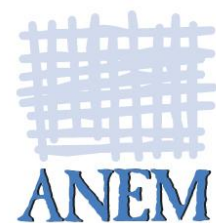




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for August 2012





FONDACIJA ZA OTVORENO DRUSTVO - SRBIJA
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TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS.....	10
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS	14
IV	MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	15
	REGULATORY BODIES	15
	STATE AUTHORITIES.....	16
	COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS.....	17
V	THE DIGITALIZATION PROCESS.....	18
VI	THE PRIVATIZATION PROCESS.....	19
VII	CONCLUSION	20

I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1. The leading political party of the new ruling coalition in Serbia, the Serbian Progressive Party (SNS), released in August a series of press releases accusing certain media of being “under the control of the previous regime”, of being “political party stooges falsifying the reality in Serbia”, “continuing to provide political support to the former regime”, of being “mouthpieces of the Democratic Party”, spreading “shameful lies”, resorting to “unbelievable untruths”, hinting that “the new government consists of murderers and incompetent people”. The first in this series of press releases was issued on August 4 and in it the SNS denies allegations concerning the newly appointed Head of the Security and Information Agency (BIA) Nebojsa Rodic. Only three days later, the SNS voiced accusations against radio and TV B92 in relation to the information about certain appointments in the Ministry of Internal Affairs (MUP), as well as to the fact that Vladimir Vukcevic would be sacked from the position of War Crimes Prosecutor. The information about the alleged dismissal of Vladimir Vukcevic was soon denied and B92 promptly aired the rebuttal. On August 31, the daily Blic came under fire over the information about the appointment of Dejan Carevic to the position of Chief of Staff of the Justice Minister Nikola Selakovic. “Blic” reported that, in the late 90s, Carevic used to work for the Sixth Department of the State Security Service of Serbia, which some associate with political assassinations, since the head of that department Ratko Romc was sentenced to seven years in prison over his involvement in the preparation of the assassination attempt on Vuk Draskovic in Budva in 2000.

The Public Information Law prescribes that public information shall be free and that it is forbidden to directly or indirectly restrict freedom of public information in any way suitable to hinder the free flow of ideas, information and opinions and especially to put any kind of pressure on media and the staff thereof, or exert influence that could obstruct their work. Continuous accusations against media for resorting to lies, untruths, fabrications, falsifying reality, submissiveness and support to the former regime, especially when such accusations are coming from the leading party of the ruling coalition, undoubtedly represent influence that could result in self-censorship and avoidance of reporting on certain topics. The avoidance of reporting on certain topics of interest for the general public, one of which definitely is appointments made by the new government, would create a situation where the media would be devoid of the

fundamental, watchdog role in society. The Public Information Law also contains provisions concerning the position of people occupying state and political positions, as well as state authorities relative to information released about them in media, which are based on the case law of the European Court of Human Rights in the enforcement of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. In a series of verdicts, of which the probably most famous is the one in the case Lingens vs. Austria from 1986, the Court found that the media were obliged not only to convey information and ideas about political and other issues in areas of public interest, but that the public was entitled to receive such information. According to the ECHR, freedom of press provides the public with one of the best tools to get to know the ideas and views of political leaders and form an opinion about these ideas and views. Therefore, the limits of acceptable criticism are wider when it comes to a politician than they are in the case of a private person. Unlike the latter, the politician is willingly exposing himself to greater scrutiny of his words and actions from journalists and the general public and therefore has to demonstrate a higher degree of tolerance. Similarly to the criticism against individual politicians and the possibility of general criticism of the Government over the decisions it makes, including decisions on appointments and dismissals of certain persons in the administration, represents an important field of freedom of expression and a mechanism that is the prerequisite for controlling the power by the public. Although the aforementioned press releases declaratively emphasize the need to “respect the absolute freedom of information” and say that “the SNS does not have anything against any kind of writing”, the SNS obviously (in the parts where it fails to point to any material and factual mistakes in reporting, but merely challenge the right of the media to analyze the developments in society in the light of the professional background of persons appointed by the new authorities to important positions in the state administration, particularly in the light of the positions these same persons had occupied during the undemocratic realm of Slobodan Milosevic), represent unacceptable meddling in and restriction of freedom of expression, which is guaranteed both by the Constitution and the ratified European Convention on the Protection of Human Rights and Fundamental Freedoms.

1.2. The Beta news agency reported that the crew of the regional television Sabac was physically attacked while reporting from the Village Olympic Games in Prnjavor near Sabac, in which attack the reporter Marija Damnjanovic suffered serious face injuries. The incident happened on Sunday, August 26 in the afternoon and was unrelated to the competition. According to the eyewitnesses and the TV Sabac crew, the reporter and the cameraman were attacked by R.K. (35), who was promptly arrested. He first insulted the reporter and then physically attacked the cameraman Zoran Milutinovic and punched Marija Damnjanovic in the face. The journalist told the S Media portal that an unknown man had started insulting her with no apparent reason and called her names. “My colleague warned him about his behavior, but

then the man ran towards us. He started strangling my colleague and punched me in the chin”, Marija Damnjanovic said. The media reported that the police had filed misdemeanor charges against the attacker for disturbing public order. The competent public prosecutor in Sabac and the high public prosecutor were informed of the incident and they are to decide whether to file criminal charges against the perpetrator.

The attack on the crew of TV Sabac is yet another evidence of journalists in Serbian being under threat. At the same time, these attacks are not necessarily unanimously condemned by the public. Marija Damnjanovic said that nobody had tried to help them, although the incident took place in a public space, with many bystanders present. In the concrete case, it will be interesting to see if the attack will be qualified only as a misdemeanor or as a criminal offense. Namely, under the Law on Public Order and Peace, any and all persons that disturb public order by an argument or shouting or threaten the security of citizens will be subject to misdemeanor responsibility and to a prison sentence of up to 20 days. Furthermore, where the peace of citizens or public order is disturbed by insults or abuse and violence against other people, provoking a brawl or taking part in a brawl, the perpetrators shall also be subject to a prison sentence of up to 60 days. The Criminal Code provides for a prison sentence of up to three years for violent behavior, which is defined as a major disturbance of the citizens’ peace or disturbance of public order by gross insults or abuse, violence against other people, provoking a brawl or ruthless behavior. In the more severe case, when violent behavior has resulted in minor bodily harm or severe humiliation of citizens, the perpetrator shall be subject to a prison sentence ranging from six months to five years. The qualification in the concrete case will primarily depend on the assessment whether the attack on the TV crew constitutes a severe or less severe threat to the peace of citizens, namely a major or less severe disturbance of public order. The assessment of the authorities in this case will speak volumes about this case and the reputation and integrity of journalists, the media and media professionals in Serbian society.

1.3. The daily “Kurir” has published that Marijan Risticovic, the President of the Progressive Peasants’ Party (NSS) (also known as the participant in the reality show “Farma” and unsuccessful presidential candidate on the elections in 2004 and 2008, as well as a MP elected to the Parliament on the list of the coalition led by the ruling Serbian Progressive Party (SNS)), harassed and insulted by telephone a journalist of the daily “Kurir” over a text published on August 24, which claimed that the Director of the company owned by Risticovic’s wife was under investigation for tax evasion. “Kurir” claims that its journalist phoned Risticovic asking for a comment on the police press release that criminal charges had been filed for tax evasion in the amount of 39 million dinars against the said director of the company, whose majority owner, according to the Business Registers Agency, is Risticovic’s wife Javorka. “Kurir”’s press release also says that, after having insulted the journalist over the phone and threatened with a lawsuit,

Risticevic sent a written denial, claiming that his wife had sold her shares in the company, which was, in his words, backed up by a contract verified in court, as well as that the buyer was obligated to register the transfer of the said shares in the Business Registers Agency.

The Public Information Law says that it is forbidden to put any kind of pressure on media and the staff thereof, or to exert any kind of influence so as to obstruct their work. Threats and insults made against a journalist over the phone definitely constitute illicit pressure. What makes this case serious is the fact that the threats came from a Member of Parliament. Under the Public Information Law, members of parliament have certain obligations in the field of public information, including the obligation to demonstrate a higher degree of tolerance, as well as the duty to make information about their work available to the public. The fact, that in the above described case the information did not concern the activities of Marijan Risticevic the MP, but the criminal proceedings initiated against the director of the company formally owned by his wife, cannot justify the threats and insults against "Kurir"'s journalist. Marijan Risticevic has already taken "Kurir" to court in June 2011, claiming 1.5 million dinars of damages. That the case is still pending in court.

2. Legal proceedings

2.1. Pursuant to Article 112, subparagraph 7 of the Constitution of the Republic of Serbia, which foresees that the President of the Republic has the authority to grant pardons, to Article 110 of the Criminal Code, under which pardoning an individually determined person involves total or partial cancellation of penalty, and under Article 1 of the Pardon Law, stipulating that pardon for felonies prescribed by Law shall be granted by the President of the Republic, on August 3, Tomislav Nikolic signed the decision on pardoning journalist Laszlo Sas. Nikolic's cabinet said that the President had signed the proposal to pardon Laszlo Sas with the conviction that the right to freedom of opinion was one of the most fundamental achievements of civilization and that it was, therefore, inappropriate for the journalist to serve a 150-day prison term only for having voiced his opinion, which was also contrary to all European standards and international conventions. Sas was released from the County Jail in Subotica the same day at about 2 PM. He thanked all his colleagues and journalists' associations for their support. A couple of days later, he personally thanked the President for the pardon. On that occasion, Nikolic said that Sas's pardon marked the beginning of the struggle for freedom of opinion in Serbia, as a fundamental achievement of civilization.

We have written about the case of Laszlo Sas in our previous report. In this Report, we will just remind that he was assigned to serve his prison term on July 20, according to the verdict of the

Basic Court in Subotica for insult, confirmed by the verdict of the Appellate Court in Novi Sad. The first verdict has seen Sas ordered to pay a 150.000-dinar fine. Under a decision issued by the Basic Court in Subotica, the fine was replaced by a 150-day prison term for failing to pay the fine in the due term. Sas was fined in the trial initiated by a private criminal lawsuit by the leader of the Hungarian right-wing extremist movement "64 Zupanije" Laszlo Torockai. The reason was the text published in the form of a reader's letter on April 24, 2007 in the daily Magyar Szó. Laszlo Sas is a journalist who has been collaborating with Hungarian language dailies Magyar Szó from Novi Sad and Hét Nap from Subotica. In the controversial text, Sas criticized the actions of Torockai as a right wing extremist. Sas's case has confirmed that it is necessary to decriminalize defamation and insult in Serbia. The Draft Law on Amendments to the Criminal Code, which foresees decriminalizing defamation and insult, was tabled by the previous Government to Parliament for adoption on January 31. However, the Parliament did not have time to adopt it before it was dissolved on the eve of the May elections, while the new government withdrew it from procedure.

2.2. The Appellate Court in Belgrade reversed the first-instance verdict, under which the journalist of the weekly "Vreme" Milos Vasic was ordered to pay 350.000 dinars of damages to attorney-in-law Biljana Kajganic over anguish suffered due to stained honor and reputation. The plaintiff's claim was rejected in its totality. Kajganic had sued Vasic over a text from September 2004, in which he released the transcript of her intercepted calls with Dejan Mihajlovic Bagzi. At the time, Milenkovic was a fugitive in Greece, after having been indicted in Serbia for involvement in the assassination of Prime Minister Zoran Djindjic. From the said transcripts, it stems that Kajganic advised Milenkovic to turn himself in, since she had allegedly secured him a special status in an arrangement with the top brass of the Serbian intelligence service and government politicians, provided he accused Ljubisa Buha Cume (the protected witness in the case against the Zemun Gang) for the unsolved murder of Momir Gavrilovic.

The verdict of the Appellate Court in Belgrade constitutes yet another victory for media professionals in Serbia and another proof of that Court's latest efforts to raise the standards of protection of freedom of expression. We have mentioned some of such verdicts by the Appellate Court in Belgrade in our previous reports. According to its findings in the Vasic case, the defendant, as a journalist and the author of the text, released information for which he believed to be true and which pertained to events and persons the citizens have the right to know about, since they concerned the criminal proceedings against persons indicted for the assassination of Prime Minister Djindjic. The release of the information in question, the Appellate Court found, was not aimed at harming the reputation and honor of Biljana Kajganic, but rather at shedding light on an issue of public interest. Accordingly, the Court found Kajganic's claim unfounded. According to the findings of the court, this information could rightfully have been released

regardless of the manner in which it was obtained and did not constitute information the release of which was prohibited under the Public Information Law. The response of Biljana Kajganic to this information was also published in keeping with the relevant rules prescribed by Law. The Appellate Court reminded that guilt was also a prerequisite for declaring a journalist responsible for damage caused by publishing a piece of information, whereas the burden of proving the journalistic guild lied with the plaintiff. In the concrete case, it was Biljana Kajganic and she failed to prove her claim. Furthermore, according to the Appellate Court, what Kajganic had to prove was that Vasic had acted without due professional care. However, the Court found that Vasic did not fail to act with due professional care, since he had checked the information he obtained. The fact that he did not contact Kajganic personally does not constitute a decisive reason for delivering a different verdict. Finally, the Appellate Court found that the legitimate interest of the public to be informed about facts and developments related to the trial against the perpetrators of an assassination of a high state official (the Prime Minister) overrode that of the protecting the reputation and honor of the attorney at law of a defendant in that trial. Namely, the court found that the information released were not aimed at the person or professional activity of Biljana Kajganic as a lawyer, but at events that could have affected the trial for the murder of the Prime Minister. The Court also found that the requirements referred to in Article 10, paragraph 2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms were not fulfilled (the fulfillment of which requirements would allow the Court to rule damage to be paid to the plaintiff). This verdict points to some typical omissions made by courts of first instance in media-related cases. Firstly, when referring to due professional care, the Public Information Law stipulates that it means care appropriate to the circumstances. In media-related cases, the courts of first instance have typically weighed that standard too abstractly, failing to conform it to the objective, real life circumstances in which journalists work, under time constraints and having in mind that information is "perishable goods". Secondly, the Public Information Law says that ideas, information and opinions about developments, events and persons the public is rightfully entitled to know about shall be released freely in media, unless provided for otherwise by Law and regardless of how the information has been obtained. The courts of first instance have too often insisted on the latter, neglecting the fact that it is by and large irrelevant for the right to release information *per se* and the responsibility of journalists. The latter is particularly significant when considering the fact that Public Information Law, the responsibility of the journalist, editor and founder of the media for damage is excluded even if the information in question is inaccurate or incomplete, if it was faithfully conveyed from a trial or document of the competent state authority. Finally, although the Law stipulates that journalists shall not be obligated to disclose information about their sources (unless the information in question concerns a criminal offense or the perpetrator of a criminal offense subject to at least five years in prison), courts of first instance in media related cases have often penalized the reluctance of journalists to disclose their sources as absence of

due professional care (since the protected source is unable to confirm that the contested information were actually checked by the journalist). In this concrete verdict, the Appellate Court showed that such a logical sequence was not correct or the only possible one, since it accepted, at the same time, the right of the journalist to protect its source of information and the fact that he did act with due professional care. We can only hope that such verdict by the Appellate Court will mark the beginning of a different practice by the courts of first instance and that we will be able to report on more first-instance verdicts that raise the standards of protection of freedom of expression in Serbia.

2.3. The Radio Television of Serbia (RTS) aired a story about journalist Milijana Stojanovic from Paracin, who wrote four years ago about a suspected case of child abuse by the mother and the failure of the prosecutor to timely launch an investigation. Stojanovic was recently fined by the Court with 30 thousand dinars fine for having slandered the then municipal prosecutor. To make things even more tragic, the unfortunate child she had written about was found dead, while the mother was found guilty a month and a half ago of neglect of the child, which died from the consequences of long-term starvation. According to the RTS story, in the controversial text, Milijana Stojanovic had referred to medical findings, official notes made by the municipal prosecutor and the charges pressed anonymously by the employees of the Center for social work. Stojanovic conveyed the information from the statement that, in October 2007, a social worker had found the child with a pillow over its head, a broken hand and blood suffusions. The injuries were confirmed by a medical doctor and the case was reported to the police and the prosecutor. The municipal prosecutor launched an investigation only 1.5 years later and went on taking the journalist Milijana Stojanovic to court over her text in a daily newspaper. The Appellate Court in Kragujevac revoked two acquittals by the Basic Court in Paracin, reversing the verdict in favor of the plaintiff, who has been promoted in the meantime and currently works in the Office of the Higher Prosecutor.

The Criminal Code defines defamation as voicing or passing on falsehoods about a person, which may harm the honor or reputation of the latter. The authors of this report did not have the opportunity to examine the court records, but were not able to conclude on the basis of media reports what falsehood may have been passed on in the concrete case. Namely, in order for defamation to exist at all, it is necessary to have an inaccurate factual statement. In the concrete case, according to the story aired by RTS, it ensues that the journalist merely stated facts by quoting the official medical records, official notes and the criminal charges filed by the employees of the Center for social work. If the text did contain criticism of the work of the prosecutor, who failed to timely initiate an investigation and protect the unfortunate child, such criticism could not constitute defamation, since defamation is not a factual statement but a value judgment. Therefore, had that been the case, it would not have amounted to a defamation as a

felony, but perhaps some other criminal offence, such as slur. The Criminal Code, however, stipulates that slur shall not be subject to a penalty, if it was made by a person exercising the journalistic profession, defending a right or protecting justified interests (which was undoubtedly the case here), provided that from the language or other circumstances it obviously was not done with humiliating intent. Whatever the case may be, it is always difficult to write about cases of child abuse, particularly in view of the requirements from the Public Information Law, that a minor may not be made recognizable in a piece of information that may harm his right or interest. Verdicts such as the one against Milijana Stojanovic, the journalist from Paracin, may result in increased self-censorship in the media and avoidance of themes related not only to child abuse, but also to challenging society's reaction (or the lack thereof) and that of the authorities to cases of child abuse.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

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

1.2. The "Pistaljka" web portal reposted a photograph originally posted on the Twitter account of the Vice-President of the Delta Holding Jelena Krstovic, which "Pistaljka" interpreted as proof of the association between Delta's owner Miroslav Miskovic and the Belgrade Mayor Dragan Djilas, namely as evidence that they both had a stake in the daily "Press". On the photograph, which, judging by the comment underneath, Krstovic took on a plane, one may observe a notebook on her knees, with handwritten notes seemingly from a meeting with Dragan Djilas on the topic of the situation of the daily newspaper "Press". Commenting the photograph, "Pistaljka" pointed to the allegations of the Anti-Corruption Council from the Report on Pressure and Control of the Media, released in September 2011. In the part dealing with opaque media ownership in Serbia, the report particularly emphasized "Press", claiming that half of the shares thereof were held by a company registered in Cyprus (Amber Press Limited from Limasol), whose owner remains unknown. "In view of the nature of the texts in that daily newspaper, there were speculations that the said company from Cyprus was in fact controlled by Miroslav Miskovic, but also, for a certain period of time, by Milka Forcan, Miskovic's former long-term associate. There were even speculations about "Press" being controlled by Dragan Djilas, the Mayor of Belgrade, Vice-President of the Democratic Party (DS)

and owner of the powerful marketing companies Multikom Group and Direct Media”, the report said. “Press” is currently formally owned by Amber Press Limited (50%), journalists Djoko Kesic and Svetomir Marjanovic (6% each), as well as by Sanja Vucicevic (claimed by “Pistaljka” to be the wife of former “Press” editor Dragan Vucicevic) and MEDIAVOX Ltd. from Belgrade, owned by a certain Sasa Petrovic. Jelena Krstovic removed the controversial photograph from her Twitter account and posted a comment claiming that “manipulators and Photoshop experts have obviously nothing better to do than to stage such naive and obvious fabrications”. In the meantime, her Twitter account almost completely died off, while the media “surprisingly” opted to ignore the findings of “Pistaljka”, with the exception of the web portal of Novi Sad-based Radio 021 and E-novine.

Since Jelena Krstovic has removed the photograph from her Twitter account, it is now impossible to compare her original picture with the one posted by “Pistaljka” and give an independent account of whether it was manipulated by “Photoshop ‘experts’ and manipulators” or if it genuinely depicts notes from a meeting between the Vice-President of Delta Holding with the Belgrade Mayor. However, what is more important for our Report is the extent to which the remaining provisions of the Law on the Amendments to the Public Information Law from 2009, which were not declared unconstitutional by the Constitutional Court (regarding the Register of public media), have contributed to more transparent media ownership in Serbia. These provisions have obviously not brought anything positive to the discourse about media ownership transparency. The Strategy on the Development of the Public Information System in Serbia until 2016 insists that the real owner of a legal person that is the founder of a media must be identified, just as origin of the capital invested in the media. The Strategy also announced that the Republic of Serbia would improve and consistently enforce regulations ensuring transparency of ownership and availability of information about natural and legal persons participating in the ownership structure of the media, including information about the nature and scope of their share, as well as about the end owners of those shares; information about the nature and scope of the shares that the same natural and legal persons have in other media and companies active in the media sector and other industries; information about other natural or legal persons that could substantially influence editorial policy; and finally information about state aid measures enjoyed by media. These requirements *per se* should not be disputed, since they were transposed from the Recommendation (2007) of the Committee of Ministers to SE member countries on media pluralism and diversity of media content dated January 31, 2007. Unfortunately, in the year after the adoption of the Media Strategy, nothing was done on this topic and we may only draw the conclusions about who are the real owners of media on the basis of carelessly posted photographs on social networks. That is, of course, if we choose to believe that these photographs are authentic and not the work of “manipulators and Photoshop

'experts"'. Instead, we should be able to do that by examining the Register of public media, which, truth be told, still exists, but avails to nothing in reality.

2. Broadcasting Law

In its edition dated August 20, the daily "Blic" writes about the increasingly frequent complaints by the citizens to the Republic Broadcasting Agency (RBA) over too loud commercials on television. Milan Jankovic, the Director of the Republic Agency for Electronic Communications (RATEL) told "Blic" that RATEL had received from the RBA a request for performing certain measurements in order to determine if the citizens' complaints were justified. "Blic" reports that, according to the measurements performed so far, certain commercials are up to three times louder than the regular programming. According to similar measurements performed by RATEL in July 2011, the least divergence in the loudness of the commercials were recorded on RTS, while the loudest commercials were aired on Pink, Prva and Hepar TV. "Blic"'s reporter was told off-the-record by these stations that the commercials were obtained as a finished product from marketing agencies, which might not have been adjusted in any way whatsoever, not even in terms of loudness. They also claimed that it was almost impossible to adjust the volume of the commercials directly on the air, since that would require an additional technician just for that task. "Blic" reports that, in a similar situation in Bulgaria where, after many complaints by the viewers over too loud commercials, the Broadcast Media Council proposed to the parliament to adopt a law that would prohibit too loud or screeching commercials.

It is not completely clear from the "Blic" article on what grounds the RBA or even less RATEL could penalize the diverging volume of the sound in commercials, even if RATEL established that the aforementioned complaints were justified. The Broadcasting Law stipulates that the broadcasters must ensure the production and broadcasting of quality programming, both in terms of content and technical quality. There is, however, no bylaw that would define any difference in the volume of sound between various parts of the programming as a technical deficiency. Similarly, the Advertising Law stops short of foreseeing the higher volume of the sound in commercials than that of the regular programming as a violation of the principle of advertising, unless if the same would fall under advertising contrary to good business customs and professional ethics. Under the Advertising Law, the latter is subject to a misdemeanor fine ranging from 100.000 and 1.000.000 dinars. However, such a fine has never been ruled by the misdemeanor courts. Moreover, if the RBA, as the competent agency, would file a request for proceedings on such grounds, it remains unclear what would the Court use as a basis for establishing to what extent the sound is louder, as well as who would and how determine what is the required standard in this field in terms of good business customs and professional ethics.

Otherwise, the different volume of the sound in commercials, relative to the sound levels in the other programming, is the issue topical not only in Serbia and the region. In the US, for example, the Commercial Advertisement Loudness Mitigation Law was adopted, insisting on technological concepts that would ensure an even level of loudness in the commercials and general programming. The UK solved the same problem by introducing a mechanism of co-regulation and Code on Broadcast Advertising, providing that the sound of the commercial should not be excessively loud or unpleasant and that the maximum subjective loudness of the commercials should correspond to the maximum subjective loudness of the programming, so that the viewers would not have to adjust the sound level during the commercial break. The Code, however, takes into consideration the fact that the commercial breaks are sometimes aired after particularly quiet programming segments, which makes the commercials with acceptable loudness sound louder than they actually are. The Code provides for various models of evening the sound levels, referring to the recommendations of the International Telecommunications Union, that the maximum sound in the commercials must be at least 6 dB less than the maximum level of sound in the general programming, taking into consideration the limited dynamic range in most commercials.

3. *Law on Personal Data Protection*

On August 7, The Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic, the Journalists' Association of Serbia (UNS) and the Independent Journalists' Association of Serbia (NUNS) have issued a joint press release condemning information enabling the recognition of juvenile victims of crimes, which brings additional pain to their families. The press release referred to the texts about young girl (minor) victim of a rape, containing pictures of her family home, reference to the name of the street and town she lives in, as well as her own initials, which practically amounts to disclosing the identity of the victim, making her situation even more difficult. The press release insisted that such texts were not journalism and did not constitute public information. On the contrary, they bring additional suffering to the victims and their families and tarnishing the reputation of journalism as a profession. The editors and journalists of the newspapers, using such texts to boost their sales, were called to reclaim their professional integrity and cease such practice, as well as the competent regulatory agencies to proactively discharge their powers.

The Law on Personal Data Protection contains vague provisions on the issue of utilization of personal data by journalists and the media. However, the utilization of personal data by journalists and the media for the purpose of publishing/broadcasting (and the collection of information about victims of crime and the release of such information undoubtedly amounts to

utilization) is also subject to certain rules from the Law on Personal Data Protection, especially the rule that the utilization of such information shall be prohibited if the purpose thereof is prohibited. In the concrete case, the Public Information Law stipulates that a juvenile person must not be made recognizable in a piece of information that may harm his/her right or interest. Accordingly, the utilization of such information for the purpose of making a juvenile person recognizable in a piece of information that may harm his/her right or interest shall be prohibited. We remind that the Criminal Code prescribes that the collection of personal data is against the Law and that the use of personal data collected in contravention of the Law shall be a criminal offense subject to a fine or prison term of up to one year.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament did not adopt any legislation of direct relevance for the media sector. The Draft Law on Amendments to the Law on Personal Data Protection was tabled to Parliament, but the proposed amendments concern only facilitating the utilization of data for humanitarian purposes. The Parliament is yet to debate any of the drafts of the set of media laws prepared in the last months of the previous government's term of office. The new government has not even initiated a public debate about these drafts.

However, the media continued to speculate as to how certain issues relevant for the media sector will be addressed. For example, the daily "Blic" cited sources within the Government and the working group (referring probably to the working group of the Ministry of Finance dealing with the revoking of "non-tax and parafiscal charges", as one of the electoral promises of certain parties of the ruling coalition) and reported that the Serbian Government would probably scrap the TV subscription fee for RTS. The daily "Novosti", citing the Ministry of Finance, wrote something completely different: they claim that the revocation of the TV subscription fee was never discussed, since they have not even considered the fee a parafiscal charge and hence it may not be on the list of 107 parafiscal charges to be revoked in October. "Novosti" went on saying that merely 36% of households paid the RTS fee and that the collection rate was the highest in Novi Sad and Belgrade (about 60%), while it was about 20% in other parts of Serbia. Furthermore, the daily went on saying that RTS needed at least 90 million Euros per year to operate, in the situation where it managed to collect merely about 20 million from advertising. This means that the state would have to earmark the remaining 70 million from the already empty budget. Evidence of the low level of that debate is the fact that "Blic" failed to explain how the Government could revoke the fee in the first place, since the latter was not introduced by a Government decision, but by the Broadcasting Law. Similarly, "Novosti" stopped short of

elaborating on the methodology of how they came to the conclusion that no less than 90 million Euros were needed annually to finance the RTS, namely if that number included the savings that could be made by having a more clear definition of the requirements the public service broadcasters had to fulfill, as well as by rationalizing the operations of the RTS and effectively controlling its finances. The same speculations emerged as to the issue of regional public service broadcasters. "Blic" wrote about the so-called "Kragujevac Initiative" as the "initiative for the salvation of local media", while "Politika" also reported from the "Kragujevac Initiative" round table in Pancevo, where the representatives of public companies from Novi Pazar, Kragujevac, Nis and Pancevo pushed for the adoption of a law that would enable the formation of regional public service broadcasters. The "Kragujevac Initiative" also pointed to the fact that the draft law produced by the working group of the Ministry of Culture, which is yet to be formally released, provided for as much as an extra five public service broadcasters (on top of the RTS), which would all be located in Central Serbia, while the only one left in Vojvodina would be RTV in Novi Sad, although the "Kragujevac Initiative" had advocated for an additional three public service broadcasters in the province. There were no analyses, however, as to whether the formation of regional public service broadcasters would be a measure that would really guarantee the survival of local media, as claimed by the "Kragujevac Initiative", or rather a death sentence for most local media, especially the commercial ones, while enabling a few chosen state-owned media to survive.

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. At a session of the RBA Council on August 15, 2012, the Republic Broadcasting Agency passed a decision to call a new open competition for the issuance of licenses for the broadcasting of radio and/or television program for regional and local areas. The competition pertains to two regional licenses for television (one for the region of Zajecar, Negotin and Zagubica and the other for the region of Sabac, Bogatic and Sremska Mitrovica), as well as to two regional radio licenses (one in Belgrade and the other for the region of Bor, Zajecar, Negotin and Boljevac). The open competition was also called for eleven local television licenses and nineteen radio licenses.

What's particularly striking is the fact that thirteen broadcasting licenses were revoked in the last five months due to unpaid fees, while another two were revoked, namely expired, due to the disappearance of the company to which it was issued and the renouncement of the company from further broadcasting, respectively. Shortly after the expiration of the period covered by this Report, the RBA initiated (also for unpaid fees) another 35 proceedings for the revocation of licenses. This fact is evidence of the absence of conditions for the financial sustainability of broadcasters in Serbia, especially in the current situation, where (as concluded in the Media Strategy) more licenses have been already issued than the market can withstand. This points to a serious shortcoming of the Broadcasting Law, which has failed to make the calling of open competitions conditional on the performance of adequate economic analysis to confirm the existence of conditions for the sustainability of licensed broadcasters and therefore the rationale for the issuance of new licenses. Namely, according to the Broadcasting Law, an open competition must be called when, on the basis of the Radio Frequencies Allocation Plan, there is a possibility to issue new broadcasting licenses. In the Rulebook on the Issuance of Broadcasting Licenses, the RBA insists on the obligation of the applicant (for obtaining the license) to provide a guarantee with its financial potential "that it will be able to realize the proposed programming and editorial concept". The latter, however, is obviously not enough, since the term of the license is eight years and irrespective of the financial potential of the applicant, his ability to realize the proposed programming and editorial concept is undoubtedly also affected by the market conditions, which have been unfavorable for years now.

2. Republic Agency for Electronic Communications (Ratel)

The activities of the Republic Agency for Electronic Communications (Ratel), pertaining to measuring the loudness of commercials on television and any divergence thereof from the sound level of general programming, have been elaborated on in the section of this Report concerning the monitoring of the implementation of the Broadcasting Law.

STATE AUTHORITIES

3. The Ministry of Culture and Media

3.1. The Government of Serbia has appointed Dragan Kolarevic to the post of Culture and Media Minister, in the Information and Media Sector. During the 90s, Kolarevic worked as a reporter for the RTS; since the democratic changes in 2000, he continued to work in the RTS

Documentary Program Department. In one of his first statements after his appointment, Kolarevic said that, since he had worked in the documentary program, he was very well acquainted with the developments in the media sector. He stressed he would push for greater freedoms and better financial position of journalists. "I am currently reading the Draft Law on public service broadcasting, which will ensure independence in the financing and editorial policy. That will be our starting point", the new Deputy Minister told the daily "Press".

More attention than the appointment itself was drawn by the text which Kolarevic posted only a few days before in the web magazine "Novi standard". Entitled "It's Time for the First Serbian Cultural Uprising", Dragan Kolarevic claims that Serbia has been under cultural occupation since 1915 and the withdrawal of the Serbian army in World War One, which, in his opinion, persists to this day. Asked "who are the motors and executors of the fatal anti-Serbian policy in Serbia?" and "Are these people the ones who have wholeheartedly supported Tadic and Jovanovic on the recent elections and all elections in the recent past?", Kolarevic lashed out by itemizing a list of singers, actors, directors, writers and other figures from cultural life that supported the Democratic Party and Liberal Democratic Party of Serbia on the latest elections. Kolarevic's text was met by widespread condemnation in the public, especially the part where he singled out "unsuitable" individuals due to their political affiliation. Immediately after the expiration of the period covered by this Report, the State Secretary in the Ministry of Culture Miroslav Tasic said that he had read the controversial text, but stressed that Kolarevic, just like anyone else, was entitled to making his personal views public. Meanwhile, the Culture Minister Bratislav Petkovic responded to the requests that Kolarevic be removed from office by saying that the latter would stay in the Ministry and that his dismissal would not be considered.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

4. *Organization of Phonogram Producers of Serbia – OFPS*

In late August, the Organization of Phonogram Producers of Serbia announced its engagement in intensive negotiations (together with the Organization for the Collective Realization of Performers' Rights – PI) with the representatives of certain associations representing the users from the field of public communication and public broadcasting, as well as with the representatives of payers of the special fee (among others the Employers Union of Serbia, Association of IT activities of the Serbian Chamber of Commerce, ANEM, RTS, RTV). The goal of these negotiations is to overcome the misunderstandings and reaching an agreement on the tariffs. OFPS also said that it had, together with the Employers Union of Serbia and the collective

organizations SOKOJ and PI, tabled an initiative with the Finance and Economy Ministry for amending the VAT Law by reducing the VAT rate from the existing 18% to 8% in cases of transfer and assignment of copyright and related rights by collective realization of copyright and/or related rights and by enabling collective organizations to pay VAT after their collect claims. The latter would, according to the OFPS press release, improve the position of both the users and the holders of rights.

We remind that the Law on Copyright and Related Rights, which has been in force since early 2010, prescribes a new mechanism for determining the tariffs of the fees for the use of copyright works and works/materials protected by related rights. Specifically, under that mechanism, the tariff is determined by mutual agreement between the collective organizations and the representative users' associations. Failing such an agreement, the managing board of the organization may adopt a tariff. The latter must be approved by the Copyright and Related Rights Commission to come into effect. As an exception, the Copyright and Related Rights Commission may independently set the tariff. However, although the aforementioned Law has been in force for more than two years, the OFPS, at least relative to broadcasters, still implements the tariff adopted under the previous Law. The reason for this is the fact that the OFPS has failed to reach an agreement with the broadcasters about the tariff or to obtain the approval of the Copyright and Related Rights Commission for the tariff the OFPS has proposed. In such a situation, it is increasingly likely that the Commission will ultimately determine the tariff on its own. OFPS' press release shows that this organization is more than willing (in order to avoid such a situation) to try and negotiate once again and even give new concessions to the representative users' associations and ultimately reach an agreement about tariff.

V THE DIGITALIZATION PROCESS

Announcing the priorities of his ministry in the coming period (broadband Internet Access, greater participation of entrepreneurs in the process of adoption of strategic documents, improved e-trade, facilitating the access of the scientific community and SMEs to EU funds and establishing functional e-government), Stefan Lazarevic, State Secretary in the Ministry for Internal and Foreign Trade and Telecommunications, also mentioned digitalization. Lazarevic said that television signal in Serbia was currently broadcast from 15 initial network locations, stressing, however, that it was a low power broadcast for the purpose of testing the distribution network. "In the final network, the signal will be broadcast from many more locations and the first switch-off of the analog signal in certain coverage zones is expected in mid-next year", Lazarevic said. The new state secretary also expects Serbia to finish the digitalization process in

the course of 2014. “We currently lack a project of the network, which is the first step we need to undertake; it will allow us to bring about a plan for the digital switchover. That plan will define in detail the term and the switchover for individual zones”. Lazarevic also said that the Government of Serbia was seriously considering modalities for helping disadvantaged families to purchase equipment for the reception of digital signal. “The timing of the purchase of STBs should be linked to the switch-off of the analog signal in each particular region, although these devices are already available on the market”, Lazarevic said. “Since their price will fall with time, the citizens should buy them immediately before the switchover to digital broadcasting. They should not even consider buying one until further notice”.

It seems that the statements of the new state secretary carry a slightly different message than the ones we were used to hear from his predecessor. The message is still optimistic; according to Lazarevic, Serbia will finish the digitalization process in the course of 2014, although the Strategy was more cautious predicting 2015 as the end date for the digital switchover. On the other hand, instead of itemizing the advantages digitalization will bring to the citizens, Lazarevic very openly talked about what the state still had to do and what it should have done a long time ago – adopting a project of the network, followed by the passage of a digital switchover plan, which would determine the timeline for the switch-off of the analog signal and the switch-on of the digital signal in phases in each region.

VI THE PRIVATIZATION PROCESS

In early August, the Serbian Journalists Trade Union called the Anti-Corruption Council to review the lawfulness of the bankruptcy of Television Cacak and the privatization preceding the bankruptcy. The call came after the signal of TV Cacak was switched off on August 1. The RBA previously revoked the licenses of that station over unpaid fees, while the Commercial Court (at the proposal of the creditor, the distribution company “Pro Vision”, to which TV Cacak owed almost 900.000 dinars) initiated bankruptcy proceedings due to lasting insolvency. According to media reports, the explanation of the Court’s decision said that the overall debt of TV Cacak amounted to 42.6 million dinars. The Serbian Journalists Trade Union reminded that TV Cacak started to operate on January 17, 1999 as a municipal public company, which was privatized on December 11, 2009. Since then, the station has been the property of the entrepreneur from Cacak Zoran Bojovic, namely the members of his family. Bojovic is also the owner of Radio Cacak and the weekly “Cacanski glas”.

According to media reports, the employees of TV Cacak, who lost their jobs after the station went into bankruptcy, have placed the blame for the demise of their employer on the city. "People in the city administration have caused Cacak to become one of the rare cities in Serbia that was left without a TV station", an employee said, adding that "they sold us out; we were privatized by force of the law. It did not have to be like this, we can see that from the examples of cities like Nis or Kragujevac, which have retained their TV stations". People who have lost their jobs look for who to blame for their situation among those who have observed the Law, which provides for mandatory privatization of state-owned media; these people say that the Law did not have to be apply to them, since it did not to media in Nis or Kragujevac. It is symptomatic that Serbian Journalists' Trade Union and many others stopped short of proposing any solution for the disastrous media situation other than the cancellation of the privatization, i.e. return to budget financing. In other words, the state is called to "safeguard its media" at the expense of private media and to violate its own laws prescribing mandatory privatization of media companies. At the same time, the Trade Union fell short of calling the state to ensure fair market conditions or consistent state aid control, which would promote the survival and growth of competitive media and not only those subsidized by the state.

VII CONCLUSION

The Serbian media scene is still waiting for the long-promised reforms in the media sector. The new government is slowly appointing people to positions relevant for the media, failing sometimes, like in the case of the Deputy Culture Minister Dragan Kolarevic, to avoid controversies with chosen solutions. Time is not plenty, the aforementioned changes are pressing, as evidenced by the fact that up to three radio or TV stations in average remain without a license every month. This average could get even worse, since it was reported that the RBA had initiated another 35 license revocation procedures. The new goverment needs to step up its activities in the media sector, otherwise there won't be any (broadcast at least) media left to privatize when it finally decides to go with media reforms. The situation is also dire for print media, as evidenced by the call of the managing board of the Media Association (an association of the largest print media publishers in Serbia) to the Prime Minister Ivica Dacic and Culture Minister Bratislav Pektovic for an urgent dialogue on measures to improve the conditions for business in the newspaper publishing sector. The message is the same – failing the introduction of the necessary measures, Serbia will become one of the rare countries in Europe where the newspapers have become extinct.