



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for March 2011



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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. On a special press conference on March 1, 2011, the Democratic Party of Serbia (DSS) announced that it had suspended all communication and cooperation with TV B92. DSS official Andrija Mladenovic had previously left the studio during the show “Insajder debata” (Insider debate), in protest of having been denied the opportunity to read DSS letter to the editors of Insider and B92 Editor-in-Chief Veran Matic. The participants of the program were discussing the embezzlement and fraud in the Kolubara mining basin, while DSS had previously accused B92 of waging a campaign against DSS leader Vojislav Kostunica, to whom B92 had sent a letter with questions about the political background of the assassination of Zoran Djindjic. The above happened against a backdrop of investigative reports “Insider” aired by TV B92, about the fraud in Kolubara that was taking place while this state-owned company was run by people close to the DSS.

According to the Public Information Law, political parties are not expressly required to make information about their work available to the public and under equal conditions for all journalists and all public media. However, such requirement is imposed to state authorities and organizations, territorial autonomy authorities and local self-government, public offices and public companies, as well as for MPs and councilors. The DSS currently counts 20 MPs in the Serbian Parliament. The decision to suspend communication with a media, even if it relates to a political party’s members of parliament, is in direct contravention of the explicit provisions of the law and represents a restriction of the freedom of public information that may impede the free flow of ideas, information and opinions. Namely, DSS has not made it secret that the reason for the boycott is the series of investigative programs about fraud in a state-owned company that took place while DSS was in power. At the same time, the boycott as a pressure mechanism may definitively hamper B92 in further investigations about events the public is entitled to be informed about. It is also worth pointing to the reason used by DSS as the direct occasion for the boycott: a letter sent a couple of months earlier in which it accused B92 of waging a dirty campaign against them after DSS officials had refused for seven years to participate in TV B92’s programs about Djindjic’s assassination in 2003, which means that the then informal boycott over one topic has now become formal and comprehensive.

1.2. In the previous report we have written about an incident that took place on February 16, involving the reporters of Blic, Vecernje Novosti, Dnevnik and TV Kula, which were physically removed from the session of the municipal assembly in Kula, two of which reporters were taken to the police station. On the following session on March 4, only the journalists of two media were allowed in the room. The explanation was that such decision was in line with the Rules about publicity of work on the sessions of the municipal assembly of Kula and working bodies thereof, which the journalists find overly restrictive due to excessive formalities for accreditation. After the incident on February 16, the representatives of OSCE and journalists reacted and the reporters now claim that the representatives of the municipality promised the OSCE at a subsequent meeting that they would amend the restrictive Rules. However, to this day, these Rules have not been changed.

We remind that, under the Public Information Law, state authorities and organizations, territorial autonomy authorities and local self-government, public offices and public companies, as well as for MPs and councilors are required to make information about their work available to the public and under equal conditions for all journalists and all public media. Nonetheless, local governments continue to obstruct this requirement with Rules that essentially restrict media freedoms. This is also in contravention of the explicit provision of the Public Information Law, which prescribes in Article 8 that its provisions will not be interpreted and enforced so as to revoke a right guaranteed by the Law or restrict such right to a greater extent than prescribed. In this case, that is precisely what is happening: a technical regulation and unreasonable requirements in the accreditation process are denying the public information on the work of the local government.

1.3. On March 5, 2011, the Belgrade police apprehended fourteen members of the right wing organization “Nasi 1389”, who were protesting in front of the building of TV B92, unsatisfied with their reporting. The police had previously banned their protest, but the organization chose to ignore the ban. They were carrying a banner with the message “Truth and love for Serbia will beat your lies about us”, which also displayed swastikas besides the logo of TV B92. The movement “Nasi 1389” later announced that four of their activists were sentenced to 15 days in prison, while another four were fined 20 thousand dinars each. The Independent Journalists’ Association of Serbia (NUNS) said in a press release the extreme right-wing rally in front of the B92 building was yet another overt attempt to put pressure on the journalists and editorial policy of the said television station. “NUNS is requesting from the authorities to enable the reporters and editors of TV92 to work in normal conditions and calls for legal measures to be taken against the supporters of the extreme right-wing organization “Nasi 1389” that have taken part in the protest”, the press release said. NUNS reminded that B92 had long been targeted by extremist organizations, whose militants had

openly threatened certain journalists and editors, putting their personal safety and fundamental professional freedoms at risk. The President of the Journalists' Association of Serbia (UNS) Ljiljana Smajlovic said that the protest in front of the building of TV B92 represented unlawful and unacceptable pressure on that station. "The Law expressly stipulates when a media is required to broadcast or publish a rebuttal, while the party requesting a rebuttal must comply with the conditions provided for by the law. Everything else amounts to racketeering the media, pressure and political manipulation", Ljiljana Smajlovic said.

The occasion for the right-wing protest in front of the TV B92 building was the decision of the station to reject their request to broadcast on TV a rebuttal of a value statement posted on B92 website. In the concrete case, the Public Information Law supports the decision of the media not to broadcast the denial. The Law namely says that a person that finds that a certain piece of information has violated its right or interest may request from the editor to publish/broadcast free of charge the person's response claiming that the said piece of information is untrue, incomplete or wrongly reported. However, the response must be published in the same media and not some other media. "Nasi 1389" requested the response to the controversial information posted on www.B92.net to be aired on TV B92, which the said TV station had not released in the first place. In the concrete case, there were other grounds for not airing the response. Namely, Article 58 of the Public Information Law lists, among the reasons for not publishing a rebuttal, the circumstance that the rebuttal/response pertains to an opinion and not a claim about facts. In the concrete case, the members of "Nasi 1389" did not contest any fact reported by B92; they contested an opinion on the character of their movement. On the other hand, holding a protest in front of the television building, despite the police ban, undoubtedly amounts to putting pressure on a public media and its staff that may hamper their work.

2. Legal proceedings

2.1. The Primary Court in Cacak found that Stojan Markovic, the Director and Responsible Editor of the daily "Cacanske novine", was guilty of slander against former minister Velimir Ilic. The slander was committed by Markovic's editorial piece "Time to Settle the Accounts: Davidovic, Jovic and Sarancic, the next one is..." and his satire "The Impotent Mandarin", published in "Cacanske novine" in February 2009. Markovic was fined with 100 thousand dinars. We remind that in April last year, the Higher Court in Cacak ordered Markovic to pay Ilic 180 thousand dinars of damages for anguish and suffering over sullied reputation and honor in the same texts. In the meantime, the verdict was upheld by the Appellate Court and Stojan Markovic filed a constitutional appeal, which is still being reviewed by the

Constitutional Court of Serbia. NUNS has voiced its concern over such verdict and claimed that the courts were protecting the politicians from reasonable criticism, which was in contravention of international conventions and the Serbian Public Information Law.

Velimir Ilic was a minister in the Government of the Republic of Serbia until July 2008; before that, he was a longstanding head of the local self-government in Cacak and as of 1998 the President of the Nova Srbija parliamentary political party, which participates in local governments in several towns in Serbia, including Cacak, where the controversial texts were published. That being said, the aforementioned court decision failed to take into consideration the legally instituted restriction of the politicians and civil servants' right to protection of privacy in relation to information of special interest to the public in view of such persons' positions; as well as the right to substantiated criticism by journalists, recognized as grounds for relief from liability in the Penal Code. Moreover, such a decision by the Primary Court ignores the constitutional duty of the courts to interpret the provisions on human and minority rights – including those pertaining to freedom of expression – so as to improve the values of democratic society and in line with applicable international standards and practice. The Council of Europe's Resolution 1636 from 2008, laying down the indicators for the situation of the media in democratic society, expressly stipulates that state officials – which includes Ilic as a former minister, current member of parliament and leader of a political party in power in the town of the court that passed the controversial verdict – may not enjoy a higher degree of protection from criticism and insults than ordinary citizens. It seems that this verdict is yet another proof of the problems Serbia is facing in its attempts to comply with the basic indicators of media freedoms.

2.2. After the 2 million dinar damage claim against Petar Lukovic, the Responsible Editor of the web portal E-novine, (E-papers) over the text “New Year Fairy Tale for Murderers”, published on January 15, film director Emir Kusturica has sued Lukovic once again. Kusturica is now pressing charges over the text “A Sarajevo Analysis: the Reputation and Honor of Emir K”, reposted by E-novine from the Sarajevo web portal Protest.ba on February 15. The new claim for damages amounts to three million dinars. Kusturica's attorney Zdenko Tomanovic told the Beta news agency that his client's lawsuit was not an attempt to close down a public media, but rather a request for protection of rights guaranteed by domestic and international standards.

Although Kusturica's attorney claims that his client's claim for damages was not attempt to close down E-novine, the amounts he is claiming might just lead to that. What is interesting in both these cases is that the claims against E-novine have been filed over texts reposted from other Internet portals in Serbia and the region and that in both cases the portals that

originally published the texts were duly identified. However, Kusturica has not sued the media that have first published the texts.

2.3. On March 23, 2011, the media reported that the Primary Court in Sabac had sentenced Bogdan Simanic to two years in prison for threats made against “Vecernje Novosti” reporter Aleksandra Delic. Simanic, a former priest of the Serbian Orthodox Church and co-owner of the weekly “Glas Podrinja”, told Delic’s colleague reporter Tatjana Cvejic he would “wipe the asphalt with Delic on the first occasion he saw her and that he would break her bones”. Simanic was unhappy with Delic’s text where she made a reference to the police press release about Simanic’s criminal record: he has actually been charged of embezzlement in the amount of 4.6 million dinars.

Under the Penal Code, threats against physical security are defined as threats to attack a person or that person’s next of kin or close friend. The Code provides a punishment ranging from one to eight years in prison for this criminal offense, as well as its qualified form, committed by threatening a journalist or, as the Law puts it, “a person occupying positions of public interest in the field of information, when the threat is made in relation to that person’s job”. The above mentioned two-year prison sentence is a rarity in Serbian court practice. Serbian courts typically sentence offenders to the one-year minimum or even to lower sentences. The verdict is a first-instance one and may be subject to an appeal.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

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

1.2. On Saturday, March 26, 2011, the media reported that the founder of the newspapers “Kurir” and “Glas javnosti” Radisav Rodic has reached a plea bargain agreement with the High Prosecutor’s Office in Belgrade and that, if the court accepted this agreement, Rodic would not stand trial. Instead, he will be sentenced to two years in prison. According to the said plea bargain agreement, Rodic is also supposed to be banned from exercising his profession and duties in the duration of six years. Rodic has been charged for abuse of office, since he has used false documents to raise a bank loan in the amount of 22 million dinars,

which he has not repaid. Rodic has been in custody since his arrest on October 27, 2009. At the beginning of the trial in December last year, Rodic claimed he was innocent. He also said that, as the owner of daily newspaper sand someone who had the influence on shaping editorial police, he resisted the pressure of certain politicians and tycoons who did not want the media to dissect their actions on the public scene.

We remind that, after the adoption of the Law on Amendments to the Public Information Law on August 31, 2009 – most of which provisions were later declared by the Constitutional Court, in a decision from July 22, 2010, to be in breach of the Constitution and ratified international treaties – one could have heard that the reason for passing such a law was in fact an attempted crackdown by the government against Rodic and his newspapers. Namely, the complex ownership structure and interrelations of Rodic’s companies, blocked accounts of affiliate companies due to claims of mother companies and frequent transfers of founder’s rights from one company to another, made it impossible to collect the claims under final court verdicts against Rodic’s newspapers, in cases where plaintiffs were suing them over controversial texts. Paradoxically, the amended Public Information Law was ultimately not used against Rodic, while he reaches a plea bargain agreement with the Prosecutor in the aforementioned case of the loan obtained using false documents. Certain experts said, at the time when the controversial law was adopted, that the problem had arisen when Rodic’s affiliate companies started blocking each other’s accounts in order to evade their due liabilities as ordered by the court. In these experts’ opinion, this issue could have been solved by simply enforcing the existing criminal legislation pertaining to protection of creditors. However, expert advice concerning this matter fell to deaf ears and the restrictive Law on Amendments to the Public Information Law was ultimately adopted. Such restrictive legislation, even though the Constitutional Court decision subsequently revoked most of its provisions, undoubtedly contribute to the growth of self-censorship in Serbian media.

2. Broadcasting Law

2.1. On March 9, 2011, the Council of the Republic Broadcasting Agency (RBA) passed a Binding instruction on the conduct of broadcasters regarding reality shows. The Instruction was published in the Official Gazette of the Republic of Serbia no. 17/2011 and entered into force on March 23. It prohibits live broadcast of reality shows. The official explanation for the ban was the need to consistently enforce the Broadcasting Law and the General Binding Instruction on Broadcasters’ Conduct (Broadcasters’ Code of Conduct).

The Binding instruction banning live broadcasts of reality shows is a direct consequence of the incidents in such program we have written about in earlier reports, which culminated with anti-Semitic outbursts in the live transmission of the reality program “The Court” on Pink television in the night between February 24 and 25. Under the Broadcasting Law, the binding instruction is one of the mechanisms that the Agency may use in order to effectively enforce broadcasting policies. Under the Law, the RBA may pass a binding instruction if, in relation to a particular matter concerning the content of a program, it has established that the broadcasters are behaving inconsistently, whereas some types of behavior may be considered disallowed. In the concrete case, this formal requirement is allowed. Against the backdrop of a public appalled by the content of certain reality shows, such decision by the RBA has not been examined from the aspect of its proportionality of the restriction of freedom of expression in order to protect decency on one side and the protection of rights of other persons on the other. However, as we have pointed out repeatedly in these reports, the RBA failed to pass a regulation that would clearly classify the programs. In that sense, at least, the enforcement of the binding instruction banning live transmissions of an entire television genre, which remains undefined by the RBA, could lead to many problems and dilemmas in practice.

3. Law on Free Access to Information of Public Importance; Law on Personal Data Protection

3.1. Commissioner for Information of Public Importance and Personal Data Protection submitted to the National Assembly of the Republic of Serbia the Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2010.

In this period, increasingly intensive addressing to the Commissioner by the citizens on account of protection of their rights has been recorded, 55 % percent more than it was in the previous year only in the field of access to information, namely seven and a half times more than in 2005. In this report is, however, ascertained that, when it comes to personal data protection, the situation in Serbia is far from satisfactory and that therefore relation of society and state toward privacy, especially toward personal data protection, must radically change.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Serbian parliament adopted several regulations relevant for the media.

1. Law on Ministries

The Law on Ministries was amended on March 11, in order to enable the reshuffle of PM Cvetkovic's government. The new cabinet has fewer ministers, which was achieved by merging several ministries, including some that are relevant for the media sector. The Ministry of Culture, which is competent for the public information system and overseeing the enforcement of the laws in the field of public information, was merged with the Ministry of Telecommunications and Information Society, which was, in turn, competent for information society, electronic communications, for determining the plan of use of radio frequency bands and passing of the radio frequencies allocation plan, as well as for deciding about the conditions for the issuance of individual licenses for the use of radio frequencies. In view of the importance of electronic communication networks for the distribution of media content, the merger of the aforementioned ministries could result in a more coherent media policy in Serbia.

2. Law on the Amendments to the Law on the Government

The Law on the Amendments to the Law on the Government was also adopted on March 11, before the government reshuffle. The Law stipulates that the members of the Government, state secretaries and the directors of special government organizations and departments must, in their public statements and appearances, express and endorse the positions of the Government. Moreover, the decisions of the Government must be publicly endorsed by even those members of the Government who have voted against these decisions or have abstained during the vote. Furthermore, the Law says that the ministers shall provide information about government activities solely in the manner prescribed by the rules of procedure and shall not give any information in a way that would make it impossible to determine which member of the Government is giving the information.

The amendments were sharply criticized by the experts, who pointed out to the requirement provided for by the Public Information Law under which state authorities, including the Government, must make information about their work accessible to the public and under

equal conditions for all journalists and public media. The information about the work of collective bodies would logically have to include information about disagreements in the government, as well as arguments voiced by members of government who have voted against certain government decisions or were abstained. Furthermore, the ban on anonymous insider information from the Government is a worrying message about the Government's unpreparedness to fully inform the citizens. However, certain government officials disagree with the aforementioned concerns. The Director of the Government's Media Office Milivoje Mihajlovic said that there was no censorship or restrictions in the communication between the members of the Government and employees in the Government and the media. "The Law on the Government is clear and prohibits members of the Government to give anonymous statements, they must speak under their own name and surname, which will most certainly improve the communication with the public and the credibility of information", Mihajlovic said. However, the public got the opportunity soon after the adoption of the Law to see the negative effects thereof. The daily "Danas" had to withdraw two interviews with the ministers that were in the process of being authorized. The Editor of "Danas" Zoran Panovic said the problem was that the journalists did not know who to call in order to get an interview. "They should then say that the Government is not run by its ministers and the Prime Minister, but rather by some centers of power. Let them say clearly who are these powers so that we can call them", Panovic said. He added that the withdrawal of two interviews amounted to censorship and that someone was clearly preventing the ministers from saying their opinion.

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)

1.1. On March 9, 2011, the Republic Broadcasting Agency (RBA) issued the lists of candidates for members of managing boards of the Public Service Broadcasting Institution of Serbia and the Public Service Broadcasting Institution of Vojvodina. The list for the Public Service Broadcasting Institution of Serbia contains 52 candidates, while there are 35 candidates on the list for the managing boards of the Public Service Broadcasting Institution of Vojvodina.

The Law stipulates that the managing bodies of public service broadcasting institutions shall be the managing boards, which have nine members that are appointed and dismissed by the Agency. The members of the managing boards are appointed from the ranks of the journalist profession, as well as among renowned experts from the field of media, management, law and finances, as well as other distinguished persons. Their tenure is five years and one person may be appointed to the managing board no more than two consecutive times. Managing boards shall adopt workplans, including investment plans, work and business reports, as well as periodic and annual statements. After a public competition, they appoint and dismiss the general managers. Furthermore, at the proposal of the general manager, after a public competition, they appoint and dismiss the directors of radio and television and the editors-in-chief and responsible program editors. Otherwise, the procedure, under which the RBA elects the members of managing boards, is regulated by the Agency's statute. That statute stipulates that the candidates shall be registered on the basis of a public call released no less than 15 days prior to sending the initiative for the election of members to interested organizations, institutions and citizens. The received proposals are consolidated into a list of candidates that is released to the public. The time limit for lodging objections shall be no less than 15 days prior to the vote for candidates. The vote shall be secret and a candidate shall be elected if he/she receives the votes of no less than five members of the Council.

1.2. On a session held on March 30, the RBA Council passed a binding instruction on the conduct of broadcasters related to programming content that may harm the physical, mental and moral development of minors. At the same session, in accordance with Article 87, paragraph 2 of the Broadcasting Law, the Council passed the decision to dismiss Predrag Markovic from the RBA Managing board, who has handed over his resignation.

In the part of this Report concerning the implementation of the Broadcasting Law, we have written about the Binding instruction on Broadcasters' Conduct related to reality programs, which was published in the Official Gazette of the Republic of Serbia no. 17/2011 that came into force on March 23. That instruction introduced a ban on live transmissions of reality programs. By the end of the month, the RBA Council went a step further and prescribed that programs categorized as content that might harm the physical, mental and moral development of minors, regardless of their age, which must be labelled "18", might be broadcast only from midnight to 6 a.m. We remind that the ratified European Convention on Crossborder Television (Official Gazette of the Republic of Serbia – International Treaties, no. 42/2009), in its Article 7, paragraph 2, stipulates that all programming content that may adversely affect the physical, mental and moral development of children and youth, shall not be aired at times where the probability exists that it might be watched by children. Article 19 of the Broadcasting Law says that the RBA shall particularly see that programs that may adversely affect the physical, mental and moral development of minors are unavailable on

radio or television, except if, by a technical procedure or time of broadcast, it is ensured that minors are unable to see or hear such programs. The Broadcasting Law also stipulates that programs representing a serious threat to the physical, mental and moral development of minors shall be prohibited. The obligation to air a special warning or label programs that may be harmful for children and youth is provided for by the Broadcasters' Code of Conduct. However, there are no clear rules and guidelines as to the classification of programs. The Broadcasters' Code of Conduct says that broadcasters shall be free to classify programs at their own discretion, but that the RBA shall be entitled to warn or punish broadcasters that fail to put the proper labels on programs unsuitable for children, fail to label such programs at all, or systemically set the wrong age limit for programs. If they have any dilemmas, broadcasters may address the RBA for an opinion about the classification and labelling and the RBA shall, in due course – the Code fails to set a precise deadline – provide its opinion to the broadcasters. It is also unknown under which criteria the RBA shall proceed if a broadcaster requests its opinion. In any case, although the aforementioned restriction, which was introduced by the Binding instruction on Broadcasters Conduct in relation to programming content that may harm the physical, mental and moral development of minors, is completely legitimate – guided by the legitimate interest to protect the rights of minors – the absence of clear rules and guidelines pertaining to the classification of programs as suitable or unsuitable for minors, opens the door to various interpretations and definitely does not contribute to the protection of minors or the legal security of broadcasters.

1.3. On March 31, 2011, pursuant to its powers under the Broadcasting Law, the Serbian Parliament elected Goran Petrovic from Kragujevac to the membership of the RBA Council. Goran Petrovic was elected at the proposal of the Conference of Serbian Universities, to the vacancy created after the death of Professor Svetozar Stojanovic on May 7, 2010.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

2.1. On March 31, 2011, the Republic Agency for Electronic Communications (RATEL) announced to have paid, pursuant to Article 27, paragraph 6 of the Law on Electronic Communications, the amount representing the difference between the revenues and expenditures laid down in the Agency's annual financial report, on the account determined for the payment of public revenues of the budget of the Republic of Serbia. According to that report, the said amount is 1.248.736.000 RSD, i.e. more than 12 million Euros.

2.2. At the first session of the first regular sitting in 2011, held on Thursday, March 31, 2011, the Serbian Parliament passed a decision on the election of the Chairman, Deputy

Chairman and members of the Managing Board of RATEL. Under that decision, the Chairman is Professor Jovan Radunovic, PhD; the Deputy Chairman is Zdravko Stanimirovic, PhD, while Professor Miroslav Djukic, PhD, Professor Vlade Milicevic, PhD and Vuk Vujovic, MA were elected to the membership of Managing Board. Jovan Radunovic was already the Chairman of the Agency's Managing Board in the previous mandate and will continue to chair the MB.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

3.1. As previously indicated in this Report, the Parliament of the Republic of Serbia has adopted several regulations relevant for the media sector. It has also decided about the appointment of new members of the RBA Council and the Managing Board of RATEL.

3.2. On March 22, 2011, the Secretary General of the Parliament Veljko Odalovic announced, after the meeting with the representatives of four of six TV stations with national coverage (RTS, Avala, Prva and B92), that talks would be held separately with each national TV station about the live broadcasts of parliamentary sessions. This is practically the consequence of the fact that not a single station has applied for the tender called by the Parliament. "We have informed them that we have earmarked 80 million dinars in the budget and that the contract will be signed for the period of one year", Odalovic explained. "Under the contract, the station shall be required to broadcast the parliamentary sessions, as well as certain extraordinary events. The representatives of stations objected that the fee for the live broadcasts is too low, while the technical requirements are high, that banking guarantees are increasing the cost...". Regardless of these complaints, Odalovic said that the aforementioned fee was not going to be raised. The position of RTS, which was from day one mentioned as the most serious candidate to be awarded the contract, has remained unchanged. "We will not talk about future cooperation until we are repaid by the Parliament the 3.3 million Euros they owe us", Aleksandar Tijanic told Novosti.

The insistence of the Parliament on live broadcasts of all plenary parliamentary sessions, regardless of their duration and the relevance of the topic of the sessions, as well as the request for these broadcasts to be performed on terrestrial channels, is in obvious contradiction with the principle of reasonable and efficient use of the radio-frequency spectrum as a limited natural resource – one of the basic postulates the Broadcasting Law is founded upon. The tender called in mid-January was doomed from the start, in view of the

aforementioned conditions imposed by the Parliament. During the meeting with the representatives of stations with national coverage, the Parliament reportedly offered to give up from certain unrealistic technical conditions (e.g. one of the conditions of the tender was that the station must possess several outside broadcast vans with HD technology). However, the Parliament continues to insist on the broadcasts to be made on terrestrial channels, regardless of the duration of the sessions. The Parliament would reportedly be prepared to consider the possibility, in the event that a plenary session is continued after 6 p.m. – when, at least officially, the working hours of the Parliament expire – to air these parts of the session in deferred transmissions. However, the latter was the last concession they were prepared to make. The Parliament did not seem to want to understand the arguments voiced by commercial stations that it was impossible for them to find an economically viable way to broadcast all the session, especially when it is impossible to predict the duration thereof and when the viewers are not exactly interested in watching all the sessions. With the Parliament standing firm on their position, it is unrealistic to expect the separate talks with individual stations to yield a different result than the outcome of the failed tender procedure.

4. THE MINISTRY OF CULTURE, INFORMATION AND INFORMATION SOCIETY

4.1. On March 17, 2011, the Assistant of the Culture Minister for the media Natasa Vuckovic Lesandric died in Belgrade after a long illness. On the commemoration held on March 21 in the Belgrade City Hall, the President of the Journalists' Association of Serbia (UNS) Ljiljana Smajlovic said that Natasa was all but haughty. "Even when she did not respect someone's opinion, she always respected the person and that person's humaneness", Smajlovic said, adding that "Natasa was the proof that a different policy is possible, a policy that did not stamp on everyone in order to prove that it has the power". Natasa Vuckovic Lesandric was born in 1966. She graduated at the Belgrade Faculty of Philosophy. She was a consultant and trainer of the World Press Association in Paris; she was hired as a consultant in Ukraine for the top-selling daily "Segodnya" in Kiev, as well as in Afghanistan, Armenia, Belarus and Mongolia. She also worked for the marketing department of the daily "Blic", was the director of the distribution network APM Trans Pres, established in the late 90s to support independent media. Finally, she was the director of the printing house of the Association of Private Media "Print" from Belgrade. She was appointed to the post of Assistant of the Culture Minister for the media in mid-February 2009, at the proposal of the political party G17 Plus.

4.2. On March 15, 2011, Predrag Markovic took over the duty of Minister in the newly-merged Ministry of Culture, Information and Information society. A week later, the new minister told the Beta news agency that "journalists' associations and media associations will

be invited to a discussion about the continuation of the drafting of the Media Strategy.” He confirmed that the “Media Strategy is a priority from day one”. In an interview for the Tanjug news agency on March 27, the Minister announced the quick appointment of the state secretary who would handle the field of information within the Ministry. “The Ministry will put at a disposal everything that is necessary in order to speed up the development of the Strategy”, Markovic said.

5. PROVINCIAL INFORMATION SECRETARIAT OF VOJVODINA

On March 15, 2011, the Provincial Information Secretariat of Vojvodina called a competition for the co-financing of media with a doubled budget compared to last year. The Government of Vojvodina has earmarked 48 million dinars for helping media in the province; the biggest difference is that the competition will not be open for only two weeks – it will be possible to apply with quality projects until November 15. “We respect the needs of the media and we are ready to assist them through this competition, which is fully conformed to the Law on State Aid Control”, said the Vice-President of the Vojvodina Government and Secretary for Information Ana Tomanova-Makanova. “At the same time, we are monitoring the expenditures in order to ensure that the funds awarded to media are spent reasonably. Those who failed to submit a report on that on time – about ten percent of the media – will not be eligible for this year’s competition”. The media from Vojvodina will be able to compete for 23 million dinars allocated for the co-financing of public information projects, namely projects aimed at the improvement and expansion of the existing programming content in print and broadcast media, as well as for internet portals. The second competition, with a budget of also 23 million dinars, concerns the co-financing of the technical and technological equipping of primarily broadcast media, in view of the statutory time limits for the coming digital switchover. At that, according to Ana Tomanova-Makanova, advantage will be given to underdeveloped local self-governments. The third competition pertains to projects for the improvement of professional standards, with a budget of two million dinars. However, Tomanova-Makanova stressed that it would be possible to apply for certain journalist training projects in the scope of the second competition. All options are open – the possibility for the Province to organize seminars in cooperation with journalists’ associations, the option to help media that want to implement such project, as well as to help individual journalists in relation to entrance fees for quality seminars in other countries.

The competitions were called pursuant to Article 62, paragraph 1, subparagraph 1 of the Law on Determining the Competences of the Autonomous Province of Vojvodina. The applications will be reviewed by a commission to be appointed by the Provincial Secretary for Information.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6.1. On March 26, 2011, the regular annual meeting of the Assembly of the Organization of Phonogram Producers of Serbia (OFPS) was held in Belgrade's Hotel Crystal. In addition to the representatives of 41 publishing companies, a representative of the Intellectual Property Office also attended. In a press release issued after the meeting, the OFPS said that it posted in 2010 a 35% increase in the collection rate year-on-year. The press release went on saying that the increase resulted from greater awareness that it was important to pay the fee for using music for commercial purposes if the music industry was going to survive.

The information about the 35% increase in the collection rate comparing to the previous year was provided under the financial statements for 2010. It is difficult to logically explain how, in the situation where the tariff, at least under the Law on Copyright and Related Rights, is typically determined as a percentage of the revenues the user is generating in the performance of an activity involving the utilization of the objects of protection (i.e. music) and where the advertising market is stagnating or declining, the OFPS has managed to raise the collection rate for as much as 35%. If we recall that in mid-last year, the organization of musical authors of Serbia SOKOJ announced that their budget intended for authors and copyright holders had been increased by 23%, it will become clear why collective organizations are reluctant to negotiate new tariffs with broadcasters. They want to see the existing tariffs remain as long as possible, enabling them to earmark more funds for the copyright holders, which is, nonetheless, completely disproportionate to the difficult financial situation which the users have found themselves in.

6.2. The agony continues for dozens of media throughout Serbia, which have been sued for commercial offences under the Law on Copyright and Related Rights. If found guilty, they will be ordered to pay fines ranging from 100.000 to 3.000.000 RSD. We remind that the OFPS has pressed charges against more than one hundred stations throughout Serbia and their managers, by sending petitions to the RBA, complaining about the failure of the said stations to deliver lists of broadcast phonograms or failure to deliver these lists in the proper form. The RBA declared itself incompetent to deal with these petitions and forwarded them to public prosecutors. The latter are now initiating commercial offence proceedings and in certain cases commercial courts have already issued fines against media.

After ANEM objection lodged with the Intellectual Property Office, pointing to the non-conformity of OFPS' acts with the relevant provisions of the Law on Copyright and Related Rights, which also highlighted the mutual contradictoriness of these acts, the Office has ascertained the irregularities in the work of OFPS and ordered the organization to remedy these irregularities. The notice about these irregularities was sent to OFPS on March 31. The Office also ascertained the non-conformity of the OFPS Rules about the notification of broadcast phonograms by the broadcasters with the Tariff, as well as the fact that the manner of entering data about broadcast phonograms – as provided for by the Rules about the notification of broadcast phonograms by the broadcasters – is not laid down as prescribed by Article 187 of the Law on Copyright and Related Rights. Such findings of the Intellectual Property Office have only confirmed that the proceedings against the broadcasters and the fines issued in certain cases are legally completely groundless.

V THE DIGITALIZATION PROCESS

On March 24, 2011, in an interview published in the daily “Danas”, Assistant Telecommunication Minister Irina Reljin announced that the experimental broadcasting of digital TV program would start in the middle of the year, in order to perform the necessary measurements and tests. Reljin said that the available channels with limited transmitter power would be used at certain transmitter sites, as well as temporary antennae, while the permanent ones will be mounted in the meantime. Referring to the important steps that have already been taken in order to have a successful digital switchover, Reljin mentioned the separation of the broadcasting equipment from RTS. The Assistant Minister also spoke in the interview about the project of support to digital broadcasting. “The Ministry of Telecommunications and Information Society has applied for a project financed from EU pre-accession funds. The project has been approved and a 10.5 million-Euro grant was awarded from the IPA funds for the purchase of broadcasting equipment and consulting services in the digitalization process. Some of the equipment has already arrived, while the consulting team from the BBC World Service, which was awarded the contract under the tender, is already working in Belgrade”, Irina Reljin said.

As for the legal framework, Reljin said that what remained to be done was to adopt the Media Development Strategy and the Law on Electronic Media, which were in the pipeline. In her words, these regulations must be passed in order to have a successful digitalization of terrestrial television. “A promotional campaign also needs to be organized, in order to raise the awareness of the citizens as to what they must do in order to continue to watch television normally after April 4, 2012. The plan under which the campaign will be implemented is in

its final stage. According to that plan, the digital switchover will be promoted six months prior to the complete shutdown of the analog signal”, Reljin stressed.

In earlier reports, we have pointed several times to the extent of the delay in the implementation of activities foreseen under the Action Plan accompanying the Digitalization Strategy, which has compromised the success of the switchover. In that sense, Reljin’s interview could be interpreted as a sign that the Ministry has accepted the reality that certain activities foreseen under the Action Plan are unfeasible and that problems the switchover is facing must be addressed in a different way. Reljin’s reference to the adoption of the Media Development Strategy and the adoption of the Law on Electronic Media in the context of activities preceding the switchover could be indicative of an attempt to resolve media problems differently. Namely, the Action Plan fails to mention the Media Development Strategy at all. At the same time, the Plan provides that the Rule Book on the Transition from Analog to Digital Radio and Television Broadcasting and Multiplex Access in Terrestrial Digital Broadcasting will define the rights and obligations of commercial broadcasters in the digital switchover, with respect of the rights these broadcasters were entitled to under the licenses, whose term exceeds the deadline for the shutdown of the analog signal. Furthermore, the Action Plan provides for a replacement of the existing licenses with multiplex access licenses. However, the aforementioned Rule Book on the Transition from Analogue to Digital Television Broadcasting and Multiplex Access in Terrestrial Digital Broadcasting, which were published in the Official Gazette of the Republic of Serbia no. 12/11 dated February 25, are not as comprehensive a document as they should have been pursuant to the Action Plan. It was quickly discovered that the issue of defining the rights and obligations of commercial broadcasters in the digital switchover was not something that might be resolved with a mere set of rules. According to Irina Reljin’s interview, the Ministry is seemingly expecting the issue of digital switchover to be resolved with the Media Development Strategy. Unfortunately, the Ministry does not seem yet to consider probably the easiest and simplest option – to engage in direct negotiations with license holders in order to agree upon the said rights and obligations.

VI THE PRIVATIZATION PROCESS

No advances have been observed in the field of media privatization during the period covered by this Report. The media did, however, report about the controversial argument between the VAC media group, the Government of Vojvodina and the management of “Dnevnik Holding”, in relation to the previously announced departure of VAC from the Serbian media market and from the joint company “Dnevnik Vojvodina pres”, where VAC holds a 55% stake (the

remaining 45% are owned by “Dnevnik Holding”, a company established by the Executive Council of Vojvodina. VAC expressed, in September 2010, the readiness to assign its 55% shares free of charge to the employees of “Dnevnik Vojvodina pres”. However, in late March, VAC announced it was renewing the negotiations with other parties interested in acquiring their share in “Dnevnik Vojvodina pres”. “This is our reaction to the irresponsible tactic of feet dragging that has been blocking our offer, a gift to the employees that is, for more than 4 months now,” said Peter Lange, member of the VAC management and the representative of that media group for Serbia. The President of the Executive Council of Vojvodina Bojan Pajtic said that he was disappointed by the fact that the management of “Dnevnik Holding” was “unaware and failed to recognize the fact the extent to which the transfer of VAC’s share to the employees of “Dnevnik Vojvodina pres” is the best solution for the future”. Pajtic said that the Province would not suspend the financial assistance program, because the newspaper “Dnevnik” is particularly important for Vojvodina and its citizens. Asked how it was possible for the management of “Dnevnik Holding” to override the decision of the Government of Vojvodina, which has previously given the green light for the paper to be transferred to the hands of the employees, Pajtic hinted that measures would be taken. “I have to say this is the first time that we have such a situation, that the management of “Dnevnik Holding” is ignoring not only the decision of the provincial but the republic government as well. We will decide about the steps that need to be taken,” Pajtic said, without giving any more details. The management of “Dnevnik Holding” however claims to have received the opinion of the Privatization Agency in relation to VAC’s offer on March 30 only, in the early morning hours, as well as that the session of the managing board, on which positions will be taken, was scheduled for April 4, 2011. The management of “Dnevnik Holding” claims it is not opposed to the intended “gift” of the VAC Media Group to the employees of “Dnevnik Vojvodina pres”, but stresses that it believes that the structures of “Dnevnik Holding” may not be asked to decide on renouncing from the indisputable claims towards “Dnevnik Vojvodina pres” and VAC, as a precondition for the realization of the said “gift”, because in the contrary case, the “donor” will be Holding and not VAC.

The Novi Sad-based “Dnevnik” is one of the Serbian media where, in spite of the de facto majority stake of private companies, the state has retained a significant part of the shares. Aside the question whether VAC’s offer is merely an elegant way to avoid repaying the debts towards the state, namely the state-owned “Dnevnik Holding”, as the minority co-owner in a joint-venture, this example too illustrates the problems that are constantly escalating in the media, where the state has retained a share – even a minority one – and the necessity to systemically address the issue of state ownership in the media.

VII CONCLUSION

As soon as the reshuffle of the Serbian Government – which took place on March 14 – was announced, all activities on issues relevant for the media scene in Serbia came to a halt, including the work on the Media Strategy. Somewhat unexpectedly, the reshuffle led to the merger of two ministries with competences in that sector – the Ministry of Culture and the Ministry of Telecommunications and Information Society. One may reasonably expect that this will resolve at least part of the problem caused by often uncoordinated activities of the two ministries. The new Minister Predrag Markovic himself has promptly announced that “journalists’ and media associations will be invited for discussions about the continuation of the work on the Media Strategy”, as well as that the state secretary will be appointed, to be in charge of the media within the Ministry. This is definitely a good sign. Since the problems were unfortunately not only of a technical nature, it remains to be seen if Prime Minister Cvetkovic’s reshuffled cabinet will have the political will to properly address the problems that journalists’ and media associations have been pointing to for years. At the same time, Serbia has probably embarked on an election year, which means that in such an environment, political parties will probably be reluctant to give up their mechanisms of influence and pressure on the media. A negative sign but also an indicator that shows the degree of mutual distrust inside the ruling coalition – which the media associations will have to fight against in order to have a successful reform of the media scene – are the controversial amendments of the Law on the Government, which restrict not only the freedom of ministers to communicate with the media, but also the right of the public to be fully informed about the activities of the highest authorities, including information about disagreements within the Government.