



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for December 2009

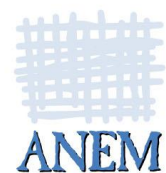


TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS	6
III	MONITORING OF THE ADOPTION OF NEW LEGISLATION	9
IV	MONITORING OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	14
	REGULATORY BODIES	14
	STATE AUTHORITIES	16
	COLLECTIVE ORGANIZATIONS.....	19
V	THE DIGITALIZATION PROCESS.....	19
VI	THE PRIVATIZATION PROCESS	20
VII	CONCLUSION.....	21

I FREEDOM OF EXPRESSION

In the period covered by this monitoring report, the most serious cases of violation of freedom of expression were the attacks against the author of “Insider” on TV B92, Brankica Stankovic, and the television station itself over the series of investigative programs about the leaders of extreme football fan groups.

1. Threats and pressures

1.1 On December 3, 2009, TV B92 aired the first episode of the new series of Insider, entitled “Impotence of the State”. The program dealt with the issue of how it was possible that certain leaders of football fan groups of Belgrade-based clubs such as Partizan, Red Star and Rad, who had been arrested several times on suspicion of severe criminal acts, were often released without ending up in court or prison. Immediately after the program was aired, its authors received threats on the internet, including death threats. The author of Insider Brankica Stankovic was assigned round the clock security.

1.2 In the night between December 5 and 6, TV B92 reporter and news presenter Roksanda Djordjevic, who read the information about the threats against the authors of Insider in B92’s news bulletin, was also threatened with insulting and threaten messages sprayed on the door of the building of her and her family’s residence, demanding to vacant the premises.

1.3 Actress Bojana Maljevic has written on her blog that she was attacked by two young men on the street near her home in Belgrade. The assailants shouted insults at her, asking if she was “Brankica’s friend”. Ms. Maljevic was targeted only because she was carrying an umbrella with the mark B92.

1.4 The President of the Partizan basketball club Predrag Danilovic branded the behavior of supporters, who shouted and sang insults against B92 and Ms. Stankovic during and after a basketball game on December 10, as mere euphoria over an important victory of Partizan. Danilovic told B92 that, in his view, it would be “pretentious” to interpret negatively the ambiance during the game with the Turkish club Efes Pilsen, stressing that in his belief, there was no need to issue an official statement. “We have all been insulted in various situations”, Danilovic said. “I don’t know if that young lady is what they [the supporters] say she is”. In their song, the supporters called Ms. Stankovic “a whore” and B92 “a station working for the police”.

1.5 On December 16, 2009, the supporters of Partizan chanted threats against Stankovic, before and during a game in the European League, saying she would end up like the assassinated journalist Slavko Curuvija, while kicking, punching in the head and stabbing a

plastic doll representing B92's reporter. According to media reports, this "performance" was carried out by the supporters' group "Alcatraz", whose ban has been requested by the State Prosecutor.

1.6 The lawyers of Uros Misic, the Red Star supporter charged with attempted murder of a police officer on a football game on the December 2, 2007, requested from the court, on a retrial, to suspend the airing of Insider on B92 television. They said that the program contained references to the trial and claims that had not been proven in court. Misic's lawyers claimed that TV B92 stated a prejudgment that their client had pushed a flare into the police officer's mouth "as an actual fact", although such action of their client has never been proven before the court. On an earlier trial, Misic was sentenced to ten years in prison, but the Supreme Court overruled that sentence and ordered a retrial.

1.7 At a press conference after a regional league game on December 26, the coach of the Partizan basketball club accused B92 of leading a campaign against sports, with the aim of chasing sponsors away so that the latter would redirect their money from sport clubs into media companies.

Article 2 of the Law on Public Information stipulates that it is forbidden to directly or indirectly restrict freedom of public information or free flow of ideas, information or opinion in any manner whatsoever. The same article also provides that it is prohibited to exert any kind of physical or other type of pressure against a public media or its staff or exert any influence aimed at obstructing their work.

Threats made against a reporter, via the Internet or shouted from the stands of sport stadiums are a criminal offense, namely threat to personal security provided for by the Criminal Code, Article 138, paragraph 3. According to the Criminal Code, threats to personal security exist when a person's life or body, or life and body of an individual close to that person, is threatened with attack. The latest amendments to the said Code, which were adopted in September 2009, introduced more stringent sanctions in cases where threats are made against a person occupying a job of public interest in the area of information, when such threats are related to the professional activity of that person. Such threats to physical security are subject to a prison sentence ranging from one to eight years.

What is positive in the reaction to the above mentioned attacks is that the police immediately assigned round the clock security to the threatened reporter. Also, the attacks were condemned by the Serbian President Boris Tadic, who said that "the state will not tolerate the violence of hooligans and criminals threatening reporters who are doing their job". Tadic's remarks were echoed by the Police Minister, the Justice Minister and other high ranking officials. According to reports from December 8, the Belgrade Police, in cooperation with their colleagues from Novi Sad, Pancevo, Sremska Mitrovica and Kraljevo, arrested

seven young men, including three minors, for the threats made against the authors of Insider. They were charged with the criminal offence of threats against physical security. Several persons have been arrested for making death threats from the stands of Partizan's stadium on December 16. However, although the media reported that the threats had been orchestrated by Alcatraz, the supporter group's leaders were not among the arrested persons. After having reviewed the security tapes from the stadium, the police established that one of the leaders of the said group, Nikola Dedovic "Johnny", was actually sitting in the VIP Box while the supporters sang that Brankica Stankovic would end up like Curuvija and while they kicked, punched and stabbed the plastic doll. Another leader of the hooligans, Milos Radisavljevic "Kimi", was on the stands and the media reported that at the end he personally punctured the plastic doll, while the fans cheered and sang. Neither Dedovic nor Radisavljevic were arrested.

It is also worrying that the clubs themselves did not find the courage to distance themselves from extremist fan groups and their leaders. As a rule, the clubs' managements failed short of admitting that death threats had been made, condemning the fans' insults merely in principle and saying that public figures, including journalists, ought to be more tolerant when being subject to insults. What's more, leading football club officials accused B92 of leading a campaign against sports in general and putting pressure on sponsors to redirect their money from sports into media. Of particular concern is that part of the media shunned the calls of media associations for solidarity with the authors of Insider and supported the accusation that the program, which referred to specific leaders of supporter groups and specific criminal offenses the said leaders have allegedly committed, was in fact part of a campaign against sports.

2. Legal proceedings

2.1 As reported by the Blic daily on December 18, 2009, the District Court in Valjevo sentenced retired physics Professor of the Valjevo Grammar School Milan Sreckovic to a fine of 100.000 dinars to be paid to reporter Branko Vicentijevic as damages for injury to honor and reputation. Vicentijevic, a journalist of the Valjevo based magazine "Kolubara" and correspondent of the Beta news agency, had sued the Professor over a text published in the local weekly, in which he claimed that the journalist did not have any formal education.

2.2 In late December 2009, the District Court in Belgrade decided that the founder of the dailies Kurir and Glas Javnosti Radoslav Rodic will remain in custody for another month. The Court explained that, if released, Rodic could put pressure on the witnesses that have yet to be interrogated in the investigation. Rodic was arrested on October 27 and the Prosecutor recently proposed that two more witnesses be interrogated. During his two-month stay in

custody, Rodic underwent a surgery and his newspapers had reported on daily basis of Rodic's life being in danger because of his poor health.

In the concrete case, Rodic is being investigated over the transactions of a company where he was Chairman of the Managing Board and not because of the reporting of the newspapers he has established. He is under suspicion of abuse of office, resulting in a Serbian Bank (Komercijalna banka) not being able to collect a loan to the said company. According to the Law on Criminal Proceedings, custody may be extended where there is reasonable doubt that the person in custody might destroy, hide, tamper with or forge evidence or traces of the criminal offence, or particular circumstances pointing to the possibility that the said person might obstruct the proceedings by influencing witnesses, court experts or accomplices. The Law also stipulates that the District Court may extend custody for another two months at the most, after the expiry of a maximum one-month custody period determined by the investigative judge. Healthcare of persons in custody is regulated in more detail by the House Rules for the Application of Custody (Official Gazette of the Republic of Serbia, no. 35/99). There is no information that Rodic has been denied any of his rights under the Law and the said Rules.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Law on Public Information

1.1 The implementation of the Law on Public Information is partially elaborated on in the section about freedom of information.

1.2 The Southeast Europe Media Organization (SEEMO) and the International Press Institute (IPI) have issued a joint press release after the visit of the said organizations' delegations to Serbia – organized with the cooperation of the OSCE – voicing their concern over the amendments to the Law on Public Information of Serbia and warning it could lead to increased self-censorship and the shutting down of certain media. The press release called upon the Serbian authorities to initiate a discussion as soon as possible about the effects of this "controversial law on the capability of the media to fulfill their role in a democratic society" and to adopt a strategy for the development of the media in the country. IPI Deputy Director Alison Bethel Mackenzie said the Government ought not to impose legislation preventing the media from doing their job, as well as that IPI was in favor of self-regulation of the media. She called upon the Government to draw up more acceptable amendments to

the present Law on Public Information, which would take into account the voice of the media and organizations protecting media freedom.

2. Broadcasting Law

The Council of the Republic Broadcasting Agency (RBA) has approved the request of Fox Television, which has a license for broadcasting with national coverage, for a change of ownership structure. According to the Deputy President of the Council Goran Karadzic, Fox TV station will henceforth be operated by the Greek station TV Antenna, as the owner of 49% of the company, while 51% have been acquired by a Belgrade firm. Commenting certain reports that TV Antenna's owner Minos Kiriakou has acquired Fox TV for one US dollar and that he would take over the stations debt estimated at 5,6 million EUR, Karadzic stressed that the RBA had ensured that the change of the asset structure of Fox did not lead to unlawful media concentration and that the transparency of capital be verifiable. The RBA also made it sure, according to Karadzic that TV Fox was not bought by an offshore company with an unknown owner.

According to the records in the Business Registers' Agency, the owners of TV Fox are presently the company Warraner Limited from Cyprus with 49% of the share and Nova Broadcasting d.o.o. from Belgrade with a 51% share. The sole founder of Nova Broadcasting d.o.o. is Antenna Stream T.V. Limited, also from Cyprus. The Broadcasting Law stipulates, with the purpose of controlling the structure and the original of the capital of the license holder, that the latter must have approved in advance any change of ownership structure by the Agency. Furthermore, if the Agency establishes that the planned changes of ownership structure may lead to unlawful media concentration, it will recommend the broadcaster to adjust the said changes so as to avoid such concentration. If the broadcaster fails to comply and if media concentration occurs, the concrete case will be subject to the provisions of law regulating the termination of the license. The Broadcasting Law stipulates that the broadcasting license, as well as the radio station license, may not be assigned, transferred or disposed of in any manner whatsoever. The assignment of the license by selling the ownership of the legal person that has obtained the license on a public competition is not expressly considered as disposing of the license. However, according to the Law, the license issuance procedure is public and every legal and natural person is eligible for obtaining the license under equal conditions, provided it has fulfilled conditions provided for by the Law and regulations stemming there from. With the sale of ownership of the legal person that has obtained the license on a public competition, the license is transferred in a procedure that is not public; all interested parties could not have participated in such a procedure and the state, namely the regulatory body, did not assess compliance with the requirements by the

new owners of the license holder. Namely, at the public competition in 2006, which saw Fox TV obtaining the national broadcasting license, the criteria included the estimated annual revenues and expenditures (along with a precise specification thereof) and data about the financial potential of the applicant, as well as other obligations that the applicants undertook to assume (such as content or staff-related commitments). Fox TV was granted a license owing to the investments it promised to make, as well as due to the financial potential guaranteed by News Corp, as a then TV Fox shareholder. We hereby remind that TV Fox was granted the license at the expense of competitors owned by other media powerhouses, such as RTL or CME. The fact is, however, that the sale of TV Fox is not the first case where the ownership structure of a broadcaster was entirely changed, including national broadcasters in Serbia. Furthermore, RBA's interpretation of the provision of Article 41, paragraph 3 of the Broadcasting Law is questionable. Namely, according to the said provision, a foreign natural or legal person may be a shareholder in the founding capital of the broadcasting license holder with up to 49% of the overall capital. The purpose of this provision was to favor domestic media and domestic content makers, but in practice, it is often shunned, due to the lack of adequate response by the RBA. In the case of the new ownership structure of TV Fox, the foreign legal person - the Greek based television station Antena – is visibly the owner of 100% of the founding capital, by having a direct 49% share via the also foreign legal person Warraner Limited from Cyprus, while indirectly owning the remaining 51% via the Nova Broadcasting d.o.o. company from Belgrade, entirely owned by Antenna Stream T.V. Limited, also from Cyprus.

3. Criminal Code

The application of the recently amendment provisions of the Criminal Code has again become topical as a result of the request by the lawyers of Red Star football fan Uros Mistic charged with the attempted murder of a police officer at a football match on the December 2, 2007. They requested that Prosecutor's Office press criminal charges against the TV B92 television station for violation of the provision 336a of the Serbian Criminal Code in its "Insider" series about the leaders of extreme fan organizations. Article 336a of the Criminal Code provides for up to six months in prison or a fine against anyone giving statements in the media during pending legal proceedings, prior to a final verdict, with the aim of breaching the presumption of innocence or compromising the independence of the court. At the round table organized by the Association of Journalists of Serbia with the topic "May journalists make comments about legal proceedings after the latest amendments to the Penal Code?" Ombudsman Sasa Jankovic branded the above provision as dangerous, saying that the legislators should reconsider it and amend it. "If this provision is applied, Serbia will keep quiet about everything that is topical in the judiciary", Jankovic said. "Journalists ought not

to worry", said Slobodan Homen, State Secretary in the Justice Ministry. "According to Article 336a, the court must prove the journalist's intent on harming the defendant or offending the court, but I think it is not that simple", Homen explained. He added that the Justice Ministry would request an explanation from the Prosecutor's Office about how exactly the article of the Penal Code prohibiting comments on pending legal proceedings was to be implemented.

It should be reminded that, according to Article 10, paragraph 2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, freedom of expression may be legally restricted to the extent necessary in a democratic society, including for the purpose of preserving the authority and objectivity of the court. Article 18 of the Serbian Constitution specifically stipulates that human and minority rights guaranteed by the Constitution, but also by the generally accepted rules of international law, ratified international treaties and laws, shall be implemented directly. It also stipulates that provisions on human and minority rights shall be interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation. But in the practice, there often have been deviations. This is precisely the reason why the manner in which the Prosecutors and the courts will interpret and apply Article 336a of the Serbian Criminal Code, is a cause of legitimate concern.

III MONITORING OF THE ADOPTION OF NEW LEGISLATION

In December 2009, the Parliament of the Republic of Serbia adopted a considerable number of laws, including several particularly relevant for the media sector.

1. Law on Copyright and Related Rights ("Official Gazette of the Republic of Serbia", No. 104/2009)

The most significant change relevant for the media sector was introduced by the new Law on Copyright and Related Rights in its part pertaining to determining the Tariffs of the organization for the collective exercising of copyright and related rights. The former Law from 2004 gave the freedom to the said organizations to independently determine the Tariffs for the use of copyright and related rights. It made the users, electronic media in particular, discontented; they claimed the Tariffs to be completely inappropriate, namely that the fee

requested by organizations for collective exercising of copyright and related rights was disproportional to the importance which the use of the subject matter of protection had for the users' revenues. According to the concept adopted in the new Law, the level of Tariffs shall be agreed upon in negotiations between the organization and the representative association of users and shall come in the form of a written agreement. The new Law has given the Institutions of the public broadcasting service the status of individual users that are enabled to negotiate with collective organizations and enter into special agreements in order to determine special Tariffs, applicable only to the Public Broadcasting Service.

Failing an agreement on Tariffs, the Tariff proposals shall be determined by the collective organization's management board and submitted to the Copyright and Related Rights Commission for opinion. The Commission consists of a Chairman and four members; they are appointed by the Government, at the proposal of the Director of the Intellectual Property Office, from the ranks of experienced experts that are well versed in the matter of copyright and related rights. Collective organizations and representative associations of users are entitled to propose candidates for membership in the Commission, while the Director of the Intellectual Property Office nominates the Chairman.

The Commission gives its opinion about the Tariff proposed by the collective organization's management board. The opinion is namely an assessment on whether the proposed Tariff includes those rights for which the particular organization has the license issued by the Intellectual Property Office as well as if the compensation has been determined in accordance with relevant rules prescribed by the Law. Where a negative opinion is given, the organization is obliged to repeat the negotiations with the representative association of users or to submit a new proposal of the Tariff to the Commission for opinion. If the Commission gives a negative opinion again, it shall pass the Tariff on its own.

The most controversial novelty is the manner in which the Law regulates the setting of the Tariff and the collection of the fee for exercise of related rights of performers and producers of released phonograms (recordings on sound carriers). The Law namely stipulates that both the said fees, which are relevant for electronic media because they are also charged for broadcasting, shall be exercised only collectively. The Law also stipulates that the Tariff for both types of fees shall be determined in a unified way, in a written agreement between the Phonogram Producers Organization and the Performers Association from one side and the representative association of users from the other side. If the agreement is not reached within 60 days from the launch of the negotiations, Managing Boards of these organizations will determine the proposal of the unified Tariff on the basis of their written agreement. If these organizations failed to submit their proposal to Commission for an opinion within 90 days from the launch of negotiations, the Tariff shall be determined by Commission. Furthermore, the Law provides that the fees shall be charged to the users in a unified way, while the organization appointed by the agreement concluded between the Performers

Association and the Phonogram Producers Organization shall be entitled to collect the said fees. Failing to reach such an agreement within six months of the entry into force of the Law, the Government shall determine the organization that will collect the fee at the proposal of the Minister in charge of science and technological development. The organization appointed by the Government that will collect the fee shall be authorized to retain no more than 10% of the collected proceeds as collection expenses, as well as to hand over half of the remaining collected amount, at least quarterly, to other organization.

This concept was adopted in spite of strong critics by the Phonogram Producers Organization (OFPS). Namely, according to the old law from 2004, collective protection was not mandatory. It was envisaged that such protection be charged by the producer of the released phonogram and that, if an agreement between the said producer and the performer did not stipulate otherwise, the half of the collected fee was to be handed over to the performer whose interpretation is on the phonogram. In practice, performers have typically concluded agreements with phonogram producers, to which they have assigned the right to their part of fee.

It remains to be seen how this new concept will take hold in practice.

2. Law on Classified Data ("Official Gazette of the Republic of Serbia", No. 104/2009)

The The Law on Clasiffied Data, adopted by the Serbian Parliament on December 11 and in force since January 1, 2010, governs a single system for determining and protecting secret data, which are of interest for national and public security, defense and internal or foreign affairs of the Republic of Serbia. The Law also regulates the protection of foreign classified data, as well as the matter of access to classified data and the cessation of secrecy thereof.

Rodoljub Sabic, the Commissioner for Information of Public Importance and Personal Data Protection, in an author's text published in the daily Blic, pointed to two positive aspects of the above mentioned Law. First, Serbia obtained a single piece of legislation governing the classification of secret data. Namely, this matter was previously regulated by an array of several hundred regulations, mostly obsolete and anachronistic. A single system is important for journalists and media too, especially those practicing investigative journalism, who obtains documents labeled as "secret" since such system provides greater legal security regarding the permissibility of releasing classified data and documents in public. According to Sabic, the second good thing is that the adopted version is much better than the initially proposed one, because the amendments of the Ombudsman and the Government have remedied certain shortcomings in the previous version that have made it impossible to adopt.

The Law stipulates that data and documents that have been assigned a certain degree of secrecy pursuant to previous regulations shall retain the same type and degree of secrecy, while the executives of the authorities, whom such data and documents pertain to, shall reconsider their secrecy no later than by the end of 2011, in accordance with the provisions of the new Law. The Law, however, falls short of providing for fines where these deadlines are breached or for an automatic cessation of secrecy upon the expiry of the deadline.

3. Law on Free Access to Information of Public Importance ("Official Gazette of the Republic of Serbia", No. 120/2004, 54/2007, 104/2009)

On December 11, 2009, the Serbian Parliament adopted the Law on Amendments to the Law on Free Access to Information of Public Importance. These amendments primarily concern the protection of "whistleblowers", but also provide for a number of new misdemeanors.

The amendments stipulate that employees in the state authority that have enabled access to an information of public importance pointing to corruption, abuse of office, unreasonable management of public funds or an unlawful action or procedure of a state authority, may not be called to account for that or suffer any consequences. The Law however stipulates additional requirements. One of them is that access to the information in question may not be restricted by law. The right to access may be restricted for reasons of protection of life, health, safety, judiciary, defense, national and public security, economic well-being of the country, threatened breach of state, official, business or other secret, whose disclosure might have serious consequences for legally protected interests which prevail the interest of accessing the information. In certain instances, this right may be restricted for reasons of protection of privacy and other personal rights. In addition, protection of whistleblowers is provided, if the whistle blowing employee had reason to believe in the authenticity of the information; if he/she has not enjoyed any benefit from allowing access to the information in question; if he/she has informed the competent person in the state authority in advance about irregularities in question, but that person failed to take measure to remedy the reported abuse.

4. Law on Bankruptcy ("Official Gazette of the Republic of Serbia", No. 104/2009)

According to the new Law, payment incapacity over an extended period of time, which is one of the reasons for bankruptcy, exists if the debtor is not able to pay its liabilities within

45 days from the due date of payment, or if it completely suspends all payments for 30 consecutive days. In the current media situation in Serbian, the new Law on Bankruptcy may be relevant for a large number of media suffering longstanding solvency problems. One of the aims of the new Law is to motivate creditors to resort to bankruptcy proceedings. Namely, statistics have shown that, in Serbia, debtors are often too late and mainly reluctant to initiate bankruptcy proceedings. Moreover, when bankruptcy is declared, there are most often no more assets to protect and hence the creditors get a meager share of their claims. The legislators wanted to improve the efficiency of bankruptcy proceedings by speeding it up and making it less expensive, while at the same time enabling creditors to receive a more substantial share of their claims.

The new Law provides for special proceedings in case of extended payment incapacity of no less than one year. The Bankruptcy Judge shall bring *ex officio* the decision on initiating preliminary bankruptcy proceedings for legal persons that are incapable of paying their debts for the above said period of time. Such preliminary bankruptcy proceedings may not be subject to an appeal. Within 60 days from the publishing of the decision on initiating preliminary bankruptcy proceedings the creditors or the bankrupted debtor have to request implementation of the bankruptcy proceedings and deposit an advance for the costs of the advertisement and notifying the creditors. If they failed to do so, bankruptcy proceedings shall be opened, the extended payment incapacity shall be ascertained, together with the lack of interest of the creditors and the bankrupted debtor for the implementation of the bankruptcy proceedings, which will finally result in the closure of the bankruptcy proceedings. When the bankruptcy decision becomes final, the legal person shall be deleted from the register and its assets assigned to the Republic of Serbia. In the transitional and final provisions of the new Law, in view of a large number of legal persons that are incapable of payment over an extended period of time, it is stipulated that in the course of 2010 such special proceedings will be implemented in the case of companies that have ceased all payments in an uninterrupted three-year period. In the case of companies that have ceased all payments in an uninterrupted two-year period, the said proceedings will be implemented by the end of 2011.

5. Law on Misdemeanors ("Official Gazette of the Republic of Serbia", No. 101/2005, 116/2008; 111/09)

The Amendments to the Law on Misdemeanors (in effect since January 1, 2010) have introduced a change to the provisions which determine the ranges of fines that may be pronounced for misdemeanors. For natural persons, fines range from 5.000 to 150.000

dinars; for legal persons, they range from 100.000 to 2.000.000 dinars; and finally, fines for entrepreneurs range from 10.000 to 500.000 dinars.

Even before the adoption of the latest amendments, the Law prescribe stipulated that, as an exception to the prescribed ranges of fines, special ranges may be provided for by the Law. They have to be proportionate to the amount of the damage caused or unpaid liability, to the value of goods or other item that is the subject of the misdemeanor, but not exceeding the twentyfold amount of these values, including for misdemeanors in the area of public information. We hereby remind that the Amendments to the Law on Public Information adopted in late August provide for fines amounting to up to 10 million dinars. Nevertheless, we believe that misdemeanor fines stipulated by the Law on Public Information remain disproportionate even after the adoption of the amendments to the Law on Misdemeanors.

IV MONITORING OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

- a) Part of RBA activities have already been elaborated in section II of this Report concerning the implementation of existing laws (see subparagraph 2 – Broadcasting Law).
- b) On December 1, 2009, the RBA published on its website a press release about the issuance of licenses for radio stations. The notice was aimed at broadcasters that won licenses for local and regional broadcasting and for broadcasting in the area of the City of Belgrade on December 29, 2008, and whose decisions are final – advising them to address the RBA to take part in the radio station license issuance procedure.
- c) During December, the media were reporting that the RBA had made a Draft of the Rules that would govern the broadcasting of TV program in cable systems. According to RBA representatives, the text has been delivered to the Association of Cable Broadcasters and major cable companies and negotiations were to ensue. Talks will also be held, in the continuation of the process of adoption of the said Rules, with journalists' associations and the civil sector. The result will be the adoption of the Rules by the RBA Council, to be tabled to the Government for approval. The media reported that the Draft Rules stipulate a form, as well as the manner of issuance of the license for all channels that are not in possession of a

broadcasting license, but want to be part of a cable distribution system. The Rules also contain information about the license issuance procedure: the cable operator must first apply for a license with the RBA in order to air a particular program in its system; the RBA will then directly communicate with the company that has produced the said program, study its program schedule and everything that is required for the issuance of a license. By the time of the closure of this Report, December 31, 2009, there was no information about whether the talks between the RBA and cable operators had been held at all or about the results of such talks.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

a) On December 3, 2009, RATEL published on its website the notice on the deadline for producing technical documentation and issuance of licenses for radio stations pertaining to broadcasters holding licenses for regional and local areas. The applicant must submit to RATEL all the necessary technical documentation by December 31, 2009 and RATEL shall issue licenses for radio stations by February 12, 2010.

b) In the observed period the public debate on the Draft Rules on the Level of the Fee for the Use of Radio Frequencies was closed. All interested parties had the opportunity to address their objections and suggestions to RATEL by December 11, 2009. We remind that the Government did not approve RATEL's decision dated July 21, 2009, on the temporary 5% reduction of fees for the use of radio frequencies in 2009 for broadcasters, requiring changes to the said Rules. By the time of the closure of this Report, there was no information on RATEL's website about whether any particular objections had been adopted and if the final text of the Rules was approved by RATEL's Management Board and sent to the Serbian Government for approval.

c) In the observed period, pursuant to its powers under the Law on Telecommunications, RATEL passed a dozen of decisions on extending the deadline for the putting into operation of radio stations, giving more time to broadcasters to procure the necessary technical equipment. RATEL's Management Board also adopted more than 25 decisions prohibiting the operation of radio stations for unauthorized use of radio frequencies. Both efforts are commendable, for the first shows that RATEL has recognized and understood the economic hardships of the broadcasters, while the second is a sign that RATEL is determined to fight broadcasting piracy. In order to have good results in curbing unlawful broadcasting, which was one of the main problems for lawful broadcasters in 2009, in addition to the actions of regulatory bodies, there must be an organized and coordinated effort by all competent state authorities. In the scope of the Government's package of urgent measures for supporting the media in the time of crisis, the measure for combating unlawful

broadcasting failed to produce any results. Hence, the efforts of regulatory bodies and RATEL in particular, had fewer results than expected, at the expense of lawful broadcasters that saw their situation further deteriorating.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

a) In this period, the Parliament ended its Second regular session in 2009, which lasted between October 6 and December 29, 2009. In December, the Sixth and Seventh sitting of the said session were held and the Second sitting, which started on the 26 of October, concluded.

The *Second sitting* was extremely important for the media sector. On voting day, December 11, 2009, the Parliament elected Goran Pekovic for member of the RBA Council as a candidate of domestic NGOs and citizen associations and also 19 members of the Serbian Broadcasting Institution Program Committee: 7 members of Parliament and 12 RBA candidates. In addition, the Parliament adopted the Law on Classified Data, the Law on the Amendments to the Law on Free Access to Information of Public Importance, the Law on Copyright and Related Rights and the Law on Bankruptcy. Although none of these laws may be considered as directly relevant for the media, they all affect them, which were elaborated in more detail in the section of this Report about the monitoring of the adoption of new laws.

The *Sixth sitting* was not important for the media sector.

On voting day of the *Seventh sitting*, on December 29, 2009, the Parliament elected three members of the RBA Council, namely *Goran Karadzic* at the proposal of the Vojvodina Parliament, *Svetozar Stojanovic* at the proposal of the Conference of Serbian Universities and his Grace *Bishop Porfirije Peric*, at the proposal of traditional churches and religious communities. The said three members were actually re-elected, as they were already members of the RBA Council (since 2005); their mandate shall be 6 years. Hence the RBA Council was added four new members, including Pekovic, who was elected on December 11. At the same session, at the proposal of the Government, the Parliament adopted the amendments to the Misdemeanors Law, the amendments to the Criminal Code and the amendments to the Law on the Prevention of Violence and Misbehavior at Sport Events. In the opinion of the authors of this Report, the courageous investigative journalism of Brankica Stankovic and the team of RTV B92's program "Insider" have greatly contributed to the adoption of mentioned amendments. The amendments to the Misdemeanors Law have

implications directly affecting the media, which has been described in more details in section III of this Report – Monitoring of the Process of Adoption of New Laws.

b) At its session on December 18, 2009, the Parliament's Culture and Information Committee made its own list of two candidates for member of RBA Council, on the basis of proposals by public broadcasters' associations, journalists' associations, professional organizations of film and drama artists and composers' associations. The Committee concluded that the authorized proposers had failed to conform their lists to Broadcasting Law requirements in the additional 15-day term, having proposed three instead of two candidates. The associations of journalists and media associations proposed Gordana Susa and Branko Zujovic, while professional associations of film and drama artists and composers' associations proposed Bozidar Zecevic. Hence, in keeping with its powers granted by the Amendments to the Broadcasting Law adopted in May, the Committee selected by vote two candidates out of three proposed, specifically: Gordana Susa and Bozidar Zecevic and submitted such list to the Parliament for election one of them for RBA Council member. The Committee did not provide any explanation of its decision to the authorized proposers.

Interestingly, the Committee did not address a request to the Parliament to consider the said list of candidates in an urgent procedure, as it did with previous lists that were considered by the Parliament, electing four members of the RBA Council. According to the Serbian Constitution, it hence remained for the fifth new member of the RBA Council – who would fill in the vacancy created back on February 17, 2009 – to be either elected on the first regular session starting on the first working day in March, or on a extraordinary session, which may be held at the request of no less than one third of MPs or the Government.

4. THE MINISTRY OF CULTURE

a) On December 11, 2009, the Ministry of Culture posted on its website a press release about the adoption of the Law on Amendments to the Law on Free Access to Information of Public Importance, with the key information about these changes. Although the press release was not clear about it, the Law had transferred the authority to supervise its implementation from the Ministry of Culture to the Ministry of Public Administration and Local Self-Government. This Law was elaborated in more detail in section III of this Report – Monitoring of the process of adoption of new laws.

b) In a press release on December 18, 2009, the Ministry of Culture condemned the threats and insults against Brankica Stankovic, the author of the program "Insider", voiced by aggressive football fan groups. The Ministry also promised to do everything in its power to protect journalists and enable them to do their job unhindered. In addition, the Minister of Culture, together with the representatives of ten diplomatic missions in Belgrade, visited RTV

B92 on December 22, 2009, thus providing open support to this station and its reporters engaging in investigative journalism. Such reaction by the Ministry to direct death threats and hate speech against Brankica Stankovic and the “Insider” crew is the Ministry’s first public condemnation of threats made against journalists and freedom of expression in Serbia, at least to the best of knowledge of the authors of this Report. The Ministry’s support to the reporters of RTV B92 is commendable; however, we would like to see this competent authority voice such public reactions to various forms of threats, made either against reporters and their work, or against freedom of expression.

c) On December 14, 2009, the Ministry of Culture and the Council of Europe organized in Belgrade a round table entitled “New Media – Council of Europe Standards”. The participants of the round table were the representatives of the media industry and associations, while the topics were the following: Human Rights and New Media; Council of Europe Standards for the Protection of Human Rights in the New Media and Communication Environment; the Reykjavik Documents; Media Policy for a New Media Environment; and Media Strategy of Serbia and New Media.

The aim of the event was to try to find quality sustainable solutions for the challenges faced by the Serbian media, which would be in line with European standards and the best European practice.

d) In late December, the media reported about the plans voiced by representatives of the Ministry of Culture about their plans for the media sector in 2010. They announced the adoption of the Media Sector Development Strategy and the continuation of the transformation of Serbian media. According to statements made by Ministry officials, the Parliament is expected to consider the Amendments to the Broadcasting Law and the Law on Unlawful Media Concentration and Transparency of Public Media Ownership.

Similar statements were made in the course of 2009 too, but unfortunately they were not put into practice. The working group tasked with drawing up the Media Sector Development Strategy is yet to be established, although the authorities have repeatedly said the Strategy was urgently needed. The working group for drafting the amendments to the Broadcasting Law is no longer Ministry’s group; now it is working under the auspices of OSCE, since the group members were discontented with the treatment getting from the Ministry, as well as with the passing of the amendments to the Law on Public Information without having been consulted. The Law on Unlawful Media Concentration and Transparency of Public Media Ownership is supposed to be in the procedure, but there is no information about the current phase of the process or its final text thereof. Therefore, it would be good to see the promises made by the authorities materialize in 2010; otherwise, the decline of the media sector will continue rapidly, which will unavoidably lead to an erosion of the accomplished level of society’s democratization, which is still insufficient.

COLLECTIVE ORGANIZATIONS

5. OFPS – the Collective Organization for the Protection of Phonogram Producers' Related Rights

On November 2, 2009, the OFPS Management Board passed a new Tariff for the fees charged to the users. The provisions of the Tariff concerning tariff scales for users, with a higher level of fees, shall come into force on January 1, 2010. The OFPS has hence used the last chance to once again determine the Tariff independently, prior to the passing of the new Law on Copyright and Related Rights. The OFPS thus make sure this Tariff's implementation until the level of the Tariff, conformed to the new Law, is introduced. The said Law does not allow collective organizations to pass the Tariff independently anymore; collective organizations shall be obliged to negotiate the level of the Tariff with the users. Failing an agreement, in which case the management of collective organizations shall set the Tariff proposal independently, such a Tariff shall become effective only if approved by the Copyright and Related Rights Commission, which consists of an equal number of representatives of collective organizations and users, respectively.

We hereby only wish to highlight that the new OFPS Tariff has increased the fee for commercial TV broadcasters from between 0.70% and 1.25% to between 1% and 2% of overall revenues. The fee for commercial radio stations was increased from 3% to 3.5%. Along with a series of other bad solutions (increase of the minimum fee, scrapping the flexible scale, etc.), the increased fee makes this Tariff utterly expensive for broadcasters, putting them in an even more difficult situation.

The new Law on Copyright and Related Rights was adopted on December 11, 2009 and became effective on December 24, 2009. The legal effects of this Law on collective organizations and broadcasters are elaborated on in section III of this Report – Monitoring of the Adoption of New Laws.

V THE DIGITALIZATION PROCESS

The implementation of the Strategy of the Transition from Analog to Digital Radio and TV Program Broadcasting in the Republic of Serbia, adopted by the Government of the Republic of Serbia on July 2, 2009, was compromised from the very beginning. Namely, most of the activities envisaged by the Action Plan adopted in parallel with the Strategy, providing for deadlines by the end of 2009, have not been realized. Namely, the Parliament of Serbia

has still not adopted the Law on Verification of the Final Acts of the Regional Conference on Radio Communications for the Planning of the Digital Terrestrial Broadcasting Service in Frequency Ranges 174-230 MHz and 470-862 MHz (RRC-06); the conceptual design of the distribution network project, namely the selection of channels according to distribution zones, which is the task of RATEL and the Ministry of Telecommunications and Information Society, has not been drawn up; furthermore, the financial plan for the procurement and distribution of set top boxes, which is the task of the Ministry of Telecommunications and Information Society and the Government of the Republic of Serbia, has not been laid down. The Ministry has posted on its website a portal about the digitalization process at the address <http://digitalizacija.gov.rs/>, but the portal was inadequately promoted and advertised.

However, on December 10, 2009, the Government appointed the Chairman and the members of the management board of the public company “Broadcasting equipment and communications”. We remind that, in accordance with the adopted Strategy, this company is tasked with managing the broadcasting infrastructure that represents the broadcasting system of the Republic of Serbia. That system has been created by separating the equipment from the Broadcasting Institution Radio Television of Serbia. Pursuant to the Strategy, the public company “Broadcasting equipment and communications” will be obliged to apply the same, non-discriminatory conditions pertaining to quality, accessibility and fees to all broadcasters. The fees for its broadcasting services shall be cost-based, while the company’s role will be purely a technical one, without the possibility of influencing choices related to program and program content.

The following persons, unknown to the wide public, have been appointed to the Managing Board (MB): Marina Kendereski, Graduated Lawyer and Assistant Secretary of the City Council of Pancevo, was named Chairperson of the MB; Nenad Filipovic PhD, Associate Professor on the Department for Applied Mechanics and Automated Steering of the Faculty of Mechanical Engineering of the Kragujevac University, as the Deputy Chairperson; Jovan Todorovic, Economist from Loznica; Nikola Spasic, Graduated Mechanical Engineer and Senior Associate in the ICT Sector of the public company JP PTT “Srbija” from Nis; and Bojana Vitanovic, Graduated Lawyer and Petar Djekic, Graduated Electrical Engineering Engineer, as the representatives of employees.

VI THE PRIVATIZATION PROCESS

After a two-year break, only 4 of 12 media companies were privatized at an auction held on December 11, 2009 in the Privatization Agency. Radio Smederevo was privatized at the price of 9.3 million dinars; Radio Obrenovac at the price of 134.000 dinars, while TV

Cacak and Radio Cacak were sold to the same bidder at the initial price of 12 million dinars. The new owner of Radio Smederevo is Milos Lukic, the son of the businessman and one of the top local officials Milan Lukic. The new owner of TV Cacak and Radio Cacak is Milos Bojovic, the son of the businessman and owner of the local paper "Cacanski glas" Zoran Bojovic. According to media reports, Bojovic is also the owner of "Ishrana", a company making bread and pastry with 54 retail stores in Cacak, Lucani, Ivanjica and Gornji Milanovac. Bojovic also owns the trade company Agrostroj. The new owner of Radio Obrenovac is Dejan Jovanovic from Obrenovac.

The auction for TV Smederevo has been postponed, while the privatization of RTV Vrnjacka Banja has been cancelled, which was explained by a "legal omission while calling the public tender". RTV Vrnjacka Banja had already been privatized for an incredible 191 million dinars two years ago, but the buyer quickly gave up his acquisition. There were no interested buyers for Radio Valjevo, the Public Information Company "Mladenovac", the public company "Regional Television Valjevo", Radio and Television "Pozega" and the Information and Culture Public Company "Barajevo". New auctions have been scheduled for February 19, 2010.

The media have also reported that the local authorities in Paracin decided not to allow the continued privatization of Radio Paracin. The privatization was suspended two years ago, when this radio station started to air a segment of its program in the Roma language, which served as grounds for avoiding privatization, pursuant to the Law on Local Self-Government.

At the same time, the media that have been successfully privatized are also facing problems. For instance, Radio Srbobran was dispossessed of its premises after the local council of Srbobran passed a decision annulling a prior decision assigning these premises to the station back in 1991. The said premises were part of the privatization agreement and the station had been using them since 1982. The owners of Radio Srbobran expect that the controversial decision of the local council will be annulled in proceedings before the Constitutional Court.

VII CONCLUSION

According to the statistics presented by the Serbian Deputy Prime Minister and Internal Affairs Minister Ivica Dacic at a meeting with the representatives of the OSCE, SEEMO and IMI in early December 2009, the number of attacks against journalist in Serbia in 2009 was halved compared to 2008, when there were 138 such attacks. Unfortunately, these statistics were spoiled by a new wave of attacks against B92 and its reporter Brankica Stankovic over a new series of the investigative program "Insider", dealing with the leaders of

extreme supporters and right wing groups. Compared to the situation in 2008 and the mass protests over the unilateral declaration of independence of Kosovo (UDI), the arrest of Radovan Karadzic and the many attacks on reporters during these protests, the statistics, presented by the Minister, sound encouraging. However, we are of the opinion that this is rather the result of a set of circumstances than of a more friendly media environment in 2008. The attacks against Brankica Stankovic have shown that in the public discourse of Serbia there remain themes and social problems that are risky to tackle and report. Furthermore, the fact that certain media joined the attacks against B92, accusing the station of waging a campaign against sports in general, point to a lack of elementary solidarity in the journalist profession. What is commendable is the decisive reaction of the highest state officials who publicly supported Stankovic. B92's Insider has also directly contributed to the passing of urgent amendments to criminal legislation. However, although several attackers have been arrested, it seems that the chief perpetrators remain untouchable.

Contrary to the presented statistics, 2009 will be remembered for the restrictive Law on Public Information that was passed and the Amendments to the Broadcasting Law, which have increased the Government's influence on the composition of the independent regulatory body; the further obstruction of the privatization of local and regional public media; the delay of the implementation of the Digitalization Strategy; as well as the ineffective measures of the Government for helping the media in crisis. At the same time, even the positive examples of government attitude towards the media, such as the amendments to the Criminal Code, which have introduced more stringent sanctions for attacks against journalists, were merely isolated cases and not part of a wider strategy to improve the legal framework and the media environment. The pending media strategy and the announced intensive efforts to further harmonize regulations with European standards and laws have remained only a promise. The entire 2009 year was marked by a continued economic decline of the media and reluctance of the Government to seriously and responsibly tackle the many problems in this sector. This has ultimately had a devastating effect on media pluralism and the role of media in a democratic society.