

## II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

### 1. Law on Public Information

1.1. Implementation of the Law on Public Information was partly discussed in the section about freedom of expression.

1.2. In their statement published on May 11, signed by the editors-in-chief of the *Vecernje novosti*, *Blic*, and *Press daily* - Manojlo Vukotic, Veselin Simonovic, and Dragan J. Vucicevic respectively, “Novosti“, “Ringier“, and “Press Publishing Group“, publishers of the dailies and periodicals with the largest circulation in Serbia, warned the Government of Serbia and Serbian general public that Stanko Subotic Cane and the German Media Group WAZ were trying to capture the entire press market in the country. The editors-in-chief accused WAZ of being behind the refusal of the banks – creditors of “Futura plus” Company undergoing bankruptcy proceedings to support the reorganization plan for this Company – the largest newspapers distributor in Serbia. The editors-in-chief maintain that WAZ has secretly purchased a part of the receivables from the banks, as well as that it is in its interest to have “Futura plus” bankrupt, since in such an event, being the owner of the competing “Stampa sistem“, it would take over the largest share of the Serbian press market and become a monopolist in newspapers distribution. The Journalist Association of Serbia (UNS) supported the largest publishers of print media stating that the danger that monopoly would occur in press distribution was real. In his response to these accusations, Stanko Subotic – Cane, indicted in Serbia for abuse of office and under a wanted warrant issued by Serbian authorities, claims that he has not had any business with WAZ since December 2008, and that only the guarantees he issued back in 2006 are now activated by this German Media Group. Subotic says that he guaranteed that Serbian businessmen Milan Beko and Miroslav Miskovic, who were buying “Novosti“ shares with WAZ money, would transfer those shares to WAZ, and that, since this did not happen in four years, WAZ is now compensating itself from his guarantees, which is why he is suffering a multimillion loss. Peter Lange, a member of the WAZ Media Group, claims that it is not in the interest of this Company to have “Futura Plus” bankrupt. He is also denying that WAZ has been secretly purchasing the receivables from the banks. Lange claims that, given that a loan secured by a WAZ bank guarantee underlies this debt, WAZ took over the Raiffeisen Bank’s receivables from “Futura Plus” at the amount of €2.5 million. Since the bank guarantee came due, Raiffeisen Bank collected its payment against it and WAZ became a direct creditor of “Futura Plus“, to which extent it duly notified the bankruptcy court and the bankruptcy administrator.

The Law on Public Information provides that no one can have a monopoly in distribution of public media and that no one may, even indirectly, restrict freedom of public information, particularly not by abusing control over the means for distribution of public media. It is, however, important to note that “Novosti“, “Ringier“, and “Press Publishing Group“ are members of the *Media Association* which on 15 September last year announced a boycott of “Futura plus”, pointing out the large debts of this distributor, and called upon the Government to regulate the press distribution market. On the same occasion, the Ministry of Culture condemned the behaviour of “Futura Plus” as unprofessional, and practically supported the boycott. Veselin Simonovic, one of the signatories of the latest announcement made by “Novosti“, “Ringier”, and “Press Publishing Group”, in the capacity of the Chair of the Media Association Managing Board, claimed on that occasion that the decision not to deliver to “Futura plus” was not a boycott but a business decision not to deliver goods to a non-paying customer,” and that the Media Association was forced to make such a decision so as to diminish their loss. After some time, “Futura plus”, which was believed to have capital ties with Stanko Subotic, went bankrupt and the boycott was terminated. New escalation was preceded by the exchange of accusations between the WAZ Media Group and the management of “Novosti“, in the course of which it was discovered that WAZ had financed the takeover of controlling interest in “Novosti“ by the companies controlled by the businessman Milan Beko, and that, allegedly, it was agreed that Beko, after some time, transfer the controlling interest to WAZ. This did not come to pass and the management of “Novosti“ launched a campaign that invoked a national feeling advocating that their newspapers should “remain in Serbian hands“ (even though the companies claimed by the media to be controlled by the businessman Milan Beko and holding a controlling interest in “Novosti“ were established abroad). Only several days after publishing a joint announcement of “Novosti“, “Ringier“, and “Press Publishing Group“, the plan for “Futura plus” restructuring was adopted. The developments with regard to “Novosti“, however, suggest that last-year’s amendments to the Law on Public Information and the introduction of media register did not provide for true transparency of media ownership. The Ministry of Culture has a while ago initiated a campaign for adoption of the Law on Media Concentration and Visibility of Media Ownership whose draft, which took a long time to complete, had already been drafted by the working group and submitted to the Ministry in the end of 2008. During a public debate, the members of Media Association were the most ardent opponents of the Law on Media Concentration. This draft provided for establishment of a more comprehensive media register which would ensure respect of the right of the public to be informed about media, their founders, their ownership structure and the identity of persons who, based on holding an interest or otherwise, can influence the editorial policy. Moreover, the draft defined the concentration thresholds for print media (thresholds for electronic media and cross-ownership of electronic and print media are defined in the Broadcasting Law). If

adoption of this Law were not given up, today we would probably not be in a situation in which the public can only guess (but cannot know for sure) who owns “Novosti“; namely, on whose behalf are “Novosti“ shareholders holding the shares of that company. Also, if adoption of this Law were not given up, it would be easier to determine whether possible takeover of “Novosti“ shares by the WAZ Media Group would result in exceeding the media concentration threshold. Namely, in Serbia, WAZ is already holding interest in “Politika” and “Dnevnik” in Novi Sad.

1.3. Belgrade-based Minority Rights Centre “most severely condemned the hate speech” in the “Nedeljno popodne sa Leom Kiš” (Sunday Afternoon with Lea Kis) program; Televizija Pink responded with public apology for offending members of Roma community. The Minority Rights Centre stated that “in the program broadcast on May 16, singer Zorana Pavic told two jokes which directly and clearly offended the Roma community”. “Behavior of the RTV Pink editors and presenters is intolerable. Although the joke was placed in the context of rivalry between “Red Star” and Partizan, it does not poke fun at the opposing football club but belittles and hurts dignity of an entire nation.” It is also stated that this was not a live program and that the content under dispute could have been removed in editing; this, however, did not happen. RTV Pink made a public apology in a statement submitted to Beta Agency. “Editorial staff sincerely regret the incident and we agree that an appropriate intervention by the presenter was missing; therefore, she will make a public apology on the occasion of her next appearance”, Pink stated.

The Law on Public Information prohibits publishing of ideas, information and opinions that provoke discrimination, hate or violence against persons or groups of persons because they belong or do not belong to a particular race, religion, nation, ethnic group, gender, or because of their sexual orientation, regardless of whether a criminal offence was committed by such publishing or not. A person who, as a member of the group, such information relates to, may file a lawsuit against the author of such information and against the editor in chief of the media in which such information was published, requesting that its republishing be prohibited and that the ruling be published at the expense of the defendants. The same lawsuit can be filed by any legal person whose objective is to protect human and citizen freedoms and rights, or by organizations whose objective is to protect interest of groups threatened by hate speech in this particular case. Discrimination of individuals or social groups based on their gender, race, ethnic origin, religion, social or national affiliation is prohibited by the Code of Conduct for Broadcasters. In case of infringement of the Code, the Broadcasting Law envisages a possibility of issuing a warning, but also that of suspending or withdrawing the broadcasting license.

1.4 The Press Council Managing Board unanimously appointed members of the Appellate Commission. Upon the proposal of NGOs, the Board decided that general public would be represented by Miljenko Dereta, Zoran Ivosevic, and Bozo Prelevic. On behalf of the founders, the members of the Commission would include: Tamara Skroza and Slavisa Lekic (NUNS), Ljiljana Smajlovic and Petar Jeremic (UNS), Aleksandar Djivuljskij, Filip Svarm and Milorad Ivanovic (Media Association), and Stojan Markovic (Lokal pres). As a self-regulatory body, the Council is responsible for monitoring of compliance with the Journalists' Code of Serbia in print media and processing of the complaints filed, with regard to particular contents, by either individuals or institutions. The Council is responsible for mediation between the affected individuals and institutions and the editorials, as well for issuing of public warnings in cases of violation of ethical standards set out in the Code.

The Press Council is a self-regulatory body the existence of which is not explicitly envisioned in the provisions of the Law on Public Information. The interest for setting up of the Council, and in particular its Commission for Complaints, is reflected in the need to promote reporting in compliance with the highest ethical standards of the profession, but also in the need to influence the quality of reporting and lessen the exposure of print media to court action through mediation, and responding by public warnings in cases of violation of the Code of Journalists of Serbia. The Commission for Complaints, however, can be hardly expected to perform its role without clear support of the authorities to the work of the Commission as well as the Council in general. We are still to see whether the Council will have such support.

1.5. "On several occasions, including our annual reports to the National Parliament, I called attention to the fact that some media were violating the rights, even the presumption of innocence, of those they wrote about, and that any effective response was missing on part of competent government authorities, but journalists' associations as well", said the Ombudsman Sasa Jankovic for Danas. "The reasons underlying these texts are more often than not an urge for sensationalism and (false) exclusivity, bolstered by the knowledge that heavy or "piquant" words sell better". He added that these cases were "surely not about wrongly perceived interest of the public to be informed, but rather about some other, much more tangible motives and interests". Jankovic believes that media could and should be formally liable if failing to publish the name and surname they have got, with regard to what they are writing about, to the Ministry of Internal Affairs or other government authority.

Article 37 of the Law on Public Information provides that in media no one can be described as a perpetrator of any punishable offence, namely proclaimed guilty or responsible, before a

final decision is issued by the court or other competent authority. At the same time, Article 82 of the same Law provides that a journalist, editor-in-chief and legal person who is a founder of a media outlet shall not be liable for damage if untrue or incomplete information was truthfully taken over from a public parliamentary debate or a public debate in a parliamentary body or from court proceedings or from a document issued by a competent government authority. In real life it happens that the information in which presumption of a person's innocence is violated is transmitted truthfully by media from the documents or announcements made by government authorities, predominantly by the police. Although it is indisputable that presumption of innocence is a fundamental right which needs to be protected without any exception, the authors of this Report find it unacceptable that journalists should be held liable for infringement of presumption of innocence made by government authorities. Consequently, a mechanism for combating this indisputable violation of human rights should be to punish the journalists who are transmitting the information truthfully, rather than the government authorities which such information originated from. In practice we have already seen a trend that the provision of Article 82 of the Law on Public Information is narrowly interpreted; accordingly, in order to exclude a journalist's liability, it is sometimes insisted that the document issued by the competent government authority, from which the journalist has transmitted the information, is "official", whatever this means (Serbian law does not make a distinction between official and unofficial documents issued by government authorities), and any further narrowing of the field of application of the provision on exclusion of liability from the Law on Public Information would further aggravate the position and rights of media, but also freedom of expression in general.

## **2. The Broadcasting Law**

2.1. In this Report, implementation of the Broadcasting Law will be discussed in the section dealing with monitoring of the work of the competent regulatory body, the Republic Broadcasting Agency.

## **3. The Law on Local Self-Government**

3.1 The Danas daily reported that the municipality of Pirot had allocated 13.4 million dinars of municipal budget funds in order to support local media. The funds will be allocated on two different bases – 70 percent or 9.4 million dinars for regular media activities and performance of news-related activities, and the remaining four million dinars based on the projects. Vladan Vasic, the Mayor of Pirot, said that it is in the interest of the Municipality to

have the media survive, possibly improve the quality of their news program, and report about any developments in the Municipality. Boban Nikolic, member of the Municipal Council, said that the allocated funds are considerable, that the task before the Municipal Council and the Fund allocation commission was not an easy one, but also that spending of these budget funds will be carefully monitored. For performance of its regular activities, Regional TV Pirot was allocated 2.6 million dinars, TV „PI kanal“ 2.1 million, Radio Pirot two million, “Sloboda“ weekly 1.7 million, and Radio “Sport plus“ a million dinars. A procedure upon a call for proposals with regard to project-based disbursement of remaining funds is now in progress.

The Law on Local Self-Government provides that municipalities and towns are responsible for taking care of public information of local interest and creating conditions for public information in Serbian language and the languages of national minorities spoken at the territory of the Municipality. The Law, however, does not define the way in which these funds are to be allocated; accordingly, relevant practices vary among different local self-governments. Local self-governments therefore decide, at their sole discretion, between a call for proposals, a procedure for public procurement of services, or direct negotiation process with a particular media outlet, and sometimes opt for a combination of these models. We often here complaints that the funds are allocated in a way which is not transparent, or non-discriminatory, but rather constitutes a state aid that either distorts or threatens to distort market competition and is forbidden by the Law on State Aid Control. As a pre-emptive action to avoid such complaints in future, Local press – association of local print media, ANEM, and NUNS, announced that, together with the Ministry for Public Administration and Local Self-Government, they will work on issuing a recommendation to uniformly regulate the manner in which municipalities and towns allocate relevant funds when discharging their legal duty to create conditions to ensure public information.