

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

### **1. Public information Law**

1.1. The implementation of the Public Information Law has partly been elaborated on in the section concerning freedom of expression.

1.2. On October 13, 2011, daily Danas reported that, according to the records kept by the Independent Journalists' Association of Serbia (NUNS), there were 212 cases of physical and verbal attacks on journalists in Serbia in the last four years, of which merely 17 were prosecuted in court. The ban, provided for in the Public Information Law, on putting any physical or other pressure on public media and their staff with the purpose of obstructing their work, was obviously of no help. Moreover, NUNS believes that only one third of the actual threats and attacks get reported to the competent authorities, showing deep distrust of the journalists in the institutions. The statistics show that the state reacts in merely one fourth of the reported cases. On the other hand, according to the same research, the total number of attacks against journalists is on the decline. In 2008, there were as much as 143 such incidents, compared to 37 in 2009 and 19 in 2010. In the current year 2011 "only" 13 attacks were registered. The attackers are most often indicted of misdemeanor, but some were prosecuted in criminal proceedings, whereas the penalties were at the legal minimum or even below it. Some get sentenced to conditional prison sentences or fined.

### **2. Broadcasting Law**

2.1 According to a report in the daily Danas, 140 thousand Serbian citizens will this year be exposed to measures taken by the Serbian Broadcasting Corporation (RTS) with the aim of collecting the subscription fee. In most cases, RTS sends dunning letters. According to the RTS, since 2007, non-paying citizens in all parts of Serbia are sent dunning letters before action and are given the opportunity and possibility to pay their debt to RTS in several monthly instalments. In case of repeated non-payment against the received dunning letters, the RTS presses charges against the non-payers. The greatest collection percentage of payment is recorded in the Belgrade area – an average of 65 do 70% and Vojvodina – between 55 and 60%. In southern and eastern Serbia, this figure is the lowest. In central Serbia, the collection rate is around 35%, whereas it is 15-20% in the south, the RTS said, adding that the collection rate varied depending on the level of a region's economic development. The collection rate is also subject to the fact that the fee is charged along with

the electricity consumed and that the rule is that electricity bill is collected first, followed by the radio and television subscription fee.

The Broadcasting Law provides for the financing of public service institutions, related to the realization of the legally provided general interest, from the subscription fee for radio and television. Obligated to pay the said fee are the owners of radio and television sets. The subscription fee, the amount of which is equal throughout Serbia, is paid per radio and/or television set in a household, whereas the households owning two or more devices, excluding those in motor vehicles, shall pay the fee for one device at the same address only. Legal persons must pay the fee too, namely hotels and motels one fee per each ten rooms equipped by a television or radio set, while other legal persons owning a TV and/or radio set are charged one fee per each 20 employees that are able to receive television or radio program. Exempted from paying the subscription fee are only households owning a TV and/or radio set with one member having a 100% body injury, an invalid with less than 100% body injury, if the household enjoys the right, in accordance with the applicable regulations, to an allowance for care and help for a member of the household, or a person that has suffered a permanent loss of hearing or a blind person. Exempted from the subscription fee are also legal persons – institutions for the accommodation of students, healthcare institutions and disabled persons organizations and companies for professional training and employment of invalids, as well as diplomatic and consular offices, under the conditions of reciprocity. The amount of the fee that was initially provided for by Law is adjusted to the index of retail prices in Serbia in the previous calendar year, according to the officially published data of the statistical agency, increased by 5%, and is currently 500 RSD. The collection of the fee is performed through the public electricity provider, under a contract signed with the public service. Of the total amount collected, 1.5 % is paid to the budget of the Republic of Serbia for the development of the local film industry. Of the income from the collected fee in Vojvodina, the Vojvodina Public Service Broadcaster gets 70%. The issue of collectibility of the fee has become extremely important in the context of the recently adopted Media Strategy. In the period when the Strategy was written, it became evident that the implementation of the Broadcasting Law, in the part concerning the financing of the public service broadcaster, is not on a satisfactory level. The subscription fee was namely introduced in order to ensure a stable and solid source of financing the public service broadcasters. At the same time, it was supposed to ensure additional independence from the government, which is difficult to gain if the PBS is directly financed from the budget. Unfortunately, instead of working to ensure a greater collection rate, the RTS often acted as if it had given up the fee altogether and as if it wished to return to the direct budget financing model. The Media Strategy was expected to provide certain guidelines for the financing of the public service in the future, but it failed short of accomplishing that. On paper, at least, the Strategy has seen Serbia undertake to

provide a safe and public financial framework for the functioning of public radio television services. Furthermore, the Strategy has pointed to the necessity to increase the collection rate by introducing the proper legal concepts and better organization of the collection. However, in terms of a model that would ensure that, the Strategy failed to offer any suggestions. The good thing is that it insisted for the first time on the financing of public services that would comply with the criteria about state aid control. These criteria involve a clear definition of the functions and obligations of the public service, oversight of compliance thereof, transparent financial control, a test for the introduction of new services, a ban on overpayment (commercial revenues must be taken into account), proportionality and prohibition of anti-competitive behavior on the market. The reference to these criteria in the Strategy should in fact mean that the issue of the collectibility of the fee may not be treated separately, outside of the context of a responsible public service broadcaster in terms of doing business and transparency in spending the scarce money they are able to get through the subscription fee.

2.2 From a police press release dated October 25, we could have seen how the fight against radio piracy may be efficient and successful when other agencies, and not only the media, are threatened. According to the said press release, the operatives of the Anti-Organized Crime Department of the Serbian Ministry of Interior, in cooperation with the Department for Fighting High-Tech Organized Crime of the Higher Public Prosecutor's Office in Belgrade and the RBA have, on the basis of warrant issued by the investigative judge of the Higher Court in Belgrade, searched several apartments and premises in order to find the studio and transmitters of the illegal radio station „Radio Boss“ from Belgrade. In the concrete case, the reason for the search is the fact that the said station threatened to endanger airline traffic safety, as repeatedly pointed to by RATEL. The owner of the radio station was identified and taken in police custody. The press release of the police said that, in addition to transmission and studio equipment, the police had found unlicensed firearms in his apartment. The police announced it would press charges for several criminal offenses, including threatening the security of airline traffic, violations of copyright and related rights and unlawful performance of activity.

RATEL has continued publishing the lists of pirate radio stations in Serbia, which were fifty in October – six less than the previous month. Otherwise, the fact that, in the concrete case, the police have announced they will file charges against the arrested owner of the pirate station for unlawful performance of activity, demonstrates that the media association ANEM was right more than two years ago when it proposed to the police this very mechanism for fighting radio piracy. In its letter to the Police Minister and Director of the Police back in February 2010, ANEM emphasized that „the manner in which the state had been fighting radio piracy in the past was inappropriate“ and that „neither the RBA, nor RATEL have, on

their own, the mechanisms to enable efficient fight against radio piracy.“ On that occasion, ANEM emphasized that cooperation with the ministry of interior and the police was, in that sense, indispensable. In the same letter, the Association said that broadcasting without a license provided for by the Broadcasting Law (namely the broadcasting of commercial content – commercials and prize advertisements) amounted to the commission of the criminal offense from Article 353 of the Penal Code of Serbia. The said article stipulates that unlawful and performance of a certain activity for profit, which requires, under the law or other regulations, the proper license of the competent authority, shall be subject to a fine or a prison sentence of up to two years.

2.3 The cable television channel Kopernikus has been placed under 24/7 monitoring of the RBA, in relation to media reports that it was negotiating with the representatives of the Serbian Progressive Party (SNS) on the purchase of eight hours of TV time on that station, the Deputy President of the RBA Council Goran Karadzic told the daily “Danas”. He added that political parties had the possibility to present their political program in the media, but only during the pre-election campaign and not before. In his words, the RBA may not act “before something happens”, but is entitled to place certain broadcasters under special 24/7 monitoring, as it is the case with TV Kopernikus.

The Broadcasting Law prohibits the advertising of political organizations outside of the pre-election campaign, while during the campaign parties are guaranteed equal representation without discrimination. In that sense, the purchase of media space for political advertising, would undoubtedly be prohibited. In addition from prohibiting political parties from advertising outside of the pre-election campaign, the Law also says that a political party, organization or coalition, or a legal persons founded by a political party, organization or coalition, may not be issued a broadcasting license. Consequently, the purchase of broadcasting time by political parties outside of the pre-election campaign would be contrary to both the spirit and the letter of the laws of Serbia.

### **3. Law on Ethnic Minorities’ National Councils**

Boris Labudovic, the Chairman of the Managing Board of Radio-Television Vojvodina (RTV) has resigned from his post. In his press release Labudovic explained that he found the coming changes to the RTV Statute, aimed at conforming the said Statute to the Law on Ethnic Minorities’ National Councils, unacceptable. „With the Law on Ethnic Minorities’ National Councils, the same legislator practically annuls the independence and autonomy in the work of RTV stipulated by the Broadcasting Law“. „If that Law is strictly adhered to,

according to the interpretation of the authorities, the Managing Board and the RTV Management will not be appointing as much as 16 out of 21 responsible editors“, said Labudovic, whose resignation came into effect on October 4. Labudovic added that the Manager and the editors-in-chief of RTV might not be held accountable for editorial policy if three quarters of responsible editors were appointed by the National Councils, making RTV lose its autonomy for three out of five television programs it broadcast. The Managing Board has appointed Vanja Barisic-Jokovic as new Chairman to replace Labudovic.

The Managing Board of RTV, consisting of nine members appointed and dismissed by the Republic Broadcasting Agency, is competent for appointing and dismissing the General Manager, the directors of radio and television and programming editors-in-chief. The Law on Ethnic Minorities' National Councils stipulates that the National Councils of Ethnic Minorities, on whose minorities' languages RTV is broadcasting, shall provide their opinion in the procedure of appointing the members of the Managing Board, Programming Board and the General Manager of the Broadcasting Institution of Vojvodina, as well as to determine the criteria for electing the responsible editor for the language of its respective ethnic minority. Furthermore, the National Councils shall propose to the Managing Board the appointment of the responsible editor for the program on the language of the respective ethnic minority out of the eligible candidates; they give their opinion about the candidates for the responsible editor of the program on ethnic minorities' languages – if the responsible editor is appointed for several minority languages programs. The resignation of Boris Labudovic has exposed an almost unsustainable situation where the Managing Board and the General Manager have their hands tied when it comes to choosing the leading editors in RTV. Taking into account the controversial decisions about the dismissals of responsible editors in minority media in the recent past, which were enacted primarily by the Hungarian minority National Council, as well as the undeniable politicization of National Councils and them being placed under the control of the leading political parties of the respective ethnic minorities, it becomes increasingly evident that the model adopted by the Law on Ethnic Minorities' National Councils, aiming to realize the ethnic communities' right to autonomy in the field of public information, is threatening to place information on minority languages under the absolute control of minority oligarchies. To make things worse, the Media Strategy has completely failed to address this issue – it has merely reiterated the declarative guarantees of independence of public service broadcasters and the prohibition of illicit influence on programming content and on any restrictions to their independence and autonomy. It remains to be seen how RTV will handle this problem, namely will the resignation of Boris Labudovic, on the other hand, result in an open debate about the fact that the Law on Ethnic Minorities' National Councils has created more problems than it has solved in the field of public information on minority languages, which debate should be free

of superficial accusations claiming that any alternative concept would be tantamount to a violation of acquired minority rights.