

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. The incident involving Teofil Pancic, the columnist of the “Vreme” weekly, who was attacked and beaten with a metal club on the evening of July 24 in a public transportation bus in Zemun, received an epilogue with the arrest of the suspected perpetrators. According to the media, Danilo Zuza (19) and Milos Mladenovic (18) from Belgrade have been arrested by the Belgrade crime police in cooperation with the Security Information Agency (BIA). Zuza and Mladenovic are members of one of the subgroups of the nationalist organization “Obraz”. According to media reports, they have confessed the attack on Pancic, stating that the columnist had vexed them “with his anti-Serb views, criticism of the Serbian Orthodox Church and support for homosexuals”. The First Public Prosecutor’s Office has pressed charges against Zuza and Mladenovic for violent behavior. The Independent Journalists’ Association of Serbia (NUNS), the Association of Independent Electronic Media (ANEM), Local Press and the Independent Journalists’ Association of Vojvodina have called for an urgent ban of extremist, clerofascist, neo-Nazi and racist groups in Serbia over increasingly frequent attacks on journalists and minority communities. “Obraz” is one of the organizations whose ban has been requested from the Constitutional Court by the Republic Public Prosecutor.

The Law on Public Information expressly prohibits any restrictions on freedom of information, free flow of ideas, information and opinions, as well as any physical and other pressure on a public media and its staff or influence aimed at obstructing their work. Violent behavior, for which the First Public Prosecutor’s Office in Belgrade has pressed charges against Zuza and Mladenovic, is defined by the Criminal Code as a major threat to the public order by acts of abusiveness or harassment, violence, brawl or offensive and unscrupulous behavior. According to the Criminal Code, sentence for violent behavior can be up to three years in prison. The Code also provides for an aggravated form of violent behavior if committed in a group, or when it has resulted in a minor bodily injury or severe humiliation of the citizens. In such cases of violent behavior, the sanction ranges from six months to five years. Pancic was diagnosed in the Clinical Center in Zemun with minor bodily injury in the aftermath of the attack. Regarding the information linking Pancic’s attackers to the

nationalist organization “Obraz” and the request of the Republic Public Prosecutor with the Constitutional Court for a ban on this group – among other extremist organizations – which this Court is yet to decide upon, we wish to remind that, according to the Serbian Constitution, the Constitutional Court is competent to decide upon bans on the activities of citizens’ organizations. The Constitutional Court may ban only an association whose activity is aimed at the subversion and abrogation of the constitutional order, violation of guaranteed human or minority rights or inciting racial, ethnic or religious hatred.

1.2. On August 7, prior to the Assembly’s session, the delegate of the SRS to the Kursumlija Municipal Assembly Branislav Miljkovic tried to verbally and physically assault journalists because of reporting from the previous session. Miljkovic first attacked TV B92 correspondent reporter Ljiljana Danilovic and went on bullying Radio Free Europe correspondent Milos Ivanovic. The reason was TV B92 story showing the deputy speaker of the Assembly and Miljkovic’s fellow SRS member Zoran Lakic pushing the Secretary of the Municipality from the speaker’s platform. The councilors and citizens prevented the incident from escalating. The President of the Municipality Goran Bojovic apologized to the reporter, while the SRS denied that the incident had happened at all. Ljiljana Danilovic was invited for a meeting with the Deputy President of the Municipality Zoran Lakic, which she attended under the protection of bodyguards because, in her own words, “she didn’t feel safe”. During the meeting Lakic denied again that the incident had happened at all and expressed his dissatisfaction with the report from the session of the Assembly. Ljiljana Danilovic said that she would continue to report on the activities of the local authorities under the protection of bodyguards until she was provided guarantees by SRS officials that reporters in Kursumlija were able to work unharmed.

The Law on Public Information expressly stipulates that public information shall be free and to the benefit of the public; free of any censorship; that all direct and indirect threats to freedom of public information by putting pressure on public media and its staff or influence with the aim of obstructing their work, shall be prohibited. The Law on Public Information also says that public media may freely publish ideas, information and opinions on phenomena, events and persons the public has a justified interest to know about. The same Law also limits the privacy protection rights of state officials if the information in question is vital for the public, since the person is performing a public function. At the same time, the Law obliges local self-governments to make the information about their activities accessible to the public and under equal conditions for all journalists and public media. In the concrete case, verbal attacks and attempted assaults on journalists that were fortunately prevented by the councilors and citizens undoubtedly represent a breach of freedom of information. The motive for the attack was reporting about the activities of the local self-government; in the

concrete case about the incident on the session of the Assembly of the Municipality of Kursumlija. The Deputy President of the Municipality Zoran Lakic is obliged to demonstrate a higher degree of tolerance with regard to information concerning his behavior in the Assembly due to his official function. The same degree of tolerance should also be demonstrated by his party colleagues, namely in the concrete case, councilor Branislav Miljkovic.

1.3 On August 7, the daily Blic reported that the Mayor of Zajecar Bosko Nacic had prohibited the directors of all public companies and public institutions in the city from giving statements to journalists without his prior approval. The text says that Nacic's directive was transmitted by the secretary of the City Administration. Blic claims to have corroborated this information from sources within the City Administration, who insisted to remain anonymous in fear of losing their jobs. The article goes on saying that Nacic's ban resulted in Blic not being able to obtain updated information; Blic previously reported about the debts of companies and institutions funded from the city budget. The correspondent of the daily newspaper Press from Zajecar Andjelina Petrovic-Marjanovic, who has been writing about Zajecar's public swimming facilities, was unable to obtain information about the construction of a swimming pool in the village of Nikolicevo, near Zajecar. Finally, the correspondent of the daily Kurir Slavic Markovic, according to Blic's report, was unable to obtain information about the activities of the Tourism Organization of Zajecar.

The Law on Public Information expressly stipulates that public services and public companies must make information on their activities accessible to the public and under equal conditions for all reporters and media. If in the concrete case, as reported by Blic, the information that was denied was subject to the above mentioned legal provision, it is undoubtedly a case of serious violation of freedom of public information resulting from an abuse of office by the Mayor of Zajecar.

2. Legal proceedings

2.1. The High Court in Nis has rejected the claim of the former Head of the Military Directorate for Legal and Property Affairs Zarko Surbatovic and his wife, in which they requested one million dinars from the Nis-based daily "Narodne novine" and its reporter Dragana Kocic, who is also the correspondent of Press. That amount was claimed as non-pecuniary damages for breach of honor and reputation caused by publishing an excerpt from the charges against Surbatovic in relation to the criminal offence and forging an official document. The wording of the sentence of the High Court in Nis differs from the one

contained in last year's sentence delivered by the Municipal Court in Nis in the same case, which upheld Surbatovic's claim. An even greater paradox is that the charges against Surbatovic, publishing of which was found to be disputable by the Municipal Court in Nis, have in the meantime resulted in Surbatovic being sentenced to two years and eight months in prison by the court of first instance. The sentence was appealed and the District Court in Nis revoked the sentence of the Municipal Court and returned the case for retrial. After the reorganization of the judiciary, the case was assigned to the competence of the High Court in Nis as the court of first instance, which has now rejected the claim.

Last year's sentence of the Municipal Court in Nis has often been quoted as an example of inadequate practice of Serbian courts in both the implementation of domestic regulations and the case law of the European Court of Human Rights. Namely, in accordance with Article 9 of the Law on Public Information, the rights to privacy of state officials are restricted if the information in question is significant for the public interest, since the person the information pertains to is performing a public function. The Municipal Court in Nis failed to consider that the former Head of the Military Directorate for Legal and Property Affairs, Major Zarko Surbatovic's rights to invoke protection of privacy in relation to the charges pressed against him for alleged abuse of office and forging of official documents are restricted. Surbatovic was accused of assisting his mother in law to claim damages for a house in Kosovo that was allegedly destroyed by the Army in 1999. Surbatovic has allegedly failed to exempt himself from the case due to the kinship relation with the claimant. Finally, according to the charges, Surbatovic has allegedly failed to use extraordinary legal remedies after the court had awarded damages to his mother in law. The Municipal Court in Nis failed to consider the fact that in the concrete case, according to the Law on Public Information, there were also grounds for the exemption of responsibility of "Narodne novine" and the journalist Dragana Kocic, due to the fact that the contested information were taken from the legal proceedings, namely from the charges pressed by the competent Public Prosecutor. At the same time, the Municipal Court in Nis failed to directly apply the right to freedom of expression guaranteed by the ratified European Convention on Human Rights and Fundamental Freedoms, by interpreting this right in line with the practice of the international institution overseeing its implementation – the case law of the European Court of Human Rights. The Municipal Court was obliged to do that pursuant to Article 18 of the Serbian Constitution. The new decision of the High Court in Nis rejecting the claim of Zarko Surbatovic definitely represents a step in the good direction regarding to the protection of freedom of expression in Serbia.

2.2. On August 4, 2010, the First Primary Court in Belgrade sentenced the leader of Partizan's football supporters Milos Radisavljevic Kimi to 16 months in prison for making threats against the security of B92 reporter Brankica Stankovic. Milos Radisavljevic was

orchestrating the cheering and singing of the fans during the match between Partizan and the Ukrainian team of Shaktjor from Doneck in December last year, after the airing of Stankovic's program "Insider" on TV B92 dissecting the illegal activities of football fan groups. At the above mentioned match, Partizan's supporters chanted threats to Stankovic saying she would meet the fate of slain journalist Slavko Curuvija, while at the same time throwing around, punching and finally perforating a doll representing the reporter. After the Court's verdict, the media reported that the Judge had received anonymous phone calls and that the apartment building she lives in had been sprayed with hooligans' graffiti. The judge declined to make any comments, while the Justice Minister Snezana Malovic said that it was "unacceptable to have the judges that are honorably discharging their duties targeted by hooligans".

The explanation of the verdict, sentencing Radisavljevic to 16 months in prison, is yet to be published and hence it is difficult to comment the Court's decision at this moment. The Criminal Code defines threats against security as threatening to attack a person's life or body, or the life or body of someone close to that person. The amendments to the Criminal Code in 2009 introduced an aggravated form of this offence when it has been committed by making threats against a person in a position of public importance in the sphere of public information and in relation to such position. In the concrete case, it is expected that the Court has found that Brankica Stankovic was targeted for her journalist work, namely for her program "Insider", as well as that her journalist work represents an activity of public interest in the sphere of information. According to the Penal Code, the qualified criminal offence of threats against physical security is subject to 1 to 8 years of imprisonment. Therefore, Radisavljevic, sentenced to one year and four months, has received a sentence that is very close to the minimum of the possible punishment prescribed in the concrete case.

2.3. Virtually at the same time with the announcement of the verdict against Milos Radisavljevic Kimi, it was announced that the Appellate Court had revoked a decision of the First Basic Court in Belgrade from April 22 to acquit six football fans charged in relation to the same incident – threats against the security of Brankica Stankovic and violent behavior. According to the then explanation of Judge Jelena Milinovic, who was the Presiding Judge of the First Municipal Court, the actions of the defendants did not contain any elements of the above mentioned criminal offences. Milinovic said that they could have been charged with slander, which may only be subject to a civil lawsuit. Therefore, the court rejected the indictment of the First Basic Public Prosecutor's Office for having been filed by an incompetent Prosecutor's Office finding that Stankovic could have, in the concrete case, pressed private charges for slander instead of charges pressed *ex officio* for threats to security and violent behavior. The Appellate Court found that the first-instance verdict did not

contain the proper explanation as to why the First Basic Court believed that the actions of the defendants did not contain any elements of the criminal offences of threats against physical security and violent behavior. The Appellate Court namely found that the court of first instance could have rejected the charges only after having undisputedly established the facts during the main hearing.

The decision of the Appellate Court was preceded by serious controversy after the announcement of the decision of Judge Milinovic's Chamber in April this year. Even the Justice Ministry joined the debate, indicating in a press release that it had initiated proceedings before the High Judiciary Council for dismissing Judge Milinovic. Critics claimed that the Ministry's press release about the procedure to dismiss Jelena Milinovic would affect the future decision of the Appellate Court, as well as the independence of the judiciary as a whole. It seems, however, that the Appellate Court has avoided the trap of being accused to act under the pressure of the Ministry, by delivering a clear and logical verdict. That verdict claimed that the decision of the court of first instance to reject the charges was premature, namely that it was not founded on evidence, since it was delivered before the evidence had been established at the main hearing. For that reason, the Appellate Court said, the proceedings needed to be resumed.