

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 pressures

1.1. In a clash with students on November 3, the private security guards, hired by the management of the Faculty of Philosophy in Belgrade to curtail the two-week blockade, threatened the photographer of the daily "Pravda" to throw him out of the building, while insulting his reporter colleague from the same newspaper Srecko Milovanovic. The President of the Journalists' Association of Serbia (UNS) Ljiljana Smajlovic called everything that had happened on the Faculty of Philosophy a disgrace and emphasized that the attack on a reporter was a violation of the Public Information Law. Smajlovic reminded that the Faculty was a public institution and that the students' protest was an event relevant for the public interest. Hence, she said, the journalists were entitled to report from it.

The Public Information Law expressly stipulates that public information shall be free and in the interest of the public, as well as that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion, or to put pressure on public media and its staff so as to obstruct their work. The Media shall be free to release ideas, information and opinions about phenomena and events the public is entitled to know about. The freedom to publish information the public is entitled to know about involves the freedom to collect such information. The Public Information Law expressly stipulates that public services, including universities and faculties – and this inevitably involves the University of Belgrade as a state university, and the faculties it includes – shall be required to make information about their activities available to the public under equal conditions for all journalists and public media. In that sense, universities and faculties are put on equal footing with state bodies and organizations, territorial autonomy and local self-government bodies and public companies. Insulting reporters and photographers and throwing them out of the building where they were reporting from about the blockade of the faculty – undoubtedly an event of justified public interest – represents a serious and inadmissible violation of freedom of expression.

1.2. Journalist Rada Stajic and cameraman Slobodan Gabric, correspondents of Radio-Television Vojvodina (RTV – a provincial public service broadcasting) from Subotica, were

attacked on November 4 in Bajmok, while interviewing people about the unsolved murders and kidnappings in that town. An attacker grabbed Rada Stajic by the neck and violently shook her head and he also tried to seize Gabric's camera. The RTV crew was making a story about unsolved murders in Bajmok and they were shooting the interviews on the funeral of the victim, which was found strangled and buried in the cellar of her house after a 12-day search. The media reported that the journalist and the cameraman were attacked by the man who was guarding the house of the victim – a woman that was working abroad. The daily "Vecernje Novosti" reported that the underage daughter of the attacker had also disappeared along with her boyfriend shortly after the strangled woman was reported missing.

The Public Information Law expressly stipulates that it is forbidden to put physical or other type of pressure on public media and its staff so as to obstruct their work. The task of the RTV crew was by no means easy, since they were reporting about an unfortunate and tragic event, involving personal pain and the shock of the community that knew the victim. There are no indications, however, that the reporter violated the Ethical Code or the Public Information Law. We remind that, under the applicable Serbian Journalists' Code of Ethics, the journalists are required to respect the privacy, dignity and integrity of the persons they are writing/reporting about. The right to privacy is restricted only when it comes to public figures and public officials in particular. The Serbian Journalists' Code of Ethics particularly emphasizes that the journalists and editors must especially refrain from speculation and communication 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. Journalists are especially obligated to ensure that a child, whose name, photograph or footage are released – including photographs and footage of his/her home, community where he/she lives or recognizable surroundings – is never threatened or put at risk because of that. The same is stipulated by the Public Information Law, under which a minor must not be made recognizable in a piece of information that may harm his/her rights or interests. In the concrete case, based on available information, journalists acted in line with ethical rules of the profession and existing regulations. As this could also be relevant to some other cases, we point out the fact that the prohibition of physical, or any other pressure on media and journalists, is unconditional and that any violation of the Code of Conduct or provisions of Public Information Law, even in the case in which such violation occurred, does not justify the vigilantism. On the contrary, such violation only provides the basis for possible litigation. Vigilantism is a criminal offense punishable under the Criminal Code by a pecuniary penalty or sentence of up to one year imprisonment.

1.3. The journalist, editor and presenter of the news program of TV Prva, Branka Nevistic, has left the said station due to, in her words, “strong pressure and impossibility to do her job professionally”. The media reported that Nevistic was prohibited from working on certain topics and that she was not allowed to invite certain guests. The daily “Blic” reported that the heat was on Nevistic because of the political analysts with differing opinions who discussed the state policy towards Kosovo in her shows. Everything reportedly began when she was reprimanded for the harsh tone in the interview Nevistic made a year ago with the then Telecommunications Minister in the Serbian Government. TV Prva declined to comment on the reasons put forward by Nevistic to explain her departure, but nonetheless said that she behaved “utterly unprofessionally and with lack of respect for her colleagues”. The station’s press release also said that she had left her workplace refusing to hear out what her daily duties were. UNS stated in a press release that Nevistic informed them back in August that she was being censored on TV Prva and threatened with dismissal, the reason reportedly being the pressure her employer was under from the “powers that be” over the content of her news show. “They punished her by sacking her from the position of producer and presenter of the news program because she had invited someone who expressed, on the air, a political position about Kosovo that differed from that of the state and political leadership,” UNS said. TV Prva responded that UNS failed to hear the other party involved in order to establish the truth, “with the aim of putting pressure, smearing and publicly lynching a reputable television station”.

The Public Information Law stipulates that a journalist may not be laid off, have his salary cut or position in the media degraded as a reprisal for a truthful claim released in his/her media; for the refusal to obey an order that would violate the legal and ethical rules of the journalist profession or an order contrary to the editorial concept of the public media; or for having expressed an opinion outside of the public media, as a personal position. On the other hand, the Serbian Journalists’ Code of Ethics says that journalists must consult as many sources as possible and enable those sources to express their respective positions. The case of Branka Nevistic, which will, as announced by both sides, end up in court, has once again demonstrated that the Public Information Law lacks sufficiently precise provisions protecting journalists from editorial orders requiring him/her to act contrary to the Journalist’s Code of Ethics. The provisions contained by the Law are namely not underpinned by case law, based on which it may be predicted how courts ought to interpret the aforementioned provisions. This is relevant for private media, but even more so for media funded from public sources, which should operate as public service broadcasters and which also lack their own code of professional ethics regulating the rights of journalists that might enter in conflict with the editorial policy of their media for their differing opinion.

1.4. In its November 17 edition, the daily “Danas” reported that, during an interview on the local TV “Aldi” in Presevo, the President of the National Council of Albanians Galim Beciri attacked the Editor of the Internet portal preseva.com Driton Salihu, accusing him of being a collaborator of Serbian secret services and organizations. Salihu had previously requested, on his online portal, information about the budget expenditures of the National Council of Albanians. Citing information of the Local Self-Government and Human and Minority Rights Ministry, the portal wrote that the National Council of Albanians had received 16.5 million dinars from the Serbian budget in the period between July 1, 2010 and October 15, 2011. Salihu claims that the citizens have the right to know how and where that money was spent. Since he had not received the answer from the Council itself, he posted on his website the scanned document obtained from an insider from within the Council, which pointed to non-transparent expenditures.

Under the Public Information Law, public media shall be free to release ideas, information and opinions about phenomena, events and persons the public is entitled to know about, unless provided for otherwise by the Law and irrespective of the manner in which such information has been collected. Expenditure of budget money is definitively a topic relevant for the public interest. The national councils are bodies representing ethnic minorities in the fields of education, culture, information on their native language and official use of language and alphabet. The national councils participate in the decision-making process or decide about issues related to the aforementioned fields and establish institutions, companies and other organizations operating in these domains. The Public Information Law does not contain provisions concerning the transparency of the national council’s operations, but these councils are necessarily part of the group of bodies which, under the Public Information Law, are obligated to make information about their activities available to the public, under equal conditions for all public media and all journalists. On the other hand, in view of the reserved attitude of the National Council of Albanians towards a particular media and taking into account the unacceptable attack of the Council’s President on that media’s Editor Driton Salihu, it is pertinent to ask how the Council will fulfill its competences in the media sphere under the Law on National Councils of Ethnic Minorities. We remind that the national councils are authorized to establish media and to assume founding rights to state minority media, but also to give proposals for the distribution of funds from the budget allocated to the minority media by the means of public competitions.

2. Legal proceedings

2.1. The Appellate Court in Belgrade has increased the sentences of Milos Mladenovic and Danilo Zuza by seven months each, to one year in prison for the attack on weekly Vreme columnist Teofil Pancic on July 24, 2010 in Belgrade. The press release of the Appellate Court said that the court had accepted the appeal of the First Basic Prosecutor in Belgrade concerning the sentence, because the court of first instance had attributed too much weight to the alleviating circumstances benefiting Mladenovic and Zuza. The Appellate Court found that there were no grounds for alleviating the sentence against the defendants below the legally prescribed minimum for the criminal offense of violent behavior. The Court reminded that Mladenovic and Zuza had attacked Pancic without any reason whatsoever, after having followed him in the public transportation, while he was switching bus lines. This is the evidence that they were extremely perseverant in trying to realize their decision to attack Pancic, regardless of the fact that they were obstructed by „victim’s switching transportation means“. The Court found that the one-year sentences were proportionate to the degree of the defendants’ guilt and that they were necessary in order to reflect society’s condemnation of the criminal act.

We remind that Danilo Zuza and Milos Mladenovic were arrested nine days after the attack on Teofil Pancic. They got caught by the security cameras from the back and hence they could not have been identified just on the basis of the security footage. However, their identity was confirmed by DNA analysis, since their DNA was found on the object they had used to beat up Vreme’s journalist. This was confirmed on the day of their arrest by the Minister of Interior Ivica Dacic. The First Basic Court in Belgrade sentenced them in September 2010 to three months in prison each. In May 2011, the Appellate Court revoked that sentence, having found that the First Basic Court in Belgrade failed, in the course of the first-instance proceedings, to reliably conclude that Mladenovic and Zuza were aware that the person they were attacking was Teofil Pancic the journalist, as well as they were motivated by Pancic’s occupation and the disagreement with his texts. The new verdict of the First Basic Court on July 1, 2011 saw them again sentenced to three months in prison each. Acting upon the appeals to that verdict, the Appellate Court accepted the appeal of the First Basic Public Prosecutor in Belgrade and reversed the verdict of first instance in the part concerning the sentence and sentenced the defendants to one year in prison each. The criminal offense of violent behavior that Mladenovic and Zuza were sentenced for is subject to a prison term ranging from six months to five years. This sentence is a rare example of a sentence for an attack on a journalist that is not at the legal minimum or below it.

2.2. The Appellate Court in Belgrade has reversed the verdict of first instance of the Basic Court in Loznica against Ljubinko Todorovic, the attacker on the journalist from Loznica Vladimir Mitric, doubling the sentence for the criminal offense of serious bodily harm and sentencing him to one year in prison. Mitric told the Tanjug news agency that he had received the written copy of the verdict, which was pronounced after two hearings in September and October respectively, before the three-member council of the Appellate Court, presided by Sretko Jankovic. The Appellate Court was deciding about the appeals submitted to the first-instance verdict by the Basic Public Prosecutor in Sremska Mitrovica and Todorovic's attorney. The Appellate Court upheld the first-instance verdict declaring Todorovic guilty "of the criminal offense of serious bodily harm". The Appellate Court reversed the first-instance verdict "only in the part concerning the punishment", sentencing the defendant "to a total of one year in prison". The Appellate Court explained the verdict by saying that the first-instance court had found Todorovic "guilty of the criminal offense of serious bodily harm provided for in Article 53, paragraph 1 of the Criminal Code", sentencing him to six months in prison, which time would include one month period spent in custody. The Appellate Court found that, regarding the decision about the criminal penalty, the first-instance court failed to sufficiently weigh the aggravating circumstances, namely the fact that the defendant attacked the victim, inflicting him serious bodily harm, over the texts he (the journalist) had written, as well as the fact that the defendant had demonstrated obstinacy in committing the crime, since he had hit the victim several times. Furthermore, the first-instance court was found to have failed to take into account, as an aggravating circumstance, the behavior of the defendant after the commission of the criminal act. Hence, in the opinion of the Appellate Court, the six month-prison sentence was inadequate for realizing the purpose of punishment as provided for by the Law. Todorovic shall also be obligated to pay the court costs in the amount of around 100 thousand dinars, as well as Mitric's court costs in the amount of 255 thousand dinars. The attack on Mitric, a correspondent of "Vecernje Novosti", took place on September 12, 2005 in downtown Loznica, in front of the entrance of the building where he lived, at about 10 p.m. The attack was carried out in a cowardly manner, from the back, with a wooden object similar to a baseball bat. Mitric sustained a fractured left forearm and other severe injuries.

The fate of Vladimir Mitric is a case in point, particularly due to the fact that he has been living under constant police security from the day he was attacked, i.e. in the last six years. Moreover, although he was attacked almost identically as the late Milan Pantic, the slain correspondent of "Novosti" from Jagodina, Mitric's attacker Ljubinko Todorovic was accused and convicted of inflicting serious bodily harm and not attempted murder. Had Mitric's criminal act been qualified as attempted murder, the penalty would have ranged from five to fifteen years in prison, while for serious bodily harm it ranges from six months to six years.

Serbian courts typically sentence attackers on journalists to penalties below the legal minimum and Todorovic was no exception – he was sentenced to the minimum prison sentence both in the first and second instance trials. The Appellate court doubled the sentence and sentenced the former police officer Todorovic to one year in jail. Those who ordered the attacker on Mitric are however yet to be discovered and there is no information whatsoever about any investigation being led in that direction. However, the mere fact that the Appellate Court – just like in the case of Teofil Pancic – finally delivered a verdict explaining that “the legal minimum sentence may not adequately realize the purpose of punishment” points to a possible U-turn in the Serbian case law, under which attackers on journalists were typically sentenced to minimum penalties under the Law and often to even milder sentences.