

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 reports in "Kurir", correspondent of this daily Tomo Rakocevic was slapped in the face by a security guard of the hotel "Park" in Novi Sad, while reporting about the death of Ratko Buturovic. Buturovic, the President of the "Vojvodina" football club, who died on June 8 in the apartment in the hotel "Park", which he owned. "Kurir" also reported that a police officer was present during the attack on Rakocevic, who was slapped for trying to defend his colleague from the daily "Blic", verbally assaulted by the same security worker. "Kurir"'s editors and journalists have condemned the attack and called the competent authorities to protect journalists and allow them to work freely. The Independent Journalists' Association of Serbia (NUNS) condemned the attack, reminding that, under the Criminal Code, occupations relevant for public information were considered occupations of public interest. The Journalists' Association of Serbia (UNS) requested an investigation of the incident, stressing that the police ought not to ignore such incidents and that it should react, as it would react if a colleague of their own were under attack.

Under the Law on Public Information, it is prohibited to put physical or any other type of pressure on public media and journalists, or to exert any other kind of influence that might obstruct their work. On the other hand, the Criminal Code defines "occupations relevant for public information" (editor, journalist, camera operator, etc.) as "occupations of public interest entailing a greater risk for persons performing such occupations". Although, after repeated attacks on journalists, we have seen many public debates about whether journalists should be declared "official persons" or not, the latter are yet to obtain that status. Meanwhile, increased protection is provided only if journalists or a person close to them is threatened in relation to the job they perform, or in the case of murder or infliction of serious bodily harm. However, the Criminal Code stops short of providing any kind of special protection in the event a journalist is attacked (or slapped in the face, as in the aforementioned case) and is prevented from doing his/her job, although the latter is defined as an occupation of public interest, entailing increased

risk for the person performing it. Such a concept in the Criminal Code brings into question the implementation of the provision in the Law on Public Information, according to which it is prohibited to put physical or any other type of pressure on public media and journalists, or to exert any other influence that might obstruct their work. It seems that the failure to protect occupations of public interest entailing a greater risk for the performer, with stricter legal sanctions in a greater number of criminal offenses, has compromised the adequacy of the protection of not only journalists, but also other occupations, branded "occupations of public interest" by the Criminal Code, e.g. doctors and medical staff, employees in the public transportation system, or attorneys at law. According to "Kurir", the incident in Novi Sad took place in the presence of a police officer, who had seen everything, but looked away. In such a situation, we should ask ourselves how is a police officer supposed (and obligated) to react to such an incident? Firstly, the Police Code of Ethics stipulates the main goals of the Police and police officers to be maintaining public order and enforcing the law, but also protecting human rights and helping and serving the citizens in accordance with the Law and the Constitution. Under the Law on the Police, police officers are obligated, at all times, to take the necessary actions in order to protect the life and personal safety of people and property. As for human rights, the Serbian Constitution says that the physical integrity of each citizen shall be inviolable. Since, in the aforementioned case, a journalist was prevented from doing his job, we remind that the Constitution guarantees freedom of opinion and expression, as well as to receive and disseminate information and ideas by speech, written word, picture or other means. Freedom of expression may be restricted by Law, but only if necessary for the protection of the rights and reputation of others, preserving the authority and impartiality of the Court and protecting public health, morality and democratic society, as well as of national security of the Republic of Serbia. The latter was not the case in the aforementioned situation; had it been the case, such decision might have not been made by an individual, at his own discretion. This means that each police officer must take measures provided for by the Law and Professional Code of Conduct, in order to protect the rights of both those that inform the public and those that receive such information. The latter is particularly pertinent if we bear in mind that, in keeping with the Serbian Constitution, all guaranteed human and minority rights are to be enforced directly. Meanwhile, the provisions on human and minority rights shall be interpreted for the benefit of improving the values of democratic society, in accordance with the relevant international standards, as well as with the practice of international institutions overseeing the enforcement of these standards. Moreover, under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

1.2. The Finance Minister Mladjan Dinkic reacted to the reports in the daily "Informer" that the Special Prosecutor's Office had suspended the investigation against him, on suspicion that he was involved in embezzling billions of dollars, siphoned out in secret to Cyprus following the democratic changes after October 5, 2000. "Informer" also wrote that Dinkic was under investigation for allegedly being involved in embezzlement over the establishing of the National Postal Savings Bank, also worth millions. In his response, Dinkic refuted the allegations and said it was a "notorious lie" that he had been involved in some kind of "robbery of the century". Dinkic called on the Director of the Police Milorad Veljovic and Prosecutor Miljko Radisavljevic to "initiate all the necessary actions and promptly investigate all the claims in the text". He requested that the entire case dealt with by "Informer" be opened for the public and that the Prosecutor's Office inform the citizens about all the facts. Dinkic also called the President to call an urgent session of the National Security Council, stressing, "some elements in the police have conspired with tabloid journalists in order to orchestrate a lynching campaign", thereby "threatening the security of each and every citizen". The Finance Minister called on "Informer" to tell the readers which of their journalists were financed by a rogue element of the police; Dinkic called on the sources to "stand up by name before everyone they are vilifying". He announced he was going to press criminal charges against the Editor-in-Chief of "Informer" and persons unknown in the Police.

Under the Law on Public Information, public information shall be free and in the interest of the public, free from censorship; it is prohibited to restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information and opinions. Furthermore, it is forbidden to put pressure on media and their staff, or to exert influence with the aim of obstructing their work. Possible pressure by state officials, in this case the Finance Minister, on the Prosecutor's Office, as well as alleged involvement in embezzlement during the establishment and privatization of the National Postal Savings Bank, definitely constitutes information about events and persons of interest for the public. Therefore, in such cases, it is necessary to protect the right to freely release ideas, information and opinions about matters of public interest. Under the Law on Public Information, every person subject to inaccurate, incomplete or other claims (as part of released information, the release of which is forbidden under that Law), which has been damaged by the release of such claim, shall be entitled to damages, irrespective of other legal remedies they have at their disposal. Hence, Mladjan Dinkic has legal grounds to press charges against the journalist, editor and founder of the media in question. However, in such and similar situations, the motivation for the lawsuit are relevant, namely will the lawsuit restrict freedom of information enjoyed by those performing jobs in the field of public information, as well as that of the citizens, who have not only the interest, but also the right to freedom of expression guaranteed by the European Convention, ratified by the Constitution? The said right entails the right to receive information, namely viewpoints and

opinions of other persons. In this case, the claims by the Finance Minister about a “conspiracy involving part of the police and tabloid media”, where “journalists are financed by rogue elements in the police” are noteworthy, since it remains unknown how the above has happened at all and why the proper measures have not been taken against these elements in the police. Unfortunately, this case merely reflects the communication culture between the politicians and the media in Serbia, which is characterized by sensationalist accusations typically backed up by anonymous sources and, on the other hand, threats of criminal charges and allegations of corruption, or unethical work of the police, accused of serving other interests than those of the citizens.

1.3. “Naše novine” claim that, after they had reported about Mladjan Dinkic not paying his taxes regularly, they received a warning from the tax administration to pay their tax dues within five days, or else they would be subject to forcible collection. Although the tax administration claims that these developments are unrelated, “Nase novine” and NUNS (while pointing out that everyone should pay their taxes) have branded the aforementioned warning yet another attempt of putting political pressure on the media. “Nase novine” reported that Dinkic was late with his property tax payments and that he was charged default interest in the amount of 2.119 dinars accordingly. Dinkic confirmed that, saying that he had accidentally failed to pay an instalment for the year 2011. However, he insisted he had never received a warning and that he had paid the due amount after discovering the omission himself.

If the Ministry is proven to have arranged with the tax administration to send a tax warning to a media over a text criticizing the minister heading that particular ministry, that would undoubtedly constitute pressure on the media, even if that media has failed to properly pay its taxes. It would actually amount to “silent” pressure, which is, by nature, much more dangerous than overt pressure, sending the message to the media to mind how and about what they will write. We remind that, under the Law on Public Information, public information shall be free and in the interest of the public, free from censorship; it is prohibited to restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information and opinions. Furthermore, in accordance with the same Law, holders of state and political office shall have their privacy protection rights restricted, if the information is relevant for the public interest, since the person the information pertains to holds a certain office. The issue of payment or non-payment of taxes by a state official is relevant for the public and the fact that the Finance Minister failed to pay his taxes is subject to criticism, regardless of the due tax amount.

2. Legal proceedings

2.1. Aleksandar Radojevic, MP of the Serbian Progressive Party (SNS), has withdrawn two lawsuits filed before the Higher Court in Cacak. The first was filed against journalist Nebojsa Jovanovic, over the text published in the (now defunct) daily "Press" and the second against the same journalist, as well as against the publisher of "Cacanske novine", over a text published in that local newspaper. In each lawsuit, Radojevic claimed 200.000 dinars in damages, offended by the texts published last October, which had conveyed his statement about the privatization of the Cacak factory for the production of potato chips, mashed potato and other potato products. On that occasion, Radojevic commented on the ethnic background and the origin of capital with which one of the three members of the consortium that acquired the factory had become the co-owner. Several media conveyed Radojevic's words, but he had sued only "Cacanske novine" and Jovanovic. Stojan Markovic, the Editor-in-Chief of the newspaper, said that the fact that Radojevic had sued only his newspaper and the journalist Jovanovic (although almost all media had reported about the event) pointed to a selective approach by the plaintiff and the intent on putting political pressure on "Cacanske novine". According to Markovic, Radojevic, a holder of public office, should have had a higher degree of tolerance for public criticism of his words and actions. However, since he opted to go to court, Markovic stressed, Radojevic should not be making a distinction between "suitable" and "unsuitable media". Radojevic's lawsuits caused many reactions of media associations, media and even foreign embassies. Finally, the President of Radojevic's SNS, the First Deputy-Prime Minister Aleksandar Vucic, said that the decision to file the lawsuits was wrong and that Radojevic would need to withdraw them, or be expelled from the party.

The "Indicators for Media in a Democracy" of the Council of Europe's Parliamentary Assembly (Resolution 1636 (2008)) says that a high number of court cases, involving the right to freedom of expression, is an indication of problems in the implementation of national media legislation and should require revised legislation or practice. The means to change practice, not only that of the courts, but also the practice of prosecutors in such disputes, are well illustrated by the case of the MP Aleksandar Radojevic. His decision to withdraw the charges pressed against "Cacanske novine" and journalist Nebojsa Jovanovic is a good sign, regardless of the motivation. Particularly important is the fact that the public recognized that political pressure on a newspaper and its reporter has been the motivation behind Radojevic's lawsuits, as well as that the media and media associations have jointly condemned his decision to go to court. Secondly, the political pressure behind the lawsuits was condemned at the political level, by the very political party the plaintiff belongs to. Thirdly, the withdrawal of the lawsuits constitutes a public admission of the erroneous decision of the plaintiff, irrespective of whether Radojevic

truly recognized the wrongness of his decision or if his decision to withdraw the lawsuits came as a result of adhering to political party discipline.

2.2. The Constitutional Court has decided that the Government must explain why are the working documents, which, after the assassination of the Serbian Prime Minister Djindjic in 2003, served as a basis for the report of the so-called Korac's Commission, still classified. Such decision means that the Administrative Court will have to repeat the proceedings in which it had previously rejected the request filed by the journalists of "Insider" in 2008, claiming the right to free access to information of public importance. The lawsuit concerned the request filed by the journalist of "Insider" to the Government of Serbia, in the scope of their investigation of the circumstances that had lead to Djindjic's assassination. The request was to be allowed access to the records collected during the mandate of the Government's commission, presided by the then Deputy-Prime Minister Zarko Korac. The goal of the Commission was to investigate possible omissions in the work of the late PM's security. Although the report of the Korac's Commission, which said there were many such omissions, was released for the public, the documentation based on which the report was compiled (including the minutes from the Commission's sessions and the interviews of the persons the Commission had interviewed) remains classified to this day. The said Commission was the only one to address the possible responsibility of the State Security Agency (BIA) and the Ministry of Interior (MUP). The Commission concluded that both institutions needed to be investigated, but the latter had never happened. The records compiled and acquired in the course of the Commission's work have never been released and have never been used (to the best of our knowledge) in the trial for the murder of the late prime minister. After the finality of the trial, the journalist of "Insider" requested that all records of the Korac's Commission be declassified in the interest of the public. However, all they received from the then Government was the report (which was publicly available in the first place). Access to the requested documentation was denied, with the Government invoking the label "classified" on it. The journalists went on pressing charges before the Administrative Court, which were rejected, after which they filed a constitutional complaint. In the ensuing proceedings, the Constitutional Court ruled that the journalists' right to a fair trial was denied and that the proceedings before the Administrative Court had to be repeated.

The decision of the Constitutional Court is an example of good practice and is expected to have a positive effect on freedom of expression in Serbia. It is an example and a guideline for all courts in Serbia as to how to proceed in similar situation. Its significance was recognized by the Constitutional Court itself, which requested that it be published in the Official Gazette, for its relevance for human rights and civil freedoms in Serbia, which is really a precedent. Particularly significant is the part of the verdict's explanation that practically cemented the position of case law, that the fact that a document is classified is not sufficient to deny access to the public; it is

namely necessary to establish if, in the concrete case, the classification of the document in question as confidential is founded on a legitimate interest and whether such interest overrides the right of the public to know – all of which the Administrative Court failed to address in the proceedings preceding the constitutional complaint.

2.3. The Commercial Court in Belgrade has passed a first-instance decision in dispute involving B92 as a plaintiff, against the publisher of the daily “Informer”. We remind that, in early May 2012, when the daily newspaper, in the meantime named “Informer”, was launched, its publisher tried to go with the names “Insajder”, “Insajd” and finally “Zabranjeni insajder” (“The banned insider”). The court ruled that such attempts had violated the trademarks of B92 and prohibited the publisher from using them, sentencing him to damages. The trademark “Insajder” has been used by B92 to label its investigative TV series “Insajder” (Insider), on the air since 2004. The author of the series Brankica Stankovic has received many awards, including the Dusan Bogavac Award, extended by NUNS for ethics and courage. She is also the two-times winner of the Jug Grizelj Award, for the highest achievements in investigative journalism in the service of developing friendship among people and removing borders between nations. She was also the laureate of the Erhard Busek Award, issued by the Vienna-based South East European Media Organization (SEEMO), for her contribution to better understanding in the region, as well as the journalism award of the City of Belgrade. The complete team of “Insajder” has received the investigative journalism award (extended by NUNS and the US Embassy to Belgrade) for their program about the embezzlement in the Kolubara coal mine “The Fraud of the Century”. The series had extremely high ratings and in the traditional poll of the magazine “Status”, involving many journalists and editors, Brankica Stankovic was voted “Journalist of the Year” in Serbia in 2005 and 2009. “Insajder” was branded “Best Program” in 2006 and 2008. In its verdict, the Commercial Court in Belgrade found that “Insajder” was undoubtedly known as a trademark of high reputation (well-known mark) and that the use thereof by the publisher of “Informer” would constitute drawing unfair benefit from such reputation and/or harming such reputation. The publisher of “Informer” is entitled to lodge an appeal against the decision with the Commercial Appellate Court in Belgrade.

The B92 had first filed a proposal for a temporary injunction against “Insajder tim” d.o.o. for the publishing of a newspaper under the titles “Nezavisne novine Insajder”, “Nezavisne dnevne novine Insajder”, “Insajder” or other name including the mark “Insajder”. The proposal was accepted and B92 later filed a lawsuit. After several days, during which, due to the court’s decision to impose temporary injunction, their newspaper would not be sold on the majority kiosks under the names “Insajder” and “Insajd”, the publishing “Insajder tim” d.o.o. decided to change the newspaper’s name to “Informer”. Although some believed the whole procedure with the injunction had actually helped “Informer” to gain publicity and that its editor had managed

to acquire similar publicity in the past (after leaving the daily “Kurir”, he tried to launch the daily newspaper “Novi Kurir”, which later became “Press”), it seems that the biggest accomplishment of that whole matter is probably the first case in the practice of the Serbian courts where the name of a television program (an investigative one for that matter) has been recognized as a well-known trademark in terms of Article 6bis of the Paris Convention on the Protection of Industrial Property. Such marks enjoy special protection, which is not limited to identical or similar kinds of goods or services, but is very close to absolute protection. In this way, the investigative TV series “Insajder”, in addition to breakthroughs it has enabled on the media scene, has accomplished a great deal when it comes to the protection of intellectual property in Serbia, particularly in the field of protection of trademarks in the media sphere.