LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for April 2012

ANEM

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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. Innadequate 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 undoubtely 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.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Public Information Law

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

2. Broadcasting Law

2.1. The Republic Broadcasting Agency (RBA) has passed General Binding Instruction (GBI) to broadcasters in order to enable unhindered provision of information to hearing-impaired viewers during the election campaign in 2012. The GBI was published in the Official Gazette of the Republic of Serbia no. 31/2012 on April 12, 2012. It requires from broadcasters in Serbia and Vojvodina, as well as broadcasters of local or regional communities or the civil sector airing election program, to make such program (except from the content of electoral advertising messages) accessible to hearing-impaired viewers by using subtitles or signs. As for commercial broadcasters, the GBI prescribes that those broadcasters airing program on the entire territory of Serbia should make it accessible to hearing-impaired viewers by using subtitles or signs, again with the exception of electoral advertising and paid time slots. However, if such broadcasters do not possess the necessary financial or technical means, they shall be required to make at least one news program (that covers the election campaign entirely or partly) per day accessible to the aforementioned viewers, again, by using subtitles or signs.

The RBA is competent for passing general binding instructions in order to regulate more closely certain matters concerning the content of TV and radio program irrespective of the broadcasters' existing practice. General binding instructions may concern a particular matter related to content, several generic issues, but they may also pertain to all matters related to content (Broadcasters' Code of Conduct). Article 78, point 2 of the Broadcasting Law stipulates that public broadcasting services institutions shall – for the purpose of fulfilling the public interest in the field of the public broadcasting service, as provided for by Law – produce, among other things, programs intended for

all segments of society, without discrimination, particularly taking into account societal groups such as children and youth, minorities and ethnic communities, people with disabilities, socially and health-wise vulnerable persons, mute and deaf persons (with the obligation to simultaneously display a written description of the audio segment of the action and the dialogue) and others. Pursuant to Article 96, paragraph 9 of the Broadcasting Law, broadcasters of local and regional communities must adhere to the provisions of that Law concerning special obligations of the public broadcasting service when producing and airing program, until they enjoy the status of public company. Civil sector broadcasters, in keeping with Article 95, paragraph 6 of the Broadcasting Law, shall also be subject to the provisions of the Law concerning the public broadcasting service regarding special programming obligations. The obligation imposed to national commercial broadcasters arises from the general programming standards laid down by Article 68 of the Broadcasting Law, which, among other things, contain the obligation of all broadcasters to ensure free, complete and timely information of citizens, which includes hearing-impaired persons. This GBI represents a significant step forward in the protection of the right to freedom of expression of hearing-impaired persons, since this rights involves the right to receive information. It seems, however, that it is not good to have and *ad hoc* and selective approach to these issues and deal only with information concerning the electoral campaign. Making television programs accessible to hearing-impaired persons should be dealt with at broader level (especially in the context of the coming digitalization) and not only in the context of a single event such as the elections.

3. Personal Data Protection Law

In early April, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic warned the Ministry of Internal Affairs of the Republic of Serbia (MUP) that the public releasing, without legal authorization or consent, of photographs and video footage of arrested persons, or of textual messages establishing the identity of such persons, amounted to unlawful processing of personal data. Sabic said in a press release that the MUP was posting on its webpage video footage of arrests recorded by ministry officials, accompanied by texts revealing the identity of such persons. The press release also said the same officials were posting these photographs and footage on Youtube and on the MUP's profile on Facebook, making them accessible to the general public, under various search criteria. The Commissioner said such processing of personal data was dissallowed, "not only because a lack of legal grounds, but also due to the fact that the amount and type of personal data that is processed is obviously disproportionate with the purpose of the data processsing itself". He stressed that "the justified need to inform the public about anti-crime activities and to promote some of these activities may be

entirely satisfied by posting footage of arrested persons without making them recognizeable and by publishing their initials, without any other type of personal data".

The Commissioner's address to the MUP, as well as his press release, are important for the media, especially in the context of the many legal cases pending over MUP's release of the aforementioned footage and photographs in the media, with the media being the defendants, accused of conveying such information of the MUP. Namely, in spite of the express provision of the Public Information Law in Article 82 that a journalist, responsible editor and legal person (founder of the public media) shall not be liable for damages if they have faithfully conveyed information from a public document, in practice, the aforementioned persons and media were often indicted for publishing police press releases. In the opinion of the courts, by doing so, these media violated the privacy of the persons concerned, as well as the presumption of innocence. The courts often required the media to double check the claims of the police, as well as to harm the privacy of persons, whose privacy had already been harmed by the police. In that sense, pointing to defficiencies in the work of the police is good for the media, because the police is indeed to blame for the original ommission and not the media, as conveyors of information representing information of public interest.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, after calling the elections, the Serbian Parliament did not hold any sessions and hence has not adopted any new regulations.

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

REGULATORY BODIES

1. Republic Broadcasting Agency (RBA)

In the scope of its powers laid down by the Broadcasting Law to oversee the work of the broadcasters and rule upon petitions, as well as within its powers vested by the Advertising Law in

relation to advertising on radio and television programs, especially taking into account the fact that the electoral campaign was in full swing, the RBA Council was practically in constant session. The Council tried, in contact with both the broadcasters and the general public, through a series of press releases, to affect the manner in which the broadcast media followed the election campaign and particularly the extent to which they respected the principle of equal representation and non-discrimination of the participants in the elections. The Council thus called on broadcast media with national coverage (TV stations in particular) to refrain from underming the fairness of the election process by charging excessive fees for political advertising. It also pointed out that electoral advertising inciting discrimination, hate, violence or offending the honor, reputation or privacy of the citizens or other participants of the campaign would not be tolerated. The Council warned against the misuse of children and their dignity in the context of the campaign, as well as against violations of the presumption of innocence. Since the Council has not accomplished much with these warnings, it is evident that it does not possess the mechanisms to affect the overall tone of the electoral campaign. Hence, it is clear that not much can be achieved by mere regulation of broadcast media without influencing political parties, candidates, advertising agencies engaged in the campaign of these parties and print and online media. It was not realistic to expect the Council to act as a substitute of the supervising committee, for it does not have such powers or competences. Namely, under Article 99 of the Law on the Election of Members of Parliament, general supervision of the activities of political parties, candidates and means of public information during electoral activities shall be conducted by the 10-strong supervising committee, half of which shall be appointed by the Parliament, while the other half is appointed at the proposal of MP groups in the Parliament, from the ranks of prominent public figures, provided they are not members of bodies of political parties participating in the elections. In practice, however, in spite of this explicit stipulation in the aforementioned Law, the supervising committee for the elections was established the last time on the eve of the 2000 elections. Hence, general supervision of the electoral process once again did not take place. At the same time, the control of the activities of broadcast media during the campaign proved inneficient, since nobody else was subject to the same scrutiny.

2. Republic Agency for Electronic Communications (RATEL)

On April 10, the Republic Agency for Electronic Communications (RATEL) passed a decision allowing the operator with major market strenght on the media content distribution market – SBB – to change the fees for its services, starting from May 1. We want to remind that RATEL analyzed the media content distribution market in 2011, the cable distribution market in particular, and found that there was no effective competition, meaning that SBB possessed major market strenght. Accordingly, SBB was imposed the obligation to provide retail services under certain conditions.

That obligation involves the prohibition to charge excessive fees, the ban on obstructing market access or restricting competition by charging excessive or dumping fees, the prohibition to enable unjustified advantage to certain end users, the obligation to limit the level of retail prices, the extent of the control of individual tariffs, as well as the obligation to base the fees (prices) on the cost of services or prices on comparable markets. In the concrete case, RATEL found that SBB's regulatory report on the separation of costs and performance for 2011 did not allow the Agency to conclude that the fee increase was justified, since it was never intended for that purpose in the first place. RATEL nonetheless ultimately allowed the increase, taking into account the prices on comparable markets, namely the fees charged by major cable operators on the markets of Serbia, Croatia, Montenegro, Bosnia-Herzegovina, Macedonia and Romania, as well as the forecast 4.2% inflation rate for 2012, in line with the Guidelines of the Regulated Prices Policy from the Revised Memorandum on the Budget and Economic and Fiscal Policy. Here, however, it is pertinent to note that RATEL's decision will not have major effects on the operation of broadcast media using SBB's distribution services, since the core of the problems broadcasters face with cable distributors are not excessive retail distribution fees, but rather the practice of entering into similar or identitical distribution agreements with content providers under diametrically opposite conditions. This results in cable distributors paying to some content providers for content, while at the same time charging distribution services to other providers. At that, they do not distinguish between content providers considering the attractiveness of the content, but according to the possibility of the distributor to put pressure on the content provider in question. This has resulted in the situation where mainly local terrestrial broadcasters are switched off from the cable offer if they refuse to pay distribution fees. At the same time, national broadcasters are not required to pay those fees, while foreign content providers are getting paid for the right to distribute their programs. Although such practice could constitute entering into prohibited restrictive agreements under the Competition Protection Law, the competent Competition Protection Commission did not consider it. These problems could perhaps be addressed by enforcing the decisions passed by RATEL in March, which have (at the request of the RBA) obligated SBB to include in its Novi Sad and Kikinda networks the programs of several local TV stations with licences for terrestrial broadcasting.

3. The Press Council

On April 26, the Press Council's Commission for Complaints has passed the decision in yet another case against the daily Press. It was the first time, however, that the Commission was unable, due to split votes, to rule out whether the Journalist Code of Conduct had been violated or not. The plaintiff in the case is the Governor of the National Bank of Serbia (NBS); the Commission unanimously found that, by releasing, in the period between February 25 and March 6, a series of texts about the

responsibility of the Governor for the plummeting exchange rate of the dinar, thereby violating the provisions of the aforementioned Code of Conduct. The members of the Commission said that the Governor, as a public figure, was less protected by the Code than "ordinary" citizens and that he/she be prepared to take criticism for his/her work. However, the Commission stressed, the media may engage in such criticism only within the limits established by the rules of professionalism. In this case, the Commission found that these rules were not adhered to, since Press reported biased, by omitting facts or releasing false claims. The members of the Commission also said the Code was not violated in each single text that was complained about, stressing however that professional standards were not adhered to when publishing the series of articles. In the proceedings regarding the second complaint they were deciding about, the members of the Commission were unable to pass a decision as to if the text released in the daily "Politika" on March 13, entitled "Only Thieves are Diligent" had violated the Code of Conduct. In the opinion of the plaintiff – the Regional Minority Center – the text violated the provisions of the Code requiring journalists to protect the rights and dignity of vulnerable groups and invest their best efforts to avoid any kind of discrimination. In the text in question, the author criticized the lax penal policy against thieves stealing telephone cables and tin from schools and kindergarten roofs, which "typically belong to the Roma community". The text includes the following sentence: "One may already sense that the courts are going to be lenient: some NGO or 'factor' is going to step in protecting their rights and will 'call out the judge'. The fact is that the Roma are in a very difficult situation, living in poverty, but at the same time, huge amounts of money are spent for their 'inclusion', which does not give them the right to be spared from justice", the text said. The Politika editorial board responded by saying that the controversial text "merely stated the state of affairs", with the goal of addressing a major social problem, in the general interest and for the benefit of the Roma population in particular". Politika's journalists said they were ready to apologize, if the plaintiff furnished relevant information countering the claim that "the majority of the delinquents stealing copper cables are not Roma".

The Serbian journalists' Code of Conduct stipulates that the journalists are required to accurately, objectively, completely and timely report about events of public interest, in respect of the right of the citizens to know the truth, while adhering to the principal standards of the journalistic profession. It is without dispute that the frequent thefts of copper cables, due to which entire districts and parts of towns remain without telephone lines, are events of public interest. The Code, however, also says that the journalist is required to respect and protect the rights and dignity of vulnerable groups, as well as that he/she must be aware of the risk from discrimination the media may propagate. Journalists must do everything possible to avoid discrimination based on ethnic or social background. The opinions of the Commission were split as to whether the ethnic affiliation emphasized by the journalist in the concrete case was directly related to the type of felony he had

referred to, which could serve to justify mentioning the ethnicity of the thieves. The members of the Commission – Tamara Skrozza, Filip Svarm, Slavisa Lekic, Stojan Markovic and Petar Jeremic – believed that the Code was violated, that the text was discriminatory against the Roma, portraying them not only as thieves, but as "protected" thieves unpunished by the courts because they have powerful protectors such as NGOs. The remaining members of the Commission – Ljiljana Smajlovic, Bozo Prelevic, Nebojsa Spaic, Aleksandar Djivuljskij and Zoran Ivosevic – were of the opinion that the Code was not violated, because the ethnic background of perpetrators of criminal offenses in the concrete case was relevant for the text. The mere fact that the Press Council's Complaints Commission failed to adopt a decision about a complaint is definitely not good for the credibility of the Commission as an institution. Furthermore, it seems that one group of Commission members failed to discern the fact that the text in question – referring to a concrete case of telephone cable theft and one concrete case where a group of persons had been arrested under the suspicion of theft of tin from the roof of one faculty, two kindergartens, other schools and public institutions – inferred two conclusions. First, that the thieves of tin and copper cables are mainly of Roma origin and second, that the judges in Serbia, in fear of pro-Roma NGOs, pursue a more lenient policy than against other citizens. At that, whereas for the first assumption the author pointed to two concrete incidents as evidence, the second claim is made without any evidence that a non-Roma person has ever been punished more strictly by the Serbian courts for the same felony. It is possible that the members of the Commission had other arguments unmentioned in the decision published on its website, but it seems that the explanations of the decisions were fairly weak. Even if the Commission thought that more extensive explanations would not be published by those they pertained to (the decision, if approving a complaint, always includes the obligation of the newspaper it concerns to publish it), that problem could be solved by simultaneously releasing both the complete explanations and short excerpts thereof. In the contrary case, certain decisions of the Commission will be very difficult to understand, which will not boost its credibility either.

STATE AUTHORITIES

4. *The Parliament of the Republic of Serbia*

The Speaker of the Serbian Parliament Slavica Djukic-Dejanovic and the Director of the RTS Aleksandar Tijanic have signed an agreement providing for the live transmission of parliamentary session of the new composition of the Parliament on the public service broadcaster. The RTS will broadcast the sessions on Tuesdays, Wednesdays and Thursdays when, according to the Rules of Procedure, the Parliament will sit, whereas the rest of the week shall see live transmissions where appropriate. RTS will receive 80 million dinars for this service. The Agreement also includes the

possibility for certain sessions to be transmitted in a deferred broadcast, due to earlier commitments assumed by RTS. Slavica Djukic-Dejanovic said that the collaboration of the Parliament and the RTS shall ensure transparency of the legislators' work.

While some in Serbia believe that live broadcasts of the parliamentary sessions to be a democratic achievement, others claim it is evidence of the public broadcaster's inability to decide independently what parliamentary activities deserve to be on the air. We remind that in 2007 the RBA even passed a binding order commiting the RTS to enable live broadcasts. The binding order remained in force less than two months and was replaced by a recommendation. Although the latter was formally non-binding, RTS continued with live broadcasts. In January 2011, the Parliament called a tender for live broadcasts, but no station applied, because the RTS was the only broadcaster that was technically able, with its two terrestrial channels, to meet the tender requirements. The public service broadcaster, which did not even apply for the tender, ended up entering into an agreement with the Parliament last July. That agreement guarantees RTS a fee in the amount of 80 million dinars for one year of live broadcasts and now it has probably been merely extended. However, the problem lies in the dilemma if the conclusion of such a deal undermines the oblgiation of the public service broadcaster to ensure its programs (and news programs in particular) are protected from any government interference. On the other hand, if live broadcasts of parliamentary sessions are deemed to be beneficial for the public interest, then this interest must be financed (under the Broadcasting Law) from the subscription TV fee and not directly from the budget. From what we know from experience, RTS would have anyway continued to broadcast all parliamentary sessions without exception (as they did until the summer of 2011) even without the 80 million dinar fee, if not for sincerely believing it is in the public interest, then because of the inability to resist such requirement from the Parliament. That is why the aforementioned agreement resembles more a ficticious deal concealing a case of unlawful state aid to RTS.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

5. Serbian music authors' organization – Sokoj

Four months after the new tariff of fees charged by SOKOJ for airing music works on radio and television stations (which tariff was proposed by the SOKOJ's Managing Board and was approved by the Commission for Copyright and Related Rights) was published in the Official Gazette, SOKOJ is yet to issue invoices to broadcasters under that new tariff. The only logical explanation is that

SOKOJ is aware that the amounts of the fees prescribed by the tariff are exorbitant, which means that SOKOJ's overall tax obligations will probably exceed the amount charged under the invoices. This is showing the paradox of the process of approval of the tariffs, since SOKOJ apparently felt it was more important to have a tariff that looked good on paper, than one that it might realistically charge. The negotiations with ANEM (as the representative association of radio and TV broadcasters) continued in April, with SOKOJ offering certain concession as to the approved tariff: discounts would be extended subject to the payment of advances several months ahead or subject to more up-to-date furnishing of lists of actually aired music. The key problem remains the fact that, while the Law on Copyright and Related Rights stipulates that the fee should typically constitute a percentage from the amount of the revenue the user generates by performing his activity, which involves the exploitation of the protected object (i.e. the music) – whereas the lowest fee amounts is determined as a protection mechanism – where a user has disproportionately low revenue, the released tariff that received the positive opinion of the Commission for Copyright and Related Rights foresees exorbitant fees to be charged to more than 70% of the users. This has shifted the focus from the percentage of the revenue to be collected by SOKOJ to the fixed amount of the minimum fee, while the minimum fee itself becomes a regular fee, to be paid by more than 70% of the broadcasters. SOKOJ has shown the willingness to diverge from such a concept by foreseeing various minimum fees for different coverage zones (broadcasters situated in smaller communities would be charged a lesser minimum fee than national/regional broadcasters and those in larger towns/cities), as well as special discounts for underprivileged parts of the country. Nonetheless, the organization did not back down from its basic position that the tariff is based on the minimum fee and not on the percentage of the revenue. This, in turn, means that the tariff has lost its main characteristic according to the Law – proportionality. By the time when this report was finalized, the negotiations between ANEM and SOKOJ failed to produce an agreement on the amounts and the discounts on the amount of the fees prescribed by the tariff.

V THE DIGITALIZATION PROCESS

At a session held on April 4, the RBA Council discussed the technical possibilities for seting up several packages with various content in the Initial Network for the testing of the digital TV signal and established the list of broadcasters whose programs of which met the requirements for making certain packages. In the press release that ensued, the Council said it had taken into account the broadcasters' individual requests, as well as their statements as to programming, technical and financial resources. We remind that the Council said earlier that the Initial Network might comprise the content provided by the publci service broadcaster – RTS 1 and RTS 2, as well as RTS Digital and

RTS HD, all national commercial broadcasteres – TV Pink, TV Avala, TV Prva, TV B92 and Happy TV/HappyK, as well as RTV for the Vojvodina region and TV Studio B for the region of Belgrade. Since ETV (public company "Broadcasting Equpiment and Communications") announced that the Initial Network would be able to realize several different programming packages in different parts of the country, it means that packages in various regions shall be supplemented by channels possessing terrestrial licenses for these regions. This is important because no separate license is issued for broadcasting in the Initial Network; broadcasting is performed on the basis of the existing terrestrial licenses issued at an open competition (except in the case of the republic and provincial public service broadcasters, whose programs are broadcast nationally/in the province directly on the basis of the Law), with a defined service zone of the Initial Network, in order for the broadcaster to be included in the latter. Accordingly, in the Initial Network covering about 40% of the Serbian population, ETV will air the programs of the public service broadcaster and the programs of national commercial broadcasters at the national level. The programming package in Vojvodina will also include two channels of the Vojvodina public service broadcaster; the Belgrade programming package will also include Studio B, while the programming package in Central Serbia will also include TV Kragujevac. Another two programming packages in southern and southwest Serbia will include TV Vranje from Vranje and TV Belle Amie from Nis, namely Regionalna TV from Novi Pazar. We remind that on March 15, RATEL issued to ETV the licenses for the use of frequencies for the Initial Network, while ETV started the trial broadcast in the DVB T2 on March 21. ETV said the Initial Network to be intended, in its experimental phase, for testing the system, transmitters, receivers, various parameters and capacities. ETV has yet to start releasing the measurement results and reports on the functionning of the network. Although the Ministry of Culture, Media and Information Society has released the Specification of Minimum Technical Requirements for the Reception of the Digital Terrestrial Television Signal in the Republic of Serbia, as well as the Guidelines on the Manner and Procedure for Testing the Devices (STBs and digital television sets) with the aim of assessing compliance with the requirements for the reception of digital terrestrial television signal in the Republic of Serbia, there are still no television sets on the market that have been ascertained to meet the requirements from the aforementioned Specification. Therefore it is difficult to assess how many citizens currently receive television program through the Initial Network. However, the Ministry has announced that the primary objective of the Initial Network is not to achieve high ratings, but to ensure – by testing the system and its parameters – a smoother process of switching over to digital broadcasting.

VI THE PRIVATIZATION PROCESS

Early April was marked by news on the interest-free loan extended by the Government to the state news agency Tanjug. The Government granted the 17.5 million dinar loan to Tanjug for reporting on the election campaign. The same agency received more than 216 million dinars from the budget for the year 2011. NUNS, UNS, ANEM, NDNV and Local Press said that extending interest-free loans from the budget to a state-owned news agency might pave the way for the state to interfere even more in editorial policy. The Media Coalition also said that the move was also in contradiction with the principles of the Media Strategy adopted last year by the Government. "This move has resulted in further systemic muzzling of non-state media, aiming at establishing a monopoly. The Government is drastically breaching its promises given to media associations that it will embark on a genuine reform process in the media sector", the press release said. The Serbian PM Mirko Cvetkovic responded that all media enjoyed equal treatment, but that the Government had extended the loan to Tanjug because it was a state company and the state should care for state companies. "Tanjug had difficulties repaying several prior loans and the state decided to help with a short-term loan they will repay", Cvetkovic said, according to the Fonet news agency. In Cvetkovic's words, Tanjug is not an isolated case – other state-owned companies receive loans when in difficulties, because the state will not let them collapse. Otherwise, the Government's decision does not mention earlier Tanjug loans at all, but merely that the 17.5 million have been allotted for reporting about the electoral campaign and on Election Day May 6. However, the PM's words were soon denied by the media. The daily "Blic" reported that the employees in Radio Sombor, also a state-owned company, had received their last minimum wage for January 2011. In 2010, they received only three minimum wages and a mere 5000-dinar advance for the remaining months. Radio Sombor was privatized in 2007, but the privatization contract was terminated in mid 2008 and the station was taken over by the state. In yet another media that is partly in private ownership – Politika – the German media group WAZ offered the state its 50% share for 4.7 million Euros. Although the offer was expected since WAZ is withdrawing from Serbia, it shows that the state is everything but withdrawing from media ownership (as announced in the Media Strategy). In the context of such information, the concern of journalists' and media associations that the state is establishing a monopoly in the media is completely justified. We remind that the Media Strategy provides for the withdrawal of the state from public media ownership within 24 months from determining the legal grounds. The legal grounds for privatization, except for the Tanjug news agency, already exist.

VII CONCLUSION

Economic and political pressure on journalists and media, the media renouncing critical and analytical reporting, an electoral process devoid of any mechanism to oversee political parties and candidates, supervision of broadcast media on the basis of the General Binding Instruction to broadcasters (radio and TV stations) in the election campaign, which was so unclear that the RBA had to release, on the eve of the second round, a binding explanation: all that paints a grim picture of the environment in which the media in Serbia operated in the period covered by this Report. Add to that the statements of the head of the same Government that adopted the Media Strategy less than a year ago, opting for the withdrawal of the state from the ownership in all media and for state aid control – the same prime minister who is now saying that all media in Serbia enjoy equal treatment, while only state-owned outlets receive interest-free loans (to solve their liquidity problems under the guise of "assistance for reporting about the election campaign") – the picture appears even grimmer. In such circumstances, the verdict of the Appellate Court in Belgrade in the case of Dr. Slavka Durutovic-Gligorovic against B92 and reporter Sasa Lekovic – which has brought the practice of Serbian courts in media cases closer to the highest European standards established in some of the most important decisions of the European Court of Human Rights in the application of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms – starts to look even more significant. If the practice in enforcing media regulations becomes the standard for Serbian courts, the media would have obtained a key ally in their struggle for a more open and democratic society. The Appellate Court's decision sticks out even more from the above-described environment if we compare it to the decision, or rather the lack thereof, of the Press Council's Commision for Complaints – as the self-regulatory body, expected by the media community to contribute to the furthering of the highest freedom of expression standards – in the case of the Regional Minority Center against the daily "Politika" over a text boosting prejudice against an entire ethnic group, accusing it of enjoying preferential treatment by the Serbian courts compared to other citizens.