

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)

We have partly elaborated on the activities of the RBA in the section of this Report concerning the implementation of the Broadcasting Law.

1.1. In late December, the RBA issued a statement saying that it had shut down the pirate radio station "Minic" from Kursumlija. This was achieved in a joint operation by the RBA and the Prosecutor's Office for High-Tech Crime, in collaboration with the Republic Agency for Electronic Communications (RATEL) and with the assistance by the police. During the operation, the entire equipment of the station was seized and criminal charges were pressed against the owner. The statement went on saying that the RBA, in collaboration with other state authorities, had taken part in shutting down several pirate stations and that criminal charges had been pressed in nine cases. Seven decisions prohibiting broadcasting activities had been enacted.

The collaboration of the RBA, the Prosecutor's Office for High-Tech Crime, RATEL and the police in cracking down on radio piracy is most certainly good news. However, the reaction of state bodies appeared to be effective only in those cases where reasonable doubt existed that illegal broadcasting was accompanied by the commission of another criminal offense. In other situations, there are apparently no effective mechanisms as yet to suppress illegal broadcasting. Hence, there are still more than 30 illegal broadcasters, some of which even have national coverage. It seems that the ministry in charge of telecommunications still lacks proper capacities to conduct effective and efficient inspection control, which it is to carry out under the Law on Electronic Communications. Therefore, it seems that it is necessary to consider a reform of inspection control in this field, namely moving the authority of inspection control from the Ministry to the independent electronic communications regulator RATEL. This should be the subject of some future amendment to the Law on Electronic Communications.

STATE AUTHORITIES

2. Ministry of Culture and Information

The Ministry of Culture and Information called on December 21st an open competition for the co-financing of projects and programs from the field of public information in the Republic of Serbia in 2014. The competition was called for the co-financing of production and distribution of programming content of the media in the Republic of Serbia and countries of the region, which is relevant for the realization of public interest. Apart from general projects, it also involves projects and programs from the field of public information in minority languages; public information for Serbian nationals in the countries of the region; information for disabled persons, as well as projects and programs of media based in Kosovo and Metohija. The projects will be appraised based on their relevance for the realization of the right to public information, contribution to the diversity of media content and pluralism of ideas and values, valid argumentation of the project and adequate budget specification, consolidated and explained from the standpoint of planned project activities. The competition will be open until January 21, 2014. The maximum amount of funds that may be committed to each individual project shall be between 700 thousand and one million dinars.

The novelty relative to the open competitions called in the previous years is that public service broadcasters (PSBs), public companies and media founded by ethnic minorities' national councils are not eligible to participate. This is the result of the strategic commitment by the state not to financially help publicly owned media until they are privatized and not to finance PSBs and media established by ethnic minorities' national councils as long as they are funded from the public budget. This competition is a foretaste of the future media financing system, in accordance to what is foreseen by the Media Strategy and the Draft Law on Public Information and Media, which was discussed at the public debate in March 2013. However, in order for the new system of media financing from public sources to be fully implemented, we will have to wait for the adoption of the set of new media laws, when the sustainability of the solutions provided in that set of laws will also be subject to the adequate implementation of state aid control and competition protection regulations.

3. Ministry of Foreign and Domestic Trade and Telecommunications

In December 2013, the Ministry of Foreign and Domestic Trade and Telecommunications presented the new Draft Law on the Amendments to the Law on Electronic Communications. According to representatives of the Ministry, the amendments were necessary primarily due to the Decision no. IUz 1245/2010 of the Constitutional Court, which has declared unconstitutional the provisions of the Law on Electronic Communications concerning access to retained communication data. In addition, major amendments pertain to the merger of two regulatory agencies – RATEL and the Republic Agency for Postal Services. The changes are clearly not comprehensive since they do not take into account the new European regulatory framework for electronic communications from 2009. Therefore, the reform of electronic communications regulations will probably have to wait for the EU Screening (Chapter 10: Information Society and the Media), which is planned for May and July 2014.

As for media-relevant provisions, they include the changes to Article 128, which pertains to the grounds for access to retained information, as well as certain changes concerning the help scheme for the purchase of STB devices. The latter is relevant for the digital switchover and we will examine it in detail in the section dedicated to that process. The aim of the amendments to articles 128 and 129 and adding a new article 130a was harmonization with the Constitution and the decisions of the Constitutional Court passed at the initiative of the Commissioner for Information of Public Importance and Personal Data Protection and the Ombudsman, which have been warning for some time that these clauses of the Law threatened the privacy of citizens and particularly the confidentiality of journalists' sources.

The amendments to Article 128 of the Law on Electronic Communications confirmed that the retained data (data necessary for tracking and identifying the source of communication, determining the destination thereof, determining the start, duration and end of the communication, the type of communication, identifying the terminal equipment of the user and the location of the user's mobile terminal equipment) constitute an integral part of communication and as such are subject to the same degree of constitutional and legal protection as the communication itself. Therefore, access to retained data (e.g. telephone call listings) require the respect of constitutional guarantees, which stipulate that such access may exceptionally be allowed, but only for a limited time, on the basis of a court order and only for the purpose of a criminal trial and the protection of national security of the Republic of Serbia. In some segments, the proposed amendments to the Law remain unclear, since they have extended the list of situations in which retained data may be accessed, which was stressed by the Commissioner for Information of Public

Importance and Personal Data Protection during public debate. Namely, since the degree of the protection of retained data in Serbia is higher than the protection of other personal data (since it is related to the confidentiality of communication), direct harmonization of the Serbian law with European directives in this field would amount to lowering the achieved degree of human rights protection. It should be emphasized that the concept of “retained data” is quite problematic also in the EU from the aspect of protection of fundamental human rights (especially the right to privacy). A procedure for the assessment of the conformity of Directive 2006/24 (supplement to Directive 2002/58), which pertains to retaining communication data, with the European Charter of Human Rights, was recently initiated before the European Court of Justice.