

I FREEDOM OF EXPRESSION

In the period covered by this Monitoring Report, there were several cases pointing to potential violations of freedom of expression.

1. Threats and pressure

1.1. “Pravda” daily reported that their Pristina correspondent Nedjeljko Zejak was attacked on August 3, in Gracanica and threats made against his life. Zejak claims he was attacked by Snezana Karadzic, advisor to the Deputy Prime Minister of Kosovo and to the Minister of Local Self-Government Sobodan Petrovic, and her bodyguard Radman Doderovic. According to “Pravda”, in a telephone conversation, Doderovic asked to meet Zejak in Gracanica to tell him some “important information”. He arrived at the agreed location in a vehicle of the Kosovo Ministry of Local Self-Government, with Snezana Karadzic in the car as well. “Pravda” claims that both of them had insulted and cursed Zejak after leaving the automobile, hit him with a chair and threatened him with ‘liquidation’. “Pravda” added that Snezana Karadzic had called the Editor-in-chief of this daily prior to the attack to defame the reporters and make threats regarding the story published on August 2. In the story titled “Coffe Girl in Board of Directors”, claims are made that Serbs, who participate in the work of Kosovo institutions are incompetent for the positions they occupy, and as one of the examples it is inferred that Karadzic, elected to be Serb representative in the Board of Directors of the Kosovo RTV, was a coffee girl prior to 1999. Snezana Karadzic said to KIM radio from Caglavica that she had thrown paper at Zejak after a series of gender and ethnic insults, namely that the reporter had called her and Doderovic ‘Montenegrin fascists’. “Pravda” also reported the statement made by the Gracanica chief of police Bratislav Trajkovic, saying that two people were arrested after Zejak had reported the attack to the police, that charges were raised against them for disturbing the peace and that the case would be forwarded to the investigating judge. Snezana Karadzic denied being arrested but confirmed that she and Doderovic had issued statements on the occasion of the charges raised. At the same time, Montenegrin Liberal Party announced a lawsuit against Zejak and “Pravda” for – as said by Radman Doderovic – ‘disturbing the Montenegrin community in Kosovo’.

This case can be seen in the context of the general state of the media in Kosovo, as reported by the daily “Danas” in August, in the form of an interview with Imer Muskolaj, executive director of the Association of Professional Journalists of Kosovo. Muskolaj claimed that all international reports pointed to a bad state of the media and insufficient freedom of

expression in Kosovo. He also perceived the proportion between the influence a given media had on the certain community and the size of the pressures against the journalists of these media. The fact that Muskolaj perceives – that Kosovo Serbs predominantly get their information from Serbian media and that these media have more influence over them than Serbian media from Kosovo – is reinforced by the attacks on the Serbian media staff. The attack and threats to Nedjeljko Zejak came only one week after the attack on the cameramen of the Tanjug news agency Djordje Spasic and Davorin Pavlovic, who were attacked and injured on the evening of July 27, while filming the barricades in the north of Kosovo. In the case at hand, the text was critical of Kosovo institutions and certain officials, but also asked the legitimate question concerning qualifications and experience of the people placed on certain positions. Apart from the example of Snezana Karadzic, the text also points to Deputy Director of Kosovo Police service Dejan Jankovic, whom “Pravda” claims to be a former waiter, and Radivoj Mancic, chairman of the Kosovo Government Commission for Serbian Curriculum Development who is – as stated in “Pravda” – wanted by the Serbian police for forging his university degree. Undoubtedly, the limits of acceptable criticism should be wider when public persons are in question, in particular holders of public office, who would have to display a higher level of tolerance compared to common citizens. In the stated example, an attack against the journalist who has exposed facts in connection with the qualification and work experience of holders of such offices is absolutely unacceptable.

1.2. In its issue on August 15, daily “Kurir” stated that the Chairman of the Serbian Jet Ski Federation Veljko Sukalo had attempted physical assault against “Kurir” reporters and driver. The incident occurred on the preceding day, and the paper claimed that Sukalo was irritated with the fact that the reporters were reporting on the water collision between two jet ski scooters over which he had confirmed ownership. Four persons were injured in the collision that occurred on the Sava River, near Hall 14 of the Belgrade Fair. One underage British citizen received – according to the media – severe trauma of the internal organs, whereas the other person, who was on the same jet ski, also underage, from Belgrade, received several bone fractures. “Kurir” claims that Sukalo threatened, assaulted the photo-reporter and snatched his camera and that the present three members of the river police just watched what was happening not making any attempts to protect the journalists. The media reported that Sukalo was cooperating with the Belgrade police in a way of training members of the river police to handle jet ski scooters.

The Public Information Law stipulates that no one shall restrict the freedom of public information nor in any manner restrict the free flow of ideas, information and opinions. Especially, no one shall perform any physical or other pressure on public media and its staff or any influence capable of obstructing them in conducting their work. Judging by the

information reported by the media about this specific case, the case concerns obstructing the public media staff in conducting their work by threats, attempted physical assault and snatching equipment. However, what is particularly concerning is the attitude of the police officers at the scene in the specific case. According to the doubts from the “Kurir” editorial staff, the police had tolerated Sukalo’s behaviour because they knew him, because they had cooperated with him and because he was their instructor. If this actually happened, and, according to “Kurir”’s writing, the case is under investigation from the internal affairs control of the Ministry of the Interior of the Republic of Serbia, the matter becomes all the more serious. The results of the investigation, which, according to “Kurir”’s sources from the MI, is still under way, have not yet been communicated. In accordance with the Law on Police (“Official Gazette of the RS” No 101/2005 and 63/2009 – Decision of the Constitutional Court), police affairs are conducted in a way to ensure equal protection of safety, rights and liberties for everyone, which is necessarily in the absolute opposite from tolerating the violation of these rights in the case when the violator had previously professionally cooperated with the members of the police.

1.3. In mid August, “Bor” Mining-Smelter Basin submitted a complaint to the Republic Broadcasting Agency on occasion of the “program content and behavior of Timocka television and radio” from Zajecar. In a letter signed by Blagoje Spaskovski, General Manager at Bor Mining-Smelter Basin, it is claimed that this media had published the information that the concentrate from the “Coka Marin” mine near Majdanpek should be processed in the Bor smelting facility and that this would create “environmental genocide over the citizens of Bor”. The letter specifies that this is untrue, that reporting this sort of information terrifies the citizens, harms business interests, credibility and rating of BMSB and is in serious violation of the Law on Information and the journalists’ Code of ethics. Sasa Mirkovic, chairman of the Timocka television and radio Managing Board stated for daily “Vecernje Novosti” that he had requested the editorial staff to address these accusations; he has also pointed out that Spaskovski, who – apart from being the general manager at the BMSB, is a party official of G17 Plus – ‘uses force and threats on anyone who does not think alike’. Mirkovic accused the authorities at BMSB that, contrary to the provisions of the Law on Free Access to Information of Public Importance, they had not answered media inquiries concerning “Coka Marin” mine. Simultaneously, Mirkovic warns about the troubling concentration of sulphur dioxide in the atmosphere in Bor.

Broadcasting Law stipulates that natural and legal persons have the right to submit complaints to the Republic Broadcasting Agency concerning the program contents of broadcasters, if they feel these programs insult or harm their personal or public interest. Upon receiving the complaint, RBA is obligated to immediately forward it to the broadcaster

for its statement and designate a deadline for said statement, except in cases when the complaint is obviously unfounded. Should RBA find the complaint is founded, it is obligated to take appropriate action and inform the submitter of the complaint in what way they can protect their interest. However, in this specific case, at least in accordance with the quotations from the complaint as reported by the media, “Bor” Mining-Smelting Basin calls upon the violation of the Law on Information and journalists’ Code of ethics. Monitoring the implementation of this Law and Code is not, however, in the immediate authority of the Republic Broadcasting Agency. Namely, if the information published by the media was incorrect, “Bor” Mining-Smelting Basin has at its disposal the option of pressing charges as stipulated by the Public Information Law, and if terrorizing the population is actually the case, initiating criminal proceedings concerning it, e.g. for the offence of causing panic and disorder as in Article 343 of the Criminal Code is also the option. On the contrary, and particularly if it is established that Timocka television and radio had grounds for concern due to the possibility of an environmental catastrophe, it could become established that “Bor” Mining- Smelting Basin’s complaint was in fact the abuse of rights, forbidden in accordance with the Public Information Law, in this case abuse of the right to submit an appeal suitable for the limitation of the free flow of ideas, information and opinions.

2. Legal proceedings

2.1. The Appellate Court in Belgrade sustained two verdicts of the High Court in Belgrade against television B92 in disputes concerning investigative series Reaction, specifically programs titled „Dossier Saric“, broadcast in March 2010. The verdicts obligate B92, Editor-in-chief Veran Matic and journalist Jelena Veljkovic by way of solidarity obligation to compensate for non-pecuniary damages in the total amount of 600.000 RSD; the damages occurred by “publishing incorrect information” and offending the honor, reputation and human dignity of a total of six plaintiffs, members of two Belgrade families mentioned in a police report created during operative work on Darko Saric's organized crime group, shown in the program in question.

What is troubling about these two verdicts in the utterly restrictive interpretation of the provisions of Article 82 of the Public Information Law whereby the journalist, responsible editor and legal person acting as founder of the public media are not accountable for damages if the untrue or incomplete information was reported verbatim from a document of a competent state body. In both trials, the plaintiffs claimed they had suffered non-pecuniary damages by way of offence to honor, reputation and human dignity, due to the broadcast of the police report in the television program. During the evidence hearing, the court obtained a

statement from the police, claiming that there was a report of such content in the Ministry of the Interior. However, in its verdict, the Appellate Court finds that, in this specific case, the appeal unfoundedly infers a verbatim report of information from a document of a competent state body, so as the report used in the show, being acquired through personal sources, does not represent official police information leading to the defendants' exclusion from accountability. In this way, the court practically narrows the field of application for Article 82 of the Public Information Law, interpreting the legal provision in a manner according to which the basis for the exclusion from accountability shall exclusively be the publication of information officially communicated by the authorities – in other words their media release – rather than publication of information that the media and journalists obtain through investigations. This interpretation of Article 82 of the Public Information Law not only practically hinders the very essence of investigative journalism, but is also directly opposite to the provisions of Article 8 of the Public Information Law, stipulating that no provision of the said law shall be interpreted and applied in a manner that would lead to canceling a right guaranteed by this law or to limiting it to the extent larger than regulated. This interpretation is also in collision with the practice of the European Human Rights Court in an entire set of rulings, such as Bladet Tromsø and Stensaas vs. Norway of 20/5/1999, § 68, or Colombani vs. France of 25/6/2002, § 65, which is beyond a doubt of the standpoint that a media and journalist, if quoting a document of a competent body, shall not be obligated to verify the truthfulness of the libeling and defamatory statements quoted from such documents and shall not be responsible for their publication. B92, as we found out, will use extraordinary legal remedies to refute said verdicts.

2.2. “Danas” daily newspaper reported that only three verdicts were pronounced since the Republic Broadcasting Agency had started filing requests for initiating offence proceedings against national broadcasters on grounds of the Advertising Law in January last year. In one case the verdict was pronounced against Pink television that was fined with two million dinars and Zeljko Mitrovic as the responsible party with 140.000 dinars. Other two verdicts concern Radio-Television of Serbia that was fined with 300.000 in one verdict and 400.000 in another. The Magistrate court formed a total of 516 cases, of which 44 in 2010 and 472 in 2011.

Although it is absolutely obvious that there are cases of violating advertising regulations and that these violations are frequent and numerous, the large number of proceedings exclusively against national broadcasters points to the fact that we, as a society, are still far from having an order in this field. We would just like to point to some problems that are still looking for a solution. Firstly, the larger number of requests for offense proceedings in 2011 does not necessarily speak of a larger number of offences but rather the new practice introduced by the

RBA that offences over the same period be separated into a larger number of requests, different from its practice in 2010, when each request for court proceedings comprised all irregularities noted in the monitoring report. In this manner, the RBA contributes to a longer duration of proceedings, as the media regularly submit requests to join proceedings, and the cases are on hold until these requests are ruled upon. Secondly, a large number of requests is the consequence of the fact that the media and RBA have different interpretations of certain provisions of the Advertising Law. The services of the Republic Broadcasting Agency did cooperate with the media and issue opinions concerning the application of the Law, but the RBA omitted to pass closer regulation on advertising and sponsorship on television and radio, which is its obligation under Article 103, paragraph 4 of the Advertising Law. If these rules were passed, it is possible that some of the dilemmas would have been solved. Thirdly, the question of selective application of the Advertising Law could be asked, if it is indeed applied only to national broadcasters. Also, it is unclear whether the reports against the public service relate to advance sales of advertising space or its sales to one person or a group of related persons over legally regulated quota, which is also prohibited according to the Advertising Law. Finally, the question of the competence of magistrate courts to try cases in proceedings initiated pursuant to the Advertising Law is asked, especially in the situation where RBA did not pass closer regulation on advertising and sponsorship on television and radio, and the provisions of the Law are not sufficiently precise and leave plenty of space for various interpretations.

2.3. The Appellate Court in Belgrade announced on 5 August that it passed a decision to revoke the verdict by the Basic Court in Sabac sentencing Bogdan Simanic, priest and co-owner of Glas Podrinja, to a prison sentence in the duration of 2 years. A reminder: Simanic was convicted by the Basic Court in Sabac for the act of threatening security, i.e. because he threatened Vecernje novosti journalist Aleksandra Delic (via Tatjana Cvejic of Blic) that he will “break her every bone and wipe the asphalt with her” because she reported the official communication that he and Slobodan Teodorovic, the other co-owner of the Glas Podrinja weekly, are charged with abuse of office. The Appellate Court in Belgrade returned the case for a new trial before a completely new council. Namely, according to findings of the Appellate Court of Belgrade, the first verdict was passed with significant violations of the criminal procedure provisions, as there are no reasons on decisive facts.

Journalists’ malcontent with Serbian judiciary – which they quite believe protects the offenders who attack them rather than themselves – was reheated with the short communication by the Appellate Court of Belgrade, from which it can not be seen what in the original verdict, the rare example where those who threaten journalists are convicted to unconditional prison sentences, was so disputable that the Appellate Court not only cancelled

it but asked for a retrial before a completely new council. It is beyond discussion that the right to appeal is a constitutional category and that anyone, and even Bogdan Simanic has the right to examine the ruling passed on him at a higher court. It is beyond discussion that courts can make mistakes and that basic court verdicts are revoked and cases retried almost on a daily basis, which should in essence contribute to legal security in the country. However, what remains troubling is that in this specific case the Appellate Court in Belgrade, in a legal matter concerning not only endangering personal safety of a journalist but also the realization of the right to freedom of expression, does not inform the public in detail on the reasons to revoke the verdict. In this way, an impression is created among the public that the courts do not respect freedom of expression or personal safety of journalists in general which – on one hand – encourages those who threaten and pressure journalists and – on the other – subverts the faith of journalists in the judiciary and impacts the strengthening of self-censorship. A more precise communication with which the Appellate Court would point out the specific shortcomings due to which the original verdict was revoked might have helped to avoid these consequences.