

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

1.1. The Serbian Progressive Party (SNS) requested the Republic Broadcasting Agency (RBA) the suspension of member of the RBA Council Gordana Susa for allegedly making improper comments about that political party. In a TV show on September 12, Susa belittled and smeared the SNS and according to a press release issued by that political party, this has brought into question the credibility of all members of the Council. The press release went on saying the SNS was ready to initiate the dismissal of all members of the Council.

The Broadcasting Law stipulates that it is prohibited to influence in any manner whatsoever the work of the Council and that the member thereof shall ignore all instructions related to their work but the decisions of the competent court passed in scope of the judicial control of the Council's work. The Law also says that a member of the Council may be dismissed only for reasons and in proceedings provided for by the Broadcasting Law. The Law expressly stipulates that the reason for dismissal of a member of the Council may not be a political or other conviction of a Council member. We hereby remind that the SNS has already voiced its discontent with members of independent regulatory bodies or managers of the public service broadcaster. The SNS leader Tomislav Nikolic, in an interview published in the daily Press on July 24, announced that, if his party came to power after the next parliamentary elections, he would sack "that same evening" Aleksandar Tijanac, the General Manager of RTS. The statements and press releases issued lately by that political party seem to point to a worrying misunderstanding of independent regulation of radio and television in Serbia, as well as of the independence of the institutions of the public broadcasting service. SNS' stance shows that they aspire to take up positions both in the independent regulatory body and in the leading positions in RTS.

2. REPUBLIC ELECTRONIC COMMUNICATIONS AGENCY (RATEL)

2.1. On September 14, the Chairman of RATEL Managing Board, Professor Jovan Radunovic, PhD and the Director of RATEL, Milan Jankovic, PhD, presented before the

Traffic and Communications Committee of the Parliament, the report about the work of RATEL for the year 2010. The members of the Committee reviewed the Annual Report and laid down the Proposal of Conclusions they subsequently sent to Parliament for review and approval. By the time this Report was closed, the Parliament failed to approve the proposed Conclusion. The report says that in the course of last year RATEL passed 151 decisions prohibiting the activities of radio stations using frequencies without authorization; 76 misdemeanor proceedings were initiated and 98 conclusions were passed on allowing a forcible enforcement of decisions.

We have detailed the problems faced by RATEL in relation to radio piracy and unauthorized use of frequencies in the part of this Report concerning the implementation of the Broadcasting Law and the Law on Electronic Communications. The latter provides that RATEL's managing board shall submit to the Parliament an annual report about the work of the Agency, which report shall contain information about the situation on the electronic communications market in Serbia, about the accomplishment of the goals and tasks set out in the annual plan of the Agency and particularly about the degree of implementation of the electronic communications development strategy, the financial plan, financial reports and auditing reports, as well as other information relevant for the enforcement of the Law on Electronic Communications. The annual plan for the previous financial year shall be submitted no later than by the end of the last quarter of the current year. In addition to submitting the reports to the Parliament, the Agency shall post them on its webpage. These reports, dated July 24, have indeed been posted on the Agency's website. Among other things, the report shows that RATEL had a surplus of almost a billion and 250 million dinars in 2010. However, one is unable to see in the report information about the situation on the electronic communications market in Serbia for the year 2010. The report namely refers to the previously released data for 2009, while merely mentioning, in relation to 2010, that the analysis has started. Although it is the first annual report submitted under the Law on Electronic Communications from 2010 and RATEL perhaps needs more time in order to fulfill the requirements of a relatively new Law, one must observe that the report has nonetheless failed to meet the expectations.

3. PRESS COUNCIL

The Press Council's Complaints Commission – the first independent auto-regulatory body for print media in Serbia – started receiving complaints on September 15. We remind that the Press Council, as an independent auto-regulatory body consisting of publishers, newspaper owners and professional journalists, was founded back in 2009, in order to monitor

compliance with the Journalist Code of Serbia in print media and decide about the complaints of persons and institutions related to the content of print media. The Council is competent for deciding about complaints against daily and weekly newspapers, the circulation of which accounts for 85% of the overall distribution of all the press in Serbia. That includes the dailies such as Alo, Blic, Vecernje Novosti, Dnevnik, Danas, Politika, Press, 24 sata, Sportski zurnal and Sport and weeklies such as Vreme, NiN and many others. The members of the Complaints Commission are the representatives of the Media Association Filip Svarm, Nebojsa Spaic and Aleksandar Djivuljskij, the representative of Lokal pres Stojan Markovic, Tamara Skrozza and Slavisa Lekic from NUNS, Ljiljana Smajlovic and Petar Jeremic from UNS and representatives of the public Zoran Ivosevic, Bozo Prelevic and Miljenko Dereta. It was also announced that the first session of the Complaints Commission of the Press Council was held on September 29 and that it reviewed the complaints that had arrived since the Council officially started receiving them. The Commission reviewed two complaints filed by citizens in relation to the content of daily newspapers, of which one complaint was rejected after the Commission declared itself incompetent to suggest to newspapers not to publish a text they had announced, which was requested in the complaint. In the second case, the Commission decided to wait for the response of the daily the text of which was the subject of the complaint for disclosure of the identity of a domestic violence victim. The newspaper must respond within seven days and the members of the Commission will then rule whether the publication of the contested content represented a breach of the Journalist Code of Conduct.

STATE AUTHORITIES

4. MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On September 28, the Government of the Republic of Serbia adopted, on a conference call session, the Strategy for Development of Public Information System in the Republic of Serbia by 2016. This was confirmed by Dragan Milicevic-Milutinovic, Assistant Minister of Culture, Media and Information Society in charge of the media. Milicevic-Milutinovic said that the Government has accepted those recommendations of the European Commission it deemed important to be included in the Strategy. "The recommendations did not concern fundamental concepts; they rather represented some fine tuning. The most important segment of the Strategy is that the state is withdrawing from all media within two years," Milicevic-Milutinovic told Vecernje Novosti. The EC's objection concerning the establishment of six regional public service broadcasters was not accepted. The Assistant Minister said that

these services would be set up, because the state must not allow the disappearance of media informing the citizens about regional matters.

The adoption of the Media Strategy has put an end to a painstaking process initiated by the requests of media and journalists' associations after the adoption of the Amendments to the Public Information Law in the summer of 2009. The associations aren't, however, completely satisfied with the text of the Strategy and the most vocal criticism concerned the part thereof regarding the setting up of regional public service broadcasting. On the eve of the Strategy's adoption, the EC pointed to the segments it believed to be particularly problematic. First, the EC fears that the said public service broadcasting will not be financially sustainable and has said that there were alternative ways to cope with the demand for regional programs of public interest, echoing the stance of journalists' associations. Furthermore, the EC says that state media either be editorially and financially independent or be privatized, pointing out to the need to have a much more detailed explanation as to how this need will be realized than it is the case in the Strategy, including organizational aspects and more precise rules on state aid, in order to exclude unwarranted influence of media content. The EC has also stressed it is necessary to foresee clear rules for state advertising, all the more so since the sources for the funding of media in Serbia are concentrated in the hands of a small number of players. Moreover, competition protection rules ought to be enforced in order to prevent that the said concentration of marketing budgets and the distribution thereof results in abuse of dominant position and influence on the professional and financial integrity of the media. The Commission has highlighted as a special concern the possibility for the media of National Minorities' National Councils to be funded from the budget, in view of the political nature of these councils and potential influence on the editorial policy of the said media. The Commission has also warned that two aspects concerning digitalization haven't even been mentioned. First, who will finance digitalization and second, the state failed to commit that it would implement the digitalization process in consultation with all stakeholders and the public. The text of the Strategy has been published in the Official Gazette of the Republic of Serbia no. 75/2011 from October 7, 2011.

5. THE ANTI-CORRUPTION COUNCIL

In late September, the Anti-Corruption Council presented its report on the pressures on and control over the Serbian media. The Council concluded that the information it had gathered showed Serbian media to be under strong pressure and that they were subject to total control. "Not a single media outlet is providing complete and objective information to the citizens. Under strong political pressure, the media are ignoring events or report about these events

selectively and partially,” the report says. The document cites three main problems faced by the media in Serbia: lack of transparency with respect to ownership, economic influence of state institutions on the work of media, as well as the issue of RTS, which is serving the interests of political parties and ruling elites, instead of being the citizens (public) service. The said problems have resulted in the media ignoring problems Serbia faces, including corruption. According to the Council’s findings, the real owners of 18 out of 30 most important media in Serbia are unknown to the Serbian public, due to the presence of off-shore companies in the ownership structures. Furthermore, the Council has found, almost a quarter of the money on the advertising market comes from state institutions and public companies, which means that the state, by pumping money into the media, influences their reporting and editorial policy in order to promote certain figures and political parties. In the Council’s opinion, this has, in turn, led to an absence of analytical and investigative content in the media, which would deal with the activities of state institutions and public companies that are major advertisers. The report also cites other models, apart from advertising, by which the media make profit at the expense of the budget, such as commissioning media for research services, subscription to news agency services or contracts on the services of reporting about the activities of certain state agencies. The report criticizes RTS over opaque contracting procedures and unequal conditions for the same transactions with independent production companies. The Council has also analyzed the work of the RBA and concluded it was under “very strong pressure” and constant influence of political parties.

The Anti-Corruption Council’s report has stirred many controversies: the Council’s President Verica Barac pointed out that the fact that the report was ignored or received only limited coverage by the majority of media had practically confirmed the veracity of its findings. The report could undoubtedly be the foundation for analyzing the obstacles on the path to media freedom and the creation of a democratic public opinion in Serbia. However, the report is, at the same time, seriously flawed: ignoring the report or conveying only scarce excerpts prevents a public debate to take place both about the good side of this report and about its shortcomings. The good news is that report has pointed out and, in certain parts, documented the mechanisms of pressure against media and that it recognized a series of serious problems. However, it does not indicate the standards that the Council advocates in relation to the transparency of media ownership. Furthermore, the issue of competition protection and maintenance of media pluralism is reduced to the problem of illicit media concentration, absolutely ignoring both restrictive agreements and the abuse of dominant position. Hence, the report recommends that the Competition Protection Commission should oversee instances of media ownership concentration, but fails to recommend sector analysis of the advertising market or media content distribution markets, although such analyses would be more appropriate for the problems identified in the report. Moreover, state

financing of media isn't analyzed from the aspect of state aid control regulations. Finally, perhaps the best thing is that the release of the report coincides with the adoption of the Media Strategy. This fact enables us, in view of the problems identified in the report, to both evaluate the solutions proposed by the Strategy and the implementation of these solutions.