

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. The leader of the Democratic Party and the Mayor of Belgrade Dragan Djilas sent a letter in late July to the management of the Radio-Television of Serbia (RTS), saying that the national public service broadcaster has been informing the citizens in an unprofessional and biased manner, giving insufficient coverage to the biggest opposition party and denying viewers the opportunity to hear more dissenting voices. According to Djilas, „the RTS is not the public service broadcaster of a European Serbia, but that of a SNS Serbia, a country of dictatorship, without dissenting opinions.“ What pushed him to write the letter, Djilas said, was the fact that the Vice-President of the DS Bojan Pajtic had been given merely 15 seconds of coverage in the central news bulletin of the RTS, while the SNS enjoyed a 12-minute package about the reshuffle of the government and a live stand-up from the office of the SNS Main Board.

Under the Law on Public Information and the Media, public information shall be free, in the interest of the public and free of censorship. It is disallowed to restrict freedom of public information in any manner whatsoever suitable to restrict the free flow of ideas, information and opinions, or to put any kind of pressure so as to obstruct the media's work. On the other hand, the Broadcasting Law stipulates that the public service broadcasters (PSB's) shall, in the general interest in the field of public information, ensure that the programs they produce and broadcast (especially news programs) are free of any influence by the government, political organizations or centers of economic power. Moreover, the Law also provides that the PSB's must ensure diverse and balanced content. It stops short, however, of insisting on the equal coverage of the government and the opposition, save in the case of free electoral coverage, which the PSB's are required to provide to all participants in the electoral process. The Broadcasters' Code of Conduct goes even further, saying that all broadcasters, and not only PSB's, must in their news political features fulfill the standards of objectivity, impartiality and non-discrimination: the standard of impartiality involves the obligation to clearly separate the facts from views, opinions or comments; personal convictions and opinions of the editors and the journalists shall not affect or discriminate the topic and the manner of describing it; statements, press releases and similar content must not be manipulated with, in order to alter their essential meaning. The

Code particularly bans all broadcasters, and not only the PSB's, from clearly favoring or discriminating certain political parties, organizations or their officials. While it is evident that the statement by the DS leader and Belgrade Mayor Dragan Djilas constitute undue pressure on the editorial policy of the RTS, it is also true that Serbia lacks the mechanisms for making a quantitative evaluation of the content produced and aired by the PSB's. The oversight reports of the Republic Broadcasting Agency (RBA) itself (which is competent for controlling the consistent enforcement of the Broadcasting Law, not least the extent to which the PSB's fulfill their function and mission) are predominantly quantitative. This has helped building a conviction that independence entails equidistance and balance in terms of seconds or minutes of coverage dedicated to certain actors on the social or political landscape. According to that reasoning, critical opinions (of the political opposition) equal the right to air time, which would actually restrict the right and the possibility of the PSB to have its own critical stance. Therefore, the key problem is not the one highlighted by Dragan Djilas – that the Vice-President of his Party gets 50 times less air time in the RTS central news bulletin than the representatives of the ruling coalition. Even if the latter was true, the main issue is whether the PSB is adhering to its statutory mission.

1.2. In the course of the month of July, TV Pink waged for several days a campaign against the daily „Blic“ and its Editor-in-Chief Veselin Simonovic. Pink aired long press releases where Zeljko Mitrovic, the owner of the TV station, called Blic „a filthy newspaper“, while using foul language to describe his opinion of Simonovic. The text of the press releases was accompanied by malicious editing using photos of Simonovic, who was never given the opportunity to comment on Mitrovic's allegations. The Association of Journalists of Serbia (UNS) and the Independent Association of Journalists of Serbia (NUNS), the Media Association and even some members of the RBA, condemned the Mitrovic's actions, calling it abuse of the national frequency for private ends. Both associations insisted it was not the first time that Mitrovic misused the air in such a manner and called on the RBA Council to react as soon as possible. Goran Karadzic, the Deputy President of the RBA Council, told „Blic“ that his agency had already initiated proceedings against TV Pink *ex officio* and the basis of monitoring and, even before it received the petition of Blic's founder.

Under the Broadcasting Law, all broadcasters shall ensure in their operations free, complete and timely information of the citizens and contribute to raising the overall cultural and educational level of the citizens. The competences of the RBA include controlling and ensuring consistent enforcement of the provisions of the Broadcasting Law; overseeing the work of the broadcasters; as well as taking the proper measures where such provisions are violated. The

RBA may namely pronounce a warning and a caution against a broadcaster and it may also (under the Broadcasting Law) temporarily or permanently revoke their broadcasting license. The Broadcasters' Code of Conduct expressly says that the broadcasters shall be impartial in their reporting. When reporting about debates that include conflicts of any kind, the broadcasters shall enable all participants in the debate to take an equal part in it. The Code also prohibits airing unilateral personal attacks or waging lengthy or repetitive campaigns against private individuals, social groups or institutions without relevant new information that would justify continuous or repeated reporting about the same phenomenon, event, institution or person. When saying that "it is not the first time Zeljko Mitrovic has abused the national frequency in such manner", UNS and NUNS had two cases in mind. Back in 2002, Mitrovic attacked in a similar fashion the then member of the government's anti-corruption council Cedomir Cupic, a Professor on the Faculty of the Political Sciences. The campaign ensued after Cupic accused the new authorities of turning a blind eye to the illegally built building of TV Pink, while bringing down other illegal structures. He was immediately subjected to an aggressive campaign on Pink television, where he was insulted in the communiqués of Pink's owner, aired in the news bulletins of that station for days. The case ended up in court and Mitrovic was fined 30.000 dinars. A slightly different situation happened in 2011, when Mitrovic reacted to the decision of the Croatian customs to seize his yacht, claiming two million euros in alleged customs offences committed when the yacht was entering Croatian territorial waters from Montenegrin territorial waters. Mitrovic responded by removing Croatian music and films from the air and banning the advertising of Croatian tourism on TV Pink. He also launched an anti-Croatian campaign, highlighting in the news attacks against Serbian or Bosnian tourists and the vandalizing of their property in Croatia. Back then, Pink said that it "would never again cover up the incidents against Serbian, Bosnia and Montenegrin citizens on holiday in Croatia." While the attacks against Professor Cupic happened before the entering into force of the Broadcasting Law, the "anti-Croatian" campaign, instigated by a private dispute Mitrovic had with the Croatian customs authorities, happened after that. In that sense, the abuse of news program for personal vendettas may definitely constitute a repeated breach of the Code and entail a stricter penalty provided for by the Law.

1.3. The daily "Informer" published in July a series of texts discussing the reasons for putting Veran Matic, the Editor of the B92 news programme, under police protection. Informer pointed to the costs of such an arrangement for the national budget and accused Matic of arrogance. In the text authored by Dragan Vucicevic, the Editor-in-Chief of Informer, it was claimed that Matic didn't need security in the first place. The Police Directorate (PD) responded to this claim by saying that Matic hadn't requested to be placed under police security, which was assigned to him

after it was assessed necessary on the basis of information supplied by the Special Prosecutor for Organized Crime and the Security Information Agency. The PD also said that the security costs are much lesser than the potential consequences if the security threats against Matic were to be realized.

Security threats against every person in Serbia, including Veran Matic, are assessed by the competent authorities of the Republic of Serbia and not by the person to be placed under security. After the assessment is completed, the decision is made whether to assign them police protection, the duration of which is decided in further assessments of the threats against that person's security. The reality that the journalists in Serbia are threatened is evidenced by the assassinations of Milan Pantic, Dada Vujasinovic and Slavko Curuvija, as well as by the attempts on the life of Dejan Anastasijevic and the almost daily attacks against journalists. Besides Matic, police protection has already been assigned to the General Manager of the RTS Aleksandar Tijanic, the author and editor of the investigative programme "Insider" aired on TVB92 Brankica Stankovic, Vladimir Mitric, the correspondent of Vecernje Novosti from Loznica, as well as other journalists deemed to be threatened. Interestingly enough, Dragan Vucicevic, the Editor-in-Chief of "Informer" and the author of the controversial text against Matic, was also, at one time, placed under police protection. Claiming that police protection for certain journalists is costly and unnecessary and the result of these persons' whims will certainly not contribute to the betterment of the position of journalists in Serbia. It is evident that keeping certain journalists under police protection for years, instead of addressing the causes of them being under threat, is not good. However, accusing the journalists for such a state of affairs amounts to additionally victimizing the victims and will certainly not contribute to solving the problem. On the contrary, such practice constitutes innacceptable pressure on the most threatened news outlets and journalists.

1.4. The web portal "Koreni" (Serbian for "roots") posted a text calling the journalist and writer from Novi Sad Nedim Sejdinovic, the President of the Executive Board of the Independent Association of Journalists of Vojvodina (NDNV), a "Muslim Duke" and "one of the leading separatists in Vojvodina". The text went on saying that "Sejdinovic is a man unable to see the log in the side of his Islamic-Bosnian group" and that he "dares to describe the thorns in the Serbian side as enormous logs". "Koreni" is self-described as the web portal of diaspora Serbs the aim of which is to truthfully inform them about the developments in their mother countries (i.e. in the former Yugoslavia) and the countries the Serbs in the diaspora currently live in, in our interest and that of our people and homeland". The editor-in-chief of Koreni is a certain Nikola Janic, while the physical address of the portal is in Sweden. The text was reposted on right-wing

websites, but on the Internet it is available on a domain registered in Serbia, with a Serbian address for administrative and technical contact.

According to the Serbian Constitution, indirect or direct discrimination shall be prohibited, particularly on the basis of race, gender, ethnicity, social background, birth, religious affiliation, political or other conviction, material wealth, culture, language, age or physical or mental disability. Furthermore, the Broadcasting Law prohibits hate speech, which is described as the release of ideas, information and opinions instigating discrimination, hatred or violence against persons or groups of persons due to their affiliation or non-affiliation to a certain race, nation, ethnicity, gender or sexual orientation, whether such release amounts to a criminal offense or not. As a post-conflict society, Serbia should be less tolerant of ethnically motivated attacks. Unfortunately, the outbursts of ethnic hatred against certain journalists on the Internet are yet to be dealt with adequately by the authorities.

2. Court proceedings

2.1. The company for the production and distribution of television program "TV Apatin" d.o.o. from Apatin – the founder of the newspaper "Novi glas komune" and its Editor-in-Chief Vesna Milanovic Simcic, received in early July the verdict of the Appellate Court in Novi Sad, committing them to pay to the plaintiffs Nenad Nisic and Vesna Nisic the amount of 500 thousand dinars, namely a total of one million dinars in damages for injury to honor and reputation, as well as 99.750,00 dinars of legal costs for the first and second-instance trial. As the Editor-in-Chief of "Novi glas komune", Vesna Milanovic-Simcic was ordered to publish the Appellate Court's verdict without any comments and delay and no later than in the second edition of the newspaper, as of the day when the verdict came into effect. The Appellate Court in Novi Sad has namely reversed the first instance decision of the Higher Court in Sombor, which had entirely rejected the claim of the plaintiffs against "TV Apatin" and Vesna Milanovic Simcic. In early February 2013, Nenad and Vesna Nisic claimed damages for injury to honor and reputation allegedly caused by two texts in "Novi glas komune", requesting the amount of two million dinars. The texts discussed the suicide of the daughter of the plaintiffs. The latter's claim said that the defendants were reporting about the suicide of their daughter – the motives, the manner in which she had taken her life, the suicide note – while failing to act with due journalist care prescribed in Article 3 of the Public Information Law. That article says it is the duty of the journalist and the editor-in-chief of a public media, prior to releasing information about a particular event, phenomenon or person, to check, with the proper care in the given context, the

originality, accuracy and completeness of the information, since there was no official confirmation of its accuracy at the moment when it was released. The Higher Court in Novi Sad found that the texts about the defunct girl contained sensitive and careful language and stopped short of mentioning the plaintiffs, which means there was no causal relationship between the information published and the injury to honor and reputation of the plaintiffs. For that reason, as the first instance verdict says, the plaintiffs may not claim damages from the defendants for injury to honor and reputation due to the changed attitude of other persons about them after their daughter's death. The court of first instance also established that the author of the texts – the editor in chief of “Novi glas komune” – had acted with due journalist care and that the information released, in view of the presented evidence, are accurate. For these reasons, the court rejected the plaintiffs' claim in its entirety. Acting upon the plaintiffs' appeal against the above described verdict, the Appellate Court in Novi Sad reversed the decision of the Higher Court in Sombor. In spite of accepting the position of the court of first instance about the established facts, the Appellate Court explained that the defendants have violated the plaintiffs' rights to privacy and decided, for that reason, to partially uphold their claim, by upholding it in the amount up to one million of the total two million dinars claimed.

Since the plaintiffs in this case didn't claim damages for breach of privacy and that, consequently, no evidence was presented on these grounds (nor did the defendants have the opportunity to say their opinion about that), it seems that the court of second instance overstepped the claim, thus violating the provisions of the Law on Litigation Procedure. In addition, it failed to explain how the defendants have injured the honor and reputation of the plaintiffs, i.e. what is the exact causal relationship between the information published and the injured honor and reputation of the parents. The latter especially since the court of first instance established that “the texts were affirmative”, that they are not even mentioned by the parents in the context of the responsibility for the death of their daughter, as well as that the editor and the media outlet should not be held accountable for the injured honor and reputation of the plaintiff for having allegedly created a negative image of them with a certain number of people (who would supposedly blame the parents for the conditions in which their late daughter lived, due to which she presumably took her own life, or for the injury the plaintiffs themselves, by associating their honor with such conditions). The problem is that the verdict may not be contested by an appeal; instead, an extraordinary remedy must be resorted to – special review – which does not delay the enforcement of the verdict. The specificity of the special review is that it is allowed only when the Appellate Court or the Supreme Court of Cassation believes it is necessary to examine legal matters of general interest or legal matters in the interest of citizens' equality; for the purpose of aligning case law, as well as if new interpretation of law is necessary.

In addition to resorting to the special review, the defendants may also lodge a constitutional appeal, which will not, however, delay the enforcement either. That means that the plaintiffs may initiate enforced performance and if the second instance-verdict is repealed, the defendants would be able to reclaim forcibly collected moneys in a new trial only. In addition to the fact that the verdict of the Appellate Court in Novi Sad exceeded the plaintiffs' claim, the sentence is also problematic from the standpoint of the damages that are unusually high for this kind of proceedings, threatening the very survival of the two media outlets founded by the Company for the production and distribution of television program "TV Apatin" d.o.o. from Apatin – TV Apatin and Novi glas komune. It is also interesting for showing the inconsistency of the case law in media-related cases, even in the scope of the same court, in this case the Appellate Court in Novi Sad. In one of our previous reports, we have written about the verdict by which that same Appellate Court rejected the claim of the parents of Miladin Kovacevic, which filed a lawsuit for non-financial damages caused by injured honor and reputation against B92, the Editor-in-Chief Veran Matic and journalist Nikola Radisic. In that case, damages were claimed over a packaged aired by TV92, which criticized the decision by the Serbian government in 2009 to pay a million dollars of indemnity to Brian Steinhower and for the bail for Kovacevic to be released from prison. The Kovacevic family claimed damages because they had actually paid the bail and not the government. The same court that in Kovacevic's case properly observed that the negative image of the Kovacevic family held by certain people was not the consequence of the media's mistake in presenting the amount paid (or not paid) by the government; even in the absence of journalist error - since the information released, according to the explanation of both the court of first instance and the court of second instance - is accurate, the Court nonetheless found the defendants to be responsible on grounds that weren't even invoked by the plaintiffs. In addition, if we agree that media coverage of personal tragedies is often devoid of moderation and good taste, it was not the case (according to the explanation of both the court of first instance and the court of second instance) in the aforementioned case.