

I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1 According to a press release by Radio-Television Vojvodina (RTV) published on July 4, their reporter Nenad Jovicevic and cameraman Laszlo Ratz were attacked verbally and physically, while filming a fire in the workshop of the company Agro-Lend in Becej. The attacker was Roland Sabolcki, the owner of the said company. The press release says Sabolcki insulted and threatened the RTV crew and ultimately pushed the cameraman off the premises on the road, while trying to grab his camera away. He was finally stopped by the police. Journalists' associations condemned the attack and insisted that the perpetrator be properly punished, just like in the case of every other attack on journalists, the goal being to send a message that the authorities have to put an end to the „tradition“ of impunity (attackers on journalists typically remaining unidentified or, in the contrary case, receiving merely symbolic sentences) that encourages attacks on reporters. Several days later, Roland Sabolcki sent a letter (which he demanded to be made public) to the management of RTV apologizing for his actions. In the letter, Sabolcki said the fire in his company's workshop was the most difficult moment in his life, which was not, he admitted, an excuse for his behavior.

The media reported that a tragedy could have happened due to the many barrels with oil in the workshop that caught fire. The public undisputedly had the right to be informed about such an incident. The Public Information Law says that it is forbidden to restrict freedom of public information so as to restrict the free flow of information, ideas and opinions and particularly to put any kind of physical or other pressure on public media and the staff thereof, or influence that could obstruct their work. Since from the given context it may be inferred that Sabolcki aimed at preventing the footage to be aired on television, we remind that the Criminal Code, in Article 149, paragraph 2, says that unauthorized impeding or obstruction of television broadcasting shall be a felony subject to a fine or a prison sentence of up to one year. By the time this Report was completed, no information were released as to whether the competent prosecutor had initiated any kind of procedure. In any case, the fact that Sabolcki apologized to the RTV management for his actions and admitted his behavior was inexcusable, could be interpreted as

a sign of increased awareness about the importance of freedom of expression and the societal unacceptability of attacks against journalists reporting about matters of public interest, irrespective of the circumstances of the concrete case.

In the period covered by this Report, a similar (albeit incomplete) apology was extended to a journalist and a media – Olja Beckovic and TV B92. Namely, the leader of a political party belonging to the new ruling majority, Velimir Ilic, who, on a press conference held on July 17, accused TV B92 of waging a campaign against him, while calling Beckovic “not sane” and “in need to be taught a lesson”, said two days later that, while he still believed he and his associates were victims of a “political crackdown”, he admitted to have reacted vehemently and therefore he was apologizing to both TV B92 and Ms. Beckovic”. Ten days later, Velimir Ilic was appointed to the post of Construction and Urban Planning Minister in the Serbian Government. The parliamentary majority obviously did not consider Ilic’s repeated attacks against journalists and the media to be an obstacle for appointing him to an important public position. We remind that, only several months ago, Ilic was sentenced to pay damages to journalist Vladimir Jesic for having insulted and attacked him during the shoot of an interview in 2003. Ilic has a long history of insults and threats against both Olja Beckovic and B92, as well as other media and journalists. Hence, his appointment raises concerns that the relationship between the government and journalists will not change with the coming to power of the new ruling coalition in Serbia.

1.2. On July 12, the Ljig Information Service (LIS) announced that journalist Mira Kojic of Revija Kolubara and longstanding correspondent of Napred from Valjevo has been expelled from the first session of the new Municipal Council in Ljig. According to a LIS press release, as soon as Kojic entered the premises, where the session was being held, she was told by the chairman of the Municipal Council Miodrag Starcevic that the meeting was closed for the public and that she ought to leave. After Kojic asked her photographer to be allowed to remain in the premises, just like the crew of Ljig Television (whose program is broadcast in the local cable system without the proper RBA license), in order to take pictures of the members of the Council, Starcevic called the police to remove her from the session. The ruling majority in Ljig consists of the Socialist Party of Serbia (SPS), New Srbija (NS), United Regions of Serbia (URS), the Democratic Party of Serbia (DSS) and the Serbian Radical Party (SRS).

Municipal councils (as local self-government bodies), just like all state authorities and organizations, territorial autonomy bodies, public services and public companies, members of parliament and local councilors, are subject to the obligation provided for by the Public

Information Law to make the information about their work available to the public, under equal conditions for all journalists and all public media. In the concrete case of the Ljig Municipal Council, it is difficult to see any reason whatsoever for the session being closed for the public and the media. Moreover, it seems to be a clear case of unlawful discrimination against journalists and the media, since the crew of Ljig Television (which, as it was mentioned above, is broadcasting without a proper license and in breach of the Broadcasting Law) was allowed to stay and keep filming the session, which Mira Kojic was expelled from. Since cases, such as the one in Ljig, are not isolated, it may be concluded that the current legal framework in Serbia, while providing for the obligation to make information on the work of local self-government bodies and other state authorities available to the public, under equal conditions for all journalists and all public media, actually lacks the proper mechanisms that would ensure the enforcement of that obligation. If those responsible for such violations of the provisions banning discrimination against journalists and the media and for shunning the obligations related to the transparency of the work of state authorities and local self-government bodies, are not held to account, the said anti-discrimination provisions will remain a dead letter on paper, the enforcement of which shall merely depend on the good will of individual public officials.

2. Legal proceedings

2.1. In a press release issued in early July, the Independent Journalists' Association of Serbia (NUNS) protested over the intolerable foot-dragging of the trial stemming from a case from June 2000, when the Mreza Production Group's camera was snatched in the street in downtown Zemun. While shooting a story about the attack on the Xeroxing store of Ljubomir Rankov, two members of the security of the Serbian Radical Party (SRS) approached Mreza's reporter Snezana Stojadinovic and cameraman Aleksandar Kostic and took away by force the tape with the footage and the camera. They said the camera would be returned to them as soon as the footage was reviewed in the premises of the SRS. Mreza called the police and half an hour later, in their presence, the bystanders recognized one of the two security guards exiting the SRS offices, accompanied by a high party official – the then Transportation Minister in the Serbian government Dragan Todorovic. In the indictment raised in November 2001 against Branislav Gavrilovic and Nebojsa Gavranov, the then Municipal Prosecutor accused them of grand larceny, while stopping short of investigating if anyone from the SRS, in the premises to which the camera was taken, ordered such a thing. NUNS said in a press release that, eleven years and seven months after the indictment was raised and after 37 scheduled inquests and three expert hearings, the conclusion of the proceedings is still not on the horizon.

The trial against the persons accused of taking the camera away from Mreza's crew reflects the ineffectiveness of court protection of freedom of expression in Serbia. When the incident happened back in 2000, Mreza was interviewing Ljubomir Rankov and the reporter Dragan Stojovic, the then President and Vice-President, respectively, of the Independent Citizens' Alliance for Zemun in front of Rankov's Xeroxing store that was attacked the day before as an act, as some believed, of retaliation for the photocopying of materials compromising for the SRS-controlled local government of Zemun. The investigation that was carried out and the trial that followed and that is still underway disregarded the fact that the defendants, working for the SRS security, did not probably act on their own, but rather under the instructions of unidentified SRS officials. This is yet another in a myriad of cases, where only the direct executors of attacks against journalists and their property are prosecuted, while those, who have incited and ordered such attacks, remain untouched. Add to that the fact that the trial has entered into its eleventh year, without either the first instance or final verdict in sight and we get a pretty grim picture about the effectiveness of court protection of freedom of expression in Serbia. For comparison's sake, the trials for libel against Dragan Stojovic, initiated by Todorovic. Stojovic was heard as a witness in this case, since he was among the persons Mreza interviewed when their camera was taken and who, after one of the hearings in 2002 that were scheduled but were not held, due to the absence of the defendants, published a text hinting at the possibility that Dragan Todorovic was one of the persons who ordered the camera to be snatched – since as a high SRS official he was most probably present in the SRS offices when the incident took place and since one of the defendants was his personal bodyguard. In the case initiated by Torodovic's private action for libel, Stojkovic was freed of all charges, but in the litigation for damages, Stojovic was first sentenced in 2006 to pay Todorovic 500 thousand dinars. That amount was reduced to 350 thousand in the appeals proceedings in 2008, only to be ultimately revised in 2009 to 200 thousand. During all this time, the criminal proceedings against the persons accused of taking the camera were still underway. Therefore, paradoxically, twelve years after the incident, the only person that was ultimately fined for the camera incident was not the one that ordered the camera to be snatched (for he/she remains unknown) or those who took the camera (who are known, but are ignoring court subpoenas or claiming inability to stand trial), but the reporter that was interviewed by his colleagues from Mreza just before the incident.

2.2. On July 12, the Association of Independent Electronic Media (ANEM), the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina (NDNV) protested against the verdict of the Higher Court in Novi Sad sentencing Radio 021, the daily "Dnevnik" and the editors of the said media to pay damages for tarnished reputation and honor of the Prosecutor Dragan Urosevic, who is currently serving a prison term

in Pozarevac. The charges were pressed after the website of Radio 021 and the daily "Dnevnik" published last November the news about the verdict sentencing Urosevic and Blazo Boskovic from Stari Ledinci to five and four years in prison, respectively, for extortion. The text wrongfully indicated that the verdict pertained to a case of extortion from 2007 (in that trial, the then District Court suspended the proceedings against Urosevic). In reality, it concerned a case from 2009, when Urosevic and Boskovic, as the verdict said, "used threats and beating to extort money from a considerable number of women in Kacka Petlja".

The Public Information Law says that any individual, whom false information pertains to and who is harmed by such information, shall be entitled to compensation of pecuniary and non-pecuniary damages. At that, the responsibility should not be objective, but rather conditioned by a lack of due professional care in journalism. Under the Law, journalists and editors are required, prior to releasing information containing data about a specific event, occurrence or person, to check the origin, veracity and completeness of such information, exercising proper care in the given context. In the concrete case, two Novi Sad-based media complemented a piece of inexhaustive information about a verdict for a felony with previously released information about the fact that the same persons already stood trial for extortion in a case from 2007, whereas, in reality, the extortion in question took place in 2009. The key problem in such cases is the manner in which the courts weigh the notion of "due professional care in journalism", namely the prudence/care corresponding to the circumstances of the concrete cases. In the practice of Serbian courts, it is virtually impossible to find a verdict where the court had concluded the released information to be untrue, while, at the same time, there were no grounds for damages, since both the journalist and the editor did act with due professional care in journalism. Furthermore, when they invoke the absence of due professional care in journalism as the reason to commit the media to pay damages, the courts typically fail to clearly determine what is the proper standard of due professional care in journalism required in the concrete case. In practice, this has created the situation where the media are held to a "zero-error standard", irrespective of the circumstances, as well to a total lack of consideration for the requirement of the trade that news, just like perishable goods, must be released fast, while it still makes sense to make them public. In that sense, the only thing that mattered in the concrete case was whether the plaintiff was sentenced for a case of extortion from 2007 or from 2009 and not what is the proper standard of due professional care in journalism required in the concrete case, namely whether the reporters and the editors of two Novi Sad-based media were able (with due professional care in journalism in the given circumstances of the concrete case and taking into account the need to release news while they are still fresh) to determine if there were two and not one criminal trial against the same persons for two generic felonies, with a different

outcome. Moreover, given that the plaintiff had indeed been convicted in a case of extortion and that he is serving his term in another part of the country and his access to the regional press in Novi Sad and the internet is probably restricted, the question is how did the court ponder the non-pecuniary damage that he has allegedly suffered. Namely, according to the general rules for determining non-pecuniary damage, damages for emotional distress over tarnished reputation or honor are ruled only exceptionally, depending on the circumstances (especially if warranted by the level of distress and the duration thereof) of the concrete case. The ratified European Convention on the Protection of Human Rights and Fundamental Freedoms stipulates that freedom of expression may be restricted, among other things, only to the extent necessary in a democratic society. In the concrete case, it would most definitely be interesting to see how the court has determined that the circumstances of the case, the level of distress suffered by the plaintiff and the duration thereof, are sufficient grounds for ordering the defendant to pay damages for emotional distress. Moreover, it would be useful to discern why did the court assessed that determining the pecuniary damages is necessary in a democracy, namely if the purpose of the protection of the Prosecutor's right could not have been achieved in some other way, respecting the principle of proportionality.

2.3. UNS, NUNS and NDNV have called the President Tomislav Nikolic to pass a decision pardoning Laslo Sas from Subotica, who has been serving a prison term since July 20, after he was found guilty by the Primary Court in Subotica (the verdict of which was upheld by the Appellate Court in Novi Sad) for libel and fined 150 thousand dinars. The fine was ultimately replaced by a 150-day prison term by the aforementioned Primary Court, since Sas failed to pay the fine on time. He was subject to a private claim by the leader of the Hungarian extremist movement "64 Zupanije" Laslo Torockai over his text published in the form of a reader's letter on April 24 in the daily Magyar Szó. Laslo Sas is a journalist who used to write for Magyar Szó from Novi Sad and Hét Nap from Subotica. In the controversial text, Sas criticized Torockai as a right-wing extremist; he says he did not want to offend Torockai, but merely to protect the youth from Hungarian nationalism. Otherwise, the trial was held while Torockai was banned from entering Serbia by an Interior Ministry decision, which branded him an extremist. UNS, NUNS and NDNV said that, due to a difficult financial situation, Sas was unable to pay the fine, while he was also forced, in the second-instance proceedings, to defend himself on his own, since he could not afford an attorney (the attorney that represented him in the first-instance trial passed away in the meantime).

We wrote two months ago about the paradox that the revoking of the prison term for libel and defamation in Serbia and replacing it with merely by a fine (with the Amendments to the Criminal Code from 2005) threatens to result in someone going to jail for libel in the media for the first time after 20 years or maybe more. In our May report, we wrote about Novi Sad activist of the Anti-Fascist Action Zoran Petakov, who was sentenced to 100 days in prison for failing to pay a fine for having slandered Serbian Orthodox Church's Bishop Irinej of Backa. The slander allegedly happened in the TV program Klopka on BK Television back in 2005. We remind that, until the amendments to the Law enacted that same year, the penalties for libel and defamation, if and when they were handed down, were typically conditional and nobody really went to jail. The amendments created the situation where those fined for libel or defamation would serve a prison term if unable/unwilling to pay the fine. In the backdrop of a serious financial crisis, which has made it impossible for many journalists to pay fines, the possibility that a fine be replaced by a prison sentence threatens to become the norm. Also interesting is the fact that both the cases of Zoran Petakov and Laslo Sas are related to criticism of right-wing extremism: in the first case, criticism was expressed by a civil activist in the media and in the second, a reporter. While Petakov was sentenced for voicing his opinion that the Serbian Orthodox Church was promoting an ideology that attracted right-wing extremists and that certain bishops had an influence on the creation of extremist groups, Laslo Sas was convicted for criticizing the Greater Hungary nationalism of the leader of the Hungarian extremist movement "64 Zupanije" Laslo Torockai. In both cases, public figures were criticized – a bishop of the Serbian Orthodox Church and a politician from neighboring Hungary, who advocates for a revision of the Treaty of Trianon from 1920, which defined Hungarian state borders. Both verdicts are problematic, to say the least, from the aspect of compliance with the constitutional guarantee of freedom of expression, as well as with the provision of the Serbian constitution guaranteeing that Serbian courts will, in such cases, interpret the legal provisions related to human rights (including freedom of expression) in favor of furthering democratic society values, in line with the applicable international standards and the practice of international institutions overseeing their enforcement. In other words, in line with 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. The case of Laslo Sas has painfully demonstrated the extent of the damage Serbia has suffered for refusing to decriminalize libel and defamation back in 2005. The full decriminalization of libel and defamation was foreseen only on January 31 this year, when the previous government tabled to the Parliament the Draft Law on the Amendments to the Criminal Code. However, the Parliament failed to adopt it in the period prior to the May elections, when it was dissolved. Meanwhile, right after this Report was completed – on August 3

– the new President Tomislav Nikolic passed a decision pardoning Laslo Sas, who was released from prison, where he had spent two weeks.

2.4. On July 4, the Constitutional Court adopted the constitutional appeal filed by Veran Matic and Brankica Stankovic (the responsible editor of TV B92 and the author of the investigative serial “Insider” aired on TV B92). In its decision, the Constitutional Court ruled that the verdicts of the former Fourth Municipal Court in Belgrade and the former District Court in Belgrade from 2008 and 2009, respectively, violated Matic’s and Stankovic’s constitutionally guaranteed right to a fair trial. The Court ordered that the proceedings on appeal against the first-instance verdict of the Fourth Municipal Court be repeated. In the concrete case, the Constitutional Court found that the right of the reporter and the responsible editor to a fair trial was violated by the omission of the first instance court and the second instance court in trial on appeal to present evidence proposed by the defendants – i.e. to officially request a document from the Ministry of Internal Affairs (MUP), which was invoked by the defendants, and to review it in order to establish the veracity of the information that was being conveyed from that document.

This case concerns an episode of Stankovic’s investigative program “Insider”, aired on TV B92 back in December 2006. The program dealt with the position of prosecutors and the possibility to illicitly influence their work. In the part of the program concerning the then District Prosecutor in Belgrade Milovan Bozovic, it was said that his son Ivan Bozovic had been described in MUP’s “White Book” as a man with close ties to an organized crime group collaborating with the Montenegrin mafia. The same information was released by other media in early 2006 – specifically in the daily “Blic”. During the trial, the defendants Matic and Stankovic claimed that they had checked and corroborated that information from several independent police sources. At the same time, they invoked the right to protect the confidentiality of their sources. The White Book represents a compilation of the police’s operational intelligence about groups and individuals engaging in organized crime activities. It is continuously updated and the public had the opportunity to get to know the version from 2003, which was distributed to the press by the then Police Minister Dusan Mihajlovic, during the state of emergency declared after the assassination of the Prime Minister Zoran Djindjic. Brankica Stankovic claimed that, in their case, they had invoked a later version of the White Book, compiled after the state of emergency. The existence of such new versions was also publicly hinted at by Ivica Dacic, after he became Interior Minister in 2008. In Stankovic’s and Matic’s case, however, the former Fourth Municipal Court rejected the defendants’ request to ask specific operational intelligence from the Interior Ministry and convicted them on the basis of the rule on the burden of proof. Although the

Constitutional Court did not weigh whether the journalists' right to freedom of expression had been violated by their conviction, due to the fact they were unable to produce a document that would serve as evidence of their claims (they were unable to produce it since that document was classified and realistically inaccessible to journalists), this verdict is significant from multiple reasons. Firstly, it has given the opportunity to the defendants to stand a fair trial in repeated proceedings. Secondly, the Constitutional Court confirmed, albeit indirectly, that the courts ought to establish the facts in media-related trials by officially requesting evidence in cases where journalists, intent on protecting their sources or due to the inability to access such evidence, were unable to produce them on their own. This has contributed to freedom of expression and strengthened the right of journalists to protect the confidentiality of their sources. In addition, in the criminal trial against Stankovic, related to the same situation from 2006, the Criminal Court did request the Interior Ministry access to operational intelligence concerning Ivan Bozovic and after receiving such intelligence, ruled to reject the libel claim. Bozovic appealed the verdict, but the case expired during the appeal proceedings.