LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for July 2011

ANEM

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I FREEDOM OF EXPRESSION

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

1. Threats and pressure

1.1. On Sunday, July 24, the leader of the Serbian Progressive Party (SNS), Tomislav Nikolic, in the interview for daily Press, told that if his party comes to power on the coming parliamentary elections, he will dismiss „that same evening“ Aleksandar Tijanic, the General Manager of the Serbian Public Service Broadcaster (RTS).

According to the Broadcasting Law, general managers of public service broadcasting institutions in the Republic of Serbia, including the Radio Television of Serbia as one of them, are appointed and dismissed by the Managing Board of the RTS, with a two-thirds majority of the total number of members. Under the said Law, the Managing Board has nine members appointed and dismissed by the Republic Broadcasting Agency (RBA) from the ranks of journalists and renown experts from the field of media, management, law and finances, and other prominent persons. Broadcasting Law stipulates that the members of the RBA Council are appointed and dismissed by the Serbian Parliament, in accordance with the conditions provided for by that Law. The members of the RBA Council are elected by the Parliament from the ranks of prominent individuals from the areas that are relevant for tasks from the RBA's competence, at the proposal of authorized proposers. Statements like the one made by Tomislav Nikolic – although the SNS leader has tried to justify it by his dissatisfaction with the quality and impartiality of the RTS program – are actually undermining the system of broadcasting regulation in Serbia and the legally established position of public service broadcasters. That system and that position are incompatible with the dismissal or appointment of political party personnel to positions in public service broadcasting institutions. On the other hand, the Public Information Law expressly forbids any forms of restrictions to freedom of public information, including by abuse of state powers, which powers Nikolic and his political party could acquire after the parliamentary elections, or in any other way that might restrict free flow of information, ideas and opinions. At the same time, the Law prohibits putting any other kind of pressure on public media and staff thereof, or influence that might hamper their work. In a period where media professionals, but also the public in Serbia, strive to establish certain rules of the game concerning the media

through the adoption of the Media Strategy, which would guarantee genuine independence of public service broadcasters in the interest of the citizens and further democratization of society, any attempt to reduce managing and editorial positions in public service broadcasters to the level of a mere political booty conquered on the elections, is a cause for grave concern and is absolutely unacceptable.

1.2. In the evening of July 27, two cameramen of the Tanjug news agency, Djordje Spasic and Davorin Pavlovic, were attacked and injured in the north of Kosovo, on the road from Leposavic to Jarinje, at a roadblock placed by the local Serbs. Djordje Spasic, who sustained severe injuries, said that he and Pavlovic had gotten out of the car and moved towards the border crossing in order to film the barricades and the blocked road, when they were attacked by group of hooligans. "One of them grabbed my camera and hit me on the head with it. I fell to the ground, blood was pouring out of my wound, all around me. They were beating up my colleague beside me and then they ran away", Spasic told the daily Danas.

Each case of physical assault on journalists and cameramen, especially in the above described case involving injuries (severe injuries in the case of Djordje Spasic) represents a serious threat to freedom of information and a severe restriction of the right to free exchange of ideas, information and opinions. Of particular concern is the danger that the perpetrators of this act will never be discovered and brought to justice, due to politicization of incidents in Kosovo, mutual ethnic distrust and absence of elementary communication between the authorities in Kosovo and the Republic of Serbia. Against such a backdrop, the circumstance indicated by the President of the Journalists' Association of Serbia (UNS), who told Danas that a sizable portion of the public believes that have right to beat up a cameraman if they don't like what they see on their TV set, becomes a regional problem. All that said, in a time of political conflict and bickering over competencies and powers, that problem is steadily gaining momentum and is seriously threatening the right of the citizens, not only in Serbia and in Kosovo, to be informed about the issues they have right to know about.

1.3. According to the report by the daily Kurir, Dr. Slavko Tomic and persons accompanying him, described later by Dr. Tomic as his friends, threatened on July 27 Kurir's journalist who was reporting from the trial in the First Primary Court in Belgrade. On that day, the said Court of first instance sentenced Dr. Tomic and anesthesiologists Miodrag Stojanovic and Olivera Jeremic, to 15 months in prison each for severe criminal offence against human health, in relation to the death of a female patient from sepsis after a routine operation they had performed in the private

clinic “Decedra”. “I didn’t want to insult, threaten or humiliate anyone. My friends, who came to attend the pronunciation of the verdict, and I, were very emotional and the circumstances were such that this incident became something I never wanted. I deeply regret everything that happened in front of the court house and I apologize”, Tomic said in a statement published by Kurir two days after the incident.

Reporting on legal proceedings in Serbia has become increasingly complex, especially after the amendments to the Criminal Proceedings Law from 2009, which introduced a new offense – unlawful commenting of legal proceedings. Since there is no clear practice as to what kind of commenting of legal proceedings is punishable by law, self-censorship is rife. To make things worse, journalists are often threatened and attacked by friends and relatives of the defendants and the court security often fails to ensure the proper conditions for the media to do their job without obstruction. The attack on the reporter of Kurir is a rare, yet commendable case, where the attacker Dr. Slavko Terzic, fairly soon after the incident happened, publicly apologized to the journalist and the newspaper for the insults and threats.

1.4. The regional radio and television station RT Novi Pazar issued a press release, signed by the Editor Edo Celebic, claiming that hackers from Kosovo attacked their website on July 10. The press release said it was the sixth attempt to crash the website of that regional station since December 2010. On July 27, the website of City Radio from Nis was also attacked. In their press release, the management of the station said that, in their opinion, the reason for the attack was the joint program of a network of local Albanian and Serbian radio stations from Kosovo and Serbia entitled “A Bridge beyond Borders”. The said program explored the possibility for the coexistence of Albanians and Serbs in Kosovo, whether the Kosovo issue may be solved by partition or independence and if the Kosovo institutions provide equal protection to all. The first episode of “A Bridge beyond Borders” was aired on City Radio on Sunday, July 23.

The article published by the daily Politika about the attack on RT Novi Pazar’s website says that such attacks on Serbian websites are on the rise, whereas the targets are increasingly the websites of state and public institutions. Politika writes that the attackers are predominantly hackers from Kosovo. They typically get away with it, like in a case from 2009, when multiple attackers disabled Pescanik’s website. Contrary to the disruption of printing and dissemination of print items or obstruction of the broadcasting of radio and television program, which in Serbia are provided as separate criminal offences, attacks on internet media or internet portals of traditional media are treated only as unauthorized access to a protected computer, network and electronic data

processing, or as obstruction and restriction of access to a public computer network. Politika writes that in 2010 criminal charges before the Supreme Public Prosecutor in Belgrade were pressed for hacking of websites only six times and concludes that many cases remain unreported. Until the law enforcement authorities fail to show some concrete results even with this small number of cases and bring the perpetrators to justice, the media using new electronic platforms will be on their own. Even worse, some media are still portraying hackers like some romantic heroes, when these hackers are "our" hackers attacking "their" websites, or as a necessary evil, disregarding the devastating impact of these attacks on media freedom and freedom of expression in general. These attacks, as a rule, have also the typically political goals, as evidenced by the attack on City Radio from Nis, whose website was attacked in the time when this station, in cooperation with a network of local Albanian and Serbian radio stations from Kosovo and Serbia, broadcast the joint program about the possibility for the coexistence of Albanians and Serbs in Kosovo.

2. Legal proceedings

2.1. The Appellate Court in Belgrade sentenced journalist Milenko Vasovic to pay 100.000 dinars in respect of non - pecuniary damage to the plaintiff Radovan Vukovic, over Vasovic's text published in the daily Dnevni Telegraf 14 years ago. Vasovic would also pay 107.960 dinars of court costs. The reason for the claim was Vasovic interview with Radovan Vukovic. Vukovic, at the time an advisor in the Government of the late Federal Republic of Yugoslavia, was put in prison in Montenegro for the statements he made on that occasion, but was released from custody after two months and later successfully sued the government for the time he spent behind bars without justification. However, the Appellate Court found that Vasovic had falsified Vukovic words by publishing the statements of a third person under Vukovic's name, that third person being a former minister in the then government. By doing so, the Court found, Vasovic damaged Vukovic's honor and reputation, causing him suffering.

The verdict against Vasovic is yet another evidence of the problems faced by journalists in Serbia due to excessively long legal proceedings against them. Namely, Vasovic was sentenced to pay damages, since, 14 years after the interview with Vukovic, he was unable to prove that the statements published in Dnevni Telegraf were really Vukovic's own. The Court chose to believe Vukovic's witnesses who have claimed that the controversial statements were made by a third person, a minister in the government in which, more than a decade ago, Vukovic was a mere advisor. The Court disregarded the fact that initially, at the time when he was arrested over these

statements in Montenegro, Vukovic didn't deny he was the one who made them. Moreover, after he was released from custody, Dnevni Telegraf published his reply, in which Vukovic raised some objections as to the headline of the interview and the conclusions the interviewer had inferred from what he had said, but didn't dispute the statements as such. In the concrete case, the courts in Serbia have passed two first-instance verdicts – one in favor of the journalist and the other in favor of the plaintiff, while finally the Appellate Court ruled in favor of the plaintiff, but reduced the amount of the damages. However, in view of the fact that 14 years have passed since the controversial interview, the reliability of the evidence based on which the Court reached its decision casts a shadow on the verdict.

2.2. On July 11, the Appellate Court in Belgrade announced in its press release that it had sustained the verdict against one of the leaders of the fans of the Partizan, Milos Radisavljevic Kimi, under which he was sentenced to six months in prison for violent behavior. However, the Appellate Court revoked the part of the verdict concerning the threats made against the security of B92 journalist Brankica Stankovic. We remind that in August 2010 Radisavljevic was sentenced before the First Primary Court in Belgrade to 16 months in prison for violent behavior and threats against Stankovic. Radisavljevic had been leading the fans on Partizan's football match against Ukraine's Shaktyor, when the crowd shouted insults from the stands against Stankovic, calling her a snake that will fare like the assassinated journalist Slavko Curuvija and punched and kicked a doll in the likeness of the B92 journalist. The Appellate Court found that the lyrics of the chants amounted to a gross insult against the person of Brankica Stankovic and the peace of citizens. Pertaining to the threats against the security of the reporter, the Court found that no clear and convincing reasons have been voiced, which would explain why Radisavljevic is considered to have committed the criminal offense of threatening security as described in the indictment.

The Appellate Court found that, from the court records, it may be concluded that the defendant Radisavljevic did not chant "You're venomous as a snake, you will fare like Curuvija" himself, but that he did impale the doll on a metal rod. The Court also found that the first instance verdict lacked the explanation as to which specific actions by the defendant were considered as a threat by the plaintiff. The court of first instance was ordered to present the evidence once again and re-interview Stankovic. While the purpose of second-instance proceedings definitively is to establish beyond all doubt all the circumstances related to the actual case and admitting that the first instance proceedings might well have suffered from certain shortcomings, as found by the Appellate Court, it is difficult to understand that it accepted that kicking, punching and impaling the doll in the likeness of the plaintiff on a metal spike represented behavior threatening the

peace of the citizens, but not a threat against the security of the plaintiff. Such qualification is even more bizarre if one knows that Brankica Stankovic remains, more than a year and a half after the incident, under police surveillance 24/7, due to police assessments that her security is severely threatened.

2.3. The Appellate Court in Kragujevac revoked the verdict against the Editor-in-Chief of Cacanske novine Stojan Markovic, the daily Danas reported. Markovic was convicted before the Primary Court in Cacak for slander and ordered to pay 100 thousand dinars of damages to plaintiff Velimir Ilic, who recognized himself in the satire "The Impotent Mandarin". According to the explanation of the first-instance verdict, Markovic slandered Ilic with that satire published in February 2009, as well as with the comment about how "the time has come to settle the accounts".

The verdict against Stojan Markovic and particularly the explanation that, with a satirical texts that was not sufficiently based on facts, he had slandered a member of Parliament, former Mayor of Cacak and former minister in the Serbian government and leader of the parliamentary party New Serbia, prompted a strong reaction from the media professionals and the general public. The revoking of that verdict, which has considerably contributed to the rise of self-censorship in Serbia, is without any doubt good news. On the other hand, however, the revoking of one verdict does not necessarily indicate a U-turn in the case law in Serbia regarding the treatment of politicians in the media. Reaching the standard, under which politicians would not be protected from critical texts more than ordinary citizens, remains an aspired goal for the Serbian judiciary. The verdict of the Appellate Court in Kragujevac is a step in that direction.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

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

2. Broadcasting Law

2.1. The Council of the Republic Broadcasting Agency (RBA) invited on July 13 all cable operators to introduce in their offer the channels of all regional and local broadcasters in the areas where these broadcasters possess a terrestrial broadcasting license. RBA said in its press release that this field is not regulated and that the respective regulations are still being prepared and hence the RBA Council recommends that the aforementioned channels be included in order to contribute to more complete information of citizens and pluralism of opinions. This was preceded by a press release of the Journalists' Association of Serbia (UNS) requesting the RBA to react after the cable operator SBB switched off on July 5 the channel TV K9, which holds a local broadcasting license for Novi Sad. According to UNS, SBB's network encompasses more than 50% of households in that city. ANEM press release indicated that the case of the exclusion of TV K9 was not an isolated one, since TV VK, holding a local broadcasting license for Kikinda, suffered the same fate.

The Broadcasting Law does not provide for an obligation of cable operators to include channels holding a terrestrial broadcasting license in their offer. The law only stipulates that the operators, fulfilling the conditions for the provision of the service of television programs/channels in accordance with telecommunication regulations, must acquire the rights and licenses for program distribution, whereas the license for cable broadcasting is not acquired for channels that may be received through free (unscrambled) satellite broadcasting on the territory of the Republic of Serbia, as well as for those channels holding the license for terrestrial broadcasting in the area for which the broadcasting license was issued, while the public service broadcasters' programs shall be aired free of charge. In practice, however, cable broadcasting licenses are still not being issued and cable operators are free to contractually regulate their relationships with stations the programs of which they are broadcasting. At that, there are serious reasons to suspect that cable operators are discriminating against domestic channels and especially domestic channels possessing local coverage broadcasting licenses. Namely, cable operators pay foreign television channels for the rights to distribution thereof in their systems, while domestic channels are charged for being included in the program in the cable offer. Certain television stations holding a terrestrial broadcasting license, which refuse to pay the fee, shall ultimately remain without this type of distribution, i.e. this program will not be distributed. In a situation where only 50% of the population receives television program via terrestrial transmission, exclusion from the cable offer represents a serious problem for each broadcaster. At the same time, contractual freedom invoked by the cable operators is threatening to become a bottleneck and a place where selection of

information that are fed to the citizens is performed, for purely economic reasons. Furthermore, such attitude of cable operators could also represent a breach of competition. Namely, the Law on Competition Protection stipulates that the application of uneven business conditions to the same business transactions, in respect of different market participants, placing the market participants in a less favorable position than their competitors, is a restrictive practice that is directly prohibited by Law. The Competition Protection Commission, tasked by Law to keep track of and analyze the conditions of competition and to take measure to protect it, has dealt with cable operators several times. However, these were typically cases handled on the basis of complaints mutually lodged by the operators themselves against each other and mostly regarding mutual contracts providing for the exclusive distribution of certain television channels. In the meantime, the Republic Electronic Communications Agency passed on July 7, 2011, the Decision on determining the relevant markets that are subject to prior regulation. According to that Decision, one of the markets subject to prior regulation is the retail market of media content distribution. The next part of this Report, containing the analysis of the implementation of the Law on Electronic Communications, will delve more deeply into this subject.

3. Law on Electronic Communications

3.1. The Managing Board of the Republic Electronic Communications Agency passed on July 7, 2011, the Decision on determining the relevant markets that are subject to prior regulation. The decision is significant for the media sector primarily because it provides for prior regulation of the retail market of the media content distribution. The report on the analysis of that market, which analysis was performed by RATEL in keeping with the provisions of the Law on Electronic Communications, concludes there are structural barriers for accessing the cable distribution market, which come in the form of an absence of economic interest of the operators for building their own distribution network on territories where the network of some other operator already exists. Furthermore, according to RATEL, there are also regulatory barriers to entry, namely in the IPTV segment, since Telekom Srbija is the owner of the entire landline network on the territory of the Republic of Serbia. The analysis determines SBB, as an operator with a 50 % market share, as an operator with major market strength and announces the passage of a decision that would introduce regulatory obligations to SBB to refrain from charging excessive fees, obstructing other operators to enter the market or from restricting competition by charging excessive or dumping fees, giving unjustified preference to certain end users. Furthermore, the level of retail prices would be limited, the operator would be obliged to obtain a formal approval from the Agency for determining and changing the content and price of service packages. Finally,

the control of individual tariffs would be introduced, while the prices would be based on the costs of services provided or prices in comparable markets.

The aforementioned report on the analysis indicates that the number of cable, IPTV and DTH satellite subscribers in 2009 was about 1,1 million households, with a penetration of about 42 %. Distribution services are provided by 81 registered operators, of which 76 cable operators, two IPTV operators and three DTV operators. Seven operators have a market share of more than 85 % and SBB alone holds more than 50 %. The goal of the pre-regulation announced by RATEL is to prevent SBB from using its market strength and the absence of genuine competition by investing less, increasing the costs and decreasing the quality of services. Furthermore, in RATEL's opinion, SBB could, in the absence of regulation, be in the position to be able to raise the price of its services without justification, which could be interpreted by the other regulators as a signal to start behaving in the same way, to the detriment of end users. The regulatory obligations that were announced would not, however, have an effect on the current problem posed by the discrimination suffered by certain media, the program of which is excluded from the cable offer. In order to solve this problem, the Law on Electronic Communications foresees a different solution. Namely, it provides for the possibility for RATEL to determine, on the request of the RBA, the operator that is obliged to transmit one or several radio or television channels, at the national, provincial, regional or local level. RATEL is expected to introduce this measure when a considerable number of end users will be using the electronic communication network of that specific operator as the sole or primary channel for receiving media content and also when the measure is necessary in order to achieve a set of clearly defined goals of general interest, which goals will be determined by the RBA, in accordance with the principle of proportionality and transparency. This decision has never been passed and the RBA has instead opted for a non-binding recommendation to the cable operators, as we have already mentioned in this Report.

3.2. The Ministry of Culture, Media and Information Society launched on July 21 public consultations about the Draft Rulebook on Technical Requirements for Equipment and Program Support for Lawful Interception of Electronic Communications and Retaining of Data on Electronic Communications. The Rulebook is to be passed pursuant to Article 127, paragraph 5 and Article 129, paragraph 4 of the Electronic Communications Law and the Ministry has foreseen that the public consultations should last until August 4.

Article 127 of the Electronic Communications Law stipulates that electronic communications operators must enable lawful interception of communications. It actually concerns the disclosure

of the content of communication, which disclosure is, without the user's consent, allowed only for a certain period of time and only on the basis of a court decision, if necessary for the purpose of criminal proceedings or the protection of the security of the Republic of Serbia, in the manner provided for by Law. In order to realize the obligation to allow the lawful interception of communications, the operators must, at their own expense, ensure the necessary technical and organizational conditions (equipment and program support) and the Ministry of Culture, Media and Information Society should prescribe more precisely the requirements concerning the said equipment and programming support, after having obtained the opinion of the Justice Ministry, the Internal Affairs Ministry, the Defense Ministry, the Security Information Agency and the Commissioner for Personal Data Protection. Article 129, paragraph 4 of the Electronic Communications Law says that the Ministry of Culture, Media and Information Society shall, again after having obtained the opinion of the Justice Ministry, the Internal Affairs Ministry, the Defense Ministry, the Security Information Agency and the Commissioner for Personal Data Protection, prescribe more precisely the requirements concerning the retaining of data required for the tracking and identifying of the source of communication, identifying the destination of the communication, establishing the beginning, duration and end of the communication, establishing the type of communication, identifying the terminal equipment of the user and identifying the location of the mobile terminal equipment of the user. The operators are required to retain this data for the needs of conducting an investigation, uncovering of criminal acts and conducting criminal proceedings, in accordance with the Law governing criminal proceedings, as well as for the purpose of protecting national and public security in the Republic of Serbia, in keeping with the laws governing the activities of security services of the Republic of Serbia and those of internal affairs agencies. The obligation to retain the aforementioned data shall last 12 months from the day when the communication took place and the operator shall retain it so that the data may be promptly accessed and delivered. The interception of communication, i.e. the finding out the content thereof without the consent of the user, as well as the retaining of data required for the tracking and identifying of the source of communication, establishing the type of communication and the type of equipment of the user and identifying the location – even when it concerns mobile equipment – if abused and resorted to outside of the constitutional guarantees for the protection of the secrecy of communications, can cause great damage to human rights. Therefore, it is commendable that the Draft Rulebook is subject to a public debate. On the other hand, these consultations are held during the summer holidays season and last merely ten business days, instead of 30 days, as the Law stipulates for acts pertaining to determining general requirements for the performance of electronic communications-related activities. Moreover, the constitutionality of provisions that represent the basis for passing this Rulebook has been partly contested by the Proposal for the assessment of constitutionality filed by the Commissioner for

Personal Data Protection and the Ombudsman to the Constitutional Court of the Republic of Serbia back on the 30th of September 2010. In such circumstances the Ministry should have either waited for a decision of the Constitutional Court or at least to hold public consultation in a longer period of time or in a period when the attendance of a greater number of stakeholders was possible. The main concern as to the text of the Draft Rules is definitively the fact that it has failed to specify the technical requirements for the devices and equipment, as one could assume from its name. Instead, it transfers the right to prescribe the functional specification of the equipment, devices and programming support to the Security Information Agency, which falls far outside of the framework provided for by the Electronic Communications Law. What makes this Rulebook particularly interesting for the media is the fact that the misuse thereof would irrevocably compromise the legally established right to the protection of journalists' sources.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament of the Republic of Serbia did not pass any regulations of relevance for or with implications on the media sector. However, amendments to the Criminal code were announced, which could have an effect on the media.

1. The Criminal Code

State Secretary in the Ministry of Justice, Slobodan Homen, announced that the amendments to the Criminal code, which are expected to be passed in early autumn, provide for the decriminalization of libel and slander. The purpose is, among other things, to alleviate the pressure on the media from many high fines that are putting their survival at risk. „Removing libel and slander from the Criminal code is extremely important for journalists and media, which are often exposed to claims", Homen said, noting that those who feel they have been slandered and that they have suffered damage as a result, will still have the opportunity to claim for damages in litigation proceedings. The existing Criminal code of the Republic of Serbia provides only for a fine both for slander and libel, since the threat of a prison sentence was revoked with the amendments from 2005. The Journalists' Association of Serbia (UNS) and the Independent Journalists' Association of Serbia (NUNS) have welcomed the announced scrapping of slander and libel as criminal offenses from the Criminal code. The decriminalization of slander and libel is extremely important for the development of civil rights and freedoms and especially for

journalist, which have in the recent years been exposed to a real epidemics of lawsuits and excessive damage claims that are putting their very survival at risk, NUNS said in a press release. The association believes that decriminalization of slander and libel will be a major step forward towards the expansion of freedom of information in Serbia. UNS on the other hand reminded that journalists have been sentenced, according to applicable Criminal code provisions, even when they had been merely transmitting official press releases of government bodies and statements made by state officials, which didn't bear any responsibility since they are protected by immunity.

The decriminalization of slander and libel would definitively represent a major step forward towards the protection of freedom of expression in Serbia. While the advances made in 2005, with the revoking of prison sentences for libel, were more symbolic in nature, since such sentences weren't seen for decades in Serbia's case law, not even in the times of worst crackdown on the media during the nineties, today they have been replaced by fines. However, the decriminalization of libel itself will not suffice if there is no change as to the civil responsibility for damage suffered and especially in the practice of courts in litigation proceedings over publicly made statements. As it could have been observed through our prior reports, the number of sentences against journalists and media for damages far exceeds the numbers for sentences pronounced for libel. What's more, the amounts of damages to be paid, that are often pronounced by the courts too easily, typically exceed the amount of fines for libel.

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. The RBA Council announced on July 13 that it had suspended the proceedings for revoking the license of Televizija Prva station over the statements made in the talk show „Evening with Ivan Ivanovic". The press release said that the Council has concluded, after having reviewed the reports of its departments and the explication of the broadcaster, that the said talk show did

not include hate speech or violations of the Broadcasting Law. At the same time, the Council accepted the assurances of the editors of the station that they will see that the borders of good taste in the talk show are not crossed. We remind that the reason for the proceedings was the open letter by the Democratic Union of Croats (DZH) to the President of the RBA Council, Bishop Porfirije. In the said letter, the DHZ claimed that on April 29 and May 6, the host of the talk show "Evening with Ivan Ivanovic" insulted the Catholic Church and called "Al Qaeda to wait until Croatia is admitted in the EU and then plant an atomic bomb with clear insinuations as to where exactly to put it".

Article 38 of the Public Information Law prohibits hate speech, in the form of banning the release of ideas, information and opinions inciting discrimination, hate or violence against persons or groups of persons because of their affiliation or non-affiliation to a particular race, religion, nation, ethnic group, gender or due to their sexual orientation, regardless of the fact if a criminal offense resulted from the release. Unfortunately, the Council did not release a more detailed explanation for suspending the proceedings for revoking the license of TV Prva, but it seems that RBA in this particular case managed to make a difference between a statement made in a humoristic talk show – even if it was devoid of good taste – and inciting discrimination.

1.2. The RBA Council said in a press release that the Misdemeanor Court in Belgrade, ruling upon a misdemeanor charge by the RBA in relation to the reality show "Moment of Truth" aired in October 2009 on Pink Television, fined that station in the amount of 750 thousand dinars. We remind that in the controversial show the host Tatjana Vojtehovski asked the guest – who had been raped by her father for years, starting from the age of eleven – if she had ever had an orgasm during sexual intercourse with her father. After angry reactions from the public and accusations that the show is in breach of laws protecting minors and that it promotes violence implying that a rape victim may have an orgasm, the RBA filed charges to the Misdemeanor Court, invoking precisely the provisions of the Broadcasting Law protecting the physical, mental and moral development of children and youth.

According to the Broadcasting Law, the broadcasting of programs that may harm the physical, mental and moral development of children and youth may be subject to misdemeanor fines ranging from 300 thousand and one million dinars. In the case of Pink Television, the Court has not disclosed the circumstances that were considered in the weighing of the fine in the amount of 750 thousand dinars. However, of concern is the fact that it took the Misdemeanor Court almost two years from the incident to deliver a first-instance verdict, just as the RBA itself judged, after

having filed misdemeanor charges, that the violation of the law in the concrete case was not serious enough in order to warrant a measure from the RBA's competence, or even a mere warning.

STATE AUTHORITIES

2. THE MINISTRY OF CULTURE, MEDIA AND INFORMATION SOCIETY

At the roundtable discussion "Serbian Media at the Crossroads", held in the Media Center on July 7 in the organization of the OSCE Mission to Serbia, the Minister of Culture, Media and Information Society, Predrag Markovic, said in his introductory speech that the Ministry will receive until July 15 objections, suggestions, proposals and comments to the Draft Media Strategy, after which the text thereof will be finalized no later than by early September and tabled for further procedure. "All objections will be reviewed in order to protect everyone's interests", Markovic said, "and on the basis of public discussions held until now, we will try to find a way to guarantee the rights of citizens to information at the local and regional level". The Ministry posted on its website all the comments received, as well as video clips from the round tables held in Kragujevac, Novi Pazar, Novi Sad, Nis, Belgrade and Cacak, which has definitely contributed to the transparency of the entire process. However, it remains to be seen, in the Minister's own words, in which direction the text will be "finalized", since further activities of the Ministry concerning the text has been to a great extent shrouded in secrecy. During the whole course of the public debate, the Ministry treated the text of the Draft it had released for public discussion - the drafting of which was aided by experts selected and appointed by the same Ministry – like an "alien element" and with unacceptable detachment. Minister Markovic even said that in drafting the Media Strategy, Serbia gave up deciding and allowed the representatives of media associations to determine and shape the text of such an important document. Although the Minister obviously thought that such attitude of the state only confirmed its openness and democratic character, there are at least two possible scenarios that may explain the said detachment of the state from the document it had released for public discussion. The first is that the regulatory capacity of the state is so weak that it is simply clueless as to what it really wants in the media sector. The second is that what the state wants is to a great extent contrary to what is acceptable to media professionals and that the Ministry dares not openly say that. Whatever the truth might be, the attitude of the Ministry in the public discussion is everything but promising for the continuation of the work on the Media Strategy.

3. THE ORGANIZATION OF PHONOGRAM PRODUCERS OF SERBIA (OFPS)

The President of the Managing Board of the Organization of Phonogram Producers of Serbia (OFPS) sent a letter to the President of the Employers' Union of Serbia inviting him to renew the discussions about the situation in the field of collective realization of copyright and related rights. He also invited him to resume talks about the unique tariff. The letter was also posted on the OFPS website. The motivation for the letter was the letter of the Employers' Union addressed to the presidents and judges of commercial courts and the Commercial Appellate Court. In that letter, the Union informed the courts it had signed a contract on cooperation with the organization Fair Share Ltd. for the purpose of offering the Union's members music for public communication that is outside of OFPS' and Sokoj's system of protection. OFPS Managing Board President said in the letter that, pursuant to the Law on Copyright and Related Rights, the right to a fee for broadcasting, re-broadcasting and public communication of phonograms and interpretations contained therein, may be realized only through the organization for collective realization.

The Law on Copyright and Related Rights foresees that copyright and related rights may be protected individually and collectively. Individual realization of copyright and related rights may be direct or through a representative with a power of attorney. Representatives may include natural or legal persons and hence a company like Fair Share Ltd. may act as a representative. However, the law establishes an assumption that the organization is authorized to act for the account of all holders of copyright, namely related rights concerning the rights and type of objects of protection that are encompass by that organization's activity. The only possibility for the author or other holder of rights to walk out from the mechanism of collective protection is to inform the organization in writing that he/she will realize its rights individually. Collective organizations are obliged to report to the users about all authors or other holder of rights that protect their rights individually. However, there are a number of cases where collective protection is mandatory pursuant to the Law, namely when the rights may not be protected individually. This is the case with cable rebroadcasting of author works (Article 29, paragraph 2 of the Law on Copyrights and Related Rights), the special fee from import and sale, i.e. sale of technical equipment and blank sound, picture and text carriers for which it may be rightfully assumed they will be used for copying for personal, non-commercial purposes (Articles 39, 142 and 146 of the Law on

Copyrights and Related Rights); with the right to a fee for lending an object of protection (Article 40 of the Law on Copyrights and Related Rights); with performers' fees for broadcasting, rebroadcasting and public communications of interpretations from a recording released on a sound carrier (Article 117 of the Law on Copyrights and Related Rights); with a fee charged by the producers of phonograms for broadcasting, rebroadcasting and public communications of released phonograms (Article 117 of the Law on Copyrights and Related Rights). Unfortunately, it is obvious that the extent of unawareness of regulations administering collective protection of copyright and related rights in Serbia is large. There are no grounds in the Law to avoid, through individual contracts with representatives, the obligation towards to collective organizations with regards to performers' fees and fees charged by the producers of phonograms for broadcasting, rebroadcasting and public communications of interpretations from recorded phonograms.

V THE DIGITALIZATION PROCESS

The Ministry of Culture, Media and Information Society announced in mid-July that a test network for the digital signal broadcasting would be put into operation by the end of 2011. The Ministry claims that it has found the way to start earlier with the test broadcasting in order to enable smoother transition from analogue to digital broadcasting. Furthermore, the Ministry stated that the possibility to change the date for the complete digital switchover, as well as to change the Digitalization Strategy is being considered. We remind that the deadline for the complete digital TV switchover in Serbia was initially set for April 4, 2012. The daily Danas reported that the said deadline could be extended until the beginning of 2013, because the Strategy agenda, with the exception of the test digital signal, was not possible to fulfill. In late July, in an interview for the daily Danas, Vladimir Homan, the Director of the public company Broadcasting Equipment and Communications, explained that the start of the test broadcasting was planned for mid-November this year. Until then, he said, a network with 15 terrestrial locations would be set up, covering the major cities and smaller towns. Homan also said that the digital signal in the said test network would not have its full strength in order to avoid overlapping with the analogue signal, which would be aired simultaneously with the digital one. Homan said that the goal of this trial phase was to see how the transition to digital broadcasting would function in practice. The outcome will be used by the Ministry of Culture, Media and Information Society and the Government of Serbia to assess if they would keep the initial digital switchover strategy.

We remind that the current Digital Switchover Strategy in Serbia does not provide for simulcast, namely a period of simultaneous analogue and digital broadcasting. In our earlier reports, we have warned about the worrying extent of the delays with respect to the deadlines set in the Action Plan accompanying the Digitalization Strategy. The said delays would most definitely result in the postponement of the complete digital TV switchover. The announced putting into operation of the test network for the broadcasting of digital signal could also mean that the Ministry has opted for setting realistic goals, although mid-November is also very ambitious.

VI THE PRIVATIZATION PROCESS

The Securities Commission has confirmed that the three companies of businessman Milan Beko are the majority owners of the Novosti company, as Beko himself previously told B92. Beko's companies possess 62,42 % of the shares, the Republic of Serbia owns 29,51 %, the Pension and Disability Insurance Fund 7,15 % and small shareholders 0,92 %. The Commission has passed a temporary measure limiting the managing rights of Beko's companies Ardos, Trimaks and Karamat to 25 % of the total managing votes, which measure will be effective until the announcement of the offer for taking over the minority packing, or until the sale of the shares. Beko now has two options: to announce the offer for taking over the remaining shares of Novosti or to sell part of his package and reduce his share to one quarter. Namely, the Law stipulates that if a company reaches more than 25 % of the shares, the owner must issue a public offer for taking over up to 100 % of the shares or to sell all shares above the 25 % limit and until the sale is effective his voting rights for all shares above 25 % may be revoked. Milan Beko told B92 that he has been actively working with the Securities Commission, together with the legal representatives of Ardos, Trimaks and Karamat and that he would make the decision as to what option to choose after consultations with the WAZ media company. The Austrian company, member of the WAZ media group, requested last January from Competition Protection Commission the approval for taking over 62,4 % of the shares of the Novosti company. Beko namely had an agreement with the WAZ media group on the resale of the shares of Novosti.

The decision of the Securities Commission merely confirmed what was already known and what Beko himself has never denied – that he owned more than 62 % of the shares of Novosti. However, this has solved only one of the controversies regarding the privatization of Novosti. We remind that in our previous report we have written about the criminal charges pressed by the

Anti-Corruption Council against Milan Beko, the Economy and Privatization Minister Predrag Bubalo, the President of the Securities Commission Milko Stimac, members of the Commission Dejan Malinic, Djordje Jovanovic and Dusan Bajec, as well as against the Director of NIP Novosti Manojlo Vukotic. The Supreme Public Prosecutor's Office in Belgrade did not publicly react to these charges. The Council filed the charges over the suspected criminal offenses of abuse of office, fraud, document forgery and association with the purpose to commit criminal offenses, all in relation to the privatization of Novosti.

2. A total of 56 media have been privatized in the last eight years in Serbia. In 18 of these cases, the sales contract has been terminated, according to the data of the Privatization Agency, Danas reports. Of the public media foreseen for sale, 53 remained non-privatized. In the latter group, privatization has been suspended in seven cases, interrupted in 37 cases, while in the case of eight media outlets three failed auctions in each case were held. At the present time, according to Privatization Agency data, only one media is currently being privatized and there is no pending public call for sale. Most of the media in Serbia were privatized in 2007, while only four public media outlets were sold in 2010.

The general public predominantly views the process of media privatization as a failed one. There is an absence, however, of serious analysis as to the reasons that have led to the failure of a number of privatizations. In our reports we have repeatedly pointed to the problem of having too many media in Serbia, while at the same time having an underdeveloped media market. At the same time, the high number of still non-privatized media, their privileged position and their non-transparent financing are putting at risk the survival of privatized media and those who were commercial from the very beginning. The above problems discourage investors and hence the number of failed auctions should not come as a surprise. Their complexity, however, means that a comprehensive solution ought to be found so as to ensure even conditions for commercial media on the market, including transparent and non-discriminatory expenditure of budget funds in the media sector, due to the substantial impact of these funds in the current situation of a weak advertising market.

VII CONCLUSION

The summer holiday season in Serbia has been typically used to push through some unpopular solutions “under the radar”, when the public’s attention is at its lowest. One of the most drastic examples was the adoption of the Law on Amendments to the Law on Public Information from 2009. It seems, however, that the public is now more prepared, in such circumstances, to resist media-related changes that could endanger human rights and particularly freedom of expression. The public discussion launched by the Ministry of Culture, Media and Information Society about the Draft Rulebook on Technical Requirements for Equipment and Program Support for Lawful Interception of Electronic Communications and Electronic Communications Data Retention, which could potentially compromise the right to protection of journalists’ sources, was even prolonged as we conclude this Report and certain media associations took the opportunity to voice their remarks. The public debate on the Media Strategy was prolonged too and Minister Markovic announced that the text would be finalized no later than by the beginning of September. The concern remains, however, the unwillingness or incapacity of the Ministry to clearly define and defend its stands. When we thought that the Ministry, by adopting the Strategy and releasing it for public discussion, had finally revealed its positions, it suddenly and inexplicably has distanced itself from the process. It was so pronounced that Minister Markovic even said the Draft was not the Ministry’s, but of the representatives of media associations. Markovic, however, failed to explain at least two things. First, if it’s not the Ministry’s Draft but that of the representatives of media associations, why did the Ministry release it for public discussion in the first place? Secondly, and even more important, if the Draft does not reflect the authentic intentions and plans of the Ministry in the media sphere, what are the authentic intentions and plans and when will we finally get to know about them? If the public doesn’t even know the positions of the Ministry as to the „finalization of the text“, then reasons for concern are many.