

## 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 Mladjan Dinkic, the President of the United Regions of Serbia political party (URS), has accused the daily Kurir of being edited by officials of the Democratic Party (DS) Dusan Petrovic and Slobodan Homen. The paper issued a press release claiming that Dinkic had sent a SMS message in the night between June 7-8 to the owner of the newspaper Aleksandar Rodic. According to the press release, Rodic understood the message as a threat that he would suffer the same fate as his father Radisav Rodic. Rodic the father spent almost two years in custody, under the accusation of abuse of office, before reaching a plea bargain agreement with the prosecutor. All this happened after Kurir announced that the Austrian Anti-Corruption Prosecutor had launched an investigation against businessman Martin Schlaff in relation to acquiring a stake in the Serbian mobile operator "Mobtel" and that the 357.9 million euro payment made to Schlaff under the contract signed by Dinkic (at that time the Finance Minister in the Serbian Government), was also being investigated. In the same text, Kurir cited an anonymous analyst claiming there were grounds for Serbia to deny to Schlaff the aforementioned payment for the stake in Mobtel, which was ultimately sold to the Norwegian company Telenor.

The Public Information Law expressly stipulates 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. Mladjan Dinkic was Governor of the National Bank of Serbia in 2000-2003, Finance Minister in the Serbian government in 2004-2006, as well as Economy and Regional Development Minister and Deputy Prime Minister in 2007-2011. He is also a MP in the newly formed Serbian parliament.

The text published in Kurir has conveyed almost certainly undisputed information that Schlaff is being investigated in Austria in relation to acquiring a stake in the Serbian mobile operator "Mobtel". The co-owners of Mobtel – the state of Serbia with 49% and Serbian businessman

Bogoljub Karic with 51% - were parties to an arbitration dispute, in which the state tried to prove that its stake was in reality higher. In 2005, Karic sold to Schlaff his Russian company that was the owner in Mobtel. The same year, the state stripped Mobtel of its mobile telephony license and bought out from the banks all the receivables claimed from Mobtel and converted these receivables into a stake in the company. This led to the situation where the state became a co-owner with 70% instead of the hitherto 49% of the shares. Mobtel was ultimately sold to Telenor for about 1.5 billion euros, 30% of which were paid to Schlaff for his stake in the company. In its text, Kurir claims that Dinkic, as the Finance Minister, was able to deny that payment to Schlaff. The newspaper cited its source, a pensioner from Belgrade described as an "telecommunications expert", who claimed that Karic's company, sold to Schlaff, never existed in the first place, namely that it was not registered with the proper register in Russia.

In accordance with the case law of the European Court of Human Rights in enforcing Article 10 of the European Convention on Human Rights and Fundamental Freedoms, which was built from decisions such as the verdict in the case of Lingens vs. Austria from July 8, 1986, § 42, or Oberschlick vs. Austria (no.2) from July 1, 1997, § 29, or Lopes Gomes da Silva vs. Portugal from September 28, 2000 § 30, "the limits of acceptable criticism are wider in the case of a politician, than that of a private person". The politician, who is expressly mentioned in the verdict Lopes Gomes da Silva vs. Portugal, is definitely entitled to have his reputation protected, even when not in private capacity. However, the requirements for protection must be weighed in the context of the need to have an open debate about political issues and in light of the need to interpret narrowly the exceptions, under which freedom of expression may be restricted.

If any payments made to Schlaff were illegitimate (made by money from the state budget), then it is an issue of public interest and the media may release information, ideas and opinions about it freely, without being harassed by accusation and ambiguous SMS messages that may be interpreted as threats. It remains to be determined whether Kurir placed too much confidence in a source that might not be credible after all. Furthermore, the irregularities should be elucidated concerning the registration of a company that formerly owned "Mobtel". These irregularities, if any, were not identified by Mr. Schlaff's advisors prior to acquiring the company from the Karic brothers, or the state of Serbia, when it entered an arbitration dispute with the said company over the level of its stake. The same goes for the legal advisors of Telenor, which bought Mobtel on a tender, as well as for a dozen international telecommunication companies, which were interested in the same deal and which had purchased the tendering documentation for review in 2006, when Mobtel was privatized. Such shortcomings in the text released by Kurir may not,

however, be used as an excuse for the crackdown on that newspaper. The tension caused by the utterly inappropriate reaction to the controversial article somewhat dwindled after the release of Dinkic's text in the daily Danas on June 11, in which the former finance minister explained his version of the events surrounding the privatization of Mobtel, this time in a much calmer tone. Dinkic's URS political party said in mid-June that Kurir had failed to properly publish their response to the information from the disputed text released on June 8. URS pointed to the principle of equality of the information and the retort, involving the requirement to publish the response on the same page and equipped in the same way as the information that was being retorted. According to the Public Information Law, the failure to release or the improper release of a retort shall be subject to court protection in urgent proceedings. By the time we completed this Report, we did not obtain any information about whether URS or Dinkic had requested with a court order that their response be released. On the online portal of the Serbian courts, however, one may learn that on June 20, Dinkic sued Kurir and the Editor Sasa Milovanovic, claiming damages in the amount of 990.000 dinars.

1.2. In downtown Novi Sad, in the evening of June 22, unknown perpetrators sprayed the car of Kurir's reporter Zorica Radulovic with gasoline and set it on fire. Kurir reported, citing police sources that three persons had participated in the arson. One person poured the gasoline, another set it ablaze, while the third person waited in the car used by the arsonists. Kurir also claims that the police believe that the attackers followed the reporter the whole day, waiting for the right moment to strike. Everything happened at about 11.20 PM, in the parking lot in front of the building where the journalist lives. Zorica Radulovic had left the car and entered the building only moments before. Journalists' associations requested law enforcement to urgently shed light on this case and identify and punish the perpetrators and those who have ordered the arson.

It was impossible to discern the motives for the attack on Zorica Radulovic (her car) from the description of the accident released by the media. Until all the circumstances are elucidated, the prime suspects will logically be individuals that might be unhappy with the writing of Kurir, namely that of Radulovic. According to applicable regulations, 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, which involves attacking a journalist's property so as to obstruct their work. The perpetrators of the arson, if apprehended, could be charged for the felony of destruction and damage of somebody else's property, as well as for causing a threat against the general public, since the car was set on fire in the center of the city, in a parking lot in front of a residential building and, according to media reports, in the vicinity of certain public

facilities, where an explosion caused by the fire could have caused a major threat to life and property. According to the Criminal Code, the destruction and damaging of somebody else's property is subject to up to five years in prison, while causing a threat against the general public in a place with a large number of people shall be subject to a fine and up to 1-8 years in prison, depending on the severity of the destruction/damage.

## **2. Legal proceedings**

2.1. The journalist of the daily "Danas" Boban Karovic was interviewed by the police in relation to the charges pressed by Dr. Dragan Arsic, the former Director of the "Studenica" Health Center in Kraljevo. The daily reported that Arsic had pressed criminal charges against Karovic for spreading false news in the text "European Average or Bad Solution", published on November 1, 2011. In that text, the journalist researched the number of deceased patients in the Haemodialysis Unit of the aforementioned health center, amid the decision of the Director to purchase, instead of the haemodialysis solution formerly procured through the Health Insurance Institute, other solutions via a private firm. The text highlighted the fact that, according to the data obtained from the Public Health Institute in Kraljevo, in response to a request for free access to information of public importance, the number of deceased patients in the first half of 2011 only was 11 (compared to 4 in 2008, 6 in 2009 and as much as 22 in 2010). The text quoted the press release and the data of the "Studenica" Health Center, according to which the European mortality rate for haemodialysis patients is 15.6%, while in the USA it is 21.7%. The mortality rate in the said health center in Kraljevo was claimed to be at the level of between 13.9 and 17.05%. "Danas" claims to have obtained (after the release of the controversial text) a third list with the number of dialyzed and deceased patients, contained in a Health Ministry report. That list, "Danas" claims, contains data that differ dramatically from that in the previous two. The said Health Ministry report from 2011, cited by "Danas", says that, after the decision made in 2009 by the "Studenica" Health Center to start purchasing dialysis solution on its own (instead of going through the Health Insurance Institute), frequent operational stoppages of the dialysis devices started to occur. According to the report, the reason was the fact that the concentrated solution failed to fully dissolve in the water and the "crystal" residue would congest the filter. By the time we completed this Report, there was no information whether the competent prosecutor had decided to start proceedings against "Danas" journalist.

According to Article 343 of the Criminal Code, the release or dissemination of false news, or claims resulting in panic or severe disruption of public order, or the precluding or severe obstruction of the enforcement of decision and measures passed by state bodies or organizations discharging public duties, shall be subject to a prison sentence ranging from three months to three years and a fine. Where the false news or claims are released/made on a public gathering or in the media, the prison sentence shall be 6 months to 5 years. Although the very circumstance that criminal charges have been pressed and that the police has started to collect information at the request of the competent prosecutor, still does not mean that proceedings will be launched, the mere fact that a journalist is under threat of criminal prosecution – for reporting about an issue of public interest, invoking government documents (the Kraljevo Public Health Institute) obtained in response to a request for free access to information of public importance – should be a serious cause for concern. The latter particularly in the light of the fact that the controversial text, a serious investigative article, has been shortlisted for the annual investigative reporting award of the Independent Journalists' Association of Serbia (NUNS). The same felony (albeit differently formulated), was misused in the late 90s with the aim to muzzle the press. A landmark case was that of Nebojsa Ristic, the then editor-in-chief of TV Soko from Soko Banja, who was sentenced to one year in prison. The explanation of the sentence said that Ristic, as the editor-in-chief of a station that was shut down by a decision of the then Federal Telecommunication Ministry, was guilty of placing a Radio B92 poster on the building of his station saying "Free Press – Made in Serbia", depicting prison bars, alluding to the absence of freedom of press in Serbia. The court concluded that by placing the poster in a public area, Ristic had spread false claims that there was no freedom of press in Serbia. The procedure against "Danas" Boban Karovic marked the comeback of the crackdown on journalists and the media – times we believed were long gone – which is a serious blow to freedom of expression in Serbia and the right of journalist to freely investigate events of public interest, analyze, collect information and freely publish stories about such occurrences.

2.2. On June 13, the First Basic Court sentenced, in repeated proceedings, Milos Radisavljevic Kimi, one of the leaders of the football club Partizan fans, to 16 months in prison for endangering the safety of B92 journalist Brankica Stankovic. The trial was repeated after the Appellate Court, in appeal proceedings, had upheld the former sentence of the First Basic Court (according to which Radisavljevic was sentenced to one year and four months in prison for the criminal offence of endangering safety and violent behavior) in the part concerning violent behavior, while scrapping the part related to endangering safety and violent behavior, finding that Radisavljevic was only proven to have participated in insulting the journalist, while death threats were not confirmed. This case concerns the incident on the football match Partizan-

Shaktyor in 2009, when Partizan fans chanted Brankica Stankovic to be a “venomous snake that would fare the same as slain journalist Slavko Curuvija”. A group of fans, led by Milos Radisavljevic Kimi, threw around a rubber doll representing the B92 reporter, which was ultimately ritually destroyed. Insults, threats and the “performance” with the doll was the fans’ response to the Insider series “Impotent State” authored by Stankovic, which revealed that the police had filed hundreds of criminal charges against fan leaders that were never prosecuted. Brankica Stankovic has been under 24/7 police protection as of 2009, since it was determined that her safety was under threat. At the repeated trial, Stankovic examined as the injured party said that the shouting “You will end up just like Curuvija” could mean one thing only – “We will kill you” – Curuvija was sprayed with gunfire in 1999 in front of his apartment building and his assassins were never identified. “I will not press charges, since this is not my private problem and I’m not waging a war against anyone here”, Stankovic said. “This is a problem of the state, which must protect every citizen. The court must take responsibility, since this decision will determine if we will continue having a system that protects hooligans and criminals. This trial was initiated by the state, namely the prosecutor, and not by B92 or myself”, Stankovic stressed. Ilija Drazic, the attorney of the defendant Milos Radisavljevic, said he would appeal the verdict sentencing his client to 16 months in jail. In his statement to the journalists, he pointed out to what he claimed to be an important detail – the fact that the aforementioned doll was in Radisavljevic’s hands for merely 12 seconds. Milos Radisavljevic claimed at the trial that he had ordered the fans to stop singing the insulting song and he apologized for the remaining insults. We remind that Radisavljevic had fled the country after the first verdict and was arrested on February 21 in a café in downtown Skopje and extradited to Serbia.

The trial of Milos Radisavljevic is just one of the cases against the members and leaders of fan groups in relation to the events that ensued after the airing of the Insider series “Impotent State” on TV B92 in 2009. In that series, after reviewing comprehensive documentation obtained from the police, prosecutor and the courts, Brankica Stankovic and her team analyzed the fate of criminal charges the police had pressed against hooligan leaders. After the program was aired, Stankovic became the target of insulting chants on basketball and football matches and she was also threatened on social networks. At the football match Partizan-Shaktyor in December 2009, Partizan fans shouted that Brankica Stankovic was a venomous snake that would end up just as slain journalist Slavko Curuvija. The incident, which was transmitted live on national TV, ended up with a ritual stabbing of the rubber doll, which was previously kicked, punched and thrown around. Stankovic was placed under 24/7 police security, which is still in force after 2.5 years. However, the biggest controversy that angered journalists’ and media associations was not related to Radisavljevic’s criminal responsibility, but rather the dilemma of the Appellate Court

whether the singing of the song threatening the journalist that she would be killed and the mauling of the doll symbolically representing that journalist (depicting the way she would be disposed of) represented a threat or a mere insult. In the aforementioned repeated sentence, the First Basic Court in Belgrade upheld the understanding that these acts constituted a threat. It remains to be seen, however, how the courts will rule in the pending proceedings related to this incident, since Radisavljevic is not the only person prosecuted in this case. The situation where specific actions are considered as a serious threat and work impediment by the journalists, while the court's opinions vary from seeing it as an insult to interpreting it as a serious threat, represents a grave menace for freedom of expression and may lead to increased self-censorship in the Serbian media.

2.3. On June 20, TV B92 announced that it had received the verdict of the Appellate Court in Belgrade upholding the earlier decision of the Higher Court in Belgrade, ordering the station to pay 350 thousand dinars in damages to a person mentioned in a police press release from 2008, which was cited by B92. The Belgrade based station reacted to the final verdict by saying that "it was a continuation of the unacceptable practice of Serbian courts in disputes concerning the conveying of information from government documents and particularly from police press releases". B92's protest over the verdict was supported by media and journalists' associations, as well as by the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic. The latter said it was unacceptable for journalists and media to be fined for having faithfully conveyed the content of communiqués or documents issued by state authorities, thereby allegedly hurting someone's honor or reputation.

In the concrete case, B92 conveyed information from the police press release no. 284/08 dated September 24, 2008, which remains available to this day in the press releases' archive of the Serbian Interior Ministry's website at <http://www.mup.gov.rs/domino/arh2008.nsf/24sep08mup>. Conveying the press release in question, B92 reported that the police had identified a group believed to have attempted to assassinate V.M. from Raska and arrested Slavisa M. (1973) from Raska, Zdravko N. (1977) from Novi Pazar and Dragan R. (1979) from Kraljevo. The verdict against TV B92 was passed in the case brought up by Zdravko Niciforovic from Novi Pazar, who claimed his honor and reputation were tarnished, since the criminal proceedings against him were ultimately suspended. He also dubbed "untrue" the information that he had a police record due to his involvement in serious felonies – such as drug trafficking, murder and car theft. Article 82 of the Public Information Law stipulates that a journalist, responsible editor and legal person – founder of the public media –

shall not be held liable for damages if false information was faithfully conveyed from an official document, including, but not limited to, records of competent state authorities. Furthermore, Article 74 of the Public Information Law says that if a public media has reported that criminal proceedings have been initiated against a certain person, that person shall be entitled, after the completion of the trial, to request from the responsible editor to publish information about the suspension of the trial, rejection of the indictment or release from charges. In the concrete case, Zdravko Niciforovic did not contact the responsible editor of TV B92 with the request to release the information that the criminal proceedings against him were suspended. This verdict is typical in the sense that it concerns an issue where Serbian courts differ the most from European freedom of expression standards. Namely, the case law of the European Court of Human Rights (ECHR), including a series of verdicts, such as Bladet Tromsø and Stensaas vs. Norway dated May 20, 1999 or Colombani vs. France dated June 25, 2002, has unambiguously been that the media or journalist citing competent authority documents (and the Ministry of Interior definitely is a competent authority in our case) shall not be obligated to check the veracity of defamatory and libelous claims and shall not be held liable for publishing such claims. More specifically, in paragraph 68 of the verdict in the case Bladet Tromsø and Stensaas vs. Norway and paragraph 65 of the verdict in Colombani vs. France, the court expressly stated that the media must be entitled, when contributing to a debate about issues of public interest, to confide in the veracity of official reports and communiqués, without being obligated to independently check the content of such reports and communiqués. Otherwise, the ECHR says, the vital role of the media to work in the interest of the public would be threatened. In keeping with such practice, the Serbian Public Information Law, in Article 82, foresees the liability of editors, journalists and the media for damage in such cases. In practice, however, Serbian courts often ignore that provision, as evidenced by the verdict in the case we are reporting on. As B92 says, this has created a situation where no media in Serbia has been exempt of court fines for passing on police communiqués, the same ones that are published on the MUP's official website, without the Ministry suffering any consequences. B92's press release goes on saying that such verdicts will ultimately not be in the interest of the persons whose names are cited in untrue or incomplete police communiqués, since their interest may only be to obtain satisfaction from the police (since the mistake is theirs), rather than from the media that confided in the police. It is not in the public interest to conceal the omissions of the police by fining the media for having merely conveyed a communiqué. Finally, it would not be in the public interest either that the media keep quiet about police activities in order to avoid risking paying fines stemming from police blunders.