



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for October 2013





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I FREEDOM OF EXPRESSION

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

1. Threats and pressures

1.1. According to the daily "Blic", its correspondent Gvozden Zdravic was fired from the public company "Poslovni centar" in Aleksandrovac, where he had been employed since last April, as an IT Technician. In the explanation of the decision, his employers said the reason he was fired was the fact he had been writing for "Blic" while on sick leave. Zdravic says he is the victim of revenge by local power players for having written about embezzlement in Zupa. The decision on his dismissal was signed by the Director of "Poslovni centar" Milutin Radicevic, who is said to be (according to Zdravic) an associate of Jugoslav Stajkovic, the Mayor of Aleksandrovac, in "immoral doings". Gvozden Zdravic informed the labor inspectorate about his case. In the last 15 days, Zdravic sought protection several times from the local police in Aleksandrovac for himself and his family, from the threats he has been receiving on regular basis, as confirmed by Miljan Petrovic, the Head of the Police Administration. According to reports by "Blic", on the day he was handed over the decision on his dismissal, Zdravic was prohibited from attending the session of the Local Assembly. Speaking about the incident, Zdravic said he came to the building of the Municipality to attend the session, where was stopped by security. He was told they were keeping him away at the orders of Tomislav Savkovic, the President of the Council, over his writing about the frauds in Zupa. After that, Zdravic met Mihajlo Milic, the councilor of "Pokret za Zupu", who advised him to watch his back and that of his children. According to "Blic", a week prior to this incident, Zdravic was told the same by an acquaintance, who had heard "Zdravic would be eliminated over his writing about the local government". The Club of Journalists of Zupa issued a press release over this incident, saying that their town has been the victim of a media blackout and torture for the last ten years, enforced by Jugoslav Stajkovic and his associates, and stressing that Gvozden Zdravic was targeted in several physical assaults for pointing the finger at embezzlement.

In accordance with the provisions of the Labor Law, the employer may terminate an employee's employment contract for a justified reason pertaining to the employee's working ability, his/her conduct and the needs of the employer, including the employee misusing the right to a leave over a temporary incapacity to work. On the other hand, the Law on Public Information says that public information shall be free, in the interest of the public and not subject to censorship. It shall be forbidden to directly or indirectly restrict the freedom of public information, especially

by abuse of public or private authority or rights, or in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on a public media and its staff or influence that might obstruct their work. Regarding the above mentioned case, two questions arise: first, has Zdravkovic misused his right to a leave due to temporary incapacity to work and second – has the employer, even if there are grounds for terminating the employment contract, abused his right to terminate the employee’s contract in order to restrict freedom of public information and thereby the free flow of ideas, information and opinions? The second scenario is more likely, if we take into account the statements made by Zdravic, as well as the press release of the Club of Journalists of Zupa. What’s not questionable, however, is the fact that the topics Zdravic has been reporting about – embezzlement in the public sector in Aleksandrovac – most definitely constitute, under the Law on Public Information, ideas, information and opinions about occurrences and events of relevance for the public interest, which shall be freely reported in the public media. Related to the information that Gvozden Zdravic was prohibited from attending the session of the Local Council, the Law on Public Information stipulates that the local self-government authorities must make information about their work available to the public, under equal conditions for all journalists and media. Hence, such prohibition is in direct contravention with an explicit legal provision. Furthermore, the threats Zdravic was subject to could be qualified as the most severe form of threats to security, since he is a person performing an occupation of public interest in the field of the media and the threats against him were related to his job. This criminal offense is subject to a prison term ranging from 6 months to five years.

1.2. The Independent Journalists’ Association of Vojvodina (NDNV) has expressed “concern over the attitude of the President of the Serbian Progressive Party (SNS) and the First Deputy Prime Minister Aleksandar Vucic towards Radio-Television Vojvodina (RTV), especially in the light of the start of the public debate about the Draft Law on Public Service Broadcasting”. NDNV claims that, after the victory of the SNS on the municipal elections in Vrbas, Vucic told in a live interview for the RTV news bulletin that “people in RTV didn’t expect his party to win”. He then cynically apologized to RTV for SNS’ election victory. Told by the reporter that she understands it is a “very emotional evening for him”, Vucic replied that it was indeed an emotional evening, particularly for RTV, accusing in that way the television station for bias in its reports about the local elections in Vrbas. In its press release, NDNV reminded that Vucic had called on multiple occasions the citizens of Vojvodina not to pay the subscription fee for PSB’s, which resulted in the plummeting of the collection rate, causing the financial difficulties RTS and RTV are presently facing.

Under the Law on Public Information, public information shall be free, in the interest of the public and not subject to censorship. The Law especially provides that it is forbidden to directly

or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. The Broadcasting Law provides that the programs produced and aired by PSB's must ensure diversity and impartiality of the content promoting democratic values. The same Law stipulates that the PSB must ensure that programs produced and aired, especially news programs, are protected from any influence of the government, political organizations or centers of economic power. In the concrete case, the allegations that the program of the PSB is not impartial or even worse, that it is biased – especially coming from the First Deputy Prime Minister and the leader of the strongest political party in the Serbian ruling coalition – definitely constitute pressure aimed at altering the editorial policy of the PSB and threatening to obstruct the PSB in realizing its statutory obligation to remain free of government interference.

1.3. The Mayor of Smederevo Jasna Avramovic announced on a press conference held on October 2, that the City Council would take legal action against all journalists that reported about an epidemic in Smederevo during the “Smederevska jesen” festival. Avramovic claims to have received a report by the Public Health Institute Pozarevac, which refuted the existence of an epidemic caused by food poisoning. She also said that the developments in that town on September 9 and 10 might not be connected to “Smederevska jesen”. The daily “Novosti” reported that the Public Health Institute Pozarevac announced that microbiological analysis of stool samples belonging to two patients has shown the presence of Rota virus, which could be a cause of the epidemics. However, the report noted, due to a small number of samples sent for virological analysis, it was impossible to determine the source and the course of the epidemic. Furthermore, the epidemiologists were unable to group the patients by place of consumption and type of foodstuffs in order to connect them to the festival. The epidemic was called off on October 1, with officially 68 registered patients. We remind that the media reported on September 9 and 10 that more than 400 people reported to health centers in Smederevo, complaining about nausea, vomiting, diarrhea and dehydration. The Mayor of Smederevo now claims that the headlines in the media were “excessive in describing what was actually happening”, as well as that many people did not come to the festival due to wrong information in the media (30% less visitors than expected). She said that damage was caused for city and the festival and that responsibility for that damage will be determined in a court of law. The Mayor also said that the “avalanche” was set in motion after statements made by the Director of the General Hospital Goran Kuljanin and the Head of the Children’s Ward Slavica Andjelkovic (a member of the United Regions of Serbia, an opposition party at the city level). However, she noted that she didn’t know if the whole case was politically motivated.

Under the Law on Public Information, ideas, information and opinions about phenomena, events and persons relevant for the public interest, shall be freely released by the public media.

regardless of how the information was gathered. In the concrete case, the interest of the public to be informed about the epidemic that was incontestably declared in Smederevo should not be questioned. Furthermore, the report of the Public Health Institute Pozarevac does not provide a definitive answer as to the source and course of the epidemic, due to too few samples. In this context, the threat by the Mayor of Smederevo that the city will take legal action against all journalists that reported about the epidemic may not be interpreted as other than overt intimidation and plain restriction of freedom of public information. The threats of lawsuits in Smederevo constitute yet another example of intolerable behavior by many local governments in Serbia, which, instead of complying with their statutory obligation to make information about their work available to the public and under equal conditions for all journalists and all public media, resort to various mechanisms and means, including unscrupulous intimidation, in order to control media reports and curb the free flow of ideas, information and opinions.

2. Legal proceedings

2.1. The first hearing in the case of the Vice-Speaker of the Parliament of Vojvodina Milivoje Vrebalov against the journalist and editor-in-chief of “Novobejejski informator” Nevena Subotic, will be held in late October before the Higher Court in Zrenjanin. Vrebalov’s lawsuit says that Subotic has injured his honor and reputation, by releasing a text entitled “The Former Speaker Earns Ten Times More than the Average Salary”. Subotic has allegedly published “many baseless accusations” about Vrebalov’s earnings, which had been paid to him in accordance with the Law and in the amount of about 100 thousand dinars. The controversial text claimed that Vrebalov earned 240 thousand dinars in average during the year 2012, while his per diems amounted to 60 thousand dinars, in average also. Subotic, who is employed in the Novi Becej Municipality as a PR officer, wrote that, as the President of the Municipality, Vrebalov had 48 domestic and 15 international per diems in 85 business days. In addition, she revealed that his phone bills in 2012 amounted to 274.568 dinars and 236.984 dinars, respectively, in 2011. Nevena Subotic told the Tanjug news agency that she had published the data the earnings of Vrebalov, the former President of the Novi Becej municipality and provincial MP, on the basis of official information obtained from the municipal accounting department.

Under the Law on Public Information, the journalist, responsible editor and the legal person that is the founder of the public media, which prior to releasing the information, were able, with due care appropriate for the given context, to determine the inaccuracy or the incompleteness of the information, shall be solidarily responsible for material and non-material damages resulting from the releasing of the said information. In the concrete case, the court would have to establish if the information in question was accurate or not. However, even if it is determined that the information in question is inaccurate, as claimed by Vrebalov, there are grounds for

excluding the responsibility of the journalist, since the data was obtained from the municipal accounting department. Namely, in accordance with the provisions of the Law on Public Information, the journalist, responsible editor and the legal person that is the founder of the public media shall not be held accountable for the damage if the inaccurate or incomplete information has been faithfully conveyed from a document issued by a competent state body. The latter especially since, in keeping with the Law on Public Information, the rights to privacy of persons occupying government and political office are restricted compared to those of the persons the information pertains to, if the information is relevant for the public, in view of the fact that the person the information pertains to performs a certain function.

2.2. The Appellate Court in Belgrade has sentenced three supporters of the Partizan football club to several months in prison for threatening the security of investigative reporter and editor of "Insider" Brankica Stankovic. The threats were made during the football match between Partizan and Shakhtyor on December 16, 2009. The final court verdict sentenced Goran Kljestan and Aleksandar Perisic to 10 months in prison, suspended for four years, for the criminal offense of threats against security. For the same felony, Milan Guduric's sentence of one year in prison, suspended for five years was upheld. The said individuals were convicted for chanting "You are poisonous like a snake, you will end up like Curuvija!". The first-instance verdict was revoked in the part where the three football fans were convicted of violent behavior and this trial will be repeated. The sentence against Dragan Djurdjevic was revoked. He was sentenced to 10 months in prison, suspended for four years, as well that against Nemanja Odalovic (10 months in prison, suspended for three years) and Nemanja Bogdanovic (six months in prison, suspended for five years). The Appellate Court found that the court of first instance failed to clearly and accurately determine the actions of these three persons and the related consequence, which is a breach of the provisions of the criminal proceedings.

The author of Insider, investigative journalist Brankica Stankovic, has been under 24/7 police guard ever since the incident happened almost four years ago, after it was determined her security was threatened. Bearing that in mind, as well as the fact that attacks against journalists have been on the rise lately, it seems that the Appellate Court in Belgrade could have sent a clearer message about the unacceptability of threats against the security of journalists. Unfortunately, after almost four years, Stankovic remains under round-the-clock police surveillance, while those that threatened her are being sentenced to suspended jail terms or have their sentences revoked. Meanwhile, the episode of Insider dissecting the incapacity of the state to deal with extremist fan groups remains topical as ever. At the same time, the claims of the highest state officials that Serbia will crack down on criminals in the fans' ranks remain hot air.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Law on Public Information

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

2. Broadcasting Law

The Council of the Republic Broadcasting Agency (RBA) announced on October 25 the open competition for the issuance of a TV broadcasting license for the territory of the Republic of Serbia. After the failure of the previous competition, cancelled by the RBA's decision on September 13, by which the Agency rejected the complaints of "Kopernikus cable network" d.o.o. from Nis and „Nova.rs Television" d.o.o. from Belgrade against the Decision of the Council dated August 9, under which broadcasting licenses for national coverage were not issued. The criteria of the competition are slightly different, but they are not making the competition itself any less controversial. First, the media market's value has plummeted, as did the interest of the investors for investments in the media sector. Furthermore, since the RBA Council already decided at the previous competition that the applicants have failed to meet the requirements for obtaining a license, the question is which new candidates may apply for the repeated competition, namely what may Kopernikus or Nova offer this time that would be significantly different?

But even if we disregard that, the fact remains that the RBA has blatantly violated the procedure and, notwithstanding the material shortcomings of that competition, compromised the lawfulness and legitimacy of the entire process. What is actually happening here?

First, Article 49, paragraph 2 of the Broadcasting Law stipulates that an open competition must be called when, under the Radio Frequencies Allocation Plan, there is a possibility for issuing new broadcasting licenses. However, calling such a competition was subject to the adoption of the new Rulebook on the Allocation Plan. The Ministry of Foreign and Internal Trade and Telecommunications published the said Rulebook on October 25 in the Official Gazette, but the latter entered into force on November 2 only. This practically means that, on October 25, when the competition was called, the mandatory criteria for calling such competition were not fulfilled, since the Rulebook on the Allocation Plan regulating the competition hadn't yet entered into force. However, the fact that the RBA Council rushed into calling the competition, instead of waiting for the eight days that had to pass in order for the Rulebook to enter into force, is merely part of the problem.

The other questionable circumstance concerns the criteria for national coverage pertaining to the obligation to supply no less than 60% of the population with quality television coverage. Namely, the new competition was called for only 21 frequencies instead of 33, which was the number of frequencies provided by the hitherto K5 network for which the previous (failed) competition was called. Part of the frequencies of the former K5 network was moved to Annex 5 of the Allocation Plan and will be used for the extension of the initial network for digital broadcasting (we will elaborate on this in more detail in the segment about digitalization). The question remains if the new network, comprising only 21 frequencies, can really be a national network, namely if quality television coverage may be supplied to 60% of the population in Serbia, as required by the Broadcasting Law. Furthermore, of the 21 frequencies subject to the open competition, at least six are questionable. Namely, the competition was called for three frequencies, for which licenses (used by other users) have been already issued and which, under the Register of the Republic Agency for Electronic Communications (RATEL), shall remain in force until June 16, 2015. The holder of these licences is the public company Broadcasting Technology and Links (these are the frequencies relinquished by the RTS in late 2010). Even if we disregard the fact that the procedure, in which RATEL had issued RTS' licenses to Broadcasting Technology and Links, had no clear grounds in the law, the terms of these licences, expiring on June 16, 2015 are not something that should have been disregarded when calling this competition. The latter has, hence, been called for frequencies that, under the present public registers, will remain occupied for another 1,5 years.

But that is not all. Another two frequencies that were the object of the open competition are also disputed. One of them used to belong to *Super TV*, which was the only commercial broadcaster for the territory of the Autonomous Province of Vojvodina. When *Super TV* had its broadcasting license revoked in 2009, that frequency remained vacant and it was, until recently, been included in Annex 3 to the Allocation Plan, which contained frequencies intended for experimental digital broadcasting. The question is why, if the said frequency became vacant before, the RBA didn't called a new tender for provincial coverage in Vojvodina back in 2009 (on the grounds of Article 49, paragraph 2 of the Broadcasting Law it invokes today when calling the national tender)? We remind that the still effective Broadcasting Development Strategy by 2013 says that Article 47 of the Broadcasting Law provides for the existence of commercial stations at the provincial level, namely that the existence of commercial provincial broadcasters is a statutory obligation. This means that the RBA has been wittingly breaking the law since 2009, by failing to call a competition for a commercial broadcaster for the territory of Vojvodina or that it is breaching it now, if the frequency in question became vacant only now, by having reallocated that frequency for national coverage, instead of using it for provincial coverage.

Another frequency which the current competition was called for until recently belonged to *TV Zona* from Nis. Bearing in mind the RBA's position that a competition "will always be called" when frequencies become vacant (which served as its key argument for calling the previous, failed competition for national coverage back in April), why is the Agency selectively enforcing the law, namely why is it enforcing it by calling a national competition and not a local one in Nis and a provincial one in Vojvodina? Particular curious is the fact that the competition also offered the frequency/location of Pljackovica. The latter is a hill above Vranje, constituting a radioactive area since the NATO bombing in 1999 and from which the signal is merely re-broadcasted to lower locations. The latter fact brings in question the capacity of the new network and its potential to provide quality television broadcasting for at least 60% of the population of the Republic of Serbia. One may only conclude that, by calling a new competition only a month after the failure of the previous one (the new one being called unreasonably hastily and without legal grounds, on a network that is unlikely to achieve national coverage and which includes frequencies that had either been allocated to someone else or were originally intended for different coverage), the RBA has further eroded the credibility of independent broadcasting regulation.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. Law on Electronic Media and Law on Public Service Broadcasters

The month of October saw the public debate on the Draft Law on Electronic Media and the Draft Law on Public Service Broadcasters. Since the day when these drafts were published, they caused many controversies and ambiguities, especially concerning authorship of the texts. We remind that the Draft Law on PSB's was first posted in August, on the webpage of the Ministry of Culture and Media, only to be quickly removed after a professional outcry. Ensued the formation of the working group, consisting of experts and representatives of RTS and RTV, which made the new Draft, which was tabled for a public hearing in October. That Draft may be described as much better than the one presented to the public in August. Nonetheless, it retained the concept of budget financing, which is a politically motivated one, since media professionals were unanimously against it. We have warned several times in these reports that the model of budget financing for PSB's isn't adequate for Serbia, since it threatens to further undermine their editorial independence, allowing an even greater influence of politics. Moreover, since Serbia must curb its rising budget deficit, the sufficiency of such budget financing would be questionable. The participants in the public debate almost unanimously described budget financing as a poor concept and the question is what kind of solution will the ministry in charge of this issue propose to the Government, namely what the latter will table to Parliament.

The Draft Law on Electronic Media was marred by even greater controversy. Namely, while the public debate has ended, the authors of certain legislative concepts remain unknown. The expert working group set up last fall (tasked with writing the Draft Law on Electronic Media), completed its work in late April. Part of the members of the working group signed the integral text of the Draft, containing the provisions on PSB's, while the second group signed two separate drafts. The Draft Law on Electronic Media tabled for public debate significantly differed both from signed versions and in certain segments it was completely contradictory to the Draft Law on Public Information (provisions on media ownership concentration, for example). Therefore, the distrust of the public and the experts involved in the drafting of all these legislative texts didn't come as a surprise: during the public debate, more than 200 pages of comments, suggestions and proposals for improving the proposed text were submitted. It is very difficult to properly assess the quality of that Draft. It is true that, in certain parts, the text has introduced innovations addressing some of the problems that have appeared in the ten-year implementation in the still valid Broadcasting Law. On the other hand, in many of its segments, the Draft diverges from the intention to modernize the obsolete media-related legislative framework in accordance with accepted European standards and introduces restrictions that are far more rigid than those provided in the current Law. Therefore, it may rightfully be assumed that, if the present Draft is adopted as a Law, not only would it not contribute to furthering freedom of expression in Serbia, but it also would render the planned media reform completely meaningless. Meanwhile, the Ministry of Culture and Media has undergone major personnel changes, after which the new minister and his team found themselves in the unsolicited situation of having to make decisions on draft legislative texts for the creation of which they were not responsible. The predominant position ended up being that the controversial Draft Law should be tabled for public debate after all, primarily because the adoption of media laws is already six months late, which delay was criticized, among others, by the EC's Progress Report for Serbia. In addition, the Ministry now faces an even more difficult task – to consolidate all objections and to accept the valid ones, with the goal of bringing the Draft Law in sync with its main purpose – modernizing and reforming the electronic media sector in Serbia.

2. Law on Public Information and Media

On the margins of the public debate on the Draft Law on Electronic Media and the Draft Law on PSB's, the Ministry of Culture and Media announced that the Draft Law on Public Information and Media will soon be proposed to the Government, since the texts thereof have been essentially harmonized with the objections from Brussels, as well as with those of the line ministries, put forward last spring during the public debate. On the other hand, it is clearly difficult to expect all the media laws to be tabled to Parliament as a single package. The hope remains that the Law on Public Information will be adopted by the end of the year, since the

concept of project-based financing is expected to be implemented starting from early 2014 and since it's the year when the remaining non-privatized media will hopefully be finally privatized.

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. We have elaborated on the activities of the Republic Broadcasting Agency (RBA) in the part hereof concerning the implementation of the Broadcasting Law.

1.2. The RBA has released its report "Protection of Children and Youth and Labeling Programming Content by National Broadcasters". The report covers the period January-April 2013 and aims at showing to what extent national television broadcasters have complied with the obligations from the Broadcasting Law pertaining to the protection of children and youth from inappropriate programming content that may threaten their physical, mental and moral development. The legislative framework for this survey consists of Article 8, Article 19 and Article 68 of the Broadcasting Law. Article 8 stipulates that the Agency shall perform tasks concerning taking measures in the field of broadcasting, with the goal of protecting minors. Article 19 details the competences of the RBA in that respect: the Law says that the Agency tends to the protection of the dignity of juvenile persons in radio and TV programs, by passing a General Binding Order (GBO), so as to make programs that may harm the physical, mental and moral development of juvenile persons inaccessible, unless when the time of broadcasting or technical procedures (restricted access) ensure that minors usually may not watch or listen such programs. For these purposes, the RBA adopted back in 2007 a GBO (Broadcasters' Code of Conduct - BCC), part of which concerns the protection of children and youth. In 2012, it adopted a special GBO about the conduct of broadcasters in relation to the broadcasting of programming content that may harm the physical, mental and moral development of minors. Article 68 of the Law prescribes the general programming standards, some of which expressly concern minors. According to that Article, the broadcasters are required to contribute to raising the general cultural and cognitive level of the citizens, as well as to refrain from airing programs the content of which may harm the physical, mental and moral development of children and youth, namely to clearly label such programs as such. If they do broadcast them, they should do so in the period

between 12 PM and 6 AM. The same Article requires broadcasters to air program intended for preschool children synchronized in Serbian language or languages of national and ethnic communities. The analysis concludes that the labeling of programming content with an age label by national broadcasters has become common practice, but such labeling is inappropriate in a certain number of cases, especially in the case of reality programs. The labeling used by broadcasters pertained to the categorization of programs suitable for ages above 12, 14, 16 and 18 years (as recommended in the Broadcasters' Code of Conduct). Other broadcasters also used labels showing that the program in question is suitable for ages above 13, 15 and 17. The report particularly emphasizes the reality programs "The Farm", "Adulterers" and "Moment of Truth" (aired on TV Pink), "Big Brother" (TV B92), "Family Secrets" (TV Prva) and "Mad House" (TV Happy). Most of the objections concerned the labeling of these programs and their broadcasting time. The analysis cited the reality program "The Farm", which was usually labeled as "For 12 years of age and above" ("12") when aired during daytime, regardless of the fact it contained foul and vulgar language and rows threatening to escalate into fights. The programs "Adulterers" and "Moment of Truth" were recognized to be wrongly labeled, while the time when they were aired was also emphasized as questionable. We remind that it was because of these programs that the RBA Council issued a warning to TV Pink, as detailed in our prior monitoring reports. Apart from reality programs, the Report also deals with unsuitable labeling of films and series aired in the period between 6 AM and 9 PM (when children and youth could have watched them) which films and series contained bloodshed and violence, brutal murders, nudity, explicit sex and rape. The conclusion of the Report itemizes the measures to be taken in order to remedy the observed shortcomings, including laying down minimum standards that would help determine why some programs have been classified as suitable for youth of 12, 14 and 16 years of age; the introduction of a "protected time slot" from 6 AM to 9 PM, when it would be prohibited to air programs forbidden to youth under 16; the rule that entertainment reality shows must be labeled by at least the "14" label and typically with "16" and "18", in order to have them banned in time slots accessible to children and youth.

Although the RBA's intent is a legitimate one and the recommendations appear logical, it seems that some of them are currently not grounded in the Law. Article 19 of the Law indeed speaks about the need to protect children and youth from inappropriate content, but imposing too many obligations may constitute the first step towards over-regulation. Firstly, the Report acknowledges that the broadcasters have mainly fulfilled the labeling obligation, which means that the majority of service providers take this obligation from the Law and the Code seriously. Creating new rules prescribing the criteria for labeling programs could inject additional confusion relative to the well-established practice by broadcasters in their 10-year implementation of the Broadcasting Law when it comes to program labeling. Furthermore, the prescription of minimum standards would perhaps also constitute overstepping of the RBA's statutory powers. The Agency is namely authorized to pass a GBO about inappropriate content

that may harm the physical, mental and moral development of children and youth. The “hyper production” of regulation without legal grounds would undermine the regulator’s proclaimed objective and further bureaucratize the procedure. Such overregulation would practically devoid the broadcasters of the freedom to autonomously edit such programming content and to label it as such. The control of lawful procedure must exist, but the rules that are imposed must be necessary in the context of realizing the Law and proportionate to the goals to be achieved – the protection of children and youth. Then, there is also the issue of availability of such content in the daily press and especially on the web. Are today’s children, generally speaking, protected from such content, if we bear in mind the wide availability of improper content on the Internet? It seems that regulation becomes powerless in the face of the challenges imposed by accelerated technical development and the convergence of media services. Therefore, the emphasis should be placed on the education of viewers, which must be aware of the influence of particular problems on them. The broadcasters should not be the ones to take up the entire burden, without tackling the problems at the wider level. To that purpose, media literacy should be promoted, because if the viewer is not educated, actions and interventions by the state and the independent regulator will be meaningless or even counterproductive.

2. The Complaints Commission of the Press Council

2.1. In the period covered by this Report, the Complaints Commission of the Press Council (CCPC) has reviewed very interesting cases concerning potential violations of privacy rights in reporting. Particularly interesting was the complaints Zlatibor Loncar lodged to the Press Council against the daily “Alo” over the text “Another Suspicious Baby Death”. This case shows how an unprofessional article about a topic of public interest resulted in a serious breach of the privacy of the person that was the subject of the article. According to the editor-in-chief of the daily “Alo”, the controversial text aimed to show how the “top brass of the medical authorities” might also fall victim of a medical neglect. So, the topic was indeed of public relevance, since it points to problems in the healthcare system. However, the text in question first revealed the identity of the woman that was to give birth (first by stating her initials and then revealing she is the wife of the Emergency Center Director Zlatibor Loncar), only to follow with the most intimate details concerning her childbirth and health condition. In keeping with the practice of the European Court of Human Rights, holders of public office are more often subject to criticism than common citizens. In that respect, the interest of the public to know how holders of public office behave overrides the right to privacy. That means that the holders of public office are required to accept a certain degree of restriction when it comes to their right to privacy. However, information from the private lives of public persons, namely holders of public office, shall be disclosed only if it is in the public’s interest, namely if such information may have direct consequences for several people, if they are in contradiction of the spirit of the office the person

in question occupies or the ideas that person publicly promotes. Outside of these exceptions, journalists must respect the privacy, dignity and integrity of public persons that are being written about, just like in the case of ordinary people. This obligation is clearly provided for by subparagraph 1, Section VII of the Code of Journalists of Serbia. The Press Council unanimously decided that the daily "Alo", in the text "Another Suspicious Baby Death", violated the abovementioned provisions of the Code and thereby pointed up to the fact that "narrowing privacy" in this case wasn't justified from the standpoint of the prevailing interest of the public to know.

2.2. The second case the CCPC tackled, which we will mention here, is even more complicated from the aspect of determining the borders of privacy while reporting about public figures. It pertains to the appeals lodged by Ljuba Pantovic against the daily "Kurir" and the weeklies "Skandal" and "Star" for disclosing the details from the private life of her underage daughter A.P. Ljuba Pantovic is the former participant of the reality program "The Farm". The abovementioned newspapers published details about her private life and that of her daughter as a series of articles. It should be said that A.P. too disclosed such private details about herself. However, as a minor, it is questionable if she was conscious of the impact of her activities and if she therefore has to suffer the abovementioned "narrowing of privacy". On the other hand is the statutory right of the mother to protect the privacy of her child, which she is the legal guardian of. That was the dilemma faced by the Press Council, weighing between the principle of public figures' restricted privacy, the protection of minors in media reporting and the right of the legal guardian to protect her own privacy and that of her family. Particularly striking was the fact that the weekly "Star" even published the medical report about the pregnancy of the underage A.P, which involves not only the issue of journalist ethics, but also that of medical ethics and the confidentiality between the doctor and the patient. It should not be excluded, however, that it was A.P. herself that supplied that report to the press. The reporting of these media was qualified as a violation of the Code. The Commission found that Ljuba Pantovic's family was dysfunctional and that the parents and relatives misused the underage girl in quest of publicity; in the Commission's opinion, they were the ones to leak the whole story in the media. In the opinion of the members of the Commission, the Code is very clear when it comes to the protection of minors and the journalists have to respect it; they found that the consent of the 16-year old girl to be photographed or to give statements to the media is not a sufficient reason for the media to release such statements, since it is a person that, due to her age, is not able to reason in a mature way. According to the Commission, the fact that the remaining members of the family accepted to participate in the media "coverage" of her private life wasn't sufficient. Interestingly enough, there was no unified stance among the members of the Commission as to whether a person taking part in a reality program has thereby accepted its right to privacy to be "narrowed" compared to the rights of ordinary people. The majority of the members of the Commission believed that details from the private lives of public persons should be disclosed in

public only if they are in contradiction with the office that person occupies or the ideas it publicly promotes, while two members considered this right to be always restricted. They explained it was a case of “symbiosis between tabloids and tabloid-like people”, which together participate in something mutually beneficial and hence there may be claim of media abuse or harm. The position of the two members of the Commission is also legitimate and it will be interesting to follow this case, since the media are still reporting about it.

STATE AUTHORITIES

3. Ministry of Culture and Media

We have written about the activities of the Ministry of Culture and Media in the part of this Report concerning monitoring of the process of the adoption of new laws. Here we will mention only the fact that, after the new minister Ivan Tasovac assumed his duty in early September, succeeding the previous minister Bratislav Pekovic, the new Assistant Minister of Culture and Media (in charge of the media) was also appointed – Sasa Mirkovic. Mirkovic was born in 1967 and he has graduated law on Belgrade’s Faculty of Law. He was one of the founders of Radio B92 in 1989, where he worked as a music editor, programming director and general manager of RTV B92. He was the chairman and member of the Managing Board of B92 from 2003 to 2008. Mirkovic was also one of the founders of the Association of Independent Electronic Media (ANEM) in 1993 and its chairman since 2006. After he was appointed assistant minister, Mirkovic stepped down from his positions in ANEM (Chairman and member of the Managing Board). Mirkovic’s appointment represents the recognition of the current government of everything that ANEM and the entire Media Coalition (consisting, besides ANEM, of the Journalists’ Association of Serbia (UNS), the Independent Journalists’ Association of Serbia (NUNS), the Independent Journalists’ Association of Vojvodina (NDNV) and the Association of Local Independent Media Local Press) have accomplished so far for the promotion of media reforms in Serbia, on their own or together with the Association of Media, regrouping the publishers of national print media and news agencies. Mirkovic faces the ungrateful task of replacing (as Assistant Minister for Culture and Media in charge of the media) Dragan Kolarevic, who was previously dismissed. We remind that Dragan Kolarevic has been accused in the public of lack of transparency in passing media laws. During his term of office, draft media laws were written outside of the working groups set up by the previous minister Bratislav Petkovic. Kolarevic admitted to that in his response to NUNS’ request for information of public interest, when he confirmed that the Draft Law on PSB’s (posted by the Ministry on its webpage and grilled by media professionals as substantially different and far worse than the version drafted by the working group) was written by himself and Zeljko Poznanovic, advisor in the Information Sector disregarding the decision of the previous minister Petkovic. It remains unknown,

however, if Kolarevic was ever reprimanded for these actions. Moreover, it also remains unclear if anyone else has been involved in the alteration of the Draft Law, or if the previous minister merely didn't approve such alterations merely formally or wasn't aware of them altogether. On one hand, Mirkovic will now have to reconstruct the doings in the Ministry during Kolarevic's term of office, put back the drafting of regulations in the lawful procedure and prove that the Ministry is capable of working in a transparent way. He will not have a lot of time at his disposal, since all deadlines prescribed by the Media Strategy already expired, while the patience of the media community has long been exhausted.

4. Commissioner for Information of Public Importance and Personal Data Protection

In early October, NUNS and UNS demanded answers related to the memo sent by the Ministry of Interior by e-mail to the institutions involved in the process of explanatory screening. The memo said that all information and data about explanatory screening should be deemed an official secret the following one-year period and that they must not, as such, be disseminated to public media and third parties. Such decision was justified by alleged requests by the European Commission. The Commissioner for Information of Public Importance and Personal Data Protection reacted by saying in a press release that all important issues related to the classification of confidential data shall be regulated by the Law on Data Secrecy and the Law on Free Access to Information of Public Importance and that the existing provisions of the Law may not be circumvented by informal requests, regardless of the requestor.

Explanatory screening, which in a way announces the start of the accession negotiations between Serbia and the European Commission, concerns the preliminary assessment of compliance with European standards related to negotiation chapter 24. This chapter pertains to freedom, security and justice. We remind that some of the questions to be discussed: fighting organized crime and corruption, internal border control, as well as justice reforms. The relevance of these issues for the citizens is clear and it is astonishing that access to such information has been denied, based on a memo by the interior ministry sent by e-mail, which has arbitrarily classified all information and data about screening as "official secret". For that purpose, it should be noted that both the Commissioner and journalist associations have warned that the said semi-formal memo has resorted to using legally inexistent terminology, since the institute of "official secret" isn't a legal category anymore according to the current Law on Data Secrecy (which doesn't contain a category called "secret data"). The problem highlighted by journalist associations is the consequence of the traditional opacity of secret services, which try to mystify their activities at any cost and deny the citizens access to information relevant for the development of society as a whole, under the guise of "official secret". We want to point hereby to the recent verdict of the ECHR in the case of the Youth Initiative for Human Rights vs. Serbia,

where the Court concluded that the right of the public to know is an integral part of the right to freedom of expression, as well as that even secret services must make certain data available to the public. Concealing any information, outside of the legally prescribed procedure, undermines the confidence in security structures and brings back Serbia in the totalitarian era. Interestingly enough, that is being done by hiding behind the EC's alleged request, thereby deceiving the public about how the institution that has established the European standards has requested that the same standards be violated. The logical question to ask is how will Serbia reach European standards after demonstrating ignorance of the basic principles of civil society in the first formal step (more specifically, the principle of civilian control of security services by the public)? The Commissioner for Information of Public Importance and Personal Data Protection announced that he will have a meeting with the EU Ambassador in Serbia Michael Davenport, in order to remedy any misunderstanding related to this case.

V THE DIGITALIZATION PROCESS

The Ministry of Culture and Domestic Trade and Telecommunications released on October 25 the Rules on Establishing the Plan on the Allocation of Frequencies/Locations for Terrestrial Analog FM and TV Broadcasting Stations for the Territory of the Republic of Serbia. These Rules introduced a different allocation of the frequencies that remained vacant after TV Avala was stripped off its license in the fall of 2012. It should be noted that the Draft Plan underwent a public debate last March, where it wasn't adopted due to the opposition of the RBA. The position of the Agency was that certain frequencies, which were then determined for the expansion of the Initial Network for Testing the Digital Signal (Annex 4), actually belong to the K5 network, which are to be subject to an open competition in accordance with Article 49 of the Broadcasting Law. The competition was indeed called, but failed after almost half a year. After a lengthy debate as to which frequencies are really necessary for the digitalization process, a compromise was reached by having part of the frequencies that used to belong to TV Avala used for the needs of expanding the initial digital network, while the other part will be intended for calling a national coverage competition, as detailed in the part of this Report concerning the implementation of the Broadcasting Law. Here we will only reiterate that the new competition of the RBA has many formal and material shortcomings and it is particularly unclear if the frequencies for the transmitters on 21 transmitter sites will suffice for the new analog broadcaster to cover 60% of the population of Serbia, as provided for the Broadcasting Law. The second part of the story is particularly interesting for the digitalization process. Namely, how is it possible that a compromise solution has been found only now, when something like that could have been done as early as last March and maybe even when the RBA's decision on revoking the license of TV Avala became final? This opens up the question of responsibility of both regulatory bodies: the

RBA, because it insisted on calling a competition for analogue television regardless of the potential consequences (slowed down digitalization; the possibility of the EU reclaiming from Serbia the equipment that supplied at Serbia's request, which equipment Serbia left rotting in warehouses, instead of installing it and using it; precluding the state to make profit earlier, by putting the digital dividends for an auction – the part of the spectrum that would be freed with the digital switchover, etc.), but that of RATEL too, which is exclusively authorized for the coordination of the radio-frequency spectrum and which should have known what may result from unreasonable usage of the spectrum. On the other hand, regardless of the unjustified delay, the adoption of the Allocation Plan removed the regulatory obstacles for expanding the initial network from 15 to 35 frequencies/sites, which will enable the remaining part of the EU-donated equipment to be installed. Furthermore and even more importantly, it will enable a greater number of citizens to receive the digital signal through that network. According to the estimates of the competent ministry, it is about 75% of Serbia's population. Moreover, RATEL's earlier predictions confirm that the expansion of the initial network would create the conditions to complete the digital switchover by next summer, about one year before the deadline foreseen by the International Telecommunications Union, which expires on June 17, 2015. It should be said, however, that despite optimistic estimates, the digitalization process is still not in its final stage. The main reason is that the expansion of the initial network has created only the technical conditions for 75% of the population to receive the digital TV signal. Still, that does not mean that such percentage of the population will actually receive the digital TV signal, since that depends on the characteristics of their TV sets (whether they support the DVBT2/MPEG4 standards), namely on whether the citizens possess the required STBs. In addition, it seems that the broadcasters are still not completely informed about their rights and obligations in the digitalization process and especially not about the costs of primary distribution (from their studios to the head-ends of the new digital network) and secondary signal distribution (to the end users). Finally, a final regulatory document remains to be drafted (in accordance with the Digital Switchover Strategy) – the Switchover Plan, which will define the terms and the manner of the switchover in each of the 12 allotments (regions). Only when these preconditions are created, it will be possible to make a more specific estimate of whether digitalization will be completed in the term announced by the state officials.

VI THE PRIVATIZATION PROCESS

There was no progress in October concerning the privatization of state-owned media. Although the public debate on the Draft Law on Public Information and Media, which once again confirmed, at least declaratively, the commitment of the state to enforce privatization, ended last spring, that Law is yet to enter parliamentary procedure. October saw the public debate on the

Draft Law on Electronic Media and the Draft Law on PSB's. However, that debate was again misused for questioning privatization and claiming that the sole remedy for the troubled Serbian media landscape – and particularly local and regional media - is state ownership. Just like last spring, the concept of privatization is under attack from the centers of political power unwilling to relinquish public media through which they influenced public opinion, as well as part of the employees in public media, concerned for their jobs. Meanwhile, the state offered neither social programs nor incentives to private media for employing new people and hence the fear of public media employees for their job is not without foundation. On the other hand, delaying privatization and continuing with opaque budget financing of public media is pushing these same media to the brink of collapse. At the same time, such an outcome would further increase the likelihood of Serbia ultimately remaining without any local and regional media.

VII CONCLUSION

The month of October was marked by the discharge of Dragan Kolarevic, the Assistant Minister of Culture and Media in charge of the media and the appointment of the new Assistant Minister – Sasa Mirkovic, hitherto President of ANEM. Mirkovic's appointment appears as a great victory for the media community, as he was at the helm thereof in the struggle for media reforms, which was intensively waged after the adoption of the undemocratic Law on Amendments to the Law on Public Information back in 2009. It remains to be seen if Mirkovic will be able to speed up the reforms. The fact that he was appointed a full month and a half after the government reshuffle is not encouraging. Meanwhile, the situation in Serbia remains unchanged. Those journalists that are brave enough to do their job against the liking of the local power players still risk being fired and sued and, judging from the court decisions taken in October, the judiciary is unlikely to make their life easier. The government is still paying lip service to reforms and their related promises remain idle talk.