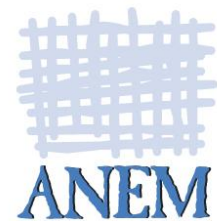




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for May 2012





FONDACIJA ZA OTVORENO DRUŠTVO - SRBIJA
FOUNDATION FOR AN OPEN SOCIETY - SERBIA

*This Monitoring Report was prepared with
financial support from the Foundation for an Open
Society*

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I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1. Srdjan Vucurevic, the Director of the weekly "Backopalanacki nedeljnik" informed the Journalists' Association of Serbia (UNS) that he was threatened over the telephone on May 11 by the Mayor of Backa Palanka Dragan Bozalo. Bozalo allegedly told him that if the weekly wrote anything about him once again, or published his picture, he would throw a bomb on the journalist's house and the premises of the magazine. Vucurevic claims that Bozalo also threatened the editor of the said weekly Dragica Nikolic. UNS' press release said that Dragan Bozalo had denied the latter claim, stressing he did call them, angered over the headline on the front page "The Former Mayor". Bozalo told UNS he had not given a statement to Backopalanacki nedeljnik for 1.5 years and that they had conveyed his statement given to another media.

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 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, which is subject to 1-8 years in prison. In the concrete case, it was not revealed if the prosecutor's office or the police had been informed about the threats. The incident described, however, is yet another in a series of threats and pressures faced by many local media and journalists on daily basis. Local power players are typically unhappy as to how they are portrayed in a particular media. As a result, they retaliate by not inviting reporters to press conferences and other events, by denying accreditations for reporting about the activities of local self-government bodies, or denying them interviews... At that, the express obligation from the Public Information Law – that state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well as members of parliament and councilors, must make information about their work available to the public and under equal conditions for all journalists and all public media – is typically not complied with. Evidence of the extent to which the undermining of this obligation does not undergo any criticism or consequence on the person that has disregarded it, is not only Bozalo's admission to UNS that he had broken the law by not having provided information on his conduct to the weekly in question for the last year

and a half, but particularly his conviction that he was doing the right thing. What is more, Bozalo seems convinced that he is not only entitled to discriminate against a media by denying it official statements, but that he is also entitled to forbid it to convey his statements given to other media.

1.2. After the Internet portal of Regional Informative Agency "JUGpress" from Leskovac (providing news in Serbian, Albanian, Roma and Bulgarian language), posted the content of two letters addressed by an organization called the Serbian Liberation Anti-Terrorist Movement to the Mayor of Bujanovac Shaip Kamberi, Ljiljana Stojanovic, the Editor-in-Chief of "JUGpress" received a message from Mikan Velinovic, the self-declared founder and commander of the said movement, accusing her of being the mouthpiece of the local authorities and providing "utterly concerning" support to terrorism. The letters published by "JUGpress" revealed that the Serbian Liberation Anti-Terrorist Movement was accusing Kamberi of supporting terrorism, "advising" him to cease with such conduct. Ljiljana Stojanovic declined to speculate as to who might have sent the messages, saying instead she had informed the competent state authorities, as well as the representatives of the EU and the OSCE Mission to Serbia.

The Serbian Liberation Anti-Terrorist Movement and Mikan Velinovic have been mentioned in the Serbian media mainly in the context of the situation in Serb enclaves in Kosovo. In the concrete case, this organization sent two letters to the Mayor of Bujanovac, in Southern Serbia, reacting to the rallies in that town, organized after the police had arrested, in early May, five Albanians in Bujanovac and its surroundings, over the suspicion they had committed a war crime against civilians in 2001. Two more persons were arrested for resisting a police raid, while one man was detained over a pistol found in his apartment, for which he did not possess a license. About two thousand Albanians protested in downtown Bujanovac. The local politicians, including the Mayor Shaip Kamberi, claimed that the arrests were aimed at destabilizing the security situation in Southern Serbia and creating fear and confusion among Albanian citizens. Five of the arrested persons suspected of war crimes were released in late May. They were unsure, however, if the procedure against them was suspended or if they would remain free pending trial. Since the issues of establishing responsibility for war crimes (as one side claims) and namely the misuse of the police for electoral purposes (as the other side believes, (since the arrests were made during the electoral silence, which allegedly enabled the Minister of the Interior to continue his own electoral campaign after the general campaign was formally over) are most definitively questions of public interest; the information concerning these event fulfills the conditions for free release in the media, unless provided for otherwise by Law. Furthermore, the Serbian Liberation Anti-Terrorist Movement itself addressed the local officials in Bujanovac with opinions and recommendations related to an issue of public interest and it would hence be unrealistic from them to expect that the content of their letter would remain unavailable to the public. On the contrary, insisting on the secrecy of the letter addressed to the Mayor only means that it may be rightfully assumed that the letter was, in fact, a threat. Therefore, the new message by Mikan Velinovic and the Serbian

Liberation Anti-Terrorist Movement, in which they accused the editor of the weekly of supporting terrorism, while she was only passing information on to the public they have the right to know about, represents, without any doubt, influence suitable for restricting free flow of ideas, information and opinions. This has hampered the media in question to perform its activity and hence restricted freedom of public information. The public is entitled to be informed about the mechanisms influencing the elected local officials in their decision making, while the state must actively defend the right of the public to obtain such information, including the obligation to reveal the reasons, interests and real intentions behind each specific request to conceal something the public is entitled to be informed about.

2. *Legal proceedings*

2.1. On May 3, Tomislav Nikolic, at the time still only the President of the Serbian Progressive Party (SNS) and presidential candidate, filed two lawsuits before the Higher Court in Belgrade: the first against the daily “Kurir”, “Kurir”'s Editor-in-Chief Sasa Milovanovic and Aleksandra Jerkov, the Spokesperson of the League of Social Democrats of Vojvodina (LSV) and candidate for Mayor of Novi Sad; and the second against the publishers of the daily “Blic” and their Editor Veselin Simonovic. In each of the claims, Nikolic is seeking damages in the amount of 200 million dinars per each case. “Kurir” said that Nikolic had pressed charges against them for having conveyed Jerkov’s statement from a press conference, where she demanded Nikolic to explain at which faculty he had obtained his diploma. In the case of “Blic”, the reason for the lawsuit was the text “The Mystery of Nikolic’s Diploma”. The SNS presented to the media a diploma, stating that Nikolic graduated in 2007 at the Novi Sad Faculty of Management. However, some media continued to investigate why that diploma had not been mentioned in Nikolic’s official biography on the eve of the presidential elections in 2008. The then biography stated that Nikolic had finished Technical School (Civil Engineering Department) and that he had studied at the Faculty of Law, which studies he interrupted in 1971. The latest diploma from 2007 was not even mentioned. The SNS confirmed it had filed the lawsuits, but stressed that they had claimed only two million per each and not per 200 million dinars in damages. If 100 times more were really requested, they said, their lawyers would be fired and the 2 million claims per each lawsuit would remain.

Nikolic’s biography for the 2012 elections indeed contains the information that he graduated at the Faculty of Management in Novi Sad in 2007. The controversy of the diploma’s authenticity was most pursued by the LSV, while “Blic” investigated the reasons as to why it had not been mentioned in Nikolic’s earlier biographies. The daily also reported about the relations of the said Faculty with the former BK University of Nikolic’s coalition partners – the Karic brothers. “Blic” investigated if the Faculty of Management was accredited at all at in the time when Nikolic was studying, how much time his studies had lasted and if other students of that faculty recalled

Nikolic coming to the lectures or exams at all. Since Nikolic was in the meantime elected President of Serbia, it goes without saying that these allegations will represent a burden in his relationship with the Serbian media. According to the Public Information Law, public media shall be entitled to publish ideas, information and opinions about matters, events and persons the public is entitled to know about. It is understood that the biography of a presidential candidate (in this case Tomislav Nikolic) is without doubt a matter of public interest. In that sense, and particularly in view of the exorbitant damage claims (200 million dinars claimed by Nikolic in each case) as publicly posted on the Internet portal of the Serbian courts, such claims may be qualified as abuse of right, which may lead to self-censorship and restrict the free flow of ideas, information and opinions, namely to make the media avoid issues relevant for the public interest, in view of Nikolic's function. The final decision of the courts in this case will show the extent to which the Serbian judiciary is up to the task of fulfilling the requirements of the European Convention on Human Rights and Fundamental Freedoms, as well as the obligation to comply, in its activities, with the practice of the European Court of Human Rights in matters concerning the protection of the right to freedom of expression.

2.2. In the case we have reported about several times in our reports – the lawsuit filed by journalist Vladimir Jescic against the President of Nova Srbija and former government Minister Velimir Ilic – the Higher Court in Novi Sad passed on May 9 the first-instance verdict sentencing Ilic to pay 1.38 million dinars in damages to Jescic. Jescic pressed charges against Ilic after the incident during the shooting of an interview with Ilic in 2003.

We have closely followed this case and wrote about it in our reports, since it was a case of an attack on a journalist, with the attacker being an active politician (who, at the time of the attack, was a minister in the Government and Member of Parliament). The criminal proceedings against Velimir Ilic were never conducted, because he had invoked parliamentary immunity. What is also interesting is that Jescic had already won the case, but Ilic lodged an appeal that was accepted, although it was filed three years after the verdict was passed! From a legal standpoint, this would have been possible only if the first instance verdict against Ilic had never been furnished to him, since the deadline for lodging an appeal starts at the moment of furnishing the verdict to the defendant and not the moment when the verdict is passed. However, the circumstance that the verdict had not been furnished to Ilic for three years is difficult to understand, in view of Ilic's political position at the time and the fact that he is a public person, whose residence or place of work should have been well-known to the Court, which means that he could have easily been handed over the verdict. However, the verdict of first instance failed to explain how it was possible not to deliver the verdict to a well-known politician for three years; or, if the verdict was handed over to him, how it was possible that the evidence of that have disappeared? If the doubt persists that the politicians (who are allowed to submit successful appeals three years after the passing of the verdict, although the Public Information Law provides for an 8-day period) are not subject to the same procedural rules and laws that apply to ordinary citizens, the concern will remain that

Serbia is a country where journalists will be allowed to attack journalists with impunity. The opportunity to address this issue and shed some light on it will be the appeal procedure, since Jesic's attorney has already announced his client was unhappy with the amount of the damages. In the former verdict, which was overruled after Ilic's appeal, the damages awarded to Jesic several times exceeded those in the latest verdict.

2.3. On May 8, the Commercial Court in Belgrade passed a temporary restraining order prohibiting the company "Insajder tim" ltd. from Belgrade (owned by Dragan J. Vucicevic, the former deputy editor-in-chief of "Nacional", the former editor of "Kurir" and former deputy editor and editor-in-chief of the daily "Press") to publish their new daily newspaper under the name "Nezavisne novine insajder" (Independent Newspaper Insider), "Insajder" or any other name containing the sign "Insajder" protected by a trademark or trademark application by B92. The court passed the temporary restraining order after having found that B92 had made it probable that its trademark/right deriving from the trademark application "Insajder" would be violated by the publishing of a newspaper containing that trademark in their name. "Insajder tim" ltd. has filed an appeal against the temporary restraining order and their newspaper were released for sale on May 10 under the name "Informer".

Vucicevic is known, among other things, for having written a text entitled "Brankica – the First Goebbels of Serbia", after taking part in a television talk show. In that text, Vucicevic accused Brankica Stankovic and her investigative program "Insider" of "spewing Goebbels-like propaganda, manipulation and indoctrination", calling B92 "dirty and unscrupulous characters pretending to be some kind of supreme moral judges in this country and society". Vucicevic concluded that "Brankica the Insider is a liar, manipulator and a fraud"! After leaving the "Press", he announced a new project on Twitter, under the name of B92's famed investigative program, which he had accused for "totalitarian propaganda and manipulation". The restraining order is a logical consequence of the fact that B92 has been protecting, with the Intellectual Property Office since 2004, two trademarks "Insajder", encompassing the logo "Insajder" and the word "Insajder", in several categories, all of which directly or indirectly pertain to the media and media-related activities. The possibility to pass a temporary restraining order in such cases is provided for by the Law on Trademarks, while the media have reported that it is not the first time that Vucicevic has attempted to launch a daily newspaper under somebody else's trademark. Namely, in a text authored by Radisav Rodic, the founder of the dailies "Glas javnosti" and "Kurir" from 2009 in the now-defunct "Glas javnosti", Vucicevic was said to have tried, in December 2005 (after he left "Kurir"), to print a daily newspaper under the name "Novi Kurir" (New Kurir), which attempt was thwarted, also by an injunction. Otherwise, it is interesting to note that the amendments to the Public Information Law from 2009 have introduced the prohibition to establish a public media under a name that may be misleading in terms of identity. However, the prohibition pertains only to cases of misleading names of media that have been deleted from the Public Media Register, or

have ceased to be printed/published. In all other cases, the media trying to protect their intellectual property rights (trademark or trademark application) may only resort to remedies provided for by the Law on Trademarks, namely the Trade Law (protection from unfair market competition). Otherwise, Vucicevic's company also tried to protect its trademark "Insajder" as a trademark with the Intellectual Property Office. The related procedure is still underway, but the application will most likely be rejected. Asked about the likely outcome of that application, Mirela Boskovic, the Assistant Director of the Trademarks Department, said that "Law on Trademarks is clear – nobody may protect with a trademark another trademark that is identical or significantly similar to a formerly registered trademark or formerly submitted trademark application".

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

1.1. The implementation of the Public Information Law was elaborated on in the section about freedom of expression.

2. *Broadcasting Law*

2.1. On May 7, the Council of the Republic Broadcasting Agency (RBA) adopted the binding interpretation of article 16 of the General Binding Instructions (GBI) to radio and television stations (broadcasters) in the election campaign for local, provincial and national parliamentary elections, presidential elections and elections for the Ethnic Minorities' National Councils, as a response to the many queries received from broadcasters about how to interpret the said Article. In the interpretations, the Council insists that content of the election advertisements and paid air time must be true and verifiable; that only publicly aired audiovisual footage must be used in these advertisements and paid air time; the use of secretly recorded footage is prohibited, as is the use of unacceptable symbols and the like. It is also prohibited to use the name, image, voice or part of the face of persons that are not participating in the electoral process, without the consent of those persons; to disclose information or allegations against any person, unless this information is not publicly available from the competent state authorities; to use claims from the investigative proceedings against a particular person, if that person has been cleared of such accusations with a final verdict, if the charges have been rejected or if the proceedings have been terminated; to air content that could encourage discrimination, hate or violence against a person or group of persons due to their different political affiliation, including content offending the honor, reputation and privacy of citizens, especially of those citizens that are not participants in the electoral process.

Finally, it is prohibited to spin statements, press releases and similar content with the aim of changing their basic meaning (malicious editing, shortening or removing key parts of the content and the like), which, in the RBA Council's opinion, represents a breach of the principles of truthfulness, completeness and distinctness of the advertisement.

Article 16 of the GBI stipulates that, under Article 38 of the Public Information Law and Article 21 of the Broadcasting Law, a broadcaster may refuse to air an advertisement or a program, if the latter is estimated to promote discrimination, hate or violence or offend the honor, reputation and privacy of citizens or other participants in the electoral process. Article 38 of the Public Information Law prohibits hate speech, while Article 21 of the Broadcasting Law provides for the competences and powers of the RBA in suppressing hate speech. In that context, we are able to recognize the key omission of Article 16 of the GBI: it has taken a ban provided for by law and a power of an authority to enforce it and "lower it" to the level of the broadcaster's right to refuse to air content. The binding interpretation only complicates the whole matter without solving anything. Namely, in its efforts to regulate political advertising (primarily on television), the Council has failed to take into consideration the difference between the ban of hate speech on one hand and freedom of advertising on the other. The ban of hate speech is absolute and involves the release of ideas, information and opinions promoting discrimination, hate or violence against a person or several persons over their affiliation (or lack thereof) to a particular race, religion, nation, ethnic group, sex or over their sexual orientation, regardless if such release/publication amounted to the commission of a criminal offense. Such ban may not be reduced to the broadcasters' right to refuse to air something. On the other hand, freedom of advertising from Article 3 of the Advertising Law involves the need for advertising to be carried out in accordance with the law, other regulations, good business practice and professional ethics. In any case, the mere fact that the Council was forced to pass a binding interpretation of its GBI is evidence of the lack of clarity thereof. The second problem unfortunately lies in the fact that the binding interpretation has also failed to meet this objective. The Council should seek for a solution somewhere else: it should finally pass – in accordance with Article 103 of the Advertising Law – more detailed rules on advertising and sponsorship on television and radio, in order to regulate advertising in the electoral campaign more precisely. The broadening of the concept of hate speech, so as to include cases of mere violation of the advertising principles, is not good either for suppressing hate speech or for having a sustainable regulation of TV and radio advertising.

3. *Copyright and Related Rights Law*

3.1. At an extraordinary session on May 11, the RBA Council reviewed the request by Aleksandar Stankovic, the editor and journalist of the Croatian national television (HRT) for the protection of his copyright in relation to the misuse of the footage of his talk show originally aired

on HRT during the electoral campaign in Serbia. The RBA Council forwarded the copy of Stankovic's letter to all broadcasters for them to consider when deciding if they would air the content indicated in the said letter.

The electoral political advertisements of the presidential candidate Tomislav Nikolic, aired on Serbian television stations during the campaign, included footage of his rival Boris Tadic in the HRT talk show "Nedeljom u 2" (On Sundays at 2) authored and presented by Aleksandar Stankovic. Nikolic's marketing camp included the segments where Tadic answered, in their opinion, in an undignified or inconsistent way, which was supposed to undermine his credibility. Tadic's marketing team resorted for the same tactics, using in Tadic's videos excerpts from Tomislav Nikolic's interview on Prva TV. The aforementioned advertisements became the cause of great controversy; in the case of the advertisement containing excerpts from Stankovic's talk show and accusations of malicious editing, Stankovic's letter attempted to set the record straight and point to the legal issues that such advertisements pose. Namely, according to the Law on Copyright and Related Rights, television works are to be considered author's works and hence the authors of such works enjoy the proper moral and property rights, which are violated and breached by unauthorized exploitation. The aforementioned situations could be interpreted as violations of the moral right to protection of the work's integrity, but also of the moral right to oppose undignified use of the work. The Law on Copyright and Related Rights says that the author enjoys the exclusive right to protect the integrity of his work and especially to oppose any changes to his work by unauthorized persons, to oppose public communication of his work in a changed or incomplete form, as well as to grant authorization for any alterations to his work. Furthermore, the author has the exclusive right to oppose any exploitation of his work in a manner that compromises or might compromise the author's honor or reputation. In relation to property rights, the author has the exclusive right to allow or disallow the recording and copying of his work entirely or partially (shooting a commercial involves recording the author's work, from which excerpts are taken, on the medium on which the commercial is shot), but also the right to allow or disallow any alterations and modifications. In the concrete case, it is clear from Stankovic's letter that neither he, as the author, nor HRT as the producer, have consented to the use of excerpts from their talk show, or the modification thereof, for the purpose of making an election advertisement. These advertisements have possibly also violated other personal rights in a way that is in contravention of the provisions of the Public Information Law. Under that Law, the prerequisite for broadcasting someone's image or voice on television is the consent of that person. At that, under the Law, consent accorded for one release (airing) or for one particular type of release, namely release for a particular purpose, shall not be deemed consent for repeated release, for release in a different form or for other purposes. The exception from the requirement to acquire consent (which is provided for by the Law), which could apply to Boris Tadic as holder of a state or political function (and hence a person of public interest) could hardly apply to Stankovic who, as evidenced by the letter, did not consent to his image and voice to be used in Tomislav

Nikolic's presidential campaign. Identical arguments apply to the authors of the show on Prva TV, excerpts from which were used in Tadic's campaign. It remains unknown if the RBA, or the authors of the advertisements /owners of the rights to the respective talk shows, have pressed any charges. It is probable, however, that Stankovic's letter alone, which was disseminated by the RBA among broadcasters, will serve as guidance as to what the latter must focus on when airing political advertisements.

4. The Criminal Code

4.1. The activist of the organization "Antifascist Action" from Novi Sad Zoran Petakov was sentenced to 100 days in prison for failing to pay a fine for insulting Serbian Orthodox Church's Bishop of Backa Irinej. The insult occurred in the talk show "Klopka" (Trap) on BK Television back in 2005. Petakov was previously fined by the Fourth Municipal Court in Belgrade. The sentence was upheld by the Higher Court in Belgrade in 2008. In an unrelated event, Petakov took part in the said talk show, aired one week after the neo-Nazis from the extremist group "Nacionalni stroj", led by Goran Davidovic "the Fuhrer", had stormed a debate organized on the Faculty of Philosophy in Novi Sad, in the scope of the Day of Combating Fascism. Petakov said back then that the Serbian Orthodox Church propagated an ideology close to right-wing extremists; he called bishops Amfilohije Radovic, Atanasije Jevtic, Artemije Radosavljevic and Irinej Bulovic "the Four Horsemen of the Apocalypse who had more influence in the last 15 years on the formation of (right-wing extremist) groups than the state secret service".

Back at the time, the trial of Zoran Petakov was monitored by the Committee of Lawyers for Human Rights and their reports are still available on the organization's website at <http://www.yucom.org.rs/rest.php?idSek=22&idSubSek=63&tip=vestgalerija&status=prvi>. For the purposes of this Report we will not be examining again a trial conducted between 2006 and 2008; we will only try to point out the paradox that the revoking of prison terms for defamation and insult (in the amendments to the Criminal Code in 2005) now threatens to result in the imprisonment of someone who has offended a public figure, for the first time after 20 years or even more. Namely, before the said amendments were introduced seven years ago, prison sentences for defamation and insult were typically conditional sentences and nobody really went to jail. The amendments were heralded as a leap forward, which would boost freedom of expression in Serbia. Instead, we have a situation where people will be fined for defamation and insult and go to jail if they cannot/do not want to pay. Thus, after having received a decision, ordering him to serve a 100-day prison term, replacing the fine he failed to pay, Zoran Petakov will become the first person in Serbia's recent history that will serve time for having offended someone on television. Petakov's case shows to what extent half-baked solutions in the protection of human rights (including right to freedom of expression) are counter-productive. It also shows

how much Serbia lost by refusing to decriminalize defamation and insult. We remind that full decriminalization is foreseen only in the Draft Law on the Amendments to the Criminal Code, which was tabled by the Government to Parliament for adoption on January 31st. Unfortunately, the Parliament did not vote about it before it was dissolved. Hence, the decriminalization of defamation and insult will have to wait for the formation of the new Government. We can only hope that the case of Zoran Petakov will open eyes of those who opposed decriminalization the loudest back in 2005 and that it will contribute to the ultimate removal of defamation and insult from the Serbian criminal legislation.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, after the calling of the elections, the Serbian Parliament did not sit and hence did not pass any new regulations.

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 On Election Day (May 6), the RBA ordered cable operators in Serbia to stop airing the following channels, due to the violation of electoral silence: HRT 1, OBN and “Kopernikus 3 – Svet plus”, the B92 reported, citing the Beta and Tanjug news agencies. “Those stations’ programs were suspended on cable networks for they were airing such content that had violated electoral silence”, RBA Vice-President Goran Karadzic told Tanjug. He also said that the cable operators would be able to continue to air these programs at 8 PM, after the expiration of the period of electoral silence. The internet portal of the daily “Blic” reported that the RBA had – also due to electoral silence violation – temporarily suspended the program of Studio B, around 7.15 p.m.; BN television was reportedly also added to the list of stations the cable operators were ordered to switch-off. The same happened on Sunday May 20, on the day of the Presidential runoff, when the RBA Council announced that its experts had determined “Kopernikus 3 – Svet plus” to have repeatedly violated electoral silence. The Council instructed cable operators that the channels they were airing ought to be in compliance with regulations about electoral silence.

The Law on the Election of Members of Parliament stipulates that electoral advertizing through means of public information, as well as announcing any estimates as to the results, shall be prohibited 48 hours prior to election day, as well as on election day itself, until the closing of the polling places. This applies to presidential elections too, as well as to local elections. Compliance with electoral silence rules is also provided for by the Broadcasters' Code of Conduct, as well as the General Binding Instruction to radio and television stations (broadcasters) in the electoral campaign for local, provincial and national parliamentary elections, presidential elections and elections for the Ethnic Minorities' National Councils. It remains unclear, however, on what grounds the RBA had ordered cable operators to suspend the distribution of specific channels. The RBA is namely authorized, under the Broadcasting Law, to temporary revoke a broadcasting license. However, this measure was not passed in the concrete case (nor could it have been passed), for two reasons. First, this would involve the proper procedure, as well as the requirements provided for by Article 63 of the Broadcasting Law: among other things, that the broadcaster in question, in spite of a warning, has continued with non-compliance with the Broadcasting Law or regulations passed on the basis thereof; or has failed to comply with the requirements contained in the broadcasting license; or has failed to adhere to the measures for remedying the violations established by the Council in the said warning. Secondly, the RBA Council ordered the switching-off of channels that were not distributed in Serbia on the basis of licenses issued by the RBA – the terrestrial channels from neighboring countries (HRT from Croatia and OBN and BN from Bosnia-Herzegovina). The rebroadcasting of those channels in Serbia is regulated by the ratified European Convention on Cross-Border Television. The latter stipulates that signatory countries, including Serbia, must ensure freedom of expression and information under Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms; they must guarantee freedom of reception of the signal and refrain from restricting the rebroadcasting of programming services on their territory that are in compliance with the provisions of the said Convention. The latter provides for the possibility to temporary suspend rebroadcasting, but only in cases of prolonged violation of the Convention in an extended period of time, after having sent a notice to the state that is the source of the program in question. As for cable operators, they operate under the regime of the general authorization, in accordance with the provisions of the Law on Electronic Communications and the Rules on the General Requirements for Performing the Activity of Electronic Communication Under the Regime of the General Authorization. These regulations do not foresee the possibility to issue an order to broadcasters to switch-off a specific channel. The violation of electoral silence also stops short of meeting the requirements for the prohibition of distribution provided for by Article 17 of the Broadcasting Law. The prohibition of distribution may namely be ordered only if it is necessary in a democratic society in order to prevent: calling for violent insurrection against the constitutional order; undermining the territorial integrity of the Republic; propagating war; inciting direct violence or advocating racial, ethnic or religious hatred that constitutes inciting discrimination, hostility or violence and if the released information directly threatens to cause serious, irreversible consequences that may not be averted in some other way. However, even in such a

case, the decision to ban distribution may be passed only by a court of law and solely at the proposal of the public prosecutor.

3. *The Press Council*

The Press Council's Commission for Complaints rejected the complaint of Ksenija Radulovic, the Programming Director of the Sterijino pozorje theatre festival, filed over the text "Molière – a Writer of Love Vices", published on May 18 in "Vecernje novosti". The Commission found that the daily had not violated the Journalists' Code of Conduct with its text. The plaintiff, Ms. Radulovic, believed that the controversial text (an interview of theatre director Egon Savic to "Novosti" journalist Vukica Strugar) had violated the provisions of the aforementioned Code concerning the authenticity of reporting and journalists' caution, as well as that it has "placed slander in the form of a question". In its decision rejecting the complaint, the Commission nonetheless expressed its concern over the observed tendency of "Novosti", in its texts about Sterijino pozorje, not to hear the other side, as well as the unwillingness of its editors to enable different opinions to be heard.

The point of contention was the following question posed to Egon Savin: "Your play 'The Well' made it in the official selection of this year's Sterijino pozorje, the once-illustrious festival, whose selection is seldom mentioned, as if everyone have given up on it?" The members of the Complaints Commission were of the opinion that in interviewing Savin, the journalist had expressed her value judgment and not a fact. We are citing this decision (by the Complaints Commission) in the Report precisely, due to the ever-topical question of value judgments vs. factual judgments. The erroneous qualification of value judgments as factual ones seems to happen too often in the decisions of Serbia courts. Hence, the decision of the Complaints Commission is at a higher level than the average court decision. One can only lament, however, at a shortcoming in the Commission's decisions we have already reported about – they are typically very scarcely explained. Well-thought out and well-explained decisions of the Commission could become a model and guidance for the courts and have a positive influence on them in media-related disputes. This is something the Commission should explore.

STATE AUTHORITIES

3. *The Ministry of culture, media and information society*

In a joint press release issued on May 4, the Journalists' Association of Serbia, the Independent Journalists' Association of Serbia, ANEM and Local Press asked the Ministry of Culture, Media and Information Society about the outcome of open competitions for the co-financing of media

projects in 2012. Namely, five open competitions for the co-financing of projects – public information related programs; programs in the field of public information on ethnic minority languages; programs related to broadcast public media seated in Kosovo and Metohija; programs related to the provision of information to disabled persons and programs related to public information of Serbs in countries of the region – were called back on November 1, 2011, while the deadline for submitting applications expired on December 1, 2011. According to unofficial information, the commissions, whose members’ list was not posted on the website of the Ministry, had finished their work back in March and the decisions were waiting for the signature of the Minister to be released. The Ministry of Culture, Media and Information Society has to date failed to provide any explanation whatsoever as to why these decision are still not passed.

Only after the issuance of the joint press release by media and journalists’ associations, on May 8, the Ministry passed and published the decision on the allocation of funds resulting from the competitions for the co-financing of media projects – programs related to electronic media seated on Kosovo and Metohija; programs related to the provision of information to disabled persons and programs related to public information of Serbs in countries of the region. For the remaining two competitions (public information related programs; and programs in the field of public information on ethnic minority languages), the decisions on the allocation of funds were passed on May 15 and posted on the Ministry’s website on May 18, only to be withdrawn two hours later, without any explanation whatsoever. By the time this Report was completed, the decisions were not released again, which raises serious doubts as to the regularity of the competitions. Moreover, the grave delay in releasing the results and consequentially in entering into the related agreements and allocating the funds, seriously threatens the realization of the proposed projects. Amid the crisis engulfing the Serbian media landscape, funds are extremely important for the survival of some local media.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

4. *Serbian music authors’ organization – Sokoj*

On May 31, the Slovenian capital Ljubljana hosted the regional meeting of organizations for the collective protection of music authors’ rights. In addition to the organizers from the Slovenian SAZAS, attending were the Croatian HDS-ZAMP, the Bosnian “Sine Qua Non”, the Montenegrin PAM, Macedonian ZAMP and Sokoj. As SAZAS announced in a press release, the meeting had resulted in an agreement on joint actions in the entire region, with the aim of improving copyright protection. In its own press release, Sokoj said the participants had also discussed the current situation in the region with respect to copyright protection, as well as about the many difficulties

faced by the respective organizations. The topics also included the problems related to the non-payment of copyright fees by the users, the issue of amendments to the law and sanctions for non-compliance. The participants agreed to make regional comparative presentations of tariffs, memberships and management and highlighted the need for promotional activities with authors, the media, customs administrations and interior ministries.

According to the Law on Serbian Copyright and Related Rights, tariffs will be set by factoring in the tariffs of collective organizations in states with a comparable gross domestic product (GDP) to that of Serbia. In that sense, the announced comparative presentation of tariffs is good news, even if not all the countries in the region have comparable GDPs. This first comparison should merely be the first step in comparing tariffs in a larger number of states. The existence of comparative tariffs may only help to settle potential tariff disputes in the future, by providing exact data and avoid the tariffs to be based on some vague categories (as it is currently the case) such as “mainly generally accepted standards”, invoked by the Serbian Commission for Copyright and Related Rights in the tariff dispute between Sokoje and ANEM, as the representative association of broadcasters, in December last year.

V THE DIGITALIZATION PROCESS

Although more than two months have passed since the start of the trial broadcasting in the DVB T2 standard on March 21, in the scope of the initial network for testing the digital TV signal, the public company “Broadcasting Equipment and Communications” (ETV) is yet to release the results of the measurements and the reports about the operation of the new network. Off the record, we have learned there were no serious operational difficulties. However, the problems could arise with respect to financing, since the funds ETV receives from the budget are less than last year, while the biggest clients face financial difficulties or, as in the case of RTS, still have not paid for broadcasting services. Namely, ETV provides most commercial stations with only collocation services (storage of analog broadcasting equipment in their facilities) while providing analog broadcasting services only to RTS and the commercial national station TV Avala. Avala’s financial woes became obvious during the recent two-month strike of the employees over unpaid salaries and fees. A new strike erupted in early May, with the employees accusing the management of failing to adhere to the deal that had ended the previous strike in February. Meanwhile, RTS has not paid for broadcasting services to ETV or for the use of frequencies to RATEL, although it is obligated to do so under the Broadcasting Law. What is more, RATEL is now trying to “pass on” the debt for the frequencies to ETV. The financial difficulties that might ensue for ETV could seriously undermine the further roll-out of the digitalization process.

VI THE PRIVATIZATION PROCESS

While nothing has been done so far to implement the Media Strategy, i.e. the part thereof obligating the state to withdraw from media ownership, the controversy persists in relation to the already privatized media. In some of them, the state has kept a significant stake, such in the case of “Novosti”. Milan Beko, the majority owner of “Novosti”, announced on May 17 that his companies, which held the shares of that media company, had won an arbitration dispute against the media group VAC. The German-based group, which announced its withdrawal from Serbia two years ago, over the controversies that had marred their attempts to acquire the majority stake in “Novosti”, denied having lost the arbitration and rejected Beko’s allegations. They claim that, since they have withdrawn from Serbia, there is no reason to continue the arbitration against Beko’s companies and hence they have withdrawn the claim and paid the legal costs. VAC also said that, when initiating the arbitration, they had presumed they would have to pay the legal costs regardless of the outcome, since (they say) their studies had shown that Beko’s companies had no assets to compensate for the costs. We remind that Milan Beko himself confirmed he controlled three foreign companies (Trimax Investments, Ardos Holding and Karamat Holding), which jointly owned 62.4% of the shares of “Novosti”. In June 2011, the Securities Commission ordered Beko to issue the offer for the acquisition of the remaining “Novosti” shares within three months at the latest, failing which he ought to announce the sale of all shares above the 25% threshold. Nothing of the above has happened and Milan Beko is only prevented from voting on the basis of his shares exceeding the 25% threshold, which has created the situation where the shareholder with the most votes in “Novosti” is once again the state. The media have reported that Beko was unlikely to offer a bid for the acquisition anyway, since that bid would have to be unrealistically high. He also would have been unable to sell all shares above 25%, since these shares were reportedly pledged as collateral to protect the rights of the VAC media group. Meanwhile, VAC attempted to obtain the consent of the Competition Protection Commission for carrying out the concentration by acquiring the shares of Trimax Investments, Ardos Holding and Karamat Holdings in “Novosti”, but that request was rejected by the Commission last October, citing as a reason the non-submission of evidence on the legal grounds for the concentration. Until this whole imbroglio is settled, the state, which directly owns 29.5% of “Novosti” and indirectly, through the Republic Fund for Pension and Disability Insurance, an additional 7.15 %, will hence have the majority in the shareholders’ meeting of “Novosti”. The annual session, which was scheduled for May 25, was postponed due to the lack of quorum.

VII CONCLUSION

Instead of the conclusion, we will convey here some details from the Report on the Media Situation in Serbia, compiled based on 27 indicators of the Council of Europe, measuring the freedom of expression and freedom of the media. The results of that Report –a product of the combined efforts of the Civil Rights Defenders, ANEM, NUNS, NDNV and Local Press – were released in the publication “Serbia Media Scene VS European Standards” on May 18. The results of the Report are based on publicly available data and the results of the polls involving 240 editors of in chief editors of news media from 79 towns in Serbia, 69 media owners, 40 political functionaries from 10 towns in Serbia, 50 persons belonging to nine minority ethnic communities, as well as on interviews with the representatives of 26 state, regulatory and self-regulatory bodies with competences in the media sector. According to that study, merely four of the aforementioned 27 European media freedom indicators are realized in Serbia (freedom of access to the journalistic profession, freedom of access to the Internet and international media, separation of the participation in the executive branch from the professional occupation of media activities, as well as the restrictedness of the right of the media to exclusive reporting about events of public importance). As for the majority of other indicators, the legal grounds exist, but these indicators are nonetheless not fully realized or marred with problems. The most drastic deviations from European standards exist in the field of media economy and independence of the media from political influence, as well as in the area of labor and social rights and safety of journalists.

The situation that the new Government (that is yet to be formed) will face is appalling. What that government should definitely do is to put an end to the decay of the media scene by thoroughly analyzing the situation and launching the necessary reforms. Unfortunately, the media professionals are not overly optimistic. In view of the events and situations described herein, it is difficult to disprove their concerns.