

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Law on Public Information

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

2. Broadcasting Law

In the period covered by this Report, the Council of the RBA has issued two warnings, causing reactions by journalists' and media associations as well as media professionals. They expressed concern that the regulator has overstepped its authority by censoring (which is prohibited by the Constitution) programming content and "disciplining" public service broadcasters and commercial broadcasters.

2.1. The Republic Broadcasting Agency (RBA) has issued a warning to Radio B92 over the humoristic program « Mentalno razgibavanje » (Mental Stretching), namely a satirical package with edited news of the public broadcaster Radio Television of Serbia (RTS). The controversial part for the RBA was the sequence with the words "the Government... sacked... President Nikolic, who was pimping young boys to the former Bishop Vasilije Kacavenda". The RBA Council estimated the controversial sound bite to have been completely outside of the context of the story concerning the months-long reshuffle of the Serbian government. In reality, the program was introduced with a clear warning that it was a deliberately edited feature; it went on the air containing sound bites saying, among other things, that the government was reshuffled so as to have "18 ministries", including "the ministry of intestinal pains", "the ministry of the all-Chinese people's congress", "the ministry of corruption", "the tralala ministry" and "the ministry of Novak Djokovic", with the goal of such reshuffled government being to have the Socialist Party of Serbia "controlling as many ministries as possible" and that such government "has dismissed... President Nikolic for having pimped young boys to the former Bishop Vasilije Kacavenda". The RBA Council was of opinion that airing such content has injured the dignity of the person and the office of the President, who was placed in the context of "committing the grave criminal offense of procuring minors for sexual intercourse", punishable under the Criminal Code.

Under the Broadcasting Law, the RBA is authorized to initiate proceedings against broadcasters based on complaints by viewers/listeners, but also *ex officio*, although the latter possibility is not expressly mentioned. From the intent of the provisions of the Law, it may be concluded that reacting to the complaints by viewers/listeners is a rule, while acting *ex officio* is an exception. The latter should hence be limited to cases where the public interest is threatened to such an extent that it requires the reaction of independent regulators. In other cases, such act by the RBA could be interpreted as disproportionate intrusion into the right to free expression. In the concrete case, neither the RBA, nor Radio B92 received any listener complaint; unlike the RBA, the listeners realized that the controversial content was a satire of the months-long government reshuffle and did not implicate the President in the commission of a crime. The qualification of “violation of the Broadcasters’ Code of Conduct (BCC)” is also questionable. The RBA’s press release stated that the broadcaster had violated the obligations arising from subparagraph 10.2 of the General Binding Order on Broadcasters’ Conduct (GBO) concerning the ban on extremism and insulting speech. The quoted provision of the GBO indicates that broadcasters must suppress extremism and insults in their programs, both relative to the conduct of the anchor of a certain program and to that of his/her guests. Since the above described case concerned a satire criticizing the lengthy (months long) reshuffle of the Government, and it did not contain any form of extremist speech or insults against the President, the decision by the RBA Council is reminiscent of a precedent of the Higher Court in Cacak and the Appellate Court in Kragujevac. Back in 2011, these courts sentenced to a fine Stojan Markovic, the editor of Cacanske Novine, who was sued by Minister Velimir Ilic. Markovic was fined for publishing a humorous article that “did not contain enough true facts”. Particularly concerning is the fact that, by passing such a decision, the RBA Council is actually defining the standards of acceptability of political satire, while being even more restrictive than the Criminal Code. Namely, under Serbia’s criminal legislation, insult shall not be punishable if uttered as a part of serious criticism in a work of art or in the performance of the journalism profession, if no attempt at humiliation may be discerned from the manner of expression or other circumstances. In the concrete case, even if a part of the package with edited news of the public service broadcaster could constitute an insult of the President, the circumstances of the case made it clear that there was no intent to humiliate him, but merely to criticize the authorities for delaying the arrangement on the Government reshuffle.

2.2. Simultaneously with the warning issued to Radio B92, an identical measure was pronounced against Radio-Television Vojvodina (RTV) over the interview with Kosovo politician Atifeta Jahjaga. The objection was that the journalist did not stand up to Jahjaga with additional questions. At the same time, the RBA Council did not object the fact that the interview was conducted without adequate simultaneous translation, due to which the journalist (in his own words) did not fully understand the interviewee. Ignoring that issue the RBA Council patronized

RTV over the format of the interview and even questioned the veracity of the interviewee's statements. An interview is a distinct form of journalism expression and, as such, is not subject to the same criteria as reporting about current affairs. It is completely absurd to hold accountable a media outlet or a journalist for the personal opinions voiced by an interviewee about a certain issue, namely because the journalist did not notice that such views are not true. By doing so, the regulator embarked on assessing the veracity of a personal position (not facts) and meddles in the free practicing of the journalism profession. Journalist Laszlo Tot, who conducted the controversial interview, was in the meantime sacked from RTV.

What makes this interview highly controversial is the doubt that emerged over the possibility that the footage was in some way pre-approved or censored. Namely, a member of the RBA Council Goran Pekovic told the media that the RTV representatives had said, in their defense, that the Government "asked them if they could take a look at the interview". The Government office in Gracanica, where a part of the interview was reviewed, merely objected the fact that the journalist addressed Jahjaga with the words "Ms. President". So, the representatives of RTV thought the latter to be the Government's official stance and decided to air the interview. The legitimate question is if this was an introduction of a kind of low profile censorship in reporting about Kosovo. Also, what would happen had the Government office in Gracanica opposed the interview and would that mean it would not have been aired at all? The RBA said in a press release about the warnings against RTV that the broadcaster had violated the obligations contained in Article 3, paragraph 1 (the Principle of Professionalism) and Article 79 of the Broadcasting Law, as well as those in section 2, paragraph 1, subparagraph 2) Objectivity and 3) Impartiality from the GBO. The above-mentioned provisions of the BCC confirm that the broadcasters must enable every view to be presented with a minimum of objectivity (without malicious editing, inserted comments, etc.). Furthermore, when the broadcaster and an individual or organization referred to in the broadcaster's program are in some way connected or if the program mentions any kind of interest-related connection, such connection must be clearly mentioned in the program (objectivity). At the same time, the broadcasters are entitled to their own independent editorial policy, while respecting a minimum of impartiality in reporting. Minimum impartiality entails the obligation of broadcasters to clearly separate factual reporting from positions, opinions or comments, while being obligated to make sure that the personal convictions and opinions of editors and journalists will not discriminate against the choice of any particular topic and the manner in which that topic will be presented. Furthermore, it is not allowed to manipulate with statements, press releases and similar content with the aim to change their core meaning (malicious editing, shortening or removal of key parts of the content in question, etc.). As the RBA Council practically accused the interviewing journalist of lack of objectivity and bias, it is necessary to analyze what these qualifications are based on. First, there is no apparent interest connecting Atifeta Jahjaga with Laslo Tot and RTV. Second, in the

interview, Jahjaga mainly voiced her positions and not facts. Furthermore, the assertion that the journalist could have “discriminatorily affected the choice of topics and the manner in which they were presented” in the interview, while not fully understanding (in his own admission) the responses of the interviewee, is questionable to say the least. For all those reasons, the decision of the RBA Council is utterly problematic. Namely, it seems undeniable that RTV did violate the principle of professionalism and independence – firstly, by broadcasting an interview where the interviewer did not understand the interviewee, since she spoke in a different language and simultaneous interpretation was inadequate; secondly, if the interview (as some claimed) had really been sent for “approval” to the Government. However, even if the grounds for pronouncing the measure exist, RBA’s explanation was disturbing. In the explanation, the Agency did not refrain from accusing journalists of not asking certain questions, which is in contradiction with the allegedly breached principle of professionalism and independence. Finally, we remind that, in the famous case *Jersild v. Denmark*, the ECHR found that the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question and that it was not for that Court, nor for the national courts for that matter, to impose on the press manners of reporting that should be adopted by journalists. This naturally also pertains to the RBA Council, which should not be the body that will impose on the PSB or any other media outlet the manner in which their journalists will be reporting and asking questions, neither should it impose on the media the obligation to stand up to interviewees. Furthermore, interviews are one of the main means by which the media perform their core function in a democratic society. Punishing a journalist or a media outlet for conveying the statements of a third party in an interview restricts the possibilities of the media to contribute to the necessary debate about public interest matters and as such constitutes illegitimate meddling in freedom of expression.

2.3. In December 2013, the RBA Council submitted to the Parliamentary Committee for Culture and Information a report on the work of the Agency for 2012. The Committee debated the report on its 19th session. Presenting the report, the President of the RBA Council, Bishop Porfirije (Peric) said that 48 reprimands were pronounced in 2012, as well as 1 public warning. Furthermore, 19 decisions prohibiting unlicensed broadcasting were passed and 22 criminal charges were filed. Members of the Council Goran Karadzic and Bishop Porfirije emphasized that the RBA is trying to do the best possible job in fulfilling its statutory duties and that it does not act as a censor or meddle in the media editorial policy. Particularly interesting is the statement made by Karadzic, who said that there would be no broadcasters at all in Serbia “if the RBA was rigid in enforcing the Law, and that it is not in the interest of the public that all broadcasters be closed. The members of the Parliamentary Committee inquired about the authority of the RBA relative to banning certain content and about the existence of mechanisms that would enable the RBA to exert a stronger influence on the creation of Serbia’s media landscape. The Committee also analyzed the work of

PSBs and commercial TV stations and discussed the need to have more culture-related programs on channels with national frequency, as well as the amount of the remunerations of the members of managing boards of all independent regulatory bodies.

At first glance, that session of the Committee does not appear unusual, with a regulatory body submitting a report about its work in accordance with the Law. What is questionable, though, is the fact that the report about 2012 was submitted in December 2013. Furthermore, it is questionable that the session of the Committee debated the rigidity with which the RBA enforces the Law. If Serbia were indeed left without a single broadcaster due to "RBA's rigid enforcement of the Law", it would be logical to question the restrictiveness of the Law itself. Moreover, the RBA Council's definition of "rigidity" remains unclear. What matters more than "rigidity" in enforcing media laws is consistence and predictability. It seems that the lack thereof in the RBA's implementation of the laws is a far greater problem than lesser or greater rigidity.

2.4. A round table was held in Belgrade on December 17, organized by UNICEF, Journalist's Association of Serbia (UNS) and the RBA, after two similar round tables at the beginning of the month in Nis in Novi Sad. Two reports concerning the protection of children and youth by labeling TV programs by age group they are suitable for were presented at the round table. One of the reports, prepared by RBA's Oversight and Analysis Department, covered the programs of national broadcasters in the first four months of 2013. The second report pertains to the analysis conducted by the UNICEF office in Serbia and UNS. They analyzed the programs of RTS 1, RTS 2, TV B92, TV Prva, TV Pink and TV Hepi in the period from early January to late June 2013. The analysis was complemented by a study involving the parents of children 10-17 years of age, who were interviewed in focus groups in Nis, Novi Sad, Subotica, Cacak and Belgrade. The results of the analysis have shown that the labeling of the programs is well underway and that the most labeled are films, series and reality shows. It was observed, however, that the label of certain content (mainly entertainment reality shows) is too low; meanwhile, some documentary, science and cultural/artistic programs were labeled for a certain age group without any obvious need. The survey of RBA's Oversight and Analysis Department has shown the problem also lies with the reruns of films in inadequate time slots, as well as the teasers, which contain scenes of violence, brawls, obscenities from films and reality shows, which teasers are aired every once in a while during the day. Four measures were proposed to remedy this. The first is to establish minimum standards to help determine the content labels. Meanwhile, with the help of psychologists, UNICEF and UNS have compiled specific criteria for labeling content that may harm the physical, mental or moral development of children.

It seems that the analyses and research could be a good introduction to comprehensive public consultations through which solutions might be found to protect the interests of children and youth from improper content. It is already clear that films and series may not be judged the same as reality and pseudo-reality programs, and that the potential inadequacy of the content may be established only relative to a particular context. Moreover, since in Europe and the world there are organizations dealing with the categorization of films by age group, which is a practice that does not exist in Serbia, it seems that the RBA should, within the scope of its authority and in collaboration with broadcasters and other stakeholders, regulate this matter with the aim of creating a clear, predictable and unambiguous legal framework. In that sense, the criteria for labeling programming content that may harm the physical, mental or moral development of children prepared by UNICEF and UNS could constitute the initial proposal to be further elaborated on with the goal of reaching a wider consensus and finding a sustainable model of co-regulation in this field.