



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for August 2011

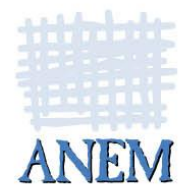


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I FREEDOM OF EXPRESSION

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 “Coffee 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.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

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

2. Broadcasting Law

2.1. In early August, the owner of Pink television Zeljko Mitrovic announced that he would remove Croatian music, films and advertisements from program in all five countries where this company owns TV stations (Serbia, Macedonia, Slovenia, Bosnia and Herzegovina and Montenegro). The announcement came after the Croatian advertisement for the auction of Mitrovic's yacht on August 17 in Dubrovnik. As a reminder, Croatian customs seized the yacht in September last year as it was sailing in from Montenegrin waters, with citations of customs procedure violations; Mitrovic lodged a complaint concerning the decisions of Croatian authorities. However, the thing that caused special reactions in the public is Mitrovic's statement that he had been trying all these years to improve neighborly relations between Croatia and Serbia by "favoring Croatian music, cinematography and Croatian investments in ex-Yugoslav countries". Mitrovic announced that his company's managing board would discuss "banning Croatian music in all five countries where Pink had its television and special care measures for quality control of Croatian products in countries outside Croatia". Also, he stated that he had forbidden Croatian tourist advertisements on his channels and that he would "never again be in a position to cover up incidents and embarrassments that Serbian, Bosnian and Montenegrin citizens experienced on summer holidays in Croatia". Journalists' associations reacted to Mitrovic's statement. Nino Brajovic, UNS general secretary, said that the job of the media was not to cover up anyone's assaults or to non-critically promote anyone, and asked whether Mitrovic's statement meant that he would continue covering up if Croatia returned his yacht. The media reported that the Ministry of Foreign Affairs of Croatia had also reacted and, keeping in mind that Pink uses a Serbian national frequency, called for urgent action in accordance with all legal regulation to stop publishing negative and unfounded content on Croatia, its institutions and Croatian companies on TV Pink as soon as possible. The Ministry of Culture, Media and Information Society submitted information concerning objections from Croatia to the Republic Broadcasting Agency and the RBA Council stated that they were "keeping a close eye on the program of Pink television regarding the case that emerged after statements made by television owner Zeljko Mitrovic". This sort of monitoring did not, however, lead to imposing any specific measures.

The incident with Mitrovic's reaction to the announced auction of his seized yacht in Croatia provided an opportunity to many to point to the shortcomings of the media system in Serbia, which allegedly did not provide adequate mechanisms to prevent the abuse of frequencies as national goods in media owners' private purposes. However, is this indeed the case? Let us

remind that the Broadcasting Law established principles to regulate relations in this field, among which are the principles of freedom, professionalism and independence, a ban on all forms of censorship or influence on the work of broadcasting media, all with the aim of guaranteeing their independence and the independence of their editorial boards and journalists. The law also insists on a full affirmation of civil rights and liberties, particularly the freedom of expression and pluralism of opinions. Unfortunately, even at the level of internal codes within the media, there are no rules to guarantee the independence of the editorial boards and journalists in relation to media owners and their private interests. However, on the other hand, it is undoubtedly the case that the RBA, in accordance with provisions of Article 8, paragraph 2, point 3 of the Broadcasting Law, is authorized to undertake measures with the aim of banning programs that contain information inciting discrimination, hatred or violence against persons or groups of persons due to their belonging or lack thereof to a certain nation or ethnic group. Also, in accordance with Article 13 of the said Law, RBA is authorized to monitor the work of broadcasters. In monitoring, the RBA is obligated to take special care that broadcasters fully comply with conditions under which their permit was issued, especially regarding general programming standards prescribed by law. Let us remind, one of the programming standards prescribed by the law is that broadcasters are obligated to provide free, full and timely information of citizens, whereas biased information in accordance with the owner's private interests certainly does not fall in this category. Also, the often criticized Code of Conduct for Broadcasters ("Official Gazette of the RS" No 63/2007) contains specific provisions that could be applicable to this practice. Specifically, in its manual regarding general programming standards in news broadcasting and current affairs programs, RBA stipulates that the broadcasters are obligated to provide that each standpoint be presented in a minimally objective way (without biased editing, inserted comments etc). Also, according to the Code, the right to an independent editorial policy includes the obligation of impartiality in reporting, which again implies clearly separating factual reports from positions, opinions or comments and taking care that the editor's personal beliefs and opinions do not impact the selection of topics and the manner of their presentation in a discriminatory way. Let us remind, apart from being the owner, Zeljko Mitrovic is also the Editor-in-chief of Pink television. Moreover, the Code prohibits broadcasters to intentionally conceal information of public significance. It could be concluded from Zeljko Mitrovic's statements that such intentional concealing of information of public significance did occur in the programs of the television under his editorial care. Finally, the Code contains a general ban on discrimination, among others, based on ethnicity or nationality.

2.2. In late August, Telekom Srbija announced that it had become owner of 51 per cent of HD WIN Company, founder of four Arena Sport TV channels, by way of capital increase by € 7.7 million. As stated in the communication, with this acquisition, Telekom Srbija shall become the first telecommunications operator in Serbia to play a significant part in the production of multimedia content, apart from its distribution business. Somewhat simultaneously, the media announced that TV Pink might soon fall into the hands of one of the owners of SBB, “Mid Europa Partners” investment fund. As they said in Pink television, they had initiated business talks with “Mid Europa partners”. SBB is the most powerful Serbian cable and satellite DTH operator. According to the data from the Business Registers Agency, Adria Cable B.V. of Amstelveen in Holland own SBB. However, there is information at Mid Europa Partners’ website that this fund led a consortium of investors that took over 100% ownership of SBB in July 2007. Mid Europa Partners’ present share in the ownership is unknown.

The Broadcasting Law contains provisions related to media concentration and cross-media ownership, but it does not contain provisions related to vertical integration, i.e. simultaneous participation in various markets of significance for media production and distribution, including advertising, press distribution and electronic communications markets. Media ownership by the operator of the largest cable and satellite DTH network in Serbia (SBB) and the operator of the largest IPTV network (Telekom Srbija) inevitably poses questions concerning the creation of possible bottlenecks in the distribution of media content through favoring own content compared to content from other players in the media market. From the standpoint of the Broadcasting Law in its current form, the completed (in the case of Telekom Srbija) and announced (in the case of SBB) transaction does not represent illicit media concentration. Some work was done on a separate Law on Media Concentration in Serbia but, although public debate was held about its draft, it was never put on the agenda. Truth to be told, even this draft has treated vertical integration between operators of electronic communication networks and the media. Risks of vertical integration, at least according to presently available data, are being neglected by the draft of the future Serbian media strategy. The creation of new bottlenecks for the free flow of information and opinions that vertical integration may pose remains at this time the sole domain of the Republic Agency for Electronic Communications, authorized to ensure the development of competition in the field of electronic communication, and the Commission for the Protection of Competition, authorized to prevent restrictive agreements, among others those splitting the market or applying unequal business conditions to the same businesses regarding different market participants. It remains to be seen if that will be enough to provide free flow of information and equal business conditions for all media.

3. Law on Electronic Communications

3.1. In accordance with suggestions from the Commissioner for Information of Public Importance and Personal Data Protection, the Ministry of Culture, Media and Information Society extended the period for public consultation on the Draft Rules on Technical Requirements for Equipment and Programming Support for Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications until August 11, 2011. After the end of the public consultation period, the text of the Rulebook was not adopted until the date of closing this Report.

We have written about the risks posed by the Draft Rules on Technical Requirements for Equipment and Programming Support for Lawful Interception of Electronic Communications and Retention of Data on Electronic Communications in our previous report. Let us remind, it was initially planned that public consultations lasted until August 4. The Rulebook should represent the actualization of a provision in the Law on Electronic Communications stipulating that electronic communications operators must enable lawful interception of communications. During public consultations, objections to the text of the Draft Rules primarily concerned the fact that its text did not actually specify technical requirements for devices and equipment, as the case should be, but – on the contrary – transferred the right to prescribe functional specifications for the equipment, devices and programming support onto the Security Information Agency, therefore exiting the framework prescribed by the Law on Electronic Communications. The Rules are particularly interesting for the media, as its abuse would compromise the legally recognized right to protect ‘sources’. Extension of the public consultation period provided the opportunity to interested parties to state their objections to the text. However, what is troubling is that, after ending public consultations, the Ministry has not communicated which objections that were stated during consultations have been adopted, due to which it is completely unclear in what form and when this important Rulebook will be adopted.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the National Assembly of the Republic of Serbia did not pass any regulations of relevance for or with implications on the media sector. However, the Government of the Republic of Serbia did propose to the National Assembly the adoption of the

Law on Amendments to the Law on Copyright and Related Rights, whereas certain proposed amendments are of significance for the media sector.

1. The Law on Amendments to the Law on Copyright and Related Rights

Article 75 of the Stabilization and Association Agreement obligates Serbia to ensure the level of protection for intellectual property similar to the level of protection in the EU. As stated in the Law on Amendments to the Law on Copyright and Related Rights that the Government forwarded to the Assembly for adoption on August 11, when answering the questions from the EU Questionnaire concerning Chapter 7 “Intellectual Property Rights”, it was established that some provisions of certain EU Directives regulating the subject matter of copyright and related rights had not consistently been incorporated into local legislature. For this reason, most of the proposed amendments represent the consistent transposition of provisions of EU Directives regulating the subject matter of copyright and related rights into the local legislature. Also, during negotiations concerning Republic of Serbia’s accession to the World Trade Organization, it emerged that individual provisions of the Agreement on trade-related aspects of intellectual property – TRIPS were not consistently transposed into the Law, thus necessitating changes in that respect as well.

The Draft Law provides for amending Article 43 of the Law on Copyright and Related Rights that stipulates copyright limitations concerning press, radio and television reports to the public on current events. The new text of this provision provides that the following shall be allowed when reporting to the public by way of press, radio and television and other media on current events, without the author’s permission and without paying a fee:

- copying published work(s) that appear as integral part(s) of the current event reported to the public;
- preparing and copying short excerpts or abstracts from newspaper or other similar articles in overviews of the press;
- copying public political religious or other speeches held in state bodies, religious institutions or on occasion of state or religious festivities;
- free use of daily information and news that have the nature of newspaper reports.

The government also proposes amendments to the provision of Article 49 of the Law that regulates the right to quote. Firstly, amendments provide for the possibility to quote even entire short author's pieces. Until now, it was possible only to quote parts of authorship works, which in practice excluded the possibility of quoting short works of art, e.g. epigrams, on these grounds. Also, amendments provide an additional condition for the use of the right to quote, i.e. that the quote is used in accordance with good customs.

Finally, the draft allows for free treatment of a published work of art if it is a parody or caricature, if it does not create confusion or cannot contribute to creating confusion regarding the source of the work, which will certainly improve legal security in publishing parodies, caricatures and general satirical content in the media.

Also, the proposed amendment to Article 183 of the Law, regulating the obligations of users – and inherently the media – to collective organizations for the protection of copyright and related rights, provides for grounds to authorize collective organizations to expand the scope of their requests for the submission of lists of broadcast works of art, phonograms and interpretations. Namely, citing the provision of Article 183 of the current Law, the media – primarily in litigation against the collective organization representing producers of phonograms (OFPS) – emphasized that OFPS requests related to the submission of data concerning broadcast phonograms in the media exceeded the framework regulated by law. Now, with amending the Law, the Government intends to impose an additional obligation on the media to inform collective organizations not only on the circumstances relevant for the calculation of the fee paid according to the tariff, but also for its further distribution to owners of the rights. In practice, this will impose an additional obligation on the media to record and administrate data related to broadcast music pieces, phonograms and interpretations.

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)

1.1. “Enter television” has lost its terrestrial broadcasting license due to unpaid fees for broadcasting programs. This decision was passed by the Republic Broadcasting Agency Council,

on a session held on August 8. “Enter” television possessed the regional coverage land program broadcasting license for Belgrade. “The crisis in the media has reached such a pitch that even the media in Belgrade that have the most income from advertising can not make it”, Goran Karadzic, deputy chairman of RBA Council, said for Novosti. He added that half of the total number of televisions broadcasting in Belgrade has lost licenses due to unpaid compensations for program broadcasting. Before “Enter”, “Art” TV and “TV Plus” had also lost their licenses.

In accordance with the provisions of the Broadcasting Law, the broadcaster shall pay a program broadcasting fee and a frequency utilization fee for the right to broadcast programs. The amount and manner of payment of the frequency utilization fee are determined in accordance with regulations concerning electronic communications and it is payable to the account of the regulatory body responsible for the field of electronic communications. The broadcasting fee is payable to the account of the Republic Broadcasting Agency. The Republic Broadcasting Agency shall determine the amount of the program broadcasting fee with approval from the Government of Serbia, based on criteria that include the population size in the broadcasting area and the broadcaster’s programming conception and/or the origin and type of programs being broadcast. In practice, this fee can be 10 times higher than the frequency utilization fee and it was often underlined that it presented a serious burden for the work of the media. The fact that even certain Belgrade media cannot pay the fee confirms that these remarks are not unfounded. Also, although the only reason that the legislator prescribed the obligation to pay this fee (different from the frequency utilization fee, which is in its nature the price of using a limited resource) was to provide stable funding and financial independence to the regulator, these fees have been significantly larger than the costs of regulation for years, which is only reinforced by the fact that RBA transfers the collected surplus into the state budget. On the other hand, non-payment of the fee is grounds for revoking the license. The Law stipulates that it can be revoked if the broadcaster does not settle the obligation to pay the fee in spite of a written notice. The process rules of the Broadcasting Law stipulate that the broadcaster, whose license has been revoked, shall have the right to appeal against the Council decision within eight days of receiving the said decision. The appeal does not delay the execution of the decision, and an administrative dispute can be initiated against the Council’s decision passed after the appeal.

STATE AUTHORITIES

2. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On August 17, 2011, the website of the Ministry of Culture, Media and Information Society reported that its Media Sector had completed the text of the Draft Media Strategy. We remind that, the announcement came after the public discussion on the text of the Draft prepared by the working group consisting of experts from media and journalists' associations, as well as the said Ministry. The Media Sector was supposed to incorporate into the text the objections, proposals, comments and suggestions arising from the discussion. However, the final version was not published; Culture Minister Predrag Markovic – according to an agreement with the Prime Minister – forwarded it to the Office of the PM with the aim of forming a Commission that would give suggestions to the final text of the Draft. After considering the suggestions, the Minister would present the text at a public hearing at the National Assembly of the Republic of Serbia before adoption procedure at the Government. The following were appointed as members of this Commission, formed by the Decision of Prime Minister Mirko Cvetković: Dragana Milicevic Milutinovic, State Secretary at the Ministry of Culture, Media and Information Society as Chairwoman; Irini Reljin, Telecommunications Assistant to the Minister of Culture, Media and Information Society; Goran Radosavljevic of the Ministry of Finance; Srdjan Majstorovic of the Serbian European Integration Office; Jelena Trivan, Chair of the Serbian Parliament's Culture and Media Committee; Dragan Penezic of the Commission for the Protection of Competition; Ranka Vujovic of the national Secretariat for Legislature; Zoran Sekulic as the representative of the media sector and Sandra Basic Hrvatin, European Commission expert. The Commission started work on August 22. Although there were no official communications concerning its work, it could be assumed that the same issues persisted – what were the deadline and manner in which the state would withdraw from ownership in media, i.e. to what extent could the state be an owner of any media at all. What is also disputed is the manner of Serbia's fight against illicit media concentration, cross media ownership and vertical integration – simultaneous participation in media and advertising markets, the market of press distribution and the market of electronic communication. Much has been said about the manner to meet the citizens' needs for information of local and regional importance and information in minority languages, where the government – in spite of opposition from practically entire media community embodied in media and journalists' associations – refuses to abandon the idea of forming regional public broadcasting services and national minority councils reserving the right to establish minority media, which would subsequently be funded from the budget.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

3. THE ORGANIZATION OF PHONOGRAM PRODUCERS OF SERBIA (OFPS)

The Organization of Phonogram Producers of Serbia announced that the Universal Music Group – the world’s largest producer of phonograms and one of the ‘big four’ of the music industry (together with Sony Music Entertainment, Warner Music Group and EMI Group) –had registered its repertoire with the OFPS via PPL, a collective organization from the UK, with which OFPS has a signed bilateral agreement. The announcement does not specify whether the other three music industry leaders have registered their repertoire to the OFPS and when.

The publication of this announcement by the organization for the collective protection of related rights brings us back to the question on what grounds do collective organizations collect fees from users for the benefit of the owners of rights. In accordance with the Law on Copyright and Related Rights, the collective organization collects the fee either based on an order from the rights holders to collect said fee in its own name and for their benefit, in accordance with Article 153 of the Law, or pursuant to the assumption established in Article 180 of the Law that the organization is authorized to act for the benefit of all rights holders regarding those rights and those types of protected objects that are included in its activities, and finally – regarding foreign rights holders from abroad – based on a contract with the appropriate foreign organizations, in accordance with which it provides collective rights enforcement of Serbian holders abroad and foreign holders in Serbia. The Law stipulates that collective organizations are obligated to conclude such contracts within 5 years from the day of obtaining the first license to operate. As a reminder, OFPS gained its first license in 2002. The announcement does not make clear the nature of the repertoire registration by Universal Music Group, i.e. whether it represents Universal Music Group’s order to OFPS within the meaning of Article 153 of the Law, or the broadening of the scope of rights covered with the already existing contract with PPL, or a completely different matter. The size of the repertoire in question can be testified by Universal Music Group’s market share during the previous decade, which – according to publicly available data – moved during the previous decade from one quarter to as much as one third on the global scale.

V THE DIGITALIZATION PROCESS

Announcements made during the summer from the Ministry of Culture, Media and Information Society and Public Company “Broadcasting Equipment and Communications” – that the possibilities of changing the date of complete switchover to digital broadcasting and amending the Digitalization Strategy are under consideration, and that the test network for broadcasting digital signal shall be commissioned by the end of 2011 – have not been realized yet. As a reminder, initially the date of complete switchover to digital television signal broadcast was planned to be April 4, 2012, and the media reported on considerations about pushing it to the beginning of 2013. A testimony that pushing back digitalization is not exclusively a Serbian phenomenon is that only Croatia and Slovenia of all our neighboring countries successfully transitioned from analogue to digital broadcasting, while Bulgaria and Romania pushed back the transition for 2015. What is also – however, still only unofficially – announced is that amendments to the Digitalization Strategy, instead of switching off analogue broadcasting and shifting to digital broadcast in a day, shall provide for a phased switch-off by regions or individual distribution zones. To that extent, the announced commissioning of the test network for broadcasting digital signal should contribute to examining selected network parameters and testing new equipment bought partially by utilizing IPA funds and the equipment that remains to be acquired with funds from a loan backed by the state.

VI THE PRIVATIZATION PROCESS

In accordance with information collected for the needs of working on the Draft Media Strategy, according to the data from the Privatization Agency, 56 of the total of 109 public media in Serbia eligible for privatization – of which 81 were electronic and 28 printed media – were privatized. A total of 18 privatization agreements were terminated and these media await new auctions. For 37 media, the privatization process was stopped by citing provisions of the Law on Local Self-Government and/or the Law on the Capital that have – contrary to the provisions of the Public Information Law and Broadcasting Law – left the option to municipalities to remain owners of television and radio stations to report in minority languages and to the capital to remain the owner of a television and radio station, newspaper and other media. Of the remaining 16 state-owned media, 7 have ceased to exist by decisions of municipalities as their founders and no bidders appeared at auctions for the remaining 9. This data is subject to various interpretations

and while some draw from them the conclusion that privatizations proved to be a failure, others point out that one of the reasons behind failed privatizations and generally unfavorable business conditions for commercial media is the fact that the state, by continuing to finance municipal media, violates regulations on controlling state aid, leads municipal media into a more favorable position in relation to commercial media, therefore harming competition in the market. This understanding represents the primary reason why the media and journalists' associations insist on continuing privatization and a new model of state funding for the media based on transparent and non-discriminatory funding for projects in the fields of public interest in the media sphere; independent commissions would decide on public competitions on awarding these funds. Data gathered for the needs of working on the Draft Media Strategy testify on the size of the funds in question. Namely, this data – although not comprehensive – being collected from nearly 90% of municipalities, show that the state gave more than € 21 million to the media in 2010 and that over € 25 million have been allocated for the same purpose in 2011. Of the whole sum, nearly 5 million were allocated at the level of the Republic of Serbia, nearly 3.5 million at the level of the Autonomous Province of Vojvodina, and over 16.5 million at the level of cities and municipalities. Numerous closed commercial media and numerous cancelled privatization contracts testify to the extent that the disposal of these funds – largely non-transparent and discriminatory – harms the media market. However, the state is neither ready to assume responsibility nor to regulate state funding for the media in an acceptable and legal manner.

VII CONCLUSION

The Serbian media community still waits for the Government to adopt the Media Strategy, but the enthusiasm has dropped noticeably. The fact that the position of authorities and those of the journalists' associations are opposed to that point, even concerning elementary issues such as the issue of state's withdrawal from media ownership or the issue of resources Serbia as a country has at its disposal to fund six new public broadcasting services in the situation when financial stability of the two existing ones is insecure, does not leave space for great expectations. Also, obviously the Strategy – whatever final solutions concerning media concentration being adopted in it – will be late to regulate vertical integration in time in this sector. The acquisition giving Telekom Srbija control over the operator of specialized regional sport channels – ArenaSport, and the announced entrance of the owner of the most powerful cable and satellite DTH operator into the ownership structure of Pink television, show precisely that vertical integration is no longer a mere possibility but a reality in the media sector. Meanwhile, the number of threats, attacks or pressures editorial

boards and journalists are exposed to shows no tendency of reducing. On the other hand, verdicts reached in media matters still provoke doubt regarding their compliance with European standards, in particular with the case law of the European Court of Human Rights in applying Article 10 of the European Convention. Two of these verdicts, where the court narrowed the scope of application of Article 82 of the Public Information Law – stipulating that a journalist, editor and the media are not accountable for damages if the untrue or incomplete information was reported verbatim from a document of a competent state body – solely to the situations where the information is reported verbatim from a document that the state body officially has communicated to the media, are described in this report. The impact of these verdicts to self-censorship and conformity in media language is indubitable and increasing.