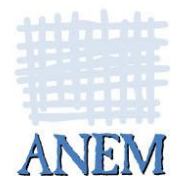




# LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for August 2010



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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. 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.

## **II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS**

### **1. The Law on Public Information**

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

1.2. Although the Constitutional Court found as early as back on July 22 that most of the provisions of the Law on Amendments to the Law on Public Information, adopted on the August 31, 2009, to be in disaccord with the Constitution and ratified international treaties, by the end of August the Court's decision was still not published in the Official Gazette.

The publication of the decision of the Constitutional Court in the Official Gazette is important because Article 58 of the Law on the Constitutional Court stipulates that a law that is found by that Court to be in disaccord with the Constitution and a ratified international treaty shall cease to be valid only on the first day of the publication of such decision in the Official



Gazette. The failure to publish the decision practically amounts to prolonging the validity of a law that has already been proclaimed unconstitutional. The authors of this report did not observe in August a single case where unconstitutional provisions of the Law on Public Information had been applied, but it might have been possible, because these provisions are still in effect. The tardiness in publishing already adopted decisions of the Constitutional Court is definitely not a good thing, because it creates legal uncertainty that could give rise to a dangerous precedent.

## **2. Broadcasting Law**

2.1. This report will partly elaborate on the implementation of the Broadcasting Law in the section about the monitoring of the activities of competent regulatory body, the Republic Broadcasting Agency.

2.2. On August 23, 2010, in an interview for Danas the spokesperson of the Republic Broadcasting Agency (RBA) Srboj Bogdanovic said that misdemeanor charges pressed by the RBA had disciplined the broadcasters. According to Bogdanovic, most of the charges concern the failure to label programs that may be harmful for children. In addition, broadcasters often violate the ban on airing certain content in time slots when it may be accessible to children and minors. Bogdanovic emphasized that the number of such misdemeanors plummeted as of June and that the number programs containing foul language and profanity had been greatly reduced. According to the data for July, Bogdanovic claimed, such violations have practically vanished. He indicated that the RBA policy was to seek for the most efficient manner to remove inappropriate content off the air and that it was often sufficient to warn the broadcasters, after which they started to adhere to the standards set forth by law. The RBA spokesperson said in the same interview that the number of violations of the Advertising Law had been significantly reduced after the RBA had pressed charges.

The Broadcasting Law requires broadcasters to clearly label airing content that may be harmful for the physical, mental or moral development of children. This provision has been set forth more precisely by the Broadcasters' Code of Conduct adopted by the RBA in 2007. The Code stipulates that the broadcasters may air certain type of content only at times when children and youth are not supposed to watch radio and television programs (sex, nudity, brutal violence, drug abuse and similar content), namely to take into account the usual daily routine of children and to particularly avoid airing problematic content at times when minors may be expected to watch radio and television program. The Code also stipulates that content

that may be harmful for children and youth must be specially introduced or labeled so as to indicate the minimum age of children that may watch the program prior to airing the program, at the beginning thereof and every 15 minutes in the course of the program. Broadcasters are free to classify the programs at their discretion, but the RBA is entitled to warn or fine the broadcasters that fail to label programs inappropriate for children at all or fail to label them in the manner prescribed by the Code, namely broadcasters that consistently indicate the wrong age limit for a certain program. Concerning the claims made by the spokesperson of the RBA about the violations of the Advertising Law, we wish to remind that the Law says that the RBA, in addition to passing detailed rules on advertising on television and radio, is also entitled to oversee the application of the provisions of the Advertising Law governing television and radio advertising. In December, in the scope of such oversight, RBA filed a number of misdemeanor charges against national broadcasters, but it remains unknown if any legal proceedings have yet been launched. Expressing the RBA's dissatisfaction with the tardiness of misdemeanor courts, certain members of the RBA Council requested that the Agency be authorized by law to directly pronounce fines.

### **3. Law on Free Access to Information of Public Importance**

3.1. The Commissioner for Information of Public Importance Rodoljub Sabic has said that, in the first seven months of 2010, a total of 1686 cases of complaints for denying access to information of public importance were registered. For comparison, in 2009 as a whole, there were 1865 such cases and 1517 the year before. This means that, by the end of the current year, the number of cases could twice exceed the figures from 2009. Sabic emphasized that, while it was positive to have the citizens striving to realize their rights in that manner, many problems persisted, since the number of complaints was rising. The bulk of these complaints are filed against the Ministry of Internal Affairs, the Privatization Agency and the Finance Ministry, the latter failing to comply with the orders of the Commissioner to enable access to information in many cases. Sabic said that his office had received 737 reports about the work of state authorities (about 100 more than last year) but noted that figure to be unsatisfactory. Furthermore, he said that the chief "culprit" for such a state of affairs were the judiciary bodies, which was, on the other hand, understandable to a certain extent in view of the reorganization of the judiciary.

The Commissioner for Information of Public Importance is competent to decide on complaints against state authorities for violations of rights provided for by the Law on Free Access to Information of Public Importance. The Commissioner is however not competent for complaints against decisions delivered by the Parliament, the President of the Republic, the

Government of the Republic of Serbia, the Supreme Court, the Constitutional Court and the Republic Public Prosecutor, which may be challenged in administrative proceedings only. Consequently, the above statistics do not pertain to these bodies, namely their decisions denying requests for free access to information of public importance within their possession. Concerning the orders of the Commissioner that have not been fulfilled, we remind that the Commissioner was entitled by the amendments to the Law adopted in May 2010 to pronounce fines. On the other hand, the reports about the work of state authorities must be tabled to the Commissioner for Information of Public Importance by January 20 of the current year for the previous year and shall contain data about the number of requests filed, the number of completely or partially approved requests, as well as the number of rejected or denied requests, data about the number and content of complaints against decisions rejecting or denying a request, data about the total number of fees that were charged for granting the right to access to information of public importance, information about measures taken in relation to the obligation to publish the Information Booklet, measures taken in relation to maintaining the information carrier, as well as information about measures taken in relation to the training of employees for implementing the Law. The increasing number of ongoing proceedings before the Commissioner points to an increase in the application of the Law, but also to a higher confidence of the public in the institution of the Commissioner.

3.2. The Deputy Public Prosecutor in Zajecar Dejan Stojanovic refused to respond to a request of a B92 reporter written in Latin alphabet because, in his own words, “he does not understand the language” and “reads only the Cyrillic alphabet”. The request concerned information about legal proceedings related to the shootout in cafe “Plus” in Zajecar. In that incident, an off-duty police officer had wounded a young man. “I have to admit I got confused and asked him in which language did I send him my first request. He replied that he didn’t know what language it was, because the request was written in Latin alphabet and reiterated that I must retype it in Cyrillic and resend it by fax if I wanted a response”, said the reporter Sonja Kamenkovic. The Republic Public Prosecutor’s Office said that the whole case was a misunderstanding, while the Commissioner for Information of Public Importance Rodoljub Sabic warned that Stojanovic’s conduct was unacceptable in a democratic society. Sabic said that the reaction of the Deputy Public Prosecutor in Zajecar was inconceivable in a democracy. “What if Mr. Prosecutor had received a notification about a multiple homicide written in Latin alphabet, would he still have ignored it? That’s nonsense”, Sabic said. The spokesperson of the Republic Public Prosecutor’s Office Tomo Zoric confirmed that his office receives all journalists’ queries, criminal charges and other petitions written both in Cyrillic and Latin alphabet, as well as in the language of ethnic minorities.

There is no law or regulation in Serbia obliging the citizens to address state authorities in the Cyrillic alphabet. On the contrary, the Law on the Official Use of Language and Alphabet says that state authorities and institutions, companies and other organizations, while exercising public powers, shall use Serbian language and the Cyrillic alphabet when communicating mutually and with the citizens. However, that Law does not oblige the citizens to use the same alphabet or even the same language when addressing the said institutions. On the contrary, the Law says that every citizen shall be entitled, in proceedings before an authority or organization that, in exercising public powers, is deciding upon the right or duty of that citizen, to use his/her own language and to be informed about the facts related to these proceedings in his/her own language. The Law on Free Access to Information of Public Importance stipulates that everyone is entitled to be informed whether the authority in question holds a particular information of public importance and if that information is accessible to him/her. It is a right that is not guaranteed only to citizens of Serbia or those who only speak the Serbian language, namely those who read or use Cyrillic alphabet. In view of the conditions for appointment to the post of public prosecutor and deputy public prosecutor – Serbian citizenship, a law degree and bar examination – Deputy Prosecutor Dejan Stojanovic must be familiar with the Latin alphabet, which in Serbia is taught in early elementary school and used in parallel with the Cyrillic alphabet. Consequently, one may conclude that the incident was pure harassment. The incident in question amounted to violation of free access to information of public importance, as well as restricting freedom of public information and hindering free flow of information.

### **III MONITORING OF THE ADOPTION OF NEW LAWS**

The Parliament did not sit in August and hence did not discuss any laws of relevance for the media sector. According to what the authors of this Report have learned, the previously established working groups for drafting media laws were not active in August either. Serious work on the drafts is expected only after the debate on the Media Study prepared by experts engaged by the European Commission. The Study is supposed to be the basis for the drafting of the Media Strategy of Serbia. The above mentioned debate is expected to take place in the form of a series of round tables scheduled for September. The drafting of the Strategy will follow, as well as the public debate in October. These debates are expected to yield a solution for outstanding issues in the Serbian media sector, such as, for example, the participation of the state in media ownership.

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

### **REGULATORY BODIES**

#### **1. THE REPUBLIC BROADCASTING AGENCY (RBA)**

1.1. On August 2, 2010, the Republic Broadcasting Agency (RBA) posted on its website a list of applicants for the public competition for the issuance of television and radio broadcasting licenses on the regional and local level, whose applications have been complete and timely filed. The Agency also announced the criteria for awarding the licenses. An updated list was published on August 20, while the RBA Council published on August 31 a list of persons that have been issued a license for regional and local television and radio broadcasting. According to the list, two licenses were issued for regional radio broadcasting, one for local television broadcasting and 31 licenses for local radio broadcasting. The issued licenses include media that broadcast content in Albanian and Roma language, while the Catholic and Serbian Orthodox Church obtained new radio stations.

The Republic Broadcasting Agency has called a competition for the issuance of radio and television broadcasting licenses for several local and regional areas in March 2010. The deadline for submitting the applications expired on May 31. According to the Broadcasting Law, the RBA was entitled within seven days from the expiry of the deadline to publicly release the list of all applicants whose applications were complete and timely filed. This was done with a delay of almost two months. The said list was updated on August 20. The release of the updated list of applicants, whose applications were timely and complete, was not accompanied by an explanation. Two possibilities logically come to mind. First, it is possible that the RBA itself has made an omission when releasing the initial list. The second and more probable explanation is that some of the applicants of incomplete applications have in the meantime supplemented their applications. The latter possibility is provided for by the Broadcasting Law, according to which incomplete applications shall be rejected only after the applicant fails to furnish the additionally required documents in the additional deadline. Simultaneously with releasing of the list of applicants with complete and timely applications, RBA released the criteria for issuance of licenses on the public competition. These criteria involved business success i.e. the economic self-sustainability of the applicant, the station's ratings (viewers and listeners – applies to the applicants that are already broadcasting), experience in broadcasting or similar activities, the core activity of the applicant, contribution

to the development of domestic broadcasting, contribution to the development of the local or regional community in the sphere of information, culture and education, guaranteed contribution to quality and diversity of the program, prior conduct of the applicant, transparency of the ownership structure and origin of capital, prevention of dominant influence on the public opinion, conduct of the applicant during the competition procedure, contribution to the realization of the rights of ethnic minorities, religious communities, social groups and citizens' organizations (applies to civil society stations). We hereby remind that the RBA has been criticized over prior competitions for releasing the criteria for awarding the licenses only after the submission of applications and not beforehand. In spite of such criticism, the RBA stuck to that practice, invoking a provision of the Broadcasting Law which has placed the release of the said criteria among the activities taking place after and not before the submission of applications. The authors of this Report find that the criteria need to be released beforehand. It will be possible to determine the extent to which the released criteria are non-discriminatory, objective and measureable, as required by the Law, only after the RBA releases an explanation of its decisions delivered in relation to this competition. After the RBA has published the list of persons that have been issued a television and radio broadcasting license, the applicants will receive permits from RATEL for placing the transmitters for the use of radio frequencies, so that the RBA may issue unique licences. These developments are expected to take place in the next two months.

## **2. THE REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)**

2.1. On August 23, 2010, at a session of its Managing Board, the Republic Agency for Telecommunications adopted twenty decisions prohibiting the activities of radio stations (transmitters, signal delivery relay links). The decisions partly pertain to pirate broadcasters and provide for permanent ban, as well as to lawful broadcasters, which have been using radio relay links in unauthorized ranges for the signal delivery and/or operated their transmitters without having undergone prior technical inspection.

The said activities are in line with RATEL's mandate to control the use of the radio frequency spectrum, identify harmful interference and take measures for the removal thereof. These activities are also in accordance with the several times reiterated intention of the Agency to clamp down radio piracy as a serious hindrance to the normal functioning of electronic media in Serbia. We hereby want to point out that the recently adopted Law on Electronic Communications gives certain powers in this sphere to electronic communications inspectors from the Ministry of Telecommunications and Information Society and the provincial authorities on the territory of Vojvodina. The inspectorates are expected to become fully



operational as of the beginning of 2011, which will boost the effectiveness of combating radio piracy.

## **STATE AUTHORITIES**

### **3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA**

The Parliament did not sit in August and neither did the parliamentary committees debating matters of relevance for the media sector.

### **4. THE MINISTRY OF CULTURE**

4.1. On August 26, 2010, the Ministry of Culture released a public call for the submission of suggestions and comments on the recommendations contained in the Media Study, to be furnished to the Ministry by September 30. The Media Study was funded by the European Union within a project of assistance to the Ministry of Culture of the Republic of Serbia in drafting the Media Strategy. The Journalists' Association of Serbia invited its members to send suggestions, while the media reported that the Independent Journalists' Association of Serbia, the Association of Independent Electronic Media, Local Press and the Independent Journalists' Association of Vojvodina have set up working groups that would work on the draft of the Media Study. These organizations will then present their views on the future media strategy on a public debate. The four associations have reached a consensus on preparing ready-made solutions, as well as on determining minimum joint requirements, Danas reported on August 9, 2010. ANEM has previously announced that it had furnished to its members an internal document containing a short overview of the recommendations from the Study, accompanied by expert comments. ANEM members were requested to provide comments and suggestions in order to help shape positions ANEM would then stand for on round tables dedicated to the drafting of the Media Strategy. The Ministry has co-organised six round tables and the Media Strategy is expected to be adopted by the end of October. Some key recommendations of the Media Study pertain to the allocation of the subscription fee, the transformation of the Tanjug news agency, the setting up of regional public service broadcasters and the related change to the status of RTV Vojvodina.

4.2. On August 13, 2010, in an interview for the daily Danas, the Culture Minister Nebojsa Bradic, asked if he would resign over the decision of the Constitutional Court that found that many provisions of the Law on Amendments to the Law on Public Information were in



disaccord with the Constitution, stated he did not intend to leave his post. Bradic explained that the amendments to the Law had had a purpose at the time when they were passed, when the media were “brutally violating ethical, civilisational and legal norms”. The Minister went on to say that the Ministry had considerably contributed to improving the situation in the sphere of information, stressing that the media were not being intimidated or intimidating others, which was the case prior to the passing of the Law on Amendments to the Law on Public Information. Mr. Bradic added that “the whole case shook the public opinion“ and that the key word – responsibility – resurfaced once again. In his words, the whole situation led to an improvement of the media environment, which is good news for everyone.

The Minister’s decision to resign or not to resign is a personal choice or action. However, in view of the pending round tables dedicated to the drafting of the Media Strategy, the Minister’s opinion that the regulations that violate the Constitution and the fundamental human rights may have a purpose and be justified in certain circumstances, gives rise to concern. The Minister’s belief that, in the period preceding the adoption of the unconstitutional Law on Amendments to the Law on Public Information the media “were brutally violating ethical, civilisational and legal norms”, is a debatable position. However, his conviction that, in the situation he has described above, the state is entitled to pass unconstitutional laws and that such laws may have a positive effect on public information, is utterly unacceptable and disturbing. We hereby remind that the predominant public perception of the Law on Amendments to the Law on Public Information was diametrically opposed to Minister Bradic’s stance, namely that the controversial provisions of that Law have resulted in increased self-censorship in the Serbian media. Bradic’s statement unfortunately represents a step that the Serbia authorities were in the recent past reluctant to take. This step represents giving up even on their support only verbally declared to media freedom and human rights through advocating the dangerous hypothesis that some circumstances justify breaches of the Constitution.

## **COLLECTIVE ORGANIZATIONS**

### **5. OFPS, the collective organization for the protection of phonogram producers’ related rights**

5.1. On August 28, 2010, the Organization of Phonogram Producers of Serbia (OFPS) posted on its website a press release, related to “unauthorized information about the activities of the OFPS that were published in the media”. The press release said that the

organization had been established and was operating in accordance with the Law on Copyright and Related Rights. According to the OFPS, its repertoire consists of phonograms of both domestic and foreign producers. The OFPS reminds that every person using the repertoire of the organization or publicly communicating or broadcasting music is required to obtain the permission of the OFPS prior such usage and pay a fee in the amount determined on the basis of the applicable fee tariffs.

Without delving into the reasons for OFPS' press release explaining matters that are already indisputable, we will point out the following. The concepts governing the way in which the tariffs of organizations for the realization of collective rights are determined, contained in the new Law on Copyright and Related Rights from 2009 were adopted as a result of the unsustainability of the models from the previous Law from 2004. According to the "old" Law, organizations for the realization of collective rights were entitled to completely freely determine the tariff. The new Law provides for a completely new model: the tariff is now determined by mutual agreement resulting from negotiations between the organization and the representative users association. Until the procedure of determining the tariff by mutual agreement is completed, the fee is paid according to the existing tariff. Prior to the adoption of the Law in December 2009, when the above described concept was already deemed to be a certainty, the OFPS set a new tariff on November 2, 2009, which was even more onerous than the existing one. The new tariff provided for an increase of the fee for commercial TV stations from the then 0.7% - 1.25% of the overall income to 1 - 2%, while commercial radio stations had to pay 3.5% instead of 3%. Negotiations ensued between the OFPS and the representative users association (ANEM, with the support of APRES and in consultation with the Serbian TV network), but the OFPS was reluctant to ease the tariff. Government has still not named the members of the Copyright and Related Rights Commission, who should provide an opinion about the proposed tariff proposed by OFPS, this time together with the collective organization protecting the rights of performers – PI. Media have been for months now paying a fee, which is not even based on the excessive tariff, which led to the above mentioned change to the Law, rather under an additionally increased tariff adopted by the OFPS on the eve of the coming into force of the new Law.

## **6. SOKOJ, the collective organization for the protection of musical authors' copyrights**

6.1. SOKOJ, together with the collective organization for protection of the rights of performers – PI, has invited the following organizations for negotiations about the unique tariff for the realization of rights to a special fee: the representative organization of producers

and/or importers of devices for sound and video recording, the representative association of producers and/or importers of blank sound and picture carriers, as well as individual producers and/or importers, if they are the only ones performing that kind of activity in the Republic of Serbia. These were invited to submit, within 15 days of the invitation, applications for taking part in the talks about the unique tariff for realizing the right to a special fee, as well as proof that they represent the majority of producers and/or importers of devices or sound or picture carriers, or proof of representativeness on the basis of other regulations, namely proof that they are, as individual producers or importers, the only ones performing that respective activity in the Republic of Serbia, in accordance with Article 174, paragraph 1 of the Law on Copyright and Related Rights.

The Law on Copyright and Related Rights stipulates that the authors of works that may be expected to be copied for personal, non-commercial use onto sound, picture and text carriers (books, music, films, etc.) shall be entitled to a special fee from the import/sale of technical devices and blank sound, picture and text carriers, which may be reasonably expected to be used for the said copying. The fee shall be charged to manufacturers of devices for sound and video recording, the manufacturers of photocopying machines or other similar copying devices, manufacturers of blank sound, picture and text carriers and in solidarity with them to the importers of devices for sound and video recording, photocopying machines or other similar copying devices and blank sound, picture and text carriers, unless they are importing small quantities intended for private and non-commercial use, as part of personal luggage. If the said devices and objects are not manufactured in the Republic of Serbia, the fee shall be charged to the importer. Although, according to the Law, the fee is not charged for technical devices that are typically not used for copying authors' works for personal, non-commercial usage (e.g. studio equipment and devices), as well as for blank sound, picture and text carriers that may be used only in conjunction with such technical devices, the charging of the special fee will undoubtedly result in an increase of the operating costs of electronic media.

## **V THE DIGITALIZATION PROCESS**

Concerning the digitalization process, no visible positive developments were registered as to the outstanding tasks identified by the Action Plan accompanying the Digitalization Strategy. We hereby remind that, according to that Plan, we were supposed to already have adopted or at least proposed: the Rules on the transition from analog to digital broadcasting; concepts of changes to the existing licenses; designs of the distribution network; the decision on the allocation of the digital dividend; a financial plan for the purchase and distribution of set top

boxes; measures for encouraging domestic STB producers and manufacturers of equipment for the distribution network; a financial plan for the realization of the digital broadcasting network of the Republic of Serbia and the dynamics of the implementation of investments; an internet portal about the digitalization process; a plan of the information and promotion campaign and the campaign itself, including posters and brochures with important information about the digitalization process. All these activities are significantly delayed and the extent of the delay is seriously putting at risk the viability of the planned date for the transition to digital broadcasting in the Republic of Serbia – April 4, 2012.

## **VI THE PRIVATIZATION PROCESS**

1. The media reported in August about the problems of the still not privatized public media. The daily Danas wrote about how Radio Pirot failed to find a buyer after the third consecutive auction and will remain the only not privatized media outlet in town. The Municipal Assembly of Pirot has announced it would reduce the budget funds earmarked for the said radio station for next year, which is compromising its survival. The employees of Radio Pirot hope they will remain a public service broadcaster. On the other hand, the President of the Pirot Municipality Vladan Vasic hopes that the next session of the Municipal Assembly of Pirot will adopt a budget revision in order to earmark additional funds for Radio Pirot. However, Vasic claims it does not mean that the local authorities have given up privatization, pointing to the examples of the newspaper “Sloboda” and TV Pirot, which have been privatized and saying it shouldn’t be any different with Radio Pirot. In the meantime, the Politika daily reported that Radio Valjevo, one of the oldest radio stations in Serbia, also failed to find an owner after three failed auctions. In order to avoid its liquidation, the founder and financier of the station, the city of Valjevo has decided, in agreement with the employees, to remedy the situation by cutting the number of employees. To that end, the Management Board of Radio Valjevo decided to transfer its property – a 200 sqm building, two hectares of land and other property worth several million dinars – to the founder, the city of Valjevo. A social program is also underway, which 16 of 26 employees have opted for so far, provided they are paid 200 Euros for each year of services. The city of Valjevo will allot seven million dinars from the budget for that purpose.

Reality has shown that on a poor and unregulated media market, the possibility to become the owner of a local media outlet in Serbia through privatization is not attractive for investors. However, a particular concern is the attitude exemplified by the insistence of the employees of Radio Pirot on remaining in the status of what they call “public service

broadcaster”, which in reality amounts to merely extending direct state funding. At the same time, nobody is interested in fulfilling the function of the public service broadcasters, the needs it has to meet, independence from the local authorities, etc. On the other hand, reduced funding from the local budgets, which typically ensue after a media outlet is expected to be privatized, is contrary to the provisions of the applicable Law on Self-Government. The Law namely stipulates that local self-governments must attend to public information of local interest and ensure the conditions for public information in the Serbian language and languages of ethnic minorities used on the territory of the municipality. In that sense, the privatization of a particular media outlet should not amount to relieving the local self-government of the obligation to deal with public information of local interest and ensure the conditions for public information on the territory of the municipality, as it is often understood by these local authorities. The example of Valjevo clearly shows that certain local self-governments are considering rationalizing their operations. It remains to be seen what will be the effect of such rationalization and to what extent Radio Valjevo will be able to sustain the conditions of the market with less employees and after having assigned its building and other property.

## **VII CONCLUSION**

August, namely the summer, is a period when the institutions are not expected to work with full capacity and when the attention of the public is reduced due to the holiday season. That is why, in the last couple of years, the authorities in Serbia have taken this opportunity to introduce controversial regulations changes, typically without any public debate. We had the same situation last summer with the Law on Amendments to the Law on Public Information; earlier, the provisions of the Broadcasting Law governing the election of the members of the RBA Council were amended. Looking from that perspective, the fact that there have been no changes of laws relevant for the media is good news. Another good news is also the fact that the debate about the Media Study, prepared by experts hired by the European Commission and which should represented the basis for drafting the Media Strategy of Serbia, is planned for September, a month when media professionals are expected to take a more active part. Not so good news is the fact that many other things that should be dealt with unrelated to the future media strategy have most probably been postponed for the period after the completion of the debate about the Strategy. At that, the stakeholders have failed to make the difference between issues that are of strategic interests and matters that are of merely practical nature and should not be delayed. By the latter we mean the failure of the Government of the Republic of Serbia to finally appoint the members of the Copyright and Related Rights

Commission and enable the implementation of the new mechanism for determining the tariffs of the fees for the use of authors' musical works and phonograms in the program of broadcasters. The same may be said for the failure to publish the decision of the Constitutional Court of the Republic of Serbia, which has ruled most of the provisions of the Law on Amendments to the Law on Public Information to be in disaccord with the Constitution – the publishing of that decision would finally invalidate the controversial piece of legislation for good. The failure to publish that decision has flabbergasted media professionals, in the context of the Culture Minister's statement that such law had its purpose and positive effect on public information. An additional concern is the worsened position of the media and journalists on local level, which may be "credited" to local authorities and functionaries, who have at times neglected their obligations to ensure conditions for public information of local interest, excluding cases of direct funding (and the related influences) or have directly violated media freedoms by making threats, putting pressure or withholding information, which have also been presented in this report.