



LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for October 2012





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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. 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, Zvecan, Leposavic 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.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

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

2. Broadcasting Law

2.1. In mid-October, the Council of the RBA and the management of the RTS have formed a working group tasked to urgently propose a new model for the financing of the public service broadcasting. Namely, the survival of the national television is threatened due to the low collection rate of the TV subscription fee, the daily "Press" reported. The Chairman of the RBA Council, Bishop Porfirije of Jegar, stopped short of confirming such body was established, saying that, when working on a set of media laws, the state ought to try to provide for a fully reliable way of financing the PSB so that it may operate smoothly. Bishop Porfirije told "Press" there were several potential solutions to the issue of financing the RTS. "One of the ways is to introduce a tax, like the one being successfully implemented in Croatia, which would be charged by door-to-door collectors. Due to the difficult economic situations, socially vulnerable groups should be charged a lesser amount in line their financial situation. The second possibility would be to continue to charge it via the electricity bills, but the TV subscription fee would have to be deducted [from the paid amount first]". According to the Chairman of the RTS managing board Predrag Markovic, the main conclusions of the meeting between RTS top managers and the members of the RBA Council concerned the necessity to respect the achieved level of operating standards and the financing of the PSB. "That means that PSB must enjoy regular and sufficient financing and their independence, in terms of editorial policy, must be preserved", Markovic said. Several days later, however, commenting on one of the RTS' proposals to collect the debt from the TV subscription fee directly from the account of those citizens that have a job, the Deputy Chairman of the RBA Council Goran Karadzic said that it was not a good idea. In an interview for the daily "Kurir", he also denied the existence of any working group or commission consisting of representatives of the RTS and the RBA.

We remind that, under the Broadcasting Law, the activities of PSB institutions concerning the realization of the general interest determined by Law shall be financed from the subscription fee. The fee shall be paid by the owners of radio and TV sets. The Law has provided for a generally inefficient collection method, which has resulted in a collection rate of below 40%. Nonetheless, the RBA, or the RTS for that matter, are not entitled to propose legislation. Under the Broadcasting Law, the RBA may only control and oversee the consistent enforcement of the provisions of that Law. In that sense, the RBA could, in the scope of its oversight powers, perform the control of the contract the RTS has concluded with the Power Distribution Company (EPS) and ask for it to be altered, since it has stopped to serve the purpose which it was entered into for in the first place, in view of the low collection rate. The statement by Bishop Porfirije that the issue of financing the RTS and redefining the treatment of the payments for electricity, by having the TV subscription fee deducted

from it first, may be interpreted in that sense. We remind that, in our previous monitoring reports, we mentioned a perhaps more realistic possibility, to have the paid amount divided proportionately to the electricity debt and the TV subscription fee debt, instead of the current situation where, until the debt for electricity is settled, it is considered that each payment is for that debt only and not for the fee. The contract between the RTS and, as the law says, “public company performing the activity of production and distribution of electrical energy” is a contract the conclusion of which is provided for as a statutory obligation for both parties. Under the Law of contract and torts, the content of such contracts may be altered only by passing the proper regulations, namely the provisions of the regulations, laying out the content of such contracts, become an integral part of the later, replacing inconsistent contractual provisions. It is true that the Broadcasting Law does not contain provisions determining the content of the contracts between the RTS and the “public company performing the activity of production and distribution of electrical energy”. However, such provisions must not necessarily be contained in the Law – they may be provided for by a bylaw.

2.2. The daily “Danas” dealt with the issue of media ownership transformation and the distinction between ownership and resale of frequencies or reselling the license, which is forbidden under the Broadcasting Law. Danas’ sources from the RBA claim that the agency, since it was established, has approved about 100 changes in ownership structure of national, regional and local broadcasters. The Deputy Chairman of the RBA Council Goran Karadzic explained that a change in ownership structure should not be considered as reselling of the frequency, since the holders of the licenses were companies and those companies should have retained that status even in the case of change of owners. By rule, the problem of the resale of frequencies appears in the media each time there is a change of owners of certain electronic media. This time, the topic emerged when it was announced that the national station *TV Avala* could be sold.

Article 46 of the Broadcasting Law says that the TV broadcasting license, or the radio license, may not be assigned, leased or transferred or disposed of in any way whatsoever. At the same time, the Law stipulates that broadcasters must report any and all changes to their ownership structure to the Agency, namely to apply for its prior approval. The essence is that the one that broadcasts must be the one that was issued the license, namely the broadcaster awarded with the license has not at the same time been vested in the powers of the RBA to further allocate that license to a third party. On the other hand, the change of the ownership structure occurs for two reasons. The first concerns the transparency of the ownership capital and the control of the share directly controlled by foreign companies. The other pertains to unlawful concentration of media ownership. Concerning the first reason, upon receiving a complaint, the RBA controls if the ownership structure of a media outlet

has been “penetrated” by a foreign legal person, whose ownership is not transparent (namely which is registered in a country whose internal regulations do not allow or do not enable establishing the origin of the founding capital), namely if the broadcaster is directly owned by foreign legal persons with more than 49%. Regarding the second reason, upon receiving a complaint, the RBA only checks if the change of ownership structure has resulted in unlawful concentration of media ownership. Hence, for example, since under the Broadcasting Law, unlawful concentration of media ownership exists only when a person holding a national broadcasting license simultaneously participates in the capital of another broadcaster holding the same license, with more than 5%, the RBA allowed the change back when *TV Avala had* changed its ownership structure by introducing the owner of *TV Pink* Zeljko Mitrovic in its ownership structure, because Mitrovic limited his share in *TV Avala* to 4,95%. Some believe that such stance towards ownership structure actually enables concealed ownership. Whatever the case may be, at all times, especially during a crisis, media will be sold and that is not debatable. What oversight of media ownership should enable is that the media, with new owners, as with those that received the broadcasting license on an open competition, continue to meet all technical, organizational and programming criteria for the production and broadcasting of content, based on which criteria the broadcasting license has been issued in the first place.

3. *Law on Classified Data*

In a press release dated October 22, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic said that the effects of the enforcement of the Law on Classified Data ought to be reviewed. In view of the irrefutable significance of data classification, both for the realization of free access to information and for general legal security and the security interests of the country, the absence of the desired results must not be overlooked. Sabic's conclusion is that all the conditions have been met for reviewing the content of the law and for amending the same or replacing it with a brand new Law.

The Law on Classified Data was adopted in December 2009 in order to regulate, in a unified manner, the matter of data classification, which was previously governed by a large number of regulations that enabled arbitrary decisions and serious malpractice. The adoption of the Law was branded a serious democratic achievement, significant for both journalists and the media, since it was expected to enable an easier overview of the risks related to the release of official documents, particularly those classified under various levels of secrecy. Unfortunately, those hopes proved to

be overly optimistic. In the words of Commissioner Sabic from his press release, the main and biggest problem is the fact that the Government has failed to pass the required bylaws for the enforcement of the Law. The Government has also failed to lay down detailed criteria for determining the level of secrecy, the direct consequence of which is the absolute legal uncertainty we have today in terms of the justification (or lack thereof) for certain secrecy labels on documents. Moreover, although the Law provides for an obligation to review the secrecy labels on data and documents determined according to prior regulations, the expected effects have failed to materialize. In the Commissioner's judgment, the number of documents that unjustifiably carry the formal label of confidentiality, both old and inherited documents, as well as new documents, is not decreasing. On the contrary, it is on the rise. We are recalled the extent to which it has created legal uncertainty in the media by the unpleasant experiences of Jelena Spasic and Milorad Bojovic, the journalist and the editor, respectively, of the now defunct "Nacionalni gradjanski list". Spasic and Bojovic were indicted by the Novi Sad Prosecutor's Office for releasing the "Report on the Condition of the Defensive Preparation in Serbia in 2010", which was debated on the closed session of the Serbian Parliament and which carried the label "strictly confidential".

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, no laws of direct relevance for the media have been adopted. However, the Culture and Media Minister Bratislav Petkovic said in an interview for RTS on October 5 that the Government was committed to implementing the Media Strategy and announced that five new laws to be adopted: the Public Information Law, the Law on Electronic Media, the Law on Public Service Broadcasting, the Law on Unlawful Concentration of Media Ownership and the Law on Accreditation of Foreign Correspondents. "A team of people that has already been involved in such laws is preparing the aforementioned legislation: professors Rade Veljanovski, Vladimir Vodinelic and Mirosljub Radojkovic and Assistant Professor Dejan Milenkovic. The legislation will be tabled for public debate, after which they will be debated at the Government session and in the Parliament", Petkovic said. He denied the rumors that one of the media laws was being developed by an informal group in the President's cabinet.

We remind that the drafts of four of the aforementioned laws were finished near the end of the previous government's term of office. The Draft Law on Electronic Media, which was prepared by the working group operating with the support of the OSCE, was presented to the public by the then

State Secretary for the Media.. The Draft Law on Unlawful Concentration of Media Ownership underwent public discussion back in 2008 without, however, ever being debated in the Parliament, with the biggest opponents of its adoption being the largest press publishers. Off the record, one may learn that the task of the working group, whose members were mentioned by the Minister in his interview for RTS, is to harmonize the aforementioned draft laws. Although the Minister confirmed that the Government was committed to implementing the Media Strategy, it has been reiterated several times that the Strategy's most controversial part – the establishment of several regional PSB – will be abandoned. All that also coincides with the requests from the European Commission, which said in its latest progress report about Serbia dated October 10, that it was necessary to ensure the transparency of media ownership. Among other things, the EC called for speeding up of the implementation of the Media Strategy. "It is necessary to ensure complete transparency of the ownership structure of the media and speed up implementation of the Media Strategy", the EC report said. "Measures concerning the financing of certain media from the state budget must be aligned with EU regulations for the constitute state aid". The report also reminded that Serbia undertook to align state aid control regulations with EU regulations as of January 1, 2012.

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 a session of the RBA Council held on October 26, 2012, this body decided to strip *TV Avala* of its broadcasting license prior to the term if was issued for. The Council stated that the formal reason for revoking the license at that time was the failure to pay the fee. However, the statistics about the program for the first ten months of this year shows that *TV Avala* has departed from its programming concept, based on which it was issued a license and that it has also failed to meet the legal obligation to produce its own program and news program. At the same session, proceedings were initiated for the revoking of the licenses of another 32 broadcasters that had failed to pay the broadcasting fee. When in early September 35 such proceedings were launched, the number of broadcasters, threatened with losing their licenses for failing to pay the fees to

regulators, grew to 67 in only two months. Since the Media Strategy says that, according to the data of the RBA for August 2011, up to 321 radio stations operated in Serbia with a valid license, of which five national broadcasters, one on the province level, 48 regional and 267 local, as well as 134 TV stations (6 national, 30 regional and 98 local). The said 67 media, threatened with losing their licenses, account for 15% of all broadcast media with valid licenses. The above is evidence of the extent to which the crisis and inadequate public policy have affected the media sector, since the failure to pay the fee is not caused by poor management, but by the insolvency of impoverished media.

Failing to pay the broadcasting fee, even after the RBA's warning, constitute grounds for the termination of the license before its expiration date. The procedure for revoking the license is such that the broadcaster has the opportunity to make a statement about the relevant facts and attend the session of the Council debating his case. The decision of the Council to revoke the broadcasting license is adopted by a two-third majority of the overall members of the Council. Otherwise, the Agency determines the fee with prior approval of the Government. The amounts of the fees have often been controversial, since the broadcasters believe that the purpose of the fee should only be to cover regulation costs, while the RBA, with the consent of the Government, used to determine the fees to generate surplus, which was later channeled into the budget. However, the surplus has been lesser and lesser each year, but the RBA nonetheless continues to plan it, so it is stated in the financial plan of the Agency for 2012. In that plan, the revenues of the Agency are planned at the level of 412.995.000 dinars, whereas the surplus is forecast at 31.780.200 dinars. The Broadcasting Law provides for the following criteria for setting the amount of the broadcasting fee: number of inhabitants in covered region, programming concept of the broadcaster, namely the origin and type of content broadcast; - the share of science and education content, art and children programming, or own news program; the share of own production or independent production content with science and education content, art and children programming, as well as the share of programming by other national broadcasters or translated foreign programs. The case of *TV Avala* is a precedent in the sense that it is the first station stripped off its license and that only local and regional stations have had problems with payment so far. In relation to the claims in the explanation of the decision related to *TV Avala*, particularly interesting is the part saying that the station failed in the first ten months of 2012 to fulfill its statutory obligations concerning the production of own program and news program. Furthermore, it says that *TV Avala* has diverged from the programming concept it was awarded the broadcasting license for in the first place. As for the said concept, *TV Avala* was initially planned as a channel with a substantial share of financial and business news content, but has moved away in the last few years from such a format to mostly air films and series. As for the

obligatory programming quotas, commercial broadcasters are required under the Law to air no less than 50% of their annual programming in the Serbian language, of which at least 50% their own production. Due to a months-long employee strike over unpaid salaries, the share of own production had fallen dramatically. Therefore, the statement from the explanation that the quota had not been met in the last 10 months comes as no surprise.

1.2. Belgrade, October 31, 2012 (Politika) – On October 30, the RBA Council issued an order to the television stations Pink, Hepi and TV Prva to clearly designate the programs “Preljubnici” (Adulterers), “Luda kuca” (Mad House) and “Porodicne Tajne” (Family Secrets) as feature programs, since the viewers might easily be mistaken into thinking they were documentaries. Furthermore, the RBA ordered all the broadcasters to completely censor all offensive and foul language in their programs and to air content inappropriate for minors after midnight only. “We expect broadcasters to adhere to the General Binding Instruction on Broadcasters’ Conduct and to avoid airing inappropriate content at times when minors may reasonably be expected to be watching television,” the RBA said.

The Broadcasting Law does not contain specific provisions insisting on providing precise information to the viewers that would help them make an informed choice as to which programs to watch. Nonetheless, such provisions exist in the Consumer Protection Law, which, however, stops short of providing for the competency of the RBA for supervising the enforcement of that Law. This is most definitely one of the issues that should not be overlooked in the coming media laws reform, since misleading the viewers that the content served to them is of documentary nature and not a feature program is unquestionably unacceptable. On the other hand, as to the order issued to the three national broadcasters concerning the recommended age of the viewers and the warning to parents that some content is not suitable for all juvenile persons, as well as imposing the obligation to air content inappropriate for minors after midnight, these obligations unquestionably stem from the relevant provisions of the Broadcasting Law and the General Binding Instruction on Broadcasters’ Conduct.

2. *Electronic Communications Agency (RATEL)*

In mid-October, the Electronic Communications Agency (RATEL) released a list of pirate broadcasters containing about 48 stations. They still include one national station with 11 transmitters (Radio Balkan, the former Radio Fokus), as well as three stations that have continued

to operate after they were stripped off their license (Radio City in Belgrade, Radio Jesenjin in Novi Sad and Radio Op-Top in Topola). The worst situation remains in Novi Sad, where there are up to nine pirate broadcasters. Zemun, Belgrade and Lazarevac have three each. Otherwise, an interesting example is the village of Melenci near Zrenjanin, with two pirate radio stations. Regrettably, in spite of all efforts, the number of pirates is on the rise and the authorities are obviously yet to devise mechanisms and procedures for the effective enforcement of their decision to shut down all pirate broadcasters and remove them from the air.

3. *The Press Council*

The Complaints Commission of the Press Council passed three decisions in October, while one procedure was settled by mutual agreement of the parties. Two proceedings, where the Complaints Commission had found a violation of the Code, concerned the obligation to respect copyrights and to state the sources for the reproduction of content from other media, namely the obligation to respect the right to a response, apology and correction. In the third decision, where it found there was no violation of the Code, the Complaints Commission stood up in defense of the right of the media and journalists to state value judgments, to comment and have a critical approach to the topics they were writing about. In the Commission's opinion, as long as it conveys accurate information about a certain event described in the text, the media is entitled to interpret that event in line with its editorial policy and freedom of expression. Particularly interesting is the decision that the Complaints Commission passed in the dispute between the columnist of the daily "Politika" Dimitrije Vojinovic and his employer (the newspaper) with regard to Politika's refusal to release his response to a denial made by a third party in relation to Vojinovic's column. The denial in question concerned information stated by Vojinovic in his column, which were branded by the third party as "criminal and calumnious lies". In the response to the complaint of Politika's journalist, it was confirmed that the newspaper had apologized for Vojinovic's text and that the editors asked the columnist to wait with his response until Politika's lawyers reviewed the whole case, since the newspaper was threatened with a lawsuit. The Complaints Commission rejected Politika's explanation, saying that the Code was explicit when it came to the obligation to respect the right to a response and did not provide for any exceptions of that kind. Under the unanimous decision of the Commission's members, the threat of a lawsuit does not exempt in any way the newspaper from the duty to allow its columnist to exercise his right to a response. The Commission also rejected the explanation that "Politika" had to wait for the opinion of its lawyers, since the whole case was not about law and lawfulness, but about professional ethics. By apologizing to the third party, the Commission said, "Politika" practically endorsed the party's claim that the text was a "criminal and

calumnious lie". Hence, it was obligated to enable the author to respond to such an accusation. The Commission's decisions, the arguments used and the promptness in their passing have boosted its reputation and authority, which is undoubtedly good news.

STATE AUTHORITIES

4. *The Parliament of the Republic of Serbia*

On October 31, the the Culture and Information Committee held its first session in the Parliament of the Republic of Serbia. Members of the Committee are MPs Irena Aleksic, Vesna Markovic and Marija Obradovic from the Serbian Progressive Party (SNS), Maja Videnovic, Vesna Marjanovic, Gorica Mojovic and Jelena Trivan from the Democratic Party, Dragana Djukovic and Snezana Stojanovic Plavsic from the United Regions of Serbia, Vesna Jovicki and Djordje Milicevic the Socialist Party of Serbia, Aleksandar Jugovic from the Serbian Renewal Movement, Sinisa Kovačević from the Democratic Party of Serbia, Zarko Korac from the caucus of the Liberal-Democratic Party, Vesna Milekic from the Social-Democratic Party of Serbia, Mira Petrovic from the United Pensioners Party and Dubravka Filipovski from Nova Serbia. By a majority of votes, the members have elected MP Vesna Marjanovic from the Democratic Party for Chairperson of the Committee and MP Marija Obradovic from the Serbian Progressive Party for Deputy Chairperson.

According to the Parliament's Rules of Procedure, the Culture and Information Committee reviews draft laws and other acts; oversees the Government's policy; monitors the enforcement of laws and other acts; considers the work plan and report of the competent ministry and other state authority, organization or body; reviews the annual work plan of the Parliament; gives consent to acts of state authorities, organizations and bodies that are submitting these acts to the Parliament for approval in accordance with the Law; submits initiatives and proposals to the Parliament in accordance with Law and the Rules of Procedure; reviews initiatives, petitions and proposals from its scope of work and other issues from the competence of the Parliament.

5. *The Ministry of Culture and Media*

In the part of this Report dealing with monitoring of the process of adoption of new laws, we have already commented on the announcement of the Culture and Media Minister Bratislav Petkovic that

a set of five media laws will soon be adopted. In the interview he later gave to “Vecernje Novosti”, the Minister explained that the Media Strategy would not be altered; in his words, only the working versions of the prepared media laws will once again be reviewed and consolidated in the legal and technical sense, before being tabled for public debate. Petkovic also said that it was necessary to find a new model for the financing of the PSB. He stressed that the PSB was in the red due to the low collection rate of the TV subscription fee and that the state would have to intervene from the budget. What remains the key problem with the new Culture and Media Minister and his team, however, is the fact that the Ministry endorses, at least in principle, the main concepts of the Media Strategy and the suggestions coming from media professionals and the industry, but is still unwilling to make exceptions and renounce these principled positions in a number of concrete cases. Hence, the Ministry is, in principle, for the withdrawal of the state from media ownership but, on the other hand, when asked what if there are no buyers for the non-privatized media, it responds that “it is not excluded that the state will remain an owner in some media”. Unfortunately, until the Ministry is completely consistent and principled in its positions, the concern will remain that the change of media laws is opted for only as a necessary evil that the state needs for obtaining a date for the start of the accession talks with the European Union and not as a genuine commitment of the new government.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6. *Organization of Music Authors of Serbia – Sokoj*

6.1. The Protocol that SOKOJ signed with ANEM, as the representative association of broadcasters, has entered into force and is being enforced since early October. The Protocol has provided for major discounts and benefits for paying the minimum fee for the exploitation of music author’s works for 2012 and has addressed the issue of settling outstanding debts from the previous period. In our previous Report, we presented the Protocol in detail. We remind that it provides for a 50% reduction of the fee for the period March 1 – December 31, 2012 for all the stations paying the minimum fee, regardless if they have debts from the previous period. The 50% discount of the minimum fee shall be applied through regional discounts, where such discounts already exist, in accordance with the existing tariff. This practically means that these discounts amount to 65% in Eastern and Southern Serbia, 60% in Western and Central Serbia, 55% in Vojvodina and 50% in Belgrade, Novi Sad and tourism centers. Civil Sector stations, which are already enjoying a 50% discount of the minimum fee based on the tariff, will be allowed to

cumulate the discounts under the tariff and under the Protocol, respectively, so as to benefit from a total discount of not more than 75%. Additionally, the Protocol has put on equal footing (in using the discount) stations from local, ethnically mixed communities, the program of which is aired on one or several minority languages, with civil sector stations. Unsettled debts from the previous period shall be paid in several installments, interest-free, by March 31, 2013, based on an agreement these stations will individually enter into with SOKOJ. The same deadline will apply to unsettled debts that have already been taken to court, increased by legal costs, whereas the Protocol provides that SOKOJ will write off 50% of the interest on such debts. However, the implementation of the Protocol is late in the part where it provides for SOKOJ's obligation to organize, for all interested stations, free training for the use of the online portal for the submission of program lists. Meanwhile, a number of stations have criticized the signing of the Protocol, insisting that only a new, cheaper tariff may be negotiated about and not about discounts on the existing tariff. Unfortunately, negotiations always require two parties and the stations that criticized the Protocol fell short of explaining how to force SOKOJ to negotiate a new tariff, if that organization is reluctant to do it since it is happy with the existing tariff.

V THE DIGITALIZATION PROCESS

On October 30, the Government of the Republic of Serbia submitted to the Parliament the Draft Law on Budget for 2013 for adoption. The Draft provides the issuance of a guarantee of the Republic of Serbia in the amount of 75 million Euros to commercial banks for granting a loan to the Public Company "ETV" for the project of the digital switchover. We remind that the Digitalization Strategy and the Law on Electronic Communications provide for the aforementioned company to establish electronic communications network for the multiplexing, distribution and broadcasting of digital television program, for which the company will receive an individual license for the use of radio frequencies. The Strategy foresees that the digitalization costs will involve, among other things, funds for setting up the digital terrestrial broadcasting network. These costs have been partially financed from pre-accession EU funds and the Serbian budget. The financing of the equipment for the Public Company "ETV" was anyway planned to be dealt with a loan. By planning to issue a guarantee from the budget for such a loan, the Government has reaffirmed its commitment to see this project through. The amount of the guarantee was set at 75 million Euros, but the exact worth of the procurement will be precisely allocated only after the completion of a detailed network plan, announced for the end of the first quarter next year. Prior to the budget proposal, the Government

passed another decision relevant to the impending digitalization. The new Radio Frequency Bands Allocation Plan was adopted, under which the digital dividend (the radio frequency band that will be freed after the completion of the digital switchover) would be used for high-speed mobile Internet access services and the introduction of a new generation of mobile telephony. This will provide a harmonization of plans intended for the European level, which will also enable the use of user devices from Serbia in the European Union and vice-versa.

VI THE PRIVATIZATION PROCESS

The management of the company “Politika novine i magazini” (*Politika Daily Newspapers and Magazines*) has announced that the Government of Serbia is discussing the future relations in this company with the new co-owner of “Politika”. The management of “Politika” NPM issued the afore-cited press release after the Journalists’ Association of Serbia (UNS) said that the former representative of “Politika” Goran Ilin, who performed that function on behalf of the foreign co-owner, was deleted from the register on October 15. The Managing Director Mira Glisic Simic, who is representing the predominantly state capital in “Politika”, remained as the only representative. UNS has concluded from these changes that the East Media Group, which purchased the share of the German WAZ in “Politika” last summer, renounced the rights to manage the company, under the principle of the agreement of both owners on important business decisions. That means that the East Media Group has become the passive partner of the state of Serbia in managing “Politika”, namely that the state is now running “Politika” without any restrictions whatsoever. We remind that, previously, the First Deputy Prime Minister Aleksandar Vucic said that the East Media Group, a company registered in Moscow, was actually controlled by Miroslav Bogicevic, the owner of the Sabac-based concern Farmakom. Vucic told RTS that Farmakom “was forced to participate in the purchase. He was not genuinely interested in the transaction and it was merely a favor he did to the biggest political party in the previous government. We will find a way to protect the state and reclaim what belongs to it, while at the same time avoiding a crackdown on Farmakom, which employs 3500 people and has 5000 subcontractors,” Vucic said. However, it remains unclear what the First Deputy Prime Minister meant by saying “protect the state and reclaim what belongs to it”, since the East Media Group has acquired 50% of the shares of “Politika”, which were already privately owned by the German media group WAZ. Even before WAZ pulled out, the state already had 50% in “Politika” and it is now clear that the only difference that has emerged after the change of the private co-owner is that the new private co-owner, as opposed to the old one, is not taking

part in managing the company. UNS has rightfully pointed to the fact that the state is now running “Politika” without any restrictions. Consequently, while the official Media Strategy of Serbia provides for the withdrawal of the state from the ownership in media, nobody is discussing the privatization of the state share in “Politika”. On the contrary, the state, which has retained an equal share in “Politika”, will obviously continue to control it completely autonomously. The developments related to “Politika” are shedding a new light on the statement made by the Culture and Media Minister Bratislav Petkovic that the Media Strategy will not be altered but that “it is not excluded that the state will remain a partial owner”. Such statements and actions are evidence of the reality that Serbia did get a new government, but not a new policy, since the new authorities have continued with the practice of publicly opting for a certain concept, while implementing a completely different one in practice. Until that changes, it is unfortunately unlikely to expect any positive developments on the Serbian media scene.

VII CONCLUSION

The Serbian media scene is still waiting for the long-promised reforms in the media sector. Meanwhile, Molotov cocktails and explosive devices are thrown at the homes of newspaper directors and journalists, while at least 15% of all license-holding stations are on the verge of extinction, due to poverty and inability to pay the regulatory fees. The crisis and the unregulated relations in the media sector have (after affecting many local and regional media) led to the shutdown of a national television station, *TV Avala*. A few months ago, we wrote that, if the new government continued with its slow adjustments, there would perhaps be no media (electronic media at least) to deal with at all, once it finally decided to do something about the long-promised media reforms. Today, we can rectify that by saying that the Government did decide to engage in media reforms, but its commitment remains, for the time being, merely declarative and verbal, since all has remained unchanged at the practical level. While insisting that the state is withdrawing from media ownership, the Government, as the management of “Politika” (another media where the Government is one of the owners), says it is “discussing future relations in that company with the new private co-owner of “Politika”. These future relations have merely been about (in the case of “Politika” at least) private co-owners becoming “silent partners”, which do not participate in managing the company, leaving to the state the possibility to exercise unrestrained influence over the media where it is not the sole owner. Such developments are all but promising, in spite of the assurances of the new government to the contrary.