

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. The Republic Broadcasting Agency (RBA) released, on May 17, the Report on the Realization of Statutory and Programming Obligations of the public service broadcaster (RTS) for the year 2012. The analysis involved the channels RTS 1, RTS 2, RTS SAT and RTS Digital. At first glance, one may clearly see the absence of an analysis of the radio program of the public service broadcaster. At the same time, the analysis of the public service broadcaster's obligations tackled mainly the segment of compliance with statutory and programming obligations. Therefore, one may say that, although very detailed in some segments, the analysis was not complete. The Report concluded that the RTS, on its channels RTS 1 and RTS 2, has complied with its obligations concerning the mandatory quotas of Serbian language-production and own production. On the other hand, as to the percentage share of independent production content (6,56% on RTS 1 and 9,01% on RTS 2), the RTS hasn't fulfilled the statutory mandatory quota for independent production content on its channels. Moreover, since 2012 was an election year, the analysis also dealt with the issue of meeting the statutory obligation of the RTS to enable the representation of all election lists and all presidential candidates. The analysis concluded that the RTS had fulfilled that obligation through specialized programs on its second channel RTS 2.

Although the analysis, as aforementioned, also encompassed RTS SAT (a program mainly intended for the diaspora, consisting of rebroadcast content from RTS 1 and RTS 2, as well as of the specialized experimental program RTS DIGITAL), we are hereby analyzing the realization of programming functions relative to the basic programming offer of the RTS – the channels RTS 1 and RTS 2. The RBA states that the analysis had placed an emphasis on articles 68, 73, 74, 77 and 78 of the Broadcasting Law. Article 68 prescribes general programming standards; Article 73 provides for the mandatory quotas for original, own-production content, produced in the Serbian language; and Article 74 prescribes the quota for independent production content.

Article 77 of the Law says that the programs produced and aired in the scope of the public service broadcaster, shall involve news programs, as well as content from the area of culture, art, education, religion, children's program, entertainment, sports and other field. These programs aim at fulfilling the needs of the citizens and other entities and the realization of their rights in the field of broadcasting. Article 78 of the Law stipulates that public service broadcasters' shall produce and broadcast programs intended for all segments of society, without discrimination, taking into particular consideration specific social groups. Public service broadcasters shall also satisfy the needs of the citizens for program content expressing the cultural identity of the nation, as well as those of national minorities and ethnic groups, by enabling them to follow certain programs or blocks programs in the areas where they live and work, in their native languages, both spoken and written; as well as to ensure the appropriate time slots for broadcasting content related to the activities of civic associations and NGOs, as well as religious communities in the region where the program is broadcasted. The first thing that strikes one is that, for the third year in a row (from the time the RBA has been releasing its reports), the RTS has failed to meet its statutory mandatory quota for independent production on its channels. Instead of having the share of independent production content at 10% or more, on the RTS 1 it amounted to 5,99% in 2010, 6,27% in 2011 and 6,56% in 2012. On RTS 2, it was 7,36%, in 2010, 7,4%, in 2011 and 9,01% in 2012. As for genre, the analysis has shown that RTS 1 posted a trend of moderate growth of the share of news and sports programs, respectively. At the same time, the share of films, sitcoms, entertainment, documentary, children's and music programs, respectively, was down by a small margin. Although their share is up, science and educational content and musical and artistic programs are still insufficiently represented. Furthermore, the share of premieres on RTS channels stopped falling in 2011; nonetheless, the share of reruns continued to grow. The share of commercials is also down. Meanwhile, the share of news programming on RTS 2 is slightly down, as for science and educational content. The share of documentary, children's, cultural-artistic and entertainment content is slightly up. As for the programming intended for specific social groups, the analysis of RTS 1 has only recorded programming for hard-of-hearing persons, which are broadcasted in sign language, as well as programs for national minorities. However, the share of such content in the overall programming is merely 0,30%. There was slightly more programs for specific social groups on RTS2 - 4,57%. However, relative to the obligation of the public service broadcaster to provide for satisfying the needs of national minorities and ethnic groups for the content expressing their cultural identity, including the possibility to receive certain programs and program content in their own mother language both spoken and written, the impression remains that the RTS has fallen short drastically by broadcasting, in the course of the whole year, only one program on the life of national minorities and two programs in Roma language, leaving Hungarian, Bosniak or Albanian minority without any program content. Several key objections to the Report on

fulfilling of statutory and program obligations of RTS are self-obvious and have been pointed to for the third year in a row.

First, radio program is completely neglected, as if the public service broadcaster didn't have any statutory and programming obligations relative to it. The second objection is the absence of qualitative analysis, since the mere statistics about how the RTS has dedicated a certain percentage of its program to certain type of contents, does not automatically mean that the content broadcasted was of proper quality and does not mean that they fulfilled their designated purpose. Thirdly, if the purpose of the Report was to influence the RTS to improve its offer, it is obvious, when one compares the latest report to the previous two, that this purpose is far from being realized. For the third year in a row, the RTS failed to fulfill its statutory mandatory quota of independent production program on its channels. The share of such independent production program is up, but that growth is so small that it does not guarantee that the mandatory quota for RTS 1 will be fulfilled at all before 2025. Fourth, the Report contains a section with the statistics of misdemeanors. We remind that, under the Serbian legislation, misdemeanor is a unlawful, culpably committed act, which is determined as an misdemeanor by a regulation of a competent authority. Misdemeanors may be prescribed by a Law or Ordinance, decision of the parliament of an autonomous province, local council or city council. That means that misdemeanors may not be provided for by binding instructions of the RBA. Furthermore, even in cases where a specific misdemeanor referred to by the RBA is correctly prescribed, it goes without saying that nobody may be declared responsible for such misdemeanor outside of a legally prescribed procedure conducted by the competent authority. The RBA mislabels things here (it's doing what it bans the media from doing - breaches the presumption of innocence) and brands as misdemeanor alleged violations of various regulations and obligations of the RTS. This category in the Report imposes a new question: what has the RBA undertaken if, according to the RBA's report, the RTS is guilty of 1370 violations of different regulations in only one year?. If we add to that the fact that, for the third consecutive year, the RTS fails to comply with its statutory program quota, the RBA's responsibility is even greater. What could the RBA have undertaken? According to the Broadcasting Law, it is authorized to take measures, in the concrete case merely warnings and notices. The Report didn't show that any procedures for issuing such measures had been initiated. Moreover, if the actions of the broadcaster, in the concrete case, may be characterized as an offense under the Law, the RBA is authorized to initiate the proper procedure before the competent court or other state authority. One cannot conclude from the Report whether these procedures have been initiated. Finally, the RBA is also competent for dismissing members of the RTS Management Board. If the members of the latter are obligated to ensure the consistent enforcement of the provisions of the Broadcasting Law,

meaning the provisions concerning the RTS, as well as if the results of the Report have shown that, for the third consecutive year, the RTS Management Board failed to comply with this obligation, one may ask when will the mentioned members be dismissed? Finally, bearing in mind the fact that the adoption of new Broadcasting Law is pending, i.e. Electronic Media Law, from the Report it stems that the new Law could provide to the regulator clearer base criteria for assessing the effectiveness of the function of the public service broadcaster than those existing (or better say inexistent) in the applicable Law.