

I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1 On April 19, 2012, the Delegation of the Council of Europe (CoE) Parliamentary Assembly called on the political parties in Serbia to refrain from influencing the media's editorial policy. According to a CoE press release, the Delegation led by Jean-Charles Gardetto, which visited Belgrade in the scope of the preparations for monitoring the May 6 elections, praised the said preparations, but voiced concerns over the pressure on certain journalists. "The observer mission of the Council of Europe (CoE) Parliamentary Assembly is concerned by the economic and political pressure faced by certain journalists and is hereby calling all political parties to refrain from influencing the editorial policy of the media", the press release said. The fact that the pressure was real and effective is evidenced by the results of a media survey conducted on April 1-14 by the Social Research Bureau. The survey showed that media reporting in the electoral campaign was overwhelmingly positive and in some cases even amounted to political advertising. The same report said that most of the media "had given up their watchdog role during the campaign and refrained from any critical reporting, merely conveying information on behalf of the political parties and their candidates".

The Public Information Law expressly stipulates that public information shall be free and in the interest of the public, as well as that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion, especially not by abuse of office or private powers. It is also prohibited to put physical or other type of pressure on public media and the staff thereof so as to obstruct their work. Furthermore, according to the same Law, public media shall be free to release ideas, information and opinion about phenomena, events and persons relevant for the public interest, regardless of the manner in which the information has been obtained, if not provided for otherwise by Law. Issues concerning the observance of media freedom and freedom of expression are particularly delicate in the context of the elections and electoral campaign. The role of the media in a democracy – to be a forum hosting debates on the successes and failures of the government, thereby holding the government accountable and under the watchful eye of the public – is merely a fraction of what the media are expected to accomplish in the electoral process. Among other things, the media should educate the voters about how to use their democratic rights; to

report on the course of the electoral campaign; to allow political parties to address the voters; and finally to report about the election results. While the media are most certainly not the sole source of information for the voters, they are still a very important, if not the most important one, as many believe. In that sense, the extent to which the media are free in the electoral process is tantamount to the extent to which the media have enabled the voters to make informed decisions, on the basis of complete information, the right of the candidates to challenge each other's policies, as well as the right of the media to present their own opinions and report about issues relevant for the public interest. In the context of the pressure faced by certain journalists and attempts by political parties to influence the editorial policy of the media, as noted by the Delegation of the CoE Parliamentary Assembly, as well as in light of the results of the monitoring of the Social Research Bureau (showing that some media have given up from critical and analytical, choosing neutral, often promotional reporting on political parties activities), it seems that the extent of media freedom in the electoral process is not something Serbia can be proud of. The reasons were, again, recognized in the press release of the Delegation of the CoE Parliamentary Assembly, as being of economic and political nature: economic pressure in a situation of severe financial crisis, involving shrinking advertising budgets, with the advertising market tightly controlled by a small number of agencies very close to state officials and political power players. On the other hand, the longstanding failure to implement serious reforms in the media sector, including the completion of privatization, have allowed the survival of many media that are under direct control of the ruling oligarchies, especially at the local level. Inadequate enforcement of state aid control-related regulations have enabled these media to be funded from the budget, without making sure they are releasing content that is in line with the standards of what we typically call the public service. On top of that, the often unclear regulation of the electoral campaign by the Republic Broadcasting Agency has resulted in many dilemmas for television stations. Namely, the number of complaints related to their work is on the rise, as is the case in each election campaign. While the RBA did not reveal the exact number of complaints, it confirmed in a letter to national broadcasters, after the session held on April 30, that these complaints were legion and that they contained requests to prohibit individual video spots. The RBA is expected to make an analysis of all the complaints received during the election campaign. However, even before that analysis is made, the impression is that, in most cases, the complaints pertain to more or less obvious cases of abuse of the right to submit a complaint. This has ultimately led to decisions by the media or journalists to postpone the release of sensitive material for after the elections, over fears of lawsuits and measures by the RBA or concerns that they (the media) could be misused for political party rows. The team of the most prominent investigative program in Serbia – B92's Insider – decided to postpone its latest series for the post-electoral period. In the press release explaining such decision, the Insider team said that aforementioned series was the product of

10-month work by the entire team. They stressed that they wanted to avoid accusations of working for the benefit of a certain political party by airing the series in the final stages of the electoral campaign. It seems there is no easy answer to the question what should be changed on the Serbian media scene in order for the media to be more free and not to be a mere mouthpieces of the political parties as well as ,the citizens to be able to obtain at all times – and especially during the election campaign –complete, critical and analytical information. The reasons for the current situation are many and complex and serious and far-reaching reforms are undoubtedly needed to remedy such a state of affairs.

2. Legal proceedings

2.1. The Second Basic Public Prosecution in Belgrade has raised an indictment against five persons, suspected of sticking death certificates for the B92 television in Lazarevac in February 2011. The five indicted are Nenad Pavlovic, Dusan Suka, Aleksandar Radovanovic, Nikola Bjekovic and Ivan Pantelic, all from Lazarevac. They are indicted on criminal charges of threatening security by engaging in violent behavior. The indictment says that in the night of February 14-15, Pavlovic acquired glue, a brush and about 50 posters depicting death certificates for B92 and its employees. Pavlovic distributed those posters to the other four indicted, instructing them as to how to stick them. While they were sticking the posters on the walls, the indicted insulted the citizens Dane Tomanovic and Vladimir Vukovic, who had disapproved of their actions. They threatened the two citizens and ultimately beat them up. Tomanovic suffered a broken nose. The posters appeared after the series Insider entitled “Scam of the Century” about the embezzlement in the Kolubara mining basin. The first defendant Nenad Pavlovic used to work in Kolubara as the driver of the former Director Dragan Tomic. The “Scam of the Century” highlighted the huge increase of costs incurred in the state-owned Kolubara mining basin during while Dragan Tomic was in charge. Tomic was arrested in early October 2011, along with 16 other directors and managers of Kolubara, as well as owners of private companies, whose machines were leased to Kolubara. After the investigation, the Prosecutor for Organized Crime raised an indictment against Tomic and 27 other persons over the suspicion of having abused office and robbed Kolubara of 938 million dinars. According to the Prosecutor, the abuse of office was committed by hiring transportation and engineering machines and falsifying the workload thereof, which was revealed to the public in the “Scam of the Century” episode of Insider.

According to the Criminal Code, threatening security involves the threat to attack the life or body of a specific person or that person’s next of kin. Where such threat is made against a journalist in

relation to his/her journalistic work, threats against security may be subject to a prison sentence ranging from one to eight years. The Criminal Code defines violent behavior as a major disruption of public order by severely insulting or harassing someone, with the use of violence, by provoking a fight or by engaging in rude or ruthless behavior. Where violent behavior is engaged in a group, namely if it results in minor bodily harm or severe humiliation, such behavior may be subject to a prison sentence ranging from six months to five years. In the majority of cases when journalists are the victims of attacks or threats, the Serbian prosecutors raise indictments for one felony or the other. In practice, however, the courts have often failed to see threats against security in the same actions singled out by the prosecutors. For instance, in the case concerning the "Insider" program (an earlier series - "The Power(less) State") dealing with the leaders of football hooligans groups, the courts had a problem recognizing as a threat the fans' chants telling the Insider journalist she would fare like the (slain journalist Slavko) Curuvija, or the impaling of a rubber doll depicting the said journalist. In the concrete case, we would have a similar scenario, where the sticking of death certificates with the names and surnames of journalists, authors and editors, would not be recognized as a threat by the courts of law. Of course, we must wait and see, but meanwhile TVB92's bold investigative style and the courage of its journalists stands out of the overall media situation in Serbia, becoming a reference for freedom of expression.

2.2. In another legal case also concerning B92 television and the program entitled "Chronicle of a False Death", aired in the scope of the "Search" series, dealing with cases of missing babies newborns from maternity hospitals, the Appellate Court in Belgrade delivered a verdict in late April, partially reversing the first-instance decision of the Higher Court in Belgrade from October 2011, which obligated B92 and reporter Sasa Lekovic (the author of "Search") to pay the plaintiff, dr. Slavka Durutovic-Gligorovic from Belgrade, to pay 300.000 dinars of damages. The first-instance verdict was reversed in the sense that the plaintiff's claim was entirely rejected. The dispute concerned the testimony of Drinka Radonjic from Belgrade in the controversial program about the events that happened after she gave birth, in which testimony she mentioned the plaintiff and the doctor in the maternity hospital. As opposed to the court of first instance, which found that Drinka Radonjic's claims had stained the honor and reputation of the plaintiff and that they were "incomplete, unsubstantiated and offensive", the Appellate Court found that they amounted to "information shaping the opinion of citizens as to important social developments". The Court also said that in such a case "the interest of the public and the freedom of mass media overrode the one of the plaintiff to release information about matters that would otherwise have to remain inaccessible to the public". In the context of the conclusion of the court of first instance that the reporters and editors of B92 had failed to act with due journalistic care - among other things by failing to contact the plaintiff Slavka Durutovic-

Gligorovic before releasing the statement of her patient Drinka Radonjic – the Appellate Court came to an opposite conclusion. The court first said that the plaintiff had claimed before the court that she did not recall the patient Drinka Radonjic and the events surrounding her childbirth at all. Furthermore, the Appellate Court had found that the proceedings of first instance established that the journalists and editors had double-checked the claims by Drinka Radonjic in the context of the report by the Investigative Committee of the Serbian Parliament, set up for the purpose of determining the truth about children missing from maternity hospitals in several Serbian cities, as well as that they had consulted the records of the cases where Drinka Radonjic was the plaintiff, which had shown that she had indeed been the victim of omissions by healthcare institutions and civil registries. In that context, B92 acted in line with the obligations of due journalistic care as provided for by the Public Information Law.

What makes this decision of the Appellate Court extremely important is that it hints at a potential change in the practice of Serbian courts in freedom of expression-related cases. More specifically, Article 3 of the Public Information Law stipulates that, prior to releasing information about a certain event, occurrence or person, a journalist and editor-in-chief must, with due care, establish the source of such information, its veracity and completeness. Furthermore, in accordance with Article 80 of the same Law, the circumstance that the journalist and editor-in-chief have, with due care, established the source, veracity and completeness of a piece of information shall represent grounds for releasing them from liability for damages. In practice, there are virtually no decisions for which the courts would find that the standard of due professional care has been complied with and, even worse, rare are the decisions in which the courts have clearly established what due professional care actually means. Article 4 of the Public Information Law expressly stipulates that public media shall publish ideas, information and opinions about occurrences, events and persons the public has a justified interest to know about, unless provided for otherwise by Law. In reality, however, we have seldom seen decisions by which claims were rejected with the explanation that the information in question concerns events of public interest. In view of the above, the verdict of the Appellate Court in Belgrade, in the case of Dr. Slavka Durutovic-Gligorovic against B92 and Sasa Lekovic, represents a major reversal of the practice of Serbian courts, bringing us closer to the highest European standards established by the decisions of the European Court of Human Rights (ECHR), such as the verdict in the case of Jersild vs. Denmark from 1994 (petition no. 15890/89), §35, according to which journalists and the media may not be held liable for conveying third persons' statements concerning matters of public interests, unless there are extremely strong reasons for the court to decide otherwise. In the contrary case, the public debate about matters of public interest would be seriously undermined. The Appellate Court's decision has also brought us closer to the standards established by the ECHR in the case Thoma vs. Luxembourg from 2001 (petition no.

38432/97), §64, according to which journalists are not obligated to distance themselves from the statements made by interviewed persons, which might harm the reputation of third parties, for that would be contrary to the concept of the media's role to convey ideas and opinions. The same with the verdicts in the cases Dyuldin and Kislov vs. Russia from 2007 (petition no. 25968/02), §44 and Filatenko vs. Russia from 2007 (petition no. 73219/01), § 45, under which, the mere perception of a statement as offensive, is insufficient to justify the intervention of the courts in freedom of expression in such cases.