

The Republic of Serbia
The Constitutional Court of Serbia
26 Nemanjina Street
Belgrade

Belgrade, January 28, 2010

On the basis of the article 168 paragraph 1 of the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia" no. 83/06), the Business organization "Association of Independent Electronic Media" (ANEM) hereby submits to the Constitutional Court of Serbia the following

**INITIATIVE TO BEGIN PROCEEDINGS
TO ESTABLISH UNCONSTITUTIONALITY**

of the

1. Article 20 of the Law on Local Self-Government ("Official Gazette of the Republic of Serbia", no. 129/2007) i.e. its following provision:

- paragraph 1 point 34 in the section that reads "establishes television and radio stations for the purpose of reporting in languages of national minorities that are in official use within the municipality, as well as for the purpose of reporting in languages of national minorities that are not in official use, when such reporting represents the achieved level of minority rights";

2. Article 8 paragraph 2 point 5 of the Law on the Capital City ("Official Gazette of the Republic of Serbia" no. 129/2007);

3. Article 19 of the Law on National Councils of National Minorities ("Official Gazette of the Republic of Serbia no. 72/2009) i.e. its following provisions:

- paragraph 1 in the section that reads "performing of press-publishing and radio-television business activities", and
- paragraph 2;

4. Article 24 paragraph 1 point 3 of the Law on National Councils of National Minorities

5. Article 17 of the Law on Protection of Rights and Freedoms of National Minorities i.e. its following provision:

- paragraph 2 in the section that reads "and is allowed to establish special radio and television stations that would broadcast programmes in languages of national minorities".

The disputed provision of the Law on Local Self-Government stipulates municipality's authority to establish TV and radio stations.

The disputed provision of the Law on the Capital City defines the city of Belgrade's authority to establish TV and radio stations, newspapers and other public media outlets.

The disputed provisions of the Law on National Councils of National Minorities recognizes the right of the national councils to establish institutions and companies to perform press-publishing and radio-TV activities; as well as the right of the republic, an autonomous province or a unit of local self-government, as a founder of public companies and institutions in the field of public information that wholly or partially perform informing in a minority language, to wholly or partially transfer the founding rights to the national council in agreement with the national council; and stipulate that the Republic of Serbia, an autonomous province or a unit of self-government, at the initiative of the national council, wholly or partially transfer the founding rights related to institutions that perform public informing exclusively in minority languages.

The disputed provision of the Law on Protection of Rights and Freedoms of National Minorities allows the state to establish special radio and TV stations that broadcast programmes in minority languages.

First, the disputed provisions are contrary to the provision of the article 4 paragraph 1 of the Constitution of the Republic of Serbia which confirms the integrity of the legal order in the Republic of Serbia. In its earlier decisions, specifically in the decision published in the "Official Gazette of the Republic of Serbia" no. 89/2010 stating that certain provisions of the Law on Amending the Law on Public Information violate the Constitution and adopted international contracts, this court has decided that the principle of integrity of legal order – as one of the basic principles of the constitutional-legal system of the Republic of Serbia – requires that fundamental principles and legal institutions stipulated by laws that systemically regulate an area

must be upheld in special laws as well, except if such a systemic law explicitly allows the possibility of different regulation of the same area.

The submitter of the initiative is of the opinion that this principle should be upheld especially in the area of media law, i.e. the right to public informing, having in mind that the norms of the right to public informing by their very nature are directly related to realization of fundamental human rights and freedoms, especially the right to freedom of opinion and expression, the right to freedom of the media and the right to information.

Regulation of individual issues related to the right to public informing in a manner different from the manner in which these issues are regulated by a systemic law can seriously threaten the exercise of fundamental human rights and freedoms.

The systemic law in this area is the Law on Public Information ("Official Gazette of the Republic of Serbia" no. 43/2003, 61/2005, 71/2009, 89/2010) that in its article 14 paragraph 3 stipulates that public media outlets cannot be founded, directly or indirectly, by the state, territorial autonomies, institutions, companies nor any other legal persons that are predominantly owned by the state or that are wholly or predominantly financed by public income, except in cases defined by the special law regulating the area of broadcasting. Taking this into account, in accordance with the article 11 paragraph 1 of the Law, public media outlets are defined as newspapers, radio programmes, TV programmes, news agency services, the internet and other electronic editions of these public media outlets, as well as all other means of public informing that use words, pictures or sound to publish ideas, information and opinions intended for public distribution to an indeterminate number of users. The article 14 paragraph 4 of the Law on Public Information stipulates that the state is allowed to found a news agency only in special cases on the basis of a special law.

Therefore, since the systemic law explicitly stipulates that these issues can be regulated in a different manner only on the basis of a special law regulating the area of broadcasting; and since the Law on Local Self-Government, the Law on the Capital City, the Law on National Councils of National Minorities and the Law on Protection of Rights and Freedoms of National Minorities are not special laws that regulate the area of broadcasting, the disputed provisions are undoubtedly contrary to the provision of the article 4 paragraph 1 of the Constitution of the Republic of Serbia.

Further, the disputed provisions of the Law on National Councils of National Minorities related to transfer of the founding rights from the republic, an autonomous province

or a unit of self-government – as founders of public companies and institutions in the area of public informing that wholly or partially inform in languages of national minorities – to national councils of national minorities, wholly or partially, in a manner contrary to the systemic law, and the law that the systemic law designates as the law that may regulate this area in a different manner, regulate the legal status of the aforementioned public companies and institutions i.e. public media outlets founded by them. Namely, the Law on Public Information in its article 101 paragraph 2 prescribes closure of the aforementioned public media outlets, not a transfer of founding rights. The Law on Broadcasting, as pertains to radio or TV stations founded by local self-government units, stipulates mandatory privatization in its article 96 paragraph 10.

At the same time, the disputed provisions of the Law on National Councils of National Minorities related to transfer of founding rights from the Republic, an autonomous province or a unit of self-government – as founders of public companies and institutions in the area of public informing that wholly or partially inform in languages of national minorities – to national councils of national minorities, wholly or partially, in a manner contrary to the systemic law, regulate the issue of transfer of founding rights on public media outlets. Namely, the article 14a of the Law on Public Information stipulates that founders of public media outlets cannot transfer nor in any other way use the rights related to public media outlets or the right to publish a public media outlet.

Secondly, the aforementioned provisions are contrary to the article 18 paragraphs 2 and 3 of the Constitution of the Republic of Serbia which guarantee and as such directly implement human and minority rights guaranteed by generally adopted rules of the international law and by adopted international agreements and laws, i.e. which interpret the provisions related to human and minority rights in a manner allowing advancement of the values of a democratic society in accordance with current international standards of human and minority rights and the practice of international institutions that monitor their implementation.

In this specific case, the disputed provisions of the Law on Local Self-Government, the Law on the Capital City, the Law on National Councils of National Minorities and the Law on Protection of Rights and Freedoms of National Minorities, are contrary to the article 10 paragraph 1 of the ratified European Convention on Protection of Human Rights and Fundamental Freedoms ("Official Gazette of Serbia and Montenegro" – International Agreements, no. 9/2003, 5/2005, 7/2005; "Official Gazette of the Republic of Serbia" – International Agreements, no. 12/2010) which guarantees the right to freedom of expression, including the freedom to form own

opinion and to receive and distribute information and ideas **without any interference by public authorities**. Interference of public authorities with the exercise of the right to freedom of expression in this case is achieved by founding of public media outlets by municipalities, cities or the state, or by authorization of the republic, the autonomous provinces or local self-government units – as founders of public companies and institutions in the area of public informing – to transfer their founding rights to national councils of national minorities. This interference of public authorities with the exercise of the right to freedom of information in this case has no legitimate basis in the article 10 paragraph of the European Convention, and such interference is not necessary nor proportionate in a democratic society. Namely, the interest of public informing at the local level and reporting in languages of national minorities can be realized and are already being realized, with less interference, by the media outlets not owned by the state. This is especially true if we have in mind that provisions of the Law on Local Self-Government, the Law on National Councils of National Minorities, and the Law on Protection of Rights and Freedoms of National Minorities do not stipulate any systemic mechanism that would ensure editorial independence of public media outlets founded by municipalities, the capital city, the state, or national councils. Namely, the current international standard of human and minority rights in this area was defined in Europe by Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe (Indicators for Media in a Democracy) which does not recognize the possibility of existence of public media outlets owned by the state or publicly owned, except in the case of public service broadcasters (at the same time, public service broadcasters are required to adopt their own internal journalistic codes and to be editorially independent from the executive branch of government – point 8.21 of the Resolution), while in the case of other media outlets, designated as private (under quotation marks), it is stipulated that they cannot be managed nor owned by the state nor state-owned companies (point 8.22 of the Resolution).

Taking this into account, it is proposed that the court accept this initiative to begin proceedings to establish unconstitutionality and begin proceedings which would establish the incompatibility of the disputed provisions of the Law on Local Self-Government, the Law on the Capital City, the Law on National Councils of National Minorities and the Law on Protection of Rights and Freedoms of National Minorities with the Constitution, the generally accepted rules of international law and adopted international agreements.

On behalf of ANEM,

Sasa Mirkovic, president

Attachments:

- Resolution 1636 (2008) of the Parliamentary Assembly of the Council of Europe - Indicators for Media in a Democracy (the original and translation)