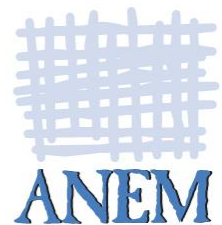




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for March 2012





FONDACIJA ZA OTVORENO DRUŠTVO - SRBIJA
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I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1 On March 6, the crew of the Federal TV of Bosnia-Herzegovina, which was shooting in Novi Pazar material for a program about Vehabits in the Balkans, was attacked in front of the building belonging to the Association of Islamic Youth "Furkan", while cameraman Refik Vejsilagic was filming the access to the building where the Vehabits gathered. Federal TV journalist Avdo Avdic told the police that they were approached by Abit Podbicanin, the leader of the Vehabit community, who had told them he was dissatisfied with their reporting. Podbicanin tried to make them delete the footage they had shot. When they refused, claiming they had merely been filming the street, the assailant grabbed Vejsilagic's camera and damaged it. Avdic said the crew had found the building they were shooting interesting in relation to Novi Pazar-born Mevlid Jasarevic, who had committed a terrorist attack on the US Embassy in Sarajevo in late October 2011. The police apprehended Abid Podbicanin, along with another person, ordering that they be placed in custody for 48 hours over the suspicion that they had committed the criminal offenses of violent behavior and destruction and damage of another person's property.

According to the Public Information Law, 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. In the above described case, the fact that a foreign television crew was victim of abuse does not make any difference, since the said Law stipulates the same rights and obligations for foreign and domestic persons, unless provided for otherwise by the law or a ratified international treaty. Serbian law recognizes, in principle, everyone's right to protect their privacy, among other things, by denying the approval for/opposing the release of photographs or videos containing their identifiable image. There are, however, exceptions to this rule. Some of these exceptions concern photographs or videos pertaining to a multitude or persons or voices (including passers-by and situations where a person is shown as part of the landscape, panorama, square, street or similar space). Furthermore, even if the aforementioned event was a case of breach of privacy, the latter, namely the right to a personal recording, may be protected by a lawsuit claiming the non-release, handover, destruction or deletion of a recording, damages, that is to say, the publication of the verdict. It must not be claimed by

violence or breaking up someone's equipment. While there was no official word on whether any proceedings had been initiated by the time this Report was completed, it is interesting to point out that the aforementioned persons were suspected by the police of violent behavior and destruction and damage of someone else's possession. While invoking the latter seems reasonable, the crime of violent behavior has apparently become a "blanket" offense, covering a range of attacks against journalists. In a similar incident in 2004, when TV B92's camera was damaged in front of the house of Milorad Lukovic Legija, which that station's crew was filming in the night of Legija's surrender, the attackers were prosecuted for the felony of "obstruction of broadcasting and prevention of printing and dissemination of print items". The said felony partly incriminates the unauthorized prevention or obstruction of printing, shooting, sale, dissemination or release of newspapers, other publication and radio and TV program. It seems that the violence in the form of damaging the TV crew's camera in the Novi Pazar case was precisely aimed at preventing the shoot and airing of television program criticizing the Vehabit movement and not at threatening the citizens' peace or disrupting public order, which are the values that are protected by the incrimination of violent behavior. A completely different issue (an issue concerning the penal policy in Serbia) is the fact that violent behavior in its qualified form (when conducted as part of a group, resulting in minor bodily harm or when involving severe humiliation), is subject to up to five years in prison, while obstruction of broadcasting and prevention of printing and dissemination of print items is subject to merely a fine or up to one year in prison.

1.2. On March 9, the President of the municipality of Becej Peter Knezi said that RTV Vojvodina reporter Nenad Jovicevic, who was prevented from reporting from Knezi's press conference after the security had barred him from entering the building, was not even invited to the conference. Knezi said in an open letter that, due to alleged innacurate reporting about the activities of the local government, he had personally told Jovicevic, that he would not invite him anymore to his press conferences, because he felt "unable to collaborate in a manner that is unprofessional and in breach of the basic journalism standards". Peter Knezi's actions were strongly denounced by journalists' associations.

According to the Public Information Law, state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well members of parliament and local councilors, are obligated to make information about their work available to the citizens, under equal conditions for all journalists and all public media. In that context, the actions of the President of the municipality of Becej Peter Knezi are in direct breach of the Law. Particularly striking is the fact that Knezi has not only discriminated against a particular reporter, but he had publicly stood by such action in an open letter, visibly persuaded he was entitled to it, according to his own arbitrary assessment of that reporter's

professionalism. Such cases are, however, not an exception. They speak of a political reality in Serbia, where many still believe they are living in a system in which the media and journalists are accountable to the politicians and not vice-versa. Furthermore, such cases, while typically leading to public condemnation by the media, journalists' association and the democratic public, fail to result in punishments for politicians responsible for discrimination against the journalists and media. The aforementioned provision of the Public Information Law does not even foresee misdemeanor responsibility. The grounds for misdemeanor responsibility in such cases might be found in the Anti-Discrimination Law from 2009. That Law provides for misdemeanor responsibility and fines ranging from 10.000 to 50.000 dinars for an official, namely responsible person in a public authority body if he/she has engaged in a discriminatory practice. If we compare the amount of the prescribed fine in this case to the fines prescribed by the Public Information Law against editors or publishers of media for offences provided for by that Law, we will see that the latter are much more stringent. From that we may conclude that the Serbian authorities do not see their own discriminatory practices as a serious threat to society that require tougher sanctions.

1.3. The President of Zagubica Municipality Dragi Damnjanovic, a member of G17 plus, attacked the reporter of TV AS from Krepoljine Aleksandra Djordjevic on a citizens' rally in the village of Krupaja. Djordjevic told the daily "Danas" that she had come to Krupaja on March 9 to shoot the rally. At about 7 p.m., she was filming Damnjanovic shaking hands with the citizens. At one point he turned to her, asking what she was doing and if she had a permit to shoot. The reporter claims that Damnjanovic – reportedly unhappy with her answer – insulted her and punched the camera, which in turn hit her in the head. The journalist reported the attack to the police, which instructed her to have the doctors in the Pozarevac hospital check her for any injuries. Dragi Damnjanovic denies having attacked the reporter, claiming that he merely asked her who had invited her and if she possessed an authorization to shoot. He also claims the citizens had kindly asked Djordjevic not to shoot and to leave. Damnjanovic noted that TV AS from Krepoljine was a pirate television station owned by his rival candidate for the local elections in Zagubica, who is waging a smear campaign against him.

According to the Public Information Law, state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well members of parliament and local councilors, are obligated to make information about their work available to the citizens, under equal conditions for all journalists and all public media. Furthermore, 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. It has been unquestionably established that TV As from Krepoljina appears on the lists of

pirate stations released by RATEL, but the Public Information Law does not entitle local or any other officials to discriminate journalists on the basis of whether their media is lawfully using radio frequencies or not and it certainly does not entitle them to use physical or any other pressure against reporters. The issue of pirate broadcasting must be treated separately from the rights of journalists to report about the work of public officials, under equal conditions. This incident is unfortunately an indicator of the problems faced by the media and journalists, which are exacerbated by the fact that the electoral campaign is in full swing. On one hand, the survival of pirate broadcasters has largely rendered meaningless the regulation of the activities of broadcast media attempted by the RBA with its generally binding instructions pertaining to reporting about the election campaign. On the other hand, the government is behaving in such a way that one may rightfully suspect it does not care about unreasonable and unauthorized use of the broadcasting spectrum *per se*, until it is used neutrally towards the government – when pirate media start criticizing the authorities, then they start paying attention. The above described incident in Becej, just like this one near Zagubica, leave the impression that the “hunt” on reporters has started and that the latter have come under increased scrutiny by public officials, who have taken the freedom to decide if a reporter is professional or not, subject to whether it criticizes them or not. This results in an atmosphere of fear and self-censorship and the media are straying away from their fundamental role in a democratic society – to enable an extensive debate about matters of public interest. Instead, the media are being pushed into conformism, where there is no room for information about the players in the electoral game, especially information that is critically oriented; the media are rather expected to engage in naked uncritical promotion and propaganda.

1.4. The editorial staff of Timocka television and radio (TTR) from Zajecar has announced the station was ordered to move out of the premises it has been occupying since 1972, as the legitimate successors – in their words – of Radio Zajecar and Radio-Television Zajecar. On the same day, they also received a subpoena in the proceedings over the unlawfully installed transmitter on a site where it has been in operation for the last 17 years. Less than a week later, on March 27 and in breach of all the applicable contracts, the signal of TTR was switched off from the program of the cable operator Jotel d.o.o. All this happened after the Mayor of Zajecar Bosko Nincic, a high official of the United Serbian Regions (URS) political party, had announced that URS would demand from the RBA a 24-hour monitoring of TTR’s program, the managing board of which comprises of Nincic’s political rival Sasa Mirkovic, the Vice-President of the Workers and Peasants Movement. “TTR not only violates the rules of the journalist profession, it has engaged in smear campaigns against just about everyone. They have been releasing lies and unsubstantiated information by the minute”, Nincic said. According to TTR, the row with the Mayor escalated after the station aired an investigative program about the privatization of the heating plant in Zajecar.

The situation with TTR from Zajecar is similar to the previously described case in Zagubica, the difference being that TTR is a major regional media holding valid broadcasting licenses and boasting a longstanding tradition. At the same time, just like in Zagubica, there is a conflict between the Mayor and the person running the chief television station, who also happens to be the counter candidate of the Mayor on the coming elections. In such a situation, on one hand, the mayor accuses his rival of misusing a station where that rival is a member of the managing board. On the other hand, the authorities are accused of putting pressure on the media and misusing their powers in order to restrict the free flow of ideas, information and opinion. In any case, the losing party are the citizens and their right to receive information of local and regional importance, but also media employees exposed to potential instrumentalization for electoral ends by their owners or managers, as well as to the mercy of local authorities. The absence of adequate mechanisms to protect journalists from the owners and managing board members, as well as from abuse of power in the election campaign, are a cause of concern.

2. *Legal proceedings*

2.1 Olja Beckovic, the author of the influential weekly talk show *Utišak nedelje* (Impression of the Week), a landmark program of TV B92 for years, has received a subpoena by the court to be interviewed in the case of unlawful public commenting on legal proceedings, in relation to a statement made in the same talk show more than a year ago, featuring Aleksandar Vucic, the Deputy-President of the Serbian Progressive Party (SNS). Charges were pressed by Bogoljub Karic, the President of the *Pokret snaga Srbije* political party (PSS), which will take part in the elections as part of the coalition *Pokrenimo Srbiju* (Let's set Serbia Forward), led by Vucic's SNS. Karic, indicted for having siphoned out 60 million Euros from the telecom operator Mobtel, which was jointly owned by the state and the Karic family, fled the country in 2006, while the media reported in 2010 that he was being granted political asylum in Russia. Olja Beckovic confirmed she would respond positively to the subpoena. She told the daily "Danas" that she had asked Vucic "how did he plan on making an alliance with a man who had robbed half the country?" to which the SNS Deputy President responded that Karic was merely indicted, but not convicted and Beckovic concurred with such an assertion. Karic's attorneys then requested that their client's reply be read in the next talk show, which indeed happened. Karic's attorney Milorad Panjevic, who is also a member of the PSS Presidency, said that by claiming that Karic had robbed half the country, Beckovic had violated the presumption of innocence. He stressed she had thus put pressure on the court and the independence thereof. Panjevic confirmed that Beckovic had Karic's reply read on the air in the following talk show, but noted she did not apologize for her statement, as insisted on by Karic.

Unlawful commenting on legal proceedings is a relatively new felony introduced in the Serbian legal system by the Amendments to the Criminal Code from 2009. Dilemmas persist over the interpretation and enforcement thereof. Article 336a stipulates that giving public statements in means of public information during the proceedings before a court of law, prior to the adoption of a final verdict, with the aim of violating the presumption of innocence or the independence of the court, shall be subject to jail term of up to 6 months and a fine. Those who have criticized that provision stress it forbids the commenting of current proceedings, while, as a paradox, failing to incriminate the commenting of final court verdicts, which could represent an even harder blow to the court's authority, is not prohibited. Going back to Beckovic's controversial statement, one may notice that she actually did not comment on the legal proceedings against Karic, but the decision of the SNS to enter into a political coalition with that political party. Furthermore, if we assume that the violation of the presumption of innocence in the media is the reason for Karic's lawsuit, then according to Serbian law, it is to be prosecuted as a misdemeanor under the Public Information Law and not as a criminal offense under the Criminal Code. Judging from the statements made by his attorney, Karic's motivation ignores the applicable provisions of the Public Information Law concerning the release of the reply. Namely, the responsible person, whom the contested information concerns, may claim that information to be untrue, incomplete or inaccurately conveyed. The Law provides for the duty of the media in question to publish such a reply, without any comments whatsoever, which TV B92 ultimately did. The apology, insisted on by Karic's attorney, would have been a personal gesture, which is not something that the law imposes to anyone. It remains, however, to be seen what position the court will take in the concrete case. Without consistent case law or clear regulations to distinguish between undermining the authority and impartiality of the court and violating the presumption of innocence not aimed at the court and court proceedings, the felony of unlawful public commenting on legal proceedings will continue to cause dilemmas and represent a restrictive factor for the journalists and the media, even when they are not directly reporting about legal proceedings.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

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

2. Broadcasting Law

2.1. On Tuesday, March 13, the President Boris Tadic called the parliamentary elections for May 6, 2012. The same day, the Speaker of the Parliament Slavica Djukic Dejanovic called the local elections, also for May 6. The Republic Broadcasting Agency (RBA) adopted a General Binding Instruction for radio and television stations (broadcasters) in the campaign for local, provincial and national parliamentary elections, presidential elections and elections for ethnic minorities' national councils, which came into force on March 9. The General Binding Instruction has introduced some new rules, providing for, among other things, the obligation of identifying paid electoral time slots. These time slots are not counted as a part of the overall advertising time on radio/television, but may not be aired in prime time (from 6 a.m. to 9 p.m. and from 7 p.m. to 11 p.m. on television, namely from 6 a.m. to 9 p.m. and from 3 p.m. to 7 p.m. on radio). Furthermore, the media must not air more than 90 minutes of electoral time slots per day and if they do, they must secure such slots to all election lists/candidates under equal conditions (no more than five minutes uninterrupted during the day per list/candidate). As an exception, once during the campaign, the list/candidate shall be entitled to a electoral time slot in the duration of 30 minutes. The General Binding Instruction also contains special rules concerning solely commercial stations, and the ones applicable to the public broadcasting service and other public media that have the same obligations as the public broadcasting service during the election campaign. The public broadcasting service must enable the free of charge and equal advertising of political parties, coalitions and candidates whose election lists are accepted, without discrimination, while providing for adequate representation of ethnic minority candidates. The public broadcasting service, the founders of which are the cities and municipalities, as well as civil society stations, may not air paid electoral time slots.

The grounds for passing the General Binding Instruction are the provisions of Articles 8 and 12 of the Broadcasting Law, according to which the RBA is in charge of prescrib binding rules for broadcasters, which allow for the enforcement of the broadcasting policy in the Republic of Serbia. The Agency passes the General Binding Instruction in order to regulate in more detail certain questions concerning the content of the program, irrespective of the existing practice of the broadcasters. Failing to adhere to the General Binding Instruction represents grounds for all measures the RBA may pass, including a warning and reprimand, but also temporary or lasting revocation of the broadcasting license. The sensitivity of this matter is evidenced by the fact that, the RBA had adopted new instructions, on the eve of almost every election campaign in Serbia, changing in a certain way the rules of conduct during the campaign and rectifying prior shortcomings. The key change in the latest Instruction concerns paid electoral time slots, the duration of which is limited after the last elections, when political parties purchased hours and hours of paid program. An additional problem lies in the fact that the Law mentions paid time

slots only once, by prescribing that public service broadcasters must secure free and equal advertising of political parties, coalitions and candidates during the campaign, by airing advertising videos only if the latter are for electoral purposes, but shall not air a paid electoral promotion. According to the RBA and the professionals from that field, this practically means that all television and radio stations may air electoral advertising only in regular advertising time slots, while commercial stations enjoy the additional possibility to air paid electoral advertising. The biggest controversy concerning the new General Binding Instruction lies with its provision that, during the election campaign, broadcasters must exclude from their program documentaries, feature films and sitcoms, entertainment and similar programs and films featuring an official, prominent representative of a election list or candidate and to avoid other forms of indirect political propaganda in their regular programs. Brankica Stankovic, the author of the investigative program "Insider" on TV B92, told the daily "Blic" that the new series of her program, which was scheduled for April, would not be aired due to the General Binding Instruction. The series was to deal with unreasonable spending of Serbian budget resources in Kosovo. The RBA reacted by issuing a press release, saying that "Insider", or any other news program in Serbia for that matter, was not banned. According to the RBA, the controversial article of the General Binding Instruction does not concerns news bulletins and investigative programs. According to the Agency, on the basis of a clasification method it applies, "Insider" has been dubbed a news program and not a documentary one. Ultimately the key problem proved to be the fact that the RBA had never released its classification method to the public, which leaves the doubt that the programs might be classified arbitrarily. We remind that genre classification of programs is significant not only for the conduct of broadcasters during the electoral campaign, but also for other issues (e.g. certain types of programs may not be sponsored or special requirements must be met for such programs to be interrupted by commercials). The controversy about "Insider" unfortunately culminated in a mere exchange of heated communiques and fell short of leading to the disclosure of the classification methods used by the RBA, which would help avert such misunderstandings in the future.

2.2. The daily "Blic" has released a text in which it is claimed that the RBA has in the last three years given the consent for the change of ownership structure of radio and television stations more than 70 times. Although the Law does not allow the disposal, sale or lease of frequencies alloted to national broadcasters back in 2006, new television owners obtained the frequencies as part of a package with the majority part of the shares they purchased, "Blic" wrote. Legally speaking, those broadcasters' frequencies were not on sale, but according to "Blic", the legal framework has enabled a concealed sale. Broadcasting licenses for national coverage were alloted in 2006 to the television stations Pink, Foks, Avala, Happy/Kosava and B92. Today, six years later, save for Pink television, all other stations changed their owners, come of them several times.

According to the Broadcasting Law, broadcasting licenses, as well as radio station license, may not be assigned, leased or otherwise disposed of. However, it is allowed for a broadcaster to change its ownership structure subject to RBA prior approval and provided it does not result in unlawful concentration of media ownership. The problem with the change of ownership structure of Serbia's television stations lies in the fact that they may lead to opacity of ownership, and it is impossible, in a situation where media ownership is not transparent, to ponder the risk of unlawful concentration of ownership. The second problem that became obvious during the recent strike on TV Avala, is the fact that the RBA has failed to weight compliance with certain financial requirements while approving changes to the ownership structure. We remind that RBA's own rules provide for the obligation of the Agency to assess, when granting a license on a public competition, the financial potential of the applicant to realize the proposed programming and editorial concept. This failure has resulted in a situation where companies without capital became the owners or co-owners of media, which were later unable to pay the relevant fees to the Agency or salaries to their employees. On the other hand, although the RBA claims to know each owner of each media in Serbia by name and surname (with B92 being partly owned by an investment fund, they are surely not familiar with the names of all persons who have invested, but are aware of the names of the persons managing the money of this fund), it seems unquestionable that there is a great deal to be done in Serbia when it comes to transparency of media ownership. We remind that back in 2008, the working group established by the then Culture Ministry, produced a draft law on unlawful media concentration and transparency of media ownership, which was never tabled to parliament for approval, although it was approved on the public debate. Most interestingly, although the accusations of unlawful concentration of media ownership and lack of transparency exist mostly in the case of broadcast media, the latter did not voice any serious objections to the said draft, as opposed to print media. It would be good to deal with this issue in the coming legislative reform expected in accordance with the Media Strategy. The minimum would be to regulate more clearly the matters the RBA must check on prior to issuing an approval for changing the ownership structure, in order to avoid those changes to result in circumventing the requirements for obtaining licenses on a public competition.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament did not adopt any media-specific regulations. The activities in the scope of the enforcement of the Media Strategy Action Plan will be detailed in the section concerning the activities of the Ministry of Culture, Media and Information Society.

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

REGULATORY BODIES

1. *Republic Broadcasting Agency (RBA)*

1.1. The activities of the Republic Broadcasting Agency have been partly covered in the section about the enforcement of the Broadcasting Law.

1.2. In its General Binding Instructions about reporting in the election campaign, the RBA have introduced more stringent requirements of the media related to the monitoring of their work. For instance, starting from the day when the elections are called, until the completion of the election process, television stations are required to submit to the RBA the footage of their entire program aired in the previous week. At the same time, as in every election campaign, the number of petitions submitted to the RBA in relation to the content of television program is on the rise, the petitions being mainly lodged by political parties participating in the elections. Hence, the United Regions of Serbia (URS) have objected that the media are tolerating the abuse of the office of President for the purpose of furthering the interests of the President's political party. URS claims that on March 18, Boris Tadic officially visited a family and its farm in the status of President of the Republic. According to URS, Tadic also officially visited the Fiat car plant in Kragujevac. URS says the media allowed that the footage shot during these two official visits be aired as part of the election program of the list of the Democratic Party "A Choice for a Better Life – Boris Tadic". The Serbian Progressive Party (SNS) has also filed a petition, claiming that "lists in the campaign do not enjoy the same treatment in news programs". Meanwhile, the RBA announced it would discuss at the Agency's Council the election video of URS containing the seals of famous international companies. URS has used the seal of the Italian company Fiat, which came to Serbia partly due to the efforts of the URS leader, when he was a minister in the Serbian Government. The controversial video also contains the seals of Benetton and other companies. A member of the RBA Council, Professor Goran Pekovic said that the above represented a case of violation of the Advertising Law, since the viewers might get the impression that the aforementioned companies supported the campaign. A press release was issued on March 26, after the RBA Council meeting, claiming that no broadcaster had violated the RBA's General Binding Instruction while reporting about the work of state authorities. Responding to the objections of URS and SNS that the DS and Boris Tadic were misusing the office of the President of the Republic for electoral ends, the RBA said that all broadcasters "during the election campaign, as well as before the elections are called, shall be free to follow

the work of state authorities and their representatives”. In relation to the objection concerning the use of the seals of certain international companies in the URS election videos, the Council has demanded additional documentation to be submitted in order to show if these companies consented with use of their seals for such purpose.

2. Republic Agency for Electronic Communications (RATEL)

2.1 The activities of the Republic Agency for Electronic Communications shall be partly elaborated on in the section concerning the digitalization process.

2.2 Acting at the request of the RBA dated February 3, the Director of RATEL passed two decisions concerning the dominant cable operator SBB on March 5. According to these decisions and pursuant to Article 101 of the Law on Electronic Communications, SBB was ordered to include in its cable offer in Novi Sad the programs of the following stations: “Kanal 9”, “Delta”, “Mozaik” and “Novosadska TV”, as well as “VK” and “Rubin” in the town of Kikinda. We remind that pursuant to said Article 101, RATEL is authorized, at the request of the RBA, to prescribe to an operator of the electronic communication network for the distribution and broadcasting of media content, the obligation to air certain television channels. In addition to the request of the RBA, which is, while making such request, obligated to comply with the principles of proportionality and transparency and to assess the necessity to air certain channels for the purpose of realizing certain specific goals relevant for the public interest, an extra requirement is needed: the a substantial number of end users uses the electronic communication network of that operator as the sole or primary channel for receiving media content. In the procedure of passing the decision, RATEL assessed the circumstance that SBB is a the cable operator with the largest number of subscribers in Novi Sad, namely that it is the sole cable operator in Kikinda, which status makes the agency’s decisions more than reasonable. In our previous report, we have described the reasons that made the RBA submit the request for such decisions to be passed in the first place. “Kanal 9”, which has pressed charges against SBB for having switched off its program from SBB’s cable offer in July 2011, announced on March 16 that their signal was once again available to the viewers in Novi Sad, as well as that there was no need to forcibly reinstate their program in the cable network, since SBB had complied with RATEL’s decisions and the order of the Commercial Court in Novi Sad.

2.3 On March 14, RATEL announced that after a joint operation of the Anti-High Tech Crime Department of the Service for Combating Organized Crime of the Criminal Police Administration of the Serbian Police Ministry, the RBA and RATEL’s Control Department, the radio program of Radio Raka Esinger from Lazarevac was switched off. That station topped the list of

unauthorized users of the radio-television spectrum that RATEL used to publish on regular basis. Radio Raka Esinger remained on the air for years in spite of not having a proper license. RBA's statement also said that criminal charges had been pressed against the perpetrators, without giving any details.

3. *The Press Council*

On March 29, the Press Council adopted a decision establishing that the daily "Press" had violated the Serbian journalists' Code of Ethics in a text released on March 2 in the print edition and on the website of that newspaper. The text in question, entitled "Mengele from Oxford: Doctors Now Allowed to Kill Children", was found by the Press Council to have violated the provisions prescribing that the journalist ought to "respect and protect the rights and dignity of children, victims of crime, disabled persons and other vulnerable groups", as well as to "do everything in their power to avoid discrimination based on gender, age, sexual orientation, language, religion, political and other opinion and ethnic and social background". The complaint in the concrete case was filed by the Gay-Lesbian Info Center, which claimed that the controversial text had put on equal footing gay marriages and the right of same sex parents to adopt children with pedophilia and the killing of children with disabilities. The Complaints Commission found that the text was discriminating against a particularly vulnerable minority and that journalists should be aware of the danger of discrimination that may be propagated by the media. The decision was adopted by a majority of votes, since two members of the Commission – Ljiljana Smajlovic, the President of the Journalists' Association of Serbia and Bozo Prelevic, attorney at law – were of the opinion that the text did not violate the Code of Ethics, namely that the author of the text had no intention of discriminating against the gay population. In his opinion, it was merely a poorly written text putting in the same context completely unrelated issues. Otherwise, of the nine decisions passed by the Complaints Commission of the Press Council to date, this is the third one establishing that the daily "Press" has breached the Code of Ethics. In the previous three decisions, the Commission found that "Press" had breached the right to privacy and the fundamental principle of the Code concerning the accuracy of reporting, by presenting a value judgment of its editorial staff as a material fact. "Press" hence became a newspaper against which the biggest number of complaints has been validated by the Complaints Commission. Furthermore, a decision is pending about another complaint filed against "Press", which was submitted by the National Bank of Serbia over "biased and malicious" writing of that newspaper.

STATE AUTHORITIES

4. *Ministry of Culture, Media and Information Society*

In spite of the statement made by Predrag Markovic, the Minister of Culture, Media and Information Society in late January, when he said that the implementation of the Action Plan accompanying the Media Strategy was going as planned, the Ministry has not released any news in relation to that Plan for nearly two months. Off the record, we have learned that the working groups have been established and that the draft of the new laws are in the works. Meanwhile, the Government has passed certain decisions that are totally contrary to the concepts promoted by the Media Strategy. For instance, in late March, the Government approved an interest-free loan to the state news agency Tanjug in the amount of 17.5 million dinars, for reporting about the election campaign and election day on May 6, namely for “expenditures related to reporting and purchase of equipment in order to secure adequate reporting and video and photo coverage of the campaign and election day”. The loan was approved only three days after Tanjug had asked for it and under the contract, it must repay it by December 31. At the same time, it remains unknown if any analysis of other news agencies’ plans for reporting on profit basis about the election campaign and election day has been made. Money from the budget is allocated each year for funding the state news agency – more than 200 million dinars in 2011. We remind that the Media Strategy stipulates that the state will, in keeping with the strategic commitment to withdraw from media ownership, conduct a transformation of the ownership of Tanjug. The Strategy also foresees that, even before the said transformation, Serbia will provide for a regulatory framework for an equal position of all news agencies. This end is in line with competition protection and state aid allocation rules, with the state being required to secure that Tanjug is not brought in a more favorable position than its competitors. The decision to grant an interest-free loan to Tanjug, which was obviously unopposed by the Ministry of Culture, Media and Information Society, could be interpreted as giving up yet another segment of the Media Strategy.

5. *The Commissioner for Information of Public Importance and Personal Data Protection*

In late March, the Commissioner for Information of Public Importance and Personal Data Protection submitted to the Parliament a report on the enforcement of the Law on Free Access to Information of Public Importance in 2011. Pursuant to this Law, the same report was furnished to the President, Ombudsman and the Government of the Republic of Serbia. The Commissioner said in the report that the number of citizens addressing him in order to have their rights

protected was on the rise: in 2011, there were about 40% more such cases than in 2011 and two and a half times more than in 2009. He stressed such trend to be a confirmation of the growing confidence of the citizens in the institution of the Commissioner, but also a warning pointing to the many problems burdening the fulfillment of the right both to access to information of public importance and to have one's personal rights protected. In his estimate, the situation in two different fields of his competence is different. In the domain of freedom of access to information of public importance, the state of affairs is getting better by the year and this process is, the Commissioner said, pretty much irreversible, needing only to be improved and sustained. He believes it is particularly important to direct the efforts at the affirmation of modern concepts of right to access to information, as well as that the authorities need to release as much information as possible about their work proactively, without particular request. In the field of personal data protection, the Commissioner believes the situation to be different and worse, due to three negative facts. The first is the fact that the Commissioner's staff is undermanned, which is consequence of the Government's reluctance to secure his institution with the adequate premises to work. Secondly, the Government and other state authorities have failed to comply with their commitments prescribed by the Law on Personal Data Protection, which has had utterly negative effects. The third problem, according to the Commissioner, is the inadequate attitude of the competent authorities towards non-compliance with the aforementioned Law. In 2011, no misdemeanor proceedings were instituted for breach of the Law on Free Access to Information of Public Importance, although there were cases where it was appropriate to do so. Furthermore, not a single case where the Commissioner has filed misdemeanor and criminal charges for violation of the said Law has resulted in a final court verdict. The Commissioner therefore believes that the attitude of the state and society towards privacy and personal data protection in particular must be thoroughly changed.

A particular concern in the field of personal data protection is the fact that the Government is yet to pass an Action Plan for the enforcement of the Personal Data Protection Strategy, containing defined activities, deliverables, assignment holders and deadlines, although the deadline for the adoption of such a Plan expired on November 20, 2010. Moreover, the Government has failed to regulate the archiving and protection of particularly sensitive data, although it was mandated to do so by May 4, 2009. Likewise, some of the existing regulations need to be amended, for they are not aligned with the relevant international documents: the existing Law on Personal Data Protection, which is not fully synchronized with binding international acts or the Serbian Constitution. What is of particular relevance for the media is the part of this Law concerning the processing of personal data by journalists and the media. These provisions are not clear enough and result in cases where journalists, especially investigative ones, face criminal proceedings, with their journalistic work being treated as unauthorized processing of personal data.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6. The Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the Collective Realization of Performers' Rights (PI)

On March 21, the Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the collective realization of performers' rights (PI) announced that in 2012, they would not be charging the fee for the public communication of phonograms and interpretations recorded on these phonograms in small craft shops. Namely, these shops will enjoy a 100% discount from the fee provided for by the tariff. Additionally, OFPS and PI said that they had also proposed to the Commission for the Protection of Copyright and Related Rights adjustments to the tariff of fees charged to bars and restaurants, shopping malls, stores and supermarkets, gas stations, hotels, fairs, casinos and betting shops. The aim is to take into account the size of the city or municipality where the facility is situated. OFPS and PI said they have proposed these measures due to the crisis. They have failed, however, to propose similar measures for the media, in terms of fees for the broadcasting of phonograms and interpretations contained thereon. Accordingly, the media will continue to pay fees under the tariff from 2009 – 3.5% from the total income for commercial radio stations and 1-2% for commercial television stations, whereas the minimum fee for radio stations shall be 7.200 dinars and 9.000 dinars for TV stations. The impression is that the fee charged to broadcasters are the last thing the collective organizations are willing to give up. It seems they are sympathetic with the problems of betting shops and casinos due to the crisis, but not with those of radio and TV stations. Meanwhile, since the tariff negotiations between OFPS and PI, on one side, and ANEM, as the representative broadcasters association, on the other, did not bear fruit, the new tariff proposed by the former two organizations is still before the Commission, which is supposed to make a decision about it.

V THE DIGITALIZATION PROCESS

After the Government adopted a decision on March 1 amending the Strategy for the Switchover from Analog to Digital Broadcasting in the Republic of Serbia and after the Ministry of Culture, Media and Information Society adopted in February Annex 4 of the Allocation Plan allocating the frequencies for the initial network for testing the digital TV signal, with its Rulebook on Determining the Plan for the Allocation of Frequencies/Sites for Terrestrial Analog FM and TV Broadcasting Stations for the Territory of the Republic of Serbia, the conditions for the start of digitalization in Serbia have finally been met. Namely, the amended Strategy provides that the switchover to digital terrestrial television broadcasting will start by switching on the Initial

Network for testing the digital TV signal from 15 sites indicated in Annex 4 of the Allocation Plan. The infrastructure and equipment of the Initial Network shall be included in the final digital network, gradually and simultaneously with the shutdown of analog transmitters and complete digital switchover. In line with the Strategy, on March 15, RATEL issued to the public company "Broadcasting Equipment and Communications" (ETV) a single license for the use of frequencies laid down in Annex 4 of the Allocation Plan, while the test broadcasting began on March 21. ETV says that the Initial Network is intended, in the experimental phase, for testing the system, transmitters, receivers, various parameters, as well as range and reception. The real situation will be known only after detailed measurements that the ETV experts will carry out in the coming months, but it is to be expected that about 40% of the population will be able to receive the digital signal from the Initial Network. Unfortunately, although the Ministry of Culture, Media and Information Society adopted the Specification of Minimum Technical Requirements for the Equipment for Receiving Digital Terrestrial TV signal in the Republic of Serbia and the Instructions on the Manner and Procedure of the Testing of Devices (STB and digital TV sets), aiming at assessing compliance with the requirements for receiving digital terrestrial signal in Serbia, set top boxes (devices decoding digital signal and allowing it to be received on a standard TV set) still cannot be found in shops. Hence, the ratings of the programs aired in the digital network are still small. The network airs channels that were cleared by the RBA from the legal point of view, in line with coverage zones laid down in the valid broadcasting licenses. These channels are RTS 1, RTS 2, RTS digital, Pink, B92, Prva, Avala, Hepi, RTV1 (on the territory of Vojvodina), Studio B (in the Belgrade region) and RTS HD.

In keeping with the Action Plan for the implementation of the Digitalization Strategy, the end of March was supposed to have seen the adoption of the Digital Broadcasting Switchover Plan and the new Rulebook on Switching Over from Analog to Digital Broadcasting of Radio and Television Program and Access to Multiplex in Terrestrial Digital Broadcasting. The Rulebook was tabled for public discussion in late 2011 and early 2012, but is yet to be adopted. The aforementioned Digital Broadcasting Switchover Plan, which aims at determining the sequence order of regions for a phased switch-off of the analog signal, the deadlines for a complete switchover to digital broadcasting in each of these regions, as well as the tasks and duties related to informing the public and the plan of assistance to the most vulnerable categories of the population, is visibly late, in the situation where the parliamentary elections are called and with the probability that the outgoing government will not pass it at all. In any case, March 2012 is a big month for television digitalization in Serbia. It will have seen the putting into operation of the seed of the new digital network in Serbia and the start of the simulcast as the first stage of digitalization in the country.

VI THE PRIVATIZATION PROCESS

The month of March was marked by the termination of yet another privatization contract, this time in Pirot Television, which was reclaimed by the state after having been privatized in 2007. The contract was terminated at the proposal of the trade union and the employees of the station. The explanation of the termination decision says that, while controlling the records, the Privatization Agency established that the buyer had failed to comply with the contractual obligations concerning investments, business continuity and social program-related commitments, although having been set an extra deadline. The employees are now expecting the appointment of a representative of capital, claiming it is in their interest to continue working, while hoping for a partnership relationship with the municipality. The municipality also claims it is in their interest for the station to survive. The now former owner Milorad Pejic has publicly doubted in the ability of the state to run the business of TV Pirot. He requested from the Privatization Agency to allow him to assign the privatization contract to a third party. He says that talks were under way, but that the Agency ultimately terminated the contract at the request of the trade union. Pejic also claims he has evidence of having fulfilled the obligation to invest in the station, that the program was regularly aired and that employee salaries were far less late than claimed. In any case, the termination of the privatization contract seems to be part of a wider trend after the calling of the elections on all levels, characterized by increased pressure on the media and attempts by local power players to secure uncritical support by the media – especially public ones – in the election campaign. This battle for positions often leads to conflicts within ruling municipal coalitions. In Coka, for example, the representatives of the ruling Association of Hungarians from Vojvodina (SVM) have withdrawn from the editorial board of the local monthly “Hronika”, claiming they did not have any influence on the paper’s editorial policy. The Deputy President of the Coka Municipality Ferenz Balasz, a member of the SVM, claims that the editorial board was receiving finished newspapers for printing so late that there was not enough time to react to anything or make any changes. The President of the local council Czaba Pinter, also a SVM member, says that the latest (February) edition of the newspaper made it to the citizens without having been reviewed by the Board. In Pinter’s words, this is done on purpose in order for the paper to serve the agenda of one political party. Their coalition partners from the Democratic Party disagreed with the assessment that SVM did not have the mechanisms “to make the paper look like they wanted it to be”. The President of the DS Municipal Board and former President of the Coka Municipality Predrag Mijic interpreted SVM’s decision as a typical pre-election move, “when everyone tries to make it look like they have never been in power”.

The painful fact that local public media do not have any mechanism to protect their journalists and editorial freedom from local power players is most taken advantage of in the election

campaign. The local authorities are so arrogant towards the local media that they often overtly refer to “mechanisms to make the media look like they wanted them to look”. Unfortunately, the journalists themselves are often unable to resist and hence we have the situation like the one in Pirot, where the television employees rejoice over being again in state property: instead of offering their services to the citizens as a watchdog of the government, they are “expecting a partnership relationship with the municipality”. All this paints an ugly picture about the distorted system of values and blurred perception of the function of the media in a democratic society.

VII CONCLUSION

The calling of the elections in Serbia has added extra pressure on the media. The pressure comes from various sides, most often in the form of rows between the local authorities and power players on one hand, and the owners of media on the other, who are accused of misusing their journalists in order to politically promote the political parties they are affiliated or close to. We have written about such cases in this Report. Most often, these are instances of discrimination against journalists and media that are judged to be critical of a particular political force, by enabling access to information and events only to obedient and spineless reporters and media outlets. A particular concern is an environment where such discrimination is accepted as normal and acceptable behavior and where pressure is not even concealed, but presented as something legitimate. The RBA tried, with the adoption of the General Binding Instruction (GBI) about the conduct of stations in the election campaign, to introduce certain rules, but these rules are first and foremost aimed at protecting the viewers, by restricting the rights of broadcasters from selling excessive air time to political parties. The media and the journalists are, however, left to defend themselves on their own. The GBI has other shortcomings, including an inherent lack of clarity, due to which it required many additional interpretations and clarifications. This is evidenced by the controversy caused by divergent interpretations of the GBI's instruction requiring the media to avoid indirect political propaganda in their regular programs, as well as to exclude documentary, feature, entertainment and similar programs and films featuring an official, prominent representative of a political party or candidate. The mere fact that the RBA had to explain that the controversial clause of the GBI did not pertain to news and investigative programs is enough of a reason to be worried. In the same vein, the RBA is constantly invoking the method of classification of program genres it applies, which nonetheless remains unknown and mysterious, since the Agency has never released it. Until all these criteria are known and available, reasons for concern will persist as to the possibility that programs are being classified arbitrarily. It is particularly important to point out that this program is not exclusively linked to the election campaign, since genre classification of programs is already important for the

enforcement of regulations concerning advertising. The Advertising Law namely regulates differently the right to sponsorship or completely prohibits interruption of programs of certain genres, which has caused a great deal of trouble in practice, in situations where the broadcaster itself has classified a particular program differently (so as to allow the conclusion of sponsorship or interruption of the program with commercials) than the RBA, whose classification of that same program excludes the possibility of sponsorship and prohibits/restricts interruption due to commercials. Many legal proceedings are currently underway because of the above situation, with a precarious outcome. While the election campaign has created the situation where the outgoing government has given up certain fundamental commitments from the Media Strategy, or the resolution of certain burning problems identified by that Strategy (as evidenced by the granting of the interest-free loan to the Tanjug news agency), we must commend and highlight the serious step forward made with the amendments to the Digitalization Strategy, the issuance of licenses for the initial digital network and the beginning of the simulcast in Serbia. This is expected to enable the necessary testing of the signal, transmitters, receivers, network parameters and signal reception capacities, which should all together allow a smooth digitalization of terrestrial broadcasting in Serbia.