



# LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for September 2010



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## **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 Stajkovac. 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.

## **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 elaborated on partly in the section about freedom of expression.

1.2. The daily newspaper “Kurir” published a sensationalist text about a home porn video allegedly circulating around Jagodina, whose „lead character“ was, according to “Kurir”, a Serbian Orthodox priest from Jagodina of the name of Ivan J. The newspaper reported that the said priest claimed to have reported to the police that he was blackmailed by anonymous persons for money in order not to post the video on the Internet. He also said that he was not the person in the video. The “Kurir” text claims that the Ivan J. was suspended by the church until the facts were sorted out. “Kurir” posted the video on its website and published the pictures in its print edition. One of the photos depicts a priest who is not Ivan J, claimed by “Kurir” to be actor in the porn home video. The said photo depicts Ivan Cvetkovic, the vicar of the Church of the St Jacob the Apostle in the village of Dublje, near Jagodina, who is not mentioned in the text at all. “Kurir” later published an apology to Ivan Cvetkovic.

The releasing of a personal video without the consent of the person that made the video or the person filmed, namely without the consent of the person depicted in the video or the consent of some other person whose consent is required by Law – and intruding in the personal life of that person – has serious legal and criminal implications. Namely, such action may amount to the criminal offense of unauthorized release and showing of another



person's document, portrait or recording referred to in Article 145 of the Criminal Code, which is subject to a two-year prison sentence.

On the other hand, subject to the Law on Public Information, intruding in someone's private life represents grounds for the plaintiff to press charges against the editor-in-chief of the public media requesting the intruding video not to be released or to be removed or destroyed, as well as for requesting damages and publishing of the verdict in the public media in question. The Law expressly stipulates that the plaintiff may also request from the founder of the public media to be paid part of the profit generated by the release of the video, in proportion to the extent to which the use of information or footage from that person's private life has contributed to the generated profit. The rules that were definitely not obeyed in this case, pertaining to releasing information from someone's private life or footage of one's face or voice that may identify that person, which are contained in the Law on Public Information, are very precise and generally applicable, with one exception. The Law namely stipulates that the rights of holders of government and political functions to privacy shall be restricted if information is relevant to the public, in view of the fact that the person the information relates to is occupying a certain function. This restriction is proportionate to the justified interest of the public in each particular case. The general rule is that releasing information shall be subject to consent, both of the person whose private life is affected by the information and the person's words, face and/or voice is contained in the video, as well as of the person whom the information or recording is intended to, namely the person it pertains to, if releasing such information or footage would infringe on someone's privacy or other right. 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. If the person that has given the consent has died, consent must be given by the spouse of the deceased, his/her children over 16 years of age, parents or siblings, the legal person in which the deceased was involved (as an organ, member, employee), when the information or recording pertains to his/her activity in that legal person, namely a person designated by the deceased to give consent. As an exception, the information or recording from one's private life may be released without the consent of the person it pertains to in the following cases:

- If the person has intended the information or recording to the public,
- If the information or recording pertains to a person, occurrence or event of interest for the public, especially if it concerns of holder of governmental or political office and the release thereof is important due to that fact (holding such office).
- If the person has behaved so as to cause the release of the information or recording,

- If the information has been released or recording has been made during a public parliamentary debate or public debate in a parliamentary body,
- If release is in the interest of the justice, national security or public safety,
- If the person did not oppose the obtaining of the information or taping of the recording, although it was aware that the purpose was to release it publicly,
- If the release is in the interest of science or education,
- If the release is necessary as a warning of a hazard (in order to prevent an epidemic, find a missing person, fraud and the like),
- If the recording pertains to a multitude of persons or voices (sport fans, concert audience, protesters, passerbys, etc.)
- If it is a recording from a public gathering,
- If the person is shown as part of the scenery, nature, panoramic view, settlement, square, street or similar sight.

## **2. Broadcasting Law**

2.1. The implementation of the Broadcasting Law shall be elaborated in this Report through the section concerning the monitoring of the activities of the competent body – the Republic Broadcasting Agency (RBA).

2.2. On September 1, 2010, the Republic Broadcasting Agency released a list of individuals and companies that were issued a television and radio broadcasting license on a public competition for regions and local areas. The said list includes 34 broadcasters.

We hereby remind that the RBA Council passed a decision in March on calling a public competition for the issuance of television and radio broadcasting licenses, namely one local television license and two regional, and 50 local radio licenses. The obligation to publicly release such list lies with the Republic Broadcasting Agency, as provided for by Article 53, paragraph 1, subparagraph 7) of the Broadcasting Law.

## **3. Law on Electronic Communications**

On September 30, 2010, the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection initiated before the Constitutional Court a constitutionality procedure with regard to Article 128, paragraphs 1 and 5 of the Law on

Electronic Communications, as well as of Article 13, paragraph 1 in relation to Article 12, paragraph 1, subparagraph 6) and Article 16, paragraph 2 of the Law on the Military Security Agency (MSA) and the Military Intelligence Agency. The proposal states that the contested provisions of the Law on Electronic Communications are in disaccord with the Constitution of the Republic of Serbia, because they allow the enforcement of special measures overriding the secrecy of letters and other means of communication not only on the basis of a court order, but also absent of such order, when such possibility is prescribed by Law, namely at the request of the competent state body. The disputed provisions of the Law on the Military Security Agency and the Military Intelligence Agency provide that the MSA shall, “on the basis of an order by the MSA Director or person authorized by him”, employ special procedures and measures, including “secret electronic surveillance of telecommunications and information systems in order to gather data on telecommunication traffic and the whereabouts of the user, without examining the content of such traffic”. Furthermore, the MSA “shall be entitled to obtain information from telecommunications operators about the users of their services, realized traffic, location from which the communications are taking place and other information relevant for the outcome of special procedures and measures”. In the opinion of the Ombudsman and the Commissioner, the said information is intruding in the privacy of letters and other means of communications and the MSA may not be “entitled” to it without a court decision.

We hereby remind that the Law on Electronic Communications, in its Article 128, paragraph 1, says that every telecommunications operator shall be obliged to retain information concerning the type of communication, its source and destination, the start, duration and end thereof, the identification of the user’s equipment, including the mobile user group, with the aim of carrying out an investigation, uncovering of crimes and carrying out criminal proceedings, in accordance with the law regulating criminal proceedings, as well as for the needs for protecting national and public security of the Republic of Serbia, in keeping with the laws governing the activities of the services of the Republic of Serbia and the work of internal affairs agencies. Paragraph 5 of the same Article stipulates that the operator shall retain information so that it may be promptly accessed, namely so that such information may be promptly served at the request of the state authority. The constitutionality request states that the said regulations are not conformed to the provision of Article 41 of the Constitution of the Republic of Serbia, which guarantees the secrecy of letters and other means of communication, with exceptions that are permitted only for a specific period of time and on the basis of a court order. A particular concern is the fact that on May 28, 2009, the Constitutional Court of the Republic of Serbia passed the decision pronouncing that the provision of Article 55, paragraph 1 of the previous Law on Telecommunications is not in accordance with the Constitution. The Law on Telecommunications ceased to be effective with the adoption of the Law on Electronic Communications. With Article 128, paragraph 1

thereof, the legislator practically attempted to evade the Constitutional Court's decision from 2009, by adopting a new provision, which essentially corresponds to the provision that was formerly found to be unconstitutional, namely by restoring the level of human rights protection to the one that existed prior to the said decision of the Constitutional Court from May 28, 2009. The consequences of the contested provisions of the Law on Electronic Communications for the media, as we have already outlined in our previous reports, primarily involve the possibility to identify reporters' sources by tracking the listings of their outgoing and incoming calls, thus evading the provision of the Law on Public Information providing for the reporters' right to keep their sources secret.

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

In the period covered by this Report, the Parliament of the Republic of Serbia did not discuss any laws of particular relevance for the media sector. However, issues related to future media regulations were discussed on a series of round tables organized by OSCE in cooperation with the Ministry of Culture of the Republic of Serbia and the European Union Delegation in Serbia, with the support of the British Embassy in Belgrade. The aim of the round tables was to encourage discussion about the recently published Media Study, which would serve as a starting point for drafting the Media Strategy of the Republic of Serbia. At the round tables held in September the recommendations laid down in the Media Study were presented and explained. Other topics included the Press Council, regulatory bodies and digitalization, state assistance to media, public service broadcasters and commercial broadcasters, as well as print media, with a special emphasis on concentration and transparency of ownership in print media, press freedom in Serbia and systemic measures for helping print media.

The print media industry, represented by the Media Association – the association gathering the largest press publishers in Serbia – decided not to take part in the round tables. The organization justified such decision by claiming that it could not accept the Media Study – which was drafted with the participation of experts engaged by the European Commission – as a starting point for developing the Media Strategy. The Media Association said that the Study was not a serious and fact-based analysis of the current state of affairs in all media or an analysis of the current regulations. Furthermore, the Association claimed that the Study stopped short of providing a proposal for improvements or new concepts. The Media Association condemned the almost complete absence of clear position in the Media Study about the unacceptability of state ownership in the media sphere, the lack of analysis of the situation of the press and publishing industry in Serbia, as well as the completely unfounded

proposal to establish a network of regional public service broadcasters. The Media Association also indicated that the Study did not contain a good analysis and proposals for the future organization and activities of regulatory bodies or a forecast of the growth and development of the media sector in the country and a proposal of possible state incentives.

Contrary to the Media Association, the leading journalists' and media associations have decided to take an active part in the series of round tables and voice their objections to the recommendations and the proposals of alternative solutions contained in the Media Study. The Association of Independent Electronic Media (ANEM), the Independent Journalists' Association of Serbia (NUNS), the Journalists' Association of Serbia (UNS), the Independent Journalists' Association of Vojvodina (NDNV) and the Association of Local Independent Media Local Press announced their set of joint principles even before the start of the first in the series of round tables, insisting on:

- Transparency of media ownership, which will be open to public scrutiny
- Prevention of excessive media concentration
- Complete withdrawal of the state from ownership of media
- Equal treatment of all media on the market

The recommendations from the Media Study concerning the creation of regional public service broadcasting entities have been particularly harshly criticized. Although we have mentioned that in our previous reports, we hereby remind that the Media Study recommends the setting up of a new model of regional broadcasting in Serbia, which would be based on regional public service broadcasters. The authors of the Study have proposed that 10-15 regions be defined by the Ministry of Culture, with a 17-21- member Program Council established in each region. Under the proposal, these Program Councils will elect the Managing Boards of the new regional public service broadcasters. The Managing Boards will have 7-9 members that would elect their executive directors, as well as the editors-in-chief of regional public service broadcasters on a public competition. These directors and editors would enjoy all editorial and financial powers and responsibilities. Each regional public service broadcaster would be established as an independent legal entity, which would take over the equipment and personnel of regional and local broadcasters currently owned by the municipalities. The recommendation is that private radio and TV stations should also be offered to assign their equipment and staff to the regional public service broadcaster or carry on broadcasting until their license expires. Regional public service broadcasters would be funded from subscription, through the existing RTS subscription fee and they would not have their independent frequency. They would instead broadcast on RTS frequencies in periods that would be determined through collective bargaining mechanisms of the network

of regional public service broadcasters on one side and the RTS on the other. These recommendations were partly supported only by the Kragujevac Initiative, a group of regional publicly owned broadcasters opposing privatization. However, these stations too insisted on keeping an independent frequency and 24/7 broadcasting, instead of, or in addition to, broadcasting in the scope of national windows on RTS frequencies. The RTS also objected, pointing first to the unacceptably low subscription fee collection rate and the hence impossibility to ensure stable funding of the existing public broadcaster's institutions, let alone to allot part of the subscription for funding an additional 10-15 regional public service broadcasters. RTS also objected to the proposed opening of regional windows on their frequencies, claiming that such regional broadcasters will not be capable to provide quality programming viewers expect from the RTS. On the other hand, four associations - ANEM, NUNS, NDNV and Local Press, stressed that the establishing of new public service broadcasters was unacceptable, since the existing public service broadcasters were already unsustainable. Furthermore, they said it was unacceptable to finance them from the subscription fee, for the reasons stated above. The said organizations indicated that the model involving the shutting down of commercial broadcasting was unacceptable, since the Constitution guaranteed the rights of commercial stations owners which rights were obtained by investing capital in accordance with the Law. ANEM, NUNS, NDNV and Local Press proposed an alternative set of recommendations for regional and local broadcasting based upon:

- Urgent and time-limited completion of privatization of media that remain in public ownership;
- Addressing the problem of too many electronic media relative to what the market may absorb, measures that will stimulate aggregation and mergers on the media market;
- Addressing the problem of shortage of quality programs for regions and local communities and other programs that are typically associated to public service broadcasters, through a mechanism of the regulatory obligation imposed to commercial broadcasters to produce and air such programs; such obligation would be offset by the guaranteed access to cable systems, lower license fees, use of frequencies, namely access to the multiplex, financial support for quality programs and protection from unfair competition;
- Efficient mechanisms for state aid control, which would prevent the state from undermining competition on the media market.

UNS has not completely ruled out the idea of regional public service broadcasters but it does not necessarily believe that non-privatized municipal stations ought to be the sole holders of



this function. Rather it insisted on further consultations with the Ministry of Culture in order to eliminate the danger of possible political control over the regional public service broadcasters.

Four associations, ANEM, NUNS, UNS and NDNV, have also proposed an alternative set of recommendations related to the state co-financing of media, which would be based on project financing through media funds. These funds would finance projects dedicated to the development of programming and other capacities of media, the transformation of business models, education and improvement of professional standards, minority language content and diversity of media content in general. Under the proposal, the media funds would be financed from part of the resources to be generated from the digital dividend, as well as from the difference between the revenues and expenditures of the regulators and partly from the collected subscriptions and donations. Local Press has taken the position that the state should also consider the state aid to local print media.

Concerning regulatory bodies, all five associations have proposed that the Broadcasting Law be amended so as to boost the regulatory capacity of the said bodies by the means of training, exchange and recruitment of new experts, where appropriate. At the same time, the regulator would be authorized and obliged by the new Law to carry out or commission periodical and continuous analysis of the media market, as well as analysis as to what extent the needs of the public for various programming content are satisfied. The regulator must be authorized and obliged to introduce regulatory measures for raising the level of fulfillment of such needs. All these processes must ensure the widest possible participation of the public. The sector regulator would have to bring about a new Development Strategy applicable to the digital era; such Strategy would involve procedures according to which – based on reviewing the needs of citizens and social groups for media content and a comprehensive market analysis – decisions would be taken on coverage zones and the number and the type of programming for which licenses would be issued. Fees paid to regulators must be determined relative to the level of regulation costs, while the surplus of funds from the collected fee should be channeled into media funds. The associations also pointed to the need – bearing in mind the convergence of networks and services, in a procedure that would involve the proper analysis and consultations with all relevant stakeholders – to address the issue of convergence of the two regulatory bodies. At that, special attention should be paid to the need to boost the independence and regulatory capacity of the regulators, irrespective of the choice we have made as a society to opt for one or two regulators. The latter should not compromise the functional, human and technical capacity of the regulator to carry out duties from its competence in the best interest of both the media sector and the public.



We shall be addressing the recommendations of the media associations concerning digitalization in the part of this Report pertaining to digitalization. You may find in more detail the content of all recommendations of the media associations at

<http://www.anem.org.rs/en/aktivnostiAnema/AktivnostiAnema.html>

## **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. Certain questions concerning the activity of the Republic Broadcasting Agency (RBA) have partly been elaborated on in the part of this Report dealing with the implementation of the Broadcasting Law.

1.2. On September 15, 2010, the Republic Broadcasting Agency called the operators that have been issued approvals by the Republic Agency for Electronic Communications (RATEL) for the provision of radio and television broadcasting services through the cable distribution network to furnish, within 30 days, a list of all channels they are distributing, as well as to file requests for the issuance of licenses for domestic cable channels.

According to the Broadcasting Law, the RBA shall issue a license for cable broadcasting without public competition, at the request of the cable operator. The operator is obliged to meet beforehand the conditions prescribed by a separate law governing telecommunications with regard to the possession of the proper licenses, fulfillment of technical requirements and standards for the network it uses, as well as other conditions prescribed by the law and the regulatory body. The operator also has to obtain the rights for broadcasting a certain program from the broadcaster of that program. The obligation to obtain a license for cable broadcasting does not apply to programs subject to RBA licenses for terrestrial broadcasting in the area for which such license was issued and provided that the operator is distributing at the same time free of charge the program of public service broadcasters. The obligation to obtain a license for cable broadcasting also does not apply to programs that may be received by free (unencoded) satellite broadcasting on the territory of the Republic of Serbia.

However, concerning the licensing of cable channels, the Law has not released from that requirement foreign channels whose licenses have been issued in their mother countries (except for unencoded satellite channels), although Serbia has ratified the European Convention on Transfrontier Television, which has committed our country not to restrict on its territory the rebroadcasting of programming services harmonized with the provisions of the said Convention. Furthermore, the Law stops short of responding to questions pertaining to the localization of foreign channels, the insertion of localized advertisements in foreign programs for the Serbian market which is taking place on cable. Otherwise, according to the publicly available Register of Issued Approvals of RATEL for the distribution of radio and television programs through the cable distribution network, there are currently 88 such operators in Serbia.

In any event, although by having extended the above call to cable operators – more than eight years after the Broadcasting Law came into effect – the RBA has practically made the first step in the direction of regulating the cable offer in Serbia, which is in itself necessary and long awaited, the authors of this Report believe that the Agency will not manage to tackle all the problems present on this market by the above described manner of licensing cable channels. The key problem is not the RBA itself, but the Broadcasting Law that is out of step with contemporary developments. The Broadcasting Law namely provides insufficient flexibility to the Agency in this area, which is needed in view of the constant technological progress and occurrence of new business models and new services in cable broadcasting, which are unknown to the said Law. All this is yet again pointing to the necessity to promptly introduce the long-discussed Amendments to the Broadcasting Law. The RBA tried to tackle some of these problems by passing the Rules on Issuance of Licenses for Cable Broadcasting. However, it didn't receive a positive opinion from the Ministry of Culture regarding the constitutionality and legitimacy of these Rules. Namely, according to the provisions on the Law on Public Agencies, the RBA is required, as any other public agency, to obtain, prior to the release of any regulation, the opinion of the ministry competent for the affairs of the Agency (in the concrete case the Ministry of Culture) about the constitutionality and legitimacy of the regulation in question. On the other hand, if it believed the regulation to be unconstitutional and/or illegitimate, the Ministry should have furnished to the Agency a reasoned proposal as to how to put the regulation in line with the Constitution, Law, regulation or other general act of the Parliament and the Government. The nature of the Ministry's objections and whether it has put forward a proposal for harmonizing the rules remains unknown.

## **2. THE REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)**

2.1. On September 8, 2010, RATEL's Managing Board called a public competition for the election of RATEL's Director, pursuant to Article 19 of the Law on Electronic Communications, Article 16, paragraph 1, subparagraph 10) of the Statute of the Republic Agency for Electronic Communications (RATEL) and the decision of the Managing Board on calling a public competition.

The Law on Electronic Communications says that RATEL's bodies are the Managing Board and the Director. Under the Law, the Director is responsible for ensuring the lawfulness of the Agency's activities; he represents the Agency, runs the operation and business thereof, passes decisions related to the rights, obligations and responsibilities of Agency employees, prepares and implements the decisions of the Managing Board, ensures the transparency of the agency's work and performs other duties provided for by the Law and the Statute of the Agency. The Director is elected for a five-year term of office, as well as is dismissed, by the Managing Board, on the basis of a public competition, pursuant to the Law. The Director reports to the Managing Board for his work and submits to the Managing Board an annual and periodical reports. The conditions for the appointment of the Director are the same as the conditions for electing members of the Managing Board of the Agency. The Director must be an expert with high academic education from an area relevant to the Agency's work and in particular in the area of electronic communications, economy and law. He shall have achieved as well noteworthy and acknowledged works or practice in the area of electronic communications and he must enjoy a high reputation in professional circles.

2.2. RATEL representatives have participated in a series of round tables organized by OSCE. The aim of the round tables was to promote a debate about the recently adopted Media Study, which would serve as a starting point for drafting the Media Strategy of the Republic of Serbia. RATEL representatives have pointed to the necessity of urgently amending the Broadcasting Law, so as to enable the digitalization of terrestrial broadcasting. We hereby remind that, pursuant to the existing Broadcasting Law, an integral part of the broadcasting license is the radio station (transmitter) license, which is issued, at the request of the Agency, by the regulatory body competent for the sphere of telecommunications, in accordance with a separate Law governing telecommunications, on the basis of the Radio Frequencies Distribution Plan enacted by the ministry in charge of telecommunications. The Strategy for the Switchover from Analog to Digital Broadcasting in the Republic of Serbia provides for a different architecture of the digital broadcasting chain, in which broadcasting licenses will not include a radio station license (license for use of the spectrum), but only

licenses for accessing the multiplex in terrestrial digital broadcasting, which are unknown to the Broadcasting Law. Consequently, the Broadcasting Law needs to be urgently amended and RATEL's objections may be considered totally justified.

## **STATE AUTHORITIES**

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

In the period covered by this Report, the Parliament of the Republic of Serbia did not discuss any law of special relevance for the media sector. On a session held on September 30, the Culture and Information Committee laid down the list for the election of a member of the RBA Council, at the proposal of the University Conference of Serbia. The list included Natasa Gospic PhD and Goran Petrovic. Such list with the said two candidates will be tabled by the Committee to the Parliament for opinion. Natasa Gospic PhD is an Associate Professor on the Telecommunications Traffic Department of the Faculty of Transport and Traffic Engineering in Belgrade, while Goran Petrovic is a graduated lawyer from Kragujevac. We remind that one of the nine members of the RBA Council is elected by the Parliament of the Republic of Serbia at the proposal of the University Conference of Serbia. The election is carried out in order to fill the vacancy created by the death of the former member elected at the proposal of the University Conference, Mr. Svetozar Stojanovic, Ph.D.

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

4.1. As we have already mentioned herein, the Ministry of Culture has organized, in cooperation with OSCE and the European Union Delegation in Serbia, with the support of the British Embassy in Belgrade, a series of round tables. The aim of the round tables was to encourage debate about the recently adopted Media Study, which would serve as a basis for drafting the Media Strategy of the Republic of Serbia. The Culture Minister Nebojsa Bradic said that Media Strategy would be a turning point in the development of the Serbian media scene. "This first Media Strategy of Serbia will ensure the proper conditions for the successful fight for all, a civilized news media environment, better conditions for journalists and quality, objective and truthful reporting", Bradic said. Assistant Culture Minister Natasa Vuckovic-Lesendric said that many laws would have to be amended if the recommendations from the Media Study were accepted.

The Ministry of Culture did not meet the expectations of the participants of the round tables and fell short of fulfilling its own promises related to laying down the conclusions from the discussions led on the round tables and from the work on drafting the Media Strategy that took place simultaneously with the round tables. We remind that the Ministry released in late August a public call for submitting projects that would contribute to improving the public information system. This call pertained to the drafting of the media strategy proposal, on the basis of the Media Study and the discussions of representatives of media and professional organizations on the above mentioned round tables. Following the said public call, the Ministry reportedly opted for PricewaterhouseCoopers (PWC) as the consulting company that should have developed the Draft Media Strategy. PWC representatives attended the round tables, but the representatives of media and professional organizations weren't told how their presentations would be considered. Furthermore, there was no explanation as to the course of the Draft Media Strategy, in view of the contradictions between certain recommendations from the Study and the positions voiced in the discussion by the representatives of the above mentioned associations. The Ministry of Culture had initially merely announced that it would furnish the first draft of the Media Strategy to the representatives of media and professional organizations prior to the last round table, which was scheduled for early October. However, in September already, the Ministry told the participants that it would need much more time for developing the said first draft of the Strategy, while the last round table initially scheduled for October was cancelled. This points to the unpreparedness of the Ministry for this task and for the process of drafting the Media Strategy. This lack of preparedness could have been observed at the round tables, where the representatives of the Ministry, as well as the international experts, failed to answer to many objections and proposals of alternative solutions for developing the Media Strategy voiced by the participants.

## **COLLECTIVE ORGANIZATIONS**

### **5. OFPS – the Collective Organization for the Protection of Phonogram Producers' Related Rights**

OFPS has informed the public that a session of the Phonogram Producers and Performers Council was held on September 27, 2010. The Council's Rules of Procedure were adopted and the participants discussed joint ideas related to the coming marketing campaign.

Article 127 of the Law on Copyright and Related Rights says that the fees the producers of released phonograms and the performers respectively are entitled to shall be charged from the users as a single fee. The single fee shall be collected by a single organization, determined in the contract entered into between the performers' organization and the phonogram

producers' organization. Under that contract, the said organizations are required to also determine the level of collection costs related to the single fee and the frequency of payment of part of the fee to the other organization. The contract shall be published in the Official Gazette of the Republic of Serbia at the cost of these organizations. The Phonogram Producers' Organizations of Serbia OFPS and the Organization for the Collective Realization of Performers' Rights PI have signed that contract and agreed that the OFPS would be the organization that would be collecting the single fee. The Phonogram Producers and Performers Council is an expert working body established by the said contract, which manages the collection and apportionment of the fee and oversee and control the contract concluded between two collective organizations.

## **V THE DIGITALIZATION PROCESS**

At the already mentioned series of round tables, organized by OSCE in cooperation with the Ministry of Culture of the Republic of Serbia and the European Union Delegation in Serbia, with the support of the British Embassy in Belgrade –aimed to foster debate about the recently adopted Media Study, which would serve as a starting point for drafting the Media Strategy of the Republic of Serbia – journalists' and media associations ANEM, NUNS, UNS, NDNV and Local Press presented their set of recommendations concerning the digitalization process. The associations insisted that the tasks and powers of the current working group for the supervision of the digitalization process needed to be more precisely defined. They also said that the working group should be supplemented by new, independent members and empowered so as to be able to react publicly, point to oversights and propose alternative solutions, aiming to have a successful digitalization process. The association insisted on a comprehensive information campaign about the digitalization process targeting all citizens, but also broadcasters. One of the requests was also that the decision on the allocation of the digital dividend be taken in a transparent procedure with the widest possible participation of the public. This procedure should take into account the public interest, both in terms of leaving enough frequency bands for broadcasting and allocating part of the revenue to be generated from the digital dividend for media funds and projects. One of the requests of the associations was related to the part of the digital dividend that would be designated for wireless broadband internet access. In their opinion, future operators that are allocated that spectrum should be required to establish the network in those parts of Serbia where broadband cable and ADSL penetration is the lowest.

## VI THE PRIVATIZATION PROCESS

Explaining the positions voiced together with other journalists' and media associations at the above mentioned round tables, the Association of Independent Electronic Media furnished to the Ministry of Culture, as yet another input for further development of the Media Strategy, an overview of the media privatization process with recommendations for further action in this area. The document (available only in Serbian) that is also posted on the ANEM website at

[http://www.anem.org.rs/admin/download/files/id\\_732/Privatizacija%20medija%20FV.pdf](http://www.anem.org.rs/admin/download/files/id_732/Privatizacija%20medija%20FV.pdf), includes the legal framework relevant for this sphere, including the regulations that have caused a suspension of privatizations, the analysis of the objections to the privatization that have been completed so far and provides recommendations as an alternative to those contained in the Media Study, which provide for giving up privatization and transforming still-unprivatized public media into regional public service broadcasters. Among other things, the document proposes the following:

- Changing the provisions of the Law on Local Self-Government, the Law on the Capital City and the Law on Ethnic Minorities' National Councils, which – pertaining to media privatization – are not conformed to the Law on Public Information and the Broadcasting Law;
- Continuing with time-limited privatization of media with short deadlines, simultaneously with the setting up of an expert team in the Privatization Agency, which would include media professionals that would, together with the Ministry of Culture, through public consultations, separately and with media and journalists' associations, work on improving the privatization model so as to recognize the specificities of the media industry;
- Relaxing the provisions of the Broadcasting Law in the part concerning the ban on media concentration, in order to solve the problem of the unsustainable number of electronic media by measures that will encourage the aggregation and merger of electronic media, particularly at the local and regional level;
- Implementing effective state aid control mechanisms; and
- Regulating a system of transparent and non-discriminatory state co-financing of media projects and a system of state support for the development of the media sector.



## VII CONCLUSION

The debate about the Media Study, developed with the assistance of experts engaged by the European Commission, which is to serve as a basis for developing the Media Strategy, has overshadowed everything else that took place in the media sector in September. The ambitious plan involved day-long sessions to be held week after week, aimed at brainstorming the recommendations from the Media Study in collaboration with the consultant hired by the Ministry of Culture, who would promptly prepare conclusions from the round tables and work on the draft Media Strategy. However, it proved too much of a task for the Ministry of Culture. The state showed to be incapable of tackling a single one of the inherited problems in the media sector, let alone of coping with the challenges of technological changes that are fundamentally changing the media environment. Serbia has found itself in the situation to have, as a basis for its Media Strategy, a study that has concluded that the even existing public service broadcasters are failing to do a decent job, while at the same time proposing the establishment of 10-15 new public service broadcasters. The study has acknowledged that the collection rate of the subscription fee is intolerably low, while at the same time insisting on funding the proposed 10-15 new public service broadcasters – including the programs of civil sector stations, minority media and part of the programs of commercial media – from that same fee. Instead of privatizing the existing public media, the study proposes to the owners of private media to assign their equipment and personnel to regional public service broadcasters and relinquish their investments. No wonder that even the RTS is among those that are opposed to such recommendations, since it is reluctant to share the subscription fee with anyone else or to open windows on its channels for regional broadcasters. Against are also the still-unprivatized media, which are reluctant to give up their frequencies and direct budget funding, as well as commercial broadcasters, unwilling to renounce their investments. Journalists' and media associations have proposed a set of alternative recommendations, but it remains to be seen if the state will get the message. In the backdrop of the debate about the Media Strategy, new cases of pressures on journalists occurred, particularly in the Serbian countryside. At the same time, the courts in legal proceedings against the perpetrators of attacks against journalists continued to pass sentences on the limit of the legally prescribed minimum or even below it. In cases where they were expected by media professionals to protect freedom of expression, the courts again delivered verdicts that were pushing journalists deeper into legal uncertainty and self-censorship.