



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for October 2011



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I FREEDOM OF EXPRESSION

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

1. Threats and pressures

1.1 On October 5, 2011, journalist of the Sabac-based newspaper “Podrinjske” and correspondent of Radio Free Europe Hanibal Kovac was physically attacked in downtown Sabac. Kovac was kicked in the back by an unknown man, who told him he was going to get “beaten or dead”. According to eyewitness’ statements, the man had gotten out of a jeep with no license plates, threatened and kicked the journalist and ultimately drove away. According to the same sources, everything happened just ten meters away from the traffic police, in an area covered by cameras. According to Kovac himself, the attacker presented himself as the body guard of a medical equipment dealer mentioned in the investigation in the Sabac General Hospital. Kovac had been investigating the dealings of that hospital for months, especially in the area of procurement. According to a press release, the police has identified the attacker, apprehended him and placed him in police custody, after which he is supposed to be taken to the judge of investigation.

According to the Public Information Law, it is prohibited to put physical or other pressure on a public media and its staff or exert any influence that might obstruct their work. According to the provisions of the Penal Code in the Republic of Serbia, Hanibal Kovac’s case might contain elements of the criminal offense of violent behavior, incriminating serious disruptions of public order, namely serious threats to the peace of citizens by gross insults against and/or harassment of other persons, violence against other persons, provoking a fight or rude or unscrupulous behavior. The Law provides for a penalty of up to three years in prison for violent behavior. If a person has suffered a minor bodily injury or such behavior has caused severe humiliation of the citizens, the perpetrator shall be punished by a prison sentence in the duration of between six months and five years. Additionally, also according to the provisions of the Penal Code of the Republic of Serbia, threats made against the security of a person by menacing that person with an attack on his/her life or body, or the life or body of a person close to him/her, if such threat is made against a journalist in relation to the his/her work in the domain of information, shall be subject to a prison sentence of one to eight years. A particular concern is, however, the fact that, as in other similar cases, including the notorious attack on Vecernje Novosti’s correspondent from Loznica Vladimir Mitric back in September 2005, the police remained silent as whether it had identified the persons that

had ordered the attack. Namely, despite Kovac's statement, released in the media, that the attacker presented himself as the body guard of a medical equipment dealer mentioned in the investigation in the Sabac General Hospital, which case Kovac had been investigating and reporting about for months, one may not infer from the police press release if any investigation about the attacker's identity has been conducted at all. Particularly worrying is the fact is that the investigation in a large number of attacks against the media typically ends up with the identification of direct perpetrators, but not of those who have hired them, the real instigators of the attack.

1.2 The editor of the aforementioned internet portal and correspondent of the daily "Danas" from Vranje Vojkan Ristic informed the police he was threatened over the phone by a high DSS official in Vranje. According to him, the threats are the reaction to information published on October 5 that the Prosecutor for Organized Crime has been investigating the assets of several persons from Vranje, members of the Democratic party of Serbia (DSS) or persons close to that political party. Using the information of an unnamed police source from Belgrade, the Vranje Press internet portal claims that the investigation is led in the scope of the operation that previously saw the arrest of the Director of the Kolubara Coal Basin.. Ristic claims he was warned not to write about the case again. Two days later, the media reported that Ristic had given a statement to the police, accusing DSS official from Vranje Misa Antic. The President of the City Board of the DSS in Vranje Dejan Stanojevic told a local TV station by telephone that "the threats are a product of Vojkan Ristic's imagination". According to Stanojevic, nobody from the DSS in Vranje has anything to do with what happened in Kolubara and nobody from Vranje has done any business with Kolubara. The City Board of the DSS in Vranje also protested over the reports by Vranje Press, labeling it a product of the impending electoral campaign and calling Vranje Press to reveal the source of the controversial information.

According to the Public Information Law, it is prohibited to directly or indirectly restrict freedom of public information, so as to restrict the free flow of ideas, information and opinion. It is particularly prohibited to put any pressure and influence on public media and their staff so as to obstruct their work. The Public Information Law particularly insists on the special responsibility and obligation of persons occupying political functions in that respect, pointing to their right to protection being restricted if the respective information is relevant to the public, since the person, which the information pertains to, is discharging a certain function. Of particular concern is the request made by the City Board of the DSS in Vranje, calling Vranje Press to reveal the source of the controversial information. According to the Law, the journalist shall not reveal his/her source unless the information related to a criminal offense, or perpetrator of a criminal offence subject to no less than five years in

prison. This rule, provided for by the Public Information Law from 2003, was mainly respected in the last eight years, although there were attempts by various sides to disregard it: for example, in early 2009, the daily Borba was called upon to reveal its sources of the information about the decision of the Serbian government in the Miladin Kovacevic case. The then Editor-in-Chief of Borba Olivera Zekic was questioned by the police, but refused to reveal the source of the information that the government was ready to pay damages to the injured student Brian Steinhower, in order for the fugitive Miladin Kovacevic to be allowed to stand trial in Serbia. The trivialization of the journalists' right to protect their sources, as well as the calls to breach this right for the sake of protecting the ratings of political parties, shows that the politicians in Serbia are ready to forego the importance of protecting journalist sources and hence freedom of expression in general, which are legally guaranteed in Serbia, among other things, by the provisions regulating the protection of journalist sources, if the aforementioned politicians estimate that it may bring them even short-term political gain.

1.3 In mid-October, the studio of RTV Prima from Bajina Basta was stoned – several windows were broken on the building and the tires on the station's company car were cut. RTV Prima said in a press release it was the third such attack on their company car in the previous three months. The attacks were reported to the police. The station said they were also under economic pressure, as well as that their employees suffered direct pressure too, with the aim of influencing the editorial policy.

The attack on RTV Prima in Bajina Basta is yet another confirmation of the increasing pressure on the media and attempts to instrumentalize them in the wake of the coming parliamentary and local elections. The pressure ranges from "friendly chats" to economic pressure in the form of cancelled marketing contracts or channeling local self-government funds allocated for public information to obedient and friendly media. At the same time, media are openly threatened and exposed to brutal attacks. Although media associations have requested from the authorities to investigate the background of the attack and hold the perpetrators to account, we are yet to see any official communication indicating that an investigation is underway, let alone that any results have been achieved.

2. Legal proceedings

2.1 The prosecutor in Novi Sad has filed an indictment against journalist Jelena Spasic and Milan Bojovic, the editor of the defunct "Nacionalni gradjanski list" newspaper from Novi Sad, over the text "State Authorities Completely Unprepared for War". The indictment, which Jelena Spasic received on October 14, said that the controversial text, written on the

basis of a confidential report by the Serbian Defence Ministry about the preparedness of the country for defending itself in the case of war, “had damaged national security”. Jelena Spasic and Milorad Bojovic were accused of committing the criminal offense provided for in Article 98, paragraph 4 of the Law on Classified Data, namely that they had made available, for the purpose of publishing the article, the material prepared for the session of the Serbian Parliament, which was labelled as strictly confidential. They are also accused of having committed the criminal offense provided for in Article 333, paragraph 2 of the Penal Code, by not revealing the identity of their source. By doing so, in the Prosecutor’s opinion, they have helped their source – the perpetrator of the criminal offense subject to a prison sentence of more than five years. The Journalists’ Association of Serbia (UNS) has condemned the indictment against the journalist and the editor. “What they have published is not detrimental to Serbia’s security, as the indictment claims. On the contrary, it is a contribution to better informing the citizens about the real state of the defense preparations and security of the country”, UNS said. Jelena Spasic said that the Novi Sad Prosecutor’s Office had filed an indictment against her without even conducting an investigation or summoning her for an interrogation. She denied having divulged a secret, because the material in question was scattered around the parliament desks and tables in the parliament restaurant and hence could not have represented a secret. The Commissioner for Information of Public Interest and Personal Data Protection Rodoljub Sabic reacted with a press release published on October 15, in which he warned that the whole case was indicative of the deplorable state of the freedom of press and the right of the public to know. “Insisting on the responsibility of journalists, while at the same time not holding others, those that are really responsible, to account, will, regardless of the intentions of the Prosecutor, have detrimental effects on freedom of press and the right of the public to know”, the Commissioner said. Several days later, on October 22, according to media reports, the Commissioner said that “he was informed that morning by the Republic Prosecutor Zagorka Dolovac that the Prosecutor’s Office will not continue the criminal proceedings against the journalists of “Nacionalni gradjanski” (under the indictment of the Primary Prosecutor’s Office in Novi Sad, which has not come into effect yet) and that instead, the investigation will be extended to other officials, unknown persons, for the offense of divulging a secret”. The same day, the spokesperson for the Republic Prosecutor’s Office Tomo Zoric told Tanjug that the Extra-Procedural Council of the Primary Court in Novi Sad has returned the indictment against the journalist and editor of “Nacionalni gradjanski” for investigative proceedings and hence an investigation would now be conducted. “After the investigation is completed, depending on the facts that will be determined, the Prosecutor will reach a decision about this case,” Zoric said.

The case of Jelena Spasic and Milorad Bojovic has shocked the public. It reminded us of a time we have believed to be gone, when, for example, Miroslav Filipovic, the correspondent

of “Danas” and the France Presse agency from Kraljevo was sentenced in 2000 for espionage to seven years in prison by the Military Tribunal in Nis. Filipovic was allegedly a spy for having posted texts signed by him on the Institute for War & Peace Reporting’s website. Both Jelena Spasic and Milorad Bojovic have done their job – writing about the poor situation of certain national defense resources, citing concrete information from a document that was labelled confidential. From the text they had published it may be concluded that its consequences may only be beneficial – the remedying of indisputable omissions – and not harming Serbia’s security. Another concern for the media professionals was the fact that their colleagues were indicted without an investigation, as well as that the Prosecutor proposed the trial to be closed for the public. Article 244, paragraph 6 of the Criminal Procedure Law of the Republic of Serbia stipulates that, in the case of a criminal offense subject to a prison sentence of up to eight years, the Public Prosecutor may, without the consent of the investigative judge and without having interrogated the suspect, raise an indictment without having conducted an investigation, if the information collected about the criminal offense and the perpetrator provide sufficient grounds for doing so. Moreover, in keeping with Article 292 of the Criminal Procedure Law, the court may, *ex officio* or at the proposal of the parties, exclude the public from the entire main hearing or part thereof, among other reasons, if required by grounds of national security. Both provisions are exceptions from general rules – that an indictment must be preceded by an investigation and that the main hearing shall be public. The impression that the Prosecutor in Novi Sad resorted to that exception hastily in the first case was confirmed by the Extra-Procedural Council of the Primary Court in Novi Sad, which returned the indictment to the investigation procedure, i.e. to normal procedure. It is highly likely that, if there is a trial at all, the court will reject any proposals for exclusion of the public during the main hearing. It would namely be illogical to exclude the public from the hearing for reasons of confidentiality of a document that was, as the indictment claims, already made available to that same public. Finally, it seems that this case has exposed the fragility of the guarantees offered by the Public Information Law – both the ones concerning information about issues of relevance for the public and those pertaining to the right of journalists to protect their sources. Concretely, Article 4 of the Public Information Law stipulates that public media shall be free to publish information and opinions and phenomena the citizens are entitled to know about, unless provided for otherwise by the Law and regardless of the means by which such information was acquired. Matters concerning the country’s military preparedness undeniably seem to enter that category, regardless if the media in question has obtained such information by picking up documents scattered around the parliament restaurant, as Jelena Spasic so picturesquely put it. Moreover, Article 32 of the Public Information Law says that a journalist shall not be obliged to disclose information about his sources, unless such information concern a criminal offense or a perpetrator of a criminal offense subject to no less than five years in prison. It is simply unbelievable that the

Prosecutor has treated the above right of the journalist (not to disclose his source) as aiding a perpetrator of a criminal offense. Even if we disregard the fact that the protection of sources is not there to protect specific sources or, as alleged by the Novi Sad Prosecutor, in order to help those who commit the offense of divulging confidential documents, but rather in order to protect one of the key preconditions for freedom of press, without which the sources would be discouraged from talking to reporters and the public would be denied information it is entitled to learn. In the concrete case, the conditions for denying the reporters to protect their sources were not met at all. A journalist is namely obliged to reveal his source of information only if this information relates to a criminal offence or a perpetrator of a criminal offense subject to no less than five years in prison. The criminal offense in question is subject to 1-8 years in prison and in that sense the journalist was not obliged to reveal his source. At the same time, his refusal to reveal his sources could not have been construed as aiding a perpetrator of a crime.

2.2 The hearing of Velimir Ilic, the President of the Nova Srbija political party, sued by journalist Vladimir Jescic back in 2003, was postponed once again before the Primary Court in Novi Sad, after Ilic's attorney requested the exemption of the judge. Velimir Ilic failed once again to appear in court. Jescic pressed charges against Ilic for having kicked him during the interview for the Novi Sad television "Apolo" in 2003, after which he tried to physically attack him. After the postponement of the hearing, Jescic said that his case was proof of the existence of double standards in Serbia for politicians and ordinary citizens.

It seems almost unbelievable that, eight years after an attack on a journalist that was televised throughout Serbia, this case is yet to be closed in court. Namely, the first-instance verdict in 2006 was scrapped upon appeal by Velimir Ilic. Jescic's attorneys claim that the appeal was not timely filed (in 2009, after six years) but was nevertheless accepted by the court. Whatever the case may be, Jescic's claim about double standards for politicians and ordinary citizens only gets credence if the case where Velimir Ilic was the attacker is compared with another case in which Ilic was himself attacked: on February 5, 2010, in Knez Mihajlova street in downtown Belgrade, Dejan Stojadinovic punched Velimir Ilic while the politician was talking to the press in relation to his party's signature collection campaign for early elections. Stojadinovic was sentenced on April 6, only two months after the incident, to two years in prison. The verdict of first instance was delivered by High Court in Belgrade. Six months later, this verdict was upheld by the Appellate Court in Belgrade and it became final, which only confirmed that Serbian courts can be very efficient when they want to. Unfortunately, they are far from efficient in cases where journalists appear as the injured party.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public information Law

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

1.2. On October 13, 2011, daily Danas reported that, according to the records kept by the Independent Journalists' Association of Serbia (NUNS), there were 212 cases of physical and verbal attacks on journalists in Serbia in the last four years, of which merely 17 were prosecuted in court. The ban, provided for in the Public Information Law, on putting any physical or other pressure on public media and their staff with the purpose of obstructing their work, was obviously of no help. Moreover, NUNS believes that only one third of the actual threats and attacks get reported to the competent authorities, showing deep distrust of the journalists in the institutions. The statistics show that the state reacts in merely one fourth of the reported cases. On the other hand, according to the same research, the total number of attacks against journalists is on the decline. In 2008, there were as much as 143 such incidents, compared to 37 in 2009 and 19 in 2010. In the current year 2011 "only" 13 attacks were registered. The attackers are most often indicted of misdemeanor, but some were prosecuted in criminal proceedings, whereas the penalties were at the legal minimum or even below it. Some get sentenced to conditional prison sentences or fined.

2. Broadcasting Law

2.1 According to a report in the daily Danas, 140 thousand Serbian citizens will this year be exposed to measures taken by the Serbian Broadcasting Corporation (RTS) with the aim of collecting the subscription fee. In most cases, RTS sends dunning letters. According to the RTS, since 2007, non-paying citizens in all parts of Serbia are sent dunning letters before action and are given the opportunity and possibility to pay their debt to RTS in several monthly instalments. In case of repeated non-payment against the received dunning letters, the RTS presses charges against the non-payers. The greatest collection percentage of payment is recorded in the Belgrade area – an average of 65 do 70% and Vojvodina – between 55 and 60%. In southern and eastern Serbia, this figure is the lowest. In central Serbia, the collection rate is around 35%, whereas it is 15-20% in the south, the RTS said, adding that the collection rate varied depending on the level of a region's economic development. The collection rate is also subject to the fact that the fee is charged along with

the electricity consumed and that the rule is that electricity bill is collected first, followed by the radio and television subscription fee.

The Broadcasting Law provides for the financing of public service institutions, related to the realization of the legally provided general interest, from the subscription fee for radio and television. Obligated to pay the said fee are the owners of radio and television sets. The subscription fee, the amount of which is equal throughout Serbia, is paid per radio and/or television set in a household, whereas the households owning two or more devices, excluding those in motor vehicles, shall pay the fee for one device at the same address only. Legal persons must pay the fee too, namely hotels and motels one fee per each ten rooms equipped by a television or radio set, while other legal persons owning a TV and/or radio set are charged one fee per each 20 employees that are able to receive television or radio program. Exempted from paying the subscription fee are only households owning a TV and/or radio set with one member having a 100% body injury, an invalid with less than 100% body injury, if the household enjoys the right, in accordance with the applicable regulations, to an allowance for care and help for a member of the household, or a person that has suffered a permanent loss of hearing or a blind person. Exempted from the subscription fee are also legal persons – institutions for the accommodation of students, healthcare institutions and disabled persons organizations and companies for professional training and employment of invalids, as well as diplomatic and consular offices, under the conditions of reciprocity. The amount of the fee that was initially provided for by Law is adjusted to the index of retail prices in Serbia in the previous calendar year, according to the officially published data of the statistical agency, increased by 5%, and is currently 500 RSD. The collection of the fee is performed through the public electricity provider, under a contract signed with the public service. Of the total amount collected, 1.5 % is paid to the budget of the Republic of Serbia for the development of the local film industry. Of the income from the collected fee in Vojvodina, the Vojvodina Public Service Broadcaster gets 70%. The issue of collectibility of the fee has become extremely important in the context of the recently adopted Media Strategy. In the period when the Strategy was written, it became evident that the implementation of the Broadcasting Law, in the part concerning the financing of the public service broadcaster, is not on a satisfactory level. The subscription fee was namely introduced in order to ensure a stable and solid source of financing the public service broadcasters. At the same time, it was supposed to ensure additional independence from the government, which is difficult to gain if the PBS is directly financed from the budget. Unfortunately, instead of working to ensure a greater collection rate, the RTS often acted as if it had given up the fee altogether and as if it wished to return to the direct budget financing model. The Media Strategy was expected to provide certain guidelines for the financing of the public service in the future, but it failed short of accomplishing that. On paper, at least, the Strategy has seen Serbia undertake to

provide a safe and public financial framework for the functioning of public radio television services. Furthermore, the Strategy has pointed to the necessity to increase the collection rate by introducing the proper legal concepts and better organization of the collection. However, in terms of a model that would ensure that, the Strategy failed to offer any suggestions. The good thing is that it insisted for the first time on the financing of public services that would comply with the criteria about state aid control. These criteria involve a clear definition of the functions and obligations of the public service, oversight of compliance thereof, transparent financial control, a test for the introduction of new services, a ban on overpayment (commercial revenues must be taken into account), proportionality and prohibition of anti-competitive behavior on the market. The reference to these criteria in the Strategy should in fact mean that the issue of the collectibility of the fee may not be treated separately, outside of the context of a responsible public service broadcaster in terms of doing business and transparency in spending the scarce money they are able to get through the subscription fee.

2.2 From a police press release dated October 25, we could have seen how the fight against radio piracy may be efficient and successful when other agencies, and not only the media, are threatened. According to the said press release, the operatives of the Anti-Organized Crime Department of the Serbian Ministry of Interior, in cooperation with the Department for Fighting High-Tech Organized Crime of the Higher Public Prosecutor's Office in Belgrade and the RBA have, on the basis of warrant issued by the investigative judge of the Higher Court in Belgrade, searched several apartments and premises in order to find the studio and transmitters of the illegal radio station „Radio Boss“ from Belgrade. In the concrete case, the reason for the search is the fact that the said station threatened to endanger airline traffic safety, as repeatedly pointed to by RATEL. The owner of the radio station was identified and taken in police custody. The press release of the police said that, in addition to transmission and studio equipment, the police had found unlicensed firearms in his apartment. The police announced it would press charges for several criminal offenses, including threatening the security of airline traffic, violations of copyright and related rights and unlawful performance of activity.

RATEL has continued publishing the lists of pirate radio stations in Serbia, which were fifty in October – six less than the previous month. Otherwise, the fact that, in the concrete case, the police have announced they will file charges against the arrested owner of the pirate station for unlawful performance of activity, demonstrates that the media association ANEM was right more than two years ago when it proposed to the police this very mechanism for fighting radio piracy. In its letter to the Police Minister and Director of the Police back in February 2010, ANEM emphasized that „the manner in which the state had been fighting radio piracy in the past was inappropriate“ and that „neither the RBA, nor RATEL have, on

their own, the mechanisms to enable efficient fight against radio piracy.“ On that occasion, ANEM emphasized that cooperation with the ministry of interior and the police was, in that sense, indispensable. In the same letter, the Association said that broadcasting without a license provided for by the Broadcasting Law (namely the broadcasting of commercial content – commercials and prize advertisements) amounted to the commission of the criminal offense from Article 353 of the Penal Code of Serbia. The said article stipulates that unlawful and performance of a certain activity for profit, which requires, under the law or other regulations, the proper license of the competent authority, shall be subject to a fine or a prison sentence of up to two years.

2.3 The cable television channel Kopernikus has been placed under 24/7 monitoring of the RBA, in relation to media reports that it was negotiating with the representatives of the Serbian Progressive Party (SNS) on the purchase of eight hours of TV time on that station, the Deputy President of the RBA Council Goran Karadzic told the daily “Danas”. He added that political parties had the possibility to present their political program in the media, but only during the pre-election campaign and not before. In his words, the RBA may not act “before something happens”, but is entitled to place certain broadcasters under special 24/7 monitoring, as it is the case with TV Kopernikus.

The Broadcasting Law prohibits the advertising of political organizations outside of the pre-election campaign, while during the campaign parties are guaranteed equal representation without discrimination. In that sense, the purchase of media space for political advertising, would undoubtedly be prohibited. In addition from prohibiting political parties from advertising outside of the pre-election campaign, the Law also says that a political party, organization or coalition, or a legal persons founded by a political party, organization or coalition, may not be issued a broadcasting license. Consequently, the purchase of broadcasting time by political parties outside of the pre-election campaign would be contrary to both the spirit and the letter of the laws of Serbia.

3. Law on Ethnic Minorities’ National Councils

Boris Labudovic, the Chairman of the Managing Board of Radio-Television Vojvodina (RTV) has resigned from his post. In his press release Labudovic explained that he found the coming changes to the RTV Statute, aimed at conforming the said Statute to the Law on Ethnic Minorities’ National Councils, unacceptable. „With the Law on Ethnic Minorities’ National Councils, the same legislator practically annuls the independence and autonomy in the work of RTV stipulated by the Broadcasting Law“. „If that Law is strictly adhered to,

according to the interpretation of the authorities, the Managing Board and the RTV Management will not be appointing as much as 16 out of 21 responsible editors“, said Labudovic, whose resignation came into effect on October 4. Labudovic added that the Manager and the editors-in-chief of RTV might not be held accountable for editorial policy if three quarters of responsible editors were appointed by the National Councils, making RTV lose its autonomy for three out of five television programs it broadcast. The Managing Board has appointed Vanja Barisic-Jokovic as new Chairman to replace Labudovic.

The Managing Board of RTV, consisting of nine members appointed and dismissed by the Republic Broadcasting Agency, is competent for appointing and dismissing the General Manager, the directors of radio and television and programming editors-in-chief. The Law on Ethnic Minorities' National Councils stipulates that the National Councils of Ethnic Minorities, on whose minorities' languages RTV is broadcasting, shall provide their opinion in the procedure of appointing the members of the Managing Board, Programming Board and the General Manager of the Broadcasting Institution of Vojvodina, as well as to determine the criteria for electing the responsible editor for the language of its respective ethnic minority. Furthermore, the National Councils shall propose to the Managing Board the appointment of the responsible editor for the program on the language of the respective ethnic minority out of the eligible candidates; they give their opinion about the candidates for the responsible editor of the program on ethnic minorities' languages – if the responsible editor is appointed for several minority languages programs. The resignation of Boris Labudovic has exposed an almost unsustainable situation where the Managing Board and the General Manager have their hands tied when it comes to choosing the leading editors in RTV. Taking into account the controversial decisions about the dismissals of responsible editors in minority media in the recent past, which were enacted primarily by the Hungarian minority National Council, as well as the undeniable politicization of National Councils and them being placed under the control of the leading political parties of the respective ethnic minorities, it becomes increasingly evident that the model adopted by the Law on Ethnic Minorities' National Councils, aiming to realize the ethnic communities' right to autonomy in the field of public information, is threatening to place information on minority languages under the absolute control of minority oligarchies. To make things worse, the Media Strategy has completely failed to address this issue – it has merely reiterated the declarative guarantees of independence of public service broadcasters and the prohibition of illicit influence on programming content and on any restrictions to their independence and autonomy. It remains to be seen how RTV will handle this problem, namely will the resignation of Boris Labudovic, on the other hand, result in an open debate about the fact that the Law on Ethnic Minorities' National Councils has created more problems than it has solved in the field of public information on minority languages, which debate should be free

of superficial accusations claiming that any alternative concept would be tantamount to a violation of acquired minority rights.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament did not adopt any laws of specific relevance for the media.

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

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

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

On October 18, 2011, RATEL released an updated list of radio and television stations using radio-frequency spectrum without authorization. Fifty pirate broadcasters, namely six less

compared to the list released a month earlier, were recorded. As much as 22 of these 50 stations are from the territory of Vojvodina, while 13 are based in the wider area of Belgrade. However, except the case of “Radio Boss” from Belgrade, which has been shut down and its owner kept in police custody, first and foremost for having caused harmful interferences to flight control endangering airline traffic security in process, there were no other cases of shutting down other illegal broadcasters in the period covered by this Report.

3. THE PRESS COUNCIL

The Complaints Commission of the Press Council, the first independent self-regulatory body for print media in Serbia, after it started receiving complaints on September 15, passed its first two decisions in October. Namely, the complaint against the daily “Press” concerning the text “Doctor Tortures Woman and her Lover” in the print edition from September 9, was approved. The plaintiff claimed that the woman, who was exposed to violence, had been additionally affected by the publishing of uncorroborated information and personal data that may contribute to identifying her as the victim, as well as information irrelevant for the violence she was subjected to. The complaint goes on saying that the disputed article contained inappropriate descriptions of situations implying that the violence was somehow justified, such as “doctor catches the lovers ‘in flagrante’ ” and “lost his temper” and the like. The Complaints Commission of the Press Council found that the complaint was justified, namely that the controversial text had violated the provisions of Section VI, subparagraphs 1, 2 and 3 of the Ethical Code of Serbian Journalists and ordered the daily “Press” to publish the Commission’s decision. The members of the Complaints Commission judged that the controversial text had violated the tortured woman’s rights, namely that her right to privacy was violated in terms of Section VI of the Ethical Code of Serbian Journalists. Furthermore, the text was found to abound with unnecessary sensationalist details, the accuracy and verifiability of which was also questionable, since the authors of the text only cited the statement of an anonymous “interlocutor familiar with the whole affair”. The Commission passed its second decision on the complaint of the former Health Minister Tomica Milosavljevic over the text entitled “The Government is Protecting the Former Minister” published in the weekly NIN on October 13. According to Milosavljevic’s complaint, the text contained several untruths, as well as offensive insinuations about his alleged culpability in relation to the activities during the pandemic of the AH1N1 virus in the years 2009 and 2010, especially concerning the procurement of the influenza vaccine. The Commission rejected this complaint, explaining that the text didn’t violate any provisions of the aforementioned Code of Ethics. The members of the Commission judged that the article by Katarina Preradovic pertained to the “Vaccine Affair”, which took place during the term of office of the plaintiff – former minister Tomica Milosavljevic and that it concerned his political person.

The Commission found that information about politicians and other persons occupying public functions were not subject to the restrictions concerning information on private persons, namely that the rights of politicians in the field of public information were restricted, proportionately to the legitimate interest of the citizens to be informed about how public functions were discharged. The Commission invoked both the Public Information Law and the Code of Ethics of Serbian journalists and the relevant European standards and case law of the European Court of Human Rights in enforcing Article 10 of the European Convention. The Commission also noted that the plaintiff had the opportunity to make a statement about the topic of the text when the journalist contacted him prior to publishing it. The former minister, the Commission says, didn't use that opportunity.

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

STATE AUTHORITIES

4. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

After the adoption of the Media Strategy on September 28 and the publication thereof in the Official Gazette on October 7, there are still no indications as to when its implementation will start. The state has provided itself with comfortable deadlines and it was therefore unrealistic to expect any activities to be taken as early as in the first month after the passage of the Strategy. However, it must be noted that there are no statements whatsoever from the Ministry of Culture, Media and Information Society and other competent ministries about

the important question of enforcement of the Law on State Aid Control. Under the Stabilization and Association Agreement (SAA) and the Action Plan accompanying the Strategy, this issue should be tackled as early as January 1st next year. Such behavior has only accentuated the dilemmas related to this item in the Action Plan, which was believed to have been the key concession offered to the representatives of the media community, owing to which they have ultimately endorsed the Strategy, except for the part concerning regional service broadcasters. The representatives of the media community were told this would definitively alter the model of media financing in Serbia, namely that direct budget financing of state media would, as of January 1st next year, be considered as unauthorized state aid. Today, however, the Ministry of Culture, Media and Information Society, the Finance Ministry and the Commission for the Control of State Aid remain silent and invisible and there are no signs of anyone preparing to change anything in the model of financing as of next year. What is the essence of the Law on the Control of State Aid and what are the obligations in the enforcement of that Law under the SAA? The said Law prohibits state aid in any form, if such aid undermines or threatens to undermine competition on the market, unless provided for otherwise by the same Law. As an exception, it is allowed to allocate state aid as welfare, which shall be allotted to individual consumers without discrimination as to the origin of goods or products constituting aid. Also as an exception, state aid may be allotted for the purpose of remedying damage caused by natural disasters or other emergencies. Among other cases, under the Law, state aid may be allowed only if allocated for the purpose of implementing a certain project of particular significance for the Republic of Serbia. For that reason, namely in order to open the door for the media to receive some aid from the state, the Media Strategy insists on the financing of projects and the defining of the public interest – a field where media projects could be branded as projects of particular significance for the Republic of Serbia.

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

V THE DIGITALIZATION PROCESS

We will not have digital television or the test digital signal on time, Vecernje Novosti reports. The deadline for digitalization in Serbia was initially set for April 4, 2012. With the slow completion of all the necessary requirements, it became clear that the said deadline could not be met. According to certain reports, the works were late, resulting in a delay of the test signal. Today, however, we hear that the reason for the delay is the parliamentary elections, because “it would not be appropriate in that period for people to be left without digital signal”. Elections as the cause for the delay were also invoked by Jasna Matic, the State Secretary for the Digital Agenda and Vladimir Homan, the Director of the public company “Broadcasting Equipment and Communications”, the bearer of the whole project. The experimental broadcasting of television program is also delayed – it was supposed to start in mid 2011, and then put off to September. However, according to Homan, the equipment for the transmitters, required for the start of digital television, is yet to arrive from abroad. The trial network is planned to be put into operation on 15 sites throughout Serbia, but it will not be broadcast in full force in order not to “override” the existing networks through which television signal travels to our homes. In order for digital transmission to start, we also must wait for certain transmitter sites, damaged in the NATO bombing in 1999, to be repaired. Experts estimate that about 70 million EUR are needed in order to finalize the digitalization process. That amount should also include the assistance to the poorest families with the purchase of decoders.

In our reports, we have long been pointing to the fact that the delays in the implementation of the Action Plan accompanying the Digitalization Strategy have rendered the initial deadlines for the digital switchover unrealistic. Serbia is not an isolated case in this respect, since almost all countries in the region and beyond have at some point postponed the digital switchover. However, the problem lies in the near-silence about the problems in the implementation of the Action Plan and the failure to postpone the deadline for the switchover immediately after it became clear that it has become unrealistic. Still, it seems that some progress will be achieved after all. The allocation plan, needed for launching the initial network for the testing of the digital signal, was tabled for public discussion in late October. Amendments to the Strategy and the Digitalization Rulebook are to be expected, which will hopefully introduce a gradual switchover by region, instead of a risky and forced transition in one day, marred by the absence of available frequencies. This was enabled by the ever reducing number of analog broadcasters in Serbia in recent years, due to the economic downturn. The crisis has thus freed part of the spectrum to the extent that it has enabled the switchover to be carried out in stages. It is true that greater transparency in the planning of

digitalization would help avoiding sensationalist texts in the media and enabling the citizens to receive accurate information about the meaning of digitalization for them.

VI THE PRIVATIZATION PROCESS

According to a press release of Austrian company OST Holding Suedosteuropa GmbH, posted on its official webpage, the Serbian Competition Protection Commission (CPC) has rejected that company's request for concentration. The request of OST Holding for acquiring 62.4% of the shares of the Novosti Company through the takeover of the entire stake of three foreign companies, shareholders of OST Holding (Trimax Investments, Ardos Holding and Karamat Holding) was rejected on October 12 by the decision of the chairman of the Commission. The Commission cited the failure to submit the required evidence on the necessary legal grounds as the reason for the rejection. Without such evidence, the press release says, the Commission's Council was unable to even start a debate about the requested concentration. OST Holding was given the possibility to file a complaint against such decision within three days. OST Holding, which is owned by the WAZ Media Group, requested the approval for the takeover of 62.4% of Novosti shares from the CPC more than two years ago, but the CPC suspended the procedure in mid-July pending the decision of the Administrative Court on the lawsuit filed against it by the Austrian Company. The Administrative Court, however, rejected the Austrians' claim and it was the reason for the CPC's new communication about the company's request for taking over the complete share in the three companies through which their owner, Milan Beko, took over the majority shares in Novosti in 2006. In the meantime, after Beko himself confirmed he was controlling three companies holding together 62.4% of the Novosti shares, the CPC ordered him last June to issue the offer for the takeover of the remaining Novosti shares no later than within three months, failing which he was to announce the sale of the share exceeding 25% of the shares. According to the current legislation, until such sale is completed, the owner shall be entitled to vote only up to the 25% limit. Hence, although being a minority shareholder with 36.6%, the state currently holds in Novosti the management rights to the majority of shares (29.5% owned by the Republic of Serbia and 7.15% via the PIO Fund – Republican Fund for Pension and Disability Insurance). This practically means that the state will not only be one of the owners of Novosti – it is already practically running that media company, contrary to the imperative provision of the Public Information Law stipulating that the state and territorial autonomy, an institution, company or other legal person in majority ownership of the state or legal person that is entirely or mostly financed from public revenues, may not be a founder/owner of a public media. The position that the state must withdraw from media ownership is, in cases like this,

enshrined in the Media Strategy. That document says that the state shall withdraw from Novosti within 24 months after establishing the legal grounds. As in the concrete case the legal grounds are there since the coming into force of the Public Information Law back in 2003, one may question the sincerity of the state to withdraw from media ownership: is it really intent on withdrawing or is it merely buying time by postponing it?

In the meantime, the media have continued to report about individual cases of unsuccessful privatizations. Hence, for example, according to such reports, four years after having acquired the regional station TV Pirot, the majority owner Milorad Pejic requested from the Privatization Agency a consensual termination of the contract. The reason is the difficult financial situation of the station and the impending layoffs. TV Pirot was sold on an auction in early November 2007 and it was the first media to have been privatized in the Southeast of Serbia. Four years later, however, the station's account was blocked due to unpaid electricity and other bills and the employees have not received several salaries. In late October, the media also reported that the Privatization Agency terminated the purchase and sale agreement in the privatization of the oldest Serbian weekly, the Kragujevac-based "Svetlost". The paper was sold in 2007 for 21 million dinars to the three-strong consortium consisting of Gvozden Jovanovic, the then councilor of the Christian Democratic Party in the City Assembly, the former Mayor of Kragujevac Vlatko Rajkovic and the local businessman Dragoljub Milovanovic.

VII CONCLUSION

Physical attacks on journalists, threats, throwing stones at a television studio, destruction of a company vehicle, filing an indictment without prior investigation, endless court proceedings in cases where journalists were attacked... All this has cast a shadow on the fact that Serbia has recently adopted a Media Strategy, a document everyone agreed was badly needed, after two years of hard work, arguing and back-and-forth negotiations. It is already evident that the implementation thereof will be everything but an easy task, due to several reasons. First, the Media Strategy is a conciliation incorporating certain incoherent concepts, which will undoubtedly result in divergent interpretations. As of the first reading, one inevitably concludes that it is impossible to both advocate the withdrawal of the state from media ownership and introduce new exceptions to the mandatory privatization. Furthermore, it is logically impossible to avoid making key changes in the evidently failed model of financing of the existing public service broadcasters and at the same time introduce new public broadcasters with an even less understandable financing scheme. Or to believe

that, in a situation where the national and the provincial public service broadcasters have been unable to satisfy the needs for information of regional relevance, new regional public service broadcasters, set up in the same mould, will somehow manage to fulfill the same objective? There is, however, one obvious thing, which represents a change of the focus laid down in the Strategy. While it may be true that it was produced to a certain extent clumsily and sloppily, the Strategy marks the first time in Serbia that the media sector is treated not only as a field where freedom of expression – as a fundamental human right – ought to be achieved, but also as a market where competition is protected and financial interventions by the state are considered as illicit interference, which may be allowed only if they are transparent, non-discriminatory and pro-competition. The experience of other countries in the region who have started – some even already finished – their EU accession talks before Serbia, teaches us that the key issues for the media sector in these talks were not those related to human rights and freedom of expression, but, paradoxically maybe, items concerning the protection of competition and control of state aid. The conclusion could be that the entire region, including Serbia, has changed in the sense that overt oppression and violence, although still being a concern, have ceased to be the dominant way of pressuring the media. The predominant instruments for muzzling the media are more subtle today and involve different, equally dangerous challenges. The changed circumstances have compelled the media community to introduce additional priorities. These priorities concern ownership, the protection of competition and, most importantly, the control of state aid. Precisely for that reason, as much as the Strategy has disappointed many, the success thereof will be measured by the results in the implementation of the new model of project-based financing of media content and a more effective control of state aid. Failure in these two areas would mean that the Serbian media space has become even poorer, while being placed under even tighter control.