



# **LEGAL MONITORING OF THE SERBIAN MEDIA SCENE**

Report for September 2013





Kingdom of the Netherlands

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## I FREEDOM OF EXPRESSION

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

### 1. Threats and pressures

1.1. Local stations that failed to film the Mayor of Leskovac Goran Cvetanovic visiting the illegal dumpsites in the village Medja on September 22 shall have their budget remuneration reduced by 10%. Namely, last June, Mayor Cvetanovic signed contracts with the representatives of seven media on co-financing of news content. Under these contracts, TV Leskovac and TV Protokol K-1 have been receiving a monthly subsidy of 250 thousand dinars, TV Studio MT 150 thousand, while the stations TV 4S and TV Klisura receive 100 thousand dinars each. The weekly "Nova Nasa rec" receives 70 thousand and Radio Ekos 50 thousand dinars. The Mayor's visit to Medja was covered only by TV Leskovac and TV 4S. According to the report by TV Leskovac, Cvetanovic said that he had ordered the head of the financial department to have the subsidies of the media that were not present at the event reduced by 10% for the following month. "Since we have signed co-financing contracts with the media, the money has been paid regularly, sometimes even 10 days before it was due. This looks like slackness to me. If the people from the media want money from the local government, they will have to cover us all the time", the Mayor said. He added he was aware that some stations exchanged filmed material and said it was unprofessional. "I am ordering the present TV crews not to exchange their footage with their colleagues from other media", the Mayor Cvetanovic said in the presence of his associates.

Under the Broadcasting Law, relations in the field of broadcasting shall be based on the principles of freedom, professionalism and independence of broadcasters, as warranty of the overall development of democracy and social harmony, as well as on the prohibition of any form of censorship and/or influence on the work of electronic media, thereby guaranteeing their independence and that of their journalists. The Law on Local Self-Government prescribes that the local governments shall, among other things, provide for public information of local relevance and ensure the conditions for the provision of public information in Serbian language and the languages of ethnic minorities used on the territory of the municipality. Unfortunately, what happens in practice (and the case in Leskovac demonstrates that) is that, instead of "providing for public information of local relevance" and "ensuring the conditions" for the provision of such information, we have the situation where local officials use the funds they are allocating to the media as a mechanism for influencing editorial policy, prescribing topics to be covered and even banning exchange of footage. In this way, public information of local relevance has become public information in the interest of local officials and mere propaganda, which is the very contradiction of the concept of public information. The latter is, in turn,

in contradiction with the Law on Public Information, under which 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, particularly by abusing powers, rights or control over funds. Under the same Law, it is also forbidden to put physical or other pressure on a media and its staff, or influence that might obstruct their work. A particularly striking fact (from which one may infer that this is not an attempt to ensure public information of local relevance or to get value from public money) is the unreasonable prohibition of exchanging the footage recorded by the TV crews. As if the Mayor was more interested in being pompously escorted by five cameras everywhere he went than in the citizens being conveyed information that might be relevant for their environment (cleaning the dump). This is yet another proof that it is urgently needed to establish (according to the provisions of the Media Strategy) a completely different model of public information of local relevance and to ensure the proper conditions for such information, since what is happening at the local level in Serbia is tantamount to bribing and blackmailing the media and abusing public money in the interest of local oligarchies and not that of local communities.

1.2. In a press release issued on September 10, the daily "Kurir" claimed that that the owner of that newspaper Aleksandar Rodic and the Editor of the weekly "Akter" Tihomir Trisic had been subjected to pressure by the high-ranks in the police for "reporting about abuse, corruption and organized crime in the top brass of the Serbian police, as well as over the interview about the police mafia given to 'Kurir' by the editor of 'Akter' ". The press release also claims that "Kurir" learned that Rodic and Trisic would be targeted for a "staged arrest". The Prime Minister and Minister of the Interior Ivica Dacic stated that leaders of the state had never considered or even thought of arresting journalists. The Ministry of Culture and Media issued a short press release condemning interference with editorial policy and intimidation of journalists and calling all public authorities to refrain from putting any kind of pressure. A day prior to "Kurir's" press release, the Director of the Police did not allow the reporters of that daily (or those of "Blic") to attend the press conference. Such a decision was explained by the fact that "the conference was intended for electronic media only."

In the month of September, "Kurir" was releasing articles on alleged embezzlement, corruption and organized crime in the top brass of the Serbian police, rather on daily basis. After a series of these texts, the daily came out with allegations of pressure by the police and a "staged arrest" being prepared against the owner and journalists of the newspaper. As it is well known, the Law on Public Information stipulates 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, especially by misusing authority, rights or influence. It remains unclear who has threatened Rodic and Trisic, but it is a fact that the journalists of "Kurir" and "Blic" were prevented from attending the press conference of the Police Director, allegedly because "it was intended for electronic media only". The latter is also a violation of the provisions of the Law on Public Information, under which state authorities, including the Police, must make information about their work available to the public,

under equal conditions for all journalists and all media. Organizing a press conference and discriminating one type of media (in this case, discriminating the press relative to electronic media) is clearly discrimination, i.e. “influence that may obstruct the work of print media”, which is prohibited by the Law.

## **2. Legal proceedings**

2.1. In early September, the Higher Court in Novi Sad passed a verdict rejecting the claim of Todor Bukinac (the owner of stable “Bukinac) against several media (Radio 021, RTV B92, the Ringier Axel Springer publishing company, Beta news agency) and their editors, for reporting about his horses leaving the stable and walking freely among the apartment buildings in Novi Sad’s Novo naselje district. The plaintiff Bukinac claimed one million dinars of damages (from each media, four million in total) for injured honor and reputation by the release of untrue information. He did not deny the allegation in the reports that the horses were outside of the stable, claiming instead that the media had wrongly reported that these animals were the famous Lipizzaner stallions that are the object of a longstanding dispute between Croatia and Serbia. That dispute was resolved and the horses were returned to Croatia back in 2007. In addition, Bukinac claimed that he had not claimed 300 thousand Euros from Croatia for returning the horses, as the media reported. In its verdict, the Higher Court found that the wrong information, that the dispute between Croatia and Serbia was still underway (while it has in fact been finished), could not have damaged a third party (Todor Bukinac), namely that such news, in addition to being incorrect, may not be causally related to the plaintiff’s injured honor and reputation. Taking into account the plaintiff’s claim that he has wrongfully been subjected to such reporting in the last 10 years, the Court has found that the text in question only reminded of these events, stating that the courts must consider the existence of the proper causality when deciding about damage claim, which, in the given case, has not happened. Related to the second allegation by Bukinac – that his honor and reputation were injured by the information he had requested 300 thousand Euros from Croatia for returning the horses – the Court established, by reviewing the evidence, that this information was in fact not false and that the compensation had actually been received, but in kind, since Bukinac got to keep the offspring of the horses that had to be returned to Croatia. The plaintiff lodged an appeal against the verdict, which is pending before the Appellate Court in Novi Sad.

The information that the horses of the “Lipizzan” breed had left the stable overnight in order to graze the grass between apartment buildings in Novi Sad was conveyed by several media not only as yet another bizarre story, but in the context of these horses origins. These were actually the descendants of the Lipizzaner horses that were moved from war-torn Croatia to Serbia during the wars of the ‘90s. These horses were later the subject of a dispute between the two countries and were ultimately repatriated to Croatia. However, the significance of this ruling for the Serbian media (and it will become even more significant if upheld by the Appellate Court in Novi Sad) is in the fact that the

Higher Court in Novi Sad (contrary to the predominant practice of Serbian courts) has found that not every mistake in media reporting may constitute grounds for damages, namely that a strong causal relationship must exist between the injured honor and reputation of a person and the said mistake in reporting. In the Bukinac case, the Court found that such causal relationship did not exist. According to the same standard, the Court has also found that the information that the plaintiff claimed 300 thousand Euros from Croatia for returning the horses was not essentially incorrect and that the plaintiff could not claim damages only because he had not received that amount in money, but in kind (the offspring of the repatriated Lipizzaner horses). Such verdicts are extremely important for strengthening freedom of expression in Serbia, because they prove that a journalist is entitled to make a mistake and that not every mistake may be grounds for damages. The standard a journalist must fulfill is that of due journalist care and not that of the absolute truth.

2.2. In our Report for May 2013, we wrote about the SNS MP and President of the Parliamentary Committee for Constitutional Issues Vladimir Cvijan filing criminal charges against the director and editor of "Nase novine" Vuk Vucurevic and Antonije Kovacevic. The reason was the alleged threat against the security of his six-year old son. Speaking to journalists in the Parliament, Cvijan accused Vucurevic and Kovacevic of being maniacs and pedophiles and called parents to see that they never get close to their children. After Cvijan's accusations in the Parliament, leaflets with photographs of Vucurevic and Kovacevic (reading "Attention! Pedophiles!") were stuck on private vehicles parked in the area around the offices of "Nase novine". Cvijan had previously shown these leaflets to the journalists. In late September, "Nase novine" reported that the First Basic Prosecutor's Office in Belgrade rejected as unfounded Cvijan's criminal charges against Vuk Vucurevic and Antonije Kovacevic. As the newspaper said, the Court concluded that "Cvijan's claims that the director and chief editor have undermined the security of his family were unfounded". Meanwhile, according to "Nase novine", the investigation continues in relation to the charges brought against Cvijan by Vucurevic and Kovacevic, for threats against their security.

The text that triggered the criminal charges was published under the title "Serbia in Dubiety, Cvijan in Dubai". It was published on the front page along with the comment "Cvijan indulges in luxury and threatens journalists". It also said that Cvijan's trip costed 1.400 Euros and quoted his words that it was his wife that had paid for the travel. Cvijan claimed that "Nase novine" had undermined his family's safety by coming into the possession of a photograph of his infant son from his wife's Facebook profile. Under the Law on Public Information, it is forbidden to put physical or other pressure on a public media and its staff or influence that might obstruct their work. Furthermore, it is stipulated that holders of state and political office shall have their privacy rights restricted (proportionately to the right of the citizens to be informed, in a particular case), if piece of information is relevant for the public interest, precisely because the person the information concerns occupies a public office. The decision of the prosecutor to reject Cvijan's charges against journalists as unfounded did not come as a surprise. Much more interesting and relevant for the Serbian media scene will be the

prosecutor's decision about the charges filed against Cvijan himself. The fact that these charges have not been promptly rejected and that an investigation is still underway is good news, since it is necessary to establish the liability for the dissemination of leaflets accusing journalists of pedophilia (thereby obstructing their work), a previously unrecorded case of intimidation against the media.

## **II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS**

### **1. Law on Public Information**

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

1.2. Late September on the media scene was marked by a debate related to the report of the independent media production company "Za medija" from Zajecar about alleged embezzlement of public money earmarked for public information in that city and the attempts of the city authorities to brutally take full control of the editorial policy of local media. Journalists' associations reacted vehemently to the report and pointed to the fact that the media's access to information about the work of the City Council in Zajecar had been restricted, by allowing the private television station "TV Best" enjoy a monopoly on these information. Furthermore, persons related to "TV Best" assumed managing positions in the City Council, while the former editor of the station was elected mayor. "TV Best" replied to these allegations that the reason for the complaints of "Za medija" was the fact that it had not received funds in an open competition for media because, as "TV Best" claims, "Za medija" is not a media outlet at all, but merely an independent production company.

The row in Zajecar has shown to what extent the systemic regulation of state aid allocated to the media is important for the latter's survival, as well as for competition in the media scene, which is undermined by opaque subsidies. What remained "in the shadow" were the claims that the journalists in Zajecar were prevented by following the Council sessions, since they were banned from personally attending them. Reportedly, the journalists only receive footage from Council sessions made by CC-TV cameras, with several days of delay. Another reason for concern is the claims that the footage is not sent from the IP address of the City Council, but from that of "TV Best". That is why "Za medija" believes that "TV Best" is privileged comparing to other media and journalists in Zajecar. Under the Law on Public Information, local government bodies and councilors must make information about their work available to the public, under equal conditions for all journalists and all media. Preventing a journalist to attend Council sessions and making footage available to one (or several particular) station only (while furnishing it to other media with several days of delay), definitely constitutes



discrimination and violation of the provisions of the Law on Public Information. Since this case is not an exception, it is obvious that Serbia has a problem with enforcing the Law on Public Information in the part calling for non-discriminatory treatment of the media by state authorities and local government bodies.

## **2. Broadcasting Law**

At the session held on September 13, the Council of the Republic Broadcasting Agency (RBA) decided to reject the complaints of the Radio and Television Activities “Kopernikus Cable Network” d.o.o. from Nis and “Nova.rs Television” d.o.o. from Belgrade, lodged against the Council’s Decision on August 9 not to allocate a national license for television broadcasting. Article 54 of the Broadcasting Law says that the applicant in an open competition, which is dissatisfied with the decision of the Council, shall be authorized to submit a complaint within 15 days from receiving the decision rejecting his application. Paragraph 2 of the same Article says that the Council shall pass a decision on the complaint within 30 days. An administrative procedure may be initiated against the Council’s decision.

By the time this Report was finalized, it was not disclosed which of the applicants filed an action before the Administrative Court against the RBA Council’s decision rejecting the complaints. It remains, however, to be seen what will happen with the frequencies left vacant after the license of TV Avala was revoked (which frequencies remain vacant after the decision to reject the complaints of the two applicants on the latest open competition). According to the RBA’s rationale in interpreting the Broadcasting Law in this case (that the open competition shall be called always when, based on the Frequency Allocation Plan, there is a possibility to issue new broadcasting licenses, as well as that, despite the fact that the drafts were ready, the Ministry of Foreign and Internal Trade and Telecommunications hesitated, for reasons unknown, to amend the Frequency Allocation Plan that would reassign the vacant frequencies for the extension of the initial network for broadcasting of digital signal, which would thus become the network for the digital simulcast waiting for the digital switchover), the RBA may, in principle, repeat the open competition. The only unquestionable, but rarely mentioned fact is that the interest potential investors have in obtaining a national broadcasting license in Serbia in 2013 is dramatically lower than in 2006. Back then, some of the leading international media companies aspired to coming to Serbia, such as News Corporation, which obtained a license for its Fox Television (later sold to the Greek Antenna Group) in 2006 or RTL, which fell short on the competition that same year. In the meantime, News Corporation left and the RTL lost interest, just like the CME Group, which operates in Croatia, Slovenia, Bulgaria, Romania, the Czech Republic and Slovakia. This should be a clear enough message that the media scene in Serbia is not doing well, as well as a sufficiently clear conclusion that the foundation of the Broadcasting Development Strategy, adopted back in 2005 (according to which, for the needs of commercial broadcasting at all levels, Serbia must ensure as much space on the air as possible), is obsolete. There is obviously no sufficient interest by the media industry to create the competition necessary for the

RBA to choose the best. Hence, the tender for national coverage in Serbia involves candidates without the proper references, for several reasons. The Broadcasting Development Strategy from 2005 was poor from the start and failed to recognize the fact that quantity in the media scene did not necessarily bring quality. Too many national licenses on a feeble market have resulted in television being a business today, unable to yield return on investment. That is why it is paradoxical that the RBA has called a competition according to the old Strategy, obsolete and harmful when applied to the existing changed circumstances, instead of passing a new Broadcasting Development Strategy (since the previous one expires in 2013 anyway), which would determine differently the number and type of broadcasters for which the competition is called. Everything else not only postpones the switchover and the necessary technological changes, but also undermines the professionalism and independence of the media and the development of broadcasting and creativity in the field of radio and television in Serbia, instead of boosting it.

### **III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS**

In August, the Ministry of Culture and Media posted on its website the Draft Law on Electronic Media and the Draft Law on Public Service Broadcasters. According to a press release of the Ministry, the aim was to “inform the public about the content of these drafts before the start of the public debate”. However, due to the pressure of the public and some controversial concepts, the Draft Law on Public Service Broadcasters was withdrawn from the website. A new working group was set up, tasked with writing the new Draft Law by the start of the month of October, after which the public debate would ensue. This coincided with personal changes in the line ministry, which are the consequence of the government reshuffle and the appointment of a new minister. Ultimately, the Government definitively decided to give up, at least for two years, the TV subscription fee as the main source of financing for PSB and opted to have RTS and RTV funded directly from the budget. The Parliament should decide on finding a new, sustainable concept for the financing of PSB, before the said two-year term expires.

It should be emphasized that in 2007, before the start of the economic crisis, more than 57 million Euros were collected from the TV subscription fee, while in 2012, that amount plummeted to about 38 million Euros. Based on the data released in the first six months of this year, the average collection rate fell to 28%, with an all-time low recorded in August – a mere 16%. This trend shows that a considerable number of citizens, emboldened by the statements made by politicians, MPs and the First Deputy Prime Minister Aleksandar Vucic, that “the TV subscription fee will be scrapped, as promised to the citizens”, have ceased to pay the fee even before the Law was officially adopted (even though the fee still remains as a statutory obligation, under the Broadcasting Law). The question is how this amount (even 57 or 38 million dinars are unquestionably insufficient for the realization of the PSB functions) will be replaced from the otherwise depleted state budget. Since, apart from the financing of the PSB, some inherited problems need to be addressed, including the accumulated debts (the RTS

has not paid copyright and related rights fees for years, or many other obligations), the fact that the Vojvodina PSB does not have its own building, as well as the inability of both RTS and RTV to deal with the surplus of employees without the proper social program, it is unlikely to expect better times for them, even with budget financing. The results of the public debate are pending, but it is unlikely that the Parliament will harness the necessary political will to back up the subscription fee concept. In such a situation, the provisions of the latest Draft Law on PSB, providing for a procedure for starting new programming services of the PSB, seem almost surreal. Paradoxically, it seems that Serbia rather needs proper rules on the cancellation of the existing PSB services.

#### **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 also elaborated on the activities of the RBA in the section of this Report concerning the implementation of the Broadcasting Law.

1.2. On September 13, 2013, at the same session where it rejected the complaints of “Kopernikus cable network” d.o.o. from Nis and “Nova.rs Television” d.o.o. from Belgrade against the decision not to allocate the license for broadcasting the program on the national frequency left vacant after the shutting down of TV Avala, the RBA Council decided to reject as unfounded the petition by “Ringier Axel Springer”, the publisher of the daily “Blic” (related to the content of the program of TV Pink). From the short press release posted on the RBA’s website, it is not possible to deduce to what the petition pertained. According to the Broadcasting Law, any natural or legal person may file the petition, if they believe that the programs of radio and TV stations offend or threaten their personal interests or the interest of the public. We remind that the RBA Council has initiated somewhat earlier *ex officio* proceedings (which were joined to the proceedings conducted under the petition filed by Dragan Djilas, the President of the Democratic Party) against TV Pink, due to that station’s repeated attacks against Veselin Simonovic, the Editor-in-Chief of “Blic”. In these proceedings, TV Pink was issued a warning. It remains unclear if that last decision to reject the petition concerns the same matter over which the RBA rejected the petition for formal reasons, since it was deciding about the incident *ex officio* or if it was something else. The opacity in the work of the RBA and the failure to publish the detailed reasons, for which the concrete petition was rejected, leaves room for speculation, especially because the penalty for repeated injuries after a warning may be the

temporary suspension of the broadcasting license for a 30-day period. In that sense, the transparency of the regulator's work should be improved by making the explanations of its decisions public.

## **2. REPUBLIC ELECTRONIC COMMUNICATIONS AGENCY (RATEL)**

RATEL has installed a remotely controlled receiver on Rudnik Mountain, which will allow direct and instant insight in the utilization of the broadcasting spectrum in the central part of Serbia. According to the press release published on September 18, the main purpose of the receiver is investigating and averting potential interference in the reception of stations of the airmobile and air radio-navigation service, but also uncovering unauthorized use of the radio-frequency spectrum. Until now, the problems with unauthorized use of the radio-frequency spectrum, however, were not (at least not primarily) caused by deficiencies in uncovering pirate broadcasters. They were rooted in the complicated, slow and unclear procedures, as well as in poor cooperation between various authorities with competences in this field. The receiver on Rudnik will perhaps help uncover the pirates earlier, but it will not facilitate RATEL's decision on shutting down the pirate transmitters. A particular problem is the fact that, because of RATEL's slow issuance of licenses for additional coverage (licenses which, under the Broadcasting Law, are issued to licensed media in areas that are not sufficiently covered by the signal for various reason), as well as due to tolerating the fact that RTS has never licensed all its transmitters. Meanwhile, for those that were licensed, the RTS returned the licenses in order to avoid paying the required fees. This has created a paradoxical situation where the biggest pirate is, in fact, the RTS, closely followed by commercial broadcasters that have not been issued licenses for additional coverage.

## **3. THE COMPLAINTS COMMISSION OF THE PRESS COUNCIL**

The Complaints Commission of the Press Council was deciding in August on ten complaints proceedings. In eight of them, the Commission found that the Journalist Code of Ethics had been violated. Even if we disregard the fact that in four of the ten cases, one and the same person submitted complaints against various newspapers, the sheer number of cases ruled upon by the Commission shows that this body has continued to build the position of a relevant self-regulator, enjoying the confidence of those that are unhappy with the way print media, including Internet portals, report about them.

Out of the cases ruled upon by the Complaints Commission in August, particularly noteworthy is that of "Ringier Axel Springer" vs. the daily "Informer" and Ana Radmilovic vs. "Nova srpska politička misao" (New Serbian Political Thought). The first case has shown how the orchestrated campaign against the company "Ringier Axel Springer" and the daily "Blic" moved from television to the daily press after the reaction of the RBA and the warning issued to Pink Television. The daily "Informer"

continued in the footsteps of TV Pink, in the period between August 9 and August 17. "Informer" released two texts every day in average, typically without any arguments or proof. The texts claimed that RBA's warning to TV Pink amounted to censorship, while "Blic" was qualified as "holy cows", "the mafia" and was accused of being a "stinking newspaper" that had "stolen millions". Some Serbian media definitively serve as a mechanism for defamation. In the case of electronic media, the regulator has effective mechanisms at its disposal for suppressing such phenomena, since it is authorized to go as far as to revoke the broadcasting license in the case of repeated violations. The self-regulatory body, such as the Press Council, does not dispose of such mechanisms. If the RBA continues doing its job thoroughly penalizing the offenders, it is expected that unacceptable content will move from the airwaves to Internet portals or newspapers, which will, in turn, constitute a new challenge for the Complaints Commission.

The case of Ana Radmilovic against "Nova srpska politička misao" is interesting for various reasons. It namely shows that the Press Council or the courts do not have a clear position about whether comments, as user-generated content on a media website, constitute part of the concept of the media or not. In the concrete case, Ana Radmilovic wrote a text for "Nova srpska politička misao", which drew a barrage of offensive comments on that website. The Editor-in-Chief of portal Djordje Vukadinovic also wrote a comment. Vukadinovic distanced himself from the text, trying to "protect" the author. However, Vukadinovic quoted the improper comments, including those that were deleted by the moderator. The author tried to respond, but the editor did not publish her reply. "I think it is really terrible to be unprotected not only from the commentators, but also from the editor himself", Ana Radmilovic wrote in her complaint. The Complaints Commission found that, by posting the readers' comments and that of the editor-in-chief on Radmilovic's text "On Poverty of Language and Mind", "Nova srpska politička misao" violated the Code of Ethics in the part concerning the obligation of journalists to oppose everyone promoting any kind of discrimination or hate speech, as well as to do everything in their power to avoid discrimination based on race, gender, age, sexual orientation, language, religion, political or other opinion and ethnic or social background. However, the problem here is the interpretation, under which readers' comments are considered a media publication, while an Internet portal is viewed as a publisher responsible for content. In this way, the responsibility of media is extended not only to editorial content, but also to user-generated content. The Serbian courts take a similar position. For instance, in recent verdict against Radio 021, the Higher Court and the Appellate Court in Novi Sad fined that station by ordering it to pay damages not in the relation to the content of news published on that Radio's website, but in relation to the user comment on that news. It seems, however, that such interpretation about user-generated content unconditionally being part of the concept of media, namely of "public information" and, ultimately, editorial responsibility, represents a disproportionate restriction of freedom of information, which is in disaccord with the applicable regulations in Serbia. Namely, posting a comment on a website rather constitutes an information society service (in terms of the Law on E-Trade) than public information in terms of the Law on Public Information. Namely, under Article 3, paragraph 1, subparagraph 3) of the Law on E-

Trade, an information society service is a service provided remotely, for a fee, by the means of electronic equipment for the storage of data, at the personal request of the user. In the concrete case, all elements of the concept of information society service are fulfilled, including the fee, which is, under the business model embraced by most media internet portals in Serbia, not charged directly from the users, but indirectly, from advertisers. That is why it seems that, in such cases, one should start from the provision of Article 16 of the Law on E-Trade about the exclusion of responsibility of the provider of the information society service, namely Article 20, paragraph 1 of the Law on E-Trade, which expressly stipulates that, in providing the service, the service provider is not required to review the data he has stored, conveyed or made available, or to investigate the circumstances that would point to illicit actions by the service beneficiary. While the Complaints Commission may be given a free pass for considering user-generated content on media websites with editorial content (since the Commission, in decision-making, is not bound by other material law standards apart from the provisions of the Code), the same approach by the courts, which are obligated to rule in accordance with the Law – in his case the Law on E-Trade – is utterly problematic and hardly acceptable.

## **STATE AUTHORITIES**

### **4. MINISTRY OF CULTURE AND MEDIA**

As early as back on August 9, the Independent Journalists' Association of Serbia (NUNS) sent a request for access to information of public interest to the Ministry of Culture and Media. NUNS requested to know who had made the Draft Law on Public Service Broadcasters, which was posted by the Ministry on its website. The consensus is that the Draft in question differed from the one produced by the working group of the Ministry for drafting media laws and far worse than the latter. Hence, it is logical to ask who in Serbia writes the Draft Law on Public Service Broadcasters outside of the working group established by the decision of the competent minister. In mid-August, the Ministry of Culture and Media decide to set up a new working group for making the Draft, which practically means that the Draft posted on the website has been abandoned, just like the version elaborated by the previous working group. The job of the new working group was to consult no less than four draft versions produced in the last few years and try to consolidate them, i.e. to find the best solutions. The Ministry waited until September to respond to NUNS' request to disclose the identity of the authors of the controversial Draft that was available on the Ministry's website from August 7 to August 23. The response signed by the Assistant Minister Dragan Kolarevic said that he had written the Draft himself, together with Zeljko Poznanovic, Advisor in the Information Sector. It also said that there was no decision by the Minister Bratislav Petkovic to set up a working group for drafting the text of the Law. In the response, Kolarevic said that the previously established working group for drafting media laws had not finished its work on the Draft Law on Electronic Media and Public Service Broadcasters. The new Minister of Culture Ivan Tasovac presented its plan and program of activities to the Serbian Parliament's Culture and Media Committee on September 10. He highlighted transparency as one of

the priorities in passing the Law. By the end of September, Dragan Kolarevic, who was practically the proponent of “opacity in passing the law”, since he wrote it without the decision of the Minister and together with the aforementioned advisor in the Information Sector and perhaps other unidentified people, had not been dismissed yet from his assistant minister position.

## **5. THE COMMISSION FOR THE INVESTIGATION OF DEATHS OF JOURNALISTS**

After a session held on September 5 in its extended composition, including the Director of the Military Security Agency (VBA) Svetko Kovac and the Special Prosecutor Milko Radisavljevic (and also with the attendance of the leaders of investigative teams formed by the Director of the Security Intelligence Agency (BIA) and the Director of the Police), the Government’s Commission for the Investigation of Murders of Journalists said that it had come in the possession of an increasing number of relevant evidence about the assassins and the instigators in relation to the case of the murder of “Novosti” correspondent Milan Panic, as well as that the investigation had obtained an increasing number of elements reinforcing the credibility of the future indictment. The Chairman of the Commission Veran Matic said that the “progress made by the investigative teams requires a wider participation of the competent institutions, in order to come in the possession of facts necessary for raising an indictment, prosecuting and sentencing the perpetrators and the persons that ordered the assassination”. Matic confirmed that the biggest progress had been made in the case of Milan Pantic. In his words, new paths have been opened in the investigation of the murder of Slavko Curuvija, “in order to prove the very convincing facts about the assassins and the persons that ordered the killing so that an indictment may be raised.” In the case of Dada Vujasinovic, the Commission is expecting the response of the FBI, which was asked to help in this case with its laboratory and experts. The investigation in that case has continued to interrogate persons who have not previously been questioned.

We remind that the Commission for the Investigation of Murders of Journalists was established in early February, with the aim of investing additional efforts in investigating the reasons why the perpetrators and those who stand behind the murderers of Dada Vujasinovic, Slavko Curuvija and Milan Pantic have not yet been identified. The mandate of the Commission was subsequently extended to the case of the killing of RTS employees in the bombing of 1999. Dada Vujasinovic was killed on April 8, 1994; Slavko Curuvija was slain on April 11, 1999 and Milan Pantic on June 11, 2001. The assassins and the persons that commissioned the murders have remained unknown to this day and nobody has ever been brought to justice in relation to these crimes.



## V THE DIGITALIZATION PROCESS

Although the RBA Council rejected, on September 13, the complaints of both applicants on the open competition – “Kopernikus cable network” d.o.o. from Nis and “Nova.rs Television” d.o.o. from Belgrade (after having previously decided not to allocate at all the broadcasting license for national TV coverage on the network left vacant after the shutting down of TV Avala), the Ministry of Foreign and Internal Trade and Telecommunications failed to adopt by the end of September the new Plan for the Allocation of Frequencies, which was supposed to reassign the free frequencies for the expansion of the digital network for the simulcast. It is not clear if the Ministry is hesitating and whether the postponement of the adoption of the new Plan perhaps means that the battle for digitalization is still not won. However, it remains difficult to interpret the ambitions behind the aforementioned tender. Serbia is, namely, simultaneously working on two things. The first is the digitalization of terrestrial broadcasting, while the second is the adoption of the new Law on Electronic Media. The third process is the announced drafting of the new Audio-Visual Media Services Development Strategy, which is expected to precede the issuance of licenses under the new law, after the latter is passed. In the meantime, all analog licenses, valid at the moment of the switchover, shall be replaced by licenses involving the right to access to the digital multiplex and a place in it. To make things even more complicated, the current national licenses expire in August next year, on the eve of the switchover and it is still not clear if the RBA will renew them without a public competition. This leads to the conclusion that both those that have applied for the competition and those that called the competition actually anticipated the situation where the new license for the analog network of the former TV Avala shall be, at some point, the only guaranteed entry ticked for the switchover, a safer bet than the four currently valid national licenses, since these licenses expire in less than a year. That is why the decision not to allocate the license was extremely important. It allows not only to speed up the switchover by creating space for simulcast (simultaneous digital and analog broadcasting), but also equal conditions for switching to digital broadcasting for all national broadcasters, namely conditions under which no such broadcaster will enjoy a more favorable position than the other. That is why it is pertinent to ask why, instead of insisting on a tender for broadcasting with obsolete technology, the RBA does not do something else – establish clear criteria for extending the licenses expiring next August and engage in the process of adopting the new Audio-Visual Media Services Development Strategy, since the previous one has already expired (it was valid until 2013). Why is this important? Extending the licenses expiring in August 2014 would provide the possibility for national broadcasters to plan, with a greater degree of certainty, the improvement of their services after digitalization. The new Audio-Visual Media Services Development Strategy would provide an insight of the necessary content, which would also answer the question when and for which services a new open competition should be called. Anything else would be hasty and injudicious.



## VI THE PRIVATIZATION PROCESS

The month of September did not see any developments concerning the privatization of state-owned media. That process is waiting for the adoption of new media laws.

## VII CONCLUSION

The month of September in the Serbian media scene has been surrealistically quiet. While the preceding months were marked by the government reshuffle and the wait for the new minister, September ultimately saw the new minister appointed and nothing else. The new minister, Ivan Tasovac, announced that one of the priorities of his ministry would be legislative transparency. This should practically mean the dismissal of the Assistant Minister Dragan Kolarevic, perceived in public as the person responsible for the “lack of transparency in passing laws”, the new minister has branded unacceptable. However, although Tasovac was appointed in early September, Kolarevic remained on his position until the end of the month. At that, Kolarevic’s dismissal was not the only development that did not happen in September, although it was the logical thing to expect. We have not seen the new Plan for the Allocation of Radio Frequencies either, which was supposed to reassign the frequencies (left vacant after the shutting down of TV Avala and the failure of the tender for an additional national coverage broadcasting licenses) for the expansion of the digital network for the simulcast. In a month of waiting for things that have not happened, the only good news to report about herein is the verdict of the Appellate Court in Novi Sad in the case of Todor Bukinac, the owner of the “Bukinac” horse farm, against Radio 021, RDP B92, Ringier Axel Springer and the Beta News Agency and its editors. A Serbian court of law has finally recognized and confirmed that a journalist is entitled to make a mistake and not every mistake *per se* constitutes grounds for damages. This is a great step for Serbian journalism and for the Serbian judiciary. There is no freedom of media and freedom of expression if there is no freedom from fear. Even if they were adhering to all professional codes and standards of due journalistic care, journalists in Serbia could have never been sure that they would receive sympathetic treatment by the courts. The verdict of the Appellate Court in Novi Sad is one important step on the path to enhancing the freedom of expression.