LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for June 2012

ANEM

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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 Mladjan Dinkic, the President of the United Regions of Serbia political party (URS), has accused the daily Kurir of being edited by officials of the Democratic Party (DS) Dusan Petrovic and Slobodan Homen. The paper issued a press release claiming that Dinkic had sent a SMS message in the night between June 7-8 to the owner of the newspaper Aleksandar Rodic. According to the press release, Rodic understood the message as a threat that he would suffer the same fate as his father Radisav Rodic. Rodic the father spent almost two years in custody, under the accusation of abuse of office, before reaching a plea bargain agreement with the prosecutor. All this happened after Kurir announced that the Austrian Anti-Corruption Prosecutor had launched an investigation against businessman Martin Schlaff in relation to acquiring a stake in the Serbian mobile operator "Mobtel" and that the 357.9 million euro payment made to Schlaff under the contract signed by Dinkic (at that time the Finance Minister in the Serbian Government), was also being investigated. In the same text, Kurir cited an anonymous analyst claiming there were grounds for Serbia to deny to Schlaff the aforementioned payment for the stake in Mobtel, which was ultimately sold to the Norwegian company Telenor.

The Public Information Law expressly stipulates 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. Mladjan Dinkic was Governor of the National Bank of Serbia in 2000-2003, Finance Minister in the Serbian government in 2004-2006, as well as Economy and Regional Development Minister and Deputy Prime Minister in 2007-2011. He is also a MP in the newly formed Serbian parliament.

The text published in Kurir has conveyed almost certainly undisputed information that Schlaff is being investigated in Austria in relation to acquiring a stake in the Serbian mobile operator "Mobtel". The co-owners of Mobtel – the state of Serbia with 49% and Serbian businessman Bogoljub Karic with 51% - were parties to an arbitration dispute, in which the state tried to prove that its stake was in reality higher. In 2005, Karic sold to Schlaff his Russian company that was the owner in Mobtel. The same year, the state stripped Mobtel of its mobile telephony

license and bought out from the banks all the receivables claimed from Mobtel and converted these receivables into a stake in the company. This led to the situation where the state became a co-owner with 70% instead of the hitherto 49% of the shares. Mobtel was ultimately sold to Telenor for about 1.5 billion euros, 30% of which were paid to Schlaff for his stake in the company. In its text, Kurir claims that Dinkic, as the Finance Minister, was able to deny that payment to Shlaff. The newspaper cited its source, a pensioner from Belgrade described as an "telecommunications expert", who claimed that Karic's company, sold to Schlaff, never existed in the first place, namely that it was not registered with the proper register in Russia.

In accordance with the case law of the European Court of Human Rights in enforcing Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which was built from decisions such as the verdict in the case of Lingens vs. Austria from July 8, 1986, § 42, or Oberschlick vs. Austria (no.2) from July 1, 1997, § 29, or Lopes Gomes da Silva vs. Portugal from September 28, 2000 § 30, "the limits of acceptable criticism are wider in the case of a politician, than that of a private person". The politician, who is expressly mentioned in the verdict Lopes Gomes da Silva vs. Portugal, is definitely entitled to have his reputation protected, even when not in private capacity. However, the requirements for protection must be weighed in the context of the need to have an open debate about political issues and in light of the need to interpret narrowly the exceptions, under which freedom of expression may be restricted.

If any payments made to Schlaff were illegitimate (made by money from the state budget), then it is an issue of public interest and the media may release information, ideas and opinions about it freely, without being harassed by accusation and ambiguous SMS messages that may be interpreted as threats. It remains to be determined whether Kurir placed too much confidence in a source that might not be credible after all. Furthermore, the irregularities should be elucidated concerning the registration of a company that formerly owned "Mobtel". These irregularities, if any, were not identified by Mr. Schlaff's advisors prior to acquiring the company from the Karic brothers, or the state of Serbia, when it entered an arbitration dispute with the said company over the level of its stake. The same goes for the legal advisors of Telenor, which bought Mobtel on a tender, as well as for a dozen international telecommunication companies, which were interested in the same deal and which had purchased the tendering documentation for review in 2006, when Mobtel was privatized. Such shortcomings in the text released by Kurir may not, however, be used as an excuse for the crackdown on that newspaper. The tension caused by the utterly inappropriate reaction to the controversial article somewhat dwindled after the release of Dinkic's text in the daily Danas on June 11, in which the former finance minister explained his version of the events surrounding the privatization of Mobtel, this time in a much calmer tone. Dinkic's URS political party said in mid-June that Kurir had failed to properly publish their response to the information from the disputed text released on June 8. URS pointed to the

principle of equality of the information and the retort, involving the requirement to publish the response on the same page and equipped in the same way as the information that was being retorted. According to the Public Information Law, the failure to release or the improper release of a retort shall be subject to court protection in urgent proceedings. By the time we completed this Report, we did not obtain any information about whether URS or Dinkic had requested with a court order that their response be released. On the online portal of the Serbian courts, however, one may learn that on June 20, Dinkic sued Kurir and the Editor Sasa Milovanovic, claiming damages in the amount of 990.000 dinars.

1.2. In downtown Novi Sad, in the evening of June 22, unknown perpetrators sprayed the car of Kurir's reporter Zorica Radulovic with gasoline and set it on fire. Kurir reported, citing police sources that three persons had participated in the arson. One person poured the gasoline, another set it ablaze, while the third person waited in the car used by the arsonists. Kurir also claims that the police believe that the attackers followed the reporter the whole day, waiting for the right moment to strike. Everything happened at about 11.20 PM, in the parking lot in front of the building where the journalist lives. Zorica Radulovic had left the car and entered the building only moments before. Journalists' associations requested law enforcement to urgently shed light on this case and identify and punish the perpetrators and those who have ordered the arson.

It was impossible to discern the motives for the attack on Zorica Radulovic (her car) from the description of the accident released by the media. Until all the circumstances are elucidated, the prime suspects will logically be individuals that might be unhappy with the writing of Kurir, namely that of Radulovic. According to applicable regulations, 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, which involves attacking a journalist's property so as to obstruct their work. The perpetrators of the arson, if apprehended, could be charged for the felony of destruction and damage of somebody else's property, as well as for causing a threat against the general public, since the car was set on fire in the center of the city, in a parking lot in front of a residential building and, according to media reports, in the vicinity of certain public facilities, where an explosion caused by the fire could have caused a major threat to life and property. According to the Criminal Code, the destruction and damaging of somebody else's property is subject to up to five years in prison, while causing a threat against the general public in a place with a large number of people shall be subject to a fine and up to 1-8 years in prison, depending on the severity of the destruction/damage.

2. Legal proceedings

2.1. The journalist of the daily "Danas" Boban Karovic was interviewed by the police in relation to the charges pressed by Dr. Dragan Arsic, the former Director of the "Studenica" Health Center in Kraljevo. The daily reported that Arsic had pressed criminal charges against Karovic for spreading false news in the text "European Average or Bad Solution", published on November 1, 2011. In that text, the journalist researched the number of deceased patients in the Haemodialisis Unit of the aforementioned health center, amid the decision of the Director to purchase, instead of the haemodialisis solution formerly procured through the Health Insurance Institute, other solutions via a private firm. The text highlighted the fact that, according to the data obtained from the Public Health Institute in Kraljevo, in response to a request for free access to information of public importance, the number of deceased patients in the first half of 2011 only was 11 (compared to 4 in 2008, 6 in 2009 and as much as 22 in 2010). The text quoted the press release and the data of the "Studenica" Health Center, according to which the European mortality rate for haemodialisis patients is 15.6%, while in the USA it is 21.7%. The mortality rate in the said health center in Kraljevo was claimed to be at the level of between 13.9 and 17.05%. "Danas" claims to have obtained (after the release of the controversial text) a third list with the number of dialyzed and deceased patients, contained in a Health Ministry report. That list, "Danas" claims, contains data that differ dramatically from that in the previous two. The said Health Ministry report from 2011, cited by "Danas", says that, after the decision made in 2009 by the "Studenica" Health Center to start purchasing dialysis solution on its own (instead of going through the Health Insurance Institute), frequent operational stoppages of the dialysis devices started to occur. According to the report, the reason was the fact that the concentrated solution failed to fully dissolve in the water and the "crystal" residue would congest the filter. By the time we completed this Report, there was no information whether the competent prosecutor had decided to start proceedings against "Danas"' journalist.

According to Article 343 of the Criminal Code, the release or dissemination of false news, or claims resulting in panic or severe disruption of public order, or the precluding or severe obstruction of the enforcement of decision and measures passed by state bodies or organizations discharging public duties, shall be subject to a prison sentence ranging from three months to three years and a fine. Where the false news or claims are released/made on a public gathering or in the media, the prison sentence shall be 6 months to 5 years. Although the very circumstance that criminal charges have been pressed and that the police has started to collect information at the request of the competent prosecutor, still does not mean that proceedings will be launched, the mere fact that a journalist is under threat of criminal prosecution – for reporting about an issue of public interest, invoking government documents (the Kraljevo Public Health Institute) obtained in response to a request for free access to information of public

importance – should be a serious cause for concern. The latter particularly in the light of the fact that the controversial text, a serious investigative article, has been shortlisted for the annual investigative reporting award of the Independent Journalists' Association of Serbia (NUNS). The same felony (albeit differently formulated), was misused in the late 90s with the aim to muzzle the press. A landmark case was that of Nebojsa Ristic, the then editor-in-chief of TV Soko from Soko Banja, who was sentenced to one year in prison. The explanation of the sentence said that Ristic, as the editor-in-chief of a station that was shut down by a decision of the then Federal Telecommunication Ministry, was guilty of placing a Radio B92 poster on the building of his station saying "Free Press – Made in Serbia", depicting prison bars, alluding to the absence of freedom of press in Serbia. The court concluded that by placing the poster in a public area, Ristic had spread false claims that there was no freedom of press in Serbia. The procedure against "Danas"' Boban Karovic marked the comeback of the crackdown on journalists and the media – times we believed were long gone – which is a serious blow to freedom of expression in Serbia and the right of journalist to freely investigate events of public interest, analyze, collect information and freely publish stories about such occurrences.

2.2. On June 13, the First Basic Court sentenced, in repeated proceedings, Milos Radisavljevic Kimi, one of the leaders of the football club Partizan fans, to 16 months in prison for endangering the safety of B92 journalist Brankica Stankovic. The trial was repeated after the Appellate Court, in appeal proceedings, had upheld the former sentence of the First Basic Court (according to which Radisavljevic was sentenced to one year and four months in prison for the criminal offence of endangering safety and violent behavior) in the part concerning violent behavior, while scrapping the part related to endangering safety and violent behavior, finding that Radisavljevic was only proven to have participated in insulting the journalist, while death threats were not confirmed. This case concerns the incident on the football match Partizan-Shaktyor in 2009, when Partizan fans chanted Brankica Stankovic to be a "venomous snake that would fare the same as slain journalist Slavko Curuvija". A group of fans, led by Milos Radisavljevic Kimi, threw around a rubber doll representing the B92 reporter, which was ultimately ritually destroyed. Insults, threats and the "performance" with the doll was the fans' response to the Insider series "Impotent State" authored by Stankovic, which revealed that the police had filed hundreds of criminal charges against fan leaders that were never prosecuted. Brankica Stankovic has been under 24/7 police protection as of 2009, since it was determined that her safety was under threat. At the repeated trial, Stankovic examined as the injured party said that the shouting "You will end up just like Curuvija" could mean one thing only – "We will kill you" – Curuvija was sprayed with gunfire in 1999 in front of his apartment building and his assassins were never identified. "I will not press charges, since this is not my private problem and I'm not waging a war against anyone here", Stankovic said. "This is a problem of the state, which must protect every citizen. The court must take responsibility, since this decision will determine if we will continue having a system that protects hooligans and criminals. This trial

was initiated by the state, namely the prosecutor, and not by B92 or myself", Stankovic stressed. Ilija Drazic, the attorney of the defendant Milos Radisavljevic, said he would appeal the verdict sentencing his client to 16 months in jail. In his statement to the journalists, he pointed out to what he claimed to be an important detail – the fact that the aforementioned doll was in Radisavljevic's hands for merely 12 seconds. Milos Radisavljevic claimed at the trial that he had ordered the fans to stop singing the insulting song and he apologized for the remaining insults. We remind that Radisavljevic had fled the country after the first verdict and was arrested on February 21 in a café in downtown Skopje and extradited to Serbia.

The trial of Milos Radisavljevic is just one of the cases against the members and leaders of fan groups in relation to the events that ensued after the airing of the Insider series "Impotent State" on TV B92 in 2009. In that series, after reviewing comprehensive documentation obtained from the police, prosecutor and the courts, Brankica Stankovic and her team analyzed the fate of criminal charges the police had pressed against hooligan leaders. After the program was aired, Stankovic became the target of insulting chants on basketball and football matches and she was also threatened on social networks. At the football match Partizan-Shaktyor in December 2009, Partizan fans shouted that Brankica Stankovic was a venomous snake that would end up just as slain journalist Slavko Curuvija. The incident, which was transmitted live on national TV, ended up with a ritual stabbing of the rubber doll, which was previously kicked, punched and thrown around. Stankovic was placed under 24/7 police security, which is still in force after 2.5 years. However, the biggest controversy that angered journalists' and media associations was not related to Radisavljevic's criminal responsibility, but rather the dilemma of the Appellate Court whether the singing of the song threatening the journalist that she would be killed and the mauling of the doll symbolically representing that journalist (depicting the way she would be disposed of) represented a threat or a mere insult. In the aforementioned repeated sentence, the First Basic Court in Belgrade upheld the understanding that these acts constituted a threat. It remains to be seen, however, how the courts will rule in the pending proceedings related to this incident, since Radisavljevic is not the only person prosecuted in this case. The situation where specific actions are considered as a serious threat and work impediment by the journalists, while the court's opinions vary from seeing it as an insult to interpreting it as a serious threat, represents a grave menace for freedom of expression and may lead to increased self-censorship in the Serbian media.

2.3. On June 20, TV B92 announced that it had received the verdict of the Appellate Court in Belgrade upholding the earlier decision of the Higher Court in Belgrade, ordering the station to pay 350 thousand dinars in damages to a person mentioned in a police press release from 2008, which was cited by B92. The Belgrade based station reacted to the final verdict by saying that "it was a continuation of the inacceptable practice of Serbian courts in disputes concerning the

conveying of information from government documents and particularly from police press releases". B92's protest over the verdict was supported by media and journalists' associations, as well as by the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic. The latter said it was inacceptable for journalists and media to be fined for having faithfully conveyed the content of communiqués or documents issued by state authorities, thereby allegedly hurting someone's honor or reputation.

In the concrete case, B92 conveyed information from the police press release no. 284/08 dated September 24, 2008, which remains available to this day in the press releases' archive of the Serbian Interior Ministry's website at http://www.mup.gov.rs/domino/arh2008.nsf/24sep08mup. Conveying the press release in question, B92 reported that the police had identified a group believed to have attempted to assassinate V.M. from Raska and arrested Slavisa M. (1973) from Raska, Zdravko N. (1977) from Novi Pazar and Dragan R. (1979) from Kraljevo. The verdict against TV B92 was passed in the case brought up by Zdravko Niciforovic from Novi Pazar, who claimed his honor and reputation were tarnished, since the criminal proceedings against him were ultimately suspended. He also dubbed "untrue" the information that he had a police record due to his involvement in serious felonies – such as drug trafficking, murder and car theft. Article 82 of the Public Information Law stipulates that a journalist, responsible editor and legal person – founder of the public media – shall not be held liable for damages if false information was faithfully conveyed from an official document, including, but not limited to, records of competent state authorities. Furthermore, Article 74 of the Public Information Law says that if a public media has reported that criminal proceedings have been initiated against a certain person, that person shall be entitled, after the completion of the trial, to request from the responsible editor to publish information about the suspension of the trial, rejection of the indictment or release from charges. In the concrete case, Zdravko Niciforovic did not contact the responsible editor of TV B92 with the request to release the information that the criminal proceedings against him were suspended. This verdict is typical in the sense that it concerns an issue where Serbian courts differ the most from European freedom of expression standards. Namely, the case law of the European Court of Human Rights (ECHR), including a series of verdicts, such as Bladet Tromsø and Stensaas vs. Norway dated May 20, 1999 or Colombani vs. France dated June 25, 2002, has unambiguously been that the media or journalist citing competent authority documents (and the Ministry of Interior definitely is a competent authority in our case) shall not be obligated to check the veracity of defamatory and libelous claims and shall not be held liable for publishing such claims. More specifically, in paragraph 68 of the verdict in the case Bladet Tromsø and Stensaas vs. Norway and paragraph 65 of the verdict in Colombani vs. France, the court expressly stated that the media must be entitled, when contributing to a debate about issues of public interest, to confide in the veracity of official reports and communiqués, without being obligated to independently check the content of such reports and communiqués. Otherwise, the ECHR says, the vital role of

the media to work in the interest of the public would be threatened. In keeping with such practice, the Serbian Public Information Law, in Article 82, foresees the liability of editors, journalists and the media for damage in such cases. In practice, however, Serbian courts often ignore that provision, as evidenced by the verdict in the case we are reporting on. As B92 says, this has created a situation where no media in Serbia has been exempt of court fines for passing on police communiqués, the same ones that are published on the MUP's official website, without the Ministry suffering any consequences. B92's press release goes on saying that such verdicts will ultimately not be in the interest of the persons whose names are cited in untrue or incomplete police communiqués, since their interest may only be to obtain satisfaction from the police (since the mistake is theirs), rather than from the media that confided in the police. It is not in the public interest to conceal the omissions of the police by fining the media for having merely conveyed a communiqué. Finally, it would not be in the public interest either that the media keep quiet about police activities in order to avoid risking paying fines stemming from police blunders.

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. The Nis-based Center for the Protection of Consumers "Forum" called on the Serbian President Tomislav Nikolic to fulfill his pre-election promise and revoke the TV subscription fee. The possibility for the public service broadcaster (PSB) to be funded from the state budget was announced several months ago by Nikolic's close associate Jorgovanka Tabakovic, who is the head of the Serbian Progressive Party's economic team. Coinciding with Forum's request, came the statement of Zoran Ivosevic, the former Supreme Court Judge, that the subscription fee was unconstitutional, "Kurir" reported. "The Constitution says that all citizens may freely and without obstruction enjoy their belongings, including money. If someone takes our money without any grounds whatsoever, it is in contravention of Article 58 of the Constitution. If I had a TV set and used it for watching RTS, this would represent grounds for charging the subscription fee, although this is not 100% reliable, since they do not keep records of who has a TV set and who does not. If someone forces the citizens to pay for something they are not watching, it is

tantamount to imposing a tax on income they are not generating and it violates their right to own their money", Ivosevic says. In his view, the subscription fee is also in breach of Article 21 of the Constitution, guaranteeing equality before the Law. "How can we be equal, if you have a TV set and I do not, but we both pay the subscription fee?" Ivosevic asks. Meanwhile, the South East Europe Media Organization (SEEMO) reacted by issuing a press release, saying that scrapping the subscription fee for RTS would open the door for political meddling in the work and the program of the PSB. International experience has shown that other sources of financing (e.g. from the state budget and parliament) are unable to guarantee editorial independence, SEEMO said, reminding that the "PSB is not a service of the state or political parties. The subscription fee is the guarantee that the PSB may remain independent", the Secretary-General of the organization Oliver Vujovic concluded in the press release. Echoing his remarks, Predrag Markovic, the member of the Managing Board of RTS said that revoking the subscription fee and switching over to budget financing would make RTS loose its PSB function. RTS Director General Aleksandar Tijanic said that the PSB needs 60 million euros from the subscription fee annually to operate, as well as an additional 23 million euros from advertising.

This heated debated started amid the backdrop of the possibility of RTS starting with forced collection of dues for unpaid TV subscription fee. According to some reports, the collectability of the fee plummeted to below 40%. We remind that the Broadcasting Law envisages that the activities of PSB institutions concerning the realization of the public interest shall be financed from the subscription fee. The obligation to pay the subscription fee applies to the owners of radio and TV sets. In that sense, the radio-television subscription fee is not a fee charged for a service (in the erroneous interpretation of Judge Ivosevic), but rather a means of financing the public interest provided for by Law. This means of financing is almost a universal one, since 98,9% of households in Serbia owns a TV set, according to data obtained from the Republic Statistics Institute's Survey on the Use of ICTs in 2011. A much more pressing and often neglected problem with the subscription fee and funding of the PSB is the issue of the reasonability of the business and the operations of these institutions and, generally speaking, the conformity of the means of financing thereof with state aid control regulations. We remind that, when the Media Strategy (adopted last September) was drafted, the most serious objections of the European Commission to the content of the Strategy concerned the non-conformity of the text with EC Communication on the Application of State Aid Rules to Public Service Broadcasting) from 2009. The Communication says that public service broadcasters are not comparable to public services in any other sector. There is no other service that is accessible to the majority of the population, while at the same time providing that much information and content and influencing both individuals and the public opinion. Broadcasting is, for a sizeable portion of the population, the most important source of information, which contributes the public debate and helps the citizens participate in the public life. In such a context, the independence of broadcasting is of paramount importance for the realization of freedom of

expression. On top of that, regardless of how the PSB is financed (from the budget or from the subscription fee, with financial aid from the state or by writing-off its debts), each such measure constitutes state aid. If the latter undermines or threatens to undermine competition on the market, it is typically banned by state aid control regulations. The aforementioned EC Communication on the Application of State Aid Rules to Public Service Broadcasting defines the conditions under which state aid to PSBs may be allowed in the first place. One of such conditions is to have a precisely defined framework for what constitutes a public service broadcaster, so as to enable to clearly ascertain, for each particular activity of the institution discharging the role of a PSB, if it is part of the said framework or not. Furthermore, on top of being precisely defined and entrusted by an official binding act, the role of the public service broadcaster must be performed transparently and under sufficient supervision, particulary when it comes to quality. Transparency requirements related to state aid also impose the necessity to separate the accounting for the operations of PSB institution within its PSB role and other activities of that institution outside of that framework. Furthermore, state aid must not exceed the real price of the service, meaning the PSB institutions are not overpaid, bearing in mind the commercial revenues they generate. Financial mechanisms are also needed to effectively control it. Finally, it is necessary to prevent the activities of these institutions that may undermine competition, such as dumping prices for advertising space and the like. In that sense, the issue of the subscription fee for radio and television is not in the absence of legal grounds or undermining the equality of citizens before the Law; the problem lies in the fact that the mandate of the PSB is not precisely defined; moreover, the operation of PSB institutions in Serbia is not transparent or effectively supervised; there is no protection from subsidizing commercial activities of these institutions with the funds intended for the functioning of the public service; we do not know the price of the PSB services and hence we do not know if they are being overpaid. Finally, there are no control mechanisms to prevent PSB from abusing their specific position on the market. A simple transition to budget financing (instead of the subscription fee) would not solve any of those problems. On the other hand, in the absence of a clearly defined mandate, supervision and transparent financing, the guarantees of editorial independence of PSB institutions will remain a dead letter on paper.

3. Law on State Aid Control

The Beta and FoNet news agencies called the State Aid Control Commission (SACC) to investigate each instance of state aid received by the public company "Tanjug News Agency" in the last two years. Beta and FoNet believe that state aid to Tanjug is undermining free market competition, which is in contravention of national laws and international documents. Two private agencies have requested the Commission to ascertain if the aid to Tanjug was lawfully allotted, whether it was permitted and if it was not, to introduce measures in order to reclaim

the granted aid. Beta's and FoNet's request also cited the information obtained from the Ministry of Culture that Tanjug had been allotted 216.715.500 dinars of aid from the budget in 2010.

The Law on State Aid Control was adopted in 2009, with the aim of ensuring free competition on the market, as well as the transparency in allocating state aid. It defines state aid as each actual or potential public expenditure or lessened realization of public revenue placing a state aid beneficiary in a more favorable position on the market than his competitors, thus undermining or threatening to undermine competition. The Law says that each instance of state aid undermining or threatening to undermine competition shall be illicit. Exceptionally, state aid shall be permitted if it is of a social nature and allocated to individual consumers, without discrimination on the basis of the origin of the goods/product constituting the aid, as well as if such aid is allocated in order to remove the harmful consequences caused by natural disasters or other contingencies. Another exception may be state aid allocated in order to improve the economic development of a particular area of Serbia with extremely low standard of living or high unemployment; remedy a serious disruption in the economy or realize a particular project of major significance for the Republic; improve the development of certain economic activities or economic areas in Serbia, provided that it does not seriously undermine or threaten to seriously undermine market competition; as well as in order to improve and preserve cultural heritage. The Law foresees that state aid control shall be conducted by a Commission, whose members are appointed by the Government. A request to the Commission to initiate a procedure of subsequent control, under the Law, may be submitted by any person with a legal interest. In that sense, the Beta and FoNet news agencies are eligible for submitting a request for subsequent control of state aid allocated to their market competitor – the state news agency Tanjug. If the Commission establishes a particular instance of state aid to be marred with irregularities, it will pass a conclusion with proposed measures and a deadline for remedying such irregularities. If the conclusion is not complied with, the Commission is authorized to pass a decision ordering the allotted funds constituting state aid to be repaid. The problems with the financing of Tanjug are almost identical to those in the case of RTS, as indicated in the previous segment of this Report concerning the enforcement of the Broadcasting Law, especially in relation to the TV subscription fee. The framework of public interest activities entrusted to the state news agency is vaguely defined. There is no transparent supervision of Tanjug's business operations or protection from subsidized commercial activities with the money intended for the performance of activities of public interest. The price of public interest activities performed by Tanjug is unknown; hence, we do not know if the state is overpaying Tanjug. The procedure of subsequent control of state aid allocated to Tanjug – if the Commission finds that there are grounds for having such a procedure – would be the first such procedure in the Serbian media sector.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

The new Serbian Parliament was constituted on May 31. However, it did not sit in June and hence no new regulations significant for media sector were debated. In late June, nonetheless, the Acting President of the Serbian Progressive Party (SNS) Aleksandar Vucic announced that the revoking of the restrictive Public Information Law would be one of the priorities of his political party in the new government. Vucic told the daily "Politika" that media freedoms in Serbia would be one of the key issues he would insist on. "What matters to us is to have freedom of press. This is a top-five priority for us and we will not give up on that. The remaining ones are obtaining a date for starting talks with the EU, fighting corruption, addressing budget problems both in terms of revenues and expenditures, the enforcement of the rule of law, guaranteeing ethnic minority rights, as well as enhancing agriculture," Vucic said. He stopped short of giving any details and deadlines for the changes to the media law. The Vice-President of NUNS Jelka Jovanovic said media associations had certain objections to the existing law and that NUNS had proposals as to what should be regulated and how. She added that it was not responsible to announce that the Law would be revoked, since media regulations ought to exist. In her words, the restrictive provisions of the Law are not in force anymore and hence should not be invoked (they were scrapped by the Constitutional Court). The Vice-President of UNS Petar Jeremic said that he was encouraged by Vucic's statement and that he expected the Parliament to invalidate the controversial law soon. "We were pleasantly surprised that the SNS did not vote for the unconstitutional amendments to the Public Information Law three years ago," Jeremic said, adding that UNS and the Media coalition were expecting that the new government started to implement the Action Plan accompanying the Media Strategy and amend the remaining regulations envisaged by that Plan. They also expect to be consulted, along with other media and journalists' associations, in the process of drafting the media laws.

The legend that Serbia once had a law on the press consisting of one sole article, stipulating that press shall be free and the conception according to which media laws should not go into more details than that, was the topic of Professor Vladimir Vodinelic's article "Journalist Codes and Media Law in Serbia: Insufficient Self-Definition", released in "Pravni zapisi", the review of the Faculty of Law at the University "Union" in Belgrade, no. 1/2012 (see: http://www.pravnifakultet.rs/images/2012/Zapisi-1-2012/Vladimir V. Vodinelic NOVINARSKI KODEKSI I PRAVO MEDIJA U SRBIJI.pdf). The fact that this legend is still popular and that some understand it as a desirable model, according to Vodinelic, "is evidence of the fact that many do not understand neither freedom of expression nor other values, which may be in conflict with that freedom". He went on saying that the law ought to ensure and prescribe the respect of guaranteed freedoms, forbid everything that may violate that freedom, as well as provide for protective mechanisms where that freedom was

breached. The Media Strategy indeed provides for laying down draft laws regulating the domain of public information, i.e. not only revoking the old law but also the adoption of a new one. That law should, first and foremost, define the public interest in the media sphere, ensure the transparency of media ownership and provide for the mechanisms for precluding illicit concentration of media ownership. Nine years after the passing of the actual Law from 2003, it should also confirm the commitment of the Republic of Serbia to achieve, in protecting freedom of expression, the standards laid down by Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the case law of the ECHR in enforcing that Article. Therefore, we believe that it would not be good that the representatives of the new ruling majority should aim at complete deregulation of the media sector (when hinting at revoking the Public Information Law), but that they should rather work on passing new regulation in a process which media and journalists' associations are fully entitled to take part in.

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 Republic Broadcasting Agency (RBA) initiated a procedure against TV B92 and TV Prva over the broadcasting of the commercial of the Serbian State Lottery (SSL), which alluded, in the opinion of the Agency, to group sex. "According to the Advertising Law, a complaint shall be filed against a broadcaster for economic offense and misdemeanor if, after considering their explanation, we determine that the law has indeed been breached. Most importantly, the outrageous content must not be aired again and for that we need the consensus of the members of the Council", said Goran Karadzic, the Deputy Chairman of the RBA Council.

The Advertising Law stipulates that the RBA shall supervise the enforcement of the Law's provisions governing advertising on television and radio and set forth detailed rules on advertising and sponsorship on radio and television. In our previous reports, we have written about one of the key problems of oversight – the fact that the RBA has never adopted detailed rules on advertising on radio and television. The Advertising Law says that an advertisement may not contain statements or visual depictions causing, in the circumstances of a given context,

indecent associations, especially with regard to the content of the advertisement, the manner and means of advertising, the sensitivity of the persons whom it was addressed to, as well as the type of advertiser, activities, product or services that are being advertised. In the concrete case, there is no "visual depiction" causing an association that may be considered indecent. There is, however, a statement that may be understood as an invitation to group sex. Considering that sexual allusions are a common occurrence and are frequently resorted to in marketing, the question is how will the RBA and/or the courts (if complaints result in legal proceedings) decide if the advertisement in question is indecent or not in the given context, especially with regard to the content of the advertisement, the manner and means of advertising, the sensitivity of the persons whom it was addressed to, as well as the type of advertiser, activities, product or services advertised, namely in the concrete case the services of online football betting. The concern is that the RBA and the courts do not have proper mechanisms to have an objective assessment of decency or indecency, as evidenced by the fact that this is the first time since the adoption of the Advertising Law that such an issue emerged with regard to television advertising. It was never brought up in relation to much more explicit "visual depictions" causing indecent associations, e.g. for ice cream advertising. It is therefore necessary for the RBA to finally adopt detailed rules on advertising and sponsorship on radio and television, in order to avoid arbitration proceedings, or even proceedings under the pressure of various power groups. It seems that the complaints over the aforementioned advertisement should be considered in a wider context of games of chance regulation. Namely, since the adoption of Games of Chance Law in 2004, the right to organize online games of chance in Serbia belongs to the State Lottery, which – with prior consent of the Government – may hire operators to organize such games. These rules were somewhat liberalized by the new Games of Chance Law from 2011. Until recently, at the expense of the budget and at the cost of considerable outflow of money from Serbia, the State Lottery did not use its monopolistic right to organize online games of chance. The project in cooperation with one of the largest international online betting operators Sportingbet, which was advertized in the controversial commercial, was an attempt by the State Lottery to penetrate the online betting market. Accordingly, the reactions to the controversial commercial might be observed, in the context of insufficiently clear regulation of television and radio advertising, as an attempt of the competition to make the TV stations, through pressure on the RBA, to renounce from advertising the service, which would, in turn, affect the level of usage thereof.

2. The Press Council

Between September 2011 and late June 2012, the Complaints Commission of the Press Council received 25 complaints on texts published in print media. At a press conference held on June 28, the Commission said to have reached a decision in 14 cases, 4 cases were pending, while the rest

were ruled to be ineligible. Of the cases that were solved, a decision was passed in four, establishing that the Journalists' Code of Conduct (JCC) was violated (all cases involved the daily newspaper "Press"). In the remaining cases, the Commission found that the JCC was not breached. Of the 14 complaints that were ultimately ruled upon, four were filed against "Vecernje Novosti" and "Press", three against "Politika" and one against "Nin", "Blic" and "Vreme". Four complaints that are pending were filed against "Blic", "Press", "Alo!" and "Vecernje Novosti".

The same day, on June 28, the Commission passed another two decisions. In the first case, acting upon the complaint filed by the poet Blagoja Bakovic, the Commission found that by publishing the texts "The Director Likes the Book about Nole Inviting People to Bet", "When I Grow up, I Will Bet on Nole" and "Children, Bet All Your Money on Nole" did not violate the provisions of the JCC. Meanwhile, one member of the Commission was of the opinion that the JCC was nonetheless violated by the publishing of sensationalist headlines, which did not correspond to the content of the texts. In the other case initiated by the Editor of the anti-corruption portal "Whistle" Vladimir Radomirovic, the Commission found that "Vecernje Novosti" had breached the JCC in the text "Development Bank of Vojvodina Keeps Quiet about Dirty Money!?" published on June 13, 2012 in the online edition and on June 14 in the print edition. The Commission says that the daily neglected the obligation of the journalists and editors to respect copyright and cite a source when reproducing a piece of information from another source. What may particularly contribute to furthering the reputation of the Commission is the fact that both decisions were passed on June 28, less than one-month from the release date of the contested texts. Within that time, an "ordinary" court of law would not even had scheduled the first hearing, let alone held it. Therefore, in view of the swiftness of the procedure, the Complaints Commission of the Press Council becomes a much more favorable option than the courts for those seeking moral satisfaction.

STATE AUTHORITIES

3. *The Ministry of Culture, Media and Information Society*

In last month's Monitoring Report, we wrote about the Ministry of Culture, Media and Information Society being late in announcing the results of the open competition for the co-financing of media projects in 2012. Namely, five open competitions were called as early as back on November 1, 2012, while the deadline for submitting the applications expired on December 1, 2011. It was only after a joint press release on May 4 by media and journalists' associations, demanding from the Ministry to reveal the outcome of the competition that the Ministry passed and released on May 8 the decision on the allocation of funds for three out of the five calls. For

the remaining two calls for co-financing of projects – programs in the area 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 after two hours, without any explanation whatsoever. In June, however, a completely new decision was released, allegedly passed on June 19 and containing completely different results of the open competition. More specifically, as much as 11 applicants, who received almost 6 million dinars under the May 15 decision that was abruptly removed from the Ministry's website, found themselves on the list of applicants that were denied funds. Meanwhile, 25 applications which, under the May 15 decision did not receive any funds, were now allocated (with the decision dated June 19) slightly more than 6 million dinars. Moreover, in one case, the applicant that was on the list of beneficiaries in both decisions received under the new decision almost half a million dinars more than under the old one. The Ministry has failed to provide any explanation whatsoever as to what actually happened and hence the gap between the two decisions that were released.

4. Commissioner for Information of Public Importance and Personal Data Protection

On June 4, the Commissioner for Information of Public Importance and Personal Data Protection confirmed in a press release that he had commenced, through authorized persons, oversight of the enforcement of the Law on Personal Data Protection in the operations of mobile operators in Serbia. The Commissioner called it a large-scale endeavor, which started in March and is still underway. Finally, he said he would inform the competent authorities and the general public about the results once the operation was completed. Oversight involves all mobile operators, as well as land line operators with wireless access. What oversight aims at finding is not traditional eavesdropping, but rather illicit access to stored communication data, so-called call logs, i.e. who has communicated with whom, by which means, when, for how long and from where. The Commissioner believes that data processing too falls under the constitutional guarantee of inviolability of communications, which is also the position of the Constitutional Court, as evidenced by the recent decision on the unconstitutionality of certain provisions of the Law on Military-Security Agency and the Military-Intelligence Agency. Even before the oversight was completed, the Commissioner was able to reveal that the number of cases, where data was accessed without a court order, was quite high.

The Law on Electronic Communications stipulates that the operators are required to store electronic communications data concerning the source and destination of the communication, the start thereof, duration and completion, the type of communication, the equipment used, as well as the location of the mobile equipment used. This data shall be stored for the purposes of a potential investigation, uncovering of criminal offenses and ultimately criminal proceedings, in accordance with the law governing criminal proceedings, as well as for the purpose of protecting

national and public security of the Republic of Serbia, in accordance with the laws regulating the activities of security agencies of the Republic of Serbia and the operations of internal affairs authorities. Since under the laws, regulating the activities of security agencies, decisions are also passed by the directors of these services and not only the court, as provided for by the Constitution, the Commissioner also passed initiatives in the past to assess the constitutionality of both the Law on Electronic Communications and the laws directly pertaining the work of security services. This issue is extremely important for journalists and the media due to the fact that access to stored data renders the protection of journalist sources futile. Namely, according to the Public Information Law, a journalist shall not be required to divulge his sources, unless the information received from the said sources pertain to a criminal offence or a perpetrator, of a felony subject to a prison sentence of no less than five years. Uncontrolled or loosely controlled access to stored data/call logs with information as to who has the journalist communicated with, by which means, when, for how long and from where, would mean that the right of that journalist to protect his/her source will remain just on paper, easy to circumvent in practice. The dramatic consequences this may have for freedom of expression are self-evident.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

5. Serbian music authors' organization – Sokoj

The new tariff of fees charged by Sokoj for exploiting music works in radio and television stations, which came into force in early 2012 (determined by the Sokoj managing board, since the negotiations with ANEM as the representative association of users, failed to produce an agreement), entails a drastic and multiple increase of the amount of minimum fees for the usage of music works. Since the new tariff was criticized by the public, Sokoj started a fresh round of negotiations with ANEM, this time about the discounts on the minimum fees. During the course of the negotiations, Sokoj did not issue any invoices to the stations. In late June, however, the stations started receiving the invoices for January and February, calculated with lesser discounts than those that were negotiated about, although the talks were still underway, without any of the parties announcing to have suspended them. ANEM called on the Intellectual Property Office to oversee the work of Sokoj and determine why the issued invoices did not factor in the discounts that were already approved by Sokoj's managing board (as ANEM has learned).

Under the new Sokoj tariff, the average amount of the fees due by radio and television stations, (which are determined as a percentage of the revenues of each particular station) has gone up by 6.67% for television and 16.67% for radio. However, this is not the biggest problem associated with the new tariff. The increase is much higher with the minimum fees currently

being paid by three quarters of all radio and television stations in Serbia. While under the previous tariff, the minimum fee for the exploitation of music works on television amounted to 9.000 dinars per month, according to the new tariff, TV stations ought to pay between 15.400 and 66.000 dinars, depending on the population and the level of economic development in the coverage zone. This constitutes an increase of between 71.11% and up to 633.33%, which is as much as 352.22% in average. It is even worse for radio stations, since the minimum fee, instead of the hitherto 6.300 dinars per months, skyrocketed to between 15.400 and 66.000 dinars, which amounts to an increase of between 144.44% and 947.62%, or 546.03% in average! According to the information received by ANEM during the talks, Sokoj's managing board accepted, as early as back on May 10, the discounts to the minimum fee of up to 45%. It also accepted that such discounts did not exclude the 10% discount for timely payment (already provided for by the tariff) or the coefficients depending on the level of economic development of the particular region where the station is located. Sokoj's managing board confirmed that these discounts would be cumulative up to the total amount of 75% of the actual fee tariff. However, instead of being able to accumulate various discounts up to the minimum level of 5.500 dinars per month, with the late-June invoices issued by Sokoj, stations in small towns in poor regions in the south or east of Serbia were charged 15.400 dinars (which could be reduced to 12.320 dinars if the fee is paid promptly). It seems that the Intellectual Property Office will have to find out how and why Sokoj charged higher fees than those approved by its own managing board, as well as what is the outcome of the five-months-long negotiations about the discounts to the minimum fees determined by the tariff.

V THE DIGITALIZATION PROCESS

In early June, the Ministry of Culture, Media and Information Society released new Rulebook on the Switchover from Analog to Digital Terrestrial Television Broadcasting and Access to Multiplex in Terrestrial Digital Broadcasting, a document of paramount importance for the digitalization process. The new Rulebook was necessary after the adoption of the amendments to the Digitalization Strategy in March and hence these two texts were almost simultaneously developed. However, after RATEL submitted its objections concerning the procedure of adopting the Rulebook, the Draft was withdrawn, only to be adopted three months after the adoption of the Strategy. The Rulebook in its current text foresees the distribution of broadcasting channels by coverage zone for the first two multiplexes that will be put into operation during the switchover to digital broadcasting. The Rulebook also envisages that the setting up of new digital networks and additional multiplexes (if any) will be considered only after the completion of the switchover process, in keeping with the Law on Electronic Communications, while the additional multiplexes will be established only where technically and commercially appropriate. According

to the Rulebook, the switchover will take place by stages, instead of in just one day in the entire territory of Serbia, as provided for in the former Rulebook from February 2011. Furthermore, the Rulebook governs the procedure for the replacement of broadcasting licenses so as for them to remain valid after the switchover. After the amendments to the Digitalization Strategy, the adoption of the Rulebook constitutes a new step in redefining the legal framework regulating the whole process. The next step is supposed to be the adoption of the Switchover Plan, a document foreseeing the timeline of the switchover stages in each of the regions. The adoption of the Switchover Plan, under the Strategy, shall be preceded by consultations between the Ministry, RATEL, the RBA, the public company "Broadcasting Equipment and Communications", public service broadcasters and holders of broadcasting licenses. The consultations are expected to commence shortly after the new Government is constituted.

VI THE PRIVATIZATION PROCESS

Although the deadlines, provided for by the Action Plan accompanying the Media Strategy (concerning issues directly related to the privatization process), are slowly expiring, the authorities have still not issued any reports about the performance of the activities envisioned in the said Plan. We remind that the Plan provides for a review, within 10 months of the adoption of the Strategy, of the possibility to amend the Law on the right to free shares and financial compensation the citizens receive in the privatization process. This is extremely important, since it addresses the problem of public media for which there are no interested buyers. The reason for the lack of potential investors (but also the proof that no issue in the Serbian media scene may be addressed separately and without an insight in the bigger picture) is explained in a text originally posted on the "Juzne vesti" online portal, which was later conveyed by the daily "Danas". The text concerns the funding of the media in Nis from public sources. According to research done by "Juzne vesti", almost 30% of the total cumulative revenue of the largest media in Nis stems solely from contracts concluded with various state institutions. The portal has posted the statement of the President of NUNS Vukasin Obradovic, who said that in the situation of economic transition and depleted market, on one hand, and the excessive number of media on the other, the state, municipality or city have become the main patrons of the media. Owing to the unfinished transition, local authorities control the public media by appointing obedient managers affiliated to political parties, enabling them to directly control editorial policy. "That's not enough for them", Obradovic says, "and so they have set up such a system for allocating money for public information, which aims at indirectly subjugating the few remaining media. By giving away taxpayers' money without open competition, clear criteria and independent commissions, along with offering contracts with public companies, they have clearly indicated that only obedient media – those who have a "constructive" approach to local governments – will

receive funding. The pinnacle of cynicism is that the government is aware that the media may not survive without assistance from local government on a depleted market. They are therefore using that situation to completely neutralize disobedient media", Obradovic says. In his opinion, the end result is that in most Serbian towns "only those media who accept the role of local governments' 'notice boards' get to survive". According to the research of Juzne vesti, the model utilized in Nis involves the conclusion of so-called "contracts on increased media coverage". Such a contract has been concluded between many Nis-based media and almost all public companies, institutions and municipalities in the city. Under the contract, the media tacitly commit to providing a positive coverage of their "clients". Nonetheless, the lion's share of the money goes again to the public municipal television – more than half of the overall amount tracked by Juzne vesti. In any case, this research too has shown that privatization *per se* will not suffice to eliminate the influence of the government on the media; it is merely one of the processes that must be carried out simultaneously and in coordination with other processes, namely in this case with the transition to the model of project-based financing of the public interest in the media sector, as provided for by the Media Strategy.

VII CONCLUSION

The first six months of 2012 have been irrecoverably lost for the media reforms in Serbia. Almost nothing provided for by the Media Strategy was accomplished. Meanwhile, we had elections that resulted in a new parliamentary majority. The new government faces a serious task that should involve, among other things, the reform of the regulatory framework and the withdrawal of the state from ownership in the media, the reform of public service broadcasters, state aid control, as well as suppressing any monopolies on the media market and related markets, such as the advertising market and the media content distribution market. The first messages the media have received from the new ruling coalition, however, are insufficiently clear and slightly contradictory – from the accusations by Mladjan Dinkic, whose party will be part of the new government, to the hints by Aleksandar Vucic, the leader of the strongest party in the new ruling coalition, that the media sector will be completely deregulated. His attitude to media freedoms, namely the manner in which his government will insist on addressing them (through deregulation – scrapping the Public Information Law) shows that, for the time being at least, the new government does not understand the problems faced by the media. They are particularly mistaking if they believe deregulation to be a magic stick that will help them deal with the many problems that have accumulated over the years. On the contrary, Serbia needs a comprehensive and meaningful reform of the regulatory framework and not merely the repealing of laws. It remains to be seen if the new government will be capable of addressing these needs and requirements.