



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for October 2015



SERBIAN MEDIA SCENE IN OCTOBER 2015

In the two cases in October where journalists were hindered in doing their work, the communal police was involved. In the first case, the crew of Istinomer.rs, while trying to record an interview with Dobrica Veselinovic, the activist of the movement “Ne davimo Beograd” (No to the Drowning of Belgrade) on the Sava promenade, was requested by the police to present their ID cards, after which they were told to leave the boardwalk because “they are in a zone where works were being conducted”, despite the fact that the construction site was not properly marked. Misdemeanor charges were later filed against the crew of Istinomer for allegedly having hindered the communal police in their work. In the second, more drastic case, the security of the Belgrade Mayor Sinisa Mali grabbed the camera and mobile phone of the journalists of “Krik” containing the footage of the attempt to make an interview with the Mayor. The footage was deleted. Later, we learned that the Head of the Communal Police Nikola Ristic and his deputy Darko Vujisic were also on the scene. The Krik Network claims that they were precisely the ones that participated in deleting the footage, as described above. After quite a while, the question of the right of journalists to protect their sources of information has again become topical. Namely, Article 52 of the Law on Public Information prescribes that journalists are not required to disclose their sources, unless the information concerned pertain to a crime or a perpetrator thereof, which crime is subject to at least five years of imprisonment, provided that information about such crime may not be gathered otherwise (than from the aforementioned source). Danilo Redzepovic, the Editor of the Teleprompter news portal, was interrogated by the police in relation to the released transcript of the eavesdropped telephone conversation between Bojan Pajtic, Prime Minister of the Government of Vojvodina and President of the opposition Democratic Party and Lidija Udovicki, the sister of the Minister for Public Administration Kori Udovicki, concerning the alleged corruption in Elektromreze Srbije (EMS) public electricity company. The transcript in question contained references to “the Director of EMS Nikola Petrovic requesting a racket in the amount of two million euros” from the company where Lidija Udovicki worked, in order to connect it to the EMS grid. In Redzepovic’s words, the police, as well as the High-Tech Crime Prosecutor, requested several times that he disclose his source. He refused, invoking the right to the protection of journalist sources. In the text he published on his portal, Redzepovic claimed that the Public Prosecutor attempted to “contest the fact that Teleprompter.rs is a media outlet”, since it is not registered in the Media Register of the Business Registers Agency. Furthermore, the inspectors and the Prosecutor also tried to contest Redzepovic being a journalist and requested from him to prove it. Finally, the investigative authorities concluded that Redzepovic is not a journalist, since Teleprompter.rs is not a media outlet and Redzepovic is not a member of any journalist association. It is true that Article 30, paragraph 2 of the Law on Public Information and Media prescribes that, for the purposes of the Law, the concept of “media” does not include *independent electronic publications such as blogs, web presentations and*

similar electronic presentations, unless they are registered in the Media Register. However, under the constitutional guarantee of freedom of association, which guarantees not only the latter, but also the right to remain outside of any association, it is absolutely unacceptable to conclude, on the basis of somebody's membership in a professional association or absence thereof, if that person is a journalist or not. If the investigative authorities' position is that the right to have one's sources protected shields only journalists of registered media and only the members of journalist associations, this would mean that the right to the protection of journalist sources is intolerably restricted.

In the Report we also analyze the non-transparent dismissal of the editor of the cultural column in the daily "*Magyar Szo*". Ferencz Kontra accused the Editor-in-Chief Marta Varja of having dismissed him for his negative literary critic of an author belonging to the National Council of the Hungarian ethnic minority in Serbia, financed predominantly from the budget. In that light, how can media outlets funded from budget sources preserve their independence? In the Report we remind that the Law on Public Information and Media authorizes national councils of ethnic minorities to establish institutions and companies in order to realize the right to public information on the language of the respective ethnic minority; under the same Law, they are also entitled to set up foundations for the accomplishment of general interest-goal of improving public information on the language of the respective ethnic minority. National councils of ethnic minorities are also obligated to configure the act of incorporation of the company publishing the media outlet, *the election and appointment of the managing bodies and the responsible editor*, in such a way so as to ensure full editorial independence, namely to make sure that two thirds of the members of the company's (publisher of the media outlet) managing body are composed by independent members. The question here is if that was done in the case of "*Magyar Szo*", namely if minimum systemic guarantees of editorial independence have been complied with.

In the part of the Report concerning jurisprudence in media-related disputes, we pointed out to the decision of the Higher Court in Belgrade, which rejected in October the claim by Dragoljub Milanovic, former General Manager of RTS, demanding the amount of 500.000 RSD from Nikola Radisic, former B92 journalist and Veran Matic, the Editor-in-Chief of B92's news program. The reason for the claim was the alleged violation of personal dignity, namely Radisic's reporting back in November 2012 about the trial against Milanovic for alleged embezzlement in allocating state-owned residential flats. On that occasion, the anchor in the studio first announced that Dragoljub Milanovic had appeared in public for the first time after he spent 10 years "behind bars" for having been found responsible for the death of 16 employees of RTS. This introduction was accompanied by footage of the destruction of the RTS building during the bombing in 1999. Ensued Radisic's report on site (in front of the court building), where he said, while referring to Milanovic, "Has he forgotten these scenes after 10 years spent in prison for having sacrificed the lives of 16 employees in the RTS bombing? There is no answer to this question, since the former RTS Director Dragoljub Milanovic declined to be interviewed by B92". In his lawsuit, Milanovic accused B92 of having attempted, in a malicious and unlawful manner, to "condemn

him mediatically” for a crime he didn’t commit. We remind that Milanovic was indicted for the crime of serious act against public safety provided for by the former Article 194, paragraph 2 of the Penal Code of the Republic of Serbia, by failing to act upon the order of the Federal Government, resulting in the death of 16 employees of RTS. The Higher Court established that the reporter (Radisic), by using word “sacrificed”, did not hint at a different crime and did not convey false information. In the estimate of the Court, the journalist uttered *“a value judgment that may not be subject to an authenticity check”*, whereas such *“value judgment is based on authentic facts”*. The Court went on to conclude that a journalist, as a person that is not a lawyer, is not obligated to know about the substance of the criminal offense. Hence, the Court said, the fact that, by using the term “sacrifice”, he tried to bring the facts in his report closer to the “average viewer”, is not problematic. This verdict is significant not only because it confirms the position that “value judgments” may not be proven, but also because it acknowledged that journalists are not obligated to strictly adhere to legal categories in their reporting, or to precisely itemize the elements of the substance of a criminal offense each time when referring to criminal verdicts.

In the part of the Report concerning the implementation of existing regulations we deal with project co-financing. The coalition of journalist and media associations comprising ANEM, NUNS, UNS, NDNV and Lokal pres, presented in early October, the most notable gaps identified in the implementation of the Law on Public Information and Media pertaining to project co-financing. According to the findings of the Commission, up to one third of the municipalities in Serbia have not called competitions for the financing of media content of public relevance. Furthermore, the resources earmarked for the media in local budgets are insufficient, while most of the shortcomings in the competitions that were called concerned the fact that the terms thereof discriminated against certain media – most often those that are registered outside of the territory of the local government that called the competition. The Report points to the many dilemmas concerning the concept of public interest and emphasizes that there are examples where the commissions deciding on the allocation of funds consist of unqualified persons. It seems that many local governments still don’t understand that project co-financing is not a replacement for direct financing from the municipal budget, but quite the opposite of it and that the public interest may not be understood as “covering the activities of local government bodies”, especially not if that involves the complete lack of critical reporting. The conclusion of the Coalition is that the failure to allot funds for the media, the reduction thereof to a minimum and redirecting these funds for other purposes are the consequence of incomplete regulations and especially the absence of sanctions for non-compliance with the Law. Relative to electronic media, two topics are particularly interesting. The first concerns political advertising outside of the electoral campaign, in relation to the live broadcast of the anniversary of the ruling Serbian Progressive Party (SNS). Two national stations, TV Pink and TV Happy and one regional station, Studio B, aired the whole event live. The Regulatory Body for Electronic Media (RBEM) first stated that it had already filed complaints against broadcasters in similar situations in the past. However, RBEM then said that *under the set of new laws, the General Binding Order for Broadcasters ceased to be valid* and that, in the concrete case, *there were no grounds anymore to initiate proceedings to determine the responsibility* of the aforementioned three stations.

What remains unclear in that situation is how the Code of Ethics/General Binding Order for Broadcasters adopted under the old Broadcasting Law ceased to be valid if the Law on Electronic Media already stipulates that acts passed pursuant to the laws that cease to be effective **will apply until new ones are adopted**, save for the provisions of such acts that are contrary to the new Law. In the concrete case, RBEM should have examined if the concrete case was one of political advertising or reporting about an unquestionably interesting media event. Whichever decision the Regulatory Body passed in that respect, it would be better than the one it finally opted for – to refrain from deciding about questions under its jurisdiction and justify the failure to take decisions by the absence of a bylaw, which, again, RBEM was obligated to adopt. Such decisions will definitely not help RBEM to build credibility and authority indispensable for discharging its duties.

The second topic we analyze are the (on-screen) crawls inviting the viewers in the program of the Happy national television stations to send information they might have in their possession about the “criminal wrongdoings of the Judge of the Commercial Court in Pancevo Speranca Jancic and her husband Aleksandar”. The crawls were aired more than two hundred times the first three days. On the basis of other reports by TV Happy, the professional board of the Commercial Court in Pancevo announced in a press release that the attacks against the judge are probably motivated by the dissatisfaction by the judgment Speranca Jancic delivered in the dispute between “VIACTOM TIM” d.o.o. from Belgrade and the Port of Belgrade, associated by some with the owner of TV Happy Predrag Jankovic. That case is one of the most drastic examples of smear campaigns in Serbia against a member of the judiciary. According to the European Convention on Human Rights, the authority of the judiciary is one of the legitimate interests for the sake of which states may restrict freedom of expression. Therefore, it may seem that the warning issued by Regulatory body for electronic media against TV Happy is totally inadequate. According to the Law, a warning shall be issued to the media service provider that has committed a serious violation of obligations prescribed by the Law. The Law also provides for particularly grave violations of the prescribed obligations, which may be subject to even stricter penalties – a temporary ban of broadcasting/publishing – in a duration of 30 days. It remains unclear what would the RBEM consider a particularly grave violation of the prescribed obligations if more than 200 crawls aired on TV Happy, in which it was stated, without any substantiation, that the Judge Jancic, President of the Commercial Court in Pancevo, together with her husband, have been “continuously committing organized criminal acts”, do not constitute such a violation. What kind of protection from smear campaigns could an ordinary citizen hope for if a high member of the judiciary is treated in the above-described manner? The fact is that in Serbia, in the 21st century, one may call a judge of the Commercial Court a criminal more than 200 times (234 times, to be more precise) with impunity is the best evidence of the state of the regulations in the media sector. It is a sad situation, indeed. In this case, according to what the Professional Board of the Commercial Court in Pancevo, the owner misused is media outlet for a personal crackdown on a judge whose decision, in a case that is of personal interest to him, doesn’t suit him. If we had effective regulations, it would be sufficient to convince the media owner of the impermissibility of such practices. Why is, then, regulation not effective? The answer perhaps lies in the fact that, out of nine places in the RBEM Council, one remains

vacant, while the terms of office of another four members are set to expire in the next few months. It's possible that, in a situation where the existing Parliament may, in the period of a few months, create a new majority in the Council, the existing composition of the latter does not feel confident enough to pronounce stricter measures. If this is the case, then it is clear that it was wrong to renounce the concept under which one third of the Council members would be elected every two years, which was the initial solution under the Broadcasting Law from 2002. It seems obvious that it would be necessary to go back to that model and also enact other measures that would help strengthening and consolidating the Regulatory Body, which would, in turn, contribute to better and more effective regulation.

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Association of Independent Electronic Media (ANEM) is a non-governmental and non-profit media association, founded in 1993 and registered in 1997, active in the development and improvement of the freedom of opinion and expression, and of freedom, professionalism and independence of the media in accordance with the highest internationally recognized norms, principles and standards. ANEM is the largest association of electronic media in Serbia gathering more than 100 radio and TV stations across the country, and online media. ANEM's activities contribute to the improvement of the media regulatory framework and the establishment of favorable media environment in the interest of the media sector, as well as to better position, conditions, and the quality of work of its members and other media. ANEM is nowadays recognized by the media sector and responsible institutions as an unavoidable stakeholder in the development of media policy and legislation. It is recognizable in Serbia and abroad by its active advocacy for media reforms, protection and promotion of the freedom of expression and freedom of the media, while ANEM's membership is recognizable by its dedication to the highest professional standards and professional ethics.