

## I FREEDOM OF EXPRESSION

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

### 1. Threats and pressures

1.1. The Editor-in-Chief of the web portal Nasa Grocka Info Zeljko Matorcevic and journalist Svetlana Urosevic were banned by the security of the Municipality of Grocka from attending the public session of the local council, the Independent Association of Journalists of Serbia (IAJS) said in a press release. Matorcevic and Urosevic were not told under whose orders they were prevented from attending the council session.

In our previous reports we have often reiterated that Article 10 of the Law on Public Information stipulates that state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well as MP's and councilors, are obligated to make information about their work available for the public, under equal conditions for all journalists and media. However, this remains the most violated provision of the Law on Public Information. The case in Grocka is one of the many examples we have written about in our reports. A particular concern (since the Law does not provide for any sanctions violating the obligation to make information available for the public, under equal conditions for all journalists and media) is the absence of any public condemnation of discriminatory acts of the public authorities towards certain media and journalists. It seems that the reticence of the institutions, or even worse, the discrimination of "unsuitable" media and journalists, threatens to become the acceptable model in Serbia and that even the media fail to display solidarity with their peers exposed to discrimination.

1.2. The Deputy Mayor of Nis Ljubivoje Slavkovic posted a series of insults on Facebook against the news portal "Juzne vesti" and offered a reward for information about "the cost of the maintenance of the "Juzne vesti" portal and who's really behind them, who's financing them..." Slavkovic's reaction followed a series of texts by "Juzne vesti" in relation to his statement that the LGBT population is a "self-genocidal crowd" and that they are suffering from a "serious psychological and physiological disorder". The Commissioner for Protection of Equality Nevena Petrusic called Slavkovic's words intolerable for a public official, noting the constitutionally

guaranteed freedom of speech must not be an excuse for communicating ideas and views constituting hate speech, smearing, humiliation and injury to the dignity of persons based on their sexual orientation.

One of the main postulates of contemporary media law, confirmed by the case law of the ECHR, as well as the Serbian Law on Public Information, is that public figures, especially holders of state and political office, must show a greater degree of tolerance for criticism by the media; their privacy rights shall even be limited, if the information in a concrete case is of public interest (especially for politicians, as persons occupying public office). In one of our previous reports, we analyzed the case of a media outlet director and editor who criticized a politician spending his holidays in Dubai. Shortly after the text was released, the director and the editor were accused by the said politician of pedophilia – leaflets with these accusations (warning parents not to leave their children in their vicinity, since they are pedophiles) were distributed near the offices of their newspaper. The case in Nis is yet another “creative response” by Serbian politicians to media criticism, an apparently growing practice. Ljubivoje Slavkovic, the Deputy Mayor of Nis, is undoubtedly a public official and holder of public office in the local-self government of that city. He has undoubtedly made a statement offending the dignity of a minority group based on their sexual orientation. These facts were confirmed by the statement made by the Commissioner for the Protection of Equality. By making the aforementioned controversial statements, Slavkovic wittingly placed himself at the core of the heated debate about the rights of minority groups in Serbia and the rights of sexual minorities. He was hence expected to demonstrate a higher degree of tolerance for critical reporting about his statement. His response, in the form of promising a reward for information about the finances of a media outlet that criticized him and “who’s really pulling the strings behind them”, may not be interpreted as a legitimate request for transparency of media ownership and influence on the media. On the contrary, it constitutes forbidden influence (as provided for in the Law on Public Information) on a public media and its personnel, which may obstruct their work and restrict the free flow of ideas, information and opinions.

1.3. After a story on Radio Television Serbia (RTS) was broadcasted about the Sokobanja Special Hospital, under the title “Sokobanja under the Magnifier”, the Director of the hospital Ljiljana Isakovic called the editor of the RTS office in Nis Dragana Sotirovski on the phone and told her: “You will not forget me!” In a press statement about the incident, the Independent Association of Journalists of Serbia (IAJS) said that, prior to going to the on-location filming at the Special Hospital, Sotirovski was under pressure for days to give up going to Sokobanja. The Director of the hospital herself postponed several times the interview and the filming, ultimately

requesting questions to be sent to her in advance and writing a letter to the RTS. Ljiljana Isakovic, NUNS' press release said, attempted, through several influential RTS journalists, to prevent the story being filmed. The program "Sokobanja under the Magnifier" talks about the irregularities that certain employees of the special hospital have been pointing out for years. Twenty of them received the status of whistleblower from the Anti-Corruption Agency. Acting on their reports, the Mobbing Center in Nis established a dozen cases of harassment and mobbing of employees and sent reports about these cases to the competent labor inspector in Zajecar. The Commissioner for Information fined the Special Hospital 200.000 dinars for denying access to information about employee salaries. The Ministry of Internal Affairs confirmed for RTS that 38 criminal charges (both anonymous and signed) have been filed to date against the Director of the special hospital, but that she is not under any investigation.

Under the Law on Public Information, public information shall be free and in the interest of the public, free of censorship and 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. 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. In the concrete case, in the news item about the Special Hospital, the reporter analyzed the irregularities revealed by certain employees, of which twenty were awarded whistleblower status by the Anti-Corruption Agency. We remind that, under the Law on the Anti-Corruption Agency, the person based on whose report a procedure before the Agency has been initiated or the person giving a statement in such proceedings, may not be subject to any harmful consequences because of that. The same holds true for any civil servant that reasonably believes there is corruption in the body he/she is working in and reports such concerns to the Agency. Under the Law, the Agency shall provide the necessary help to such persons in order to protect their anonymity. The Rules about the Protection of Persons Reporting Corruption, adopted by the Anti-Corruption Agency in 2011, stipulate that the Agency will protect whistleblowers from retribution, which involves any and all measures taken in relation to the employment status and working conditions of the whistleblower, contrary to his will, starting from the day the whistleblower was placed under protection up to two years maximum. In this report, we have already written about the omnipresent institutional opacity. The case of the Sokobanja Special Hospital is a dramatic example, which has lead to justified concerns about possible corruption in that institution, the Director of which has attempted to put pressure on the media, as retribution for the reports of corruption voiced by whistle blowing employees. The extent to which Serbia will succeed in countering the attempts to muzzle the media in corruption cases will most definitely affect the overall anti-corruption efforts in our society.

## 2. Legal proceedings

2.1. In early November, the Higher Court in Belgrade received a decision of the Supreme Court of Cassation in Belgrade, which rejected the revision of Petar Kovacevic and Branka Prodanovic – Kovacevic, the parents of Miladin Kovacevic, stated against the verdict of the Appellate Court in Novi Sad, reversing the first-instance verdict of the Higher Court in Sombor and rejecting the claim by Kovacevic's parents in the lawsuit against the Broadcasting Company B92, Veran Matic as the editor-in-chief of TV B92 and journalist Nikola Radisic. We analyzed this trial in the monitoring report for last May; with the adoption of the decision of the Supreme Court of Cassation, this case was brought to an end in a procedure initiated by an extraordinary legal remedy by the dissatisfied plaintiffs.

We remind that Petar Kovacevic and Branka Prodanovic-Kovacevic brought legal action against the Broadcasting Company B92, Veran Matic as the Editor-in-Chief of TV B92 and journalist Nikola Radisic, for alleged injured honor and reputation caused by a news item aired in TV B92's news "Vesti". The news item was a report from the trial of Miladin Kovacevic, the son of Petar Kovacevic and Branka Prodanovic-Kovacevic. Let us recap, Miladin in 2008, in Boston, USA, where he went to college, beat up his fellow student Brian Steinhower. After the US authorities took away his passport, the Serbian consulate issued Kovacevic a copy of a travel document with which he left the US and in that way avoided trial before American courts. The Consul and Vice-Consul of Serbia in New York underwent trial for committing that act. The report on TV B92 about Miladin Kovacevic's trial in Belgrade was finished with the sentence that his case had cost the taxpayers in Serbia one million dollars, of which 100 thousand for the bail to get him out of US jail and 900 thousand that the Serbian state paid for the costs of Steinhower's medical treatment. Petar Kovacevic and Branka Prodanovic-Kovacevic, Miladin's parents have claimed that this information was false since they have paid for the bail themselves from their own funds and that they were by the published false information harmed. The Higher Court in Sombor awarded them damages in the amount of 200.000 dinars, but the Appellate Court in Novi Sad reversed this decision and rejected their claim. In the explanation of the second-instance verdict, it is said that there was no causal relationship between the injury to honor and reputation to Petar Kovacevic and Branka Prodanovic-Kovacevic and the publishing of the disputed false information, nor is there any liability by B92, Veran Matic and journalist Nikola Radisic for compensation of any damages in relation to the release of the subject information, since they are not in any way mentioned in the report, (which) does not point to their morally or legally unacceptable behavior, or anything related to them is implied. The Appellate Court in Novi Sad rightfully observed there was no causal relationship between the Kovacevic's reputation and the

information whether the state had paid for something 100.000 dollars more or less. The Appellate Court in Novi Sad even pointed out that the negative image of Kovacevics with a certain number of people was a direct consequence of their adult son's negative image in public and not of the mistake the journalist made when reporting about the amount the state paid or did not pay. Having found that the revision of the verdict in this concrete case was not allowed, the Supreme Court of Cassation practically ended this legal matter. The important decision by the Appellate Court in Novi Sad, which practically confirmed the right of journalists to make a mistake (and rejected the claim for damages in a case where there was no causal relation between the alleged damage and the journalist' mistake) thereby remained in force.

2.2. The Appellate Court in Novi Sad has partially confirmed the verdict of the Higher Court in Novi Sad, which rejected in its entirety the claim for damages by Todor Bukinac, the owner of the Bukinac stables. The verdict, which we analyzed in our September report, was confirmed in relation to Radio 021, the web portal B92.net, as well as the daily newspaper Alo! published by Ringier Axel Springer. At the same time, a retrial was ordered in relation to the "Beta" news agency and its editor-in-chief.

We remind that the claim was filed against several media outlets and their editors, for having reported that the horses of Todor Bukinac had been leaving the stable to walk freely in between the apartment buildings in the Novo Naselje district of Novi Sad. The plaintiff Bukinac demanded four million dinars of damages (from all media and editors cumulatively) for injured honor and reputation due to the release of false information. Bukinac didn't contest the fact that the horses had exited the stable, but said that the reports falsely claimed that the animals were in fact the Lipicaner horses that were the object of a dispute between Croatia in Serbia. That dispute has actually been finished and the horses were repatriated to Croatia in 2007. In addition, Bukinac called false the claim (reported by the media) that he had requested from Croatia 300 thousand euros to give the horses back. In its verdict, the Higher Court found that the erroneous information that the dispute between Croatia and Serbia was still underway (although it is actually over) may not be harmful for the interests of a third party (in this case Todor Dukinac), namely that such information, in addition to being false, may not be causally related to the injured honor and reputation of the plaintiff. Having considered the claim by the plaintiff that he has been wrongfully exposed to such reporting for the last ten years, the Court found that the controversial reports merely referred to these events and concluded that, while deciding about potential damages, it must take into account the existence of causality (or lack thereof) between the controversial media reports and the damage suffered. In this case, the Court concluded, there is no proper causality. In relation to Dukinac's second claim – that his honor and reputation were

injured by the claim (in the media reports) that he had requested from Croatia 300 thousand euros to give the horses back, the court of first instance found that the information wasn't actually false – Bukinac had actually received the fee in kind (not in moneys) – the offspring of the Lipicaner horses that had to be repatriated to Croatia, which offspring he had retained in his stable. The Appellate Court only partially upheld the verdict, namely in relation to all media and editors, with the exception of the Beta news agency and its editor-in-chief. The Court made a distinction between the media and the editors that were sued by the plaintiff, which media and editors conveyed the information credibly and entirely (along with citing the relevant sources) and the Beta news agency, which was the „source media“. The Court also found that undisputed fact that Todor Bukinac got to retain the offspring of the Lipicaner horses that were repatriated to Croatia didn't constitute evidence that Bukinac had requested 300 thousand euros from Croatia. We have written in our previous reports how the first-instance verdict was extremely important for strengthening freedom of expression in Serbia, since it confirmed the belief that journalists are entitled to make mistakes and that not every journalist mistake may constitute grounds for damages, since journalists must adhere to the standard of due journalist care and not that of absolute truth. However, the Appellate Court in Novi Sad found that compliance with the standard of due journalist care – at least relative to the “source media” of the disputed information – hadn't been proven, namely that the relevant circumstances ought to be established in repeated proceedings. Such proceedings are expected to discuss whether the Beta news agency had checked (prior to releasing the information that Bukinac had requested 300 thousand euros from Croatia) the origin, accuracy and completeness thereof, acting with the proper caution.