LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for July 2010

ANEM

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I FREEDOM OF EXPRESSION

In the period covered by this Monitoring Report, there were several cases pointing to possible violations of freedom of expression.

1. Threats and pressures

1.1. After posting a blog on the Internet portal WEB 016 referring to a video clip of a crazed driving spree of an unknown BMW driver, the journalist of Radio Leskovac Dragan Marinkovic has been receiving death threats. On the said clip, the driver of the BMW is recklessly driving through the central city streets, scaring pedestrians, even thundering by near the Police Administration building in Leskovac. The driver's antics were recorded on camera and the clip was posted months ago on YouTube. Marinkovic wrote about them on his blog, requesting publicly from the police to establish the identity of the driver and owner of the vehicle and asking whether such behavior would be punished. In one of the comments to his blog, Marinkovic was told that "on the next video clip his body will be in the trunk of the car". Just two days later, on July 16, 2010, it was announced that the police had filed criminal charges with the Court of General Jurisdiction in Leskovac against Aleksandar M. (born in 1987) from Leskovac, for threatening public safety.

Pursuant to the Criminal Code, the criminal offence of endangering safety by making threats against one's life or body shall be subject to a prison sentence ranging from one to three years. The amendments to the Code from 2009 have introduced a qualified form of the said offence, where the safety of a person performing jobs of public importance in the area of information is threatened in relation to the performance of the said jobs. In such a qualified case, the Code provides for a prison sentence ranging from one to eight years. So far, these provisions have been implemented so as to treat mainly journalists of traditional media as "persons performing jobs of public importance in the area of information". In this particular case, Dragan Marinkovic is a journalist working for a traditional media outlet – Radio Leskovac – but it may be soundly argued that the threats made against him were not related to his job of journalist of Radio Leskovac, but to the fact that he is the author of a blog on the WEB 016 portal (http://web016.webs.com/). According to the Law on Public Information, blogs are public information outlets, namely public media, since they represent places where ideas, information and opinions, intended for public distribution to an undetermined number of users, are published by the means of words, pictures or sound. In that sense, the job of the author of the blog, which is a public media within the meaning of the Law on Public Information, should be considered a job of public importance in the area of information.

Consequently, threats against the security of the blogger made in relation to the information he/she has posted on his blog, may be subject to Article 138, paragraph 3 of the Penal Code, as qualified endangering of security and hence to a more stringent prison sentence. It remains to be seen if this will be the position of the competent prosecutor and/or the court; the Leskovac police has initiated the proceedings by filing criminal charges with the Court of General Jurisdiction in that city.

1.2. The police have filed misdemeanor charges against the Deputy President of the Municipality of Coka Ziva Pavlov (43) from Sanad, for disrupting public order and inflicting minor bodily injuries to writer and journalist Djuro Stanojevic (42) from Coka, by punching him in the head and kicking him between the legs. The incident took place in center town on July 5, 2010 around noon, when, after an argument over the texts on Stanojevic's blog, Pavlov assaulted the blogger. Two weeks later, under pressure from journalists' associations and the public, the municipal committee of the Democratic Party in Coka, of which Pavlov is a member, announced that the latter had, with his actions, stained the reputation of the Democratic Party and that he would consequently be barred from performing any public or party functions in Coka. Ziva Pavlov resigned to all his public and party positions. Apart from being the Deputy President of the Municipality of Coka, Pavlov was also the President of the Executive Committee of the Municipal Board of the Democratic Party. He stated that his conflict with Stanojevic would have its epilogue in court, since the police had filed misdemeanor charges, but also because that he had filed a private lawsuit against Stanojevic with the Court of General Jurisdiction in Kikinda for having allegedly degraded and smeared him on the said blog.

What is particularly interesting in this case, apart from the fact that, like in the case of Dragan Marinkovic from Leskovac, threats were made over texts posted on a blog, is that both Marinkovic and Stanojevic are journalists of traditional media in addition to being bloggers. Namely, Stanojevic's blog – Jabberwocky u zemlji čuda (Jabberwoky in Wonderland http://jabberwocky-reloaded.blogspot.com/) says that due to pressure and self-censorship, he could not have published his texts in the local newspaper in Kula. Hence this case is yet another proof of the growing self-censorship in the Serbian press, but also of the fact that the new media in Serbia and the accessibility and democratic quality of the Internet are increasingly used as an alternative platform for disseminating information that otherwise could not have reached the wider public though the print media, radio or television. Another cause for concern is the fact that the police have, in relation to the incident in Coka, filed misdemeanor charges for disrupting public order, even though the evidence point to a possible case of violent behavior, which is a criminal offence, prosecuted *ex officio*. Namely, for the most serious form of disruption of public order, as a misdemeanor, the Law provides

for a 30.000 RSD fine or a 60-day prison sentence. In the case of violent behavior, where that criminal offence involves the infliction of a minor bodily injury, the perpetrator may be sentenced to a prison term ranging from six months to five years.

1.3. On July 24, 2010, Teofil Pancic, the columnist of the Vreme weekly, was attacked and beaten with a metal bar, in a public transportation bus in Zemun. He was diagnosed with a skull contusion and injuries to the right arm. The Police have interviewed Pancic about the incident and inspected the scene of the attack by two unknown men, who had followed Pancic for a while before boarding the bus with him at the station on the Branka Radicevica Square in Zemun. As he was boarding a packed bus, the perpetrators attacked him with metal bars, clubbing him on the head and body. They then escaped from the bus, which was still standing at the station. The police press release said that Pancic, who was entering the bus no. 83 at approximately 11 PM, had been attacked by two persons at the bus station in the Glavna Street in Zemun, in front of number 42. "The attackers, who got on the packed bus behind Pancic, started clubbing him in the head and right arm and after 20 seconds exited the bus, which was still standing at the station", the press release added. The two men ultimately ran away along the Glavna Street in the direction of the Madlenijanum Theater. A metal bar was found on the sidewalk of the bus station. The police drove Pancic to the Clinical Centre in Zemun, where he received medical treatment and diagnosed with minor bodily injuries. In a text published in the July 29 edition of Vreme, Pancic explained that, after several minutes of waiting, he had boarded the bus on the Branko Radicevic Square, after having switched several buses on his route from the Belgrade city center. There were several other people at the station and Pancic didn't notice anything unusual. Immediately after boarding the bus, he noticed two hooded young men who hurriedly followed him inside. They started pulling him and beating him on the head with their fists and a metal bar, trying to knock him down on the floor. None of the passengers came to his aid and the attackers ultimately ran out of the bus, which was still standing at the station. After he had exited the bus to go after his attackers, Pancic was approached by the driver, who found the metal bar on the sidewalk, as well as by another young man. All the passengers left the site of the attack and eventually the bus also left, without anyone calling the police, which came only after Pancic himself called them by telephone. The attack against Pancic was vigorously condemned by the President of Serbia Boris Tadic, the Ministry of Culture, the Minister of the Interior Ivica Dacic, as well as by media and journalists' associations.

By the end of the month, the media reported that two dozen young men from Zemun, who had already been known to the police for their violent behavior, were apprehended. These men were brought in for questioning about the identity of Pancic's attackers. On August 3, the Minister of Interior Ivica Dacic told the Beta news agency that the police had arrested

Danilo Zuza (19) and Milos Mladenovic (18) from Belgrade, under the suspicion of having attacked the Vreme weekly columnist Teofil Pancic. Zuza and Mladenovic were detained for 48 hours, after which they were to be questioned by the investigative judge. Dacic said that the identity of the two young men was established by the means of a DNA sample analysis, since traces of the attackers' DNA were found on the metal bar used to beat Pancic. Dacic added that the identity of the perpetrators would otherwise have been difficult to establish, because the CCTV cameras on the surrounding buildings in Zemun, where the incident had happened, caught the attackers from behind only. The media have also reported that the arrested youth are members of an extreme subgroup of the radical right-wing organization Obraz. The only positive aspect of this case is that the police, unlike in the many other unsolved cases of attacks against journalists, managed to identify and apprehend the perpetrators in less than ten days. After the completion of the investigation, Danilo Zuza and Milos Mladenovic could find themselves indicted for a qualified form of violent behavior, which is subject to a prison sentence of between six months and five years.

2. Legal proceedings

2.1. On July 17, 2010, the Danas daily published the statement made by the Director and Editor-in-Chief of the newspaper "Zrenjanin" Dalibor Bubnjevic that the existence of the said regional paper would be threatened if the Appellate Court should uphold the first-instance verdict of the Higher Court in Zrenjanin, thereby sentencing "Zrenjanin" to pay 408.000 RSD of damages over an article about a murder case to the family of the victim. The controversial first-instance verdict of the Higher Court in Zrenjanin, delivered upon the charges pressed against the paper "Zrenjanin", alleging that it published on February 19, 2010 a text containing untruths about the deceased, which caused psychic pain to the members of his family. The Higher Court in Zrenjanin ruled in favor of plaintiffs, explaining that the published information about the deceased and the alleged possible reasons for the murder did not originate from a state authority, namely that they were cited in the text as "unofficial information".

The authors of this report did not have direct access to the files of the case and the sentence of the Higher Court in Zrenjanin. However, if the content of the explanation of the sentence has been authentically conveyed in the media, they hereby wish to point out that no law provides for the official/governmental origin of a piece of information as a condition to publish them, where such information may infringe on someone's right or interest. On the contrary, the Law on Public Information only provides that, prior to publishing information containing data about an event, occurrence or person, the origin, authenticity and

completeness of such information must be thoroughly checked, in accordance with the circumstances. The latter may not be interpreted so as to insist that the said information must originate from state authorities. On the contrary, the Law expressly provides that the public media shall freely publish ideas, information and opinions about occurrences, events and persons that the public has a justified interest to know, regardless of the manner in which the information has been obtained.

2.2. On July 5, 2010, the Appellate Court in Belgrade began to consider the appeal of the First Prosecutor's Office of General Jurisdiction against the rejection of the charges against six Partizan football fans for threatening the security of TVB92 journalist Brankica Stankovic and violent behavior. We hereby remind that on April 22, the First Court of General Jurisdiction rejected the charges and acquitted the hooligans of the charges of threatening the security of Brankica Stankovic during the football match Partizan-Sahtjor on December 16, 2009. Explaining the decision of the Court to reject the charges against six Partizan supporters, Judge Jelena Milinovic, who chaired the Court's Chamber, said that "the prosecutor in the indictment should have described and written the meaning of the words 'you will fare like Curuvija". In a 25-page explanation, Judge Milinovic also said that 'the Public Prosecutor had failed to describe why Stankovic is considered a person performing an occupation of public interest". The Chamber estimated that the slogan "You will fare like Curuvija" shouted against the B92 reporter "is an obvious metaphor that probably means something, but that the meaning of that metaphor is not to be deducted by the Court on the basis of any personal knowledge of the members of the Chamber. The Prosecutor must, according to the explanation, "indicate and explain in the indictment what the said metaphor means". The First Prosecutor's Office of General Jurisdiction requested in its appeal that the main hearing be repeated before a new Chamber, alleging that the facts from the indictment had been established mistakenly, as well as that the decision on rejecting the indictment had been passed without a session of the Chamber being held, which means that the "decision was just announced as it was already adopted earlier". According to the rejected indictment, four supporters were charged of "endangering security" and another two for "violent behavior".

Although it was announced that the Court would rule upon the appeal of the First Court of General Jurisdiction "in the following days", it failed to pass any decision by the end of July. However, on August 4, prior to the completion of the work on this report, it was announced that the Court had revoked the decision rejecting the indictment and returned the case to court for further proceedings.

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 on in the section about freedom of expression.

1.2. On a session held on July 22, the Constitutional Court decided upon the constitutionality of the Law on Public Information adopted on August 31 last year. We hereby remind that a motion for the assessment of the constitutionality of the said Law, harshly criticized by media professionals, had been tabled by the Ombudsman Sasa Jankovic. There were also another three initiatives pertaining to the same Law. It follows from the release of the Constitutional Court, published on its web site on July 22, 2010, that the Court ruled that most of the provisions of the Law on Public Information were not in accordance with the Constitution and ratified international Treaties. By the time this report was being finalized, the Court's decision was not yet published in Serbian Official Gazette.

First, the Constitutional Court found that the provision, stipulating that a public media may only be established by a domestic legal entity, but not by a natural person or foreign legal entity, was not in conformity with Article 50 of the Constitution, which establishes the freedom of any person to, without any permission and in the manner laid down by law, establish newspapers and other forms of public information. Moreover, the above said provision was found to be in breach of Articles 10 and 14 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and Article 19 of the International Treaty on Civil and Political Rights.

Furthermore, the Constitutional Court found that the provisions, imposing obligations to the Prosecutor and the Court by determining measures that these authorities must undertake in economic offence proceedings, were in discordance with articles 4, 142 and 156 of the Constitution. These articles namely stipulate that the legal system shall be indivisible; that power shall be separated into three branches of government – legislative, executive and judicial; that the courts shall be autonomous and independent; that the Public Prosecutor's Office is an independent state authority that prosecutes criminal and other offenders. Taking into account the fact that the domain of economic offences is already regulated by the Law on Economic Offences, the Constitutional Court found that the provision of different rules of procedure in that area of criminal law results in breaching the principle of the uniformity of

the legal system, as well as the principles of equality before the Law guaranteed by Article 21 of the Constitution. We hereby remind that the Constitutional Court refers in this particular case to the provisions of the Law ordering the Public Prosecutor to request a temporary suspension of publishing of a public media where this media is not registered with the Register of Media Organizations, as well as provisions requiring the court to order the founder of the public media, within 12 hours of the submission of the Public Prosecutor's motion, to temporarily suspend the publishing of the public media even before the outcome of the proceedings that are underway becomes final; as well as provisions ordering the court to mandatorily accompany the fine pronounced for an economic offence with a ban on publishing of the public media. The Constitutional Court also found that, with the provision of the obligation to pronounce a temporary suspension of publishing of the public media in case of failing to register with the Register of Media Organizations, the said registration obtained the character of constitutive element of the procedure of establishment of a public media, which is inconsistent with Article 50 of the Constitution, as well as with Article 10 of the European Convention and Article 19 of the International Treaty.

Furthermore, the Constitutional Court found that the provisions introducing fines for economic offences and misdemeanors against the founder, the founder's responsible person and the responsible editor of a public media, as well as the provisions introducing the obligation of the court to pronounce a temporary ban on publishing of a public media, namely the obligation to pronounce a probation sentence, were inconsistent with the principles of the uniformity of the legal system, equality of all persons before the Constitution and the Law, the principle of division of powers and independence of the judiciary, guaranteed freedom of the media and the right to legal security in criminal law. The Court also found that the prescribed sanctions were also in breach of the constitutional principles provided for in Article 20 of the Constitution that determine the prerequisites for a legitimate restriction of human and minority rights and freedoms, which are also contained in Article 10 of the European Convention. In that manner, the Court actually upheld the criticism that the legally provided fines were excessive, i.e. disproportionate to the purpose of the above mentioned restrictions of rights, which provided that such restriction is legitimate, could be achieved with a lesser limitation of the essence of the right to freedom of expression.

The Court rejected the proposal and did not accept the initiatives pertaining to the provisions of the Law, which stipulate that a public media must be registered with the Register of Media Organizations; which prohibit the publisher from disposing its right to a particular public media or right to publish a public media, as well as the invalidity of such contract; which provide for a ban on establishing a new public media under the same or similar name within one year after the termination of the public media or the cessation of the printing and

publishing thereof; which provide that the Register of Media Organizations shall be kept by the Business Registers Agency; which provide the obligations of that Agency towards the Ministry of Culture, as well as obligations pertaining to the furnishing information to the Ministry of Culture about the founders of public media as subject to forced collection procedure. The Court namely found that the above provisions did not infringe on rights guaranteed by the Constitution and ratified international treaties.

In the part in which the initiatives went further than the Ombudsman's motion for the assessment of constitutionality, the Court accepted the initiative and initiated the procedure for the assessment of the constitutionality of provisions stipulating that the Culture Minister shall regulate more closely the keeping of the Register of Media Organizations, as well as the obligations of founders of public media to submit applications for registration. The Court namely found the question, whether the powers conferred to the Minister were in conformity with the Constitution, to be legitimate.

The legal consequence of such a decision by the Constitutional Court is that the provisions of the Law on the Amendments to the Law on Public Information from 2009 that have been declared unconstitutional shall cease to be effective on the day of the publication of the decision in the Official Gazette of the Republic of Serbia.

Although the decision of the Constitutional Court may be interpreted as a democratic leap forward and a significant achievement in the area of protecting the right to freedom of expression in Serbia, it nevertheless leaves a bitter taste. We may rightfully ask why such law had to be passed in the first place, when since its very adoption it was perfectly clear, ever since its very adoption, that it was unconstitutional. What is even more paradoxical, the provisions of that Law – except for the introduction of the Register of Media Organizations – are not being implemented in practice. Its only outcome is a year lost for the Serbian media in trying to prove the obvious, as well as growing self-censorship in fear of the Law's potential implementation.

2. Broadcasting Law

2.1. The implementation of the Broadcasting Law in this report will be partially elaborated on in the section about monitoring of the activities of the Republic Broadcasting Agency.

2.2. On July 12, 2010, the Republic Broadcasting Agency Council announced that, while examining the annual accounts for the previous year, it had established that the overall revenues of the Agency exceed its expenditures. The press release said that the Council transferred 139 million RSD (the difference between revenues and expenditures) in the budget of the Republic of Serbia. According to the press release, these funds will be earmarked in equal parts for the improvement and development of culture, healthcare, education and social security, respectively.

The revenues of the Republic Broadcasting Agency consist of funds generated from the fee charged to broadcasters for their broadcasting licenses. If the Agency fails to generate revenue from this source, the Broadcasting Law stipulates that the missing funds will be supplied from the Budget of the Republic of Serbia. Pursuant to Article 34, paragraph 7 of the Law, if the overall revenue generated from the fee charged to broadcasters exceed the expenditures of the Agency, the difference will be transferred into the budget of the Republic of Serbia and earmarked in equal parts for improving and developing culture, healthcare, education and social security, respectively. The purpose of this provision, however, is not to introduce an obligation to the Republic Broadcasting Agency to pass financial plans foreseeing revenues greatly exceeding expenditures. On the contrary, the intent of the legislator when introducing the fee was to cover the costs of regulation from that source, namely to secure the Agency's financial independence from the executive. Contrary to such intent of the legislator and the principles provided by the Broadcasting Law of regulating relations in this area, which emphasize the development and incentives to creativity in the area of radio and television programming in Serbia, the RBA is actually financially obstructing the activities of the media by maintaining unreasonably high fees. Most respondents in polls conducted among media professionals say that excessive broadcasting fees and excessive fees of collective organizations for the protection of copyright and related rights are the biggest hurdle for financial self-sustainability. In order to illustrate the excessive level of the said fees, we hereby remind that, in the most difficult period of crisis in the Serbian media, which have seen their annual advertising revenues to drop by at least 20% for the third year in a row, the RBA continues to feed the state budget with huge amounts generated from broadcasting fees, while certain collective organizations proudly boast that they have distributed 25% more revenues than the previous year to owners' rights. RBA's decision to transfer the excess of collected funds in the budget is apparently in accordance with the Law at least to the extent in which the RBA should not be allowed to distribute the difference in revenues and expenditures as bonuses for its employees or Council members. However, such decision is actually in deep discord with the Law, since it may point to the fact that the RBA Council's true goal is not to regulate in order to meet the citizens' need for

quality media content, but to additionally tax the media in order to fill up the budget, at the expense of the said need.

2.3. In early July, the media reported that Aleksandar Tijanic had been re-elected to the position of General Manager of the RTS. Tijanic reportedly received the support of seven members of the Public Broadcasting Service Management Board, while two members voted against him. Tijanic has been occupying the position for six years. Tanjug quoted Tijanic as saying that in consideration for the seven votes he had received in the Management Board he would persevere and justify the support of the viewers in the next four years.

In keeping with the Broadcasting Law, the appointment of the General Manager of the Public Broadcasting Service falls within the competence of the RTS Management Board, consisting of nine members. The members of the Management Board are appointed and dismissed by the Republic Broadcasting Agency from the ranks of journalists and renowned professionals from the area of media, management, law and finance, as well as other prominent figures. The Law bars members of Parliament, members of the RBA Council, Ministers in the Republic or Provincial governments from becoming members of the RTS Management Board, as well as nominated or appointed persons in the executive branch and provincial authorities, and political party officials. The Law expressly states that the Management Board appoints and dismisses the General Manager of the RTS by a two-third majority of the total members, whereby it delivers the decision about the appointment after the completion of a public competition. An interesting issue of concern is the fact that, a whole month after the appointment, which was preceded by a public competition, the reasoned decision of the Management Board on Tijanic's reappointment and the reasons that have motivated the members of the Management Board to make such a decision, is yet to be published. According to what the authors hereof have learned, the reasoned decision about Tijanic's reappointment wasn't communicated to other applicants on the public competition either, which were not chosen by the Management Board. What additionally reinforces the bitter taste left due to the opacity of the Management Board' s activities is the fact that the reports and minutes from its sessions have not been posted on the RTS web page for more than a year and a half now. Moreover, the last session of the Management Board, from which the public may see the minutes, was held in January 26, 2009.

3. Law on Protection of Competition

In the absence of a separate law on media concentration, outside of the rules governing electronic media and cross-ownership of media, which are contained in the Broadcasting

Law, in the period covered by this report, we had two cases of takeovers and mergers in the media sector that have been subject to the Law on Protection of Competition. That Law contains rules pertaining to media concentration, irrespective of the sector where it occurs.

The first case concerns the establishing of a joint company Ringier Axel Springer Media AG seated in Switzerland, in the framework of which the Swiss-based Ringier AG and the German company Axel Springer AG have merged their investments in Eastern Europe – Axel Springer's operations in Poland, the Czech Republic and Hungary and Ringier its operations in Serbia, Slovakia, the Czech Republic and Hungary. This news, as well as the information that the transaction has been approved, amongst others, by the Competition Protection Commission of the Republic of Serbia (CPC) – that found it would not hamper competition in the country – was reported by Blic, the top selling daily newspaper of the newly established Ringier Axel Springer Media Group in Serbia.

At the same time, the CPC has voiced its opinion about the problematic takeover of Novosti. The latter case has been elaborated on in our previous reports, in which we quoted Serbia's Interior Minister Ivica Dacic saying that the police had, at the orders of the Prosecutor's Office, launched an investigation about the privatization of a media company, as well as the press release of the German WAZ media group announcing the takeover of the Austrian company Ardos Holding GmbH, one of Novosti's shareholders, as one of the mechanisms WAZ intended to use in order to sell its share in Novosti and thereby exit the Serbian market. The CPC joined the debate between the management of Novosti and WAZ about whether the CPC's failure to respond to WAZ's request from January 2010 for taking over Novosti might be deemed as an approval of the proposed concentration, when the CPC President Dijana Markovic Bajalovic confirmed to the Beta news agency that WAZ had been informed by the Commission that the concentration had not been approved. Namely, WAZ also own shares of the Politika and Dnevnik dailies and it is at the same time the sole owner of the Stampa system distribution network. WAZ had previously claimed that in January 2010, after the coming into force of the new Law on Protection of Competition, it filed a new request for approval of the concentration and practically given up the request submitted according to the old Law in September last year. From that fact, WAZ inferred that the failure of the CPC to rule upon the request within the four month deadline meant that it had tacitly approved the concentration, which is in fact envisaged by the new Law. However, from the statement of Dijana Markovic Bajalovic, it stems that the Commission believes that this is all one and the same procedure, initiated in September 2009 under the old Law on Protection of Competition which, according to the interim and final provisions of the new Law, must be completed under the same Law that was effective when the procedure was instituted.

Not delving into the interpretations as to who is right in the above case – WAZ or the management of Novosti and the Competition Protection Commission – we wish to remind that the representatives of the publishers of the top selling print media were the most vocal critics of the adoption of the Law on Media Concentration. Since there are no special rules regulating the concentration of ownership of print media, which, concerning electronic media, are provided in the Broadcasting Law and which are significantly more restrictive than the general rules of the Law on Protection of Competition, today in Serbia we have a situation in which the print media market is fairly consolidated, as opposed to the electronic media market, saturated by too many media and too many media owners. Since concentration in the media, just like in other sectors, has both positive and negative effects, the consolidation of the electronic media market is definitively an issue that deserves serious consideration in the future.

III MONITORING OF THE ADOPTION OF NEW LEGISLATION

In the period covered by this report, the Parliament of the Republic of Serbia did not discuss any law of particular relevance for the media sector. However, the Serbian translation of a Media Study was published, which was produced by experts engaged by the European Commission. That Study should represent the basis for the drafting of a Media Strategy and consequently for the amendments to a whole range of regulations, including the Law on Public Information, the Broadcasting Law, the Law on Local Self-Government, the Law on the Capital City and the National Minorities' National Councils. The above should hopefully result in the reorganization and reform of the Serbian media scene. In this report we will hence tackle some of the recommendations contained in the Media Study.

The recommendations of the Media Study are divided in six groups, pertaining to:

- local, municipal and regional radio and television stations and for local print media
- national broadcasting in Serbia
- regulatory bodies – the Republic Broadcasting Agency, the Republic Telecommunications Agency and the Press Countil
- digitalization
- media content (this group of recommendations is dealing with the issues of electronic media program distribution, intellectual property protection and improvement of media litteracy)

- support to media.

The most interesting recommendations are most certainly the ones foreseeing the creation of a new model of regional broadcasting in Serbia, to be based on regional public broadcasters. The authors of the Study the Ministry of Culture propose that the Ministry of Culture defines 10 to 15 regions, each of which would set up a Program Council with 17-21 members. These program councils would elect the management boards of the said new regional public broadcasters. Management Boards with between 7 to 9 members would then, on a public competition, elect the executive directors and editors-in-chief of regional public broadcasters, which would have all editorial and financial powers and responsibilities. Each regional public broadcaster would be established as an independent legal entity, which would take over the equipment and the staff of regional and local broadcasters controlled by the municipalities. The recommendation is also to offer private radio and television stations to assign their equipment and staff in the regional public broadcasters or to continue to air program until the expiry of their broadcasting license. Regional public broadcasters would be funded by a fee derived from the existing subscription fee charged by RTS and would not own any independent frequency; they would broadcast on RTS' frequencies in periods to be determined through collective bargaining mechanisms of the public broadcasters' network and the RTS. The recommendations allow for the possibility for regional broadcasters to increase after a while the number of regional broadcasting hours, namely to set up a joint national channel of regional public broadcasters, if appropriate and if the proper financial and political conditions are met. One of the recommendations is that Radio Television of Vojvodina (RTV) is reorganized as a regional public broadcaster, which would air its program in time slots on RTS channels, instead of boasting the current two channels. Concerning national commercial broadcasters, it is recommended to set up a fund from the RTS subscription fee for their production of content that is typical for a public broadcaster (investigative journalism, documentary content, etc.). It is also recommended, when the licenses are renewed after their expiry, to reduce the existing six national licenses for five television stations, to only two. At that, at the competition for the renewal of licenses, the content of the program would outweigh the potential revenues that the state could generate through fees charged for the frequencies.

A separate set of recommendations concerns the collection of the subscription fee. A new collection system is recommended, which would include the establishment of a separate company, in order to minimize the loss due to collection costs and maximize the efficiency of collection. The Study also recommends that the subscription fee be increased by 50% in order to yield funds not only for the RTS, but also for regional public broadcasters, including RTV, their production of content for RTS, as well as for the regional production of civil society

stations, the program of minority media and the commercial media production of content for RTS.

As early as on July 7, several NGOs from the organization Gradjanska Vojvodina issued a press release sharply criticizing the recommendation that the Public Service of Vojvodina be effectively scrapped, namely to be "reduced to one among the dozen regional radio and television stations operating within the RTS system", as indicated in the press release. Gradjanska Vojvodina went on to say that it was unhappy with the current situation in RTV and that it considers that a huge effort is needed in order to transform RTV in a modern public broadcaster in the service of all citizens of Vojvodina, free of any political interference. On the contrary, if RTV is reduced to a mere "window" of RTS, without its own broadcasting channels, this will seriously jeopardize the rights of the citizens of Vojvodina – particularly the rights of national minorities – to receive information. Gradjanska Vojvodina comprises the Independent Association of Journalists of Vojvodina, the Center for Regionalism (Novi Sad), the Center for the Development of Civil Society (Zrenjanin), the Helsinki Committee for Human Rights (Belgrade-Novi Sad), the Civil Fund Panonija (Novi Sad), the Open Lyceum (Sombor), Green Network of Vojvodina and the Civil Action (Pancevo). There were no comments to the study from other sources during the period covered by this report, but they would likely appear after the start of the public debate and the announced series of round tables.

What may be immediately inferred about the above recommendations is that their implementation would involve a 100% collection rate of the subscription fee (which currently stands at barely 50%), accompanied by a 50% increase of the fee itself. At the same time, although the efficiency of the fee's collection in itself is not contested, the Study falls short of giving any recommendations as to the restriction of RTS' rights to be also funded from commercial sources. On the other hand, the document rightfully recognizes the problem that has been created in Serbia with the issuance of an unreasonably high number of broadcasting licenses; it does not, however, recommend any incentives by which the state could promote the consolidation of the media market. Local and regional commercial broadcasters are recommended to either assign their equipment and staff to the regional public broadcasters and thus practically dissapear and or to continue broadcasting until the expiry of the license, wihout the possibility to renew it. The Study did not propose any alternative to the above concept, for example by incentives for mergers of local broadcasters in order to achieve greater regional coverage, while at the same time favoring still unprivatized municipal media. Access to a larger market, less competition, lower costs and greater municipal funding that would result from such mergers have not been sufficiently examined in the Study. Furthermore, it seems that the space and support provided for by the Study to civil sector

stations are disproportionate to the presence of such broadcasters on the Serbian media scene, in view of the fact that, for example, there are no civil sector television stations in Serbia. A good course of action would be to rededicate regional frequencies that the Study has recommended to be attributed to civil sector television stations and allot them to commercial broadcasters, the dissapareance of which would cause serious harm to the media scene.

Furthermore, it seems that such dramatic interventions in the very core of the media system would need to be carried out gradually and to be constantly reassessed through pilot projects. If the authors of the Study are of the opinion that the citizens may be better informed about regional issues through regional public broadcasters that would be devoid of their own frequency (broadcasting in the framework of the existing RTS channels), such concept could perhaps be tried out in one region or several regions through a pilot project, before its actual implementation in the whole of Serbia. Testing any solution beforehand through pilot projects should not be rejected in advance. Otherwise, if as a society we fail again to make the right decision, the ensuing damage could be irremediable.

IV MONITORING OF ACTIVITIES 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. On July 13, 2010, the RBA announced that it had filed fifty criminal charges with the Special Prosecutor's Office for Cyber Crime against radio stations in a procedure of closure for unauthorized broadcasting. The Agency stressed that the aim of the charges was to effectively curb radio piracy. The RBA's press release said it was a regular activity of the agency in shutting down illegal radio and TV stations, involving also the Special Prosecutor's Office for Cyber Crime, since it has more efficient legal powers for clamping down on this type of offences. The RBA announced that such actions would continue and that the Agency would, in cooperation with the Republic Agency for Telecommunications, identify the offenders and then deliver the information to the Special Prosecutor's Office for Cyber Crime.

In the situation where radio piracy is seriously threatening the survival of commercial broadcasters in Serbia, every effort aimed at curbing piracy is to be comended. However, RBA's statement falls short of revealing the expectations of the Agency from the Special Prosecutor's Office for Cyber Crime or how the latter might act upon the charges filed. Namely, according to the Law on the Organization and Competence of State Authorities in the Fight Against Cyber Crime, which has established the said Prosecutor's Office as a separate department for fighting cyber crime within the High Public Prosecutor's Office in Belgrade, its competence is clearly laid down. The Special Prosecutor's Office for Cyber Crime is competent in cases of criminal offences against the security of computer data, criminal offences against intellectual property, the economy and legal transactions. In the said criminal offences, the object or the means of the crime are computers, computer systems, computer networks or computer data, as well as the products thereof in hard copy or electronic form. Products in electronic form shall involve software and author's works that may be used in electronic form. Additionally, the Special Prosecutor's Office shall prosecute criminal offences against the freedoms and rights of citizens, sexual freedoms, public order and peace and constitutional order and security of the Republic of Serbia, which, due to the manner in which they have been committed or the means, may be considered cyber criminal acts. Most of the offences that could be committed by engaging in radio piracy do not have for their object or means of commission computers, computer systems, computer networks and computer data, at least not directly. ANEM had in the past proposed to the Ministry of Interior that the police, using information obtained from the Republic Telecommunications Agency, should file criminal charges with ordinary prosecutor's offices for the criminal offence of obstruction of broadcasting, provided for in Article 149, paragraph 2 of the Penal Code, - particularly in cases where the pirates are obstructing the operation of legitimate broadcasters by airing harmful interference – as well as for the criminal offence of unauthorized performance of activity provided for in Article 353. According to information obtained by the authors of this Report, ANEM proposal was put into practice and has yielded results. It remains to be seen if the initiative of the RBA will be successful and how the Special Prosecutor's Office for Cyber Crime will act in relation to the charges filed.

2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)

2.1. On a session held on July 7, 2010, the Republic Agency for Telecommunications passed fifteen decisions barring the activities of radio stations (transmitters, namely signal delivery microwave radio relay links). Part of the decisions are pertaining to pirate broadcasters and provide for a permanent ban, while the rest apply to legitimate broadcasters, which have been using radio relay links in disallowed bands for the signal delivery to transmitters, namely the broadcasters that have been puting their transmitters

into operation without undergoing technical inspection. At the same session, RATEL Managing Board also passed four decisions concerning irregularities in the operation of legitimate broadcaters. Such irregularities include broadcasting from a location that differs from the location of the transmitter indicated in the broadcasting license, namely broadcasting with higher power than allowed.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

In the period covered by this report, no law relevant for the media sector was discussed at the sessions or in the committees of the Serbian Parliament.

4. THE MINISTRY FOR TELECOMMUNICATIONS AND INFORMATION SOCIETY

4.1. According to information from the website of the Ministry for Telecommunications and Information Society posted on July 9, 2010, the Ministry called a public competition for the election of the President, Deputy President and members of the Managing Board of the Republic Agency for Electronic Communications. The candidates are required to have high university education from the areas of relevance for the activities of the Agency and particularly from the area of electronic communications, economics and law, as well as to boast valuable and aclaimed works or experience in the area of electronic communications and high reputation in the professional community.

Article 142 of the recently adopted Law on Electronic Communications stipulates that the Ministry for Telecommunications and Information Society shall, within 30 days, call a public competition for the election of members of the Managing Board of the Republic Agency for Electronic Communications, whose term of office has expired. The Managing Board of the Agency has five members; the term of office of four of them has expired, while the fifth member – President of the Managing Board, Professor Jovan Radunovic – resigned on June 14. After the announcement of the competition and the expiry of the 30-day period for submitting applications, the Government shall, pursuant to the Law, be obliged, within 30 days, to lay down a proposal for President, Deputy President and members of the Managing Board that are meeting the criteria for appointment and furnish such proposal to the Parliament, which will decide upon the appointment by voting. Pursuant to Article 141 of the

Law on Electronic Communications, on the day when that Law comes into force, the Republic Agency for Telecommunications (RATEL) shall continue to operate as the Republic Agency for Electronic Communications, while the members of the RATEL Managing Board shall resume their activities until the appointment of the members of the Managing Board of the Republic Agency for Electronic Communications, thus ensuring RATEL's continuity.

5. THE MINISTRY OF CULTURE

5.1. On July 1, 2010, the Ministry of Culture called four competitions from the area of public information: the competition for the co-financing of the production and/or distribution of content of relevance for the public interest; the competition for the co-financing of audio and audiovisual works on regional or minority languages; the competition for the co-financing of projects and/or programs in the area of information for the Serbian people in countries of the region, as well as the competition for the co-financing of projects and/or programs in the area of information of disabled persons. The total amount earmarked for all four competitions is slightly over 30 million dinars.

The grounds for calling the competitions are Article 21 of the Law on Ministries, which provides for the competences of the ministries in the furthering creative activities in the area of audiovisual media, namely Article 5 of the Law on Public Information, providing that the state shall supply part of the funds or other conditions for the operation of public media broadcasting in the language of national minorities and ethnic communities, as well as part of the funds or other conditions for the unhindered enjoyment of the rights to public information of handicapped, disabled persons or other persons with special needs.

5.2. The Ministry of Culture has presented some of its most significant achievements in the previous two years. In a press release published on July 9, the Ministry said that it has embarked in a process of streamlining the media scene in keeping with the requirements of democratic development and international professional and technical standards. The Ministry claims to have ensured the transparency of ownership by introducing a Register of Media Organizations as part of the Business Registers Agency, as well as to have protected objective reporting by penalizing violations of the presumption of innocence and infringements of juvenile rights in media reports. The Ministry also boasted that in the previous two years, Serbia joined the Council of Europe's Convention on Cross-Border Television.

Unfortunately, the authors of this Report may not agree with the self-satisfied tone with which the Ministry describes its achievements in the previous two years. Firstly, the transparency of ownership has not been ensured with the introduction of the Register of Media Organizations, as evidenced by the row over "Novosti" and the controversial takeover thereof by the WAZ media group. The penalties claimed by the Ministry to have protected objective reporting – contained in the Law on the Amendments to the Law on Public Information from 2009 – were declared by the Constitutional Court to be in disagreement with the Constitution and the European Convention on Human Rights and Fundamental Freedoms merely a couple of days after the Ministry had published its press release. Finally, Serbia has ratified the CE's Convention on Cross-Border Television, but with a 20-year delay, since the said Convention was passed in 1989 and EU countries have in the meantime replaced it with a new Directive on Audiovisual Media Services, which means that Serbia is, once again, lagging behind.

COLLECTIVE ORGANIZATIONS

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

6.1. On July 3, 2010, an agreement on business cooperation was published in the Official Gazette of the Republic of Serbia no. 45/2010 concluded between the Organization of Phonogram Producers of Serbia and the Organization for the Collective Exercising of Interpreters' Rights. The Decision of the Intellectual Property Protection Office of Serbia, which renews the license of the Organization of Phonogram Producers of Serbia for performing the activity of collective exercising of related rights, was also published in the same Official Gazette. The constitutive session of the Council of Phonogram Producers and Interpreters, as the body envisaged in the above business cooperation agreement, was held on July 19, 2010. In addition to the constitution of the Council, the Co-President thereof was also elected at the same session.

We have written in our previous reports about the business cooperation agreement between the Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the Collective Exercising of Interpreters' Rights (PI). Entering into such agreement was the obligation of collective organizations imposed by the Law on Copyright and Related Rights and its text was available on the webpage of the Organization for the Collective Exercising of Interpreters' Rights even before it was published in the Official Gazette. The Decision of the Intellectual Property Protection Office of Serbia, renewing the license of the Organization of

Phonogram Producers of Serbia for performing the activity of collective exercising of phonogram producers' related rights, itemizes the scope of phonogram producers' rights that the OFPS is collectively exercising, which excludes any dispute about the scope of rights protected by that organization, namely: a) the exclusive right to prohibit or allow the copying of phonograms in any form and marketing such copies; b) the exclusive right to prohibit or allow the lease of phonogram copies; c) the exclusive right to prohibit or allow interactive sharing of phonograms with the public by wire or wirelessly so as to enable a person to have individual access to the phonogram from the place and in the time of his choosing; d) the right to a fee for the airing of a phonogram; e) the right to a fee for public communication of the phonogram; f) the right to a fee for public communication of a phonogram that is aired; and g) the right to a special fee from import and/or sales of technical devices and blank sound, picture and text carriers which are reasonably believed to be intended for copying phonograms for personal, non-commercial needs. OFPS' license has been renewed for five years.

7. SOKOJ – Collective Organization for the Protection of Musical Authors' Copyrights

7.1. On July 3, 2010, the Decision of the Intellectual Property Protection Office of Serbia, which renews the license of SOKOJ for performing the activity of collective exercising of related rights, was published in the Official Gazette of the Republic of Serbia no. 45/2010.

As in the case of OFPS, SOKOJ license has been renewed for a period of five years, starting from March 26, 2010. The decision pertains to the collective exercising of the following property rights of musical authors, with or without text: a) the right to recording or copying works; b) the right to market copies of works; c) the right to lease copies of works; d) the right to a transmission of performance or presentation of the works; e) the right to broadcast works; f) the right to re-broadcast works; g) the right to public communication of the works, including the interactive sharing of the works with the public; h) the right to public communication of the works that are broadcast;) the right to public communication of a carrier of sound or picture; k) the right to a special fee from import and/or sales of technical devices and blank sound, picture and text carriers which are reasonably believed to be intended for copying phonograms for personal, non-commercial needs; and l) the right to lend phonograms. As in the case of OFPS, the users now clearly know for protection of which rights they are paying a fee to SOKOJ.

7.2. According to media reports in late July, the Trade Court in Belgrade has passed a first-instance ruling according to which the RTS must pay SOKOJ's authors a fee for airing musical works in the amount of 136 million dinars, including interest, as of 2007 until present. SOKOJ's legal representative Milos Pejovic told the Beta news agency that it was the highest ruling awarded in the area of copyrights in Serbia, sending a clear message that laws ought to be observed. Pejovic added that, when the ruling became final, RTS would have to pay more than 200 million RSD to SOKOJ. He added that the RTS had not been paying the fee for a long time. The General Manager of RTS Aleksandar Tijanic said to be appalled by the verdict of the Trade Court. "The RTS has been suggesting for two years that music be divided into traditional folk music and newly-composed music, namely harmful and quality music and all television and radio stations to be charged different fee tariffs for different music. I am appalled by this decision and the attempt of a private association SOKOJ to tap into the subscription system and obtain several million euros per year of Serbian citizens' money. I must stress that I support charging fees for small authors' rights, but I also think that there should be an institution in this country that will stringently punish the fakers of so-called folk music," Tijanic said.

The RTS has failed to pay fees for the use authors' music works, a fact that was confirmed by SOKOJ's legal representatives, but also through the information about the amount SOKOJ is now owed by the RTS after the ruling of the Commercial Court in Belgrade. Consequently, the national public broadcaster can be deemed the largest user of authors' musical works among electronic media. All of this paints a clear picture of the excessively high fees for the use of musical works. Namely, as SOKOJ revealed last month, they have distributed 23% more fees to the authors year-on-year, which is even more stunning since the biggest user has not been paying them anything for a long time. On the other hand, Tijanic's reasoning, if accurately conveyed by the media, is completely out of sync with the law and it will be a poor argument for the RTS in trying to have the ruling scrapped in the second instance. Namely, in accordance with the Law on Copyright and Related Rights, the tariff is determined as a percentage from the revenues generated by the user in performing the activity in the scope of which it exploits the protected musical works. The issues raised by Tijanic might be of relevance for the manner in which SOKOJ distributes the funds collected, but not for the very right to charge the fee. Furthermore, Tijanic's request for all television and radio stations, to be obliged to pay for music at different tariffs, is tantamount to knocking on an open door. At the present time, there are already two tariffs, of which the higher one applies to commercial stations and the lower, more affordable fee, is charged to the public broadcasting service – RTS.

V THE DIGITALIZATION PROCESS

At a session held on July 2, 2010, the Government of the Republic of Serbia passed a decision appointing Vladimir Homan for Director of the public company "Broadcasting Equipment and Communications". We hereby remind that on July 2, 2009, the Government adopted the Strategy for the Transition from Analog to Digital Television and Radio Program Broadcasting in the Republic of Serbia. One of the basic pillars of that Strategy and the realization thereof in the prescribed time periods was the separation of the transmission system from RTS into a new public company and the full operationality of such company that will assume the role of future operator of the network and multiplex. The public company "Broadcasting Equipment and Communications" was established late last year, but until now, it was headed by an Acting Director only, with limited powers. The failure to appoint a Director has resulted in a situation in which the "Broadcasting Equipment and Communications" was unable to fully contribute to the preparations for digitalization or to use the designated EU pre-accession funds. With the absence of a functional operator and partner in the preparations for digitalization, the media are unable to plan their activities in the transition process. In view of the above, the appointment of the Director is good news, but it comes six months too late, which is putting in jeopardy the sustainability of the deadlines laid down in the Strategy for the transition from analog to digital broadcasting.

VI THE PRIVATIZATION PROCESS

6.1. The Independent Journalists' Association of Vojvodina called the Government of Serbia and the city of Sombor to urgently find a way to help avoid the shutting down of Radio Sombor. Radio Sombor has obtained a regional frequency for broadcasting in the area of the Western Backa District in the Serbian, Hungarian, Croat, Bunjevci languages and occasionally in the Roma language. The responsibility of difficult position of the said radio station, in the opinion of the The Independent Journalists' Association of Vojvodina, lies with the state authorities and the local self-government. Radio Sombor was sold at an auction on November 2, 2007. However, in mid-2008, the Privatization Agency terminated the contract with the new owner for failure to fulfil his obligations towards the employees and the state. After the privatization was scrapped, Anita Beretic, the former Director of the radio station and currently the assistant to the Provincial Secretary for Labour, Employment and Gender Equality, was appointed, at the proposal of the trade unions, to the position of temporary representative of state capital, while the shares have been transferred to the State Equity Fund. The employees of Radio Sombor have been paid their last salary (minimum salary) in

August 2009. They are nonetheless still coming to work and discharging their daily duties. At the same time, the city authorities claim that their hands are tied due to vague media regulations and that, save the assistance received from individual competitions, they don't have other options at their disposal.

The example from Sombor is just one of the several cases reflecting the situation of the media whose privatization has failed. The competent authorities have failed to offer any systemic solution that would provide a minimum of hope for the survival of these media and for the sustainable development of local media in Serbia. Even the Media Study, that was produced by experts engaged by the European Commission and which should represent the basis for the drafting of the Media Strategy, has failed to offer these media more than a mere recommendation to either transfer the equipment and staff in the regional public broadcasting service and thus practically dissapear – whereby this regional public broadcasting service would not be broadcasting on a separate frequency but only in limited time slots on RTS channels – or to continue broadcasting until the expiry of the license, wihout the possibility to renew it.

VII CONCLUSION

The month of July was marked by the physical assault on Teofil Pancic, the columnist of the Vreme weekly magazine, in a public place and before witnesses. The attack was unprovoked, save from the opinions on various topics Pancic has been expressing as a writer, which is his job. According to the media, the attackers are members of one of the many extremist far-right organizations. The unequivocal and decisive condemnation by the Serbian public, as well as the swift reaction of the police that resulted in the arrest of the perpetrators, will hopefully be a deterrent for others who could be plotting similar actions. It also raises the hope that Serbia is finally able to find the adequate mechanisms to defend itself from extremist violence against people who hold different opinions. Virtually at the same time, almost a full year after the adoption of the Law on the Amendments to the Law on Public Information, the Constitutional Court passed a decision that hardly surprised anyone: it ruled that the said Law was mostly in disagreement with the Constitution and the European Convention on Human Rights and Fundamental Freedoms. In the period in which that unconstitutional Law loomed as a genuine threat, we have witnessed a rise in self-censorship. The result was that in July 2010, for the first time in the history of Serbian media, journalists were threatened for making their opinion known on their private blogs and web portals and not because what they reported in traditional media. These journalists have often shared their views on their private blogs because, due to self-censorship, they were not able to do it in traditional media.

All that happened without the unconstitutional Law being implemented at all, with the exception of one case where the Belgrade-based Prosecutor's Office filed charges against the "Tabloid" magazine for infringement of the presumption of innocence. All that was achieved, however, in that lone case, at least according to media reports, was a main hearing that was scheduled and then postponed. The draconian penalties envisaged by the controversial Law turned out to be an effective deterrent and there was no need for them to be implemented in practice. On the other hand, the Ministry of Culture claims to have initiated the process of streamlining the media scene in keeping with the requirements of democratic development. It is true that the commissioning and publication of the Media Study produced by EU experts was a positive step forward. However, it remains to be seen to what extent the Ministry will continue with its useful initiatives and whether it will consider the objections already been voiced to the said Study, but also alternative proposals and suggestions that may be expected from domestic media professionals and the representatives of the very media, whose survival and future is at stake.