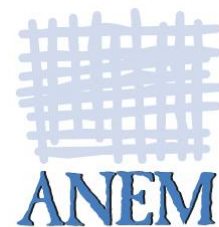




LEGAL  
MONITORING  
OF THE  
SERBIAN  
MEDIA  
SCENE

Report for November 2012





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

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## **I FREEDOM OF EXPRESSION**

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

### **1. Threats and pressures**

1.1. The investigation about the planting of the explosive device in the backyard of the family home of TV B92 reporter Tanja Jankovic, in Vranje on October 30, shall be conducted by the Criminal Police Administration of the Serbian Internal Affairs Ministry (MUP) and not by the police in Vranje, "Kurir" reported. The daily also wrote that Jankovic's family was placed under round the clock police protection, while the police was checking whether the bomb was related in any way to an incident that took place a month ago. On that occasion, on a wedding party in the hotel "Przar", a group of people, including Police Inspector from Vranje Nenad Jovanovic, beat up Tanja's father, sister and brother in law. Kurir also cited the report by the Legality Control Sector of the Serbian MUP, which says that the Head of the Vranje Police Sladjan Velinovic tried to cover up the attack on Tanja Jankovic's family. TV B92 released exclusive footage from the CC TV cameras in the aforementioned hotel, where Police Inspector Nenad Jovanovic may be seen taking part in a brawl in which Jankovic's relatives were beaten up. The attorney of the Jankovic family Zora Dobricanin made a public call for the truth to be established. She told TV B92 "there is irrefutable evidence, the footage of the brawl, where it may clearly be seen who is kicking and beating up whom... I think action must be taken". Dobricanin says, "Tanja Jankovic was threatened due to her investigative reporting and critical approach to various topics in society". "Let the perpetrators of this incident be brought to justice and be made an example of", the attorney said. "Kurir" however wrote that the police in Vranje had filed criminal charges against Tanja Jankovic's sister Bojana, reportedly for insulting one of the attackers while her family was being beaten up. The police interpreted the foul language as a threat. Bojana Jankovic told "Kurir" she had previously received a phone call by a person from the Government telling her to "calm her sister down and tell her to stop making waves" or else the police would file charges against her.

We have written about this case in our earlier reports. The family of TV B92 reporter Tanja Jankovic was attacked on September 23, at the wedding of her relative in the hotel Przar in Vranje. Her father suffered a double fracture to his jaw and his nose was broken; her sister's nose cracked and she was urgently taken to surgery; her sister's fiancé suffered a sternum contusion, while Tanja Jankovic herself endured "only" bruises. She said that Police Inspector from Vranje Nenad Jovanovic

also took part in the attack, which was, in her words, retaliation for the campaign she had been waging on social networks and blogs, reacting to the disastrous security situation in the town. In that campaign, the reporter publicly called out the officials for failing to prosecute crimes for years, such as the burning of the mayor's car last year and the arson attack in early July, which saw the Vranje Theater burned to the ground. Instead of having the perpetrators called to account, another incident ensued. After Jankovic posted on her Facebook profile that she got hold of the CC TV footage of the attack on her family in front of the hotel and after she posted photographs of documents pointing to a possible cover-up, aimed at concealing the responsibility of certain police officials for the injuries suffered by her father, sister and sister's fiancée, an explosive device was found in the backyard of her family home in Vranje on October 30. Under the Public Information Law, it is prohibited to put any kind of physical or other pressure on the public media and the staff thereof, or exert influence to obstruct their work. This pertains both to physical attacks on the members of journalists' families and the placing of explosive devices in their homes and telephone threats to make them stop investigating a case, or else their next of kin will be taken to court or harassed in some other way. In Serbia, the many unsolved attacks on journalists have resulted in self-censorship. Furthermore, such events have created an environment of impunity, which encourages would-be attackers. This is precisely what has happened in Tanja Jankovic's case. In spite of multiple witnesses and CC TV footage, nobody was held to account for the beating up of her family on September 23 and an explosive device was planted on October 30. The details of the investigation remain undisclosed and now officials from the Government have joined local police officials in the cover-up. Whatever the truth may be about the attacks on Tanja Jankovic, the unwillingness of the authorities, to supply the public with full information about this case, has already resulted in physical harm and anguish suffered by the reporter's family, as well as in a general atmosphere of fear fueling self-censorship in the media.

## **2.     *Legal proceedings***

2.1.     The Basic Court in Loznica reached a first-instance verdict, ordering former police officer Ljubinko Todorovic from Grncara to pay 700 thousand dinars of non-pecuniary damages to "Novosti" correspondent Vladimir Mitric (200 thousand for the physical pain endured, 150 thousand for the fear he suffered and 350 thousand for violation of his honor and reputation). Todorovic was previously convicted to one year in prison for having attacked Mitric on September 12, 2005 at his doorstep with a hard object, inflicting him several injuries. The chamber of the Judge Andrej Mirkovski said in the sentence that, according to expert findings, Mitric had been in a

particular psychological situation since the incident, after having been placed under 24/7 police protection, due to which he became unstable and unable to perform his journalistic work.

Due to his texts about corruption in Western Serbia and Republika Srpska, the journalist Vladimir Mitric was attacked back on September 12, 2005 in downtown Loznica, at the entrance of his apartment building about 10 p.m. and struck from the back with a wooden object similar to a baseball bat. His left arm was broken and he suffered other severe injuries. Mitric has been under round the clock police protection ever since. The Appellate Court in Belgrade sentenced former police officer Ljubinko Todorovic late last year to one year in prison for the attack. Under the just-adopted Amnesty Law, his sentence was reduced by a quarter and he was released in early December. On the other hand, the judiciary has never tried to establish who ordered the attack. Mitric has again been targeted and the latest attack reportedly happened in September, with the circumstances pointing to a serious omission by the police officers guarding Mitric: not only were they absent at the moment of the attack, but one of the officers practically disclosed Mitric's whereabouts, thus enabling the attack. The amount of non-pecuniary damages Mitric was awarded in the first-instance verdict is interesting, since it may be compared to the amounts the prosecution sometimes claims from the media when they release inaccurate, incomplete or other information, the publishing of which is prohibited under the Law. Article 200 of the Law on Contracts and Torts stipulates that the Court may, in the proper circumstances, award, independently from pecuniary damages, if any, reasonable financial damages for physical pain, anguish due to diminished life activities, disfiguration, violations of honor, reputation, freedom of personal rights, death of next of kin, as well as for fear. When ruling on such a claim and the amount of the damages, the Court must take into consideration the injured value and the purpose of the damages, and to make sure such damages are not conducive to anything naturally and socially unacceptable. Mitric's case and the damages awarded to him are not dramatically different from the fees awarded in the same circumstances to persons that the media have injured, sometimes unwittingly and without ill faith. However, the courts in Serbia are often unwilling to treat journalists' mistakes (which in some cases may not objectively be avoided, even if the journalists adhere to the rules of their profession) equally as an attack with a wooden bat.

2.2. In the scope of an operation of the Organized Crime Department and the Organized Crime Prosecutor's Office, 18 people were arrested in late November, under the suspicion they had defrauded more than 163 thousand viewers in fake TV and radio quizzes out of the amount of about 32 million Euros in the last nine months. The prosecutors and the police believe that the masterminds of the scheme are Rade Jovicic, the owner and director of the "Fonlider" company, his deputy Radivoje Pusonja, as well as Dusan Moraca, the director of the television stations "Duga sat"

and “Astro”, the daily “Blic” reported. The group is believed to have organized the fake quizzes and prize games in the last three years. The police have said that the scheme also involved the employees in the aforementioned stations, as well as those of RTV “Sunce”, “Narodni radio” and “Radio centar”. How did the hoax work? The listeners and the viewers were switched on the air in TV and radio shows via telephone calls or text messages. The prices of the calls and messages far exceeded the usual tariffs. In the quizzes, they would ask easy questions, while the employees would make fake calls impersonating viewers/listeners giving the wrong answers. At times, they would call from the studio itself. In the meantime, viewers/listeners were placed on hold, being charge for each minute started. In other cases, they would do the same, while having viewers/listeners send text messages at prices of up to 500 dinars. There was no actual prize and hence the participants could have never won it. “Blic” reports that the police and the prosecutor recorded radio and television shows in order to uncover the hoax. In raids at 32 different locations, they confiscated valuable computer equipment; bank accounts of some of the arrested persons, totaling 370 thousand Euros, were blocked; several passenger cars were seized. All suspects were placed under 48-hour police custody and interrogated in the Prosecutor’s Office. According to “Blic”, “Radio centar”, one of the stations taking part in the quiz hoax, is owned by an official of the Democratic Party of Serbia (DSS). One of the co-owners, Dragan Tomic, is the Vice-President of the DSS Main Board in Belgrade and the former Director of the Kolubara coal basin and is currently on trial for embezzlement in that state company. The employees of TV “Soko” in Sokobanja, one of the stations involved in the hoax, say that the quizzes were aired in time slots paid by a company from Belgrade, but the arrangement was cancelled as soon as doubts appeared that games were fake.

Since some of the stations mentioned in media reports on the fake TV and radio quizzes and games of chance have regularly appeared in the RATEL’s lists of pirate broadcasters in the last few months, we may at least begin to comprehend why it is so difficult to eliminate radio piracy in Serbia. It is astounding that a group has been able, in a period of only 9 months, to swindle 32 million Euros out of a single operation. Of the said amount, they managed to collect half from telecom operators, while the rest was retained by the latter in the form of service fees. If we compare these 16 million Euros, as the profit of only one group in only 9 months, to the income of all media in Serbia (print and electronic media) from advertising, which are estimated to 172 million for the entire year 2012, it becomes obvious that radio piracy is not merely an issue of human rights or freedom of expression, but also a field organized crime makes enormous profits from. Under the Broadcasters’ Code of Conduct (BCC) adopted by the RBA back in 2007, in the case of talk shows featuring real-time participation of the viewers/listeners by telephone, the broadcasters must clearly indicate the price of the call/message and the overall actual cost.

Furthermore, under RATEL's Rulebook regulating the obligations of operators providing added-value services, quizzes or similar games promising prizes that are never awarded or that are won by persons connected by the quiz provider shall be considered an abuse of value-added services. RATEL's Rulebook even stipulates that such abuse comprises quizzes and similar games, where telephone calls are charged per second, while the communication with the automated machine, speaker, TV or radio anchor, is never established, with the caller being told to wait to be put on air in a program that is not actually happening. The precision with which this Rulebook defines illicit practices, by describing in detail the scams that have happened, are evidence that both the RBA and RATEL exactly knew what was going on for years.

Another issue is, however, if the agencies could have prevented such frauds on their own, namely, whether the police and the prosecutor could have been involved earlier. The trials that will ensue will probably reveal more details about that.

## **II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS**

### **1. *Public Information Law***

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

1.2. The shareholders assembly of the publishing company "Novosti" appointed Goran Nikolic PhD, Dijana Vukomanovic PhD, Tatjana Vidojevic, Maja Ninkovic-Corac and Srdjan Muskatirovic as members of the Supervision Committee of the company. At the constitutive session of the Supervision Committee, held on November 8, Goran Nikolic was elected Chairman. Nikolic has received his PhD at the Faculty of Economics of the Belgrade University and is employed as a postdoctoral fellow of the Institute for European Studies. Dijana Vukomanovic is the postdoctoral fellow of the Institute for Political Studies and the Vice-President of the Socialist Party of Serbia (SPS). Tanja Vidojevic and Maja Ninkovic-Corac have a longstanding experience as journalists and editors. Srdjan Muskatirovic is an Economist and is currently working in the representative office of the "Laderna International BV" company. The term of office of the five-strong Committee is four

years. We remind that the majority owner of “Novosti” is businessman Milan Beko, through three foreign companies admittedly under his control, controlling 62.4% of the shares of “Novosti”. Back in June 2011, the Securities Commission ordered Beko to release the offer for the acquisition of “Novosti” in no later than three months, failing which he should announce the sale of all shares above the 25% threshold. Since none of these two things has happened, Milan Beko is not allowed to vote anymore based on his shares above the 25% threshold. In this way, a situation has been created where the state again has become the shareholder with the most votes in “Novosti”. The state namely directly holds 29.5% of the shares in “Novosti” and indirectly, through the Republic Pension and Disability Insurance Fund, another 7.15%. Hence, it holds the majority in “Novosti”’s shareholders assembly. It has not been disclosed whose candidates are the elected members of the Supervision Committee, but Dijana Vukomanovic is known to be the Vice-President of SPS, while Tanja Vidojevic is a member of the Main Board of the Serbian Progressive Party (SNS). “Laderna International BV”, the employer of Srdjan Muskatirovic, is one of Milan Beko’s companies.

Under the Public Information Law, the founders of a public media may not be, directly or indirectly, the state and territorial autonomy, an institution, company or other legal person predominantly owned by the state, or entirely or largely financed from public sources, unless it is provided for otherwise by a separate law governing the field of broadcasting and except in the case of news agencies. The Strategy for Development of Public Information System in the Republic of Serbia also stipulates that the state may not be the owner of media, namely it reconfirms the commitment of the state to withdraw from the ownership in media. Unfortunately, the seriousness of such commitment appears doubtful after the above-described election of the new management of “Novosti”. The election of a vice-president one party of the ruling coalition and a member of the main board of the other ruling party confirms that the government is aimed at taking the opportunity to control “Novosti”, holding slightly more than 36% of the shares.

## **2. Broadcasting Law**

2.1. The package of television programs Arena sport obtained the license for cable broadcasting on November 26, based on the opinion of the Ministry of Culture and Media and the Ministry of Finance. The two ministries have concluded Arena Sport was eligible for obtaining the license, since their majority owner “Telekom” is not owned by the state, but by a shareholders society. Such explanation was voiced by Goran Karadzic, the Vice-President of the RBA in an interview to “Politika”. Karadzic added that the provisions of the Public Information Law and the Broadcasting



Law, prohibiting state companies from being broadcasters, did not apply to this case. "They are subject to the Law on Companies. The aforementioned provisions of the media laws were adopted to avoid political pressure and in this case such pressure was avoided, since the recipient of the license is a sports channel", Karadzic said. The state participates in the structure of "Telekom"'s equity with 58.11%. In August 2011, "Telekom" have invested 7.7 million Euros and have become the owner of 51% of the shares of HD Win, the company that is the founder of the package of television programs Arena Sport. Four channels from this package are distributed via "Telekom"'s IPTV service and in standard and high resolution in the cable systems. One of these channels is offered in the basic package, whereas the remaining three, as well as the versions of all channels in HD, and may be purchased for an extra fee. "It is distorting the facts. "Telekom" is indeed a shareholders company, but the state is the majority shareholder. I do not see any major difference," said the President of the Independent Journalists' Association of Serbia (NUNS) Vukasin Obradovic. Petar Jeremic, the Chairman of the Executive Board of the Journalists' Association of Serbia (UNS) also believes that the explanation, provided for the issuance of the license by the RBA Council, is unacceptable. "It is distorting the basic principles the state has accepted regarding the withdrawal from the media. They have obviously found the right form how to avoid it. "Telekom" is clearly owned by the state," Jeremic told Politika.

As we have already written in the part of this Report pertaining to the enforcement of the Public Information Law, the latter stipulates that the founders of a public media may not be, directly or indirectly, the state and territorial autonomy, an institution, company or other legal person predominantly owned by the state, or entirely or predominantly financed from public sources, unless it is provided for otherwise by a separate law governing the field of broadcasting and except in the case of news agencies. Under the Broadcasting Law, the holder of the broadcasting license may not be a company, institution or other legal person whose founder is the Republic of Serbia or an autonomous province, save for the public service broadcasting institutions. That idea was accepted by the Media Strategy as the strategic commitment of the state. The Republic of Serbia is not the founder of HD Win (and that is unquestionable) - "Telekom" is, as the owner of 51% of the shares of that company. Since the state is the majority shareholder of "Telekom", it seems undisputed that we have here a case described by the Public Information Law as prohibited indirect participation of the state in media ownership. The mere fact that "Telekom" is organized in the form of a shareholders company and not as a public company makes no essential difference. The problem seems to be with the other side. Namely, the state intends to privatize "Telekom" at one point. Until then, it wants to keep it competitive against private telecommunications operators, in order to ensure the highest possible price when privatization comes. Since some of "Telekom"'s

private competitors, also active on the media content distribution market, already have TV channels (and particularly sports channels) more or less transparently in their property or under their control on other grounds, the state in this case seems to be stretching the law in order to maintain the competitiveness of its investment and the value thereof pending privatization. This, again, demonstrates the shortsightedness of the government, which seems unable to navigate through various interests or protects its own benefit by looking further than the revenues that a state company to be privatized could bring to the state budget. The key issue seems to be why the state has impeded the horizontal integration of telecommunication operators and built a legal framework in which no operator would be able to have the media service providers merged under its control. The question is also why the state is renouncing platform-neutral regulation and why it is treating differently vertical integration in the field of analog terrestrial television than in other types of distribution. We remind that, not that long ago, the state separated the public company “Broadcasting Equipment and Communications” (ETV) from the RTS system, with the argument that it was unacceptable to have the same company – in that case the public service broadcaster – be at the same time a competitor to commercial stations and manage the distribution system used by its competitors. At the same time, the state allowed the operators, which run different distribution systems – cable or IPTV – to vertically integrate with media companies. Hence, “Telekom” has now been allowed to do what used to be forbidden to RTS, which practice was the reason why the RTS had separated the public company ETV – to remain the owner of both the distribution system (IPTV) and the content distributed via that system (Arena Sport television channels). It is important to remind why this is bad and why the state separated the public company ETV from RTS in the first place. The key objection related to vertical integration is that it closes down the market, i.e. creates uneven business conditions. There are limited (if any) systemic guarantees that would ensure that the distributor will provide its services without discrimination to other competitors, applying the same conditions under which it provides such services to itself. Following economic logic only, “Telekom” would give privilege to its sports channels package over the ones of its competitors, just like the RTS used to give privilege, for the same economic reasons, to its own television program over the ones of its commercial station competitors, which it used to distribute via terrestrial distribution prior to the separation of ETV. The only principled solution to this would be to introduce unified rules that would restrict the opportunities for vertical integration of content providers (media companies) and media content distribution providers (telecom operators) by a single set of rules that would be both platform-neutral (they would apply equally to terrestrial, cable, satellite, IPTV or any other distribution platform) and that would apply equally to privately owned and state-owned market players.

2.2. In early November, the users of the services provided by cable operators discovered a new channel – Pink 2 – at the place in the programming menu where TV Avala used to be. The RBA Council Deputy Chairman Goran Karadzic said it was a cable channel. “Pink has the license for two dozen such programs, including Pink 2. Nobody has taken over the frequency that belongs to Avala”, Karadzic explained. He added that the RBA, at the time when Pink 2 appeared in the cable systems, was not aware that TV Avala had ceased terrestrial broadcasting. The deadline for the submission of complaints on the RBA decision revoking TV Avala’s license had not expired at the time and the said complaint would have had suspended the decision, thus enabling TV Avala to continue operating until the final RBA decision. The reason why the new channel took the place of TV Avala, according to Jovana Lukic, the Communications Manager in the cable operator SBB, is a well-established practice. “A station has had its license revoked and we allocated its place in the cable network to a new channel”, Lukic told the daily “Politika”. The disappearance of TV Avala will result, in the opinion of the employees, with about 100 jobs lost. What is more, the now defunct station, co-owned by Zeljko Mitrovic, the owner of TV Pink, owes its employees eight salaries. The Association of Independent Electronic Media (ANEM), the Journalists’ Association of Serbia (UNS), the Independent Journalists’ Association of Serbia (NUNS) and the Independent Journalists’ Association of Vojvodina (NDNV) have condemned the decision of the largest cable operator in Serbia – SBB Serbia Broadband – Srpske kablovske mreže d.o.o. from Belgrade, to switch-off TV Avala from its distribution system while that station was still airing its program terrestrially, only to allocate that particular channel, unlawfully and contrary to its own business conditions, to a new channel of the company Pink International – Pink 2.

According to RATEL’s Review of the Telecommunications Market for 2011, 76 cable operators and 2 IPTV operators operated in Serbia last year. To that number we may add three satellite DTH operators. According to the same source, the penetration of cable, IPTV and satellite DTH service in Serbia is 53% of the total number of households, while the number of subscribers has grown by 6.7% compared to 2010. The largest operator is Serbia Broadband – Srpske kablovske mreže d.o.o. (SBB), with more than 50% of the market. Seven of the largest operators (SBB, JP PTT, Telekom Srbija, Kopernikus, IKOM, Digi SAT and Radijus vektor) control about 88% of the market. This has paradoxically created the situation where the applicable regulations provide for a stricter regime of issuance of broadcasting licenses for terrestrial distribution of TV programs, which uses a public resource (broadcasting frequencies), but which is not anymore the primary type of reception of media content for most of the population. Therefore, in the situation that has been created, the dominant cable operators are able to exert in some cases a stronger influence than that of the competent operator. We remind that Serbia practically does not have the so-called *must-*

carry regulation, nor does it regulate the logical numeration of licensed television channels. With respect to must-carry regulation, the Broadcasting Law stipulates only that cable, satellite DTH and IPTV operators may distribute the programs of terrestrially licensed channels without the obligation to acquire a special license, if they distribute them in an area which their terrestrial licenses are valid for anyway, as well as if they simultaneously distribute the programs of public service broadcasters free of charge. The Law on Electronic Communications additionally provides that RATEL, at the request of the RBA, may appoint an operator of the electronic communications network for the distribution and broadcasting of media content. This operator shall be obligated to air one or several radio or television programs at the national, provincial or local level, when a substantial number of end users utilizes the electronic communication network of that operator as the sole or primary way for capturing media content, as well as when this is necessary in order to achieve clearly determined goals of general interest that are laid down by the RBA in accordance with the principles of proportionality and transparency. In practice, RATEL passed only two such decisions in March of this year: the first ordering SBB to distribute the program of four municipal TV stations in Novi Sad and the second, ordering the same cable operator to distribute the program of two local TV stations. As for logical numeration of licensed TV channels, Serbian regulations do not contain rules that would apply to it. This issue has become increasingly important with the strengthening of the digital platform for the distribution of media content. The logical number of a particular TV channel is a number under which a service is offered in the menu of the provider of the digital service of media content distribution. Today these numbers are allocated freely by cable, satellite DTH and IPTV operators and it is possible to imagine a situation where certain cable channels receive a lower number in the menu (and therefore facilitated access via the remote control) even than the numbers assigned to PSBs. A similar thing happened in the case of replacing the signal of TV Avala in the cable systems with the signal of Pink 2. On a channel that was memorized at low position on the remote controls of the majority of users in the analog cable offer (since the program of a national terrestrial commercial station was aired on that number), the viewers were suddenly offered the signal of a new cable channel. At that, at least in the case of SBB, this was even contrary to that company's own General Business Conditions (GBC), the excerpts of which SBB posted on its website. These GBC say that, in the case of vacant capacities in the resources (a place in the cable system), all eligible broadcasters may compete. Media and journalists' associations required SBB to inform the public as to whom it had offered place that became vacant with the disappearance of TV Avala and in which manner; based on which criteria it had decided to assign that place to Pink 2; to publicly state who were the members of the SBB's Programming Council, who were to review, under the GBC, the applications of other candidates (if they were reviewed at all) and if the Programming Council existed at all. SBB failed to answer any of these questions and the only thing the above mentioned Communications Manager said was that

everything was “as usual”, since a TV station had its license revoked and the place was assigned to a new one”. Why it was assigned to that particular station, were other interested stations damaged in that process (they definitely were), since Avala’s channel was already memorized at a low number on the viewers’ remote control? No answer has been provided to that question. It seems that such practices of cable operators require having more precise regulations regarding the logical numeration of licensed TV channels, especially since it is very well known that terrestrial broadcasting licenses are issued in a complex procedure involving an open competition, as well as that the fee for such licenses is ten times higher than the one for cable broadcasting. In such a situation, bearing in mind that the penetration of cable, DTH and satellite reception of television exceeded 50% of households last year already and that this year it may only become more prevalent, the question is what are the terrestrial channels actually paying for and what is the value they get in return, since they had to undergo rigorous control and obtain the license in an open competition and not only at request (like cable channels), let alone the ten times more expensive fee. More precise regulation of logical numeration of television channels should at least ensure that terrestrial channels be awarded lower numbers in the menus of cable operators and therefore easier access from the remote control. In the aforementioned press release, the media and journalists’ associations said that, failing a satisfactory response by SBB to the question if that company had respected its own GBC in the above-described case, it would consider that the cable operator had abused its dominant position and undermined competition, namely that SBB had limited the market and applied uneven business conditions to the same jobs with different market players. We are yet to hear anything about this case from RATEL (as the regulator in the sector) or the Commission for Protection of Competition.

### **III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS**

In the period covered by this Report, no media relevant laws were adopted. However, the Amnesty Law has been adopted, which has furthered slashed the already ridiculously low penalties delivered in criminal proceedings for attacks against journalists. Hence, as we have already pointed out in this Report, the former police officer Ljubinko Todorovic had had his one-year sentence diminished by a quarter under the Amnesty Law and was released in early December. Todorovic was convicted for having savagely beaten up journalist Vladimir Mitric back in September 2005, inflicting him multiple severe injuries. Under the aforementioned legislation, persons indicted for the first time to less than three months in prison shall be relieved of 50% of their penalty, while all other persons

shall benefit a 25% “reduction”. As an exception, persons convicted of murder, manslaughter and aggravated robbery and robbery shall be relieved of 10% of their sentence, while the amnesty does not apply to persons sentenced to between 30 and 40 years in prison, as well as to those convicted of crimes against humanity and other values protected by international law, crimes against sexual liberty, domestic violence, illicit production and sale of illegal drugs, crimes against the constitutional order and security of the Republic of Serbia, as well as for giving and receiving bribes. The amnesty shall also not apply to multiple recidivists. Although it is difficult to say if the legislator had that intention (the argument in favor of the amnesty was the issue of overcrowded jails and poor conditions for serving the prison terms), it has undoubtedly sent the message that one can get away with attacking journalists, since the state does not consider such attacks to be a serious social problem (such as corruption, drug trafficking or domestic violence for instance).

Another notable thing that happened in November is the Government’s decision to adopt, without a public discussion, the Proposed Law on Amendments to the Copyright and Related Rights and send it for parliamentary ratification. The Proposed Law on Amendments to the Copyright and Related Rights is putting certain beneficiaries of copyright and related rights in a privileged position – more specifically the small craft shops and importers of technical equipment that may be used for the author’s work and objects of related rights. These two categories of beneficiaries have had their highest fee amounts limited, namely in some cases they are completely relieved from paying the fee. ANEM pointed to the Government back in July that the media industry had been facing the decline of the advertising market by at least one sixth since 2008 and that the Law, which had resulted in the enormous hike in fees for copyright and related rights charged to the media, simultaneously with the decline of the market, was not good and needed to be changed. The Proposed Law on Amendments to the Law on Copyright and Related Rights that was nevertheless sent to Parliament for adoption, completely ignored demands for a more favorable treatment of the media, as beneficiaries of copyright and related rights.

## **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)***

On November 19, the RBA released the list of candidates for 12 members of the Programming Committee of the Serbian Broadcasting Institution (SBI). The Programming Committee is an advisory body of the RBA, representing the interests of the viewers and listeners as a whole. It reviews the realization of the programming concept of the SBI and sends recommendations and suggestions to the General Manager and the Managing Board. The Programming Committee has 19 members elected by the Parliament – seven MPs and 12 members proposed by the Agency from the ranks of professional associations, scientific institutions, religious communities, citizens' associations, NGOs and the like. Ineligible for membership in the Programming Committee are persons elected or appointed in the Government or state bodies. The term of office of members shall be three years and they may not be reappointed. The conclusion after reviewing the list of candidates is that there is visibly no major interest for membership in that body, which could, again, mean that the recommendations and suggestions it sends to the General Manager and Managing Board of the RTS are not viewed as something that is taken seriously or a factor of success. No media or journalists' association have proposed a candidate. There are no representatives of scientific institutions or religious communities either. The proposers include the National Council of the Hungarian Ethnic Minority, the Association of Film Artists, the Association of Music Artists, the Association of Jazz, Pop and Rock Music Artists of Serbia and several non-governmental organizations. The proposers of certain candidates, however, remain unknown, while the proposers of many of them are natural persons. In some cases, the proposers themselves are more interesting than the candidates they proposed. For example, one of the proposers is Suzana Vasiljevic, Special Media Advisor to the First Deputy-Prime Minister and Defense Minister Aleksandar Vucic.

#### **2. *Electronic Communications Agency (RATEL)***

2.1. RATEL posted on its website the press release of the Body of European Regulators for Electronic Communications (BEREC), expressing concern over the "influence of certain national

legislative initiatives on the efficiency of the regulatory bodies for the field of electronic communications in performing regulatory functions and hence on their independence thereof". The press release has not mentioned any country in particular, but has pointed to the necessity of having competent bodies – possessing the proper financial and human resources – performing the tasks entrusted to national regulatory bodies. BEREC said that, in some countries, initiatives were taken, resulting in revoking the authority of national regulators for part of regulatory tasks that became direct functions of the government. The press release has highlighted the necessity to have independent national regulatory bodies in the operational, organizational and budgeting sense, which includes their ability to recruit and keep qualified personnel for the performance of complex and sensitive technical tasks. BEREC understands that national regulatory bodies, as holders of public competencies, should not be exempted of austerity measures in the current economic downturn. However, those measures need to ensure that the capacity of the independent regulatory bodies to efficiently regulate the electronic communications market, in keeping with the goals guaranteed by the regulatory framework, is not diminished in any way whatsoever. Although RATEL has not commented on the reasons for publishing that press release, it might perhaps be associated with the announcements that the Government, namely the Ministry of Finance, is preparing the Proposed Law on the Fees for Using Public Goods. Under the version of the drafts that have leaked, the fees for the use of the numeration, radio frequencies, as well as the fees for performing the activity of electronic communication, shall be paid directly into the budget. Such concept is completely contrary to the provisions of the law on Electronic Communications, under which the said fees constitute the income of RATEL (a source of financing for that agency), while the difference between the revenues and the expenditures of the Agency shall be used for the improvement and development of the field of electronic communications and information society. BEREC's statement, though it was not necessarily pertaining to the situation in Serbia, points to several key problems that might happen if the Proposed Law on the Fees for Using Public Goods is adopted and primarily to the issue of the "brain drain" – the departure of qualified personnel due to the limited capacity of RATEL to pay them adequately. Independent Journalists' Association of Serbia (NUNS) voiced its concern in early November over the hints that the aforementioned Law on the Fees for Using Public Goods, which draft is being prepared by the Ministry of Finance, could compromise the position and independence of RATEL and the RBA. "We do not consider such concept to be good or acceptable. Such kind of control would allow the government to directly affect the activity and decision-making of independent regulatory bodies, which would essentially render their existence meaningless," NUNS said. The association said it would be a step towards greater influence of the state on the media sector in Serbia.



2.2. “The best way to prevent illegal broadcasting of radio and television program would be to seize technical equipment”, said the Director of RATEL Milan Jankovic in the discussion on ANEM’s round table “Measures for Efficient Prevention of Illegal Broadcasting of radio and television program”, held on November 29 in Belgrade. Jankovic said that greater efficiency in preventing the operation of pirate broadcasters was enabled by the cooperation with the department of the prosecutor’s office for fighting high-tech crime and the police administrations. “With joint efforts, we managed a couple of days ago to shut down the station “Narodni radio”, which was one of the major pirates on the territory of Belgrade. In the same vein, we expect “Radio Balkan” will soon be switched off the air”, RATEL’s Director said. Estimating that some progress was made in this field, Jankovic reminded that in late 2011, there were 55 radio stations operating without a license, which number was reduced to 48 in late October this year. Moreover, RATEL filed in 2011 ten misdemeanor and 42 criminal charges, while this year that number plummeted to 2 and 6, respectively. The Deputy Chairman of the RBA Council Goran Karadzic said on the same round table that pirate stations made unbelievable profits, since they were not paying the fees charged to licensed radio stations. In his words, the problem of piracy in Serbia is a problem of competences. Karadzic stressed that the legal competences of each of the present participants were merely partial and therefore, under the new media laws that ought to be adopted as soon as possible, the competent institution should be vested in all the necessary competences/authority in order to effectively tackle piracy. Karadzic revealed that there was only one inspector in charge of this field, but was unable to work effectively due to a huge caseload. The Head of the Special Department for High-Tech Crime of the Public Prosecutor’s Office Branko Stamenkovic said that the penalties for that criminal offense were relatively low, since it was subject to no more than 2 years in prison. According to Stamenkovic, the regulatory bodies and inspectorates are vested with the proper authority for these activities, with the assistance of the MUP where appropriate. In his words, the Prosecutor’s Office has filed 47 charges, there are 16 final verdicts and equipment was seized in three cases.

### **3. *The Press Council***

At a round table on November 7, held to mark the first anniversary of the inception of the work of Commission for Complaints, the Secretary General of the Press Council Gordana Novakovic presented the statistics collected by the Commission to date. The Commission was submitted a total of 38 complaints for suspected violations of the Code of Conduct of Serbian Journalists. The Commission ruled on 24 complaints and in 9 cases, it was established that the Code had been breached. In five cases the Code was violated by the daily “Pres”, twice by “Vecernje Novosti” and

once by “Blic” and “Politika” each. In one case, the Commission failed to pass a decision, while one case was settled by mediation. The complaints were mostly filed by NGOs (14 times), while ten private persons also complained against the media. In eight cases, the complaints pertained to the truthfulness of the reporting and journalistic due diligence, while four complaints concerned defamation and insult. The Chairperson of the Complaints Commission Filip Svarm said that the journalists had wronged against ordinary citizens, minorities and marginal groups much more often than against public persons. Attorney at law Bozo Prelevic said that one of the key achievements of the Commission was the fact that the plaintiffs had found sufficient satisfaction in the decisions of the Commission. The work and decisions thereof pertain solely to print media, which have engaged in the self-control of their adherence to the Journalists’ Code of Conduct. The dailies “Danas”, “Kurir” and “Informer” have still not joined the Commission. The Editor-in-Chief of “Informer” Dragan Vucicevic said his newspaper would “engage in the self-control of adherence to the Code.

In late November, the Complaints Commission dealt with two more cases. More specifically, it ruled upon the second complaint filed by Bozidar Mitrovic against the weekly “Nin”, over the text by columnist Mileta Prodanovic. The second complaint was filed by Zoran Todorovski, a specialist in medical psychology, against “Vecernje Novosti”. The Commission found Mitrovic’s complaint to be unfounded, namely that Prodanovic did not, by voicing his opinion about the scientific merit of the exhibition “The Infinity of the Art of Lepenski Vir and Vinca”, violate the obligation to provide truthful information. “The published text”, the decision says, “is not a report from an event, but the author’s personal view about the exhibition. Since the appearance of the text clearly suggested it was not a report, but an essay, this was in accordance to the provision of the Journalists’ Code of Conduct, saying that a clear difference must be drawn between facts that are reported and comments, which allow the author to freely voice his/her opinions.” Nonetheless, Zoran Todorovski’s complaint was accepted. The Commission found that in two texts published on October 18 and 23, respectively, “Vecernje Novosti” violated the provisions of Journalists’ Code of Conduct pertaining to the truthfulness of reporting, journalists’ due diligence, as well as the duty of the journalist to respect the presumption of innocence. In the text “Confession of a Psychologist’s Victim: They Mess up with your Brain”, a former patient accused Todorovski of “mental and sexual harassment” and “Novosti”’s reporter conveyed her account without any reservations.

## **STATE AUTHORITIES**

### **4. *The Ministry of Culture and Media***

At a conference marking 15 years of the development of independent media in Serbia, organized by USAID and IREX, the Culture Minister Bratislav Petkovic said that the Media Strategy was being redefined and that the issue of media ownership would be dealt with in the scope of media laws. Petkovic said that in the process of the state's withdrawal from the media, specific solutions were being considered for "Radio Jugoslavija" and "Jugoslovenski pregled", while the management of the Tanjug news agency was ready to have the agency transformed and do business according to market rules. "We must now opt for some of the models, which may be applied in the present conditions. The solution will be such that Tanjug will not compromise the work of private agencies", Petkovic said. The Minister added that a working group was formed with the task to redefine the Media Strategy adopted by the previous government. Petkovic's statement that the Media Strategy would be "redefined" has caused major concern. Without doubt, the Strategy has not made everyone happy and some of its segments – particularly the one pertaining to the establishment of regional PSB – have drawn major criticism. However, in spite of all shortcomings, the Strategy currently constitutes the only document the media professionals may invoke when calling for a change to the existing legal framework. Any hints that it will be redefined, without a clear goal and scope, is interpreted by many as the intent to revoke it or change its essence. The adoption of the Strategy was one of the conditions for receiving a positive opinion of the European Union on Serbia's bid for the candidate status and hence any "redefining" could affect the European integration process. Minister Petkovic later changed his rhetoric, not mentioning "redefining" anymore, only announcing that the deadline for preparing new media laws was March 31, 2013.

## **COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS**

### **5. *The Organization of Musical Authors of Serbia, The Organization of Phonogram Producers of Serbia, The Organization for the Collective Realization of Performers' Rights***

In cooperation with the Intellectual Property Office, the organizations for the collective realization of music rights in Serbia – SOKOJ, OFPS and PI – together with the Union of Record Companies of

Serbia and the Cultural Education Community of Serbia, organized the Forum on the Value of Music Rights on November 10 in Belgrade. The goal of the meeting was to draw attention of the public to the problems faced by these organizations in the protection of copyright and related rights in Serbia. The Forum was attended by government representatives, those of the competent ministry, as well as officials from the judiciary, the Ministry of Internal Affairs (MUP), professional associations, representative associations of users and media, as well as many music authors, record companies and performers. The collective society said that they would be open for cooperation with everyone in their strive to defend the rights of authors, performers and producers to work and make a living. The collective society insist there is a serious financial potential in the creative industry and that both the state and the citizens should benefit from it.

The initiative of collective organizations should be viewed in the context of the Government's Proposed Law on Amendments to the Law on Copyright and Related Rights. As we have already said in this Report, the Proposed Law gives advantage to certain categories of beneficiaries of copyright and related rights, more specifically craft shops and importers of technical equipment that may be used for the copying of authors' work and objects of related rights. These categories of beneficiaries have seen the highest amounts of their fees limited and even scrapped in some cases. Unfortunately, the restricted attitude of the collective organizations towards the users and the insensitivity to their problems have led to the situation where the state is reacting with amending the law by directly restricting the fees. It seems that, at least for a group of users the Government has decided to put in a privileged position, the call on cooperation from collective organizations has come too late. The Government is obviously not considering the media and the media industry as a sector that deserves to be helped by limiting the fees. It remains to be seen if the new calls of collective organizations on cooperation and their fresh, self-declared openness will result in a more favorable agreement with the media.

## **V THE DIGITALIZATION PROCESS**

On November 21, ANEM organized in Belgrade a round table on the topic of cooperation between different actors in dealing with the challenges of the digitalization process. The round table was attended by the representatives of the Ministry of Trade and Telecommunications, regulatory bodies, the Public Company "Broadcasting Equipment and Communications" (ETV), PSBs and commercial broadcasters. After the event, ANEM sent to all relevant stakeholders its written

recommendations for further implementation of the process of digital switchover from analogue to digital broadcasting of program, based on the identified shortcomings and problems in hitherto realization of the process and with consideration of the discussion at the event. In the said document, ANEM requested from the competent authorities to implement the digital switchover process in cooperation with the broadcasters and not without their participation. ANEM also said that the project of the distribution network ought to be made as soon as possible, in consultation with the broadcasters, while simultaneously considering the possibility of issuing licenses for additional analog coverage, where there was visible interest by the broadcasters, until digitalization kicked off. One of the recommendations is to regulate, by the set of media laws, the drafting of which is underway, among other things, the provision of media services on other distribution platforms (cable, satellite and other forms of broadcasting). The laws should contain concepts that will regulate the license issuance system in a platform-neutral manner, as well as that will see the regulatory bodies get the legal authority to convert the terrestrial analog licenses into multiplex access license. ANEM also insists on the creation of conditions for commercial multiplexes and the liberalization of the market in the field of digital terrestrial broadcasting, as well as in other technologies. One of the recommendations was addressed to the competent regulatory bodies to consider the possibility to extend the licenses, pursuant to the Broadcasting Law, as well as to clearly lay down the criteria for extension. While determining the costs of digital signal broadcasting, it was recommended that the prices that the Public Company ETV charged be based on the actual costs and not on the market model; that the media service providers be informed as soon as possible about the position of regional head-ends and the manner and form of signal transfer so that they could plan their costs; as well as to be informed about coverage zones as soon as possible and if such zones were extended, to be relieved from paying extra fees, since the extension of the zones was a consequence of digitalization and not of their request. ANEM also demanded a new analysis of the market of media content distribution be performed by RATEL as soon as feasible. If ineffective competition on this market is established, ANEM said, ETV should be declared an operator with substantial market strength and proper regulatory obligations should be prescribed in line with the Law on Electronic Communications. Finally, one of the proposal was to consider the possibility to use the revenues from the sale of the digital dividend for the needs of covering the costs of setting up the multiplexing and distribution network, namely to establish a Fund that would contribute to a more even allocation of digitalization costs, in order to avoid the latter to be borne solely by the media service providers (currently broadcasters). These recommendations are the first concrete articulation of the positions and the requests of commercial broadcasters in the digitalization process. Except the initial assessments that the proposals are indeed concrete, the competent authorities are yet to pronounce themselves on them.

## **VI THE PRIVATIZATION PROCESS**

Despite the announcements of the Minister of Culture Bratislav Petkovic that the issue of state ownership in media would be settled by introducing amendments to media laws and his statements that talks about specific solutions for Radio Jugoslavija, Jugoslovenski pregled and Tanjug were already underway, several things happened in November that had put the government's sincerity to really see this process through under a question mark. We will remind of some of developments we have already mentioned previously in this Report. First, the appointment of high officials of the ruling coalition parties to the Supervision Committee of the company "Novosti", such as Dijana Vukomanovic, the Vice-President of the SPS, or Tanja Vidojevic, member of the SNS Main Board, shows that the government intends to continue using the ownership in media for exercising an influence on the latter. The state directly controls 29.5% of shares in "Novosti" and indirectly, through the Pension and Disability Fund, another 7.15%. Since the majority shareholder Milan Beko, who controls 62.4% of the shares, is not entitled to vote above the 25% threshold (unless he issues the offer for the takeover of the remaining shares in "Novosti", namely unless he sells his shares above that threshold, as ordered by the Securities Commission), the state has thus the majority in "Novosti"'s shareholders assembly. "Politika" is in a similar position, where the state is practically in full control, holding 50% of the shares, as we have reported in our previous reports. At the same time, in the case of "Telekom" and the issuance of licenses for the package of sports channels "Arena Sport TV", which "Telekom" controls based on the majority of shares, the Ministry of Finance has issued a legally unsustainable opinion, under which it deems that state property in media is defined and seen only as direct ownership in the form of a public company. Such interpretation opens the door, contrary to what is foreseen in the Media Strategy, to having the whole privatization debate boil down to just the privatization of Radio Jugoslavija, Jugoslovenski pregled and perhaps Tanjug and possibly local radio and TV stations. At the same time, the state capital in large print media, such as "Politika" and "Novosti", seems to go unnoticed, i.e. the Government seems to be bent on keeping these shares and retain control over these companies.

## **VII CONCLUSION**

Everything presented in this Report confirms that the Government unfortunately seems to be lacking clear, principled and generally acceptable solutions for many issues that have arisen from years of failing to resolve problems in the media sector, exacerbated by the economic downturn.

The state remains a significantly dominant player on the impoverished media market. By allocated subsidies, it decides which media will survive and which will not. Furthermore, by delaying the reforms and the total withdrawal from ownership in media and by failing to set up a system where the state aid, even when allocated to media, will be allocated in a transparent procedure and under predetermined criteria (and not arbitrarily and under the criteria of political affiliation), the government is pushing the media in Serbia closer to the brink of the abyss, in which the public will be deprived of any independent source of information.