

I FREEDOM OF EXPRESSION

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

1. *Threats and pressures*

1.1. Srdjan Vucurevic, the Director of the weekly “Backopalanacki nedeljnik” informed the Journalists’ Association of Serbia (UNS) that he was threatened over the telephone on May 11 by the Mayor of Backa Palanka Dragan Bozalo. Bozalo allegedly told him that if the weekly wrote anything about him once again, or published his picture, he would throw a bomb on the journalist’s house and the premises of the magazine. Vucurevic claims that Bozalo also threatened the editor of the said weekly Dragica Nikolic. UNS’ press release said that Dragan Bozalo had denied the latter claim, stressing he did call them, angered over the headline on the front page “The Former Mayor”. Bozalo told UNS he had not given a statement to Backopalanacki nedeljnik for 1.5 years and that they had conveyed his statement given to another media.

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, or to put physical or other type of pressure on public media and the staff thereof, so as to obstruct their work. On the other hand, threatening one’s security by making threats against the life or body of a person is a criminal offense provided for by the Criminal Code, in the situation when the threat is directed at a reporter, as a person carrying out duties of public interest in the field of information, which is subject to 1-8 years in prison. In the concrete case, it was not revealed if the prosecutor’s office or the police had been informed about the threats. The incident described, however, is yet another in a series of threats and pressures faced by many local media and journalists on daily basis. Local power players are typically unhappy as to how they are portrayed in a particular media. As a result, they retaliate by not inviting reporters to press conferences and other events, by denying accreditations for reporting about the activities of local self-government bodies, or denying them interviews... At that, the express obligation from the Public Information Law – that state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well as members of parliament and councilors, must make information about their work available to the public and under equal conditions for all journalists and all public media – is typically not complied with.

Evidence of the extent to which the undermining of this obligation does not undergo any criticism or consequence on the person that has disregarded it, is not only Bozalo's admission to UNS that he had broken the law by not having provided information on his conduct to the weekly in question for the last year and a half, but particularly his conviction that he was doing the right thing. What is more, Bozalo seems convinced that he is not only entitled to discriminate against a media by denying it official statements, but that he is also entitled to forbid it to convey his statements given to other media.

1.2. After the Internet portal of Regional Informative Agency "JUGpress" from Leskovac (providing news in Serbian, Albanian, Roma and Bulgarian language), posted the content of two letters addressed by an organization called the Serbian Liberation Anti-Terrorist Movement to the Mayor of Bujanovac Shaip Kamberi, Ljiljana Stojanovic, the Editor-in-Chief of "JUGpress" received a message from Mikan Velinovic, the self-declared founder and commander of the said movement, accusing her of being the mouthpiece of the local authorities and providing "utterly concerning" support to terrorism. The letters published by "JUGpress" revealed that the Serbian Liberation Anti-Terrorist Movement was accusing Kamberi of supporting terrorism, "advising" him to cease with such conduct. Ljiljana Stojanovic declined to speculate as to who might have sent the messages, saying instead she had informed the competent state authorities, as well as the representatives of the EU and the OSCE Mission to Serbia.

The Serbian Liberation Anti-Terrorist Movement and Mikan Velinovic have been mentioned in the Serbian media mainly in the context of the situation in Serb enclaves in Kosovo. In the concrete case, this organization sent two letters to the Mayor of Bujanovac, in Southern Serbia, reacting to the rallies in that town, organized after the police had arrested, in early May, five Albanians in Bujanovac and its surroundings, over the suspicion they had committed a war crime against civilians in 2001. Two more persons were arrested for resisting a police raid, while one man was detained over a pistol found in his apartment, for which he did not possess a license. About two thousand Albanians protested in downtown Bujanovac. The local politicians, including the Mayor Shaip Kamberi, claimed that the arrests were aimed at destabilizing the security situation in Southern Serbia and creating fear and confusion among Albanian citizens. Five of the arrested persons suspected of war crimes were released in late May. They were unsure, however, if the procedure against them was suspended or if they would remain free pending trial. Since the issues of establishing responsibility for war crimes (as one side claims) and namely the misuse of the police for electoral purposes (as the other side believes, (since the arrests were made during the electoral silence, which allegedly enabled the Minister of the Interior to continue his own electoral campaign after the general campaign was formally over) are most definitively questions of public interest; the information concerning these event fulfills

the conditions for free release in the media, unless provided for otherwise by Law. Furthermore, the Serbian Liberation Anti-Terrorist Movement itself addressed the local officials in Bujanovac with opinions and recommendations related to an issue of public interest and it would hence be unrealistic from them to expect that the content of their letter would remain unavailable to the public. On the contrary, insisting on the secrecy of the letter addressed to the Mayor only means that it may be rightfully assumed that the letter was, in fact, a threat. Therefore, the new message by Mikan Velinovic and the Serbian Liberation Anti-Terrorist Movement, in which they accused the editor of the weekly of supporting terrorism, while she was only passing information on to the public they have the right to know about, represents, without any doubt, influence suitable for restricting free flow of ideas, information and opinions. This has hampered the media in question to perform its activity and hence restricted freedom of public information. The public is entitled to be informed about the mechanisms influencing the elected local officials in their decision making, while the state must actively defend the right of the public to obtain such information, including the obligation to reveal the reasons, interests and real intentions behind each specific request to conceal something the public is entitled to be informed about.

2. Legal proceedings

2.1. On May 3, Tomislav Nikolic, at the time still only the President of the Serbian Progressive Party (SNS) and presidential candidate, filed two lawsuits before the Higher Court in Belgrade: the first against the daily “Kurir”, “Kurir”'s Editor-in-Chief Sasa Milovanovic and Aleksandra Jerkov, the Spokesperson of the League of Social Democrats of Vojvodina (LSV) and candidate for Mayor of Novi Sad; and the second against the publishers of the daily “Blic” and their Editor Veselin Simonovic. In each of the claims, Nikolic is seeking damages in the amount of 200 million dinars per each case. “Kurir” said that Nikolic had pressed charges against them for having conveyed Jerkov’s statement from a press conference, where she demanded Nikolic to explain at which faculty he had obtained his diploma. In the case of “Blic”, the reason for the lawsuit was the text “The Mystery of Nikolic’s Diploma”. The SNS presented to the media a diploma, stating that Nikolic graduated in 2007 at the Novi Sad Faculty of Management. However, some media continued to investigate why that diploma had not been mentioned in Nikolic’s official biography on the eve of the presidential elections in 2008. The then biography stated that Nikolic had finished Technical School (Civil Engineering Department) and that he had studied at the Faculty of Law, which studies he interrupted in 1971. The latest diploma from 2007 was not even mentioned. The SNS confirmed it had filed the lawsuits, but stressed that they had claimed only two million per each and not per 200 million dinars in damages. If 100 times more were really requested, they said, their lawyers would be fired and the 2 million claims per each lawsuit would remain.

Nikolic's biography for the 2012 elections indeed contains the information that he graduated at the Faculty of Management in Novi Sad in 2007. The controversy of the diploma's authenticity was most pursued by the LSV, while "Blic" investigated the reasons as to why it had not been mentioned in Nikolic's earlier biographies. The daily also reported about the relations of the said Faculty with the former BK University of Nikolic's coalition partners – the Karic brothers. "Blic" investigated if the Faculty of Management was accredited at all at in the time when Nikolic was studying, how much time his studies had lasted and if other students of that faculty recalled Nikolic coming to the lectures or exams at all. Since Nikolic was in the meantime elected President of Serbia, it goes without saying that these allegations will represent a burden in his relationship with the Serbian media. According to the Public Information Law, public media shall be entitled to publish ideas, information and opinions about matters, events and persons the public is entitled to know about. It is understood that the biography of a presidential candidate (in this case Tomislav Nikolic) is without doubt a matter of public interest. In that sense, and particularly in view of the exorbitant damage claims (200 million dinars claimed by Nikolic in each case) as publicly posted on the Internet portal of the Serbian courts, such claims may be qualified as abuse of right, which may lead to self-censorship and restrict the free flow of ideas, information and opinions, namely to make the media avoid issues relevant for the public interest, in view of Nikolic's function. The final decision of the courts in this case will show the extent to which the Serbian judiciary is up to the task of fulfilling the requirements of the European Convention on Human Rights and Fundamental Freedoms, as well as the obligation to comply, in its activities, with the practice of the European Court of Human Rights in matters concerning the protection of the right to freedom of expression.

2.2. In the case we have reported about several times in our reports – the lawsuit filed by journalist Vladimir Jescic against the President of Nova Srbija and former government Minister Velimir Ilic – the Higher Court in Novi Sad passed on May 9 the first-instance verdict sentencing Ilic to pay 1.38 million dinars in damages to Jescic. Jescic pressed charges against Ilic after the incident during the shooting of an interview with Ilic in 2003.

We have closely followed this case and wrote about it in our reports, since it was a case of an attack on a journalist, with the attacker being an active politician (who, at the time of the attack, was a minister in the Government and Member of Parliament). The criminal proceedings against Velimir Ilic were never conducted, because he had invoked parliamentary immunity. What is also interesting is that Jescic had already won the case, but Ilic lodged an appeal that was accepted, although it was filed three years after the verdict was passed! From a legal standpoint,

this would have been possible only if the first instance verdict against Ilic had never been furnished to him, since the deadline for lodging an appeal starts at the moment of furnishing the verdict to the defendant and not the moment when the verdict is passed. However, the circumstance that the verdict had not been furnished to Ilic for three years is difficult to understand, in view of Ilic's political position at the time and the fact that he is a public person, whose residence or place of work should have been well-known to the Court, which means that he could have easily been handed over the verdict. However, the verdict of first instance failed to explain how it was possible not to deliver the verdict to a well-known politician for three years; or, if the verdict was handed over to him, how it was possible that the evidence of that have disappeared? If the doubt persists that the politicians (who are allowed to submit successful appeals three years after the passing of the verdict, although the Public Information Law provides for an 8-day period) are not subject to the same procedural rules and laws that apply to ordinary citizens, the concern will remain that Serbia is a country where journalists will be allowed to attack journalists with impunity. The opportunity to address this issue and shed some light on it will be the appeal procedure, since Jesic's attorney has already announced his client was unhappy with the amount of the damages. In the former verdict, which was overruled after Ilic's appeal, the damages awarded to Jesic several times exceeded those in the latest verdict.

2.3. On May 8, the Commercial Court in Belgrade passed a temporary restraining order prohibiting the company "Insajder tim" Ltd. from Belgrade (owned by Dragan J. Vucicevic, the former deputy editor-in-chief of "Nacional", the former editor of "Kurir" and former deputy editor and editor-in-chief of the daily "Press") to publish their new daily newspaper under the name "Nezavisne novine insajder" (Independent Newspaper Insider), "Insajder" or any other name containing the sign "Insajder" protected by a trademark or trademark application by B92. The court passed the temporary restraining order after having found that B92 had made it probable that its trademark/right deriving from the trademark application "Insajder" would be violated by the publishing of a newspaper containing that trademark in their name. "Insajder tim" Ltd. has filed an appeal against the temporary restraining order and their newspaper were released for sale on May 10 under the name "Informer".

Vucicevic is known, among other things, for having written a text entitled "Brankica – the First Goebbels of Serbia", after taking part in a television talk show. In that text, Vucicevic accused Brankica Stankovic and her investigative program "Insider" of "spewing Goebbels-like propaganda, manipulation and indoctrination", calling B92 "dirty and unscrupulous characters pretending to be some kind of supreme moral judges in this country and society". Vucicevic concluded that "Brankica the Insider is a liar, manipulator and a fraud"! After leaving the "Press",

he announced a new project on Twitter, under the name of B92's famed investigative program, which he had accused for "totalitarian propaganda and manipulation". The restraining order is a logical consequence of the fact that B92 has been protecting, with the Intellectual Property Office since 2004, two trademarks "Insajder", encompassing the logo "Insajder" and the word "Insajder", in several categories, all of which directly or indirectly pertain to the media and media-related activities. The possibility to pass a temporary restraining order in such cases is provided for by the Law on Trademarks, while the media have reported that it is not the first time that Vucicevic has attempted to launch a daily newspaper under somebody else's trademark. Namely, in a text authored by Radisav Rodic, the founder of the dailies "Glas javnosti" and "Kurir" from 2009 in the now-defunct "Glas javnosti", Vucicevic was said to have tried, in December 2005 (after he left "Kurir"), to print a daily newspaper under the name "Novi Kurir" (New Kurir), which attempt was thwarted, also by an injunction. Otherwise, it is interesting to note that the amendments to the Public Information Law from 2009 have introduced the prohibition to establish a public media under a name that may be misleading in terms of identity. However, the prohibition pertains only to cases of misleading names of media that have been deleted from the Public Media Register, or have ceased to be printed/published. In all other cases, the media trying to protect their intellectual property rights (trademark or trademark application) may only resort to remedies provided for by the Law on Trademarks, namely the Trade Law (protection from unfair market competition). Otherwise, Vucicevic's company also tried to protect its trademark "Insajder" as a trademark with the Intellectual Property Office. The related procedure is still underway, but the application will most likely be rejected. Asked about the likely outcome of that application, Mirela Boskovic, the Assistant Director of the Trademarks Department, said that "Law on Trademarks is clear – nobody may protect with a trademark another trademark that is identical or significantly similar to a formerly registered trademark or formerly submitted trademark application".