

## **IV MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

### **REGULATORY BODIES**

#### **1. *Republic Broadcasting Agency (RBA)***

In the scope of its powers laid down by the Broadcasting Law to oversee the work of the broadcasters and rule upon petitions, as well as within its powers vested by the Advertising Law in relation to advertising on radio and television programs, especially taking into account the fact that the electoral campaign was in full swing, the RBA Council was practically in constant session. The Council tried, in contact with both the broadcasters and the general public, through a series of press releases, to affect the manner in which the broadcast media followed the election campaign and particularly the extent to which they respected the principle of equal representation and non-discrimination of the participants in the elections. The Council thus called on broadcast media with national coverage (TV stations in particular) to refrain from undermining the fairness of the election process by charging excessive fees for political advertising. It also pointed out that electoral advertising inciting discrimination, hate, violence or offending the honor, reputation or privacy of the citizens or other participants of the campaign would not be tolerated. The Council warned against the misuse of children and their dignity in the context of the campaign, as well as against violations of the presumption of innocence. Since the Council has not accomplished much with these warnings, it is evident that it does not possess the mechanisms to affect the overall tone of the electoral campaign. Hence, it is clear that not much can be achieved by mere regulation of broadcast media without influencing political parties, candidates, advertising agencies engaged in the campaign of these parties and print and online media. It was not realistic to expect the Council to act as a substitute of the supervising committee, for it does not have such powers or competences. Namely, under Article 99 of the Law on the Election of Members of Parliament, general supervision of the activities of political parties, candidates and means of public information during electoral activities shall be conducted by the 10-strong supervising committee, half of which shall be appointed by the Parliament, while the other half is appointed at the proposal of MP groups in the Parliament, from the ranks of prominent public figures, provided they are not members of bodies of political parties participating in the elections. In practice, however, in spite of this explicit stipulation in the aforementioned Law, the supervising committee for the elections was established the last time on the eve of the 2000 elections. Hence, general supervision of the electoral process once

again did not take place. At the same time, the control of the activities of broadcast media during the campaign proved inefficient, since nobody else was subject to the same scrutiny.

## **2. *Republic Agency for Electronic Communications (RATEL)***

On April 10, the Republic Agency for Electronic Communications (RATEL) passed a decision allowing the operator with major market strength on the media content distribution market – SBB – to change the fees for its services, starting from May 1. We want to remind that RATEL analyzed the media content distribution market in 2011, the cable distribution market in particular, and found that there was no effective competition, meaning that SBB possessed major market strength. Accordingly, SBB was imposed the obligation to provide retail services under certain conditions. That obligation involves the prohibition to charge excessive fees, the ban on obstructing market access or restricting competition by charging excessive or dumping fees, the prohibition to enable unjustified advantage to certain end users, the obligation to limit the level of retail prices, the extent of the control of individual tariffs, as well as the obligation to base the fees (prices) on the cost of services or prices on comparable markets. In the concrete case, RATEL found that SBB's regulatory report on the separation of costs and performance for 2011 did not allow the Agency to conclude that the fee increase was justified, since it was never intended for that purpose in the first place. RATEL nonetheless ultimately allowed the increase, taking into account the prices on comparable markets, namely the fees charged by major cable operators on the markets of Serbia, Croatia, Montenegro, Bosnia-Herzegovina, Macedonia and Romania, as well as the forecast 4.2% inflation rate for 2012, in line with the Guidelines of the Regulated Prices Policy from the Revised Memorandum on the Budget and Economic and Fiscal Policy. Here, however, it is pertinent to note that RATEL's decision will not have major effects on the operation of broadcast media using SBB's distribution services, since the core of the problems broadcasters face with cable distributors are not excessive retail distribution fees, but rather the practice of entering into similar or identical distribution agreements with content providers under diametrically opposite conditions. This results in cable distributors paying to some content providers for content, while at the same time charging distribution services to other providers. At that, they do not distinguish between content providers considering the attractiveness of the content, but according to the possibility of the distributor to put pressure on the content provider in question. This has resulted in the situation where mainly local terrestrial broadcasters are switched off from the cable offer if they refuse to pay distribution fees. At the same time, national broadcasters are not required to pay those fees, while foreign content providers are getting paid for the right to distribute their programs. Although such practice could constitute entering into prohibited restrictive agreements under the Competition Protection Law, the competent Competition Protection Commission did not consider it. These

problems could perhaps be addressed by enforcing the decisions passed by RATEL in March, which have (at the request of the RBA) obligated SBB to include in its Novi Sad and Kikinda networks the programs of several local TV stations with licences for terrestrial broadcasting.

### **3. *The Press Council***

On April 26, the Press Council's Commission for Complaints has passed the decision in yet another case against the daily Press. It was the first time, however, that the Commission was unable, due to split votes, to rule out whether the Journalist Code of Conduct had been violated or not. The plaintiff in the case is the Governor of the National Bank of Serbia (NBS); the Commission unanimously found that, by releasing, in the period between February 25 and March 6, a series of texts about the responsibility of the Governor for the plummeting exchange rate of the dinar, thereby violating the provisions of the aforementioned Code of Conduct. The members of the Commission said that the Governor, as a public figure, was less protected by the Code than "ordinary" citizens and that he/she be prepared to take criticism for his/her work. However, the Commission stressed, the media may engage in such criticism only within the limits established by the rules of professionalism. In this case, the Commission found that these rules were not adhered to, since Press reported biased, by omitting facts or releasing false claims. The members of the Commission also said the Code was not violated in each single text that was complained about, stressing however that professional standards were not adhered to when publishing the series of articles. In the proceedings regarding the second complaint they were deciding about, the members of the Commission were unable to pass a decision as to if the text released in the daily "Politika" on March 13, entitled "Only Thieves are Diligent" had violated the Code of Conduct. In the opinion of the plaintiff – the Regional Minority Center – the text violated the provisions of the Code requiring journalists to protect the rights and dignity of vulnerable groups and invest their best efforts to avoid any kind of discrimination. In the text in question, the author criticized the lax penal policy against thieves stealing telephone cables and tin from schools and kindergarten roofs, which "typically belong to the Roma community". The text includes the following sentence: "One may already sense that the courts are going to be lenient: some NGO or 'factor' is going to step in protecting their rights and will 'call out the judge'. The fact is that the Roma are in a very difficult situation, living in poverty, but at the same time, huge amounts of money are spent for their 'inclusion', which does not give them the right to be spared from justice", the text said. The Politika editorial board responded by saying that the controversial text "merely stated the state of affairs", with the goal of addressing a major social problem, in the general interest and for the benefit of the Roma population in particular". Politika's journalists said they were ready to apologize, if the plaintiff furnished relevant

information countering the claim that “the majority of the delinquents stealing copper cables are not Roma”.

The Serbian journalists’ Code of Conduct stipulates that the journalists are required to accurately, objectively, completely and timely report about events of public interest, in respect of the right of the citizens to know the truth, while adhering to the principal standards of the journalistic profession. It is without dispute that the frequent thefts of copper cables, due to which entire districts and parts of towns remain without telephone lines, are events of public interest. The Code, however, also says that the journalist is required to respect and protect the rights and dignity of vulnerable groups, as well as that he/she must be aware of the risk from discrimination the media may propagate. Journalists must do everything possible to avoid discrimination based on ethnic or social background. The opinions of the Commission were split as to whether the ethnic affiliation emphasized by the journalist in the concrete case was directly related to the type of felony he had referred to, which could serve to justify mentioning the ethnicity of the thieves. The members of the Commission – Tamara Skrozza, Filip Svarm, Slavisa Lekic, Stojan Markovic and Petar Jeremic – believed that the Code was violated, that the text was discriminatory against the Roma, portraying them not only as thieves, but as “protected” thieves unpunished by the courts because they have powerful protectors such as NGOs. The remaining members of the Commission – Ljiljana Smajlovic, Bozo Prelevic, Nebojsa Spaic, Aleksandar Djivulskij and Zoran Ivosevic – were of the opinion that the Code was not violated, because the ethnic background of perpetrators of criminal offenses in the concrete case was relevant for the text. The mere fact that the Press Council’s Complaints Commission failed to adopt a decision about a complaint is definitely not good for the credibility of the Commission as an institution. Furthermore, it seems that one group of Commission members failed to discern the fact that the text in question – referring to a concrete case of telephone cable theft and one concrete case where a group of persons had been arrested under the suspicion of theft of tin from the roof of one faculty, two kindergartens, other schools and public institutions – inferred two conclusions. First, that the thieves of tin and copper cables are mainly of Roma origin and second, that the judges in Serbia, in fear of pro-Roma NGOs, pursue a more lenient policy than against other citizens. At that, whereas for the first assumption the author pointed to two concrete incidents as evidence, the second claim is made without any evidence that a non-Roma person has ever been punished more strictly by the Serbian courts for the same felony. It is possible that the members of the Commission had other arguments unmentioned in the decision published on its website, but it seems that the explanations of the decisions were fairly weak. Even if the Commission thought that more extensive explanations would not be published by those they pertained to (the decision, if approving a complaint, always includes the obligation of the newspaper it concerns to publish it), that problem could be solved by simultaneously

releasing both the complete explanations and short excerpts thereof. In the contrary case, certain decisions of the Commission will be very difficult to understand, which will not boost its credibility either.

## STATE AUTHORITIES

### 4. *The Parliament of the Republic of Serbia*

The Speaker of the Serbian Parliament Slavica Djukic-Dejanovic and the Director of the RTS Aleksandar Tijanac have signed an agreement providing for the live transmission of parliamentary session of the new composition of the Parliament on the public service broadcaster. The RTS will broadcast the sessions on Tuesdays, Wednesdays and Thursdays when, according to the Rules of Procedure, the Parliament will sit, whereas the rest of the week shall see live transmissions where appropriate. RTS will receive 80 million dinars for this service. The Agreement also includes the possibility for certain sessions to be transmitted in a deferred broadcast, due to earlier commitments assumed by RTS. Slavica Djukic-Dejanovic said that the collaboration of the Parliament and the RTS shall ensure transparency of the legislators' work.

While some in Serbia believe that live broadcasts of the parliamentary sessions to be a democratic achievement, others claim it is evidence of the public broadcaster's inability to decide independently what parliamentary activities deserve to be on the air. We remind that in 2007 the RBA even passed a binding order committing the RTS to enable live broadcasts. The binding order remained in force less than two months and was replaced by a recommendation. Although the latter was formally non-binding, RTS continued with live broadcasts. In January 2011, the Parliament called a tender for live broadcasts, but no station applied, because the RTS was the only broadcaster that was technically able, with its two terrestrial channels, to meet the tender requirements. The public service broadcaster, which did not even apply for the tender, ended up entering into an agreement with the Parliament last July. That agreement guarantees RTS a fee in the amount of 80 million dinars for one year of live broadcasts and now it has probably been merely extended. However, the problem lies in the dilemma if the conclusion of such a deal undermines the obligation of the public service broadcaster to ensure its programs (and news programs in particular) are protected from any government interference. On the other hand, if live broadcasts of parliamentary sessions are deemed to be beneficial for the public interest, then this interest must be financed (under the Broadcasting Law) from the subscription TV fee and not directly from the budget. From what we know from experience, RTS

would have anyway continued to broadcast all parliamentary sessions without exception (as they did until the summer of 2011) even without the 80 million dinar fee, if not for sincerely believing it is in the public interest, then because of the inability to resist such requirement from the Parliament. That is why the aforementioned agreement resembles more a fictitious deal concealing a case of unlawful state aid to RTS.

## **COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

### **5. *Serbian Music Authors' Organization – SokoJ***

Four months after the new tariff of fees charged by SOKOJ for airing music works on radio and television stations (which tariff was proposed by the SOKOJ's Managing Board and was approved by the Commission for Copyright and Related Rights) was published in the Official Gazette, SOKOJ is yet to issue invoices to broadcasters under that new tariff. The only logical explanation is that SOKOJ is aware that the amounts of the fees prescribed by the tariff are exorbitant, which means that SOKOJ's overall tax obligations will probably exceed the amount charged under the invoices. This is showing the paradox of the process of approval of the tariffs, since SOKOJ apparently felt it was more important to have a tariff that looked good on paper, than one that it might realistically charge. The negotiations with ANEM (as the representative association of radio and TV broadcasters) continued in April, with SOKOJ offering certain concession as to the approved tariff: discounts would be extended subject to the payment of advances several months ahead or subject to more up-to-date furnishing of lists of actually aired music. The key problem remains the fact that, while the Law on Copyright and Related Rights stipulates that the fee should typically constitute a percentage from the amount of the revenue the user generates by performing his activity, which involves the exploitation of the protected object (i.e. the music) – whereas the lowest fee amounts is determined as a protection mechanism – where a user has disproportionately low revenue, the released tariff that received the positive opinion of the Commission for Copyright and Related Rights foresees exorbitant fees to be charged to more than 70% of the users. This has shifted the focus from the percentage of the revenue to be collected by SOKOJ to the fixed amount of the minimum fee, while the minimum fee itself becomes a regular fee, to be paid by more than 70% of the broadcasters. SOKOJ has shown the willingness to diverge from such a concept by foreseeing various minimum fees for different coverage zones (broadcasters situated in smaller communities would be charged a lesser minimum fee than national/regional broadcasters and those in larger towns/cities), as well as special discounts for underprivileged parts of the country. Nonetheless,



the organization did not back down from its basic position that the tariff is based on the minimum fee and not on the percentage of the revenue. This, in turn, means that the tariff has lost its main characteristic according to the Law – proportionality. By the time when this report was finalized, the negotiations between ANEM and SOKOJ failed to produce an agreement on the amounts and the discounts on the amount of the fees prescribed by the tariff.