

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 On December 3, the news portal Srbobran.net released the statement saying that the reporters of the said portal and their news editor Aleksandar Sijacic were threatened in the comments posted to the news they had released about the party organized by the youth section of the Socialist Party of Serbia in Srbobran. "Watch your back, crowbars are ready" was part of a message undersigned by "Ratko Mladic. The Independent Journalists' Association of Vojvodina (NDNV) said that it was not the first time Srbobran.net was under pressure and being threatened. It noted that its reporters were prevented from reporting from press conferences held by the Mayor Branko Gajin. Furthermore, their reporter was physically attacked at a basketball game by a municipality-employed security guard. It is believed that the aforementioned threat was a result of the omission to publish the second comment of the same visitor of the website, who signs himself as "Vojislav Seselj". Ten days later, Srbobran.net announced that the person believed to have posted the threats had been apprehended by the police and that he would be subject to criminal charges for threats to security. The name of the person has not been revealed, but the portal wrote it was an employee of a municipal institution and that it had even collaborated with Srbobran.net in the past.

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 physical or other type of pressure on public media and the staff thereof so as to obstruct their work. On the other hand, threatening one's security by making threats against the life or body of a person is a criminal offense, subject to 1-8 years in prison, provided for by the Criminal Code, in the situation when the threat is directed at a reporter, as a person carrying out duties of public interest in the field of information. Particularly worrying is the fact that threats to local media and journalists are on the rise in the eve of calling the elections. Moreover, serious threats are being issued over fairly benign texts, as in the case of Srbobran.net. Namely, the reason for the threat posted on the website was the report about the elections for the new youth party leadership of a parliamentary party and the party organized to mark the completion of the said elections. One may ask how

will the local media in Serbia report about the elections at all, to be called in the spring of 2012, when their reports about elections within a political party stir so much animosity?

1.2. On December 5, the Serbian Journalists Trade Union (SNS) protested, as their press release said, over “the attack of the General Manager and Editor-in-Chief of ‘Vecernje Novosti’ Manojlo Vukotic on the President of the SNS and the Novosti trade union organization Dragana Cabarkapa. The SNS’ press release claimed that Vukotic had attacked Cabarkapa in the presence of all journalists, insulting her, threatened to slap her in the face and ultimately fined her for allegedly not doing her job properly. The reason for such behavior by Vukotic is a statement Cabarkapa posted on the company’s notice board, in which she informed the employees that a complaint had been issued to the labor inspectorate against the managers of the Novosti Company for discrimination of the SNS trade union. There are two trade union organizations in Novosti and Cabarkapa claims that Vukovic has signed a new collective agreement with the one that is not representative, thus invalidating the previous collective agreement signed with the SNS. According to Cabarkapa’s statement for the E-novine news portal, the new collective agreement includes provisions about technical redundancy, which are far less favorable for the employees, since they allow for their easier dismissal. Vukotic said he was astonished by the fact that journalists’ associations, which had risen to protect trade union rights, were dealing with what he called “an internal dispute in a newspaper”. He did not deny the fact that Dragana Cabarkapa had been fined, but stressed it happened after her editor claimed she had “endangered the technological process of publishing the newspaper with her slackness.” Vukotic also confirmed that, as the General Manager, he did not intend to negotiate with the Serbian Journalists Trade Union, since he deemed them non-representative in the Novosti Company.

The Public Information Law expressly stipulates that it is forbidden to put pressure on public media and the staff thereof so as to obstruct their work. Freedom of association, including association in trade unions, is guaranteed by the Constitution of the Republic of Serbia. Furthermore, the Public Information Law itself says that a journalist may not have his employment terminated, salary reduced or be demoted for having expressed a personal opinion outside of his news outlet/media. In the concrete case, it should mean that the opinion of Dragana Cabarkapa, or that of the trade union she is heading, about how the management of Novosti has signed a collective agreement with the trade union that is not representative and that the provisions of that collective agreement are unfavorable for the employees in the company, may not *per se* represent grounds for fining her. Otherwise, the issue of representativeness of a trade union, which is obviously controversial in the Novosti Company, is regulated by the Labor Law. That Law stipulates that a representative trade union with an employer shall be one whose membership comprises no less than 15% of the

total number of employees with that employer. Representativeness shall be established by the employer himself, in the presence of the representatives of interested trade unions. However, if the employer fails to determine representativeness within 15 days, or if the trade union believes that representativeness has not been determined in accordance with the Law, a trade union may file for establishing representativeness to the Panel for Establishing Representativeness of Trade Unions and Associations of Employers. The aforementioned Panel shall consist of three representatives of the Government, trade unions and employers union each (nine in total), appointed for a term of office of four years. Unfortunately, the pitiful condition of trade union rights and other rights related to working in the media is also evidenced by the following facts. Namely, the collective agreements concluded with the representative trade unions at various levels guarantee to the employees a wider scope of rights than those already enshrined in the Law. Under the Law, general, special and individual collective agreements may be entered into: general agreement shall be entered into for the territory of the Republic of Serbia, whereas special collective agreement may be concluded for a certain branch, group, subgroup or economic activity also for the territory of the Republic of Serbia or for the territory of a territorial autonomy unit or local self-government. Serbia has not had a general collective agreement since May 17, 2011, since the one entered into in 2008 expired on that day and there is still no new collective agreement. The previous Special Collective Agreement for Graphic, Publishing and Information Activity and the Film Industry of Serbia, which used to regulate, *inter alia*, the position of journalists and other media employees, has ceased to be valid back in September 23, 2005. The Serbian Journalists Trade Union (SNS) prepared, in 2009, the pre-draft of the Special Collective Agreement for Journalists and Media employees, which is, however, yet to be concluded, since the negotiations have not even started due to the lack of interest from the employers, as alleged by the trade unions. Even in cases where, like in the Novosti Company, individual collective agreements actually exist, there are many objections as to the representativeness of the trade union that has signed these agreements and allegations of putting certain trade unions in a more favorable position by the employer.

2. Legal proceedings

2.1 The correspondent of “Vecernje Novosti” from Loznica Vladimir Mitric, who was beaten up in 2005 in downtown Loznica by former policeman Ljubinko Todorovic (who was recently sentenced to one year in prison for that) has submitted a request with the Primary Public Prosecutor in that town to investigate the background of the attack, Novosti reported. Mitric said in his request that “as the plaintiff and a witness in the case, he has pointed to several circumstances and facts established before the Appellate Court in September and October 2011, based on which an investigation could reveal the real reason for the criminal

offense against him.” Mitric was attacked on September 12, 2005 at about 10 PM in the lobby of the apartment building he was living in, from the back, with a wooden object akin to a baseball bat. Mitric suffered a fracture of the left forearm and other severe bodily harm. Although forensic experts said the attack represented attempted murder, in the trial against Todorovic, the incident was qualified merely as inflicting severe bodily harm. Journalists’ associations and the local council of Loznica also requested that the persons who had ordered the attack on Mitric be identified. As it was estimated that his life was in danger, Vladimir Mitric has been living under round the clock police protection ever since.

We have reiterated several times in these reports that the judiciary and the police, while often managing to identify the direct perpetrators of attacks on journalists, are failing to investigate the real motives for the attacks and the persons that have ordered or instigated them. Although more than six years have passed between the attack itself and the final verdict in the trial against the Mitric’s attacker, there is no sign whatsoever that the background of the attack (in order to establish whether there was someone else standing behind it) is being investigated. Shedding light on all facts related to the attack would not only be important for grasping the mechanisms of pressure and attacks on journalists in general (and thus for improving their overall position and protection), but is also indispensable from the legal and criminal aspect. Namely, the main principle of criminal procedure law is not only that innocent persons are not to be convicted, but also that the perpetrator of a criminal offense must be sentenced to a penalty provided for by the Criminal code and in the proper criminal procedure. Since under the Serbian Criminal Code accessories and abettors are considered accomplices, who shall be held accountable for the criminal offense in the same manner as the perpetrator himself, the omission to establish the circumstances concerning those persons as accomplices is absolutely unacceptable.

2.2. On December 20, 2011, the Appellate Court in Belgrade announced that the Court had completed the proceedings in the trial where the Independent Journalists’ Association of Serbia (NUNS) had sued the Journalists’ Association of Serbia (UNS) over the ownership of the building in Resavska 28 Street in Belgrade. That building – the House of Journalists of Serbia – was built in 1934-35 by the Yugoslav Journalists’ Association – Belgrade branch of the Serbian Journalist Society, with voluntary contributions, on a lot that was also donated to the journalists, by the Municipality of Belgrade. After the Second World War, during which the building was used by the German occupying authorities, the new communist government nationalized the House of Journalists of Serbia and gave it out to the state news agency Tanjug, which used it until 1976. In late 1976, the Assembly of the Socialist Republic of Serbia passed a law returning to the Association of Journalists of the Socialist Republic of Serbia the rights concerning “the use and disposal of real estate as socially owned assets”. Part of the

members of UNS, unhappy with the work of the said association, established NUNS in 1994. After the October changes in 2000, NUNS representatives requested that the House of Journalists of Serbia be put at the equal disposal of all journalists and journalists' associations in the country. Pursuant to a decision of the UNS managing board, NUNS was allowed to use the premises on the second floor of the building. On March 30, 2011, the Serbian Government passed a resolution supporting NUNS' initiative to allow all journalists' associations registered in the Associations Register to use the premises of the House of Journalists of Serbia until the ownership dispute between these associations was settled. The resolution of the Serbian Government also said it was needed to urgently start a legislative initiative to amend the Law from 1976, pursuant to which only UNS had rights to the building. However, such Law was never passed and UNS was registered as the owner of the building in a resolution of the Second Municipal Court in Belgrade, also in 2001. That resolution was reversed by the First Basic Court in Belgrade in April 2011, which rejected NUNS' request to determine NUNS and UNS to be the co-owners of the building and also rejected the alternative proposal to determine NUNS to be the owner of one half of the building. The Appellate Court found that NUNS was established after its founders were forced to step out of UNS, which during Milosevic's reign served as a mouthpiece of the government. Such move, the Appellate Court stated, brought about certain legal ownership consequences, namely the establishment of co-ownership rights to the building. The Appellate Court concluded that legal protection ought to primarily be granted to the person acting entirely in accordance with the rules governing that person's activity, which in the concrete case are the common Statute and Journalist Code of Ethics. The Appellate Court also said that the invested efforts of individuals in defending the spirit and the purpose of the existence of the aforementioned rules and set goals, must also be taken into account. A different decision, the Appellate Court said, would bring about legal uncertainty for persons acting in keeping with the prescribed rules, goals and purpose proclaimed in the joint acts of the organizations.

The property dispute over the building in Resavska street has been burdening the relationship between two journalists' associations for years. Unfortunately, the initial reactions have shown that the latest resolution by the Court is unlikely to improve such state of affairs. In her text in "Novi Standard", the President of UNS Liljana Smajlovic said that it was a politically influenced decision by the court in which "the government is tightening the rope around the media's neck" and that "it's now the turn of UNS, which has remained resistant to the usual methods of pressure of chiefs of staff, tycoons, advertisers and media bosses and which was the only media association in Serbia two years ago that openly stood up against the adoption of the scandalous, anti-constitutional and anti-European media law engineered by the ruling coalition". Smajlovic also wrote that the attack on the property of

UNS was in fact a strike against the “main pillar of independence and autonomy of the strongest and oldest journalists’ association in Serbia.” In her words, “this ruling introduces the principle of collective responsibility and guilt in property law” and “bestows UNS’ private property to NUNS due to UNS’ sins from the times of Milorad Komrakov”.