



# LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for July 2009



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## **I FREEDOM OF EXPRESSION**

Freedom of media and the right to freedom of expression through the right to public information are primarily regulated by Law on public information. This Law guarantees freedom of expression, and prohibits its limitations, and any influence and pressures exerted on media. In the period observed, various violations of freedom of expression were noted; the characteristic ones are presented here. A few threats to media and journalists were observed; however, the first half of the month was marked by the unprecedented campaign the *Kurir* daily led against the media outlet *B92*.

### **1. Threats and pressures**

**1.1. Belgrade, 1 July 2009** – The *Kurir* daily accused *RTV B92* that they were preparing an ordered TV program, which should serve as a media introduction to the arrest of the founder of the *Kurir*, Radisav-Raja Rodic. According to the *Kurir*, the program was based on “trumped-up charges and cases launched against the *Kurir* and Mr. Rodic by Mladjan Dinkic, Minister for economy and regional development”, while *B92* was to prepare and broadcast the program to repay the Minister for the soft loan granted. The *Kurir* also accused Dinkic that he was supplying *B92* with copies of documents the tax officers had taken from *Kurir*, commenting that, as Tax administration had not found anything illegal in those documents, they were now used by *B92* for the purpose of instigating media lynch.

**1.2. Belgrade, 2 July 2009** – The *Kurir* daily accused *RTV B92* that they were covering a loss in business operations, amounting to about 8.5 million EUR, incurred over the period of the previous four years, using millions paid to them in the previous period by state companies, local tycoons and foreign donors. The *Kurir* accused the Deputy Prime minister, Mr Mladjan Dinkic, President of the Managing board of the Fund for development of Serbia for according preferential treatment to *B92*, granting this media organization a 42 million dinar loan.

**1.3. Novi Sad, 3 July 2009**– Nenad Canak, LSV Leader and MP, announced pressing charges against the media reporting on his child custody lawsuit against his former wife. Media reported that Canak used his political influence against employees of Centre for social welfare – members of his political party, in order to be granted custody over the child before the proceedings were completed, due to the alleged diminished capabilities of the child’s mother resulting from pregnancy.

**1.4. Beograd, 3 July 2009** – The *Kurir* daily accused *TV B92* for creating a TV package on the ownership structure and companies related to *Kurir* and Radisav Rodic based on a private document a copy of which was taken without any court order or approval from the *Kurir* head office by Branislav Vukovic, tax officer, on

performing inspection. According to the *Kurir*, *B92* was doing this to repay Mladjan Dinkic, Deputy Prime minister, for the service done to them by letting the building of the National Bank of Serbia on conditions more favorable than the market ones.

**1.5. Belgrade, 4 July 2009** – Quoting an anonymous source, the *Kurir* daily accused the Ministry of economy and Deputy Prime minister, Mladjan Dinkic, of paying a monthly amount of 183,000 EUR to TV *B92*.

**1.6. Belgrade, 6 July 2009** – The *Kurir* daily published that “the owners of RTV *B92* are trying to sell the majority of shares of this media organization in a panic”. According to an anonymous source, the buyer was not found among “the top authorities”, “due to the great losses of *RTV B92*”.

**1.7. Belgrade, 7 July 2009** – The *Kurir* daily published that the majority share package of *B92* had been in the ownership of a company of the American financial tycoon George Soros for the previous six years, so that *B92* was in violation of Law on broadcasting, according to which foreign natural and legal entities could not participate in capital of a broadcaster with more than 49% shares.

**1.8. Belgrade, 9 July 2009** – The *Kurir* daily published that “Slobodan Vucicevic, American citizen, tycoon and former taxi driver” allegedly evaded the payment of tax on capital profit achieved by increasing the value of the capital of *B92* after his company had participated in the additional capitalization of this media organization in 2006. The *Kurir* also wrote that the documents gained were passed to the tax authorities.

**1.9. Belgrade, 13 July 2009** – The *Glas Javnosti* published that the tax police kept harassing the head offices of the *Kurir*, *Glas javnosti*, as well as companies connected to these media outlets. Contrary to regulations, they demanded passing of the documents relating to business operations in 1990, which, according to Radisav Rodic, founder of the *Kurir* and *Glas javnosti*, had been taken by State security, Tax administration and Belgrade Commercial court officers before the democratic changes in 2000.

**1.10. Belgrade, 15 July 2009** – The rightist citizen association „Naši“ from Arandjelovac displayed in several towns of Serbia posters featuring pictures of „the most hated“ persons in Serbia due to their alleged „Serbophobia“, as well as the logo of *TV B92* under which there was the inscription „the most hated in Serbia, without any precedent“. Marko Karadzic, State Secretary to Ministry for human and minority rights, assessed this as a manner of creating „to be shot“ lists and said that the authors of these posters will be held responsible before law for threatening safety of numerous individuals.

**1.11. Belgrade, 19 July 2009** – The *Kurir* daily published that Marija Nenic, author of "Patrol" show broadcasted on TV *B92*, allegedly had her house constructed without a construction permit and on land belonging to someone else. The *Kurir* also places the journalist in connection with the disappearance of Milorad Dimic, the real land owner, which occurred „under dubious circumstances”. *B92* lodged a protest because of the failure to publish the reply of Marija Nenic in the *Kurir*, and pointed to the fact that the text on the alleged construction of the house without a permit was only published to reveal the home address and data on the family members of the journalist whose program deals with current criminal affairs, which presented a serious threat to their safety.

**1.12. Novi Sad, 22 July 2009** – Three trade union activists from “Dnevnik holding”, Nikola Bogicevic, Zoran Krstic and Caba Turza, were taken into custody and held in remand for more than four hours by the Novi Sad law enforcement. The arrest of the trade union activists disrupted the protest of employees of “Dnevnik holding” who were on strike due to outstanding salaries and the ambiguous status of the company the privatization of which was stopped three years ago. One of the activists said that the police would press misdemeanor charges against them for traffic obstruction and criminal charges for obstructing an official in performing his duties. “Dnevnik holding” is a state company the related companies of which publish a large number of specialized magazines. “Dnevnik holding” is a minority owner of „Dnevnik Vojvodina Press“, company which published the Novi Sad „Dnevnik“ daily, the majority owner of which is German WAZ company.

The Constitution of the Republic of Serbia (“The Official Gazette of RS”, No. 98/2006) guarantees the freedom of thought and expression, as well as the freedom of requesting, receiving and distributing information and ideas in speech, writing, picture or any other manner. Furthermore, the Constitution establishes that the freedom of expression may be limited by law, provided this is necessary for the purpose of protection of rights and reputation of others, preservation of authority and impartiality of courts and protection of public health, ethics of the democratic society and national security of the Republic of Serbia. Law on public information (“Official Gazette of RS”, No. 43/2003, 61/2005) stipulates that no one shall, not even in an indirect way, limit the freedom of public information, in any manner suitable for restricting free flow of ideas, information and opinions. The Law especially stipulates that no one shall exert any physical or other pressure on a public media outlet and its employees, as well as influence aimed at obstructing their work.

The Law also stipulates that the exponents of state and political functions shall have limited rights to protection of privacy, in case a person performing certain function is connected to some information vital for public. In the beginning of the month, the media reported on a

case in which Nenad Canak, the leader of one of the parties within the coalition in power and MP announced pressing charges against media in order to prevent publishing the texts treating the issue of his using his political influence against the politically active personnel of the Centre for social welfare in relation to his child custody lawsuit against his ex wife (see: 1.3.)

The period observed was especially marked with continuation of the campaign against B92, primarily by the *Kurir* and *Glas javnosti* dailies. In its new program, B92 broadcasted that a large number of companies connected to the founder of the *Kurir*, Radisav - Raja Rodic, had been blocked for a period longer than one year, which is why the persons who were passed valid court decisions for compensation of damage against *Kurir* may not collect their dues. B92 indicated that it was unclear how it was possible for a newspaper insolvent for such a long time to be still published and paying for paper, printing services, journalists, and associates, as well as where the money resulting from selling the papers and advertising inventory ended up. This was followed by an avalanche of sometimes contradictory texts against B92, published primarily in the *Kurir*. The *Kurir* wrote that B92 was in serious debts, that the owners were trying to sell the company, but to no avail; that B92 broadcasted packages ordered by Deputy Prime minister Mladjan Dinkic; that, when ordering media campaigns, B92 was favored by state companies; that it leased business premises at a price lower than the market price; and that it was in violation of the Broadcasting Act due to its majority foreign ownership. It is worthwhile mentioning that the published data on the ownership structure were incorrect, i.e. that persons who did not participate in the ownership over B92, in any manner, were stated as owners (e.g. George Soros) (see: 1.1, 1.2, 1.4, 1.5, 1.7)

Starting with these general attacks against B92, the *Kurir* also initiated personal attacks against individual shareholders and journalists. Thus, Slobodan Vucicevic, whose company NCA Media owns shares of B92, was accused of tax evasion in terms of his participation in ownership over B92. The *Kurir* also published a text on Marija Nenić, the author of the program "Patrol", a specific „black chronicle”, that she was having her house constructed without any construction permit whatsoever and on the land belonging to a man who had disappeared „under un-clarified circumstances”. The text not only revealed the home address of this journalist, but also the fact that she lives there with her child, which was of no consequence for the text itself (see: 1.8. and 1.11.)

In the current Broadcasters’ Code of conduct, the Republic Broadcasting Agency (RBA) prescribed that lengthy or repeated media campaigns without relevant new data which would justify prolonged or repeated reporting shall be prohibited for broadcasting companies and that this could serve as a base for pronouncing different measures, among which revocation of the broadcasting license. Print media in Serbia, however, do not have an appropriate self-regulatory body which would react in such cases.

## 2. Court proceedings

**2.1. Požarevac, 3 July 2009** - Dragan Sormaz, Republic MP from DSS, paid the amount of 420,000 dinars to the widow of the late journalist Mile Veljkovic, as compensation for non-material damage and costs of court proceedings, upon the ruling of the District Court in Pozarevac. The late Veljkovic died in July last year in a car accident. In the disputable text published in „Smederevska sedmica“ weekly in 2003, Sormaz accused the journalist of making up that he had been slapped and removed from the local DSS session, where from he wanted to report.

**2.2. Novi Sad, 10 July 2009** - Milijana Baletic, journalist, was reinstated to her job position in RTV Vojvodina by a court decision. Baletic is remembered as the protagonist of nationally biased journalism on state television during the Milosevic regime. The Independent Association of journalists from Vojvodina expressed its „astonishment“ due to the court decision ruling that Baletic should be reinstated to her job position.

**2.3. Belgrade, 15 July 2009** – „Politika novine i magazini“, publisher of the Politika daily, Milan Misic, the editor-in-chief of the publication, and Rade Stankovic, journalist, were filed a ruling of the District Court in Belgrade to jointly pay the amount of 100,000 dinars to Julijana Nedeljkovic from Mala Ivanca as compensation nor non-material damage with all the accompanying legally accrued interest. The District Court also ruled that the *Politika* publish the ruling, which was done. The Court found that the *Politika* violated honor and reputation of Julijana Nedeljkovic in the text treating the property-related court proceedings she was involved in against her daughter in law, after both her ex husband and her son had passed away.

**2.4. Belgrade, 15 July 2009.** – The First Municipal Court in Belgrade passed a first-instance decision in the case of the lawsuit filed by Mladjan Dinkic, Deputy Prime minister, ruling that the publisher and editor-in-chief of the *Kurir*, Rade Jerinic, pay one million dinars to Dinkic as compensation for non-material damage. The Deputy Prime minister had filed the lawsuit because of the texts published on 15 and 16 October 2008 entitled „The liar is a cheater: Lied again“ and „All masks are off“. Rade Jerinic said that the *Kurir* had already lodged a complaint against the decision.

**2.5. Belgrade, 21 July 2009.** – The Supreme Court of Serbia amended the decision of the District Court in Belgrade which made Veran Matic, editor-in-chief of *TV B92*, obliged under material responsibility to publish the reply of Marko Maksimovic, neuropsychiatrist and court expert from Novi Sad, by rejecting Maksimovic’s request as unfounded. The Supreme Court established that

Maksimovic's reply did not meet the conditions for publishing prescribed by Law on public information.

In the period observed, two rulings were found especially interesting. In terms of the first one, according to which the *Politika* was made obliged to publish the ruling of the District court in Belgrade resulting from the lawsuit filed by Julijana Nedeljkovic from Mala Ivanca (see: 2.3), Serbian Law on obligations establishes that in case of violation of rights of an individual, the court may rule that the decision be published, in case this contributes to the purpose achieved by compensation. Law on public information stipulates that the editor-in-chief of such a media outlet is obliged to publish the ruling pronouncing the obligation to compensate for damage without any comments and without any delay. In practice, rulings are published extremely rarely, and almost never without any comment. In this sense, the example of the *Politika*, which did publish the ruling, may be assessed as positive. It is unclear, however, to which extent mere publishing of the ruling, without any information whatsoever on the essence of the case and the manner in which the media outlet violated the rights of the claimant, may present real satisfaction to the claimant, especially in case several years have passed between the publishing of the disputable text and the court decision.

The second very important ruling is the one passed by the Supreme Court of Serbia amending the earlier ruling of the District Court in Belgrade relating to the lawsuit to publish the reply, conducted between Marko Maksimovic, neuropsychiatrist and court expert from Novi Sad against TV B92, i.e. Veran Matic as the editor-in-chief (see: 2.5.). Namely, three short statements given by Maksimovic were broadcasted in an investigative journalism program entitled "B92 investigates – Property hunters" in September 2007. The program treated the cases in which elderly, frequently senile persons, were deprived of their business capabilities in court proceedings, so that their proxies appointed by court could alienate their property afterwards, leaving them without anything. Makimovic's statements in the program related to cases in which he, in the capacity of a court expert, assessed whether the elderly were capable of taking care of their own interests. After the program had been broadcasted, Maksimovic filed a request to publish a reply. B92 did not publish the reply, assessing that there were legal grounds for not publishing it. During the course of the court proceedings, and contrary to Law on public information, Maksimovic changed the contents of the initial reply the publishing of which he had requested three times. In April 2009, District Court in Belgrade passed the decision ordering the defendant to publish the third version of the reply, amended during the proceedings. B92 appealed against this decision and stated in its appeal that validity of such a decision would lead to utter legal uncertainly. Namely, according to Law on public information, in the proceedings conducted for the purpose of publishing the reply, the discussion only relates to whether there is the obligation on part of the editor-in-chief to publish a concrete reply. If the courts allowed the claimants to remake the contents of their

replies after lawsuits for failure to publish the reply had been launched, this would, in practice, lead to situations in which editors-in-chief would lose lawsuits even in case the decision not to publish a reply had been passed in accordance with law. The Supreme Court accepted this argumentation and ruled that B92 was not obliged to publish Maksimovic's reply, having in mind that the reply did not meet the conditions for publishing according to Law on public information. This ruling contributed to increased legal certainty, as well as the confirmed right of editors-in-chief, that the conditions for publishing a reply shall be assessed in accordance with the valid laws and in relation to the concrete text of the reply received.

## **II MONITORING OF IMPLEMENTATION OF THE EXISTING LAWS**

### **1. Law on public information**

Implementation of Law on public information, as the main media law, is treated in the chapter on freedom of expression.

### **2. Law on broadcasting**

**Belgrade, 10 July 2009** – Council of the Republic Broadcasting Agency (RBA) lodged an appeal against the decision of the Municipal misdemeanor body in Majdanpek pronouncing a notice to Gordan Ursulovic for broadcasting program without a license. The statement of the Council states that this notice was an insufficient sanction for the offence having in mind the level of social threat imposed, making the efforts of RBA to eradicate pirate stations meaningless.

Law on broadcasting stipulates that a legal entity which broadcasts program without an RBA license shall pay the fine at the amount of 300,000 – 1,000,000 dinars, whereas a natural entity within the legal entity committing the same offence shall pay the fine at the amount of 20,000 – 50,000 dinars. In accordance with Law on misdemeanor, which was enforced in this particular case, a notice may be ruled instead of the stipulated fine in case there are circumstances which considerably diminish accountability of the perpetrator, and if it may be expected that this person will not commit further offences and will not be sanctioned in future. It is unclear which particular circumstances in this particular case considerably diminished accountability of the perpetrator, and what were the grounds for the Misdemeanor court in Majdanpek to rule that in case of Gordan Ursulovic it may be expected that he would not commit further offences and remain unpunished in future. This decision, however, confirms the previous RBA statements that the penal policy for pirate broadcasting is unacceptably lenient and that it makes efforts to eradicate pirate broadcasting quite meaningless.

**Belgrade, 10 July 2009** – The Official Gazette of the Republic of Serbia No. 50/2009 published the Rulebook on additions and amendments to the Rulebook on measures for establishing the amounts of fees for broadcasting radio and/or TV program. According to the amendments, the base for establishing the amount of fee was reduced from 13.5 to 12.825 dinars. A single formula was also established to calculate the amount of fees for all zones of coverage. The amount of fee for each individual broadcaster is established by multiplying the number of population in the zone of coverage with the 0.6 coefficient and the base as established by the Rulebook. The 0.6 coefficient is proportional to the obligation of commercial broadcasters to provide quality reception of signal for not less than 60% of the population living in the zone of coverage.

The amendments of the Rulebook, announced within the emergency measures to assist media in crisis adopted by Serbian Government on 25 July, present a real reduction of fees to be paid by certain regional and local broadcasters by up to 40%. Fees for national broadcasters were reduced by 5% only. On positive side, the formula for calculating fees is less complicated, so that broadcasters may check accounting performed by RBA much more easily. However, the issue remains that even though the Law envisaged two criteria for calculation of fees (number of population on the territory on which program is broadcasted and the broadcasters' program concept), the Rulebook does not take the program concept as a criterion to a sufficient extent. The program concept of the broadcaster, i.e. the origin and type of program, is treated in the Rulebook only as a base for subsequent reduction of the fee by not more than 20%. In practice, such reduction was granted only to B92 due to a high portion of own production and, especially, own production of news programs within the total programming broadcasted by this broadcaster. There is the impression that RBA does not enforce the mechanisms to stimulate quality programs, i.e. programs of special public interest through a more flexible manner of accounting for fees to a sufficient extent.

**Belgrade, 17 July 2009** – On the occasion of passing the Serbian Government decision on proclaiming the day of national mourning due to the death of Serbian tourists in a grave traffic accident in Egypt, the Council of the Republic Broadcasting Agency (RBA) published within its Internet presentation a notification stating program-related obligations of broadcasters on the National day of mourning.

By publishing the notification on the obligations of broadcasters on the National day of mourning, RBA considerably prevented unequal practices of broadcasters in cases of grave accidents or other tragic events. The notification contained the instructions which were entirely in line with the provisions of Law on marking the national days of mourning on the territory of the Republic of Serbia ("Official Gazette of RS", No. 101/2005), which establishes the obligation of broadcasters to publish the decision on proclaiming the National day of

mourning and programs to mark it in such occasions, informing the public about memorial events on the occasion of the National day of mourning, and adapting the programming to the occasion, broadcasting programs suitable for the National day of mourning instead of regular programs, primarily those of entertaining nature.

### **3. Law on free access to information of public importance**

**Belgrade, 2 July 2009** – Since the beginning of its work four years ago, the office of Ombudsman for information of public importance has received the total of 6,426 cases to be processed, out of which 5,600 have been settled. Rodoljub Sabic, Ombudsman, assesses that the Office has grown into a body of authority trusted by the citizens, which has, however, never been extended necessary support of the Government. He illustrated this with the fact that the Office should have as many as 69 employees, but has only 12 instead. Sabic also pointed to the growing number of unresolved cases, 220 of them at the moment, which is „an invitation to others to engage in violations”.

In accordance with provisions of Law on free access to information of public importance (“Official Gazette of RS”, No. 120/2004, 54/2007), decisions and conclusions passed by the Ombudsman for information are binding by nature, and their implementation is to be secured by the Government, if necessary. The fact stated by Mr. Sabic, that there are 220 outstanding cases at the moment, points to the fact that, regardless of its legal obligation, the Government of the Republic of Serbia actually fails to provide for execution of the decisions passed by the Ombudsman, which further points to obstructions in enforcement of law.

### **4. Other media-related laws**

No important novelties in implementation of other laws relevant from media were observed in monitoring conducted through this period.

## **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 they 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).*

*ANEM Public Statement is available [here](#)*

### **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 (so-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).*

## **IV MONITORING OF WORK OF REGULATORY BODIES, STATE BODIES AND COLLECTIVE ORGANISATIONS FOR PROTECTION OF COPYRIGHTS AND RELATED RIGHTS**

### **REGULATORY BODIES**

#### **1. REPUBLIC BROADCASTING AGENCY (RBA)**

Certain activities of the Republic Broadcasting Agency are treated in the part of this report relating to monitoring of implementation of Law on broadcasting.

In accordance with Article 39, paragraph 4 of Law on broadcasting, on 7 July 2009 RBA filed a request to the Republic Agency for Telecommunications (RATEL) to issue licenses for broadcasting stations (transmitters) to a number of regional and local broadcasters. For these stations, RBA had passed decisions on issuance of licenses to broadcast on 29 December 2008 (upon the invitation published on 20 May 2008) but it is only now that they have become final by rejection of the objections lodged. The following stations are concerned: Radio EM from Knjaževac, got a regional license for the coverage of the municipalities Knjaževac and Zaječar; Radio Drina from Loznica, got a regional license for the coverage of the municipalities Loznica, Mali Zvornik and Ljubovija; TV K::CN from Niš, got a local license for the coverage of this city; TV VIMINACIUM, got a local license for the coverage of the municipality of Kostolac; Ka TV and TV Trstenik, got local licenses for the coverage of Kraljevo; TV Jerina and TV SD got local licenses for the coverage of municipality of Smederevo; Radio Saldo, got local licenses for the coverage of municipality of Gadžin Han and Radio Nova Jasenica, got local licenses for the coverage of municipality of Smederevska Palanka.

The Rulebook on additions and amendments to Rulebook on measures for establishment of the amount of fee for broadcasting radio and/or TV program, published in the Official Gazette No. 50/2009, came into force on 18 July, so that the RBA office has already started filing new decisions to broadcasters, stipulating the amount of fee in accordance with the amended Rulebook.

We would like to point to the fact that it has not been a regular practice of RBA to publish general acts in the Official Gazette as, even though this obligation is also stipulated in Law on public agencies ("Official Gazette of RS", No. 18/2005, 81/2005). Thus, the original Rulebook, which was adopted on 24 October 2004, is now available only on the Internet presentation of RBA, while its amendments only were published in the Official Gazette. It is our opinion that, for the purpose of legal certainty, it would be much more appropriate if the final draft of the Rulebook were published in the Official Gazette instead of mere amendments.

## **2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)**

At the session held on 21 July 2009, the Managing board of RATEL passed a number of decisions to terminate operations of radio stations, without any delay, for an indefinite period of time. These decisions are final and may not be subject to administrative proceedings before competent courts. Five decisions were passed due to illegitimate use of links within the range 370-396 MHz, out of which four decisions relate to radio stations that have licenses to broadcast (for Radio Ritam and Radio Pancevo from Pancevo, and radio MFM and Radio NAXI from Belgrade). Through the Purpose plan, this range is determined for the purposes of special services (the military, emergency services). In direct contact, RATEL informed the broadcasters who used the 370-396 MHz range for transmission of modulations from the studio to the transmitter about the legitimate solutions, some of which were suggested in the Instructions for obtaining licenses, available at the Internet presentation of RATEL: [http://www.ratel.rs/editor\\_files/File/dozvole/uputstva/Uputstvo\\_za\\_dobijanje\\_dozvole\\_rev5\\_050509.pdf](http://www.ratel.rs/editor_files/File/dozvole/uputstva/Uputstvo_za_dobijanje_dozvole_rev5_050509.pdf) (only in Serbian)

As many as 20 more decisions were passed against stations broadcasting program without a license. The case of Belgrade „HIT TELEKOM” company is especially indicative. This company was pronounced the measure of prohibition of operation for as many as five illegal transmitters, located in different locations, which were used to cover almost the whole territory of Serbia.

On 8 July 2009, upon the request of RBA, RATEL published a notification on deadlines for issuance of permits for broadcasting stations (transmitters) to the stations whose licenses to broadcast from 29 December 2008 become final after rejecting the objections lodged (see paragraph 2 in item 1 of this chapter of the report – RBA). These stations are obliged to file to RATEL appropriate technical documents, according to the provisions of the corresponding Rulebook, not later than on 7 August 2009. RATEL will have issued the permits by 21 September 2009.

At the session held on 21 July 2009, the Managing board of RATEL passed the decision to temporarily reduce the amounts of fees for radio frequencies by 5%, in accordance with recommendations from the Government’s conclusion to adopt Measures to assist media in conditions of economic crisis. This reduction relates to the fees for 2009. The decision shall enter into force upon approval of the Government of the Republic of Serbia and its publishing in the Official Gazette, which did not happen while this report was being composed. [http://www.ratel.rs/editor\\_files/File/Regulativa/Odluke/UO\\_090721/UO\\_1/Odluka%20o%20sprovodjenju%20preporuka%20sadrzanih%20u%20merama%20za%20pomoc%20medijima.pdf](http://www.ratel.rs/editor_files/File/Regulativa/Odluke/UO_090721/UO_1/Odluka%20o%20sprovodjenju%20preporuka%20sadrzanih%20u%20merama%20za%20pomoc%20medijima.pdf) (only in Serbian)

## **STATE BODIES**

### **3. NATIONAL PARLIAMENT OF THE REPUBLIC OF SERBIA**

In July, the Republic Parliament had three sessions, apart from the one which started in June and finished on 8 July. The 11 session, started on 16 July, was the most important one for media. Draft law on additions and amendments to Law on public information and Draft law on national minority councils, which were discussed into more detail in the previous chapter, were included in the agenda of the session after an emergency procedure for adoption of new laws.

On 27 July, Committee for culture and information of the National Parliament deliberated the Information on the procedure of appointment of two members of the Council of the Republic Broadcasting Agency. In the capacity of authorized proponents, associations of broadcast media and journalists passed to the Committee a harmonized draft with the names of the two candidates for members of the RBA Council. Independent Journalists' Association of Serbia (NUNS) and The Independent Journalists' Association of Vojvodina (NDNV) proposed Gordana Susa, journalist, whereas the Journalists' Association of Serbia (UNS) proposed Milan Becejic, journalist. Both candidates were supported by ANEM and APRES (with BARS and RTV PRESS), while Milan Becejic was also supported by SRPSKA TV MREŽA. The Committee members decided to file their proposal to the National Parliament to decide which candidate will be appointed as the RBA Council member.

The Committee also found that local NGOs nominated five candidates, and decided to allow an additional 15-day period to the proponents to harmonize their proposals, in order to finally adopt a list with who candidates only. This decision of the Committee for culture and information was in line with the latest amendments of Law on broadcasting from June this year. Committee for culture and information will have the authority to reduce the list to two candidates only, to allow to the National Parliament to select between the two, in case the non-governmental organizations fail to harmonize their proposals within the envisaged period of time and in case they fail to produce a joint list featuring the names of two candidates.

At the same session, members of Committee for culture and information also discussed the Information on the procedure of appointment of members of the Program committee of the Broadcasting institution of Serbia. Proportionally to the number of MPs in the National Parliament, lists with names of candidates for the five members of the Program council were supplied by the LDP, SPS and Minority Parliamentary groups. The Committee repeated the invitation to pass the lists of candidates to the Parliamentary groups which have not done so yet. In accordance with Law on broadcasting, the Program committee is an advisory body of the public service, and the body representing interests of listeners and viewers. The Committee has 19 members appointed by the National Parliament, seven of whom among MPs, and 12 among members of professional associations, scientific institutions, religious

communities, citizen associations, NGOs, etc, upon proposal of RBA. RBA met this obligation in June 2009.

*The Report from 14 Session of the Committee for culture and information may be downloaded [here](#) (only in Serbian)*

#### **4. MINISTRY FOR TELECOMMUNICATIONS AND INFORMATION SOCIETY**

In July, the Ministry deliberated the RBA Council request from 19 June this year, relating to additions and amendments to Law on telecommunications which would be executed through introduction of measures which would allow for temporary confiscation of broadcasting equipment from pirate broadcasters. Consultations with Ministry of the interior were also held, among other topics, on the possibility to confiscate broadcasting equipment from pirate broadcasters in line with valid regulations. There was no information on the results of the consultations before this report was composed.

It is worthwhile mentioning that Ministry for telecommunications and information society received the request of the RBA Council relating to additions and amendments to Law on telecommunications when the working group established by the Ministry had already completed their work on drafting Law on electronic communications, which is to replace the existing Law on Telecommunications. Public debate on the Draft law on electronic communications is expected to take place in autumn.

#### **5. MINISTRY OF CULTURE**

In the period observed, Ministry of culture was mostly engaged in justifying its draft amendments to Law on public information, adopted by the Government on 9 July 2009, which was much criticized in public as restrictive and not harmonized with European standards.

On 30 July 2009, the Ministry published the Invitation to submit programs/projects in the area of public information to be co-financed. Co-financing is aimed at production of program contents important for the purpose of achieving public interest. The main goals of the Invitation, as stated, are: achievement of citizens' right to public information, development of media pluralism, and stimulation of media creativity in the area of culture, science and education.

The right to apply rested with founders of media outlets, as well as legal entities registered for production of television and radio programs. A proposed project was to be implemented through a media outlet. Applicants were to apply with one project only, and could not submit the same projects as were already used to apply to another invitation published by Ministry of culture.

The maximum amount of funds requested for project implementation amounts to 2 million dinars per project. Ministry of culture covers up to 80% of the total value of the project, and the funds granted must be used before the end of March 2010.

The total amount of earmarked funds is 80 million dinars. The amount of 20 million dinars from the budget of the Ministry is allocated for the purpose of this competition, whereas the remaining amount of 60 million dinars is allocated in accordance with the Serbian Government Conclusion on measures to assist media in the conditions of an economic crisis. The competition will be opened until 21 August 2009, and the results will be published not later than on 7 September 2009.

## **COLLECTIVE ORGANIZATIONS**

### **6. OFPS, collective organization for protection of related rights of phonogram producers**

Upon the ANEM request dated 17 June 2009, OFPS, collective organization for protection of related rights of phonogram producers, modified its incentive measures aimed at broadcasters adopted in May this year, by:

- a) Prolonging the deadline for cover liabilities from 2008 till 15 September 2009 instead till the end of June, which allows for the possibility to cover the difference between the amounts paid in advance and the final amount accounted for 2008 in six installments.
- b) Confirming the reduction of fees according to the final accounts for 2009 by 20%, provided debts from 2009 and previous debts have been settled regularly.

OFPS published its Decision on granting additional incentive measures on its Internet presentation on 7 July 2009, which also made these measures available to media which are not members of ANEM.

### **7. SOKOJ, collective organization for protection of copyrights of authors of music**

Since 1 July 2009, minimum amounts of fees to be paid by broadcasters for broadcasting music have been increased by 12.5%. This increase occurred because the value of a point for calculating the amount of fee in accordance with the SOKOJ Tariff list was increased from 8 to 9 dinars. The tariff was modified in March this year, the change was published in the Official Gazette no 29/2009 from 28 April this year, and started being implemented as of 1 July this year. By sticking to the already planned increase of fees, SOKOJ practically turned a blind eye to the recommendations from the Serbian Government Conclusions on measures to assist media in the conditions of an economic crisis from 25 June 2009 and increased the

minimum amount of fees by an additional 12.5%. The change of the tariff will affect the poorest radio and TV stations which are entitled to payment of minimum fees.

### **IMPLEMENTATION OF EMERGENCY GOVERNMENT MEASURES TO ASSIST MEDIA IN CONDITION OF CRISIS**

The issue of implementation of the emergency Government measures to assist media in condition of crisis, adopted on 25 June 2009, is of utmost importance for media. Monitoring indicates that among the adopted ones only the following measures were implemented:

- Reduction of fees to RBA, through adoption and approval of the Rulebook on the amounts of fees, which came into force on 18 July 2009, and
- Procurement of 60 million dinars to co-finance projects in the area of information (implementation of this measure, together with the additional 20 million, began with the Invitation of the Ministry of culture to submit programs/projects in the area of public information to be co-financed, published on 30 July 2009).

Before the end of July, the Government had not provided its approval to the decision of the Managing board of RATEL from 21 July 2009 on temporary reduction of fees for using radio frequencies. Before this report was concluded, the other measures passed by the Government had been neither determined into detail nor implemented, or at least there is no reliable information to that extent. Tariffs for fees to be paid to collective organizations have not yet been harmonized through the process of consultation with users. There is no information on allocation of funds earmarked for advertising campaigns on various community-aimed activities of the Government and its ministries, nor is implementation of this measure visible in media. In the period observed, assistance extended by the Government and competent ministries to regulatory agencies in terms of closing down of stations broadcasting radio and TV program without licenses did not yield sufficient results or was even not implemented. There are no data on whether and how many media organizations have been granted soft loans.

Besides, in the period of observation, the new, modified SOKOJ tariffs, making the amounts of minimum fees paid by broadcasters for broadcasting music by 12.5% higher, started being implemented. Thus, SOKOJ did not act upon the recommendation from the Government Conclusion regards to emergency measures to assist media in condition of crisis.

As the measures passed by the Government are of emergency nature, their implementation should have been provided for without any delay. Unfortunately, the Government, as well as the competent bodies, did not express sufficient willingness to further determine and provide for implementation of the adopted measures, the impact of which will deteriorate with further postponement of their implementation.

## **V THE PROCESS OF DIGITALIZATION**

Upon proposal of Ministry for telecommunications and information society, at the session held on 2 July 2009, the Government adopted Strategy for transfer from analog to digital broadcasting of radio and TV programs in the Republic of Serbia. 4 April 2012 was established as the date of full transfer to digital terrestrial broadcasting of TV program in the Republic of Serbia. The Action plan for implementation of the Strategy, which stipulates obligations of competent bodies in the process of digitalization and establishes deadlines for their implementation, is an integral part of the Strategy.

After the public debate process, the original text of the Draft strategy was modified to an extent, through adoption of corroborated opinions and proposals of representatives of the media industry, and submitted to the Government for adoption.

The Government was expected to pass another document together with the Strategy – the Decision to detach RTS from the broadcasting system and establish a new public company which would manage the national broadcasting infrastructure, under non-discriminatory conditions. It is supposed that the failure to pass this Decision may be explained by the request of RTS to be assigned a privileged position and continued free use of broadcasting infrastructure. Postponement of this decision points to the issue of whether the Strategy may be implemented in accordance with the deadlines defined by the Action plan. Separation of broadcasting equipment from the RTS system was already envisaged by the 2002 Law on broadcasting and 2005 Broadcasting development strategy.

*The Strategy and Action plan may be downloaded [here](#)*

## **VI THE PROCESS OF PRIVATISATION**

Media privatization was not continued in the observed period. The competent Ministry of culture still has no suggestion on how to resolve this issue. There are no indications as to what is happening with the Strategy, which was announced for the whole media sector, and which would regulate this issue as well. Instead of this, in July, Law on national minority councils was included on the agenda of 11 session of the National Parliament after an emergency procedure. The Law was discussed into more detail in Chapter III of this Report, which discusses new regulations. Here, we would just like to emphasize that this Law also indicates that the authorities have still not reached a clear agreement or any concrete idea on the direction in which the media sector should develop. The disputable Law was drafted by Ministry for human and minority rights. Its adoption would create additional confusion and disbalance on the media market.

In July it was noticed that certain non-privatized media, which requested this issue to be resolved, but in a different manner, became more active. Employees of the Novi Sad „Dnevnik Holding” resorted to a strike to demand, among other things, continuation of

privatization which was disrupted three years ago. On the other hand, five regional radio and TV stations, founders of the „Kragujevac initiative” demand to be assigned the status of regional public services, believing that for them, this would be a proper way of completing media transition.

### **OPINION**

*For competent bodies, completion of privatization would have to be a priority task. Any further delay of this issue would additionally complicate the position of not only non-privatized, but all media in Serbia, due to different legal regimes valid for commercial media on the one hand, and public media on the other. Ministry of culture may resolve the issue of further media privatization in a very simple manner. It is in the competence of the Ministry to pass an act to regulate this procedure into more detail. Experiences gained in practice so far have showed good and bad sides of cases of privatization carried out so far, so that the poor solutions could be overcome by introducing appropriate amendments in the Rulebook regulating privatization. In order to complete the process of media transition and continue democratization of the society, it is necessary to establish equal conditions to all on the media market, which is not possible with a number of media outlets still in public ownership. The idea of regional public services, as an alternative to complete privatization, would call for establishment of stable and independent sources of financing, as well as guaranteed editorial independence from the centers of political power; the adversaries of privatization do not talk about this.*

### **VII CONCLUSION**

In the period of observation, media freedoms were additionally jeopardized both by the effects of the economic crises, and the attempts to extend the possibilities for repressive actions of authorities through modifications of the legal framework for media operations. The emergency Government measures to assist media in circumstances of crisis have not been fully implemented, and where they have, they turned out to be neither sufficient, nor efficient. Having been passed hastily and without an appropriate public debate, the proposed modifications of the legal framework, especially Draft amendments to Law on Public information might not be proportional to the desired goal and may objectively threaten freedom of expression. Sluggish enforcement and selective implementation of the existing regulations on the one hand, and hastiness in adoption of new ones without an adequate analysis of possible consequences on the other, additionally confirm that the current authorities do not have any clearly defined, long-term media strategy. In order to overcome this situation, it is necessary to achieve a broad social consensus on goals and directions of media reforms in Serbia. If this does not happen, deterioration of the media scene will continue and its final outcome will be quite uncertain.