



## **Workshop for ANEM members**

### **“Public Information Law in practice”**

For the electronic media, the Public Information Law, beside the Broadcasting Law, represents the basic legal framework for their work. However, the practice has shown that for them, the implementation of this Law is not that simple, due to some unclear provisions as well as uneven court practice in the proceedings regarding the implementation of this law. In August last year, the controversial Law on Amendments to the Public Information Law was also brought, in spite of the strong reluctance of the media sector. This Law has caused additional sense of insecurity among journalists and media, while at the same time contributing to the increase of self-censorship due to extremely restrictive and unconstitutional provisions, excessive punishments in particular. The Constitutional Court declared the majority of this Law's provisions unconstitutional in July this year. The dilemma was created among media professionals if these provisions were still valid, since the Court's decision has not yet been published in the Official Gazette of Republic Serbia. For that reason, ANEM organized for its members the workshop titled “Public Information Law in practice”, which was held in Belgrade, on November 9, 2010, with the support of the Civil Rights Defenders. The aim of the workshop was to enable the journalists and editors of ANEM stations to understand which provisions of the Public Information Law were applicable and to get necessary explanation of both the provisions and the rights and obligations related to them, provided by the Law, in order to apply them with as little problems as possible and in favor of better quality of informing citizens.

The panelists of the workshop were: Slobodan Kremenjak, attorney at law, ANEM Legal Department; Dragan Lazarevic, Local Press attorney at law and Vesna Dabic, expert, member of the Working Group for amending the Broadcasting Law and former spokesperson for the Supreme Court, current spokesperson for the Administrative Court. Fifteen representatives of twelve ANEM radio and TV stations participated in the workshop: *Timocka TV and radio (Zajecar)*, *Novosadska TV (Novi Sad)*, *Radio Far (Alibunar)*, *RTK (Kragujevac)*, *Radio Bus (Kovin)*, *TV Gradska (Nis)*, *Sremska TV (Sid)*, *Radio Kikinda*, *RTV Krusevac*, *TV Sumadija (Arandjelovac)*, *TV Smederevo*, *Radio Paracin*, as well as the representative of the Civil Rights Defenders.

The workshop was designed as an open discussion of the panelists and participants. Apart from the clarification of some particular provisions of the Law and advices on how they were applied, the participants could hear numerous examples from practice and receive answers to their questions.

The representatives of ANEM stations had an opportunity to obtain expert information by competent speakers if the provisions of the Law on Amendments to the Public Information Law were still valid although the Constitutional Court declared them unconstitutional; what the obligation to respect the presumption of innocence really meant; what the protection of minors implied; how to report on court proceedings; how were the provisions related to

disclosure of private facts and personal records applied; what were the responsibilities of the media in regard to respecting the right to a response and the right to a correction; what were the examples of court practice in media cases; which rules were applied on publishing new media content and so on.

After the workshop, the journalists – participants agreed that, due to the importance of the Public Information Law for their everyday work, this workshop would help them in their future work, since the provisions and their implementation were clearer to them after this event, as well as rights and obligations ensuing from this Law.

### **The panelists' opening key points:**

**Sasa Mirkovic**, ANEM President: presented workshop topic and introduced the panelists; he listed the problems the media faced in implementing this Law in practice as the reasons for organizing the workshop; as a particular problem, he highlighted the last year amendments to the Law that had created legal insecurity and influenced the increase of self-censorship in the media due to the fear from possible legal punishments;

**Slobodan Kremenjak**: explained the difference between the Public Information Law, from 2003, and the Law on Amendments to the Public Information Law, from 2009 that was subjected to the evaluation of constitutionality; spoke about basic principles and fields regulated by the Public Information Law, explaining how the most important provisions should be applied in practice; paid particular attention to specific rights and obligations of the media, ensuing from this Law;

**Dragan Lazarevic**: talked about different interpretations of the provisions of the Public Information Law by courts, saying that different court decisions were brought in similar cases, because court practice in Serbia was subsidiary source of law; mentioned exceptional positive example of a court practice in this field (verdict of the High Court in Novi Sad, confirmed by the Court of Appeals in Novi Sad, in the case of legal action of the Becej Assembly deputy against a journalist of the “Mozaik” daily from Becej); warned on a greater pressure on courts and journalists in local environments due to a greater influence of local power figures;

**Vesna Dabic**: spoke about rules in media reporting on court proceedings; relations between the media and courts, their differences and similarities; explained in particular the issue of publicity of trials; gave guidelines on respecting the presumption of innocence and reporting on minors.

### **Conclusions and instructions for broadcasters**

- The 2003 Serbian Public Information Law has been applied without hindrance and has not been subjected to evaluation of constitutionality;
- The Law on Amendments to the Public Information Law, brought on August 31, 2009, was subjected to evaluation of constitutionality; although a great number of its provisions was declared unconstitutional on July 22, 2010, it is still officially valid until the decision of the Constitutional Court is published in the Official Gazette of the Republic of Serbia;

- Although the Law on Amendments to the Public Information Law has not been applied in practice, it has influenced freedom of expression and affected the quality of media reporting in negative sense, because the fear of extremely high penalties led to notable self-censorship in the media;
- Particular problem is uneven court practice in “media cases”, which makes it hard to give general advices as each case is specific; because of that it is important for the media to know and understand the Law’s provisions, in order to exercise their rights more easily and respect obligations in accordance with the Law, thus reducing the risk of legal sanctions;
- Most importantly, journalists and editor-in-chief of a media have to take care of full and truthful public informing and **to check with due attention the origin, accuracy and completeness** of every information before it is publicized;
- It is prohibited to **take over other media’s recordings**, and it is only exceptionally allowed to use short inserts when it comes to actual events of public interest and in such occasions the source from which the recording has been taken should be cited; such a recording should be not used again when event is not actual any more;
- **News on an event** is not a copyright work and everybody has the right to release it; however, someone’s interpretation of a news could be a copyright work; when news is taken over from some other media or some institution’s web site, it is sufficient to publish only name of that media/institution as a source, while listing an author’s name is not obligatory – an author’s name is obligatory when a copyright work is cited;
- Public Information Law refers to all public media, including **new media** (online issues of traditional media, blogs, forums, etc.), whose administrators are obliged to moderate posted content;
- Courts are obliged to enable **presence of the public at all trials**, except in the cases when it is explicitly forbidden by law (legal proceedings against minors, investigative procedures, family and marital disputes) or when a court estimates it is necessary to do that in order to protect public peace and order, to keep a secret, etc; audio-visual recording and broadcasting court proceedings are not allowed, with exceptions and under conditions defined by law;
- In case of doubts related to reporting on court proceedings, journalist should address **court’s spokespersons**, i.e. persons in charge of contact with the media, who are obliged to help them;
- When it comes to **reporting on court proceedings**, attention should be paid to all parties responsible for the course of a proceeding (police, prosecution, courts); the media must not influence the work of court and must take care of situations when information on court’s work has to be protected in the interest of a proceeding;

- Journalist **must not prejudge anyone's guiltiness**; before a valid final judgment of a court or some other competent body is brought, they should stick to facts; in news on someone's arrest, they should give information without publicizing full names (initials are allowed) and with figures shaded; in that phase, „the indicttee“ does not exist, but it should be said that police has apprehended „person suspected of committing a crime – the term „**suspect**“ is used before adopting a decision on inquest, i.e. filing a direct indictment;
- It is necessary to take care of **adequate usage of legal terminology**: for example, it is not adequate to use police custody, because custody is determined by a court, not the police („police detention“ is correct); „the defendant“ is used after an investigation is initiated (it is general term for a person against whom a criminal proceeding is led), and „the indicttee“ after indictment's entry into force or if a direct indictment is raised, „the convicted“ is a person found guilty for an offence by a final judgment or a legally-binding decision;
- Attention should be paid to **accurate informing in all news' parts**, because it happens that presumption of innocence is being violated in title, lead or news ticker, although it is adequately reported in news text itself;
- If guiltiness of a suspect is not determined, and some media has reported on that case from the beginning, it is advised to report on **the final outcome of the proceeding**, which is also a way for protecting a media of potential legal action against it;
- As for **the right to a response**, a person who requires publishing of his/her response, in which he/she claims some information is inaccurate, incomplete or reported incorrectly, must list facts and not give personal opinion on given facts; such request may be forwarded it to editor-in-chief *directly*, while publishing a **correction** could be required only through a legal action; the Article 58 of the Law stipulates 19 reasons for not publishing a response, which media should always bear in mind; publishing a response prevents a potential action for libel, causing mental pain etc.;
- It is not allowed to record or publish recordings and statements of **minors** without parental or guardians' consent, except in legal exceptions; in particular, minors should not be made identifiable in the information that could violate their right or interest in any way;
- As for reporting on **court proceedings against minors**, it is not allowed to mention names and surnames of minors, nor publishing other data based on which it is possible to identify a minor; moreover, recording and broadcasting of recordings is not allowed; data on crime committed by underage persons must not be published even when these persons become adults;
- **Information containing private facts and personal records** must not be publicized without that person's consent; a photo and a statement of a person is a personal record and could not be broadcast without his/her consent, except in 11 cases determined by the article 45 of the Public Information Law;

- The right to protection of privacy of **state and political officials** is limited, in accordance with the legitimate interest of the public in each concrete case, if some information is relevant to the public considering the fact that a person to whom some information is related, performs a public function;
- For **statements made by telephone**, journalists should ask in advance for respondent's consent for recording and publicizing and they should preferably have a proof of consent; if there is no consent for recording, it must not be publicized, and a journalist could then paraphrase what it is said in a statement, without citing the source;
- Personal liability of journalists and their due attention oblige them to make sure that the Public Information Law is also respected in **cases of live broadcast**, where the journalist's adequate reaction is necessary in such situations when guests reveal someone else's personal data, use hate speech, accuse someone without evidence, etc.