



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for November 2010



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I FREEDOM OF EXPRESSION

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

1. Threats and pressures

1.1. The Media Center Belgrade and the NGO “Urban in”, which have organized a visit for domestic and foreign journalists to Novi Pazar, have criticized the Mufti of the Islamic Community in Serbia Muamer Zukorlic over his treatment of the television station “Regional Television” from that city. The above mentioned organizations’ press release said that Zukorlic didn’t allow the said station to report, together with other television crews, from the meeting held on November 3 in the premises of the Mesihat. In the meantime, Zukorlic announced he would press charges against the Media Center “for spreading lies and untruths“. The press release of the Information Center of the Islamic Community in Serbia said that the Regional Television Novi Pazar had been, just like other media, properly informed about the above mentioned meeting and that it was treated evenhandedly in shooting and reporting from the meeting. The press release went on saying that the proof of the above was the fact that the Regional Television Novi Pazar aired the package and original footage from the meeting in its central news bulletin. The station responded that they had been invited by the Mesihat to report from the meeting with the journalists visiting Mufti Zukorlic. However, the press release of Regional Television Novi Pazar also says that “five minutes after the start of the shoot, the crews of TV Jedinstvo and the cameraman of Regional Television Novi Pazar were asked to leave the premises, while the only ones allowed to stay and shoot the whole course of the meeting was the crew of TV Universa from Novi Pazar”.

According to the Public Information Law, only state bodies and organizations, local autonomy and local self-government bodies, public services and public companies, as well as members of parliament and councilors, are required to make information about their activities available to the public and under equal conditions for all journalists and public media, without discrimination. However, the relevant provision of the Public Information Law should not be interpreted as a “permission“ for the Islamic community in Serbia or any other religious community to discriminate against certain journalists and media. The Law namely stipulates that it is forbidden to restrict, directly or indirectly, the freedom of public information that is in the interest of the public, and particularly not by misusing private powers or rights, or in any other way that may impede the free flow of ideas, information and opinions. Since the meeting between the Chief Mufti of the Islamic Community in Serbia and

a group of domestic and foreign journalists is undoubtedly an event the public has a justified interest to be informed about and since the media are entitled to freely collect and release information about such an event, the whole case may be interpreted as discrimination against TV Jedinstvo and Regional Television, both from Novi Pazar. All the above in view of the fact that the television crew of the third station – TV Universa – was allowed to shoot the entire meeting.

1.2. On November 4, 2010, the private Radio Television “Spektri” from Bujanovac, which is broadcasting in Albanian language, announced in a press release that “several inspectors” from the Vranje Police Directorate, paid a visit to this station and started an investigation in the premises at the orders of the Public Prosecutor’s Office in Belgrade. The press release went on saying that the reason for the investigation was the complaint filed by the Republic Broadcasting Agency (RBA), in which the regulatory body alleged “Radio Spektri to have been broadcasting without a license“. Moreover, the press release said, the inspectors inquired about the business records of the station in the previous three years and requested access to registration documents, and also wanted to know about the programming. RTV Spektra branded the actions of the inspectors unacceptable, politically motivated and aimed at discriminating against the Albanians in their legitimate right to be informed in their own language.

According to the information available, Radio Spektri has been broadcasting since 2001, while TV Spektri has been on the air since 2003. From the information available in the public registry of licenses issued to broadcasters kept by the RBA under the Broadcasting Law, the Spektri Broadcasting Company from Bujanovac possesses a broadcasting license for television program for the local area of Bujanovac. Spektri, however, doesn’t have a license for radio broadcasting. At the last open competition for regional and local licenses, according to the list released by the RBA on August 31, 2010 the local radio license for Bujanovac was issued to the public company Radio Bujanovac and not to the private Radio Spektri. According to the information published by certain newspapers, Radio Spektri ceased to broadcast its program, after the results of the open competition were released, only to be back on air in late October. In the concrete case, broadcasting without a license may represent a criminal offense under Article 353 of the Penal Code (unauthorized performance of activity), which provides for a fine or prison sentence of up to two years for unauthorized performance of activity and performance of activity for a remuneration, for which the law requires the possession of a license issued by the competent authority. However, two things are questionable in the above case. First, have the police been really investigating anything related to the content aired by Radio Spektri? In the opinion of the authors of this Report, if the RBA really filed a complaint for an offence under Article 353 of the Penal Code and not

for some other offense, the actions of the inspectors would have been unacceptable, unless they were trying to establish if Radio Spektri had broadcast program and charged for advertisements, since the latter might represent “remuneration” as provided for by the Penal Code in the definition of the criminal offense of unauthorized performance of activity. The second question concerns the extent to which the broadcasting of Radio Spektri is currently unauthorized. Namely, Article 119 of the Broadcasting Law says that the stations that were broadcasting at the time when the said Law entered into force – and Spektri is definitively among such stations, since it has been on the air since 2001 – shall freely continue to broadcast until the completion of the open competition for the issuance of broadcasting licenses. If that open competition for the issuance of broadcasting licenses is the one related to which the RBA released a list of recipients of the licenses on August 31, the question is when was the competition closed? Namely, since the competition was called for the issuance of licenses, it might be logical to assume that it was completed only when the licenses were actually issued and not at the moment when the list of recipients was published. According to the records from the public registry of issued licenses, Radio Bujanovac has still not been issued a license. Whatever the case may be, it remains to be seen what the Court will decide about the dilemma related to the interpretation of Article 119 of the Broadcasting Law.

1.3. On November 5, 2010, the workers of the company „RS partners PES“ from Surdulica, who have been on strike for the last six months, attacked the television crews while filming their protest. The workers prevented RTS cameraman Igor Ivanovic from shooting and shouted abuse and insults. They also threatened other reporters that they would break up their equipment. The police managed to thwart the attack. According to media reports, the workers didn't like the fact that the RTS and other media included in their reports the statements of the company management – they said they wanted only their voices to be heard. Member of the strike committee Violeta Djordjevic called for understanding and apologized to the reporters.

The Public Information Law prohibits anyone from putting physical or any other form of pressure on public media and the staff thereof, or any other influence that may obstruct their work. Moreover, according to journalist codes of ethics and the Broadcasting Law, the RTS, as a public broadcasting service, as well as all other electronic media, are required to provide complete information about matters of public interest. In the case of strikes, this involves the duty to present the arguments of both sides – in this case the workers and the factory's management.

1.4. Vlada Djukanovic, the author and host of the radio program “Na liniji” (On the Line) on Radio Fokus has alleged that the signal of his station was being interfered with during the

said program. “We have been suspecting for days that someone from the government is interfering with our program on purpose because it is critical towards them. Today, when the guest of the program – dealing with the topic of changes in Serbia – was Tomislav Nikolic, the signal suddenly disappeared at 11.50h only in Southern Serbia and the entire program was completely interrupted half an hour later”, Djukanovic told the daily “Alo”.

If Djukanovic’s allegations would prove to be true, the perpetrator could be held legally accountable for the criminal offense of preventing the printing and distribution of print items and program broadcasting referred to in Article 149 of the Penal Code. That regulation makes it punishable by a fine or by a prison sentence of up to one year to unlawfully prevent or obstruct the broadcasting of radio and television program. If the said actions are performed by a functional person in discharging his/her duties, the offense is subject to a prison sentence of up to three years. We hereby remind that in the last couple of years in Serbia there were no cases of alleged willful interference of radio programs. Such allegations were formerly common, especially with the program “Pescanik” (Hourglass), aired on Radio B92 for years. According to the once banned book “Military Secret” by Vladan Vljakovic, which contained authentic minutes from the meetings of the Serbian military top brass during the Milosevic era, jamming the signal of independent electronic media in that period was routine practice, involving, among others, military security agencies. After these allegations came to light, Radio B92 pressed criminal charges, but to no avail since nobody was ever prosecuted or tried.

1.5. On November 13, 2010, the Journalists’ Association of Serbia (UNS) announced that Violeta Popovic, the correspondent of Prva TV from Gornji Milanovac, had had her car vandalized twice in a week, at night, on the parking lot in front of her apartment building with side mirrors broken and the car sprayed with paint. UNS’ press release warned that the journalists, due to their occupation and recognizability, were often exposed to such harassment without concrete reason. Such harassment is seldom punished and typically later evolves into physical assaults. UNS called on the police and the Prosecutor to qualify the perpetrators of such incidents according to the provisions of the amended Penal Code, which provides for prison sentences of up to eight years for physical attacks, but also threats to physical security.

The amendments to the Penal Code from 2009 provide for more stringent sanctions, namely from 1 to 8 years in prison for threatening the security of persons performing jobs of public interest in the field of information, in relation to the performance of their duties. In the concrete case, however, it is unclear if the vandalizing of Violeta Popovic’s car happened in relation to her journalist work and if such act may be interpreted as a threat of a renewed

attack on her or merely as vandalizing. Namely, in order for such damage to be qualified for protection under the Amendments to the Penal Code from 2009, both of these conditions would have to be fulfilled.

1.6. On November 16, 2010, the correspondents of Politika and Vecernje Novosti from Krusevac Rade Stankovic and Zorica Avramovic have pressed charges against Bratislav Ivanovic, who, as they claimed, attacked them physically, in the churchyard of the St Nicholas Church in the village of Mala Vrbnica, where the reporters were talking to the locals. They were reporting about citizens' reactions to the decision of the City Council of Krusevac to withdraw the protection of the natural monument – an ancient oak tree in the village of Mala Vrbnica. In the charges they have pressed, the reporters claim that, while they were interviewing the villagers, Bratislav Ivanovic told them to “get lost immediately”. After they refused, Ivanovic stepped towards Zorica Avramovic threatening her and then swung his fist at Rade Stankovic, with the intent to snatch their cameras and smash them. The reporters say they don't know what could have been the motive of the attack, since they had never encountered Ivanovic before or the other villagers who happened to be in the churchyard at the time of the incident.

As we have already mentioned, the Public Information Law prohibits anyone from putting physical or any other form of pressure on public media and the staff thereof, or any other influence that may obstruct their work. In the concrete case, the attack on the reporters could include elements of the criminal offense of violent behavior, defined in the Penal Code as a serious public order offense in the form of insults or harassment, violence, provoking a brawl or rude or impertinent conduct. Violent behavior is subject to a prison sentence of up to three years; in its qualified form, when violent behavior is performed as part of a group of persons or when it has led to minor bodily harm or severe humiliation of citizens, it is subject to a prison sentence of up to five years.

2. Legal proceedings

2.1. The Court of Primary Jurisdiction in Cacak has sentenced in first instance the priest Vlasta Zlatic from Silopaj over the threats made against the reporter Zoran Marjanovic “that he would fare like (murdered journalist) Curuvija”. Zlatic was sentenced for the criminal offense of threatening the security of the reporter and slander with the fine of 40 thousand dinars. He was also ordered to pay the court costs. However, Marjanovic said he would appeal the verdict. “I am satisfied with the verdict, but not with the amount of the fine. Such low fines will not help protect the journalist profession”, he said. As a reminder, after the

publication of texts in which Zlatic was said to have beaten up his unwed wife, the priest threatened the author Marjanovic by telephone and also in presence of police officers.

Under the Penal Code, threats against the security of a person, in the form of threatening to attack a person or that person's next of kin, will be subject to a prison sentence of up to three years, while slur will be punishable by a fine ranging from 40.000 and 200.000 dinars. These penalties have been made more stringent with the Amendments to the Penal Code from 2009, namely 1-8 years for threatening the security of persons occupying jobs of public interest in the field of information, in relation to the performance of their duties, which category of persons most certainly includes journalists. At the same time, under criminal law provisions pertaining to alleviated penalties, if no lower threshold is provided for an imprisonment penalty, a fine or community service may be pronounced instead of a prison sentence. From the sketchy information available about the first-instance sentence of the Court of Primary Jurisdiction in Cacak, it is difficult to deduce that alleviating circumstances have been considered by the court when weighing the penalty in the concrete case. What is a concern, however, is the fact that the courts typically sentence the perpetrators of attacks against journalists to sentences below the legal minimum.

2.2. The Appellate Commercial Court has rejected the appeals filed by Television B92 and its News Director Sanda Savic against the first instance verdict of the Commercial Court in Belgrade, which ordered the station and Savic to pay a fine in the amount of 650.000 RSD. The Appellate Commercial Court and the former Commercial Court in Belgrade have found that, in its program "B92 Investigates: Dada Vujasinovic – the First Victim" aired in June 2007, B92 has unlawfully shown parts of the film "Sister" of author Nenad Krasavac, as well as parts of the material found by the courts to have been shot for use in the said film, albeit they had ultimately not been used in it. B92 announced it would propose to the Republic Public Prosecutor's Office to file an extraordinary legal remedy against the Appellate Commercial Court's decision – Request for Protection of Legality.

The reason why this case is significant for the media in Serbia in general is the nature of the material used by TV B92 in its program about Dada Vujasinovic, the journalist murdered in 1994. After the attempted assassination of Vreme weekly's journalist Dejan Anastasijevic in April 2007, the said station aired a series of documentary programs about unsolved murders of journalists in Serbia in the last 20 years. TVB92 hasn't denied using in the program "Dada Vujasinovic – the First Victim" slightly less than three minutes of material from Nenad Krasavac's film. However, in several cases filed by Krasavac after TVB92's program was aired, he insisted that the material he had shot also included the footage of the court reconstruction of Dada Vujasinovic's death, handled by Dobrivoje Gerasimovic, the investigative judge of the

then District Court in Belgrade, who died in the meantime. Professor Branimir Aleksic PhD and Graduated Engineer Milan Kunjadac also participated, as court experts, in the reconstruction conducted on May 5, 1998, in the presence of Vujasinovic's parents and their lawyer Branislav Tapuskovic. According to the testimony of the father of the late Dada Vujasinovic, judge Gerasimovic rejected his request to appoint different experts, but allowed the reconstruction to be recorded on camera. Vujasinovic insisted on the reconstruction to be recorded because the independent experts he had hired personally claimed that his daughter had been murdered, while Aleksandric and Kunjadac insisted on the suicide version. At the time when TVB92 was preparing its program, reports in the daily Politika suggested that the District Court in Belgrade, fourteen years after Vujasinovic's death, was close to giving up the official version – according to which she had committed suicide – and to finally qualify this case as murder. Vujasinovic's father then furnished the footage of the reconstruction to TVB92, with the proposal to include it in their program, which TVB92 ultimately did. Krasavac, who was hired by Vujasinovic's parents, with the approval of the investigative judge, to film the reconstruction, also used the parts of the same footage, with the consent of Vujasinovic's father, for his film "Sister". TVB92 claimed the said footage to be part of the court material, which, according to the Law on Copyright and Related Rights, was not to be considered as an author's work, particularly in view of the fact that the recording was conducted at the order or with the permission of the investigative judge and was requested and approved with the purpose of being used in the proceedings. If the verdict of the Appellate Commercial Court remains intact, it would substantially affect the manner in which the media will be able to report about legal proceedings in Serbia.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

1.1. The implementation of the Public Information Law has been partly discussed in the Freedom of Expression section.

1.2 On November 11, 2010, at the session of the European Integration Committee of the Serbian Parliament, the Head of the EU Delegation to Serbia Vincent Degert presented the European Commission Progress Report for Serbia for the year 2010. Degert stressed that the said report was essentially positive, for it recognized Serbia's progress in political democratization and acknowledged a certain degree of economic recovery. However, the reports points to problems in several areas and particularly in the reform of the judiciary,

fight against corruption and organized crime, the rule of law, the absence of a wider debate prior to passing new laws and frequent recourse to urgent proceedings when a law is passed. Degert especially pointed to the example of the Public Information Law, the provisions of which were invalidated by the Constitutional Court and which were adopted without consulting the public in the first place.

1.3. The majority of media in Serbia are not adhering to ethical and professional standards provided for by the Serbian journalists' Code of Ethics, the Public Information Law and other applicable regulations. This is the conclusion of a text published in the Danas daily on November 21. The representatives of journalists' associations agree that the main omission of the media is the failure to respect the presumption of innocence. The Chairman of IJAS (NUNS) Vukasin Obradovic said that his organization "impatiently awaits the Press Council to become operational", adding that this self-regulatory body could improve the situation in the field of the media. The Chairman of the Executive Board of the Association of Journalists of Serbia (UNS) Petar Jeremic said that the largest number of violations had taken place in the tabloid press, but added that there were examples of the public broadcasting service breaching the same rules. Jeremic believes that, related to the above state of affairs, the Press Council will have an important role to play in the case of print media, while the Republic Broadcasting Agency (RBA) should, in his opinion, oversee the observance of regulations in broadcast media.

2. Broadcasting Law

2.1. The television station SOS channel has announced that the Republic Agency for Telecommunications (RATEL) has switched off their transmitter on the Beogradjanka building "in order to prevent an examination with the purpose of determining if SOS kanal's frequency was overlapping with the one of the Romanian Television". SOS press release said that four years after being awarded a defective frequency, RATEL and the RRA are yet to solve the problem. As a consequence, the said television station has suffered millions in damage, while the viewers have been unable to watch their program on a regular basis. As the station claims, the complete documentation with all relevant measurements and information related to this case was furnished to the most important institutions in Serbia, as well as to the OSCE and the European Commission's office in Belgrade.

The press release of SOS channel reveals only a part of the story related to the withdrawal of the license of this regional specialized sports station from Belgrade. Namely, on RBA's website at <http://www.rra.org.rs/index.php?task=content&id=103>, one may see the decision

of the RBA Council dated March 24, 2009, according to which SOS channel was to be stripped of its broadcasting license if it failed to pay its dues to the Agency in the amount of 20.956.831,16 RSD (more than 220 thousand euro at the then exchange rate) within seven days or to deposit a bank guarantee covering the same amount payable on May 31, 2009. Since SOS channel did not pay the due amount or deposit the guarantee, its license was withdrawn on April 1, 2009. On February 26, 2010, RATEL passed the decision no. 1-01-345-148/10, which is also available at <http://registar.ratel.rs/cyr/filestore/?filestore=6&id=738>, disallowing the operation of SOS channel radio stations (television transmitters) on the 36th and 38th channel in Belgrade, invoking the RBA request and Article 77 of the Telecommunications Law. This Article stipulates that a radio station's permit may be withdrawn if it expires, if it is withdrawn upon decision of a broadcasting regulatory body or in some other way, if the television and radio broadcasting license expires pursuant to a special law regulating the field of broadcasting. SOS channel has indeed recurrently pointed to the problem of suffering harmful interferences from Romanian broadcasters, resulting in the television's inability to properly cover with its signal the service zone on 36th UHF channel – for which it has obtained a license on an open competition and in line with the current allocation plan. However, unhappy with the slowness in solving this problem by the competent Serbian and Romanian administrations, SOS channel refused to pay its broadcasting fee, creating thereby the grounds for the withdrawal of the broadcasting license according to the provision of Article 61 of the Broadcasting Law. That provision says that the broadcasting license shall cease to be valid before its expiry if the broadcaster, in spite of a written warning, fails to pay the broadcasting fee.

3. Law on Copyright and Related Rights

3.1. In the course of the month of November, a large number of stations in Serbia started receiving requests for information from the competent prosecutors. These requests pertained to the alleged commercial offense from Article 215, paragraph 1, subparagraph 7) of the Law on Copyright and Related Rights. The said Article provides for a fine ranging from 100 thousand to three million RSD for a commercial offense committed by a company or other legal entity that fails to furnish or fails to timely furnish to the organization for the collective realization of copyrights or related rights information about the name of the protected object, the frequency and scope of exploitation, as well as information about other circumstances relevant for calculating the fee paid according to the tariff. For the same commercial offense the Law also provides for a fine of 50.000 – 200.000 RSD charged to the responsible person in the legal entity. From the above requests it could have been ascertained that the OFPS – the Collective Organization for the Protection of Phonogram Producers' Related Rights – has filed an complaint with the RBA against a number of stations that, according to the OFPS, are

not furnishing relevant information about the objects of protection they are using, on the basis of which the RBA has filed commercial offense charges with the competent prosecutors.

The Law on Copyright and Related Rights stipulates that radio and TV stations must submit on a monthly basis to organizations for the collective realization of copyrights or related rights lists of objects of protection these stations have aired, in the manner and in the form laid down by the general acts of the particular organization. These lists of aired objects of protection are important, since they affect the allocation of the funds collected from the fee to individual owners of rights. The problem with OFPS, however, lies with the fact that the manner and form of the lists that radio and television stations must submit are not clearly regulated by the OFPS general act. Namely, Article 9 of the the applicable fee tariffs charged by the OFPS to the users (“Official Gazette of the Republic of Serbia” no. 94/2009) only says that the user must, in writing, by post or e-mail or by using a form downloadable on the OFPS webiste, nofity each instance where the repertoire has been used. From the said provision it stems that using the form from the OFPS website is optional. In any case, the OFPS website also contains the text of the Rules about the notification of aired phonograms by the broadcasters, which were adopted by the OFPS Managing Board in late March 2010. These Rules stipulate, differently from the applicable tariff, that the notification of aired phonograms shall be deemed valid and complete and therefore acceptable only if made electronically on the form provided for by OFPS and physically delivered on a CD. The authors of this Report find the above to be almost incredible. Nevertheless, it reflects the problematic regulations in line with which Serbian broadcasters operate: someone may namely be fined by up to three million dinars where he has acted in keeping with the applicable Tariff published in the Official Gazette (sending the notification of the used repertoire by e-mail) due to the fact that a collective organization has subsequently prescribed by an internal act, unpublished in the Official Gazette and thus potentially unavailable to the users, that the above e-mail notification will cease to be considered valid and complete. It remains to be seen if the prosecutors will press charges upon receiving the information they started to collect from stations in November and if the courts will pronounce the fines provided for by Law in the ensuing proceedings.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Serbian Parliament didn't debate any legislation of special relevance for the media sector. Nonetheless, the Ministry of Trade and Services released in the second part of November its Draft Advertising Law. The fact that a new law in

this field was being worked on had hardly surprised anyone. Namely, back in December 2009, the Ministry of Trade and Services set up a working group tasked with drafting the working version of the Advertising Law. This group comprised, among others, the representatives of the media sector. However, what came as a surprise was the fact that this very working group was shunned in the process of making the Draft Law. Namely, the Draft, which has recently been introduced to the general public, was produced internally in the Ministry, without consultation with the working group. This was a reminder of a similar case from 2009, when both the Law on the Amendments to the Broadcasting Law and the Law on the Amendments to the Public Information Law were drafted without the participation of the previously established working group by the Ministry of Culture. One of these two laws – the Law on the Amendments to the Public Information Law – was later found to be unconstitutional. The first analysis of the released Draft Advertising Law made by the Ministry of Trade and Services points to several facts. Firstly, the Law completely ignores the efforts that were invested in the last year in the drafting of a Media Development Strategy of Serbia. What's more, the text released by the Ministry of Trade and Services, by cementing the “as-was situation” and the problematic practices in this field, compromises the possibility of the implementation of the future Strategy before such document has even been adopted. Furthermore, the Draft wrongly implements EU's Audiovisual Media Services Directive. The definitions of terms taken over from the Directive are already unclearly transposed, namely these definitions are incorrect. There is no definition as to what constitutes an audiovisual media service. The difference between linear and nonlinear media services is ignored. The notion of audiovisual commercial communication is not precisely or accurately laid down. Audiovisual commercial communication, as defined in the Directive, includes radio, while not covering video on-demand. Consequently, the Draft contains rules for commercial radio that have been set up in line with the television model, instead of being liberalized. Also, audiovisual commercial communication from the Draft involves recommending a person, his/her activity, goods, services or image in addition to personal messages, while audiovisual commercial communication from the Directive involves recommending goods, services or image of a person engaging in a commercial activity. The difference resulted in “public good advertising”, i.e. advertising with a positive social goal being again treated as advertising of any goods or service, with all negative consequences that we have had so far. Furthermore, the Draft wrongly implements some of the concepts contained in the interpretations of the European Convention on Transfrontier Television provided by the European Commission. In any case, the Ministry of Trade and Services has announced that the public debate about the said Draft would be open until late December and that all interested persons are invited to submit their written suggestions for amending problematic provisions.

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

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

The Council of the Republic Broadcasting Agency (RBA) has passed a decision to ask for the approval of the Ministry of Culture for relieving broadcast media affected by the earthquake in Kraljevo from paying the fee to the Agency for a period of six months. The representatives of the Council and the Agency have visited the broadcast media in Kraljevo (three television stations, four radio stations and the RTS correspondents) and concluded that the earthquake had affected the normal operation of the media, as well as that the employees in these media had suffered serious damage. Advertising revenue is low to inexistent and there are no signs that the situation will improve. The media in Kraljevo are further burdened by having to pay overhead expenses, cable distribution of their program and fees charged by other government institutions, a press release dated November 17 said.

The said decision of the RBA Council, albeit positive at first glance, raises questions as to the position of the RBA and its autonomy. Namely, according to the provisions of the Broadcasting Law, the Agency is an autonomous and independent organization discharging public powers pursuant to the Law and regulations passed on the basis of the Law. One of the key measures of the Agency's regulatory activities in the field of broadcasting in Serbia should be a fee-setting policy. The fees are, again pursuant to the Law, also determined depending on the program concept of the broadcasters, namely the origin and type of programming that is aired, so as to encourage the airing of certain socially desirable programs. Furthermore, the purpose of regulation is to ensure the financial independence of regulators and to cover regulation costs. However, the Law stipulates that the Agency will determine the amount of the fee with the consent of the Government of the Republic of Serbia. Accordingly, the absence of the said consent in a concrete case could give leverage for the Government to influence the Agency's decisions. In the concrete case, there are two problems. The first is that the Law does not say that natural disasters affecting broadcasters may influence the amount of the fee. This might be interpreted as a mistake by the legislator. The second problem/question, in the opinion of the authors of this Report, is why has the RBA Council asked for the approval from the Ministry of Culture to relieve the Kraljevo media affected by the earthquake from paying the Agency fee for a six-months in the first place? It is true that, according to the Law, the amount of the fee is laid down with the

consent of not the Ministry of Culture, but the one of the Government of the Republic of Serbia. What is beyond doubt is that the situation created by the earthquake in Kraljevo and the intent of the Agency to help the local media has once again laid bare the already recognize shortcoming of the Broadcasting Law: the powers of the Agency to use the broadcasting fees as an effective mechanism for regulating the media market in Serbia are seriously limited, namely imprecisely defined.

2. REPUBLIC ELECTRONIC COMMUNICATIONS AGENCY (RATEL)

RATEL ended the public debate about the Draft Rules on the Amount of the Fee for the Use of Radio Frequencies in November. The Draft differs from the old Rules insofar as the criteria for determining the fee for the use of radio frequencies, provided for by the new Law on Electronic Communications, differ from the ones contained in the former Telecommunications Law. The old Law included the degree of economic development of the area covered by the radio station as a criterion, which is absent from the new Law. This may potentially lead to the evening out of the fees in areas with different degrees of development. The objections voiced by the media pertained to the inadequately used second corrective mechanism for determining the fee provided for by the Law on Electronic Communications. That criterion expresses the need to ensure the introduction of new services, market competition and rational use of the radio frequency spectrum. The authors of this Report believe that the omission to additionally reduce the radio frequency fee in underdeveloped areas – with the purpose of introducing new services, market competition and rational use of the radio frequency spectrum – may result in a further increasing gap between developed and underdeveloped areas of Serbia.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

As it was indicated earlier in this Report, the Serbian Parliament didn't debate any legislation of special relevance for the media sector in November. Two sessions of the Parliament's Culture and Information Committee were held in the same period. However, on the table were the ways of presenting Serbia's cultural treasures on the European stage, as well as the Draft Law on Foundations, but not any affairs that directly pertain to the media.

4. THE MINISTRY OF CULTURE

The statements repeatedly made by the Culture Minister Nebojsa Bradic in November, about how the Draft Media Strategy was going to be presented to the public at the beginning of that month, unfortunately did not materialize. Media and journalists associations were first told by the Ministry that the said Draft would be introduced on November 16 and then on November 22. The presentation was once again postponed and now the end of January 2011 is mentioned as a possible date. It is hoped that this will not be merely another postponement and failed promise accompanying the process of the adoption of the Serbian Media Strategy. We remind that, after the release of the Media Study, produced by the experts hired by the European Commission and announced as a basis for drafting the Media Strategy, it was announced that the series of round tables in September discussing the Study would be accompanied by simultaneous work on the Draft. The Ministry was namely supposed to release on each round table the conclusions from the previous round table, which would then be joined together in a Draft Strategy. Unfortunately it didn't happen, in spite of the fact that the Ministry had hired the consulting company PricewaterhouseCoopers to write the Draft Strategy. According to the Ministry, the material that was written – albeit unseen by anyone outside the Ministry – is merely a part of the Strategy that pertains to the “obligations of Serbia on the European path”, whereas the financial analysis of the market that is supposed to represent the final touch to the Strategy, is reportedly still in the pipeline. Off the record, one may hear that the problematic parts of the Strategy are the ones that require a political decision on the fate of state media, the models of financing and the proposal contained in the Media Study to establish a larger number of regional public service broadcasters. Media and journalists' associations believe that the Ministry is in fact buying time and seeking a way to include in the Strategy concepts that were harshly criticized by the associations during the round tables. On the other hand, a particular concern is the fact that other ministries are already planning solutions from their scope of competence. The latter became obvious when the Ministry of Trade and Services presented the Draft Advertising Law, which is totally unaligned with the positions that were heard during the debate about the Media Strategy, which compromises the future thereof before it has even been adopted.

COLLECTIVE ORGANIZATIONS

5. OFPS – the collective organization for the protection of phonogram producers' related rights

OFPS – the collective organization for the protection of phonogram producers' related rights has announced that, on the basis of contacts with foreign organizations for the protection of

phonogram producers' and performers' rights from Europe and the world, which were established in late October on the conference of the Global Performance Rights Committee held under the auspices of IFPI (International Federation of Phonogram Industry) in Copenhagen, it expected that it would soon enter into several international agreements concerning reciprocal protection.

Article 186 of the Law on Copyright and Related Rights stipulates that each organization for the collective protection of copyright and related rights must, pursuant to an agreement with the relevant foreign organization from the same field, ensure the collective realization of copyright and related rights of Serbian right holders abroad and foreign right holders in the Republic of Serbia. The organization must fulfill this obligation within five years from the issuance of the first license for the performance of activity. The OFPS obtained its first license back on July 14, 2002 and it was in the meantime often criticized for not being able to conclude a sufficient number of agreements with the relevant international organizations. According to information posted on the OFPS website, this organization has to date entered into agreements with the following international organizations: SSCP – France, VOIS – Russia, UMA – Ukraine, SENA – the Netherlands, PPL – Great Britain, RPA – Russia, EFY – Estonia, PROPHON – Bulgaria, The IPF Institute – Slovenia and ZAPRAF – Croatia.

6. PI – Organization for the collective realization of performers' rights

On a session held on November 22, the Management Board of the Organization for the collective realization of performers' rights PI called a regular session of PI's Assembly for December 22. In addition to the adoption of the annual statement of accounts, as well as the reports of the Managing and Supervisory Board respectively, the Assembly is expected to make decisions concerning the change of its legal organizational form and various adjustments so as to comply with the Law on Associations.

According to the transitory provisions of the Law on Copyright and Related Rights, the existing organizations for the collective protection of copyright and related rights that were engaged in the activity of realizing these rights prior to the entry into force of the new Law in 2009, shall resume their activities, but shall also conform their status and operations with the provisions of the new Law within one year from the entry into force thereof. In that sense, the existing organizations must notify their registration and change of legal organizational form to the Registry of Associations and apply for deletion from the Registry of Companies where they are registered. Since the Law on Copyright and Related Rights entered into force on December 24, 2009, the PI is practically trying to fulfil its obligation in the last days of the

deadline. It remains to be seen if it will succeed. The other two organizations that have been issued a license for the collective realization of rights by the Intellectual Property Office – SOKOJ and OFPS – have made the adjustments back in March and April this year, respectively.

V THE DIGITALIZATION PROCESS

In the period covered by this Report, no progress has been achieved concerning the digital switchover, i.e. the transition from analogue to digital television broadcasting in the Republic of Serbia, announced for April 4, 2012.

VI THE PRIVATIZATION PROCESS

Businessman Milan Beko said in an interview on TVB92 that the fact that he owned the daily Novosti was never disputed, confirming thereby that he actually controlled three foreign companies that owned a combined 62% of Novosti's shares. Namely, the companies Trimax Investments GmbH, Ardos Holding GmbH and Karamat Holdings Ltd acquired the shares of Novosti in August and September 2006, buying them out from small shareholders, with each of the said companies owning less than 25%. Until now, the Republic of Serbia was believed to be the largest single shareholder of Novosti with more than 29% of the shares, while the Pension and Disability Insurance Fund (PIO) of the Republic of Serbia held more than 7%. After Beko's interview on TVB92, the media reported that the Securities Commission had initiated a procedure to determine the ownership stakes in Novosti. Namely, according to the Law on Takeover of Joint Stock Companies, the person that has acquired the shares of a company, which, along with those that person already possesses, are exceeding 25% of the total number of votes attributed by the voting shares in that company, must immediately inform the stock market, the Commission and the acquired shares' company about the takeover. Moreover, the said person must announce a takeover bid, under the conditions and in the manner prescribed by Law. The same Law stipulates that the failure to fulfill the above mentioned obligations shall be subject to a fine ranging from one to three million RSD. The second consequence of the fact that Milan Beko, namely the companies he controls, has not timely notified the acquisition of more than 25% shares of Novosti, could be to strip him off the voting rights associated with these shares, until the breach is remedied. This would practically mean that the state, with its direct share of more than 29% and indirect share of

more than 7% via the PIO Fund may, until the breach is remedied, assume the exclusive control of Novosti. Although the problem with Novosti occurred after the privatization carried out under the regulations that are not effective anymore and after the takeover of the shares of minority shareholders by companies controlled by Milan Beko, this is yet another proof of the situation where the non-transparency of media ownership in Serbia ultimately results in the state controlling an increasing share of the media scene in Serbia, instead of leading to privatization and the separation from the state of the main Serbian media.

VII CONCLUSION

November too was marked with new cases of physical assaults on journalists. However, the court verdicts in related legal proceedings are still pronounced below the legal minimum. Such overly lenient penal policy in cases where journalists have been attacked are sending a message that the Serbian society is one in which freedom of expression is very poorly valued. At the same time, any further postponement of the adoption of the Media Strategy would show that the state is not ready to assume clear obligations as to the further development of the Serbian media. Reluctance to take clear positions about the transparency of media ownership leads to situations where after more than four years the public was unable to discern who is the owner of one of the most influential Serbia dailies (the case of Milan Beko and Novosti) – we have finally learned that after the owner himself admitted it in a television interview. The apparently surprised government authorities later announced that they would “launch a procedure to determine”. In the same way, the absence of a clear stance concerning the funding of the public broadcasting service has led to the surprising emergence of the Draft Advertising Law. That Law has not only been written almost in secrecy, but it is threatening to compromise the adoption of the Media Strategy and cement the current situation of uneven status of state and private media in Serbia. If the Media Strategy is finally adopted in such an environment, the big question is will it have anything to tackle or will the media professionals once again face a *fait accompli*? It all remains to be seen, probably by late January, or maybe not even then, judging from the multiple delays by the Ministry in adopting the Strategy and the breaking of its own deadlines.