

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. According to media reports, Predrag Blagojevic, the editor and journalist of the *online portal "Juzne vesti"* (Southern News) was threatened by the Director of the public company JKP Gradske toplane Nis ("Municipal Heating Plants") Milutin Ilic. On the same day the threats were made, two men, who presented themselves as "Mr. Jankovic from the heating plant" and "Colonel Dobrivoje from Pristina" called Blagojevic on the phone and warned him to "mind what he writes" and to "stop messing with certain things". According to the press release issued by the Independent Journalists' Association of Serbia (NUNS), the two men told Blagojevic to meet them during the evening, in order to "clarify certain things", while the "colonel" told him he would have to give a statement related to his reporting about the heating plant, otherwise he (the colonel) would come with the police in the morning to fetch him". *"Juzne vesti"* claim that back in late November last year, they wrote about "Colonel Dobrivoje" as one of the two officials of the ruling SNS, who had got their positions at the heating plant through political affiliation. On April 8, 2013, the Nis Police Administration pressed criminal charges against the Director of the heating plant, SNS member Milutin Ilic, the Vice-President of the Security Committee of the SNS in Nis, Colonel Dobrivoje Stanimirovic, as well as against Mija J., for having allegedly threatened Blagojevic. The threats against Blagojevic were condemned by NUNS, the Commissioner for Information of Public Importance Rodoljub Sabic and the OSCE Mission to Serbia. In a press statement, a group of NGOs called for the dismissal of those that made the threats and their "removal from public duties in the City". The Mayor of Nis Zoran Perisic, also from the SNS, distanced himself from the threats in a brief press release posted on the website of the City.

Under the Law on Public Information, state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well as MPs and councilors, are obligated to make information about their work available to the public, under equal conditions to all journalists and all media. The Law prescribes that ideas, information and opinions about phenomena, events and persons of interest for the public shall be released freely in the media, regardless of how this information was obtained. The Law stipulates that it shall be prohibited to directly or indirectly restrict freedom of public information in any way suitable for restricting the free flow of ideas, information and opinions, as well as to put any kind of physical

or other pressure on media and the staff thereof, or exert influence that may obstruct their work. In the concrete case, the employment policy in public companies is undoubtedly a matter of public interest and "Juzne vesti" were definitely entitled to release information about such policy and, more specifically, about possible abuse in the form of privileging members of the ruling party when employing new workers. What is more, the public company "JKP Gradske toplane" was obligated to make this information available to the public, since the employment policy is an integral part of the operations of public companies. Telephone threats made to the editor and journalist over information he released about matters of public interest, are undoubtedly suited to restrict the free flow of information and obstruct the work of the journalists. The good news in this case is the swift reaction of the police, which identified the persons making the threats (which was not too difficult, since they did not try to hide at all) and pressed charges against them. Furthermore, the fact that the Mayor of Nis distanced himself from the threats is also commendable, since they had come from members of his political party.

1.2. Fourteen employees in *TV Jedinstvo* from Novi Pazar have sent an open letter to the President of Serbia, the Prime Minister and Deputy Prime Minister, the competent ministry, the Director of the Police, embassies in Belgrade, the OSCE Mission to Serbia, as well as to their fellow journalists from other media, asking for help. The letter says their rights to free life and occupation have been under threat after a group of people, lead by Mirsad Fijuljanin, stormed their offices at the station. In the letter, the employees say they dare not come to the station due to security concerns. Mirsad Fijuljanin, who has claimed to be the Director of *TV Jedinstvo*, said that the 14 employees were fired for not showing up for work for 13 days.

The turmoil in *TV Jedinstvo*, which was described in our previous report, is apparently related to the divisions inside the Bosniak Democratic Union (BDU). We remind that *TV Jedinstvo* was stripped off its license in 2012, after its mother company, the Joint Stock Company for Graphic Services "Jedinstvo AD" (in the scope of which the station used to operate), went bankrupt over debts incurred by other parts of that company. The TV station continued operating through a third company, but since its license remained registered on Jedinstvo AD (the transfer of the license being prohibited under the Broadcasting Law), the RBA ultimately revoked it, citing as a reason the bankruptcy of the mother company. *TV Jedinstvo* continued broadcasting nonetheless and the director was fired in March. According to media reports, his dismissal resulted from a political row between the Mufti of the Islamic Community in Serbia Muamer Zukorlic and Emir Elfic, the President of the Bosniak Democratic Union; according to reports, the former Director Serif Marukic is said to be close to Emir Elfic, while the new one, Mirsad Fijuljanin, to Mufti Zukorlic. The turmoil in *TV Jedinstvo* may be analyzed from multiple levels.

On one hand, fourteen people were left without a job, evidently for not being prepared to adjust their reporting to the ambitions of one of the parties in the political row in Novi Pazar. The new director stormed their station accompanied with armed security guards and sent them off home. Thirteen days later, he fired them for not coming to work. From a different perspective, the developments in Novi Pazar illustrate why combating piracy in Serbia is so difficult. What is evident is that the political support that *TV Jedinstvo* enjoyed, at a given moment, from the President of the Bosniak Democratic Union or, at a different time, from the Mufti of the Islamic Community in Serbia, sufficed to allow unobstructed broadcasting, in spite of the fact that the license of the station had been revoked. It is still unclear what is Mirsad Fijuljanin managing (as the "Director"), since the company *Jedinstvo AD*, which was the sole holder of the license, is bankrupt. All in all, it is evident that there are people in Serbia that are prepared to ensure media support for their political groups by storming television stations accompanied by armed security; that the institutions are powerless to stand up to them, let alone the Republic Broadcasting Agency (RBA) or the Republic Electronic Communications Agency (RATEL), which were supposed to enforce their own decisions revoking the broadcasting licenses, namely transmitter license. Finally, the ineffective legal framework for the operation of media in Serbia not only lacks responses for situations such as the one in Novi Pazar, but is also unable to identify the real owner of *TV Jedinstvo* at the present time, or the rights of its journalists towards that owner.

1.3. The right-wing organization SNP NASI has continued its campaign from January, in the scope of which they have been plastering posters in Serbian towns, labeling certain NGOs and media as "foreign agents", "anti-Serbian media and NGOs financed by Western intelligence services". Among these "traitors", SNP NASI cited RTV B92, the dailies "Blic" and "Danas", the weekly "Vreme" and the "Republika" magazine, the online portal "Pescanik", NUNS, as well as NGOs such as the Humanitarian Law Fund, Women in Black, Center for Cultural Decontamination, YUCOM, the Helsinki Committee for Human Rights, the Initiative of Youth for Human Rights, the Sandzak Committee for the Protection of Human Rights, the EXIT Foundation, the Autonomous Women's Center, the Belgrade Center for Human Rights, Amnesty International, the Civic Initiative, Queeria Center, the Gay-Straight Alliance, Dokukino and others. In early April, SNP NASI issued a new press release announcing the continuation of their campaign entitled "Who should be Banned?" by plastering posters and distributing flyers with the same-named inscription and the picture of Veran Matic, the Editor-in-Chief of B92 and a number of civil society activists. The poster also contained a text branding the persons from the pictures, as well as TVB92, the LGBT population and "other political cults" as "foreign agents", accusing them of working against the interests of Serbia, leading a campaign for dismantling

Serbian institutions, spreading hate speech against the Serbian people, Serbian culture and religion, funding Albanian organizations in Kosovo promoting the independence thereof, as well as of persecuting the Serbian people”.

We remind that the Public Prosecutor has requested the ban of SNP NASI by the Constitutional Court. Article 55 of the Constitution of the Republic of Serbia guarantees freedom of association, but also says that the Constitutional Court may ban an association whose actions are aimed at forcibly undermining the constitutional system, violating guaranteed human or minority rights or instigating racial, ethnic or religious hatred. However, on November 14, 2012, the Constitutional Court found that “constitutional grounds for banning SNP NASI may not be reliably established”, stressing that it believed that not all “measures of prevention and penalizing the illegal actions of that association and its members have been exhausted”. In the concrete case, RTV B92 pressed charges against the responsible persons in SNP NASI and extended these charges after that organization’s announcement in April. Unfortunately, no measures have been taken against them yet. We may only repeat what we have stressed in our prior reports: the media are typically first to be targeted by extremists. At that, naming them and journalists “foreign agents” and accusing them of “acting against the interests of Serbia”, of “leading a campaign for the dismantling of Serbian institutions” and “spreading hate speech against the Serbian people, Serbian culture and Serbian religion”, “funding Albanian organizations in Kosovo that promote the independence thereof, as well as of persecuting the Serbian people”, if nothing else, amounts to intimidation and constitutes “influence that may obstruct their work”. As such, it should be subject to the Law on Public Information and its provisions prohibiting the restriction of freedom of public information, the cases of which are supposed to be settled before a court of law in urgent proceedings. Unfortunately, the only decision that has been passed against the intimidation campaign by SNP NASI is that of the Constitutional Court of Serbia, saying that “the existence of constitutional grounds for banning the activities of that organization may not be reliably established”. The extremists visibly view such a decision as their victory and an incentive for continuing with even more ruthless threats against journalists.

1.4. In early April, the media published the press release of the Municipal Council (MC) of the Serbian Progressive Party (SNS) in Cacak, signed by the Acting President Radenko Lukovic. The press release denounced the statement made by SNS official Mirjana Djokovic, Deputy-Mayor for the field of economic development and environment protection. Djokovic had said that, as a member of the Commission for Awarding Funds to Local Media, she would have a restrictive position towards those media that criticized the activities of the Municipal Council, the

Councilors' Group and councilors of the SNS and that she would see with the Commission to have their funds reduced. The press release by the SNS MC in Cacak says that SNS supports quality journalism, which by no means excludes criticizing someone's work. Shortly after, however, the media were addressed by Gordana Cikić Plazinić, the Acting Secretary of the SNS MC in Cacak, saying that the MC had not reviewed the statements by Mirjana Djoković and that it did not convene a session at all, therefore the MC statement did not constitute SNS' position about the statements by Mirjana Djoković, but merely a personal view of the Acting President Radenko Luković. These public disagreements between SNS officials in Cacak may be interpreted as additional pressure on the media to be less critical, if they want their projects to be funded from the municipal budget.

The Law on Local Self-Government stipulates that local self-government units shall attend to public information of local relevance and ensure the prerequisites for public information in the Serbian language and languages of ethnic minorities used on their territory. Amid a grave economic crisis, the funds local self-governments earmark for the media for the aforementioned purpose are increasing by the year and the survival of many media hinges on them. The reality is, however, that in most municipalities and cities, these funds are typically awarded arbitrarily. In early 2013, Cacak has seen the adoption of the Rulebook on the Requirements and the Manner of Using the Funds for Public Information of Local Relevance, under which the funds are awarded for live broadcasting of the sessions of the City Council, as well as for media programs and project of local relevance. Furthermore, the funds are awarded by having the recipients sign an annual contract on broadcasting thematic content of local interest. An open competition is called and a five-strong Commission, appointed by the City Council, implements the competition procedure. According to the Rulebook, the criteria guiding the Commission in assessing the projects are the project's impact on realizing public information of local relevance, the share of news content in the programming of the applicant media, the value of the public media for providing information to the local population, the perceived contribution of the project to the inclusion of various social groups (disabled persons, ethnic minorities, vulnerable groups, etc.), the project's contribution to the affirmation of the city, sustainability of the project, the level of ensured funds that needs to be proportionate with the number of accepted projects and applications. Mirjana Djoković, appointed to the Commission by the City Council, said that she would see, as a member of that body, that those media that criticized the work of the SNS MC, councilors and SNS parliamentary group, city officials and SNS appointed company directors, would receive less or no money on the competition for awarding funds in the field of public information. After such statements, "Jutro Production", a media group that incorporates "Cacanske novine" and *Radio Ozon*, filed to the City Council a motion for the exclusion of Mirjana

Djokovic from the Commission for Awarding Funds to Local Media. The Rapporteur about that motion said at the session of the Council that the exclusion was legally impossible, thus practically rejecting it. The contradictory statements made by the President and the Secretary of the SNS MC in Cacak, about whether that political party shares the position of Mirjana Djokovic on refraining from criticizing SNS staff as an additional criterion for receiving media funds, may be interpreted as extra pressure on the media to give up critical reporting. The decision of the Commission, which would be based on assessing the criteria of critical or non-critical tone in the reporting of the media, would most certainly contravene the law. However, an even greater concern is the fact that the Commission includes politicians that overtly proclaim they will attend to their political party interests, instead of being guided by the relevant Rulebook. Similar situation is in Kraljevo – controlled by the SNS, too – which also had a problem with awarding media funds. The Mayor of Kraljevo Dragan Jovanovic requested that the owners of media agree upon the allocation of the first portion of budget money intended for the media. After they managed to come to an arrangement, Jovanovic tweaked it by adding three new media to the mix. TV Kraljevo, however, refused the Mayor's proposal. Overall, the mechanisms for allocating budget money have visibly been used as an instrument of putting pressure on the media and protecting political party interests, instead of attending to those of the public.

2. Legal proceedings

2.1. The Higher Court in Belgrade sentenced "*E-novine*" and its Editor-in-Chief Petar Lukovic to a fine of 100.000 dinars, as well as 44.800 dinars of legal expenses, to be jointly paid to film director Emir Kusturica as damages for injury to honor and reputation. The text "A Little Analysis from Sarajevo", for which Kusturica sued that online portal and Petar Lukovic, was actually conveyed from the portal "PROTEST.ba" and posted on "*E-novine*" on February 15, 2011. The author of the text is Nermin Cengic, who writes for this Bosnian portal. As the Editor-in-Chief of "*E-novine*", Lukovic was ordered by the Higher Court in Belgrade to post the court verdict within 8 days of it coming into effect. The Higher Court partly approved the claim for three million dinars of non-pecuniary damages. The remaining part of the claim was rejected as unfounded. The case was forwarded to the Appellate Court in Belgrade, since both parties lodged an appeal. Emir Kusturica has also pressed charges against Petar Lukovic and "*E-novine*" over the text "New Year's Fairytale for Murderers", posted on January 15, 2011 on the portal, which was taken over from "*Pescanik*"'s website. The authors were Zoran Janic and Miroslav Bojic, who were sued by Kusturica for damages in separate proceedings conducted against the authors, but also against the Broadcasting Company B92. The station was identified in the lawsuit by Kusturica as the owner of the domain www.pescanik.net. B92 claimed it was merely

providing the service of administrative contact for the website of "Pescanik", a radio production and online portal originating from a radio program formerly aired on Radio B92.

While, according to the case-law of the ECHR in applying Article 10 of the European Convention of Human Rights and Fundamental Freedoms (back from the mid-70s and the verdict in the Handyside case from December 7, 1976), freedom of expression, as one of the fundamental pillars of democratic society, applies not only to "information" or "ideas" that have been received with approval, or are considered inoffensive or trivial, but also to information that are offensive, shocking or distressing (since these are the requirements of pluralism, tolerance and free thinking, which are the prerequisites of democracy), Serbian courts seem unsure as to how to handle value judgments that might be offensive. This dilemma transcends the enforcement of the Law on Public Information – Serbia has recently decriminalized defamation, which entails communicating or disseminating untrue facts, but it has not decriminalized insults, which entails the communication of offensive value judgments. In the case of the verdict against "E-novine", concerning is the fact that the controversial text "A Little Analysis from Sarajevo", albeit most certainly suitable to offend, shock or distress and containing inappropriate language, actually constitutes a dissection of the public activities of Emir Kusturica as a public persona.