



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for January/February 2010



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I FREEDOM OF EXPRESSION

In the period covered by this report, there have been several cases pointing to possible violations of freedom of expression.

1. Threats and pressures

1.1. Belgrade daily “Vecernje Novosti” reporter and correspondent from Sabac Aleksandra Delic filed charges with the Sabac police against 46-year old priest of the Serbian Orthodox Church Bogdan Simanic, who allegedly told her on January 30, 2010 that he would wipe the ground with her. This and other serious threats ensued after reports in Novosti, referring to a police press release alleging that Simanic – as the co-owner of the weekly “Glas Podrinja” – had been charged of having embezzled more than 4.6 million dinars. Simanic called the Blic’s correspondent Tatjana Cvejic, shouted curses at her and told her to tell Delic he would break all her bones as soon as he got to see her. The media had already written about the priest from Sabac – who has also been stripped of his paroch by the Church Court – reporting about his violent outbursts, including the beating up of his wife. The Politika daily reported that the unfortunate woman had been hospitalized for nine days in the Neurology department of the Sabac General Hospital: her husband had beaten up her so badly, punching her in the face and body, after which she had to be taken to the Safe House by social workers.

1.2. On February 2, 2010, the daily „Kurir” reported that Infrastructure Minister Milutin Mrkonjic had slapped in the face their reporter Milan Ladjevic in the hall of the Parliament. SNS MP Igor Becic, who was an eyewitness of the incident, said that Ladjevic had asked Mrkonjic why he was quiet at the session of the parliamentary Committee and that Mrkonjic responded with a “mild slap on the face and tap on the shoulder”. Mrkonjic apologized to Kurir’s reporter on the following day. “I appreciate Ladjevic very much and I have had an excellent cooperation with him so far, just like with other journalists. I am sorry if I hurt him. I maybe have an unusual pattern of communication for this era and I apologize for a gesture that happened because I actually like Ladjevic”, Mrkonjic said on a press conference.

1.3. On February 24, 2010, the camera crew of the „Infobiro“ news agency was physically attacked in Belgrade, while filming the attempt of the personnel of the Public Utility Company “Beogradske elektrane” to shut off a citizen owing several million dinars of heating bills from the distance heating system. The Journalists’ Association of Serbia (UNS) called

upon the Prosecutor's Office to initiate criminal proceedings over this assault. In a press release UNS pointed to the amendments to the Criminal Code that were adopted last year, which introduced stiffer penalties for threats and assaults against journalists.

1.4. On February 26, 2010, the swat team of the Pozarevac police attempted, all the while cursing and shouting threats, to take the camera of reporter Momcilo Veljkovic, who was taking pictures of them while they were apprehending a colleague. Veljkovic claimed to have seen officers from the swat team in the street in Pozarevac while they were apprehending their colleague Predrag Simbaljevic for misconduct in public. After he took out his camera and started taking pictures, the police officers started shouting and cursing, while closing on him in a threatening manner. Veljkovic flashed his journalist card, but the police continued to curse at him and make threats. The reporter then called the Police Minister Ivica Dacic on the phone; the latter had given Veljkovic his phone number after the tragic death of his brother, the former "Otpor" member Mile Veljkovic; Dacic told Veljkovic to call him in case of any trouble. After a conversation with one Dacic's staff, the police left Veljkovic alone. The Pozarevac Police spokesperson Jasmina Tisma said that there would be an inquiry about Veljkovic's claims.

According to the Law on Public Information, it is prohibited to directly or indirectly restrict freedom of public information, either by obstructing the free flow of ideas, information and opinion, or to put any physical or other pressure on a media outlet and its staff so as to obstruct them in doing their job. With regard to politicians and public officials, the Law on Public Information provides for a special obligation for them to show a higher degree of tolerance, as well as to make available information about their work to the public. The Amendments to the Criminal Code adopted in 2009 have given to jobs or offices entailing a heightened security risk for the persons occupying these jobs – which are significant for public information - the status of occupations of public interest, which shall therefore enjoy stronger legal protection. Specifically in the case of making physical threats against reporters and in relation to journalist work, the person making threats will be prosecuted *ex officio* and be sentenced to a prison term of between 1 and 8 years. Previously, threats against journalists were only prosecuted under private lawsuits, unless directed against multiple persons, and were subject to a maximum one year prison sentence, namely between three months and three years if made against several persons. Stiffer sanctions were provided for the murder of a journalist provided that the motive is related to the journalist's occupation, namely for serious bodily injuries inflicted to a journalist, when the motive is related to his/her job.

1.5. On February 12, 2010, the *Pirotske novine* daily announced that the local self-government had withheld the already agreed financial support to the said newspaper, when it reported that the Mayor had, in the midst of the economic crisis, purchased a €60.000 worth car.

According to the Law on Local Self-Government, the municipalities are competent for attending to public information affairs of local importance and creating the conditions for public information in the Serbian language and the language of national minorities used on the municipality's territory. In that sense, financial support to the media is an obligation of local self-government. On the other hand, the Law on Public Information stipulates that it is disallowed to directly or indirectly restrict freedom of public information, in particular by abusing government office or by abusing the law.

1.6. On February 15, 2010, the Youth and Sports Minister Snezana Samardzic Markovic said that the Serbian Government's Council for the Prevention of Violence and Misconduct in Sports would propose video clips showing sport fan violence on television to be limited to no more than three seconds. At a press conference after a session of the Council, she said the proposed restriction was one of three measures that would place an additional restriction on the media regarding the broadcasting and reporting about violence in sports. In her words, the Council would propose to the Republic Broadcasting Agency that, instead of publishing the pictures of violent behavior, the media should report about the consequences thereof. Samardzic Markovic also said that the Council would propose that the media refrain from publishing pictures of dead and injured supporters. She added that the said measures were in line with the recommendations of the International Federation of Sports Journalists, FIFA and UEFA, as well as with the Law on Public Information and the Code of Serbian Journalists. The Minister announced that a seminar with the owners and editors in chief of media would be held with the topic of continuing the fight against violence in sports.

In keeping with the Constitution and the European Convention on the Protection of Human Rights and Fundamental Freedoms, the Law on Public Information stipulates that only the court may decide to prohibit the dissemination of certain information, which should necessarily also include footage of sport fan violence. The court may rule on the ban at the proposal of the Public Prosecutor, if the court establishes that such a ban is necessary in the democratic society and the publication of the information in question may result in an irretrievable consequence that may not be prevented otherwise. The grounds for prohibiting the distribution of certain information exists also when such prohibition is necessary in order to prevent: a call to a violent subversion of the constitutional system, breach of territorial

integrity of the Republic, promoting war, instigating violence or racial, ethnic or religious hatred representing the instigation of discrimination, hostility or violence. Any general prohibition to distribute information, without a court decision and without the fulfillment of conditions provided for by the Law, Constitution and European Convention, could amount to censorship.

2. Legal proceedings

2.1. Jasmina Arsic, the Director of the Apoteka Vranje pharmacy and a G17 Plus official, has filed charges against the Novine Vranjske daily. On February 9, 2010, the Independent Journalists' Association of Serbia (NUNS) branded Arsic's action a blatant example of political pressure by local political leaders on the media and journalists. G17 plus rejected NUNS' allegations that the charges filed by their member Jasmina Arsic against Novine Vranjske were politically motivated and announced the examination of the case. The political party stressed the case had nothing to do with politics or G17 Plus, but with the fact that the daily had published incorrect information about the Arsic's institution. The controversial report alleged that, by the fault of an employee of the pharmacy, a citizen was sold salycil instead of glucose, putting his life in danger.

The Law on Public Information stipulates that the person that is personally mentioned in the information, which may injure his/her right or interest, may request from the responsible editor to publish a response free of charge, in which the said person shall claim the information to be untrue, incomplete or wrongly reported. The Law also says that, if the responsible editor fails to publish the response and where there is no reason not to publish it, as well as if the responsible editor publishes the response contrary to the regulations, the person entitled to the response may file charges against the responsible editor. The Law provides for a total of 19 reasons allowing the responsible editor to refuse to publish a response. In the above mentioned case, the responsible editor of Vranjske Vukasin Obradovic invoked one of these reasons – he namely said that Arsic's response did not refute the veracity of Vranjske's report.

2.2. On February 26, 2010, the Appellate Court in Belgrade announced that it had extended the custody of the founder of several daily newspapers Radisav Rodic for an additional month, believing that, if released, he might attempt to intimidate witnesses yet to be interrogated in the investigation under the Prosecutor's Office to widen the investigation. Rodic, the founder of the Belgrade dailies Kurir and Glas Javnosti, was arrested on the on October 27, 2009 for alleged abuse of office. The higher court in Belgrade is conducting an

investigation against Rodic under two requests filed last year by the then District Public Prosecutor's Office. Rodic is under suspicion of having raised a 22-million dinar loan from Komercijalna Banka using false documentation. The tax police recently filed an appendix to the criminal charges before the Higher Public Prosecutor's Office in Belgrade, according to which the charges now also include, apart from Radisav Rodic, Vukadin Rodic, Aleksandar Rodic and Aleksandra Simic. The three are charged as co-perpetrators of the criminal offense of abuse of office committed between March 2000 and August 10, 2009.

Since the penalty for the offense that Rodic has been charged with can be more than five-years in prison, Rodic's custody may be extended for no more than 6 months until an indictment is brought against him.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Law on Public Information

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

1.2. The President of the Serbian Constitutional Court Bosa Nenadic announced at the beginning of the year that this institution would review, amongst other laws, the Law on Amendments to the Law on Public Information. The Spokesperson of the Constitutional Court Dejan Milic has confirmed, in an interview in the Danas daily, that the assessment of the constitutionality of the Law on Amendments to the Law on Public Information has been scheduled as part of the activities of the Constitutional Court in the first quarter of 2010 and that the decision should be expected by the end of March.

1.3. The deadline for the registration of public media, which is provided for as obligatory by the Law on Amendments to the Law on Public Information, expired on January 11, 2010. The Business Registers Agency, which is keeping the Public Media Register, has received a total of 496 applications, while 414 media have been registered. The founders of the not yet registered media are risking fines reaching several million dinars and a court ban on the publication of their outlets. The authors of this report have learned that the only issues that have arisen with the registration were related to cable television channels. These channels

were not registered with the Register and remain in a legal limbo. Namely, the Business Registers Agency requires, as a precondition for registration, the possession of license issued by the RBA. However, the RBA is still not issuing such license due to an absence of the proper bylaws. By the end of the period covered by this report, no procedure had been initiated, nor were there any information about whether any of the major print or electronic media, except cable TV channels, failed to register with the Public Media Register.

1.4. In early February, media and journalists' associations – founders of the Press Council – appointed their representatives to the Managing Board of the first media self-regulatory body in Serbia. The Managing Board of the Press Council comprises the following members: on behalf of the Media Association – Dragan Bujosevic, the Editor in Chief of Politika; Manojlo Vukotic, the Editor in Chief of Vecernje Novosti; and Srdjan Radulovic, the Editor in Chief of the weekly NIN; before Local Press – Vladan Filipcev, the President of the said organisation and the Editor in Chief of "Becejski mozaik"; on behalf of the Journalists' Association of Serbia (UNS) – Ljiljana Smajlovic and Predrag Jeremic and on behalf of Independent Journalists' Association of Serbia (NUNS) – Dimitrije Boarov and Safeta Bisevac. Milorad Ivanovic, the Deputy Editor in Chief of Blic; Aleksandar Djivuljski, the Editor in Chief of Dnevnik and Filip Svarm, the Deputy Editor in Chief of the Vreme weekly will be deputies of the members of the Managing Board from the Media Association. Branko Zujovic and Slobodan Stojicevic will be the deputies of the members of the Managing Board from UNS, Tamara Skrozza and Slavisa Lekic the deputies of the members of the Managing Board from NUNS, while Stojan Markovic will be the deputy member of the Managing Board from Local Press. After it was constituted, the Managing Board of the Press Council called a competition for three representatives of the public in the Complaints Commission, which will be established subsequently. The Press Council, as the first self-regulatory body in Serbia, and particularly the Complaints Commission, is expected to contribute with its decisions to a more consistent application of professional standards; it should also indirectly influence the Law on Public Information, which should result in fewer legal proceedings related to violations of the said Law.

2. Broadcasting Law

2.1. In the period preceding the local elections in the Municipality of Vozdovac, the online radio station "Liberal Democratic Party Zvezdara" began broadcasting and continued to do so after the elections. Rade Veljanovski, Professor at the Faculty of Political Sciences in Belgrade, told the daily Danas that, although no permit is required for Internet webcasting, the broadcasting itself of the said radio station was in breach of the Broadcasting Law. On the

other hand, Assistant Minister of Culture in charge of the media Natasa Vuckovic-Lesendric believes that everything is in order with LDP's radio station, precisely because the Broadcasting Law does not require a permit for Internet webcasting.

The Broadcasting Law indeed stipulates that Internet webcasting is not subject to a permit. However, it also stipulates that the provisions of the said Law apply to the content of the program. Moreover, it clearly says that the holder of the broadcasting permit may not be a political party. The provisions of the Broadcasting Law pertaining to the content of the program and accordingly applying to online media involve, among other things, the obligation to provide free, complete and timely information to the citizens, as well as the obligation to refrain from advertising political organizations outside of the election campaign, namely to secure equal representation, without discrimination, of all registered political parties, coalition and candidates, in the course of the election campaign.

A legitimate question to ask is whether a political party web radio may fulfill such requirements, namely whether the content of its program is lawful, although its operation itself is not necessarily unlawful. Different opinions that may be heard in the public about LDP's radio only confirm that one should not resort to the regulation of new media content by simple analogy and by invoking rules governing traditional media, because new media and new platforms for the distribution of media content often require a new and innovative regulatory approach.

2.2. The Bishop's Palace of the Sumadija Eparchy in Kragujevac was the venue of the meeting of eleven Orthodox radio and TV stations. According to a report in Dnevnik on February 19, the topic of the gathering was networking and content-related cooperation, as well as the initiative to be tabled to the bishops and the Church's Holy Synod for the establishment of the Association of Electronic Church Media. Since 2006, when the issuance of broadcasting licenses began, a total of 11 Orthodox and five Catholic radio and TV stations were established. At the above mentioned meeting, the participants said that the Law did not authorize churches to have national or regional electronic media, but only local ones, as well as that the possibility for the churches to commercialize their broadcasting operations has been restricted, since the possibility to air commercials is subject to all the restrictions applying to the public service. The participants also insisted on a more liberal regime for the networking of church stations.

Article 70 of the Broadcasting Law allows for the networking of two or more broadcasters with the purpose of simultaneous broadcasting, without the use of radio frequencies, in the duration of up to three hours a day, continuously or cumulatively. As an exception, the Law

stipulates that the Republic Broadcasting Agency (RBA) may pass a decision allowing for networking in a longer period of time, if according to the RBA's judgment such decision is in the public interest. Such provision was explained by the concern that the networking of a greater number of local or regional broadcasters could endanger media pluralism and circumvent provisions about media concentration. The liberalization of the conditions for networking is one of the requirements that will increasingly be voiced by not only church stations, but also commercial ones, especially in the time of crisis when few can afford quality media content. One of the current projects is the TV project "National", aired on a number of regional television stations, the duration of which does not exceed three hours per day. According to the findings of the authors of this report, the RBA did not pass any decision allowing for networking exceeding three hours per day, nor has it received any request to that effect.

III MONITORING OF THE ADOPTION OF NEW LEGISLATION

The Parliament of the Republic of Serbia did not convene in January and there was only one extraordinary sitting in February concerning the Draft Law on Parliament, as the sole item on the agenda. In the coming period, concerning legislation directly relevant for the media sector, MPs are expected to discuss the draft law on the verification of the final acts of the regional conference on radio communications for the planning of the digital terrestrial broadcasting service in parts of the regions 1 and 3, in the 174-230 MHz and 470-862 MHz (RRC-06) frequency ranges, the adoption of which is also obligatory under the Digitalization Strategy. The Parliament is also expected to discuss the Law on the Amendments to the Law on Free Access to Information of Public Importance, as well as the Law on the Classification of Information in Texts, which has received the support of more than 35 thousand voters. However, the Parliament has recently adopted two identical laws, the texts of which were proposed by the Government. Hence it would be unrealistic to expect that the two above proposals will receive support. Currently there is no law relevant for the media on public discussion, while the drafts of the Broadcasting Law and the Advertising Law, which are currently worked on by the working groups, are yet to be publicly presented.

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)

1.1. In early January 2010, the Government of Serbia announced that it would give out 16.690 packages with food and personal hygiene products to poor families, to be covered by the surplus revenues of the Republic Broadcasting Agency. The total amount of the aid is estimated at 55 million dinars.

Article 34, Paragraph 7 of the Broadcasting Law stipulates that, if it is established in the annual statement of revenues and expenditures that the total revenues exceed the expenditures, the difference shall be paid in the budget of the Republic of Serbia and allocated in equal parts for the improvement and promotion of culture, healthcare, education and social security. There have been several warnings that there is no adequate mechanism to trace whether the said difference is spent properly. The Government's statement is the first case where the public was informed about the expenditure of these funds. It stopped short, however, of providing any details as to how exactly these funds were apportioned for the improvement and promotion of culture, healthcare, education and social security. At the same time, commercial broadcasters, their associations, and particularly ANEM, have pointed out on several occasions that the purpose of the fee paid to the RBA was to ensure the operational and financial independence and self-reliance of that regulatory body, namely to cover the costs of its regulatory activities. The total level of fees should be planned so as to cover the actual costs of the RBA and the mandatory reserve. The fact that in the last few years the Agency had a surplus of revenues over expenditures reaching up to 50% is a proof that the media are subject to inappropriately high fees. On the other hand, since this is the first time that the Government is going public about a particular purpose for which a small portion of the said funds has been spent, one could conclude that these funds have so far not been spent in accordance with their intent.

1.2. Pursuant to the decision of the RBA Council dated December 28, 2009 the Agency reminded the broadcasters in a press release published on January 13 on the RBA website that they were obliged to report in writing any and all changes to the ownership structure. Failing the latter, the RBA shall be authorized to lodge a request for initiating misdemeanor

proceedings and initiate a procedure for pronouncing measures provided for by the Broadcasting Law.

The media have reported that in the course of 2009, the RBA Council adopted 24 decisions approving changes of the ownership structure of radio and television broadcasters, mostly in case of capital increase and transfer of share. Among the broadcasters whose ownership structure changed in 2009 are the television stations Foks, Hepi, Kosava, B92 and the radio stations Roudstar and Srbobran. The fact that the Council is reminding media owners of their legal obligation could be interpreted as the RBA being suspicious of the actual number of ownership changes, namely that there were more such cases than reported. Failing to report a change of ownership structure may lead to the revoking of the broadcasting license where such change has resulted in unlawful media concentration or unclear ownership.

1.3. On February 2, 2010, the RBA posted on its website the draft rules on the manner and conditions for the issuance of radio and TV broadcasting license through telecommunication networks and called upon all interested parties to submit their opinions, proposals and suggestions related to the said draft within 15 days. According to the findings of authors of this report, proposals and suggestions have been also submitted by media associations and cable distributors. The RBA has announced that the corrected version of the draft rules will be once again posted on the Agency's website in order to collect new comments and suggestions of interested parties prior to the formal opening of the public debate.

Pursuant to the Broadcasting Law, the RBA is competent for providing for technical, organizational and programming conditions for the production and broadcasting of content, as well as for issuing licenses. The Law also stipulates that the licenses for terrestrial broadcasting shall be issued on public competitions, as opposed to licenses for cable or satellite broadcasting, which shall be issued without public competition, at the request of the cable or satellite operator, respectively. The Broadcasting Law was adopted back in 2002 and the RBA has been calling public competitions for the issuance of broadcasting licenses since 2006. However, although a large number of households in Serbia is not watching television content via terrestrial broadcasting, but by cable or satellite DTH distribution, no cable or DTH channel has been issued a license yet. The issuance of licenses for cable and satellite broadcasting represents not only the completion of the process of adapting broadcasting to the legal framework in Serbia, but also a test of the RBA's regulatory capacity in the wake of the coming digitalization of terrestrial broadcasting.

1.4. In early February, the Deputy President of the RBA Council Goran Karadzic told daily *Blic* that he was hoping that the issue of pirate broadcasting in Serbia would soon be resolved. Karadzic claims that, pursuant to Article 14a of the Law on Public Information, all media that are not registered with the Public Media Register must cease to operate. Failing the latter, the Prosecutor's Office is authorized to call upon the court to pass a temporary injunction, based on which the police may seize the equipment used for illegal broadcasting.

While recognizing the seriousness of the problem of piracy in Serbia, the authors of this report believe that the strategy for combating piracy proposed by the RBA, as well as by other sources, entails some serious consequences. Namely, according to what the President of the Constitutional Court Bosa Nenadic and the Spokesperson of that Court Dejan Milicic have announced, the decision under the request of the Ombudsman for assessment of the constitutionality of the Law on Amendments to the Law on Public Information is expected by the end of March. The Ombudsman's proposal pertains, among other things, to Article 14a of the said Law, stipulating that, where a public media is published without being registered with the Public Media Register, the competent Public Prosecutor shall without delay initiate commercial offense proceedings before the competent court and ask for a temporary suspension of the publishing of the public media in question. The Ombudsman's proposal indicates that the provision in question is not in compliance with the provisions of Article 50, paragraph 1, Article 46 and Article 20, paragraph 2 of the Serbian Constitution, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Article 19 of the International Covenant on Civil and Political Rights. Article 50 of the Constitution guarantees freedom of media, Article 46 guarantees freedom of opinion and expression, while Article 20 lays down the conditions under which human and minority rights may be restricted. The Ombudsman believes that in this case the above articles have been breached. The closing down of media – pirate or not – by invoking the provisions the constitutionality is to be assessed, would result, after the said constitutionality is determined, in the situation in which the “pirates” would gain, pursuant the provisions of the Law on the Constitutional Court, the right to request that the decisions, under which their activity has been suspended and their equipment seized, be reversed. According to the opinion presented by ANEM in a memo submitted to the Internal Affairs Ministry, as well as on a meeting with the Minister Ivica Dacic and the Police Director Milorad Veljovic, radio piracy is a criminal offense on multiple grounds, which should be combated by pressing criminal charges and not by invoking provisions of media laws the constitutionality of which has been disputed. Namely, pirate broadcasting on frequencies that are not adjusted to the Frequency Allocation Plan typically result in interferences hampering the television and radio broadcasting of lawful broadcasters. The latter represents a criminal offense of unauthorized obstruction or jamming of radio and television program referred to in Article 149, paragraph 2 of the

Criminal Code. Pirate broadcasting also entails the criminal offense of unauthorized performance of an activity referred to in Article 353 of the Criminal Code. Launching criminal proceedings would also enable the temporary seizure of broadcasting equipment as the means of the committed offense, namely evidence in the criminal proceedings.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

2.1. After obtaining the consent of the Government of the Republic of Serbia, RATEL's Rules on the amount of costs of issuance of permits for radio stations and the amount of the fee for using radio frequencies have been published in the Official Gazette no. 4/10 from January 29, 2010. The Rules on the issuance of permits for radio stations have increased these costs by up to 12 times, while according to the Rules on the amount of the fee for the use of radio frequencies, the fee is slightly lower than before, compared to electronic media.

2.2. The RATEL Managing Board has given the approval to the company Serbia Broadband – Srpske kablovske mreze d.o.o. (SBB), the largest cable operator in Serbia, to increase, as of March 1 2010, the price of the service of distribution of radio and television program through their networks, to 820 RSD.

Pursuant to the Decision of RATEL from February 2007, SBB is the main telecommunications operator with a substantial market share for the distribution of radio and television program via the cable network. The same Decision imposed to SBB the regulatory obligation to ask RATEL for prior approval of each change of the price.

2.3. On January 29, 2010, the daily Danas reported that, since September 2008, in the campaign of shutting down of radio and television stations that were broadcasting without a license, RATEL had registered 181 pirate broadcasters with 211 frequencies. About 70 have been shut down to date. The number of illegal broadcasters varies, because many, whose facilities and equipment are sealed, later simply break their official stamp and continue to operate.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

As indicated in the previous part of this report, the Parliament of the Republic of Serbia did not convene in January, while February saw just one extraordinary sitting with the Draft Law on the Parliament as the sole item on the agenda. The Culture and Information Committee held only one session on international cultural cooperation.

4. THE MINISTRY OF CULTURE

In an interview for the daily Danas published on January 28, the Culture Minister Nebojsa Bradic spoke about the situation in the Serbian media. The Minister claimed that, in most cases, the economic crisis had merely exposed the problems that the media had already been suffering from. In his opinion, the biggest problem of the media is the lack or absence of responsibility towards the public and claims made in the public realm. Bradic announced that the Ministry of Culture was planning various forms of support and incentives for media projects and programs, with the main criterion being quality. Asked about his expectations from the decision of the Constitutional Court regarding the constitutionality of the Law on Public Information, Bradic said that the Ministry of Culture would respect any decision of the Court and that it supported lawfulness in its area of activity. However, he stressed that the results of the said Law on Public Information ought already be observed and that the Law was driving forward the process of regulating the media sphere in the manner that was beneficial for both professionals and consumers looking for quality. In his words, the Law is not favorable to those who are losing their positions gained by manipulation, abuse and “pollution” of the public communication space.

Regarding the above, we hereby remind that, at least according to the explanation of the Ombudsman’s proposal for the assessment of constitutionality of the Law on Amendments to the Law on Public Information, the provisions of the said Law are not conformed to the provisions of the Constitution of the Republic of Serbia, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights. Notwithstanding the fact that the Public Media Register has begun to function as provided for by the Law, the authors of this report can not agree with the Minister’s opinion that the results of the amended Law on Public Information are visible.

What is debatable is the extent to which the amended Law on Public Information has led to an increase of self-censorship.

5. INTELLECTUAL PROPERTY OFFICE

Branka Totic, the Director of the Intellectual Property Office, has sent a public call for proposing candidates for members and deputy members of the Copyright and Related Rights Commission to organizations for the collective realization of copyrights and related rights, representative associations of users of authors' works and related rights objects, the representative association of producers and importers of appliances for sound and visual recording, namely the importers of blank sound, picture and text carriers, as well as to public broadcasting service institutions. The call was published in the Official Gazette on January 29. The deadline for submitting the proposals is 30 days.

The Copyright and Related Rights Commission is an expert body set up by the new Law on Copyright and Related Rights. It is authorized to deliver its opinion in the area of the realization of copyright and related rights about the tariffs proposed by collective organizations. The Commission consists of the President and four members. The President of the Commission, as well as the members thereof, are appointed by the Government at the proposal of the Director of the Intellectual Property Office. In addition to the President and the members, the Deputy President and two deputy members of the Commission are also appointed. The Law stipulates that, for the purpose of preparing the proposal, the Director of the Intellectual Property Office shall publish in the Official Gazette of the Republic of Serbia and on the Office's webpage, a public call to organizations and representative users associations, for proposing candidates for members and deputy members of the Commission; namely for two members of the Commission and one deputy member. The President and Deputy President are proposed by the competent authority. On the basis of the received proposals, the Intellectual Property Office shall propose to the Government the composition of the Commission, unless it deems that the proposed candidates do not meet the criteria. In such a case, the Director of the Intellectual Property Office may repeat the public call. The term of office of the President and the members of the Commission and their deputies shall be four years and they may be reappointed.

COLLECTIVE ORGANIZATIONS

6. OFPS, the collective organization for the protection of related rights of phonogram producers

The OFPS has announced that its representatives held two meetings on January 20 and February 8, 2010 with the representatives of the Organization for the Protection of the Rights of Performers "PI". The topic was the harmonization of the activities of collective organizations with the new Law on Copyright and Related Rights and the proposals of the single fee tariff that the two organizations will charge to the users. As a result, on February 19, the Official Gazette of the Republic of Serbia published a joint call of the two collective organizations to the representative users associations and to individual users for taking part in the talks about the single tariff of the fee for broadcasting, rebroadcasting and public communication of phonograms and interpretations recorded thereon.

The new Law on Copyright and Related Rights stipulates that the tariff of the collective organization shall be determined by mutual agreement, after talks between the organization and the representative users association. "Representative" shall mean the users association that, on the territory of the Republic of Serbia, represents the majority of users from a certain activity, namely the one whose representativeness was recognized pursuant to other regulations. In the absence of such association, representativeness shall be determined on the basis of the number of users the association is representing, the activities of the association, the degree of organization of the association and the like. The tariff may also be determined by an agreement between the organization and the individual user, if such user happens to be the only one engaging in this type of activity in the Republic of Serbia. According to the Law, individual users that are independently negotiating about the tariff with the collective organization are the institutions of the public broadcasting service. The deadline for reaching an agreement is 60 days from publication of the public call. The fee that the authorized producers of issued phonograms for the broadcasting, rebroadcasting and public communication of phonograms and the performers' fee under the provisions of the new Law on Copyright and Related Rights shall be charged to the users as a single fee. The single fee shall be charged by one single organization determined by the contract concluded between the organization of performers and the organization of phonogram producers. The meetings between the representative organization of performers and the organization of phonogram producers were held with the purpose to determine the proposal of the single tariff, which would serve as a negotiation platform of the two organizations in talks with the representative users association.

7. SOKOJ, the collective organization for the protection of musical authors' copyrights

7.1. SOKOJ, the collective organization for the protection of musical authors' copyrights has published on its website a call to representative associations of musical works users, as well as to individual users that are, by the nature of their activity, the only ones that are performing such type of activity in the Republic of Serbia, for taking part in negotiations in order to determine the proposal of the author's fee for using musical works on grounds including broadcasting and rebroadcasting. SOKOJ indicated in the call that users associations ought to present proof that they represented the majority of musical works users from a certain activity, namely proof of the representativeness recognized to these associations pursuant to other regulations.

See comment with point 6.1.

7.2. On February 24, 2010, on the occasion of its 60th anniversary, SOKOJ held a press conference on which it announced a media campaign including video clips, radio jingles and web clips to be broadcast on all major media in Serbia in the month of March. The clips will not be broadcasted the Public Service due to the fact that SOKOJ is involved in a three-year legal proceeding with the RTS for unpaid author fees. On the said press conference, SOKOJ representatives read a letter of Robin Gibb, the President of the International Confederation of Societies of Authors and Composers (CISAC), who warned the Serbian authorities last November that RTS was not fulfilling its obligations towards musical authors. "During my long music career as member of the Bee Gees and President of CISAC I have never encountered a case of a state broadcaster that is so blatantly avoiding to fulfill its undisputed obligations related to the use of author rights", Gibb's letter said. Responding to the questions of journalists, the Director of SOKOJ Aleksandar Kovacevic said that the RTS debt to SOKOJ amounted to about 300 million dinars, but that the exact amount could not be determined, since it depended on the Public Service's revenues, to which SOKOJ has no access. Responding to Kovacevic's allegations, the RTS, its editorial board, managing board and Director have claimed the amount of the debt to be overinflated. RTS Director General Aleksandar Tijanic claims that his company is still bound by the agreement under which they are paying SOKOJ 1.2 million dinars per year. He reminded that SOKOJ unilaterally terminated the agreement in 2006. "They walked out of the agreement and raised their tariffs six fold. We refuse to pay that much money", Tijanic stressed. In his words, the RTS has offered to pay the fee in proportion to the number of songs played. "The formula is simple: the price multiplied by the number of songs, minus the discount we should be able to obtain for our obligation to air non-commercial music", Tijanic said.

Until the adoption of the Law on Copyright and Related Rights from 2004, which started to be implemented on January 1, 2005, broadcasters used to enter into agreements with SOKOJ under which the latter receive a lump sum fee for the use of musical works. In practice, this resulted in a situation where various musical works users were paying a different fee for the same usage of music. Since 2005, under the pressure of the Intellectual Property Office and unhappy users, SOKOJ gradually abandoned the above mentioned concept of charging lump sum fees and started charging for the use of musical works as provided for by the law. The Law namely stipulated that the fee be paid as a percentage of the revenue generated by the user by using the protected object, whereas the amount paid must be proportionate to the significance such use has in the overall revenues of the user. In the above referred case, the RTS continues to insist on paying a lump sum fee, while offering to pay proportionately to the number of aired songs as an alternative. The first option is contrary not only to the Law on Copyright and Related Rights, but also to the Law on Competition Protection. The Law on Competition Protection stipulates that agreements, which apply unequal trading conditions for the same transactions to different market participants, shall be prohibited and null and void, because they are effectively discriminating against some market participants. The new Law on Copyright and Related Rights stipulates that the tariff shall, as a rule, be determined as a percentage from the revenues the user generates performing the activity entailing the use of the object of protection. The new Law, as well as the previous one, insists on the amount of the fee being in proportion to the significance such use has in the overall revenues of the user. Linking the amount of the fee to the number of songs aired by the broadcaster would result in a situation in which the fee would not be proportionate to the significance that the use of musical works from SOKOJ's repertoire has for the revenues of RTS. The model proposed by RTS is not known to be accepted in the practice of any European country. On the contrary, European practice is precisely what the Law is providing for and SOKOJ is insisting on the same. It is important to mention that if any other commercial station behaved like RTS, that station would be stripped of its license and practically removed from the air in accordance with the provisions of the Broadcasting Law and the conditions of the public competitions on which broadcasting licenses have been issued. In the concrete case, the RTS is abusing the fact it has been granted the right to broadcast its program by the Law and is limited in measures which it may take against RTS for breach of the regulations on the protection of copyright and related rights.

V THE DIGITALIZATION PROCESS

In the period covered by this report there were no major activities in the process of digitalization. The Parliament of Serbia has not adopted the Final act of the Regional Conference on Radio Communications for the planning of the digital terrestrial broadcasting Service in parts of the region in the 174-230 MHz and 470-862 MHz (RRC-06) frequency ranges, the adoption of which by the action plan for the Digitalization Strategy was expected for fourth quarter of 2009. The rights and obligations of commercial broadcasters in the transition to digital broadcasting are still not defined, although it was scheduled in the said action plan for the first quarter of 2010. What is of particular concern is the absence of consultation of the authorities with commercial broadcasters about the details of the obligations the state plans on imposing to them. Also late is the conceptual design of the distribution network, which should be the basis for the project of the primary and secondary distribution network.

On February 18, 2010, at the presentation of the trends in the media sector for 2010 held by the auditing and consulting company Deloitte in the Media Center Belgrade attended, among other participants, by Telecommunications and Information Society Minister Jasna Matic, it was announced that Deloitte has produced for the Ministry an assessment of the costs of digitalization. The analysis pertains to the costs of subsidized purchase of set top boxes, which would cost between 20 and 50 million Euros depending on the chosen model of financing. The Digitalization Strategy itself provides for three possible models of subsidizing the purchase of set top boxes. According to one model, the state would cover part of the purchase costs of one set top box per household for all users relying on terrestrial reception. The other model provides for the state to pay part of the purchase costs of one set top box per household for all users that are paying the subscription fee. According to the third model, the state would cover part of the costs only for socially endangered categories of people.

VI THE PRIVATIZATION PROCESS

The daily Danas reported that 50 electronic and print media in Serbia were privatized in the last six years, while 51 companies remained unsold. The majority of Serbian media, according to the data of the Privatization Agency, were privatized in 2007. Also according to the data of the Privatization Agency, 12 of the said 50 privatized media have seen their privatization agreements cancelled in the meantime. In the case of 39 minority media, the privatization was suspended.

One privatization case, the termination of which has been widely reported by the media in mid-January, is the one of Radio-Television Krajina from Negotin. The agreement was terminated for breach of investment provisions. Radio Krajina had a license for a regional frequency, while the television had a local frequency license.

At the same time, the consortium of natural persons that has purchased at an auction the news and publishing company Sremske novine from Sremska Mitrovica has recently paid the sixth and last installment and has therefore settled all its accounts with the state. Sremske novine are often referred to as a successful example of privatization. Today it is a regional newspaper sold in about seven thousand copies, employing 15 members of staff and three trainees. At the time of privatization in December 2004, Sremske novine had 19 employees and were losing money. The new owners have invested into new equipment and modernization and the staff was reduced when four employees retired.

The Smederevo television, a local station with 40 employees and with several used cameras as its only assets, was sold on a Privatization Agency auction on January 29 for an astounding 42 million dinars, which is 470 times the initial price of 90.000 dinars. The media have reported that the four potential buyers were often mutually raising the price, not waiting for the competition to offer more. The winner was an anonymous consortium represented in the whole deal by Milan Lukic, a local politician and leader of the Citizens' Group "Za bolje Smederevo" (For a Better Smederevo), who had purchased Radio Smederevo for his son just a month before. Lukic did not reveal the identity of the remaining members of the consortium, but hinted they were a German company involved in television production and a well-known Serbian journalist. Only several days later, however, the media reported that the privatization agreement with the said consortium was not concluded and that the auction was cancelled. According to these reports, the reason was the information that the Privatization Agency had received from the Office for Combating Money Laundering.

The Privatization Agency continued to terminate privatization contracts in February. The contract with the consortium that purchased the Pozarevac-based newspaper "Rec naroda" (Word of the People) in 2007 for 11.6 million dinars was terminated on February 10 over an unpaid third installment of the purchase price.

Also in February, four public media companies were privatized – Radio Television Vrnjacka Banja, the Regional Television Valjevo, the Public Company for Information and Culture Barajevo and the Public company Radio Station Despotovac.

VII CONCLUSION

In 2010, the media scene in Serbia is still facing the same challenges as in the previous period. The number of problem is increasing with no possible solutions in sight. The Government has continued to ignore even those obligations it has imposed to itself – for example in the action plan adopted together with the Digitalization Strategy. Meanwhile, the politicians believe that the key problem is the irresponsible reporting of certain media. On the other hand, they think that the positive outcomes are those that are the result of the passing of legislation that, in the opinion of the media, are breaching rights and freedoms provided for by the Constitution and ratified international acts. This report has quoted statement made by Culture Minister Nebojsa Bradic, who said that the biggest problem in the media sector was the absence or deficit of responsibility towards the public and for claims made in the public realm. Mr. Bradic also said that the amended Law on Public Information, which is conducive to the regulation of the media sphere, confirms that fact. Such an approach results in the Government being the one that is pointing to negative phenomena instead of journalists' associations and – in the most drastic cases – the courts. At the same time, nobody is doing the work of the Government, namely ensuring a more favorable environment for the media, which would enable them to fulfill their basic function in a democratic society. Instead of recognizing the function of the media as carriers of information and ideas on political and other issues of public interest and a means of informing the citizens about these ideas and positions, the media are treated as a sector whose only need is to be muzzled and nothing else. The same may be observed in other sectors – from the regulatory sector to resolving the issue of privatization of local and regional public media. Almost eight years after the passing of the law making the privatization of local and regional media mandatory, this task remains not only unfinished, but is being reassessed in an utterly irresponsible manner. The Privatization Agency was left to deal on its own with the problems caused by unsuccessful privatizations, which means it must simultaneously engage in entering into new privatization agreements and in terminating old contracts.

At the same time, the cases where the new owners of the media have failed to pay their dues to the state in the privatization process are highlighted, while the problem of unpaid dues to the employees, who are owed salaries and benefits, is neglected. The issue of non-compliance with professional standards is particularly being neglected. In this case we are once again facing the perception according to which the media are seen as an industry with primary function to replenish the state budget and not to inform the citizens about issues they are entitled to be aware of.