LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for November 2013

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FONDACIJA ZA OTVORENO DRUŠTVO, SRBIJA
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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.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Law on Public Information

The implementation of the Law on Public Information has been elaborated on in the section on freedom of expression.

2. Broadcasting Law

The Republic Broadcasting Agency (RBA) issued a press release on November 21, stating that the contents of the reality show "The Farm" aired on TV Pink on November 19 incited ethnic and national discrimination. At its extraordinary session, the RBA Council examined the report issued by its Oversight and Analysis Department about the controversial episode of the reality show aired in the night of November 19-20, which episode contained ethnic-based insults. The press release said the broadcaster had been ordered to immediately ensure compliance of its programs "with the provisions of the Broadcasting Law and prevent further violations".

Article 8, paragraph 2, subparagraph 3 of the Broadcasting Law says that the RBA shall perform tasks related to taking measures in the field of broadcasting, with the aim of preventing the broadcasting of programs containing information inciting discrimination, hatred or violence against persons or groups of persons for their ethnic, religious, national affiliation or gender. Furthermore, Article 21 of the Broadcasting Law stipulates that the RBA ensure that

broadcasters' programs will not contain information inciting discrimination, hatred or violence against persons or groups of persons due to political affiliation, race, religion, nation, ethnic group, gender or sexual orientation; non-compliance by broadcasters shall constitute grounds for the Agency to take the proper measures, irrespective of other legal means the damaged party might resort to. From the brief statement of the RBA referring to "ethnic-based insults", it is not clear what would "inciting ethnic-based discrimination" constitute. Unclear is also the legal nature of the order issued to the broadcaster to ensure compliance with the provisions of the Broadcasting Law and prevent further violations. Namely, according to that Law, the RBA is authorized in certain cases to pronounce measures (caution, warning, temporary or permanent revocation of broadcasting license), namely to initiate proceedings before the competent court or other state authority against the broadcaster or responsible person of the broadcaster, if the broadcaster has committed a punishable offense. In addition to the unclear grounds, the purpose of ordering the broadcaster to ensure compliance with the provisions of the Broadcasting Law is unclear too. The broadcasters are already obligated to ensure compliance with the applicable regulations and hence it is unclear what could the RBA achieve with such an order. Such vague statements, which didn't explain which provisions of the Law have been breached (in the RBA's opinion), by which specific conduct and which proceedings have been initiated accordingly, namely what decision has been taken, are unlikely to achieve anything. Instead of suppressing hate speech and discrimination, the RBA is attempting to create an energetic and strict image with the general public, while in reality it lacks the necessary legal grounds. Namely, issuing "orders" without the proper legal basis may also be understood as avoiding to pronounce measures that are prescribed by the Law. Irrespective of the broadcaster that's given a free pass in a specific case, the latter would constitute intolerable voluntarism.

3. Law on the Protection of the Rights and Freedoms of Ethnic Minorities

At a session held on October 3, 2013 the Constitutional Court of the Republic of Serbia found that Article 17, paragraph 2 of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities ("Official Gazette of RS", no. 72/09 – other law), in the part saying "it may also establish special radio and TV stations to broadcast programs in ethnic minority languages", is not in conformity with the Constitution (case IUz-27/2011).

According to Article 17, paragraph 2 of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities, prior to the last intervention of the Constitutional Court, the state must ensure in the radio and TV programs of the Public Service Broadcasters (PSB), the news, cultural and educational content in the language of the ethnic minority. In addition, it may establish special radio and TV stations to broadcast programs in ethnic minority languages. ANEM filed with the

Constitutional Court back on January 28, 2011 (in the context of advocacy efforts to suspend regulations preventing the withdrawal of the state from media ownership) an initiative for the assessment of the constitutionality of certain provisions of the Law on the Protection of Rights and Freedoms of Ethnic Minorities. ANEM also requested the assessment of the constitutionality of other laws enabling the state to retain ownership in media, namely the Law on Ethnic Minorities' National Councils, the Law on Local Self-Government and the Law on the Capital City, each in the part providing for the rights of the Ethnic Minorities' National Councils/local self-government units/the capital city to establish state-owned media. The provisions in question were namely in direct contravention of the Law on Public Information and the Broadcasting Law and as such constituted a "bastion" for the opponents of the privatization of public media. The Constitutional Court ruled separately about the constitutionality of the provisions of the Law governing the functioning of local self-government and the capital city and the Law regulating the protection of ethnic minorities. Relative to the assessment of constitutionality of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities, the Constitutional Court considered, as an important constitutional and legal issue, the uniformity of the legal system, in the context of the relationship between the Law on Public Information and the Broadcasting Law on one side and the Law on the Protection of the Rights and Freedoms of Ethnic Minorities on the other. According to the latter, the state has authority that is more extensive in the field of information of ethnic minorities compared to the authority provided for by systemic laws in this area. Under the Law on Public Information, as the main law in this field, the state and the territorial autonomy, as well as the institution, company or other legal person predominantly owned by the state or fully/partially financed from public sources (with the exception of PSB institutions), may not establish media, neither directly nor indirectly. Under the Broadcasting Law, the institution, company or other legal person founded by the Republic of Serbia or autonomous province, excluding PSB institutions, may not hold a radio or television broadcasting license. On the other hand, the PSB must produce and broadcast programs intended for all segments of society, without discrimination, always bearing in mind language and speech standards of both the majority population and (in the adequate proportion) ethnic minorities, as well satisfy the needs of citizens for content expressing the ethnic identity of peoples/ethnic minorities and groups, through the possibility of receiving programs or programming segments on their territory, on their mother language and alphabet. Starting from such concepts in systemic media laws, the Constitutional Court concluded that the disputed provision of the Law on the Protection of the Rights and Freedoms of Ethnic Minorities "actually constitutes an anachronous legal concept", adopted prior to the Law on Public Information and the Broadcasting Law, as well as before the Constitution of the Republic of Serbia from 2006. That concept, the Court said, is not in conformity with the regulations on the realization of media freedoms in the legal system of the Republic of Serbia and is therefore contrary to the principle of unity of the legal system referred to in Article 4, paragraph 1 of the Constitution. As to the relation between the contested provision and the international conventions, standards and experience in the field of media legislation, the

Constitutional Court points out that Article 18 of the Constitution provides for the direct application of guaranteed rights, as well as that the provision about human and minority rights shall be interpreted in the favor of enhancing the values of democratic society, in line with the applicable human and minority rights standards and practice of international institutions overseeing their implementation. In that context, the Constitutional Court quoted Resolution 1636 (2008) and Recommendation 1848 (2008) of the Parliamentary Assembly of the Council of Europe – "Indicators for Media in a Democratic Society", establishing that it may be concluded that the state does not have the possibility of establishing other media, save the PSB, and that acting otherwise would be in contravention of the ban on interference by the public authority with the media sphere, which is laid down, as a standard, through the implementation and interpretation of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. This decision by the Constitutional Court is extremely important, since it has confirmed the significance of the unity of the legal system. It is expected to contribute to the strengthening of minority media owned by private individuals belonging to minority communities in Serbia, which media still receive state subsidies under Article 5 of the Law on Public Information. That Article says that, for the purpose of the realization of ethnic minorities/communities' rights to receive information in their mother language and the protection of their culture and identity, the Republic, autonomous province and/or local self-government shall provide for part of the funds or other working conditions to public media in the language of ethnic minorities and communities. However, we must note here that the Constitutional Court has also previously separated the procedure about the initiative for the assessment of constitutionality of the provisions of the Law on Local Self-Government and the Law on the Capital City, which provisions too, in contravention of the principle of unity of the legal system, give the local governments and the capital city the right to establish media other than PSB's. To make things even worse, the Court found that "the assessment of mutual conformity of certain provisions of different laws, as acts of equal legal strength, is outside of the competence of the Court". The basic concept of the initiative for assessment of constitutionality was that the media laws (Law on Public Information and the Broadcasting Law) prescribe a single legal regime, stating that public entities may not be founders of public media (neither radio, nor television), while the non-media laws (Law on Ethnic Minorities' National Councils, the Law on Local Self-Government and the Law on the Capital City and the Law on the Protection of the Rights and Freedoms of Ethnic Minorities) provide for a totally different legal regime, undermining even further the principle of unity of the legal system stipulated by Article 4 of the Constitution. The Constitutional Court rejected the initiative for assessment of constitutionality of the Law on Local Self-Government and the Law on the Capital City; therefore, relative to settling the problem of divergence of these laws from systemic media regulations, we have to wait for the adoption of the new Law on Public Information and Media, Law on Electronic Media and Law on Public Service Broadcasters, which should consistently implement the Media Strategy-proclaimed goal of having the state withdraw from media ownership.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

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

After the public debate on the Draft Law on Electronic Media and the Draft Law on Public Service Broadcasters, in November the competent ministry formed a mini-working group consisting of the representatives of the ministry, RBA, public service broadcasters and media law experts, which was also supported by European Commission (EC) experts. The task of this working group was to review the comments, implement some of them and perhaps improve the text of the draft. We remind hereby that more than 400 pages of suggestions were received relative to both draft texts, making the job of the working group challenging to say the least. The group has completed its job and the latest versions of both drafts are expected to be sent for review to the competent ministries in December and January (and forwarded to the EC through the Government EU Integration Office). Meanwhile, the Draft Law on Public Information and Media was sent for a "second round of consultations" to a number of ministries and the Legislative Secretariat (only to be subsequently transmitted, also via the EU Integration Office, to the EC for review). While making any predictions seems futile at this point, all media laws should be expected to be tabled for parliamentary review in late February or early March 2014, which means that the Media Strategy deadline will have been exceeded by one year. The latter brings in doubt the timely realization of the key tasks of the media reform, namely the privatization of the still non-privatized state media, which was scheduled to be finished by December 31, 2014, as well as the actual realization of the system of project-based financing of media from public sources in 2014.

Nonetheless, the hottest topic among media in November hasn't been the work of the working group and the speculation as to when media laws will be adopted, but Article 109 of the Draft Law on Electronic Media, which provides for rules on illicit media concentration. In our prior reports, we have written about this article and its provisions concerning the ban on one entity holding two national broadcasting licenses (which makes the Draft Law even more rigid than the current Broadcasting Law). We have also written about the mysterious disappearance from the Draft Law of a provision, which tied the concentration threshold to a "technologically neutral" criterion (35% ratings in the coverage zone in one calendar year). This time, the media focused their attention on the rules pertaining to illicit media concentration, namely the provision barring a telecommunications network operator (which network is used for the distribution of media services) to be at the same time the founder of a general-type media outlet or a media outlet providing news services. Such a provision would prevent one of the biggest operators in Serbia to realize a project involving the creation of a regional news program akin to CNN. By comparing EU

practice in this field, it may be said that the Draft Law is utterly restrictive in this case, since it prohibits vertical integration of the operator and the media services provider, relative to the type of content they broadcast (in the case of general-type services and news content). Although the concept of media pluralism (which would be protected by such a provision) primarily concerns the variety of news content, there are no persuasive arguments for tying the ban on vertical integration to news programs. Namely, if the problematic provision remains in effect, the operator might have 100 music, 100 sports or 100 entertainment programs, which, in the opinion of the author of the provision, would have not an unfavorable influence on the pluralism of ideas, views and opinions. At the same time, possessing a single news channel would exert "dominant influence on public opinion". Furthermore, the Draft Law does not contain a precise definition of "general media service" and "specialized news content service". The criteria of classification are set in a general manner, leaving the possibility for arbitrary interpretation, which is intolerable in such sensitive matters. Moreover, if mechanisms are ensured, owing to which other providers of media services may access the electronic network of an operator that has its own channel, proprietary control must not always be key in exerting dominant influence on public opinion. The criteria for access (both in the case of proprietary and non-proprietary radio channels) should be based on market criteria, under which all service providers have the right to compete for a spot on cable, satellite or multiplex. However, it seems that in the present system, prior regulation of the right to access to the distribution network is possible neither under the Law on Electronic Communication, nor under the Draft Law on Electronic Media. The only thing that remains is *ex post* application of the rules from the Competition Protection Law, in case the operator grants more favorable conditions to its own operator than to other operators. Namely, access to the network should be based on objective, measureable, clear and non-discriminatory criteria, in compliance with the free market and under strong supervision of the Competition Protection Commission, which would punish each violation *ex post* (subsequently) and not *ex ante* (preventively). There are two key problems with vertical integration. The first is putting proprietary channels in a more favorable position compared to other channels and the second is "cross-subsidizing" the operator's own media services from revenues generated by telecommunication activities. The first problem could be solved by offering access to everyone (including proprietary channels) under equal conditions (non-discrimination, transparency and objectivity), which includes non-discriminatory access to the service of logical channel numbering (LCN) and more clear regulation of the must-carry obligation. The goal would be avoiding an excessive burden on the operators, as well as introducing rules on separate accounting of business operations (revenues) stemming from the provision of media services and those arising from the provision of telecommunication services. Bearing in mind those are institutes of competition law, in the absence of grounds for prior regulation in telecommunication or media related regulations, oversight should be vested in the Competition Protection Commission. Unfortunately, it seems that the Commission lacks the capacity to tackle this challenge; meanwhile, the circumstances on the market are such that it is impossible to absolutely exclude

discriminatory treatment of the operator against non-proprietary service providers. It is therefore not a bad idea to have certain rules concerning vertical integration included in media laws. However, the concept that was integrated in the Draft Law on Electronic Media is unacceptable, because it introduces barriers for certain types of content, without genuinely protecting media pluralism or preventing network operators to discriminate against non-connected content providers. The minimum rules that should be contained in media laws should clearly define, with the aim of safeguarding media pluralism, the minimum set of channels each distributor must offer in the basic service package, as well as the rules of LCN. The goal would be to prevent the situation (which happened recently with an operator) where a new commercial cable channel would appear overnight, in the place of one we had been watching for years.

2. Law on Amendments to the Law on Copyright and Related Rights

In late November 2013, the Ministry of Education, Science and Technological Development presented the Draft Law on Amendments to the Law on Copyright and Related Rights – the third change to that Law in the last four years. The amendments primarily pertain to extending the duration of copyright protection from 50 to 70 years, in conformity with the relevant EU recommendations. The changes also concern the extension of the list for computer equipment used for copying actual copyrighted works and hence fall under the regime of so-called special fees.

As for provisions relevant for the media, we hereby want point to the amendment to the hitherto Article 6 of the Law on Copyright and Related Rights, as well as to certain changes to the criteria for determining the tariff for exploiting the object of copyright and related rights. The said amendments unjustifiably introduce a new category of exception from the notion of author work (copyrighted work), providing that author works shall not include "daily news and other news with the character of press information". The explanation accompanying the Draft Law says that the aforementioned change results from the harmonization of our legislation with Article 2, paragraph 8 of the Bern Convention, which in English language reads: "The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information." The difference between the proposed formulation of the law and the text of the Bern Convention is clear, since the Draft Law mentions "daily news and other news with the character of media information", while the Convention merely mentions miscellaneous facts having the character of mere items of press information. Hence, this is about exempting from copyright protection news, or even more precisely – factual claims that are part of media reports (which is not disputed in practice). It remains unclear, however, what practical change the authors of the Draft Law wish to accomplish by exempting from copyright protection

"news having the character of mere items of press information." This definition is broad and imprecise and it may lead to exempting from copyright protection nearly all media content. In addition, the Convention is limited to "common press reports", which means daily reports by print media, which is understandable in view of the fact that the Convention was passed in 1886 and revised in 1971 the last time. If one takes into account the "age" of the Convention, extending the exemption to all media content is completely inapt. The *ratio legis* of the provisions of the Convention is to prevent copyrights to thwart the free flow of daily information (i.e. facts) and not to deny the character of author works to all media content. This goal is already achieved with the existing formulation of Article 43, paragraph 1 of the current Law on Copyright and Related Rights, which prescribes that, under certain conditions, it is allowed to use the copyrighted object without the author's permission and without paying the copyright fee in the scope of informing the public about current events through the press, radio, television and other media, to the extent necessary for the realization of the purpose and manner of providing information about the current event. Therefore, the amendment is neither necessary nor justified; on the other hand, it may cause serious problems to journalists and the media, because their author content will be freely disseminated, copied and modified, without the obligation to state the source and the author of the information (as it was hitherto prescribed in Article 41 of the Law). Furthermore, the introduced exception will practically suspend Articles 41 (relative to press information) and 43 and it is hence unclear what is the relation between amendments to Article 6 and the aforementioned articles, since the amendments to the Law stop short of addressing that relation.

The second major change relevant for the media landscape is the change to Article 170, paragraph 5 of the Law on Copyright and Related Rights, namely the change to the criteria for determining the tariffs implemented by collective organizations in the negotiations with the representative association of users. Until now, the criterion was the GDP, where it was not clearly emphasized if it is GDP per capita or total GDP, which enabled each side in the negotiations to invoke the examples of countries they found suitable to their interests, while indirectly hampering an agreement. Instead of clarifying things, the legislators opted for an even vaguer criterion, which may only complicate further the odds of reaching an agreement between collective organizations and the representative association of users. However, even if the benchmarking criteria were more clear and unambiguous, the problem remains with the failure to recognize the specific circumstances of the relevant markets where the object of protection by copyright and related rights is exploited. For example, the media market in Croatia is not comparable to the Serbian one, since it has less radio and TV stations, which compete on a richer market and hence the media may withstand higher charges. The specificity of our media market is the excessive number of electronic media (more than 500), placing Serbia at the top of the European list in that respect. It is therefore difficult to find a pilot country for Serbia to emulate. Moreover, the representative

associations of users also have the problem of not being able to access data about the tariffs of collective organizations in other countries, which makes their negotiating position uneven.

Finally, the legislator failed to regulate more closely the procedure for determining the tariff in cases of unsuccessful negotiations. Namely, the current Article 176 of the Law stipulates that, in the absence of an agreement, the managing board of the collective organization shall determine the proposed tariff, which proposal shall be subject to the approval of the Intellectual Property Office. In its present definition, Article 176 leaves two possibilities to the Office – to approve the proposed tariff or to deny approval. That means that the Office may not change the proposed tariff and hence there is no guarantee that the proposals of the representative association of users will be accepted at all. In order to have the interests of both sides in the procedure before the Office protected, the Office must be authorized to end the procedure by passing a decision about the tariff (and not only approving the tariff proposed by the collective organization) if the negotiations fail, in compliance with the criteria from the Law, the negotiations and the arguments voiced in the course thereof.

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

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

STATE AUTHORITIES

2. Ministry of Culture and Information

In early November 2013, Belgrade hosted the International Ministerial Conference "Freedom of Expression and Democracy in the Digital Age – Opportunities, Rights, Responsibilities", organized by the Council of Europe and the Ministry of Culture and Information. The conference of ministers

in charge of media and information society from CE member countries was inaugurated by the Serbian Prime Minister Ivica Dacic and the Secretary-General of the CE Torbjorn Jagland, while the Chairman was the Minister of Culture and Information Ivan Tasovac. The panelists included the CE High Representative for Human Rights Niels Muiznieks, Special Rapporteur for the Promotion and Protection of Freedom of Expression of the United Nations Franck la Rue, the representative of the OSCE Dunja Mijatovic and Secretary General of the European Broadcasting Union Igrind Deltenr la Rue.

The ministerial conference also gathered many media experts, journalists, representatives of the state and international organizations. The topics on the two-panel discussions (the ministerial panel and the panel of media representatives) pertained to the challenges for freedom of expression on the Internet, especially in the context of rising hate speech online, ever increasing attacks on journalists, as well as to whistleblower protection. One of the speakers was Veran Matic, the Chairman of the commission investigating the assassination of journalists, set up late last year by the Government of Serbia, tasked with shedding light on the murders of Dada Vujasinovic, Slavko Curuvija and Milan Pantic. He presented the work of the commission and pointed to the need for comprehensive protection of journalists, since the attacks of them are entirely motivated by their affiliation to the journalist occupation. The same panel included a presentation about freedom of expression in Turkey, especially in the context of online texts (blogs, forums and the like), in relation to the civil protests in that country. On the panel dedicated to the protection of the right to freedom of expression online, the participants were the representatives of large companies (e.g. Google), the civil sector, Internet activists and country representatives. The discussion confirmed that freedom of expression and the right to privacy on the Internet were often threatened not only by states (in the form of interception of communications, for example), but also by corporations filtrating content, while invoking the protection of legitimate interests. The discussion also showed that it was difficult to solve all open issues without a multisectoral approach, involving the participation of the state, civil society and the corporate sector.

V THE DIGITALIZATION PROCESS

The adoption of the Rules on the Allocation Plan has fulfilled the regulatory conditions for the Initial Network for the trial testing of the digital signal to be extended from 15 to 35 locations, opening the possibility for about 75% of the population of Serbia to receive the signal. The latter, in turn, will have created the foundation for the *simulcast*. According to the announcements from the competent ministry, the first stage of the *analog switch-off* is to be expected as early as in the

second half of 2014. However, the lack of funds makes it impossible to set more precise deadlines for the completion of the first analog switch-off.

Under the Digital Switchover Strategy in Serbia, digitalization costs include costs of purchasing digital broadcasting equipment (which is, to a large extent, already covered by EU funds) and the expenses related to the purchase of STB's for socially vulnerable groups, in accordance with the decision on the help scheme. The first item is not completely unknown, since the setting up of the network was greatly facilitated by IPA funds. This is not, however, the case with the aforementioned purchase of STB's.

The Strategy provides for the adoption of an additional document – the Switchover Plan – that will determine the deadline for the complete digital switchover, the sequence order of regions (allotments) for switch off, the tasks and duties related to informing the public, the drafting of the help scheme for the most vulnerable groups of the population, technical parameters and the like. This means that the adoption of the Switchover Plan is the formal precondition for addressing issues such as the date of the analog switch-off or help scheme. According to the Strategy, the Plan shall be passed by the Government in the form of amendments to the Digital Switchover Strategy, which would mean that the Strategy would be amended for the fourth time since 2009, when it was originally adopted. This also shows how complicated and unpredictable the digital switchover process is. We will mention some of the challenges Serbia has faced in the previous period, as well as some of the digital switchover models we have been able to observe. First, the "one-day switchover" concept was abandoned, giving way to "stage-by-stage switch-off" by region. Then the initial network was introduced, which was supposed to enable limited *simulcast*. That network involved broadcasting from 15 locations, which number was to be extended to 35, enabling *simulcast* for 75% of the population. It was impossible to predict all technical aspects from the very onset of the process. Bearing in mind that Serbia is the first country in Europe that opted for the DVB T2 broadcasting standard and the MPEG4 compression format, the question was immediately raised whether STB's supporting these standards will be available on the market. The precondition for the reception of digital TV signal in practice is precisely the availability of the proper TV sets or STB's. Since these may not be found on our market or not in sufficient quantities or at affordable prices, the real question is how many citizens will be able to receive digital signal (despite the extension of the initial network). Furthermore, the broadcasters are not sufficiently acquainted with their obligations relative to digital broadcasting. The only thing that is certain is that they will be provided a place in the multiplex and hence they will not have to invest in digitalizing the equipment, since the network and multiplex operator (the public company "Broadcasting Equipment and Links – JP ETV) will do that for them. The sole obligation of the broadcasters will be to enable the supply of the signal from their studio to the nearest head-end. However, nobody has publicly stated what kind of broadcasting costs the broadcasters

will have to bear, namely how much they will have to pay JP ETV for that service. It seems that the Digital Switchover Strategy has hastily promised broadcasters "lower broadcasting costs". If we take neighboring Croatia as an example, we will see that the local media are unable to sustain digital broadcasting costs and are forced to close down or switch to cheaper distribution platforms. If Serbia is to face the same risk, it should be perhaps wiser to let the broadcasters know in advance, so that they could prepare better for making the transition to cheaper cable systems. The Government, competent ministry, RATEL, RBA and JP ETV will obviously have to intensify their activities aimed at informing the public and the broadcasters about the course of the switchover process, in view of the imminent final switch off of the analog signal.

VI THE PRIVATIZATION PROCESS

November has seen activities that seem totally in contradiction to the proclaimed policy of withdrawal of the state from media ownership at the national, regional and local level. In Leskovac, for example, the local government attempted to establish a new municipal TV station (the sixth overall in that town), which would constitute part of the public company Radio Leskovac. If they succeed in their aim, it will result in an unclear legal situation, which is, among other things, the consequence of disharmony between media laws (but also the Law on Public Companies) and the laws regulating the functioning of local self-governments (we have elaborated on that issue in the part of this Report concerning the decision of the Constitutional Court pertaining to the Law on the Protection of Rights and Freedoms of Ethnic Minorities). Namely, according to the Law on Public Companies from 2012, public information is not foreseen as a field where new public companies may be established. The case of Leskovac should now provide the answer to the question if the existing public companies, such as Radio Leskovac, may establish, before ownership transformation is completed, new media within their current setup (which is actually tantamount to privatization). Common sense says it should not be allowed, but in Serbia, common sense is not the chief criterion for establishing new media. Had it been otherwise, we would not have today an oversaturated media market. In legal terms, it seems that the situation may be described as follows: under Article 1 of the Law on Public Companies, a public company is a company performing an activity of general interest, established by the Republic of Serbia, autonomous province or unit of local self-government. Article 2 of the same Law does not stipulate public information to be an activity of general interest. Meanwhile, Article 14, paragraph 2 of the Law on Public Information says that the state and the territorial autonomy, as well as the institution, company or other legal person predominantly owned by the state or fully/partially financed from public sources (with the exception of PSB institutions), may not establish media, neither directly nor indirectly, unless provided for otherwise by a separate laws governing the field of broadcasting. Article 96, Paragraph 6 of the Broadcasting Law stipulates

that radio and/or TV station established by local councils shall have the status of public companies, if public funds have the majority stake in their total capital. This provision, however, made sense only while public information was considered as an activity of general interest, which is not the case anymore after the adoption of the Amendments to the Law on Public Companies. Finally, a new television station would not be allowed to broadcast without a license and according to the provisions of the applicable Broadcasting Law, a public company may not hold a broadcasting license (except for public companies that were already broadcasting back at the start of the implementation of the Broadcasting Law). In view of the above, it seems that, particularly after the adoption of the new Law on Public Companies in 2012, the Leskovac experiment with the intended launch of a new municipal television station should not be allowed to happen, since it has no basis the Law.

VII CONCLUSION

A new development for Serbia was the decision by the Ministry of Culture and Information in November to set up a working group from people from outside of the Ministry, to help it evaluate the comments received on the draft media laws during the public debate. In the hitherto practice, the Ministry has dealt with that task on its own, stopping short of explaining the reasons for approving or rejecting certain proposals. It often happened that the draft laws were changed to the extent of becoming unrecognizable, ignoring the requests made during the public debates. The new practice of the Ministry is in line with the announcement of the Minister of Culture and Information Ivan Tasovac, who has criticized the lack of transparency of the process of drafting media laws during his predecessor's term of office. This "novelty" could extend even further the deadlines for adopting the new media laws, but such delay, if beneficial for a wider consensus about the proposed concepts and improved quality of the drafts, could well pay-off. It could also help set certain standards for the work of the Ministry in the future and establish the necessary practice of comprehensive consultations in all phases of the regulatory process. However, fresh attempts by the state, such as the case in Leskovac, to cement its ownership in the media, contrary to the official media policy and the commitments in the Media Strategy, show that it will be difficult to reach the consensus on media amendments and public media policy in Serbia. The best indicator of whether the Ministry of Culture and Information and the Government will manage to counter these attempts (and of what will be the effects of similar efforts to obstruct the reforms) will be the decisiveness of the state in withdrawing from media ownership, both on the level of the Republic and in big cities – withdrawing from the ownership of the Tanjug News Agency and from major regional media such as the Belgrade-based Studio B or the Nis Television.