

## I FREEDOM OF EXPRESSION

In the period covered by this report, there were several cases of potential violations of freedom of expression.

### 1. Threats and pressures

1.1 In the press release of the Gazi Isa-beg Madrasah in Novi Pazar from November 4, 2009, signed by the Director Mustafa ef. Fetic, the Editor of the Novi Pazar-based radio station Sto plus Ishak Slezovic was accused of disseminating disinformation through the said station, as well as of telling the Beta news agency that a female student of the Madrasah was infected with the AH1N1 virus. The press release also accused Slezovic of spreading lies on several occasions about the Islamic community and its institutions and of allegedly placing the information about the flu with the intention of slandering the reputation of the Gazi Isa-beg Madrasah in Novi Pazar, causing panic and turmoil among the students, their parents and other members of the Islamic community.

Namely, on November 2<sup>nd</sup>, Slezovic's station Radio Sto plus aired a statement by the Director of the Novi Pazar hospital Alan Kurpejovic that two persons in the city were believed to have been infected by the AH1N1 virus and that the material for analysis had been sent to the Torlak Institute, so as to finally establish if there were any cases of swine flu in Novi Pazar. Kurpejovic said that one of the two persons with flu symptoms was a student of the Madrasah in Novi Pazar. The following day, Kurpejovic told Radio Sto plus that the analysis had confirmed that the patients were not infected and that they were going to be released from hospital because they were feeling better.

The Beta news agency and Radio Sto plus demanded a swift reaction from Religion Minister Bogoljub Sijakovic and Culture Minister Nebojsa Bradic over the press release of the Novi Pazar Madrasah.

The Law on Public Information stipulates that public media may freely publish information about matters of reasonable interest for the public, unless provided for otherwise by the law. In the concrete case, Radio Sto plus has, in a situation of an officially declared flu pandemic, accurately quoted the Director of the hospital. Furthermore, the Law on Public Information explicitly prohibits anyone from restricting freedom of public information with the aim of curbing the free flow of information, or from putting pressure on public media and its staff and exert influence so as to obstruct their work. Since the beginning of the epidemic, the media have been reporting about many schools whose pupils or students were infected or believed to be infected by the virus. However, Radio Sto plus and the Novi Pazar Madrasah is the only case in which reporting information from official sources has been branded spreading panic and slandering an entire religious community.

1.2 On November 4, 2009, the Croatian Radio Television (HRT) crew, led by Editor of the weekly talk show "Nedeljom u dva" Aleksandar Stankovic, was ordered out of Kusturica's Mokra Gora village while making an interview with the film director. In protest over Stankovic's questions, Kusturica also confiscated the footage that the Croatians had filmed. According to a HRT report, Kusturica insulted and mistreated the television crew for 45 minutes until the Croatians finally handed him over the footage and left Mokra Gora. According to Stankovic, the controversial questions pertained to Slobodan Milosevic and Kusturica's relationship with him. Explaining what had happened in Mokra Gora, Kusturica said he had cut the interview short because Stankovic had malicious intentions. Several days later, Emir Kusturica returned the footage to the Croatian Radio-Television, claiming that he had not confiscated it, but that the HRT crew had forgotten it in haste.

According to the applicable regulations in Serbia, Emir Kusturica, or any third person that would find itself in a similar situation, is entitled not only to refuse to be filmed, but also to oppose that the footage be aired. However, the law does not provide for the right to confiscate the footage. The Law on Public Information stipulates that video footage of a person and audio footage of a person's voice - except in certain cases provided for by law - may not be aired without the persons' consent, if by airing such material that person may be identified by the viewers. The appropriation of another person's belongings is also a criminal offence punishable under the Penal Code of the Republic of Serbia.

1.3 Due to a misunderstanding over the payment of monthly fees, as of the November 14, 2009, the inhabitants of Leskovac and surrounding villages in the Jablanica District may not watch local media on cable television anymore. Namely, the Serbian Cable Network SBB, the largest cable television operator in Serbia, has ceased broadcasting the program of TV Leskovac, TV 4S, MT, TV Klisura, K-1 i TV Vlasotince in Leskovac and its surroundings. SBB said at a press conference that these stations will not have their respective program aired again on that cable operator's network if they fail to fulfil the clauses from the contract offered by SBB. Before they were removed from the cable program, these stations had lengthy negotiations with SBB, but were unable to come to a mutually acceptable solution. According to media reports from the press conference, SBB requested each TV station to pay a monthly fee of 500 euros, which the latter refused. On the other hand, SBB said there was "room" in its cable network for the program of only three local TV stations from Leskovac. The Danas daily reported that SBB controlled 90% of the cable television market in Leskovac. In late November, SBB's network started airing the program of TV K-1 and the media reported that this private station had accepted to pay a monthly fee of 300 euros to the cable operator.

The Broadcasting Law provides for the mandatory issuance of special cable broadcasting permits, except for programs which have been issued a terrestrial broadcasting permit by the

Republic Broadcasting Agency for the area covered by the broadcasting permit, provided that the cable operator is also airing the program of the public broadcasting service. This provision was aimed at encouraging operators to distribute local television programs. However, since more than seven years after the adoption of the Broadcasting Law, the RBA is yet to start issuing cable broadcasting permits, domestic and foreign television channels are distributed by domestic operators under different conditions. Such differences also exist between domestic TV channels. Namely, while cable operators pay foreign channels distributing their content, domestic TV program producers are expected to pay a fee for their content to be aired via the cable network. This is particularly the case with local and regional stations. RATEL's Rules on the Conditions for the Distribution of Radio and Television Program and the Content of the Approval (Official Gazette of the Republic of Serbia No. 26/2009) stipulate that cable operators, depending on their technical capacities, must ensure, in the area they are covering or intending to cover, that their services are always available to all interested subscribers, without any discrimination. The Rules do not include any provision that would explicitly ban the discrimination of producers of media content that are distributed via the cable system. Such discrimination is, however, prohibited by the Consumer Protection Law (Official Gazette of the Republic of Serbia No. 79/2005), which in the concrete case also applies to producers of media content, since they are enjoying the distribution service for their own needs. Namely, the said Law provides that it is prohibited to discriminate against consumers on the grounds of conditions under which the service is provided and that such discrimination shall be considered a misdemeanor subject to fines ranging from 300.000 to 3.000.000 RSD. Furthermore, the Competition Protection Law prohibits restrictive agreements that apply uneven business conditions to the same transactions for different market participants, putting these participants – in this case local media content producers – in a less favorable position relative to their competitors. Any restrictive agreements are punishable by a competition protection fine pronounced by the Competition Protection Commission. The Law on Public Information (LPI) states that a person engaged in the distribution of public media may not refuse to distribute someone's public media without a justified commercial reason. The LPI also states that a person engaged in the distribution of public media must not impose any conditions for the said distribution that are contrary to market principles. Most probably, in this actual case, there was no justified commercial reason for cable operators, as persons engaged in the distribution of radio and TV programs, to deny distribution, since foreign TV channels, to the best knowledge of the authors of this report, were distributed free of charge. Failure to observe these prohibitions represents a commercial offense subject to fines ranging between 100.000 and 1.000.000 RSD. In the latest amendments to the LPI, the only amendment that has not been criticized, namely whose constitutionality has not been challenged, stipulates that the founder of a public media, whose distribution has been totally or partially suspended

without justified commercial reason, namely due to the imposing of conditions that are contrary to market principles, is entitled to claim damages in court. However, the wording of Article 16 providing for the minimum amount of damages is such that it is uncertain how the competent court would proceed in practice in case of a claim filed by an electronic media. Namely, the Law links the lowest fee with the value of advertising space sold for all editions of the public media that are not distributed in breach of the ban. This shows that the legislators had primarily in mind print media and that the courts are left with the task to interpret what will "editions of the public media" mean in the case of TV stations.

1.4 On November 21, 2009, during the national league match against Smederevo the supporters of the Partizan football club from Belgrade were heard chanting offensive chants and threats against Brankica Stankovic, the author of the investigative program "Insajder" on B92 TV, as a response to this station's announcement that it would air a new series of this program as of the December 3, 2009, which would deal, amongst other things, with the leaders of extremist fan groups that have been threatened with a ban by the Serbian Public Prosecutor. Partizan's fans, more specifically several members of a supporter group called „Alkatraz“, have been arrested on suspicion of having participated in the attack on French citizen Brice Taton on September 17, prior to the match between Partizan and Toulouse. Taton died 12 days later as a result of the injuries he sustained in the attack.

According to the Law on Public Information, no one may restrict freedom of public information or exert any kind of pressure on public media and the staff thereof, so as to obstruct their work. Furthermore, the latest amendments to the Penal Code have instituted a category of occupations as affairs of public interest. Namely, these amendments state that affairs of public interest are profession or duties involving a heightened risk for the security of persons performing these professions and duties. These affairs of public interest include profession related to public information. Consequently, threats and intimidation against persons performing profession of public interest in the area of public information, which are related to the tasks they are performing, shall be prosecuted ex officio and be punishable by a prison sentence ranging from one to eight years. Before the said amendments, which came into effect in September, threats against journalists were as a rule not prosecuted ex officio; they were punishable by a prison sentence of up to one year or three years only in exceptional cases, where the threats had been made against several persons or if such threats had caused anxiety of the citizens or other severe consequences. These amendments have most definitely introduced better protection for journalists than before. It remains however to be seen how the amended Penal Code will be applied in practice.

## 2. Court proceedings

2.1 On November 9, 2009, the investigative judge of the District Court revoked the detention of journalist Slavoljub Kacarevic. "After having interrogated all three witnesses that were summoned, the investigative judge has, with the consent of the Prosecutor's Office, revoked the detention of Kacarevic", the spokesperson of the District Court Ivana Ramic said. Reminding that Kacarevic had been placed in custody to avoid any influence on witnesses, Ramic said that "the grounds for keeping Kacarevic in custody have ceased to exist". The petition for Kacarevic's release pending trial was previously signed by 542 journalists and editors in chief from almost all media in Serbia. Kacarevic was arrested on the October 28, 2009 and was placed in 30-day custody the following day on suspicion of abuse of office. Kacarevic, the former Editor in Chief of the Glas Javnosti daily and member of the Executive Committee of the Association of Journalists of Serbia (UNS) was arrested on suspicion of having committed the criminal offence of abuse of office together with Radisav Rodic, the founder of the dailies Kurir and Glas Javnosti. The request for investigation against Kacarevic is filed because he is believed to have assigned, as Director of the Manami Company and together with Rodic, owner and Chairman of the Managing Board of the said company, a printing machine, purchased with a bank loan from Komercijalna Banka, to the company NIP Glas. This transaction has left the Manami Company without any assets whatsoever and hence the bank was prevented from collecting the loan. Rodic is still in custody.

2.2 On November 19, 2009, the Pancevo police pressed criminal charges against two persons employed in the private newspaper "Pancevacki pres centar" on suspicion of abuse of office, forging of official documents and tax evasion. Municipal Public Prosecutor Branislava Vuckovic said that, in order to avoid the violation of the presumption of innocence, she was not allowed to disclose any details. The journalists of Pancevacki pres centar, who left the daily Pancevac two years ago to form their own newspaper, complained that they were harassed in the last couple of months by the inspectors from the Economic Crime Department of the Pancevo Police, who interrogated them, as well as their business partners, and examined their books.

Both in the case of Kacarevic and Rodic and the one of Pancevacki pres centar employees, according to official sources, legal proceedings are underway for abuse of office, namely in the case of Pancevacki pres centre for alleged forging of official documents and tax evasion - i.e. not directly in relation to the reporting of the defendants' newspapers. Since there are several legal proceedings underway lately against managers in companies that are founders of public media, there is often a conflict between, on one hand, the interest of leading an

efficient criminal investigation and on the other, the need to protect the right to freedom of expression, namely to avoid restricting the free flow of ideas, information and opinions.

2.3 On November 10, 2009, the daily Danas reported that the health center of Valjevo had pressed criminal charges against Sladjana Stevanovic, the correspondent of the daily newspaper Pres from that city. Stevanovic is accused of spreading panic with her article published in early October about the death of 5-year old Teodora Jovanovic, entitled “Drama in Valjevo: Little Teodora Killed by Doctors”. The girl passed away in the morning of October. Criminal charges for inadequate treatment were pressed before the municipal court against Pediatrician Vladimir R. (35) who was on duty on the children’s ward. Back in early October, the Director of the Valjevo Health Center Ilija Tripkovic said he would press charges for “spreading panic in the public and slandering the medical profession”, which was recently reiterated in a similar tone by Health Minister Tomica Milosavljevic. According to Stevanovic, Tripkovic told her back then that he had “no objections to the text”, but that he had to react because of the editorial headline. The editors of Pres stood by everything that was reported about the “Teodora case” and invited Tripkovic to press charges against the Editor in Chief and the editorial board of the newspaper.

Causing panic by reporting or spreading false information or claims through the media is criminal offense punishable by a prison sentence ranging from six months to five years. In practice, particularly in the case of tabloids, it happens that factually accurate texts are given sensationalist headlines, which often do not correspond to the content of the text. In the specific case, it seems clear that the reporter Sladjana Stevanovic is not the author of the controversial headline and that criminal charges, if any, could only be pressed against the author of the headline, if he/she is identified, or the responsible editor, respectively. According to the Penal Code, the author of the information shall be considered as the perpetrator of the criminal offense committed by publishing information in the newspapers, on radio, television or other public media. As an exception, the responsible editor, namely the person who was replacing him/her at the moment when the information was published, will be considered as the perpetrator, if the information was published without the consent of the author or if at the time of its publication, there were tangible or legal obstacles for prosecuting the author, which are still in existence.