

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. In the evening of October 16, a Molotov cocktail was thrown in the yard of the house of Damir Dragic, the Director of the daily newspaper "Informer". The fire destroyed the car of Dragic's father, but nobody was injured. Dragic said it was "an attack on Informer's editorial policy and a classical mafia-style warning". A similar attack happened several days later, on October 22, when unknown persons threw a Molotov cocktail on the terrace of the flat of Biljana Vujovic, anchor on the TV Kopernikus station. Vujovic managed to put out the fire and save the apartment, which was also occupied by her son and mother at the time of the attack.

The fact that the perpetrators of these attacks have not been identified, particularly in the case of throwing of Molotov cocktail in the yard of the "Informer" director's family home, leaves room for speculation about motives and their connection to the reporting of this. According to the Public Information Law, it is forbidden to put physical or other type of pressure or influence on media and the staff thereof so as to obstruct their work. Unfortunately, many previous unsolved cases of attacks on journalists may objectively intimidate journalists and result in self-censorship. On the other hand, the atmosphere of impunity encourages potential attackers. The provision of the Public Information Law, according to which the court will rule about violations of the freedom of public information in urgent proceedings, remains merely a word on paper in cases where the attackers are not identified, which means that the circumstances and motives are not elucidated either.

1.2. A group of a dozen men, who introduced themselves as the security guards of the House of Culture, prevented the crew of TV B92's "Insider" to attend the session of four municipalities from the north of Kosovo in Leposavic. The self-professed security guards said *they were ordered* not to let them in. The session was otherwise open to the public. The representatives of other media reported freely from the session, which coincided with the airing of the investigative series "Insider – Patriotic Theft" on TV B92, about cases of embezzlement of the money the state had allocated for helping the Serb community in Kosovo and Metohija. At the session, the councilors condemned what they called "an orchestrated campaign by some media with the aim

of demonizing the entire Serbian people in Kosovo, with a special emphasis on the Serbs in the North, in relation to the expenditure of budget resources". ANEM also condemned discrimination and the practice to arbitrarily disqualify a serious investigative work as "orchestrated campaign", while rejecting the evidence presented in the series by specific people alleging that they constituted demonization of the entire Serbian people in Kosovo".

The Public Information Law expressly stipulates that public information shall be free and in the interest of the citizens, 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. The same Law explicitly provides for the obligation of local self-government bodies and councilors to make information about their work accessible to the public, under equal conditions for all journalists and all media, without discrimination. Unfortunately, the practice where each instance of criticism of government embezzlement is painted as an "orchestrated campaign" or witch-hunt (with the only result being discrimination and pressure against unsympathetic journalists and absence of condemnation of such behavior) discourages the journalists and the media in general. In the concrete case, the President of the municipality of Kosovska Mitrovica Krstimir Pantic apologized to the "Insider" team on his personal behalf and on behalf of the remaining three presidents of the municipalities from the north of Kosovo for the incident. He said that the presidents of the municipalities of Kosovska Mitrovica, Zvečan, Leposavić and Zubin Potok were not aware that the B92 team had been prevented from entering the premises and denied having any knowledge as to who had ordered the security not to let them in. Unfortunately, the whole affair ended with Pantic's apology and no investigation was made to identify who ordered that the journalists of a particular station and program be discriminated against and prevented from doing their job. The journalists of "Insider" issued a press release saying they had determined that the people that prevented them from entering the premises, where the session was held, were not employees of the Culture House as they claimed, but employees of the municipality.

1.3. The official of the Serbian Progressive Party (SNS) and member of the City Council of Nis, Milos Bandjur, called the police to request from the online portal "Juzne vesti" and the daily "Blic" to reveal the source of the information they had published about how Bandjur was sentenced (the sentence is not final) before the Basic Court in Kosovska Mitrovica last March to 6 months in prison, for embezzlement of the funds of the trade union of the Technical Sciences Faculty in Kosovska Mitrovica, where Bandjur was the president. Bandjur, an Assistant Professor at the same Faculty, confirmed that such sentence was indeed delivered, claiming he was a victim of a "political trial". He also said that back on December 22, 2011, just a few hours before

he was supposed to head from Nis to the trial in Kosovska Mitrovica, somebody set his car on fire. On October 17, only a day after the news was published on online portals addressing the journalists in the premises of the SNS in Nis, Bandjur called the police to contact the journalists of "Juzne vesti" and "Blic", claiming that the person that leaked the information about the verdict to the media was the same one that had ordered his car to be set on fire in late December last year.

According to the Public Information Law, a journalist is not obligated to disclose information about his source, unless the information obtained pertain to a criminal offense/perpetrator of a criminal offense subject to no less than five years in prison. In the concrete case, it is a paradox to require a journalist to reveal the source of a piece of information that is public. Namely, the trials in Serbia are, as a rule, open to the public and held behind closed doors only as an exception, in cases provided for by the Law. In that sense, the first-instance verdict against Bandjur is public and hence it is nonsensical to call on the police to investigate a source of open information, accessible to everyone. Therefore, Bandjur's statement is difficult to interpret as something other than harassment of journalists. It is interesting to note that Bandjur said he was the victim of a "political trial", namely that the Court and the Prosecutor were influenced by the Democratic Party and the former Minister for Kosovo and Metohija Goran Bogdanovic. This statement is a textbook example of how the criminal offense of "unlawful commenting of court proceedings", provided for in Article 336a of the Criminal Code, is committed. According to the said Article, a person who, during a trial before a court of law, before the verdict is passed, gives statements to media with the intent of undermining the independence of the court, shall be sentenced to six months in prison and fined. In the concrete case, the sentence against Bandjur is not final, since he has appealed the decision of the Basic Court in Kosovska Mitrovica. His statement about the political nature of the trial is difficult to interpret as something other than intent to undermine the independence of the court. Whatever the case may be, it is still not known if the Prosecutor has reacted and initiated any sort of proceedings against Bandjur.

1.4. On October 30, an explosive device was found in the backyard of the family home of TV B92 reporter Tanja Jankovic in Vranje. That incident was preceded by an assault on the family of the reporter on September 23, at the wedding reception of her cousin in the hotel "Przar" in Vranje. On that occasion, Jankovic's father suffered a broken jaw and nose, her cousin a cracked nose (she was urgently taken to surgery), her cousin's fiancée a bruised sternum, while the journalist herself suffered multiple bruises. Tanja Jankovic said that a police inspector from Vranje had participated in the attack, the reason of which was, in her opinion, the campaign she had conducted via social network and blogs, reacting to the disastrous security situation in

Vranje. The journalist publicly questioned the impunity of crime in Vranje, from setting ablaze of the Mayor's car last year to the fire in the Vranje theater in early July. The incident in the backyard of Jankovic's house happened after she had posted on her facebook profile that she had come in the possession of CCTV recordings with the footage of the attack on her family at the aforementioned wedding reception. She also posted the photographs of documents allegedly proving an attempt to cover up the responsibility of several police officers for injuring her father, cousin and cousin's fiancé.

Everything that was cited in the part of the Report concerning the Molotov cocktail thrown in the backyard of the house of Damir Dragic, namely on the terrace of Biljana Vujovic, applies to this case too. The otherwise powerful explosive device failed to go off by pure chance, but nonetheless this could be an attempt to scare off the reporter from investigating the responsibility of certain police officers for the attack on her family. It is also a message to any citizen using social networks to avoid highlighting negative phenomena in society. Especially disturbing is the fact that, after more than two months since the beating of Tanja Jankovic's family, the police are yet to disclose all the results of the investigation conducted by the Ministry of Interior's investigation of the incident. Until these findings are announced and the responsible individuals punished, there will be grounds for suspicion that the explosive device planted in the backyard is actually part of an organized campaign of intimidation and cover-up.

2. Legal proceedings

2.1. In a press release dated October 1, the Novi Sad-based private TV station *Kanal 9* has filed with the European Court of Human Rights (ECHR) in Strasbourg a petition against Serbia due to the unwillingness of the state to withdraw from the ownership of the media, thereby threatening their freedom, the Beta news agency reported. The press release went on pointing to double standards, saying that in Serbia, a broadcasting license for some media meant direct financing of all costs from the budget, without the obligation to pay the broadcasting fee. For others, *Kanal 9* said, obtaining a license means "fighting for every cent" on a market that is not free, operating without any state aid whatsoever, as well as the obligation to pay the broadcasting fee. "In such conditions there are no grounds for media freedom and hence no freedom of expression", the statement said, calling for the harmonization of media regulations in Serbia in order to ensure the complete legal and economic equality of the media. The Novi Sad station said it decided to file an action before the ECHR because the state authorities in Serbia

declined jurisdiction in this matter, while the Constitutional Court denied them a constitutional appeal.

Serbia ratified the European Convention on the Protection of Human Rights and Fundamental Freedoms in 2003. The task of the ECHR is to ensure that the states signatories of the Convention respect the rights and guarantees provided for by that Document. The Court achieves that by reviewing the petitions. From Beta's short news, it may not be inferred which specific violation of right guaranteed under the Convention is invoked in the petition, but it may be assumed it concerns the right to freedom of expression. Since, according to the Convention, that right includes the freedom to one's own opinion, as well as receiving and communicating information and ideas without interference of the public authorities, it may be assumed that Kanal 9 is trying to prove with its petition that the authorities have restricted their freedom of expression by failing to implement the privatization of state media, which is mandatory by Law, as well as by financing non-privatized media in a way that constitutes a violation of state aid control regulations. However, the Convention foresees certain conditions in order for a petition to be eligible for consideration by the Court. The first condition is that all legal remedies in the signatory country have been exhausted; that the petitioner has invoked the same violation of the right under the Convention in the proceedings in the signatory country, as well as that the petition has been filed within 6 months of the passing of the final decision at the national level. What is nonetheless unclear in the concrete case (which could prove to be decisive for ECHR's decision) is the issue of proceedings initiated by Kanal 9 in Serbia, namely the arguments it invoked in these proceedings. The station's press release said that the Serbian state authorities declined jurisdiction in the action filed by Kanal 9, while the appeal with the Constitutional Court was denied. Consequently, this should mean that all legal remedies in the national jurisdiction have been exhausted. It still remains unclear which specific Serbian authorities have declined jurisdiction and related to which request, namely for which reasons was Kanal 9's appeal rejected as inadmissible.

2.2. The television station *SOS kanal* issued a press release saying that it had been engaged in a trial for the last five years before the Commercial Court in Belgrade against RATEL and the RBA. The new hearing was scheduled for October 23, but it was ultimately postponed for January 2013. *SOS kanal* is trying to prove that it has been issued, on an open competition for the issuance of terrestrial broadcasting licenses, a frequency already occupied by the second channel of the Romanian state television. The Belgrade station says that a financial expert has presented his opinion according to which *SOS kanal* has lost more than 640 million dinars in the period 2006-2010, due to the inability to operate on the allocated frequency. The station claims

it has tried to settle the dispute amicably, and that the proposal was supported by the RBA but rejected by RATEL.

According to the Law on Electronic Communications, the RATEL is managing the radio frequency spectrum as a limited asset. Managing the radio frequency spectrum, among other things, involves planning the use of radio frequencies, the allocation of radio frequencies based on an allocation plan and distribution plan, the coordination of the use of radio frequencies and the control of the radio frequency spectrum, namely identifying harmful interference and taking measures to remove the same. The Law also stipulates that radio frequencies intended for use in certain border zones are to be coordinated with neighboring countries. In the concrete case, although not all the details of this dispute are known, it should be kept in mind that RATEL has been issuing radio frequencies licenses in keeping with the Radio Frequencies Allocation Plan; under the Law, the adoption of the radio frequencies allocation plans is in the competence of the Ministry and not RATEL. At the same time, RATEL is in charge of removing harmful interference. Namely, if *SOS kanal* had really suffered interference from the Romanian television's second channel, it would have created a situation where RATEL was competent for taking measures for removing harmful interference as provided for in the procedure of control of the radio frequency spectrum. Under the Law, RATEL shall pass a Rulebook that will regulate in more detail the manner of control of the use of the radio frequency spectrum, the performance of technical inspections and protection from harmful interference. The Rulebook, adopted in 2011 only, does not foresee the situation where the source of harmful interference is a radio station broadcasting from the territory of a neighboring state. In any case, the decision in this dispute could set a precedent regarding the issue of harmful interference in broadcasting. Such precedent could prove to be significant, since *SOS kanal* was not the only broadcaster in Serbia that has faced harmful interference, or the only broadcaster in Serbia in the case of which it was claimed that source of harmful interference is a radio station broadcasting from a neighboring state.