

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)

In the period covered by this Report, the RBA Council held three sessions. The session held on June 1, 2011 was attended by the members of the Managing Board of Radio Television Vojvodina (RTV), who came to discuss the problems and the situation in broadcasting in general on the territory of Vojvodina. The Council also examined the applications for the public competition for the issuance of radio broadcasting licenses for local areas, which was called on December 28, 2010. The list of applicants who had submitted complete and timely applications was ascertained and the proper department was tasked with publishing the list in the same way as it had called the public competition for the issuance of radio and/or television broadcasting licenses. According to the list, nine applicants have submitted their applications for seven radio broadcasting licenses for local areas (Lebane, Nis, Trgoviste, Negotin, Razanj, Arilje and Kovin), while two applications have been submitted in Nis and Kovin, respectively. On the session held on June 15, 2011, the Council reviewed objections voiced over the appointment of Dalibor Bubnjevic for member of the Managing Board of RTV. The main criticism concerning Bubnjevic concerned his alleged involvement on the promotion of the book "The Case of Nacionalni Stroj", authored by Goran Davidovic "The Fuhrer", sentenced to a prison term for instigating ethnic, religious and racial hatred. The RBA Council ruled that there was no grounds whatsoever to initiate a procedure to dismiss Bubnjevic, in view of the verdict of the Court in Zrenjanin ordering the publisher of the aforementioned book to pay Bubnjevic damages for unauthorized use of his name. The Council also reviewed the annual report about the compliance of RTV with its statutory programming obligation. However, that report has not been posted on the website of the RBA or that of RTV and its content was not disclosed in much detail either in the brief press release issued after the session. The Council also announced that it had issued a warning to the "O17" television station from Vranje for political advertising outside of the electoral campaign. In accordance with the provisions of the Broadcasting Law, that decision was not posted on the RBA website and thus may not be commented. However, it is indisputable that the said Law prohibits the advertising of political organizations outside of the electoral campaign and provides for warning to be issued (but not published) for the first non-compliance with any of the obligations provided for by the Law or acts of the RBA.

On a session held on June 29, the Council reviewed and adopted the report of the Supervision and Analysis Department about compliance with statutory and programming obligations of commercial television broadcasters holding a national license. Unfortunately, this report has not been posted on the RBA website either. The RBA Council also launched proceedings against the “Prva” television over the content aired in the talk show “Evening with Ivan Ivanovic”. The reason was the open letter addressed to the Chairman of the RBA Council, Bishop Porfirije, by the Democratic Union of Croats (DZH), voicing concern over the insults uttered against the Catholic Church and hate speech against the Croatian people. DZH found that in the aforementioned talk show on April 29 and May 6, the host Ivan Ivanovic had uttered insulting statements against the Catholic Church and “called on Al Qaeda to wait for Croatia to enter the European Union before planting an atomic bomb, with clear insinuations as to where to put it.” With regard to the reporting of RTS about the alleged media connections between “Prva” and “TV B92”, the RBA Council stated that no connection had been established between the owner of “Prva” and other television stations in Serbia.

STATE AUTHORITIES

2. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On June 3, 2011, the Ministry of Culture, Media and Information Society posted on its website the text of the Draft Strategy for Development of Public Information System in the Republic of Serbia until 2016. A few days later, on June 8, the initial program of the public debate about the Draft was released. The program involved a series of round tables in Kragujevac, Novi Pazar, Novi Sad, Nis, Belgrade and Cacak. Although the public debate was initially foreseen to last until June 25, it was extended until July 15.

The text of the Draft Strategy for Development of Public Information System in the Republic of Serbia until 2016 greatly departs from the current situation in the media in Serbia. Firstly, for the first time, it offers a clear definition of the public interest in the media sphere. Secondly, it insists on the continuation of privatization and withdrawal of the state from media ownership more consistently than it has been the case until now with the applicable provisions of the Public Information Law. The Draft Strategy namely foresees that the obligation of the state to withdraw from the media will also apply to news agencies. Regarding the transparency of media ownership, the concepts from the Draft consistently rely on the Recommendation Rec (2007)2 of the Committee of Ministers of Council of Europe member countries on media pluralism and diversity of media content. With regard to concentration of media ownership, the Draft proposes the introduction of testing the public

interest as a specific corrective in relation to the general competition rules. With regard to the press, provides for affirmative discrimination measures, while concerning broadcast media, it foresees the issuance of licenses on a platform neutral basis, under predetermined and non-discriminatory conditions, adapted to the type of service, namely different conditions for linear and non-linear services. Furthermore, the Draft Strategy stipulates that the licenses will typically be issued on request, with retaining open competitions for terrestrial broadcasting only. Procedures will also be introduced to precede the issuance of new licenses for terrestrial digital broadcasting, which would involve the analysis of needs, the market and effect of licensing new content providers, in order to avoid to again have the situation of an artificially created saturation with broadcast media, hampering development and resulting in reduced service quality. For the first time in Serbia, the Draft Strategy proposes the introduction of *must carry* and *must offer* regulation. With respect to public service broadcasters, the Draft insists on strengthening the responsibility to the public and increasing transparency in the work of these broadcasters. Under the proposed concepts, the revenue will be separated on an accounting basis by financing ground, in order to prevent the proceeds from the fee to be used for commercial purposes. Concerning the legitimate needs of the citizens on the local and regional levels to receive information that are specific for their region or information about the characteristics of a certain region, municipality or town, the Draft provides such needs to be financed on a project-basis, through the funding of content, aired by commercial broadcasters, corresponding to the standards of the public broadcasting service, but also through imposing regulatory obligations to commercial broadcasters accordingly (making the issuance of licenses for terrestrial broadcasting conditional on assuming the obligations to air, in a certain part of the program, content realizing the function of regional public service broadcasters). Similar concepts, containing even more favorable conditions for project-based funding, are also proposed for media on minority languages. Relative to media based on new technological platforms, the Draft provides for the institutional merger of regulatory bodies from the field of broadcasting and electronic communication, taking into account specific regulatory needs in both sectors. Concerning state aid to media, the Draft foresees a model for the co-financing of public interest in the media sector, under a unique methodology, regardless of the aid provider in each concrete case, in a transparent procedure, under equal and non-discriminatory conditions, on open competitions for the co-financing of projects. The Draft also provides for certain specific incentives, such as a drastic reduction of the VAT rate on newspapers and magazines, news agency services and media content, the production of which has been project-financed with state aid funds; the reduction, namely the scrapping of customs duties on raw material, spare parts and fixed assets that need to be serviced, which are not manufactured/services are not rendered in the Republic of Serbia; encouraging the employment in the media sector by releasing the employer from paying part of the taxes and benefits on newly-employed staff

and tax on author fees; providing support to public media, journalists' and media associations, for professional development of journalists in various areas (economy, defense, minority rights, internal affairs, agriculture, new technologies...); imposing the obligation to state authorities to buy advertising space in the media freely and directly from the public media, without any intermediaries; releasing local public media from a part of local taxes and charges, such as taxes for business signs, taxes for the use of building land and the like.

The public debate on the Draft and particularly the round tables were held, were burdened by the fact that the Ministry of Culture, Media and Information Society itself had taken an entirely ambivalent stance towards the Draft. The impression was that the Ministry had tabled the Draft Strategy for public debate merely as yet another contribution to the drafting of the Strategy and not as a text it firmly supported and was ready to defend. During all round tables, the Ministry remained mainly a silent observer, without any input as to which of the proposed concepts it preferred. Due to such an indifferent position of the Ministry, the round tables were unsurprisingly moderated in such a way that no attention was dedicated to particular segments of the Draft and the discussion mainly focused on just two items – privatization and regional public service broadcasters.

The position of the Draft, under which the withdrawal of the state from media ownership is a necessary precondition, in the situation where the media market is undeveloped and a considerable dependence exists from public revenue, for ensuring an equal rights of the media, transparent expenditure of budget resources and control of state aid, which, in turn, is expected to result in economic recovery of the media, media pluralism, a complete realization of the citizens' needs for diverse media content, renewal of the professional reputation of journalists and the journalist profession and consistent respect of media freedoms, was attacked with poor arguments. Critics said that only state ownership in media or regional public service broadcasters could guarantee the survival of media and satisfy the needs of the citizens for relevant local and regional information or for information in minority languages. At that, the advocates of regional public service broadcasters were not willing to accept any single argument. Their proposal to ensure the financing of regional public service broadcasters from fees is completely out of sync with the reality that collection rate of even the current fee is problematic, as well as with the fact that the revenues from the fee remain insufficient for the funding of existing public service broadcasters. The alternative proposal – to earmark the funds for financing of regional public service broadcasters from local self-government, namely by signing financing contracts with them – would reactualize the same problems that have produced the current situation in the media unsustainable. Such proposal would lead to an unequal position of the media, favoring some media at the expense of

others, lack of transparency in the expenditure of budget money and keeping the mechanisms of media control by centers of political power. At the same time, the proposed models for curbing the influence of local politicians on the editorial policy of such media, namely the establishment of independent bodies to be elected on the local and regional levels, have proven to be ineffective in other transition countries that tried to implement a similar idea.

It remains to be seen what conclusions will the Ministry put forward after the public debate and what text of the Strategy it will propose to the Government. Unfortunately, the doubts about the public debate have proven true. On one hand, we have seen the lack of political will to finally part with the tragically unsuccessful public media policy in Serbia, as evidenced by the Ministry's reluctance to take any clear and principled positions in the public debate, which has relativized the concepts over which the same Ministry organized the debate in the first place. On the other hand, the managers and editors of the unprivatized media were reluctant to renounce their privileged position on the market, which was, again, supported by political players that did not want to give up well-oiled and efficient mechanisms for controlling the media, enabling them to control the media scene as a whole.

3. COMMISSION FOR COPYRIGHT AND RELATED RIGHTS

Proceedings have continued before the Commission for Copyright and Related Rights for obtaining the opinion about the proposed tariffs of collective organizations. We remind that the Law on Copyright and Related Rights stipulates that these tariffs will be determined by mutual agreement with the representative association of users and that, if no agreement is reached, the proposed tariffs shall be set by the managing board of the collective organization and sent to the Commission for Copyright and Related Rights for opinion. The opinion of the Commission should contain an assessment about whether the proposed tariff includes the rights for which the organization holds the license for collective realization issued by the Intellectual Property Office, as well as whether the fee was set in accordance with the rules for determining the tariff prescribed by the Law on Copyright and Related Rights. In the part concerning radio and television, these rules stipulate that the tariff must be appropriate, that it typically must be set as a percentage of the revenue generated by the user by performing the activity in the framework of which it uses the protected object, as well as that this amount must be proportionate to the significance of the exploitation of the protected object for the revenue of the user. The tariff will be set with consideration of the tariffs of collective organizations in countries whose GDP is similar to that of the Republic of Serbia. If the Commission in its opinion finds that the proposed tariff involves the rights for which the collective organization that has proposed the tariff possesses the license for collective

realization, as well as that the fee has been set in keeping with the rules for determining the tariff prescribed by Law, the tariff will be published in the „Official Gazette of the Republic of Serbia“ and become effective. In the contrary case, if the Commission finds that the proposed tariff does not involve the rights for which the collective organization that has proposed the tariff possesses the license for collective realization, namely that the fee has not been set in keeping with the rules for determining the tariff prescribed by Law, the Commission shall return the tariff to the collective organization, which will, within the next 30 days, renegotiate with the representative users' association, or shall submit the new proposed tariff to the Commission for opinion. Only if in the second instance the Commission finds that the fee has not been set in keeping with the rules for determining the tariff prescribed by Law, it will independently pass a decision about the tariff.

Concerning the request of SOKOJ to the Commission to issue an opinion about the proposed tariff for the fees for airing music works, the Commission completed the consultations with the users in early June. The Commission's opinion has never been released, but we have learned off the record that the Commission found that the tariff was not set in keeping with the rules prescribed by Law and that it was thus returned to SOKOJ for new negotiations with the representative users' association. With respect to OFPS' request for an opinion about the proposed tariff, the users' association is yet to issue its opinion. What is known is that OFPS' proposal of the tariff is less favorable than the currently applicable tariff for television, since the fee under the current tariff ranges from 1% to 2%, while the new proposal, tabled to the Commission, foresees a range of between 1 % and 2.5%. The proposed new tariff for radio, for most radio stations, does not involve any changes, since the current 3.5%, which was a fixed amount, will remain in force for most of the stations, while the lower fee amounting to 2.5% or 3% would be applicable for a few stations with less music in their program.