

## I FREEDOM OF EXPRESSION

In the period covered by this monitoring report, several cases have been recorded indicating potential violations of freedom of expression.

### 1. Threats and pressures

1.1 The Journalists' Association of Serbia (UNS) stated on September 10th, 2009 that the management of the public company Radio Stara Pazova had passed a decision obliging the editors and journalists of the station to monthly secure advertisements worth of 50,000 dinars (for editors) and 20,000 dinars (for journalists). This "merger" of marketing and journalist duties "represents a direct threat to objective informing", the UNS statement said.

It should be pointed out that, in accordance with the Article 31 of the Law on Public Information, a journalist may not be fired, have his/her salary reduced or position within the media outlet worsened for, among other things, refusing to carry out instructions that would represent a violation of legal and ethical rules of the journalist profession.

In accordance with the Article 2, paragraph 3 of the Serbian Journalists' Code, economic and political interests of the publisher must not affect editorial policy in any way that would result in inaccurate, biased, incomplete and untimely informing of the public; at the same time, in accordance with Article 7, paragraph 3 of the Journalistic Code of the Independent Journalists' Association of Serbia (NUNS), journalists are not allowed to participate in any kind of advertising of any institution, goods or services, with the exception of strictly humanitarian events.

Forcing journalists to provide advertisements instead of doing their job, i.e. to inform the public on matters of public interest, undoubtedly compromises their independence.

1.2 Members of the *Media Association* have ceased, as of September 15<sup>th</sup>, to deliver their publications to the distributor *Futura plus* due to the distributor's massive outstanding debt to them, which has threatened their business. *The Media Association* has called upon the Government to regulate the market and the readers to buy the press from other vendors. *Futura Plus* said the latter was in fact a call to a boycott and an attempt to suppress the sole national distributor that is able to provide quality service both to publishers and citizens countrywide. The Ministry of Culture condemned the behavior of *Futura Plus* as unprofessional and called on other distributors on the press market to supply the citizens with press until the problems between the publishers and *Futura plus* have been resolved, in order to protect the right to freedom of expression and information.

Veselin Simonovic, the Chairman of the Managing Board of the Media Association, replied that the decision not to supply *Futura Plus* with the newspapers by the members of that Association "was not a boycott, but a business decision to stop supplying goods to those who are not paying", and that the Media Association was forced to make such a decision to alleviate the damage.

While not contesting the economic reasoning behind the decision not to supply newspapers to an insolvent distributor, it cannot be denied that the initial declarations made by the Media Association contained an appeal to customers to buy press (broadly speaking and not limited to publications of the members of the Media Association) in other places. This might be interpreted as unfair competition within the meaning of Article 23, paragraph 1, point 5 of the Law on Trade, or as advertising with a call to a boycott, which is prohibited by Article 34 of the Law on Advertising.

1.3 The manner in which the tax police operated while seizing the business records from companies related to Radisav Rodic, among them the publishers of the daily newspapers *Kurir* and *Glas javnosti*, as well as weeklies *Grom* and *Stil*, drew considerable attention in the period that this report covered. The Tax Administration said that an inspection of the business operations of the company "ABC Produkt" Ltd., whose director is Radisav Rodic, had established that there was reasonable suspicion that Mr. Rodic, as the responsible person, had perpetrated tax evasion in the amount of 203.3 million dinars. The Tax Police entered on September 8 the premises of the above mentioned newspapers in the building at 8 Vljakoviceva Street in Belgrade. In a statement to the media, Rodic said he was in a hospital abroad for a routine medical examination and that the present situation represented "a crackdown on the media owned by him with the aim to further deteriorate his health condition". The *Kurir* daily said the Tax Police inspectors had sealed their offices, including the room with the server and the network equipment.

The owners and editors of *Kurir* have said they wanted to cooperate with the tax inspectors but insisted that the inventory of the sealed documentation be performed before the inspectors removed it from the building. *Kurir* had also claimed that its journalists and editors were prevented by the police from leaving the building for most of the afternoon on the 16<sup>th</sup> of September, while those who were outside could not return to work. Employees claimed that the police were on every floor of the building, that they were constantly entering and leaving the newsroom disturbing the journalists in their work. *Kurir's* management said that the further publication of that newspaper – including the daily *Glas javnosti* and weeklies *Grom* and *Stil* - had been seriously endangered. They also said that at one moment, up to thirty special police forces personnel in full riot gear had been dispatched in front of the newsroom.

The District Attorney's Office in Belgrade announced on the 25<sup>th</sup> of September that it had filed with the District Court a request for another investigation against the founder of *Glas javnosti* and *Kurir*, Radisav Rodic, and two unnamed persons on the suspicion that they had misused their official positions by "receiving a loan in the amount of 22 million dinars, after having submitted false documentation to Komercijalna Banka which has been damaged because the loan has never been repaid". The management of *Kurir* denied these allegations, claiming that in this case Rodic's company had been selling a building in 105 Visnjiceva Street in Belgrade, and that it ultimately remained without both the building and the purchase price and that the buyer, who was supposed to pay for the building with a loan obtained from Komercijalna Banka, failed to pay Rodic's company or to repay the loan to the bank.

Finally, on the 27<sup>th</sup> of September, *Kurir* and *Glas javnosti* reported that Tax Administration representatives, accompanied by several dozen police officers, had taken away the business documentation from the building in 8 Vlakoviceva Street, and that in the afternoon all tax inspectors and officials from the Ministry of the Interior left the premises. The management and the editorial team of *Kurir* stated that among the records that had been carried out were indispensable documents necessary for daily operations of the company and handling of legal proceedings that were underway.

The Law on Public Information stipulates that no one may directly or indirectly limit the freedom of public information and particularly not by misusing state powers or the law. The Law on Public Information also prohibits any kind of pressure upon public media outlets and their staff or exerting influence that may interfere with their activities. The above case was undoubtedly one of restricting freedom of public information in the form of a blockade of the building that is home to several newspapers, restriction of the movement of journalists, the entry of police officers into newsrooms and the like. In accordance with domestic regulations, as well as the ratified international treaties, the freedom of public information and freedom of expression may in some cases be restricted. In the case of *Kurir*, there seems to be a legitimate reason for such a restriction, since the actions of the Tax Administration and the police were aimed at gathering evidence about alleged criminal offences, namely tax evasion and misuse of official authority. What is, however, questionable, is whether the said restriction was proportional and whether the actions could have been carried out in a way that would have disturbed to a lesser extent the daily activities of the above mentioned newspapers.

The authors of this report do not possess sufficient information to make a definitive judgment, but there are indisputably clear indications that the restrictions in this particular case were excessive.

1.4 *Radio Sto Plus* from Novi Pazar, whose founder is the "Beta Press" Ltd. agency from Belgrade, announced on September 17<sup>th</sup> it had filed criminal charges against unknown persons that have inflicted serious damage to the regional radio station's transmitter on the Golija mountain. Consequently, the program of *Radio Sto Plus* is now available only to the listeners in Novi Pazar. The experts that examined the broken transmitter said that the damage had been caused deliberately. The editor of the station, Ishak Slezovic, said it was the second breakdown of the same transmitter in the past three months. The breakdown from last July was not reported to the police because the management of the station believed it was a short circuit. Earlier interruptions of the transmissions from Golija had been caused by physical tearing of the cables on the antenna pole. Two years ago, a Molotov cocktail was thrown at the second transmitter of the radio – covering the area of Novi Pazar – but failed to cause serious damage on the broadcasting equipment.

Unauthorized prevention or obstruction of radio or television broadcasting is a criminal offense under the Serbian Criminal Code. Unfortunately, in earlier cases of obstruction of broadcasting, most of which were caused by a physical damage to transmitters or cables for the delivery of signal to the transmitter, the police have not been able to find the perpetrators. In one of the cases known to the authors of this Monitoring Report, in late 2006 the Municipal Court in Nova Varos pronounced guilty a person that had wrecked the antenna and cut off the cables on the transmitter of a national television station and convicted him to three months in prison or one-year suspended jail sentence. The court also ordered the seizure of "a pair of pliers with a yellow plastic sheath 160 mm long" that were used for cutting. The District Court in Uzice upheld this verdict in late March 2007.

## **2. Court proceedings**

2.1 The daily newspaper *Press* published on the 11<sup>th</sup> of September the part of the verdict of the District Court in Belgrade that was upheld by the Supreme Court of Serbia. The verdict represented the outcome of the lawsuit against *the Press* by Jelena Jovanovic and Mihajlo Lajf Jovanovic, the spouse and juvenile son of the president of the Liberal Democratic Party (LDP) Cedomir Jovanovic, for violation of their right to privacy. The lawsuit was related to *Press'* publication of photographs of Jovanovic's family house, which had shown the wife and the son of the LDP leader. The photograph was published by *Press* within a series of articles questioning the revenue which enabled Jovanovic to enjoy life in such a house.

Deciding upon the appeal of *Press*, the Supreme Court revoked the verdict of the District Court in the part endorsing the claim of Jelena Jovanovic and upheld the same verdict in the part endorsing the claim of the juvenile, Mihajlo Lajf Jovanovic, and sentenced the editor of *Press*, Dragan Vucicevic, to pay damages for violation of the right to privacy to the juvenile son of the LDP leader in the amount of 150,000 dinars.

According to Article 9 of the Law on Public Information, the rights of holders of political functions to protection of privacy are limited if the information is relevant for the public, in view of the fact that such persons are exercising a public function, proportionately to the reasonable interest of the public in each specific case.

2.2 The Supreme Court of Serbia has passed a sentence in the case of Aleksandar Tijanic against the Committee of Lawyers for Human Rights YUCOM, which has caused considerable controversy. Back in 2005, YUCOM published a book "The Case of Civil Servant Aleksandar Tijanic" which mainly included quotes by Tijanic, the director of the Serbian National Television (RTS), published in the media in the period between 1976 and 2004. After the publication of the book, the RTS director filed six different charges against YUCOM, namely its president Biljana Kovacevic Vuco. In one of these proceedings for breach of copyrights – in which Tijanic claimed 8.5 million dinars of damages – the District Court in Belgrade rejected his claim in April 2006, explaining that the disputed book was not a collection of his complete texts and that it was merely using quotes as an illustration.

Upon Tijanic's appeal, the Supreme Court of Serbia passed a verdict altering the sentence of the District Court in Belgrade and partially approving the plaintiff's claim for damages up to the amount of 200,000 dinars and prohibiting YUCOM from making further use of the plaintiff's copyrights and publishing new copies of the book "The Case of Civil Servant Aleksandar Tijanic". YUCOM was also ordered to publish, at its own expense, the decision of the court in the daily "Politika".

Although the entire case is legally extremely interesting, the explanation of the Supreme Court's verdict is to a certain extent problematic. First, the Supreme Court invokes the provisions of Article 17, paragraph 1, point 2 of the Law on Copyright and Related Rights, which concern public communication; however, the quotes from declarations and articles of Aleksandar Tijanic, to the best knowledge of the authors of this Report, have not been publicly communicated, but merely recorded and reproduced in the form of a book. Furthermore, the Supreme Court invokes the provision of Article 16 of the Law on Copyright and Related Rights, which stipulates that the author has the exclusive right to publish its work and to determine the manner in which it will be published. In terms of the Law on

Copyright and Related Rights, publishing means the first communication of the work to the public by the author, or the person authorized by the author, in any manner whatsoever and anywhere in the world. In this particular case, excerpts from the articles of Aleksandar Tijanic and his quotes have already been published i.e. communicated to the public by the author and hence his right could not have been violated. A particularly interesting detail is the fact that, at least according to his statements made in public, Aleksandar Tijanic denies being the author of about 40% of the quotes attributed to him in the book. It is unclear whether the court has examined such claims at all during the proceedings. In view of the above, the Supreme Court's verdict and its explanation represent a precedent that may negatively affect the freedom of expression.