

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. AMENDMENTS OF LAW ON PUBLIC INFORMATION

On 9 July 2009, the Government of the Republic of Serbia adopted Amendments of Law on public information which, as was stated, allow for greater transparency of media ownership structure and implementation of European norms in protection of human rights and submitted them to the Parliament for adoption. The Draft law was included in the agenda for the 11 extraordinary session of the Parliament, which started on 16 July, within an emergency procedure. *Within the report from the 119th session, the Draft Law of the Government may be downloaded [here](#) (only in Serbian)*

The aforementioned Draft law caused heated reactions and protests of numerous media associations, as well as the general public.

The Independent Journalists' Association Serbia (NUNS) says that the organization never had the opportunity to examine the text of the Draft additions and amendments to Law on public information. Nadezda Gace, NUNS President, said that it would not be good to regulate provisions on the media Register by this Law without adopting Law on media concentration which has passed the public debate.

Journalists' Association of Serbia (UNS) expressed its concern because of « hastiness and non-transparency » in passing the Draft amendments of Law on public information. The UNS press release emphasizes that dramatic increase of fines may have an intimidating effect, resulting in closing down media.

The Independent Journalists' Association of Vojvodina (NDNV) stated it was against the Draft amendments of Law on public information, as people of the profession were not consulted in its drafting.

The Managing board of the Media association assessed that certain provisions of the Draft amendments placed publishers in an unequal position with other legal entities. The main comments of the media association relate to introduction of deposit for print media, relation between fines and circulation and advertising inventory sold, as well as the very amounts of fine.

Association of independent electronic media (ANEM) lodged a protest because Serbian media laws were amended without an appropriate public debate, and pointed that some solutions contained in the Draft law missed the aim and objectively presented a threat to freedom of expression in Serbia. *ANEM Public Statement is available [here](#)*

Rodoljub Sabic, Ombudsman for information, warned that the Draft law was contrary to European Convention on human rights and that the stipulated fines were way too high for the local circumstances.

Sasa Jankovic, Citizens' Ombudsman, criticized the hasty procedure within which the draft was prepared.

Serbian Government accepted certain amendments to its Draft amendments to Law on public information, the point of which is abolishment of founder's capital and reduction of fines prescribed by the original text of the Draft.

Including the accepted amendments, Draft amendments to Law on public information prescribes the following:

- Introduction of the Register of media organizations, to be kept by Agency for business registers, in the manner regulated into more detail by the competent minister;
- The obligation of suspending publishing activities for founders whose account has been blocked for longer than 90 days over the period of one year;
- High fines (up to 20 million dinars) and the measure of prohibiting publishing activities pronounced to publishers who have failed to register their media outlets in the Register or who continue publishing activities even though their account has been blocked for a period longer than 90 days;
- Prohibition to transfer or dispose the ownership rights to the public media or to transfer the right to publish;
- Prohibition of establishing a media outlet under the same name as another outlet which has stopped being published or has been deleted from the register, which might cause confusion as to the identity of the outlet; this prohibition is valid for the period of one year as of the day of publishing of the last issue;
- High fines in case of violation of presumption of innocence and rights of minors, at the amount between 25% and 100% of the total of value of circulation sold on the day on which the information was published and the value of advertising inventory sold for that particular issue; the fines are up to seven times as high in case the violation of presumption of innocence or rights of a minor was committed on the cover page of a print, i.e. within news program of a broadcast media outlet;

- High fines (up to 10 million dinars) for founders who have failed to publish the masthead, or who have published it in an irregular manner, who have failed to state the name of the editor-in-chief, or who published the name of a person with a immunity or without a place of residence in Serbia as the editor-in-chief, in case they do not act in accordance with the obligation to keep records of the issues published, i.e. programs broadcasted, i.e. in case they fail to provide the issues published, i.e. programs broadcasted, for inspection without any well-founded reason.
- High fines (up to 10 million dinars) for founders who have failed to publish a reply, correction, the latest information on the outcome of criminal proceedings, i.e. the ruling upon a valid court decision, or who have failed to publish them within the periods and in the manner prescribed by law, as well as in case publishing of such a reply, correction, the latest information on the outcome of criminal proceedings, i.e. the ruling, is subject to payment of compensation for doing so.

OPINION

It is our opinion that Draft amendments of Law on public information are not in line with European standards. Firstly, it is utterly unacceptable to introduce amendments so hastily, and without an appropriate public debate. Secondly, prohibition of publishing activities as a sanction for failure to register is also unacceptable, especially in view of the fact that it is still not known which data would be included in the Register and how it will be kept. Thirdly, an extensive list of data to be kept in the Register is to be prescribed by law, not additionally regulated by by-laws. Fourthly, the prohibition of distributing information as prescribed by the current Law may only be pronounced if it is necessary for the purpose of prevention of violent disturbance of the constitutional system, violation of territorial integrity of the Republic, war soliciting, soliciting direct violence or racial, national or religious hatred with the purpose of instigating discrimination, hostility or violence, which may be established only in case publishing of that particular information may result in grave, irreparable consequences the occurrence of which could not possibly be prevented in any other manner. It is unacceptable to provide for implementation of such a measure through the institute of a protective measure of prohibition to perform publishing activities. Fifthly, the stipulated fines are not proportional to the goal pursued by their introduction, and my have a considerable “chilling effect” to freedom of expression.

The Draft law has passed the debate, both generally and in terms of particularities. Voting has been postponed till the end of the summer recess in work of the Parliament, i.e. until 31 August 2009. According to the Rulebook of the Parliament, the Law may no longer be withdrawn from the agenda. In case the Law is adopted in principle, the text of the Draft law may be modified only by adopting the already proposed amendments which have passed the debate stage.

2. LAW ON NATIONAL MINORITY COUNCILS

On 2 July 2009, Serbian Government adopted Draft law on national minority councils, composed by Ministry for human and minority rights. The Draft, as directly opposed to the provisions of Law on public information and Law on broadcasting, proposes that national minority councils establish institutions and legal entities to perform publishing and broadcasting activities and have the same rights and duties as founders of media outlets. The Draft also establishes that the Republic, province or local government may transfer their founders' rights over the existing media outlets to national councils, guaranteeing to continue their financing from the budget.

According to the current Law on public information, the state and territorial autonomy, as well as legal entities that are in majority state ownership or that are fully or partially financed from public revenue may not be founders of a media outlet, except in case of the public broadcasting service. The current Law on public information and Law on broadcasting also envisage compulsory privatization of all state-owned media, except for the public broadcasting service and Tanjug news agency. *The Draft law of the Government may be downloaded [here](#) (only in Serbian).*

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OPINION

Drafting such legal solutions, the Government confirms the absence of any clear media strategy and creates additional issues, primarily in the area of media privatization, as was the case with the Law on local government and Law on the capital which were adopted at the end of 2007. It is especially unacceptable that the Government persistently solicits the idea that the achieved level of minority rights, especially the right to be informed in minority languages, may be preserved only through maintaining state ownership, i.e. creating some new form of quasi-state ownership and preserving the inevitably connected control over media.

3. LAW ON ILLEGAL MEDIA CONCENTRATION AND TRANSPARENCY OF MEDIA OWNERSHIP

Law on media concentration and transparency of media ownership, the draft of which was composed by the working group established by Ministry of culture, and which was filed to the Ministry in April this year, has not been adopted by the Government and submitted to the National Parliament yet. The fact that the Government has meanwhile adopted Draft amendments to Law on public information, which introduces the Register of media outlets as well as Law on media concentration and transparency of media ownership leads to the conclusion that the Government has given this law up.

4. LAW ON FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE

The National Parliament is faced with two Draft laws on additions and amendments to Law on free access to information of public importance, one of which was filed by Serbian Government, while the other is the result of the initiative signed by more than 30,000 voters. On 8 July 2009 the Citizens' Ombudsman filed to the Serbian National Parliament the amendment to the Government Draft Law, upon request of the Ombudsman for information of public importance. This amendment guarantees protection to sources of information (soo-called „whistle-blowers“) and simultaneously tends to achieve more complete enforcement of the right to access to data owned by state bodies and organization trusted by public authorities, as granted to citizens by the Constitution. *The Draft law of the Government may be downloaded [here](#) (only in Serbian), and the voters' draft may be downloaded [here](#) (only in Serbian).*