

I FREEDOM OF EXPRESSION

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

1. Threats and pressures

1.1. On September 4, 2010, Sladjana Novosel, the correspondent of the daily "Danas" from Novi Pazar, was forced to leave the rally of the supporters of the Islamic Community in Serbia, after she was threatened by the participants. The protest was held over the construction of the kindergarten on land both the Islamic Community in Serbia and the city administration of Novi Pazar claimed to be in their property. Novosel was reporting from the event from the terrace of a nearby building and the protesters requested from the organizers of the rally to chase her away. Novosel was told it would be better for her to leave, which she eventually did.

The Law on Public Information expressly stipulates that public information shall be free and in the interest of the public, free of censorship. It is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion or to put pressure on public media and its staff so as to obstruct their work. The same Law says that public media shall be free to publish ideas, information and opinions about occurrences, events and persons the public is entitled to know about. The rally of the Islamic Community supporters in Novi Pazar was undoubtedly an event that the public was entitled to be informed about, while preventing "Danas" correspondent to report from that event definitively amounted to restricting freedom of expression. The Chief Mufti of the Islamic Community in Serbia Muamer Zukorlic said after the rally he regretted the fact that reporter had received threats.

1.2. On September 11, 2010, the reporter of the regional online newspaper "Juzne vesti" Predrag Blagojevic was apprehended while reporting about an accident from the church in the Nis neighborhood of Pantelej. A girl and her grandmother were killed in the churchyard by a huge dead branch that fell off a tree. Blagojevic said that, while they were in the churchyard, a police officer signaled to his crew that they should not shoot, after which they switched off their camera. They were immediately approached by a member of the riot police asking for ID. Since Blagojevic refused to hand him over his ID card because the police officer didn't introduce himself or explain the reason for the identity check, the reporter was taken

to the police station where he was held in the cellar without electricity and water. He was also not allowed to contact his family. The police claimed that Blagojevic had been detained because he didn't have his ID card and that it was "part of a standard identity check", stressing that the reporter might press charges against the police officer in question if he believed his rights had been violated.

As we already mentioned above, the Law on Public Information stipulates that public information shall be free and in the interest of the public, free of censorship, as well as that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion or to put pressure on public media and its staff so as to obstruct their work. The same Law says that public media shall be free to publish ideas, information and opinions about occurrences, events and persons the public is entitled to know about. The Law on the Police says that the police officer, prior to applying his police powers, shall introduce him/herself by showing his/her official badge and ID. As an exception, the police officer shall not introduce him/herself if in specific case and circumstances it may be reasonably assumed that such action would undermine the legitimate goal pursued. The Law on the Police also itemizes the requirements for an identity check by the police; the Law says that the police officer shall in every circumstance inform the person whose identity he/she is checking about the reasons for the identity check. In the case of Predrag Blagojevic's detention, according to his own words, the police officer failed to do so. Checking the identity of a reporter on assignment, outside of the requirements and procedure provided for by law, undoubtedly amounts to abuse of power by the police, which also restricts freedom of expression.

1.3 On September 23, 2010, the correspondent of daily "Blic" from Aleksandrovac Gvozden Zdravic was physically attacked, while taking pictures of the "Dani Zupe" grape harvest festival. A certain Mileta Dzopalic from Aleksandrovac came to Zdravic and told him that he personally was forbidden to take pictures, adding he was "telling him what the people from the municipality had told him so". Zdravic refused to stop photographing and claimed to have been punched in the stomach. Zdravic reported the attack to the police, stressing that it was "the tenth attack against him organized by the Mayor Jugoslav Stajkovac". Only two days later, the media reported that Mileta Dzopalic, believed to be one of Stajkovac's private body guards, assaulted Zdravic again, preventing him to report from the meeting of the Union of Winegrowers and Wine Makers of Serbia. Zdravic immediately called the police, which came quickly and made a police record about the incident. Five days later, on September 30, Zdravic was attacked for the third time, this time in front of the court building in Aleksandrovac. The media reported that "Blic" correspondent, who came to report about the dispute between the Municipality of Aleksandrovac and the Socialist Party of Serbia, was

beaten up by Cedomir Cirkovic, the driver of the Mayor Jugoslav Stajkovic. Zdravic was taken to Intensive Care, where he was, as he claimed, diagnosed with skull fracture, which was later confirmed by the neuropsychiatric, who prescribed him therapy. "I believe that the Mayor Stajkovic is behind the attack, since I am writing about the embezzlement of public funds from the municipal budget", Zdravic said. Stajkovic told Blic that Zdravic had hit his driver first, after he was warned not to take pictures of the Mayor's company car. Stajkovic also claims that Zdravic was also not attacked last week on the grape harvest festival, but merely warned by security officer Mileta Dzopalic not to climb on the stage, because the municipality was responsible for safety. Legal proceedings have been initiated before the Misdemeanor Court in Aleksandrovac in relation to the incident in front of the court building.

According to the Law, local self-government bodies must make information about their activities accessible to the public under equal conditions for all reporters and media. Furthermore, the Law disallows anyone from restricting freedom of public information in any manner whatsoever, namely the free flow of ideas, information and opinions, or from putting any kind of physical pressure on media with the aim of obstructing the activities thereof. The fact that Gvozden Zdravic had been attacked several times in the course of just one week while reporting from municipal cultural event and from legal proceedings in the courthouse with the municipality being one of the parties, points to non-compliance of local self-government bodies in Aleksandrovac with the obligation to make information about their activities accessible to the public under equal conditions for all reporters and media. Even worse, one may rightfully suspect that the municipality is continuously harassing the reporter in question. Since legal proceedings have been initiated before the Misdemeanors Court in Aleksandrovac in relation to the incident in front of the courthouse, it remains to be seen what that Court will decide with regard to the responsibility of the attackers. The description of the incident, provided by Zdravic, points to potential criminal responsibility. We hereby remind that the Criminal Code provides for the criminal offense of violent behavior, described as serious breach of public order by insulting or harassing others, violence against other people, provoking a fight or acting rudely or unscrupulously. If the violent behavior has caused a minor bodily harm or severe humiliation, the perpetrator and the instigators could be sentenced up to five years in prison.

2. Legal proceedings

2.1. On September 8, 2010, former police officer of the Novi Beograd Police Department Ljubinko Todorovic was sentenced in first instance by the Basic Court in Loznica for inflicting

severe bodily harm to Vladimir Mitric, the correspondent of “Vecernje Novosti” from that town. The court sentenced Todorovic to six months in prison, which is the minimum sentence, prescribed for that criminal offence. Otherwise, the Municipal Court in Loznica has already pronounced the same verdict against Todorovic, which was overruled by the District Court in an appeals procedure, after which the case was returned for retrial.

Back in 2005 Vladimir Mitric suffered a broken left hand and two dozen contusions on his head and body after he was clubbed with a baseball bat. Former policeman Ljubinko Todorovic was indicted and sentenced in first instance as the perpetrator of the beating, but the people who had ordered the attack were never identified. Mitric has been and still is under police protection for more than three years. Law provides for a prison sentence between six months and five years for the basic criminal offense of inflicting serious bodily harm. However, Serbian courts typically pronounce sentences closer to the lower limit prescribed by law and sometimes even below that limit. We hereby remind that the Amendments to the Criminal Code from 2009 have introduced a special, aggravated form of inflicting serious bodily harm, when that offence has been committed against persons occupying positions of public interest. For the purposes of the said Amendments, a position of public interest means performing an occupation or discharging a duty involving increased risk for the security of the person performing or occupying such profession/duty. Occupations relevant for public information are considered occupations of public interest. This practically means that in the case of an attack equivalent to the one against Mitric in 2005, which would take place today, the sentence according to the Law would range between one and eight years in prison.

2.2. Television Studio B was ordered by the Appellate Court in Belgrade to pay Miodrag Zikic 150.000 RSD as non-pecuniary damages for pain and suffering over breach of honor and reputation, as well as 190.000 RSD of court costs. Five years ago, Zikic caused a car accident under influence of alcohol, after which he consented to be interviewed on the spot by Studio B. His statement was later aired in the scope of a safe driving campaign and his face was blurred. Zikic subsequently asked for three million dinars of damages.

The Law on Public Information stipulates that a recording of someone’s face or voice may be broadcasted only with the consent of that person, if that person may be clearly identified in the broadcast. Consent given for one broadcast or for a particular kind of broadcast, namely for broadcasting for a particular purpose, shall not be considered as consent for re-broadcasting, broadcasting in a different manner or broadcasting for different purposes. The Law, however, goes on to itemize 11 cases in which the footage of a person may be aired

without his/her consent. In the concrete case, the Appellate Court found that consent existed for the post-accident interview and the airing thereof the same evening in Studio B's evening news, but not for making that interview part of the subsequent safe driving campaign. At that, the Appellate Court did not consider the exceptions provided for by the Law on Public Information pertaining to cases in which footage may be published without consent. In the concrete case, in the opinion of the authors of this Report, circumstances existed, as provided in the Law on Public Information, which could have lead to a different decision by the Court. More specifically, the information, namely the footage of the interview, pertained to an event (the car accident caused by a drunken driver) relevant for the general public. Moreover, the behavior of the person that caused the accident was a legitimate reason to publish the information, namely to air the footage. Furthermore, the airing of the footage was in the interest of public safety. Finally, Studio B needed to air the footage in order to warn the viewers of the dangers related to drunken driving. All these circumstances are provided for by the Law as exceptions justifying the broadcasting of someone's face or voice without the consent of that person. Interpreting regulations by avoiding to enforce the exceptions provided for by the law in order to protect journalists and the media and to protect the right of the citizens to receive information of public interest is tantamount to creating legal insecurity, fear, self-censorship, conformism and neglect of public interest.

2.3. On September 21, 2010, Milos Mladenovic and Danilo Zuza, the young men who attacked Vreme columnist Teofil Pancic, were sentenced to three months in prison each, for violent behavior. At the same time, they were subject to a restraining order. We hereby remind that Mladenovic and Zuza beat up Pancic with a club in a public transportation bus on July 24, about 11 PM in Zemun, after having previously plotted the attack. The qualified criminal offense of violent behavior – which the Court sentenced them for – is subject to a prison sentence ranging from six months to five years. However, the Court found that a sentence below the legal minimum is justified by the fact that Mladenovic and Zuza are minors below 21 years of age (18-21) without prior criminal record. “The Prosecutor's Office will most certainly lodge an appeal, because it is not satisfied with the sentences against Pancic's attackers. The Prosecutor's Office believes that such a sentence is inadequate for the offence that was committed, because the victim was a journalist. The sentence fails to adequately reflect the spirit of the Law,” said the Spokesman for Republic Prosecutor's Office Tomo Zoric.

According to the Criminal Code, the Court may impose the perpetrator of a criminal offense a penalty that is below the limit provided for by Law or a more lenient type of punishment if it has established the existence of particularly mitigating circumstances and determined that the purpose of punishment may also be achieved by a reduced penalty. In the concrete case,

the Court found that such circumstances were the young age of Milos Mladenovic and Danilo Zuza, as well their lack of prior criminal record. The Law also stipulates the extent to which the punishment may be reduced: if the lowest prescribed punishment for the criminal offense is a prison sentence less than one year – which is the case for violent behavior – the sentence may be reduced by not more than by thirty days in prison. Hence, the court of first instance did adhere to the limits prescribed by the Law, but failed to observe the spirit of the Law, as indicated by the Prosecutor's Office. This verdict, similar to the case of the attack on Vladimir Mitric, only confirms the unacceptable practice of Serbian courts to typically sentence offenders against journalists to penalties at the lower legal limit or even below such limit, as in the case of Teofil Pancic. Such practice is unfortunately not an adequate guarantee of freedom of expression in Serbia. On the contrary, it may only contribute to the growing fear and self-censorship in the Serbian media.