

IV MONITORING OF THE ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

After the resignation of Boris Labudovic, the Chairman of the Managing Board of RTV, the RBA issued a public call for proposing candidates for this post. The advertisement was published on October 25, 2011 in the dailies „Politika“ and „Dnevnik“. We remind that, according to the Broadcasting Law, concerning the members of the Public Broadcasting Institution of Vojvodina, the RBA appoints persons living and working in Vojvodina, who must also satisfy the general conditions for membership in this body – that they are journalists, namely renown experts for the media, management, law and finances, or other prominent persons. Ineligible for membership in the Managing Board are members of parliament, members of the assembly of the autonomous province, members of the RBA council, members of the Government or the executive branch of the autonomous province or appointed persons in the Government, namely provincial bodies, or political party officials.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

On October 18, 2011, RATEL released an updated list of radio and television stations using radio-frequency spectrum without authorization. Fifty pirate broadcasters, namely six less compared to the list released a month earlier, were recorded. As much as 22 of these 50 stations are from the territory of Vojvodina, while 13 are based in the wider area of Belgrade. However, except the case of “Radio Boss” from Belgrade, which has been shut down and its owner kept in police custody, first and foremost for having caused harmful interferences to flight control endangering airline traffic security in process, there were no other cases of shutting down other illegal broadcasters in the period covered by this Report.

3. THE PRESS COUNCIL

The Complaints Commission of the Press Council, the first independent self-regulatory body for print media in Serbia, after it started receiving complaints on September 15, passed its

first two decisions in October. Namely, the complaint against the daily “Press” concerning the text “Doctor Tortures Woman and her Lover” in the print edition from September 9, was approved. The plaintiff claimed that the woman, who was exposed to violence, had been additionally affected by the publishing of uncorroborated information and personal data that may contribute to identifying her as the victim, as well as information irrelevant for the violence she was subjected to. The complaint goes on saying that the disputed article contained inappropriate descriptions of situations implying that the violence was somehow justified, such as “doctor catches the lovers ‘in flagrante’ ” and “lost his temper” and the like. The Complaints Commission of the Press Council found that the complaint was justified, namely that the controversial text had violated the provisions of Section VI, subparagraphs 1, 2 and 3 of the Ethical Code of Serbian Journalists and ordered the daily “Press” to publish the Commission’s decision. The members of the Complaints Commission judged that the controversial text had violated the tortured woman’s rights, namely that her right to privacy was violated in terms of Section VI of the Ethical Code of Serbian Journalists. Furthermore, the text was found to abound with unnecessary sensationalist details, the accuracy and verifiability of which was also questionable, since the authors of the text only cited the statement of an anonymous “interlocutor familiar with the whole affair”. The Commission passed its second decision on the complaint of the former Health Minister Tomica Milosavljevic over the text entitled “The Government is Protecting the Former Minister” published in the weekly NIN on October 13. According to Milosavljevic’s complaint, the text contained several untruths, as well as offensive insinuations about his alleged culpability in relation to the activities during the pandemic of the AH1N1 virus in the years 2009 and 2010, especially concerning the procurement of the influenza vaccine. The Commission rejected this complaint, explaining that the text didn’t violate any provisions of the aforementioned Code of Ethics. The members of the Commission judged that the article by Katarina Preradovic pertained to the “Vaccine Affair”, which took place during the term of office of the plaintiff – former minister Tomica Milosavljevic and that it concerned his political person. The Commission found that information about politicians and other persons occupying public functions were not subject to the restrictions concerning information on private persons, namely that the rights of politicians in the field of public information were restricted, proportionately to the legitimate interest of the citizens to be informed about how public functions were discharged. The Commission invoked both the Public Information Law and the Code of Ethics of Serbian journalists and the relevant European standards and case law of the European Court of Human Rights in enforcing Article 10 of the European Convention. The Commission also noted that the plaintiff had the opportunity to make a statement about the topic of the text when the journalist contacted him prior to publishing it. The former minister, the Commission says, didn’t use that opportunity.

The aforementioned Ethical Code invoked in the decision against the daily “Press” requires from journalists to respect the privacy, dignity and integrity of the people they are writing about, to avoid speculation and conveyance of insufficiently verified positions in reporting about accidents and tragedies involving casualties or major losses for society. The media are also advised, in reporting about events involving personal pain and shock, to make sure they reflect empathy and discretion. One gets the impression that media professionals may be satisfied with the first decisions of the Complaints Commission. What is particularly interesting is that we are likely to face a situation where the same matter dealt with by the Complaints Commission will be decided upon by the Court in criminal procedure: the former minister Milosavljevic has already announced he will press charges before a court of law, on top of filing a complaint with the Commission. The manner in which the Court will handle the decision of the Complaints Commission in criminal proceedings, if any are initiated, and the decision that it will ultimately make (if it confirms the Commission’s decision), could greatly contribute to boosting the authority of the Commission and reduce the final number of lawsuits print media and their journalists face.

STATE AUTHORITIES

4. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

After the adoption of the Media Strategy on September 28 and the publication thereof in the Official Gazette on October 7, there are still no indications as to when its implementation will start. The state has provided itself with comfortable deadlines and it was therefore unrealistic to expect any activities to be taken as early as in the first month after the passage of the Strategy. However, it must be noted that there are no statements whatsoever from the Ministry of Culture, Media and Information Society and other competent ministries about the important question of enforcement of the Law on State Aid Control. Under the Stabilization and Association Agreement (SAA) and the Action Plan accompanying the Strategy, this issue should be tackled as early as January 1st next year. Such behavior has only accentuated the dilemmas related to this item in the Action Plan, which was believed to have been the key concession offered to the representatives of the media community, owing to which they have ultimately endorsed the Strategy, except for the part concerning regional service broadcasters. The representatives of the media community were told this would definitively alter the model of media financing in Serbia, namely that direct budget financing of state media would, as of January 1st next year, be considered as unauthorized state aid. Today, however, the Ministry of Culture, Media and Information Society, the Finance Ministry and the Commission for the Control of State Aid remain silent and invisible and

there are no signs of anyone preparing to change anything in the model of financing as of next year. What is the essence of the Law on the Control of State Aid and what are the obligations in the enforcement of that Law under the SAA? The said Law prohibits state aid in any form, if such aid undermines or threatens to undermine competition on the market, unless provided for otherwise by the same Law. As an exception, it is allowed to allocate state aid as welfare, which shall be allotted to individual consumers without discrimination as to the origin of goods or products constituting aid. Also as an exception, state aid may be allotted for the purpose of remedying damage caused by natural disasters or other emergencies. Among other cases, under the Law, state aid may be allowed only if allocated for the purpose of implementing a certain project of particular significance for the Republic of Serbia. For that reason, namely in order to open the door for the media to receive some aid from the state, the Media Strategy insists on the financing of projects and the defining of the public interest – a field where media projects could be branded as projects of particular significance for the Republic of Serbia.

When the Action Plan refers to the enforcement of the Law on the Control of State Aid, in accordance with the SAA, it probably refers to Article 74 of the SAA, stipulating that, after the expiration of a 3-year term after its coming into force, Serbia will apply the principles laid down in the EC Treaty – with special reference to Article 86 of the said Treaty – to public companies and companies that have been assigned special rights. Article 86 is actually the actual Article 106 of the Treaty on the Functioning of the EU, which has extended the scope of the rules on state aid control to public companies, namely companies that have been assigned special rights. The biggest concern is that there are currently divergent interpretations as to the moment of the aforementioned 3-year term expiry date, namely the moment when the potential failure to enforce state aid control regulations (involving also the current model of financing of public companies) will constitute a violation of the SAA and not only a failure to observe the deadline laid down in the Action Plan.