LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for December 2011

ANEM

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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 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 Representativenss 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 indispensible 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".

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Public Information Law

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

1.2. Milan Popovic, the President of the Municipality of Zvezdara, refused to communicate with the reporters of the daily "Pravda", who wanted to interview him for their New Year edition, just like they interviewed other presidents of Belgrade municipalities. They wanted to ask Popovic about what he considered the most important achievement on the territory of his municipality, if the life of its inhabitants had been improved and how and what the plans were for 2012. "Pravda" claimed that Petrovic had already been arrogant towards their reporters, refusing to provide the requested information from his area of competence.

Under the Public Information Law, state bodies and organizations, territorial autonomy and local self-government bodies, public agencies and public companies, as well as members of parliament and councilors, are required to make information concerning their work available to the public, under equal conditions for all journalists and all media. Unfortunately, in reality this obligation is often shunned and journalists and media are often discriminated against. The Ombudsman Sasa Jankovic rightfully concluded, in a statement conveyed by "Pravda", that media must not be discriminated against and that "a person is allowed not to give a statement or an interview if they do not want to", but it does not mean it may withhold a piece of information that is relevant for citizens.

1.3. Vukasin Obradovic, the President of NUNS, told the "Politika" daily that certain print media in Serbia had violated both the Public Information Law and the Journalist Code of Ethics by reporting about the family tragedy in the municipality of Zvezdara in Belgrade, involving parents with their three-year old child jumping from the sixth floor of a military-owned hotel where they were living. The parents were killed, while the child suffered serious

injuries. On their front pages, the newspapers have published the photographs of the child along with its full name and surname, coupled with sensationalist headlines. Obradovic called the family or future caretakers of the child to lodge a complaint against certain newspapers to the Complaints Commission of the Press Council, which will determine if the aforementioned Code of Ethics has been violated. Tamara Luksic-Orlandic, Deputy Ombudsman in charge of children's rights protection, called on the media to show greater consideration for the actors of certain tragic events. The Ministry of Culture, Media and Information Society announced they would press misdemeanor charges against all media that had endangered the rights of juvenile persons with their reporting. "We are all appalled at the reporting of certain media. On one hand, the journalists complain of not having enough freedom, but at the other hand they refuse to consider how much freedom they take for themselves while compromising the future of a child," State Secretary in the Ministry of Culture, Media and Information Society Dragana Milicevic Milutinovic told the daily "Politika".

Article 41, paragraph 3 of the Public Information Law stipulates that a juvenile person must not be made recognizable in a piece of information that may hurt that person's right or interest. Furthermore, the Code of Ethics of Serbian journalists says that a journalist must ensure that a child is not endangered or put at risk due to the publishing of its name, photograph or footage with its face, house, community where it lives or recognizable surroundings. The most outrageous thing in such cases is the fact, pointed to by the NUNS President, that even the media that are considered serious resort to cheap sensationalism in order to attract readers, without considering the consequences of their actions. If, as announced by the Ministry of Culture, Media and Information Society, misdemeanor charges are filed against persons that have violated the rights of juveniles not to be made recognizable in a piece of information that may hurt their rights or interests, these persons shall be subject to fines ranging from 30 thousand to 200 thousand dinars, as provided for by the Public Information Law in the section concerning fines for responsible editors.

2. Broadcasting Law

2.1. On December 22 at 9 AM, the employees of TV Avala have interrupted regular broadcasting. The reason for going on strike are unpaid salaries, the press release of the employees said. On the eve of the strike, the employees were paid the first part of the July salary, while part-time workers received their wage for the month of June. This means they are owed four and a half and five salaries respectively, the press release added. The employees claim that they attempted several times to reach an agreement with the management as to the manner of remedying such state of affairs. However, they say, the

management has until now failed to respect the deals reached. They claim the strike began on the day that was determined as the day when the outstanding salaries would be paid. The management of the station issued a press release saying that they would not air live programs anymore due to the decision of the employees to go on strike. “The irony is that this is happening in the year when TV Avala has posted the best business results since it was founded, thereby strenghtening its reputation with the viewers. The business plan tabled to the management of TV Avala by the managing board has been already exceeded in November”, the press release noted. “However, the excellent business results, stemming from the efforts of both the management and all employees, are insufficient to cover the losses created in the previous years. That is why this was the moment when the owners had to make a business decision about the functionning of the station”, the management said. The press release added that both the owners and the managing board had been informed of the situation in detail and hence it was expected that they would quickly come to a solution. A week later, however, employee representatives said that, at a meeting attended by the members of the managing board Danko Djunic, Dusan Pancic, Bojana Lekic and Zeljko Mitrovic, the owners and the managing board of the company had offered them to pay one salary no later than by January 10 and another one by the end of January. The employees decided to continue with the strike.

The strike on TV Avala is the first strike in a commercial national television station in Serbia. There are no instructions whatsoever in the Broadcasting Law or bylaws of the RBA as to how to organize and manage a strike on a TV station, what are the obligations of the employees related to maintaining minimum operation or the rights of the employer in that situation. The Law on Strike namely provides that the activity carried out by the employer in the field of information, and particularly information via radio and television, represents an activity of public interest. Hence, the Law says, the employees performing such activity may go on strike only if minimum operation of the station is secured. According to the Law on Strike, minimum operation is a category to be determined by the Manager, depending on the nature of the activity, circumstances relevant for realizing the rights of citizens, companies and other entities, with the obligation to take into consideration the opinion, objections and proposals of the trade unions. If minimum operation is not determined, the measures and manner of fulfilling the conditions for a strike on radio or television should be determined by the competent state authority, in this case the RBA. The impression is, however, that the Law on Strike – which was adopted back in 1996 and which has in the meantime undergone only changes as to the amount of the prescribed fines for misdemeanors and economic offenses – is pretty much anachronous. The first question that comes to mind is why would, for the purposes of the Law on Strike, the activity of commercial radio or TV stations represent an activity of public interest in the present situation where there are two public service broadcasters and five commercial networks at the national level. Relative to minimum

operation, the RBA unofficially said that they did not see a problem in adapting the programming schedule to the needs of the strike, especially having in mind the fact that programming quotas introduced by the Broadcasting Law (e.g. the quotas of Serbian language content or own production quotas) are already measured at the annual level and hence in the event of a not too long a strike, it would be such a problem to meet these quotas. However, the strike on TV Avala raises many other questions pertaining to the application of the Broadcasting Law, first of all to the criteria under which the RBA has issued broadcasting licenses to national broadcasters, as well as to the rationale for the issuance of the approval for changes to the ownership structure to broadcasters possessing valid licenses. Namely, according to the Rules on the Issuance of Broadcasting Licenses, adopted by the RBA back in 2006, the applicant on an open competition had to guarantee with his financial potential that he will be able to realize the proposed programming and editorial concept. Furthermore, the same rules provide that the applicant must identify the owners of the founding capital, support the ownership structure with the proper documentation and make available information about the sources of financing of the radio and/or TV station. The question arises how has the RBA weighed these criteria, not only at the moment of issuing a broadcasting license, but also if it has weighed them at all at the time of issuing of the approval for the change to the ownership structure of TV Avala. In the case of that TV station, the said structure changed dramatically compared to the moment when it was issued a broadcasting license in 2006, which is not the case only with TV Avala. We remind that the largest single share in the property of TV Avala belongs to the Austrian company "Greenberg Invest" GmbH. Save for the fact that it is owned by a certain Werner Johannes Kraus, an attorney at law from Vienna, the details about the financial, organizational or any other potentials of the said company remain unknown, at least in Serbia. Article 103 of the Broadcasting Law stipulates that a broadcaster must report any change to the ownership structure to the RBA in writing and in advance and that the RBA will determine whether such change brings about unlawful concentration of media ownership. The RBA is doing that in practice. Hence, Zeljko Mitrovic, the owner of Pink television, has been participating in the ownership of TV Avala with 4,95% of the shares, bearing in mind that the Broadcasting Law provides for 5% to be the limit up to which the owner of a national media may participate in the ownership of another national media. However, it is often forgotten, and even worse, the RBA seems to have forgotten, about Article 41 of the Broadcasting Law when it allowed the change of ownership structure by which Greenberg Invest GmbH bought a stake in TV Avala. Article 41 namely provides that, in addition to avoiding unlawful media concentration, the pre-approval of the RBA for the change to the ownership structure of a broadcaster serves the purpose of controlling the structure and origin of capital of the license holder. Had the RBA applied this provision in relation to Article 18 of the Rules on the Issuance of Broadcasting Licenses, then "Greenberg Invest" GmbH would have probably been asked to disclose information about sources of financing, real value of the capital of the company, as an entity

acquiring a major stake in the ownership structure of a national commercial media in Serbia. This would probably have averted the current situation where Werner Johannes Kraus, the owner of "Greenberg Invest" GmbH, is according to Zeljko Mitrovic "already resigned with the fact that his investment is lost". It remains to be seen how will the strike on TV Avala end up and what lessons will be drawn from it.

3. The Media Strategy

In several situations, during the period covered by this Report, one could have posed the question if and to what extent the state is implementing the Strategy for Public Information System Development in the Republic of Serbia adopted on September 28, 2011. The dilemmas described below, related to various issues, are also evidence of the necessity to start implementing that pivotal document as soon as possible.

3.1. On December 12, the Liberal Democratic Party (LDP) submitted a request to the Anti-Corruption Agency and the Prosecutor's Office for investigation of the circumstances under which the owner of the daily Kurir had bought up shares of the company VAC in Politika, Novosti and Dnevnik from Novi Sad, LDP MP Zoran Ostojic said at a press conference in the House of the Parliament. He said Kurir's owner had bought VAC's shares in these media companies with the money obtained from the government's fund for helping media during the crisis, by which "the state is trying to put the media under control" on the eve of the elections. Ostojic added that, if the competent authorities failed to investigate this case, "it will become clear that we don't have independent institutions in this country". In response to Ostojic's allegations, the Ministry of Culture, Media and Information Society said, as reported by Danas, that the newspaper Kurir did not receive any money from that Ministry's media funds in the last three years, namely in 2009, 2010 and 2011. According to Ostojic, the framework agreement with VAC about the taking over of their stake in the aforementioned media companies was signed in Dusseldorf on November 10 and the multimillion deal of taking over the proprietary interest in Politika, Vecernje Novosti and Dnevnik should have been realized by December 22. Ostojic said that the intent was that the shares be purchased by a consortium of domestic companies controlled by the Democratic Party (DS). He accused the government of wanting to seize control of Politika via their man in "Kurir", Mr. Bjelopetrovic. DS Vice-President Jelena Trivan told the daily Danas that the purchases and claims of proprietary interests between companies had nothing to do with the DS, neither in the case of Kurir nor that of any other company and hence the DS did not want to participate in the row about a topic it had nothing to do with, in which the name of that political party was being misused. The Director of Kurir Nebojsa Rosic said in the talk show "Izmedju dve vatre" (Crossfire) on TV B92 that his newspaper was indeed interested in acquiring part of

the proprietary interest in Politika, Vecernje Novosti and Dnevnik, in order to "prevent a publisher from Sarajevo, connected to drug cartels, to seize control of Politika. Rosic also said there was no agreement or deal made about the takeover, but that negotiations had indeed been conducted. The Chairwoman of the Managing Board of "Politika AD" Sonja Liht told TV B92 that her company had never been offered to purchase VAC's stake in "Politika's newspapers and magazines", reminding that "Politika may not be sold before being offered to the co-proprietor first, which holds the right of first purchase".

We remind that VAC is the co-proprietor of Politika and Dnevnik together with the state. Due to the impossibility to acquire a stake in Vecernje Novosti, after having financed the purchase of the proprietary interest in that newspaper, VAC announced it was going to withdraw from Serbia a year and a half ago. By passing the Media Strategy, the state committed to ensure transparency of ownership in public media and prevent excessive concentration of media ownership, which may be instrumental in gaining a predominant influence on the public opinion. In the Media Strategy, the state also committed not to be the owner of public media anymore. At the present time, however, it holds a major stake both in Politika and Vecernje Novosti, as well as in Dnevnik. Furthermore, if it is established that the state indeed has, with budget money from funds for assisting media during the financial downturn, helped a private newspaper to acquire the shares of other media, it may be rightfully asked whether such measure is sustainable from the aspect of state aid control regulations. The dilemmas that emerged after the allegations, voiced by the LDP, have demonstrated the need for the state to promptly start implementing the Media Strategy and to translate the commitments contained therein into concrete regulations. It is clear that Serbia cannot afford to wait for 18 months for its government to harmonize regulations on unlawful concentration of media ownership and transparency of such ownership with the rules of the EU – the 1.5 year deadline is provided for by the Action Plan accompanying the Media Strategy. Serbia also cannot afford to spend the next 24 months determining the legal grounds for the withdrawal of the state from the ownership in all public media, since these legal grounds already exist both in the Public Information Law and in the regulations governing privatization. An additional concern is the fact that the Ministry of Culture, Media and Information Society is yet to announce the start of any activities pertaining to the realization of the commitments assumed in the Media Strategy.

3.2. On the conference "The year behind us – used or missed opportunity for the media sector?" held on December 21, the representatives of journalists' and media associations said it was possible that the state was not planning at all on suspending direct budget financing of the media in 2012 and that the Serbian taxpayers would be alloting a million Euros daily for the media, the main recipient being the state news agency Tanjug. Nonetheless, the state committed in the Media Strategy it would start enforcing state aid regulations as of January 1, 2012, in accordance with the Stabilization and Association Agreement (SAA) with the EU

and the Interim Trade Agreement (ITA). Journalists' and media associations believe that the 2012 budget has earmarked 368 million Euros for the Tanjug news agency, Panorama, Jugoslovenski pregled (Yugoslav Review) and Medjunarodni radio Srbija (International Radio Serbia), in contravention of the Media Strategy and the aforementioned Interim Trade Agreement with the EU.

We remind that, in Article 73 of the SAA and Article 38 of ITA, Serbia committed to harmonize its regulations pertaining to state aid control with that of the EU, namely to apply the rules enforced in the EU. Article 39 of ITA also stipulates that, after the expiry of the 3-year period after ITA comes into force, Serbia will apply these rules to public companies and companies that have been awarded special rights set forth in the EU Founding Treaty, with a special reference to Article 86 (Now Article 106 of the Treaty about the functionning of the EU). The aforementioned Article 106 stipulates that, relative to public companies and companies that have been awarded special rights, no new measures will be introduced and old measures will not be maintained, which would be contrary to the principles of non-discrimination, protection of competition and state aid control set forth by that Treaty. Since Serbia has been enforcing the ITA since January 1, 2009, it means that the three-year period for starting to enforce the Law on State Aid Control with respect to public companies will expire on January 1, 2012. This is extremely important due to the fact that there are still many public media companies in Serbia financed from public revenues, which gives them the edge on the market over privately-owned competitors, thus undermining competition. This is particularly notable in respect of the state ownership of the Tanjug news agency, which is directly financed from the budget and thus holds a more favorable position on the market than its competitors, the private news agencies Beta and Fonet. A test of the readiness of the state to implement the Media Strategy will be its adherence or non-adherence to the deadlines from the Action Plan, which pertain to the enforcement of the regulations on state aid control, since these deadlines are the shortest. The adopted budget for 2012 unfortunately points to the incapacity/unwillingness of the state to pass that test.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. Law on Cinematography

In the period covered by this Report, the Serbian Parliament has adopted the Law on Cinematography, which contains some provisions that directly pertain to the media sector. In the part concerning the aim of boosting the domestic film industry, the draft of the

aforementioned Law stipulated that the financial resources for that purpose shall be earmarked, among other sources, from the TV subscription fee, the fees charged by the RBA to broadcasters for their broadcasting right, as well as from the fees the operators of electronic communications pay to the Republic Agency for Electronic Communications (RATEL). It was proposed that 1.5% be allocated from the TV subscription fee, 20% from the collected RBA fee and 10% from the collected RATEL fee. The proposal was strongly criticized by both the media community and the regulatory bodies and was branded a blow to the foundation of their existence and the guarantees of their financial independence. The controversial proposal was ultimately amended under pressure so as to foresee solely an allocation from the proceeds of the RBA. Accordingly, the contentious article now stipulates that 20% of the RBA funds from the fees charged to the broadcasters shall be earmarked for boosting the national film industry, provided only that such amount does not exceed the difference between the revenue generated by the RBA and the Agency's expenditures. Professor Jovan Radunovic, the President of RATEL's managing board, announced the Agency would submit a request to the Constitutional Court to determine the constitutionality of the Law on Cinematography in the part containing the controversial provision. "For six months now we have been trying to contact the Culture Minister Predrag Markovic and talk to him, to no avail. Nobody is asking us anything. We must take them to court," Radunovic said.

We hereby want to point out that earmarking funds from the RTS fee in the amount of 1.5% is already provided for under the Broadcasting Law and hence is not a novelty. Article 83, paragraph 6 of the said Law already stipulates that the Serbian public service broadcaster (RTS) shall pay 1.5% of the overall collected monthly subscription fee in the budget of the Republic of Serbia for the purpose of developing the national film industry. However, contentious are the provisions pertaining to the earmarking of resources from the revenues of RBA and RATEL. The regulators have stated two types of objections. The first is that this earmarking is threatening their very foundations and guarantees of their financial independence. The RBA said that, due to an array of factors, including the financial crisis, the collection rate of the subscription fee is down, as is the number of broadcasters who have seen their licenses revoked for non-payment of the fee. The Agency also reminded that new licenses were not being issued, since the frequencies were kept for the needs of the digitalization. The final result of it all being the steadily decreasing revenues of the RBA. The Agency has foreseen that the revenue collected from the fees will quickly plummet so as to barely suffice for covering regulations costs, or to even lower levels. RATEL claims that it will end the business year 2011 with a surplus of slightly more than five million Euros. For 2010, the surplus was 13 million Euros, but it decreased after RATEL had significantly reduced its fees to make the life of media easier in the economic crisis. Those who support the Draft Law on Cinematography claim that the contentious concept of earmarking resources for the film

industry shall not be an additional burden. Film Director Boban Skerlic, the President of the Association of Film Directors of Serbia, who participated in the making of the Draft Law, told the daily "Politika" that the question remained where the funds from the fees were ultimately channeled to. "Under the Draft Law, instead in the budget, the money would be paid directly to the Film Center of Serbia", Skerlic said. However, it seems that the legislators have disregarded the very purposes for which the independent regulatory bodies for broadcasting and electronic communications (RBA and RATEL) were established in the first place. The RBA was founded in order to enable conditions for effective enforcement and improvement of broadcasting policy in the Republic of Serbia, in line with democratic standards. On the other hand, the goal of establishing RATEL was to effectively implement the policy in the area of electronic communications, boosting competition in the field of electronic communications networks and services, improving the capacity and quality thereof, contributing to the development of the market of electronic communications, as well as to protect the interests of the users. These bodies were not established as profit centers that would bankroll the needs of the state in other areas of activity. Moreover, the provisions of the Law on Cinematography are contrary to the applicable provisions of the Broadcasting Law, which provided for a different designated purpose of any surpluses the regulatory agencies should realize. Namely, according to the Broadcasting Law, the difference between the RBA's revenues and expenditures shall be paid in the budget of the Republic of Serbia and allotted, in equal amounts, for the improvement and development of culture, healthcare, education and social security. If the aforementioned difference is channeled, as the Draft Law Cinematography provides, to the Film Center of Serbia, the RBA would perhaps be in compliance with the aforementioned Law, but would, at the same time, be in contravention of the Broadcasting Law. Similarly, the Law on Electronic Communications also provides that the difference between RATEL's revenues and expenditures shall be paid into the budget and utilized through the Ministry of Culture, Media and Information Society for the purpose of improving and developing the area of electronic communications and information society. By adopting such Law, only a couple of months after the adoption of the Media Strategy, and instead of harmonizing concepts in various laws that are out of sync both materially and legally, the Parliament is creating new problems, since these concepts are, as the Strategy points out, causing serious disruptions in the public information system. Since the Constitutional Court has, in several of its previous decisions, insisted on the indivisible character of the legal system and the unacceptability of the practice of undermining the essential concepts provided for by systemic laws regulating certain areas by passing by separate laws (e.g. the Broadcasting Law and the Law on Electronic Communications), it is to be expected that the contentious provisions of the Law on Cinematography will be found unconstitutional, since RATEL has announced it will ask the Constitutional Court to review those provisions. A particular concern, however, is the shortsightedness of the Government, as the proposer of the Law: by stubbornly insisting that the controversial concept is only

about redirecting the funds that are charged anyway and not about introducing new charges, the Government omits the fact that these resources have already been used for other lawfully designated purposes and hence it was necessary to analyze the consequences the new concept would entail for healthcare, education, social security and/or the improvement and development of electronic communications and information society – all areas that will now see a certain amount of resources stripped from them. In the above mentioned interview for the daily "Danas", the Chairman of the managing board of RATEL said that about nine million Euros from the surplus realized by the Agency in 2009 were used for digitalization. RATEL believes that this year's surplus should be used for the development of the 112 System – the Emergency Interventions Department. Nonetheless, the legislator has clearly disregarded the potential consequences of the Law on Cinematography on the digitalization of broadcasting or the functioning of the said emergency department.

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)

On December 21, 2011, the Republic Broadcasting Agency realeased a comparative review of violations of the Advertising Law the Agency's monitoring department identified as to have been committed by national broadcasters in October 2010 and October 2011. The RBA's press release also said that seven national television stations committed in October 2011 a total of 114 violations of the Advertising Law, which is almost ten times less than in October 2010, when there were 1099 such violations. According to the RBA, the decreasing trend is also visible in the case of radio stations, which is apparently a result of the broadcasters educating themselves about the provisions of the Advertising Law as of the spring of 2009 onwards. Furthermore, since January 2010, the RBA started to press misdemeanor charges against broadcasters over advertising-related violations, causing some broadcasters to be fined millions of dinars. The RBA's press release concluded that the Agency is in daily contact with the broadcasters as to all situations that require additional interpretation.

Although the trends highlighted by the RBA are by all means positive, it is obvious that educating the broadcasters about the provisions of the Advertising Law and being in daily

contact with them is not enough. With a view to remedy such state of affairs, ANEM asked the RBA in December to pass, in keeping with Article 103, paragraph 4 of the Advertising Law, more detailed rules on advertising and sponsorship on television and radio. Bringing about such rules is necessary for several reasons. First, an array of violations of the Advertising Law pertains to various rules applicable to specific types of genres of television/radio program. The RBA has never published the criteria under which it has classified programs by genre. This is a source of serious legal uncertainty, because it often happens that the broadcaster and the RBA have classified the same program differently. Furthermore, after the adoption of the Advertising Law, the Republic of Serbia has also ratified the European Convention on Cross-border Television and some concepts from the national law and the the European Convention differ, which also causes legal uncertainty. Finally, more detailed rules on advertising and sponsorship were necessary in other countries too. The European Union had passed such rules back in 2004. Hence, while it is commendable to have the RBA in daily contact with broadcasters in relation to all situations requiring additional interpretation, if we want positive trends to continue, we need to have detailed written rules that would further improve legal certainty in this field.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

The activities of RATEL have been partly elaborated on in the segment about the digitalization process.

STATE AUTHORITIES

3. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

On December 22, 2011, the Ministry of Culture, Media and Information Society started public consultations about the Draft Rulebook on the Amendments to the Rulebook for the Switchover from Analog to Digital Television Broadasting and Access to Multiplex in Terrestrial Digital Broadcasting (Rulebook on Digitalization) and the Draft Decision on the Amendments to the Strategy for the Switchover from Analog to Digital Radio and Television Broadcasting in the Republic of Serbia (Digitalization Strategy). The consultations will last until January 5, 2012. More will be said about the text of the Draft Rulebook and the Draft Decision on the Amendments to the Digitalization Strategy below, in the part of this Report concerning the digitalization process.

4. THE COMMISSION FOR COPYRIGHT AND RELATED RIGHTS

In its opinion dated December 12, 2011, the Commission for Copyright and Related Rights found, that the Draft Tariff of the fees charged by the Organization of Musical Authors of Serbia (Sokoj) for the exploitation of music works on radio and television stations, encompasses the rigths for which Sokoj holds a license issued by the Intellectual Property Office. According to the Commission, the said Draft Tariff is also laid down in accordance with the Rules for Determining the Tariff, which are provided for by the Law on Copyright and Related Rights. The Commission's ruling put an end on the tariff dispute between ANEM, as the representative association of broadcasters, and Sokoj, on the tariff for the fees. We hereby remind that under the Law, the tariff must correspond to the type and manner of exploitation of the author's work, namely object of related rights; that the amount of the tariff must be proportionate to the significance born by the exploitation of the object of protection from the repertoire of Sokoj for the revenues of the user; as well as that, when determining the tariff, it is necessary to consider the tariffs of collective organizations in the states whose GDP is similar to that of the Republic of Serbia. From the explanation of the Commissions's opinion, however, it stems that the Commission did not ponder these legally provided criteria; it was rather guided by the claims by Sokoj that its tariff proposal was set in accordance with the "standards for determining the tariff that are universally recognized internationally and are based on the principles and recommendations of the World Intellectual Property Organization and CISAC". One may not see from the Commission's opinion which principles and recommendations by WIPO and CISAC have been considered. The tariff involves fees ranging from 2.20% to 4.20% from television broadcasting revenues, namely 2.50% - 4.50% from radio broadcasting revenues. ANEM announced it would file legal action in order to try to prove before a court of law that the Commission's opinion was not based on the Law. This was the first time, after the adoption of the Law on Copyright and Related Rights in 2009, that the tariff was determined under new rules – both those pertaining to the procedure of setting out the tariff and under substantive legal rules concerning the content of the tariff. Although radio and television stations had high expectations from the new Law, the results are a major dissapointment. Compared to the hitherto tariff the broadcasters were unhappy with, the new tariff is cheaper only for television stations that have less than 10% of music in their program. For everyone else, the base new tariff is the same or even more expensive. For example, the highest fee under the old tariff was charged in the amount of 3.50% of the broadcasters' revenues for both radio and television. In contrast, under the new tariff, that percentage is now 4.20% for television and 4.50% for radio. The Administrative Court will ultimately determine if such an outcome has resulted from a violation of the rules provided for under the Law on Copyright and Related Rights from 2009.

V THE DIGITALIZATION PROCESS

In our previous reports, we tackled the improvements in the digitalization process. Announcements and hints that digitalization and the putting into operation of the experimental/pilot network would be postponed were evidence of something being in the works. After that, back in late October, RATEL released in public consultations the frequencies allocation plan, which was needed for setting up the network on which the digital signal would be tested. It was expected that the said network would be followed by the amendments to the Strategy and to the Rulebook on Digitalization, at least in order to change the plan of the shutdown of the analog signal and to foresee a pilot network.

We remind that the Digitalization Strategy was released in July 2009. It laid down the basic strategic guidelines and defined a framework for the digital switchover. The deadline for the total switchover to digital terrestrial television broadcasting was set for April 4, 2012 and the document also laid down the obligations of the competent authorities in that process and the deadlines for the realization of these obligations. Unfortunately, these deadlines were not observed. In particular, the shutdown of the analog signal and the transition to digital broadcasting throughout the country in just one day was proven to be too complex and unrealistic of a task for Serbia.

The Rulebook on Digitalization was adopted in February 2011. Pursuant to the Law on Electronic Communications, the Rulebook was supposed to regulate the manner and the time schedule for the digital switchover, the requirements and dynamics as to the setting up of the network for the distribution of digital television program, the requirements for setting up the multiplex and the scope of usage of the radio frequencies to the extent necessary for a digital switchover. Additionally, the Digitalization Strategy provided that the Rulebook would also define the rights and obligations of commercial broadcasters in the digital switchover process and settle the status of broadcasting licenses expiring after the deadline for the analog shutdown. Instead, the only novelty the Rulebook from February 2011 brought was the allocation of channels by zones for the first and second multiplex in the scope of the network for the allocation, broadcasting and multiplexing of digital television program. Everything else was practically a repetition of what was already contained in the Strategy.

The amendments that are now proposed are far more comprehensive. First, with the amendments to the Strategy, Serbia renounced April 4, 2012 as the deadline for the complete digital switchover. Even more importantly, it gave up from the one-day switchover and opted for a gradual transition in stages, in accordance with the deadlines provided for by Serbia's

international obligations, in other words no later than by June 17, 2015. The regions for this switchover in stages shall include one or several allocation zones. The Government shall adopt a Digital Switchover Plan laying down the sequence order and timeline of the switchover in stages in each of the regions. The Plan will also define a deadline of no more than six months for the shutdown of the analog signal in each of them. Furthermore, the Government will, at least nine months in advance, determine on which particular day in the six-month period, provided for by the Digital Switchover Plan, the analog signal will be switched off in each specific region. In this manner, the Government will have sufficient space to plan the digital switchover according to the circumstances, but there will also be a framework it will have to adhere to as to how the predictability of the whole process will be guaranteed to all participants. Additional conditions are also provided for the putting into operation of the third and subsequent multiplexes after the switchover itself. These conditions pertain to market needs and financial feasibility. Moreover, the broadcasting network will have to fulfill coverage requirements in accordance with the Broadcasting Law, in other words, coverage of at least 90% of the population of Serbia for the multiplex, including national channels. RATEL is also enabled to pass a decision declaring the public company "Broadcasting Equipment and Communications" an operator with major market strength, laying down the obligations thereof, particularly with respect to providing access to multiplex to broadcasters with valid licenses (ban on the discrimination against particular broadcasters and on denying the rights to a place in the multiplex to anyone possessing a valid terrestrial broadcasting license). RATEL's decision also provides for price control and cost-based accounting. The technical and commercial conditions for access will be regulated by a contract entered into by the public company "Broadcasting Equipment and Communications" with each particular broadcaster. At the same time, RATEL will be authorized, if an agreement is not reached, to pass a decision enabling access to multiplex and regulate the technical and commercial conditions thereof. Furthermore, in cooperation with the RBA, RATEL will assign logical numbers for the numerical marking of television programs in the multiplex, so that the positioning of channels is not left to anybody's arbitrary decision. Finally, the procedure of changing the licenses is regulated by having the RBA obligated, within no less than 30 days prior to the shutdown of the analog signal and switchover to digital broadcasting in a particular allocation zone, to replace the broadcasting license by amending the radio station permit, as an integral part thereof, by a license issued by the public company "Broadcasting Equipment and Communications" and a decision by RATEL, laying down the access to multiplex.

It is also provided that the public company "Broadcasting Equipment and Communications" will set up the network so as to test it, prior to the complete shutdown of the analog signal, on special frequencies constituting the initial test network. Such network would consist of 15 transmitters on particular locations so as to cover around 50% of the population in Serbia

and it would be activated simultaneously with the existing analog networks until the moment of the total digital switchover. The Rulebook provides that the access to multiplex in the initial test network will be enabled to the republic and provincial public service broadcasters, as well as to national broadcasters. It is also stipulated that the neither the fee for the use of radio frequencies, nor the costs for the radio stations within the initial network, will be charged.

Unfortunately, while detailing certain aspects of digitalization and regulating those aspects in a more practical and feasible manner, the public consultations about these two documents could represent an introduction to a new conflict that could compromise digitalization instead of facilitating it. Here's why. In RATEL's comments, voiced during the public consultations, it was said that, contrary to what was stated in the preamble of the Rulebook, that Agency did not propose at all the same text as the one tabled by the Ministry. Furthermore, RATEL said to be unclear about the methodological approach to the selection of channels for two multiplexes that would be filled in during the switchover; who coordinated the selected frequencies with neighboring and other administrations; and what the selection of the channels meant as to the number of gap fillers – low-power transmitters that must exist on lower locations in order to better cover certain parts of the territory. RATEL therefore insists that the choice of channels by allocation zone be reconsidered, namely for seven coverage levels i.e. seven multiplexes and not for only two. That proposal is undoubtely in disagreement with the ambitions of the Ministry to free the bulk of the spectrum for the digital dividend. In any case, the public consultations about the drafts of the aforementioned two documents are commendable and a sign that the process of digitalization is finally moving forward. However, a concern is the fact that the Ministry and the regulatory agency harbor different opinions as to how to manage this process. For the time being, it is unclear if and how they will be able to reconcile their diverging opinions.

VI THE PRIVATIZATION PROCESS

The withdrawal of the state from the ownership of public media, as a national commitment proclaimed in the Media Strategy, remains a dead letter on paper, not followed by any concrete measure. The Action Plan accompanying the Media Strategy stipulates that the state will fulfill the aforementioned obligation within no later than 24 months upon establishing the legal grounds. Since the Strategy's adoption, however, no competent authority has yet come forward to explain what "establishing legal grounds" actually means. Namely, the grounds for privatization already exist. It is contained in the provisions of both the Public Information Law and the Broadcasting Law. Even the regulations that allowed the state to

keep owning certain media outlets are not imperative. We remind that, under the Law on the Capital City and the Law on Local Self-Government, the capital city and units of local self-government are entitled, but not obliged, to establish media outlets. If, however, there is a particular case where it is necessary, for the purpose of privatizing certain media owned by the state, to determine special legal grounds, it should not serve as an excuse to postpone the privatization of the remaining state-owned media where such special grounds is not necessary.

VII CONCLUSION

The end of the year 2011 in the Serbian media scene was marked by intensified threats against the media – local media and their reporters in particular – a worsening labor situation of media employees who, due to an opaque ownership structure or the lack of interest of the owners to continue to operate in Serbia's media sector, are unsure as to who to address in order to collect their salaries and realize their basic rights, even in the case of national TV channels. At the same time, uncorroborated information, such as in the case of the acquisition by a domestic newspaper of the proprietary interest of the VAC Media Group in several Serbian media (allegedly with the financial and political backing of the highest circles of the government) have stirred concern that the government is unwilling to genuinely back down from media ownership or give up influence on the media, which influence would be financed by non-transparent expenditure of public funds. The reluctance of the government to understand media needs was also evidenced by the adoption of the controversial Law on Cinematography. Only a couple of months after the adoption of the Media Strategy, by which the authorities have committed to remove the paradoxes in legislation causing serious disruptions in the functioning of the public information system, the government again proposed – and the Parliament approved – yet another piece of legislation that is in direct contravention of systemic media regulations. Only a few months after the Strategy recognized the duty to establish a regulatory framework guaranteeing independent, transparent, efficient and responsible operation of the independent regulatory body in the field of broadcasting, that same government that recognized such duty and obligation, proposed the adoption of a Law that would undermine the financial foundation of such independence and efficiency. Even in the areas where progress is visible, such as the Strategy and the Rulebook on Digitalization, there are plenty causes for concern. If the potential conflict that could arise between the Ministry of Culture, Media and Information Society and the Regulatory Agency for Electronic Communications, as to who shall be planning the spectrum and under which criteria, is not settled and pacified, it threatens to compromise the digitalization process, which was finally resumed after a long deadlock.