

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

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

2. *Broadcasting Law*

2.1. On Tuesday, March 13, the President Boris Tadic called the parliamentary elections for May 6, 2012. The same day, the Speaker of the Parliament Slavica Djukic Dejanovic called the local elections, also for May 6. The Republic Broadcasting Agency (RBA) adopted a General Binding Instruction for radio and television stations (broadcasters) in the campaign for local, provincial and national parliamentary elections, presidential elections and elections for ethnic minorities' national councils, which came into force on March 9. The General Binding Instruction has introduced some new rules, providing for, among other things, the obligation of identifying paid electoral time slots. These time slots are not counted as a part of the overall advertising time on radio/television, but may not be aired in prime time (from 6 a.m. to 9 p.m. and from 7 p.m. to 11 p.m. on television, namely from 6 a.m. to 9 p.m. and from 3 p.m. to 7 p.m. on radio). Furthermore, the media must not air more than 90 minutes of electoral time slots per day and if they do, they must secure such slots to all election lists/candidates under equal conditions (no more than five minutes uninterrupted during the day per list/candidate). As an exception, once during the campaign, the list/candidate shall be entitled to a electoral time slot in the duration of 30 minutes. The General Binding Instruction also contains special rules concerning solely commercial stations, and the ones applicable to the public broadcasting service and other public media that have the same obligations as the public broadcasting service during the election campaign. The public broadcasting service must enable the free of charge and equal advertising of political parties, coalitions and candidates whose election lists are accepted, without discrimination, while providing for adequate representation of ethnic minority candidates. The public broadcasting service, the founders of which are the cities and municipalities, as well as civil society stations, may not air paid electoral time slots.

The grounds for passing the General Binding Instruction are the provisions of Articles 8 and 12 of the Broadcasting Law, according to which the RBA is in charge of prescribind binding rules for

broadcasters, which allow for the enforcement of the broadcasting policy in the Republic of Serbia. The Agency passes the General Binding Instruction in order to regulate in more detail certain questions concerning the content of the program, irrespective of the existing practice of the broadcasters. Failing to adhere to the General Binding Instruction represents grounds for all measures the RBA may pass, including a warning and reprimand, but also temporary or lasting revocation of the broadcasting license. The sensitivity of this matter is evidenced by the fact that, the RBA had adopted new instructions, on the eve of almost every election campaign in Serbia, changing in a certain way the rules of conduct during the campaign and rectifying prior shortcomings. The key change in the latest Instruction concerns paid electoral time slots, the duration of which is limited after the last elections, when political parties purchased hours and hours of paid program. An additional problem lies in the fact that the Law mentions paid time slots only once, by prescribing that public service broadcasters must secure free and equal advertising of political parties, coalitions and candidates during the campaign, by airing advertising videos only if the latter are for electoral purposes, but shall not air a paid electoral promotion. According to the RBA and the professionals from that field, this practically means that all television and radio stations may air electoral advertising only in regular advertising time slots, while commercial stations enjoy the additional possibility to air paid electoral advertising. The biggest controversy concerning the new General Binding Instruction lies with its provision that, during the election campaign, broadcasters must exclude from their program documentaries, feature films and sitcoms, entertainment and similar programs and films featuring an official, prominent representative of a election list or candidate and to avoid other forms of indirect political propaganda in their regular programs. Brankica Stankovic, the author of the investigative program "Insider" on TV B92, told the daily "Blic" that the new series of her program, which was scheduled for April, would not be aired due to the General Binding Instruction. The series was to deal with unreasonable spending of Serbian budget resources in Kosovo. The RBA reacted by issuing a press release, saying that "Insider", or any other news program in Serbia for that matter, was not banned. According to the RBA, the controversial article of the General Binding Instruction does not concerns news bulletins and investigative programs. According to the Agency, on the basis of a clasification method it applies, "Insider" has been dubbed a news program and not a documentary one. Ultimately the key problem proved to be the fact that the RBA had never released its classification method to the public, which leaves the doubt that the programs might be classified arbitrarily. We remind that genre classification of programs is significant not only for the conduct of broadcasters during the electoral campaign, but also for other issues (e.g. certain types of programs may not be sponsored or special requirements must be met for such programs to be interrupted by commercials). The controversy about "Insider" unfortunately culminated in a mere exchange of heated communiques and fell short of leading to the disclosure of the classification methods used by the RBA, which would help avert such misunderstandings in the future.

2.2. The daily "Blic" has released a text in which it is claimed that the RBA has in the last three years given the consent for the change of ownership structure of radio and television stations more than 70 times. Although the Law does not allow the disposal, sale or lease of frequencies allotted to national broadcasters back in 2006, new television owners obtained the frequencies as part of a package with the majority part of the shares they purchased, "Blic" wrote. Legally speaking, those broadcasters' frequencies were not on sale, but according to "Blic", the legal framework has enabled a concealed sale. Broadcasting licenses for national coverage were allotted in 2006 to the television stations Pink, Foks, Avala, Happy/Kosava and B92. Today, six years later, save for Pink television, all other stations changed their owners, some of them several times.

According to the Broadcasting Law, broadcasting licenses, as well as radio station license, may not be assigned, leased or otherwise disposed of. However, it is allowed for a broadcaster to change its ownership structure subject to RBA prior approval and provided it does not result in unlawful concentration of media ownership. The problem with the change of ownership structure of Serbia's television stations lies in the fact that they may lead to opacity of ownership, and it is impossible, in a situation where media ownership is not transparent, to ponder the risk of unlawful concentration of ownership. The second problem that became obvious during the recent strike on TV Avala, is the fact that the RBA has failed to weight compliance with certain financial requirements while approving changes to the ownership structure. We remind that RBA's own rules provide for the obligation of the Agency to assess, when granting a license on a public competition, the financial potential of the applicant to realize the proposed programming and editorial concept. This failure has resulted in a situation where companies without capital became the owners or co-owners of media, which were later unable to pay the relevant fees to the Agency or salaries to their employees. On the other hand, although the RBA claims to know each owner of each media in Serbia by name and surname (with B92 being partly owned by an investment fund, they are surely not familiar with the names of all persons who have invested, but are aware of the names of the persons managing the money of this fund), it seems unquestionable that there is a great deal to be done in Serbia when it comes to transparency of media ownership. We remind that back in 2008, the working group established by the then Culture Ministry, produced a draft law on unlawful media concentration and transparency of media ownership, which was never tabled to parliament for approval, although it was approved on the public debate. Most interestingly, although the accusations of unlawful concentration of media ownership and lack of transparency exist mostly in the case of broadcast media, the latter did not voice any serious objections to the said draft, as opposed to print media. It would be good to deal with this issue in the coming legislative reform expected in accordance with the Media Strategy. The minimum would be to regulate more clearly the



matters the RBA must check on prior to issuing an approval for changing the ownership structure, in order to avoid those changes to result in circumventing the requirements for obtaining licenses on a public competition.