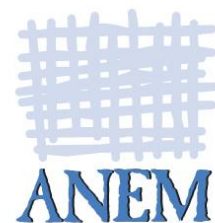




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for July 2012





FONDACIJA ZA OTVORENO DRUŠTVO - SRBIJA
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TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS.....	10
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS	12
IV	MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	13
	REGULATORY BODIES	13
	STATE AUTHORITIES.....	16
	COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS.....	17
V	THE DIGITALIZATION PROCESS.....	18
VI	THE PRIVATIZATION PROCESS.....	19
VII	CONCLUSION	20

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 According to a press release by Radio-Television Vojvodina (RTV) published on July 4, their reporter Nenad Jovicevic and cameraman Laszlo Ratz were attacked verbally and physically, while filming a fire in the workshop of the company Agro-Lend in Becej. The attacker was Roland Sabolcki, the owner of the said company. The press release says Sabolcki insulted and threatened the RTV crew and ultimately pushed the cameraman off the premises on the road, while trying to grab his camera away. He was finally stopped by the police. Journalists' associations condemned the attack and insisted that the perpetrator be properly punished, just like in the case of every other attack on journalists, the goal being to send a message that the authorities have to put an end to the „tradition“ of impunity (attackers on journalists typically remaining unidentified or, in the contrary case, receiving merely symbolic sentences) that encourages attacks on reporters. Several days later, Roland Sabolcki sent a letter (which he demanded to be made public) to the management of RTV apologizing for his actions. In the letter, Sabolcki said the fire in his company's workshop was the most difficult moment in his life, which was not, he admitted, an excuse for his behavior.

The media reported that a tragedy could have happened due to the many barrels with oil in the workshop that caught fire. The public undisputedly had the right to be informed about such an incident. The Public Information Law says that it is forbidden to restrict freedom of public information so as to restrict the free flow of information, ideas and opinions and particularly to put any kind of physical or other pressure on public media and the staff thereof, or influence that could obstruct their work. Since from the given context it may be inferred that Sabolcki aimed at preventing the footage to be aired on television, we remind that the Criminal Code, in Article 149, paragraph 2, says that unauthorized impeding or obstruction of television broadcasting shall be a felony subject to a fine or a prison sentence of up to one year. By the time this Report was completed, no information were released as to whether the competent prosecutor had initiated any kind of procedure. In any case, the fact that Sabolcki apologized to the RTV management for his actions and admitted his behavior was inexcusable, could be interpreted as a sign of increased awareness about the importance of freedom of expression and the societal unacceptability of attacks against journalists reporting about matters of public interest, irrespective of the circumstances of the concrete case.

In the period covered by this Report, a similar (albeit incomplete) apology was extended to a journalist and a media – Olja Beckovic and TV B92. Namely, the leader of a political party belonging to the new ruling majority, Velimir Ilic, who, on a press conference held on July 17, accused TV B92 of waging a campaign against him, while calling Beckovic “not sane” and “in need to be taught a lesson”, said two days later that, while he still believed he and his associates were victims of a “political crackdown”, he admitted to have reacted vehemently and therefore he was apologizing to both TV B92 and Ms. Beckovic”. Ten days later, Velimir Ilic was appointed to the post of Construction and Urban Planning Minister in the Serbian Government. The parliamentary majority obviously did not consider Ilic’s repeated attacks against journalists and the media to be an obstacle for appointing him to an important public position. We remind that, only several months ago, Ilic was sentenced to pay damages to journalist Vladimir Jesic for having insulted and attacked him during the shoot of an interview in 2003. Ilic has a long history of insults and threats against both Olja Beckovic and B92, as well as other media and journalists. Hence, his appointment raises concerns that the relationship between the government and journalists will not change with the coming to power of the new ruling coalition in Serbia.

1.2. On July 12, the Ljig Information Service (LIS) announced that journalist Mira Kojic of Revija Kolubara and longstanding correspondent of Napred from Valjevo has been expelled from the first session of the new Municipal Council in Ljig. According to a LIS press release, as soon as Kojic entered the premises, where the session was being held, she was told by the chairman of the Municipal Council Miodrag Starcevic that the meeting was closed for the public and that she ought to leave. After Kojic asked her photographer to be allowed to remain in the premises, just like the crew of Ljig Television (whose program is broadcast in the local cable system without the proper RBA license), in order to take pictures of the members of the Council, Starcevic called the police to remove her from the session. The ruling majority in Ljig consists of the Socialist Party of Serbia (SPS), New Srbija (NS), United Regions of Serbia (URS), the Democratic Party of Serbia (DSS) and the Serbian Radical Party (SRS).

Municipal councils (as local self-government bodies), just like all state authorities and organizations, territorial autonomy bodies, public services and public companies, members of parliament and local councilors, are subject to the obligation provided for by the Public Information Law to make the information about their work available to the public, under equal conditions for all journalists and all public media. In the concrete case of the Ljig Municipal Council, it is difficult to see any reason whatsoever for the session being closed for the public and the media. Moreover, it seems to be a clear case of unlawful discrimination against journalists and the media, since the crew of Ljig Television (which, as it was mentioned above, is broadcasting without a proper license and in breach of the Broadcasting Law) was allowed to

stay and keep filming the session, which Mira Kojic was expelled from. Since cases, such as the one in Ljig, are not isolated, it may be concluded that the current legal framework in Serbia, while providing for the obligation to make information on the work of local self-government bodies and other state authorities available to the public, under equal conditions for all journalists and all public media, actually lacks the proper mechanisms that would ensure the enforcement of that obligation. If those responsible for such violations of the provisions banning discrimination against journalists and the media and for shunning the obligations related to the transparency of the work of state authorities and local self-government bodies, are not held to account, the said anti-discrimination provisions will remain a dead letter on paper, the enforcement of which shall merely depend on the good will of individual public officials.

2. Legal proceedings

2.1. In a press release issued in early July, the Independent Journalists' Association of Serbia (NUNS) protested over the intolerable foot-dragging of the trial stemming from a case from June 2000, when the Mreza Production Group's camera was snatched in the street in downtown Zemun. While shooting a story about the attack on the Xeroxing store of Ljubomir Rankov, two members of the security of the Serbian Radical Party (SRS) approached Mreza's reporter Snezana Stojadinovic and cameraman Aleksandar Kostic and took away by force the tape with the footage and the camera. They said the camera would be returned to them as soon as the footage was reviewed in the premises of the SRS. Mreza called the police and half an hour later, in their presence, the bystanders recognized one of the two security guards exiting the SRS offices, accompanied by a high party official – the then Transportation Minister in the Serbian government Dragan Todorovic. In the indictment raised in November 2001 against Branislav Gavrilovic and Nebojsa Gavranov, the then Municipal Prosecutor accused them of grand larceny, while stopping short of investigating if anyone from the SRS, in the premises to which the camera was taken, ordered such a thing. NUNS said in a press release that, eleven years and seven months after the indictment was raised and after 37 scheduled inquests and three expert hearings, the conclusion of the proceedings is still not on the horizon.

The trial against the persons accused of taking the camera away from Mreza's crew reflects the ineffectiveness of court protection of freedom of expression in Serbia. When the incident happened back in 2000, Mreza was interviewing Ljubomir Rankov and the reporter Dragan Stojovic, the then President and Vice-President, respectively, of the Independent Citizens' Alliance for Zemun in front of Rankov's Xeroxing store that was attacked the day before as an act, as some believed, of retaliation for the photocopying of materials compromising for the SRS-controlled local government of Zemun. The investigation that was carried out and the trial that followed and that is still underway disregarded the fact that the defendants, working for the SRS

security, did not probably act on their own, but rather under the instructions of unidentified SRS officials. This is yet another in a myriad of cases, where only the direct executors of attacks against journalists and their property are prosecuted, while those, who have incited and ordered such attacks, remain untouched. Add to that the fact that the trial has entered into its eleventh year, without either the first instance or final verdict in sight and we get a pretty grim picture about the effectiveness of court protection of freedom of expression in Serbia. For comparison's sake, the trials for libel against Dragan Stojkovic, initiated by Todorovic. Stojkovic was heard as a witness in this case, since he was among the persons Mreza interviewed when their camera was taken and who, after one of the hearings in 2002 that were scheduled but were not held, due to the absence of the defendants, published a text hinting at the possibility that Dragan Todorovic was one of the persons who ordered the camera to be snatched – since as a high SRS official he was most probably present in the SRS offices when the incident took place and since one of the defendants was his personal bodyguard. In the case initiated by Todorovic's private action for libel, Stojkovic was freed of all charges, but in the litigation for damages, Stojkovic was first sentenced in 2006 to pay Todorovic 500 thousand dinars. That amount was reduced to 350 thousand in the appeals proceedings in 2008, only to be ultimately revised in 2009 to 200 thousand. During all this time, the criminal proceedings against the persons accused of taking the camera were still underway. Therefore, paradoxically, twelve years after the incident, the only person that was ultimately fined for the camera incident was not the one that ordered the camera to be snatched (for he/she remains unknown) or those who took the camera (who are known, but are ignoring court subpoenas or claiming inability to stand trial), but the reporter that was interviewed by his colleagues from Mreza just before the incident.

2.2. On July 12, the Association of Independent Electronic Media (ANEM), the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina (NDNV) protested against the verdict of the Higher Court in Novi Sad sentencing Radio 021, the daily "Dnevnik" and the editors of the said media to pay damages for tarnished reputation and honor of the Prosecutor Dragan Urosevic, who is currently serving a prison term in Pozarevac. The charges were pressed after the website of Radio 021 and the daily "Dnevnik" published last November the news about the verdict sentencing Urosevic and Blazo Boskovic from Stari Ledinci to five and four years in prison, respectively, for extortion. The text wrongfully indicated that the verdict pertained to a case of extortion from 2007 (in that trial, the then District Court suspended the proceedings against Urosevic). In reality, it concerned a case from 2009, when Urosevic and Boskovic, as the verdict said, "used threats and beating to extort money from a considerable number of women in Kacka Petlja".

The Public Information Law says that any individual, whom false information pertains to and who is harmed by such information, shall be entitled to compensation of pecuniary and non-

pecuniary damages. At that, the responsibility should not be objective, but rather conditioned by a lack of due professional care in journalism. Under the Law, journalists and editors are required, prior to releasing information containing data about a specific event, occurrence or person, to check the origin, veracity and completeness of such information, exercising proper care in the given context. In the concrete case, two Novi Sad-based media complemented a piece of inexhaustive information about a verdict for a felony with previously released information about the fact that the same persons already stood trial for extortion in a case from 2007, whereas, in reality, the extortion in question took place in 2009. The key problem in such cases is the manner in which the courts weigh the notion of “due professional care in journalism”, namely the prudence/care corresponding to the circumstances of the concrete cases. In the practice of Serbian courts, it is virtually impossible to find a verdict where the court had concluded the released information to be untrue, while, at the same time, there were no grounds for damages, since both the journalist and the editor did act with due professional care in journalism. Furthermore, when they invoke the absence of due professional care in journalism as the reason to commit the media to pay damages, the courts typically fail to clearly determine what is the proper standard of due professional care in journalism required in the concrete case. In practice, this has created the situation where the media are held to a “zero-error standard”, irrespective of the circumstances, as well to a total lack of consideration for the requirement of the trade that news, just like perishable goods, must be released fast, while it still makes sense to make them public. In that sense, the only thing that mattered in the concrete case was whether the plaintiff was sentenced for a case of extortion from 2007 or from 2009 and not what is the proper standard of due professional care in journalism required in the concrete case, namely whether the reporters and the editors of two Novi Sad-based media were able (with due professional care in journalism in the given circumstances of the concrete case and taking into account the need to release news while they are still fresh) to determine if there were two and not one criminal trial against the same persons for two generic felonies, with a different outcome. Moreover, given that the plaintiff had indeed been convicted in a case of extortion and that he is serving his term in another part of the country and his access to the regional press in Novi Sad and the internet is probably restricted, the question is how did the court ponder the non-pecuniary damage that he has allegedly suffered. Namely, according to the general rules for determining non-pecuniary damage, damages for emotional distress over tarnished reputation or honor are ruled only exceptionally, depending on the circumstances (especially if warranted by the level of distress and the duration thereof) of the concrete case. The ratified European Convention on the Protection of Human Rights and Fundamental Freedoms stipulates that freedom of expression may be restricted, among other things, only to the extent necessary in a democratic society. In the concrete case, it would most definitely be interesting to see how the court has determined that the circumstances of the case, the level of distress suffered by the plaintiff and the duration thereof, are sufficient grounds for ordering the defendant to pay damages for emotional distress. Moreover, it would be useful to discern why did the court

assessed that determining the pecuniary damages is necessary in a democracy, namely if the purpose of the protection of the Prosecutor's right could not have been achieved in some other way, respecting the principle of proportionality.

2.3. UNS, NUNS and NDNV have called the President Tomislav Nikolic to pass a decision pardoning Laslo Sas from Subotica, who has been serving a prison term since July 20, after he was found guilty by the Primary Court in Subotica (the verdict of which was upheld by the Appellate Court in Novi Sad) for libel and fined 150 thousand dinars. The fine was ultimately replaced by a 150-day prison term by the aforementioned Primary Court, since Sas failed to pay the fine on time. He was subject to a private claim by the leader of the Hungarian extremist movement "64 Zupanije" Laslo Torockai over his text published in the form of a reader's letter on April 24 in the daily Magyar Szó. Laslo Sas is a journalist who used to write for Magyar Szó from Novi Sad and Hét Nap from Subotica. In the controversial text, Sas criticized Torockai as a right-wing extremist; he says he did not want to offend Torockai, but merely to protect the youth from Hungarian nationalism. Otherwise, the trial was held while Torockai was banned from entering Serbia by an Interior Ministry decision, which branded him an extremist. UNS, NUNS and NDNV said that, due to a difficult financial situation, Sas was unable to pay the fine, while he was also forced, in the second-instance proceedings, to defend himself on his own, since he could not afford an attorney (the attorney that represented him in the first-instance trial passed away in the meantime).

We wrote two months ago about the paradox that the revoking of the prison term for libel and defamation in Serbia and replacing it with merely by a fine (with the Amendments to the Criminal Code from 2005) threatens to result in someone going to jail for libel in the media for the first time after 20 years or maybe more. In our May report, we wrote about Novi Sad activist of the Anti-Fascist Action Zoran Petakov, who was sentenced to 100 days in prison for failing to pay a fine for having slandered Serbian Orthodox Church's Bishop Irinej of Backa. The slander allegedly happened in the TV program Klopka on BK Television back in 2005. We remind that, until the amendments to the Law enacted that same year, the penalties for libel and defamation, if and when they were handed down, were typically conditional and nobody really went to jail. The amendments created the situation where those fined for libel or defamation would serve a prison term if unable/unwilling to pay the fine. In the backdrop of a serious financial crisis, which has made it impossible for many journalists to pay fines, the possibility that a fine be replaced by a prison sentence threatens to become the norm. Also interesting is the fact that both the cases of Zoran Petakov and Laslo Sas are related to criticism of right-wing extremism: in the first case, criticism was expressed by a civil activist in the media and in the second, a reporter. While Petakov was sentenced for voicing his opinion that the Serbian Orthodox Church was promoting an ideology that attracted right-wing extremists and that certain bishops had an

influence on the creation of extremist groups, Laslo Sas was convicted for criticizing the Greater Hungary nationalism of the leader of the Hungarian extremist movement “64 Zupanije” Laslo Torockai. In both cases, public figures were criticized – a bishop of the Serbian Orthodox Church and a politician from neighboring Hungary, who advocates for a revision of the Treaty of Trianon from 1920, which defined Hungarian state borders. Both verdicts are problematic, to say the least, from the aspect of compliance with the constitutional guarantee of freedom of expression, as well as with the provision of the Serbian constitution guaranteeing that Serbian courts will, in such cases, interpret the legal provisions related to human rights (including freedom of expression) in favor of furthering democratic society values, in line with the applicable international standards and the practice of international institutions overseeing their enforcement. In other words, in line with the case law of the European Court of Human Rights in the enforcement of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms. The case of Laslo Sas has painfully demonstrated the extent of the damage Serbia has suffered for refusing to decriminalize libel and defamation back in 2005. The full decriminalization of libel and defamation was foreseen only on January 31 this year, when the previous government tabled to the Parliament the Draft Law on the Amendments to the Criminal Code. However, the Parliament failed to adopt it in the period prior to the May elections, when it was dissolved. Meanwhile, right after this Report was completed – on August 3 – the new President Tomislav Nikolic passed a decision pardoning Laslo Sas, who was released from prison, where he had spent two weeks.

2.4. On July 4, the Constitutional Court adopted the constitutional appeal filed by Veran Matic and Brankica Stankovic (the responsible editor of TV B92 and the author of the investigative serial “Insider” aired on TV B92). In its decision, the Constitutional Court ruled that the verdicts of the former Fourth Municipal Court in Belgrade and the former District Court in Belgrade from 2008 and 2009, respectively, violated Matic’s and Stankovic’s constitutionally guaranteed right to a fair trial. The Court ordered that the proceedings on appeal against the first-instance verdict of the Fourth Municipal Court be repeated. In the concrete case, the Constitutional Court found that the right of the reporter and the responsible editor to a fair trial was violated by the omission of the first instance court and the second instance court in trial on appeal to present evidence proposed by the defendants – i.e. to officially request a document from the Ministry of Internal Affairs (MUP), which was invoked by the defendants, and to review it in order to establish the veracity of the information that was being conveyed from that document.

This case concerns an episode of Stankovic’s investigative program “Insider”, aired on TV B92 back in December 2006. The program dealt with the position of prosecutors and the possibility to illicitly influence their work. In the part of the program concerning the then District Prosecutor in Belgrade Milovan Bozovic, it was said that his son Ivan Bozovic had been

described in MUP's "White Book" as a man with close ties to an organized crime group collaborating with the Montenegrin mafia. The same information was released by other media in early 2006 – specifically in the daily "Blic". During the trial, the defendants Matic and Stankovic claimed that they had checked and corroborated that information from several independent police sources. At the same time, they invoked the right to protect the confidentiality of their sources. The White Book represents a compilation of the police's operational intelligence about groups and individuals engaging in organized crime activities. It is continuously updated and the public had the opportunity to get to know the version from 2003, which was distributed to the press by the then Police Minister Dusan Mihajlovic, during the state of emergency declared after the assassination of the Prime Minister Zoran Djindjic. Brankica Stankovic claimed that, in their case, they had invoked a later version of the White Book, compiled after the state of emergency. The existence of such new versions was also publicly hinted at by Ivica Dacic, after he became Interior Minister in 2008. In Stankovic's and Matic's case, however, the former Fourth Municipal Court rejected the defendants' request to ask specific operational intelligence from the Interior Ministry and convicted them on the basis of the rule on the burden of proof. Although the Constitutional Court did not weigh whether the journalists' right to freedom of expression had been violated by their conviction, due to the fact they were unable to produce a document that would serve as evidence of their claims (they were unable to produce it since that document was classified and realistically inaccessible to journalists), this verdict is significant from multiple reasons. Firstly, it has given the opportunity to the defendants to stand a fair trial in repeated proceedings. Secondly, the Constitutional Court confirmed, albeit indirectly, that the courts ought to establish the facts in media-related trials by officially requesting evidence in cases where journalists, intent on protecting their sources or due to the inability to access such evidence, were unable to produce them on their own. This has contributed to freedom of expression and strengthened the right of journalists to protect the confidentiality of their sources. In addition, in the criminal trial against Stankovic, related to the same situation from 2006, the Criminal Court did request the Interior Ministry access to operational intelligence concerning Ivan Bozovic and after receiving such intelligence, ruled to reject the libel claim. Bozovic appealed the verdict, but the case expired during the appeal proceedings.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

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

2. Broadcasting Law

2.1. On July 20, the Republic Broadcasting Agency (RBA) released in the daily "Dnevnik" a list of candidates for the twelve members of the Programming Committee of the Broadcasting Institution of Vojvodina (RTV), who are elected at the proposal of the Agency from the ranks of professional associations, scientific institutions, religious communities, citizens' associations and NGOs. The list includes sixteen candidates, which were proposed, among others, by the Independent Journalists' Association of Vojvodina, traditional churches and religious communities, the Arts Academy in Novi Sad and other groups. The purpose of publishing the list of candidates is to enable the citizens to pronounce themselves about individual candidates before the RBA tables the list, as its proposal, to the Parliament, which will ultimately appoint the programming committees of both RTS and RTV.

According to the Broadcasting Law, the Programming Committee is an advisory body of institutions of the Public Service Broadcasting representing the interests of the viewers and listeners. The Programming Committee reviews the realization of the programming concept and submits its recommendations and suggestions to the Director General and the Managing Board of the Public Service Broadcaster. Under the Law, the Programming Committee has 19 members elected by the Parliament – seven from the ranks of members of parliament and twelve at the proposal of the RBA. The Programming Committee may not include elected or appointed persons in the Government or republic authorities, or members of the RBA Council. Their term of office shall be three years and they may not be reappointed.

3. Law on Personal Data Protection, Law on Electronic Communications

On July 6, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic and Ombudsman Sasa Jankovic presented the results of the oversight of the implementation of the Law on Personal Data Protection, conducted with telephone operators in Serbia, in the context of the constitutionally guaranteed secrecy of communication, as well as in relation to their recommendation concerning the need to improve the state of affairs in this field. The Commissioner and the Ombudsman said that the actual situation related to the protection of privacy significantly diverged from the standards laid down by the Serbian Constitution and the relevant international documents. Namely, the Ministry of Internal Affairs and the security services have access to the databases of telephone operators, revealing whom the citizens have called, from where and when – although, under the Law, the access to such information requires a court order – which may lead to abuse. Sabic and Jankovic recommended that urgent amendments be adopted and that effective organizational measures and IT solutions be put in place, in order to speed up prior court control and decision making on requests for access to

communication and data on communication, more clearly defined obligations of electronic communication operators, as well as that access to telecommunications be recorded without the possibility for deletion, so as to include all data necessary in order to be able to perform subsequent control of lawfulness and regularity of access.

The oversight of the implementation of the Law on Personal Data Protection of telephone operators in Serbia has revealed not only that Ministry of Internal Affairs and the security services enjoy access to databases of telephone operators, revealing whom the citizens have called, from where and when, without a proper court order, but also that the number of such individual cases of access to databases, at annual level, is in the range of hundreds of thousands, if not more. It has also been established that the operators keep the data much longer than the one-year period laid down in the Law on Electronic Communications. Specifically, the data in question allows the tracking of the source and destination of the communication, its beginning, duration and end, the type of communication (a voice call, SMS or MMS message, e-mail and the like), the type of equipment utilized by the user, as well as the user's location, if he/she is using mobile equipment. Such practice may seriously threaten the journalists' right to protect their sources of information. If access to such data by the MUP and intelligence services remains free and without control, the possibility for journalists to protect their sources becomes merely declarative. For that reason, the urgent acceptance and implementation of the recommendations tabled by the Commissioner and the Ombudsman is vital not only for the sake of preserving the right to protect personal data, but also for journalists, the media and freedom of expression. Only if these recommendations are completely implemented, the right of journalists to protect the secrecy of their sources may be fully enjoyed.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

On July 26, the Serbian Parliament adopted the new Law on Ministries, which provides for a different allocation of competences for certain matters relevant for the media sector within the Government of the Republic of Serbia. The competences in the last year of the unified Ministry of Culture, Media and Information Society have now been divided between the Ministry for Culture and Media on one hand and the Ministry of Foreign and Domestic Trade and Telecommunications on the other. Hence, the Ministry for Culture and Media will be in charge of the public information system; oversight of the enforcement of the Law in the field of public information; oversight of the work of public companies and institutions in the field of public information; supervision of the activities of foreign information institutions, foreign means of public information, foreign media offices and correspondents in the Republic of Serbia; information for ethnic minorities; registration of foreign information institutions and the

provision of assistance in work to foreign journalists and correspondents. The Ministry of Foreign and Domestic Trade and Telecommunications will be in charge of electronic communications and especially for laying down the draft plan of the designated purpose of radio frequency bands and passing the radio frequency allocation plan; passing decisions about the requirements for the issuance of individual licenses for the use of radio frequencies, as well as for the policy and strategy for the development of information society; data protection and information security.

It remains to be seen how these rearranged competences will affect the efficiency and quality of the administration. However, one gets the impression (comparing to the previous reorganization of the ministries in 2011) that the new ruling majority, just like the previous government, is primarily concerned with forming a government with as few ministries as possible, to leave the impression it is committed to making savings, rather than the real goal being to genuinely reform the state administration.

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)*

1.1. At a session of the RBA Council held on July 19, four decisions were passed about the revoking of broadcasting licenses prior to the expiration of their term. In all four cases, the licenses were revoked due to unpaid broadcasting fees. Radio Djerdap from Kladovo, Radio Ekos from Vlasotince, Radio 013 FM from Plandiste and Radio Vrsac from Vrsac were stripped off their licenses. The Council also revoked cable-broadcasting licenses from TV Kanal D in SBB's cable network and from a cable operator from Novi Sad, as well as for cable broadcasting of the program of TOP SHOP TV.

The number of broadcasters in Serbia, for years perceived as excessive and disproportionate to the situation on the poorly developed advertising market, has continued to shrink, as a consequence of the inability of the stations to pay their dues. Unfortunately, although media associations have been warning for years that the state should react by introducing incentives

that would help the media market to consolidate so as to safeguard media pluralism in Serbia, the Serbian media (especially local media) are being decimated due to the years long crisis, resulted in an even more crippled media landscape. The fact is that nine months have passed since the adoption of the Media Strategy and nothing has been done to safeguard endangered local media. What's more, the RBA itself has failed to take measures it had at its disposal (e.g. to stimulate more effectively socially acceptable content on television and radio). This warrants a prompt review of the extent to which the concepts contained in the Media Strategy are sustainable in the backdrop of the continued disappearance of impoverished media.

2. Republic Electronic Communications Agency (RATEL)

2.1. In early July, the Republic Electronic Communications Agency (RATEL) released the annual review of the telecommunications market in the Republic of Serbia for the year 2011. The part concerning the distribution of media content says that the market in 2011 has not changed dramatically when it comes to structure and transmission technology. In 2011, 82 operators were registered in Serbia for media content distribution, which provided their services through the following telecommunications networks: cable networks (coaxial, hybrid and optical) – 76 operators; through public landline telephone network – 3 IPTV operators and through satellite network (Direct to Home) – 3 operators. SBB has remained the largest operator in Serbia, with more than 50% of the market share, while, out of the 82 registered operators, seven of the largest (SBB, PTT, Telekom Srbija, Kopernikus, I.KOM, Digi SAT and Radijus Vektor) jointly account for about 88% of the market (as per the number of subscribers), whereas Telekom Srbija has posted the highest annual growth rate in the IPTV segment. The total number of subscribers to the service of media content distribution has continued the growth trend from previous years and amounted to slightly more than 1.3 million in 2011, which is by 6.7% more than in 2010. Penetration is 53% of the total number of households. Of the aforementioned 1.3 million households, about one million are cable subscribers, up to 210 thousand satellite DTH and around 120 thousand IPTV subscribers. The operators' revenue has increased too – by 16% compared to the previous year – and amounted to about 10.3 billion dinars. RATEL explained the revenue growth was the result of the increased number of subscribers, the introduction of extra services and higher prices. RATEL also said in the market review that the investment rate had also grown, as well as that there was a “noticeable improvement of the quality of provided services and attitude towards end-users”. In its analysis of the data and year-to-year comparison, RATEL concluded that the media content distribution market is yet to attain full maturity and that it was expected to develop intensively in the immediate future. RATEL observed a much quicker growth of the number of IPTV subscribers compared to the number of KDS subscribers. The agency's conclusion is that, in the coming period, we may expect a change of the overall media content distribution market, namely that the potentially high number of

IPTV subscribers will put competitive pressure on KDS operators, which will contribute to quality-oriented market development and result in much better quality, greater content diversity and reduction of service fees.

Concerning terrestrial broadcasting, particularly interesting is the part of the report pertaining to pirate broadcasters. RATEL says that as of December 31, 2011, there were 47 pirate broadcasters on the air – four TV and 43 radio stations. Looking at the list, it may be inferred that the worst situation with pirates exists in Novi Sad, where as much as nine pirate radio stations were identified. RATEL continued to update pirate lists in the course of the year and hence the July list includes a total of 51 pirate broadcasters, of which 11 transmitters broadcast the program of Radio Fokus, a national station that continued to operate even after it had its license revoked due to unpaid fees. The fact that a pirate network with up to eleven transmitters continues to exist in Serbia (in Vranje, on Fruska Gora, in Krusevac, Vrsac, New Belgrade, Valjevo, Kragujevac, Pirot, Sevojno and in the surroundings of Trstenik) is evidence of the utter lack of preparedness or incapacity of the system to fight radio piracy.

3. *The Press Council*

At a session held on July 26, the Press Council's Commission for Complaints unanimously decided that the daily "Blic", in the text "Psychiatric Patient Commits Suicide", published on June 23, 2012, violated the Journalists' Code of Conduct, more specifically the provisions stipulating that journalists are required to "respect the privacy, dignity and integrity of the persons they write about", namely to "avoid speculation and conveyance of personal views in reporting about accidents and tragedies involving fatalities or heavy losses affecting the material or other interests of the citizens". In the aforementioned case, a complaint against the text published in "Blic" was filed by the mother of the person that committed suicide. She said that her son was branded in the article as psychiatric patient, whereas he was in reality a military war invalid. She also stressed that his privacy and that of the family was violated by the publication of his name and reference to the town he lived in and said that no journalist had ever tried to obtain any information from the family or check the veracity of the facts mentioned in the text. The opinion that the deceased was a "psychiatric patient" was expressed by the Superintendent of the Police in Krusevac, citing the findings of his subordinates. The same text (a news brief first released by the "Tanjug" news agency) was published in several other media, which are not under the Press Council's scope of authority. The Commission found that, pursuant of the Code of Conduct, even if the competent authorities released data falling under the private domain of the perpetrator or the victim, the media ought not to convey that information. "A mistake made by state authorities does not automatically imply that the media are allowed to violate the ethical standards of their profession", the Code says. Consequently, the members of the Commission estimated that the

fact that the information originated from the Superintendent of the Police might not be an excuse. Furthermore, the Commission found that, also under the provisions of the Code, each media was responsible for the news agency briefs it released. Accordingly, “Blic” was found responsible for violating the Code, regardless of having merely conveyed Tanjug’s news brief. It is not known whether the family of the deceased pressed charges against the news agency or other media that passed on the controversial information. It is, however, highly likely that the court might rule differently than the Complaints Commission, since the Public Information Law expressly stipulates that a media outlet may not be held accountable for damages if it has faithfully conveyed an untrue or incomplete piece of information originating from a competent state authority.

STATE AUTHORITIES

4. *The Government of the Republic of Serbia*

The new Government of the Republic of Serbia was elected at a parliamentary session held on July 27. It consists of the coalition made up by the Serbian Progressive Party, Socialist Party of Serbia, United Regions of Serbia, as well as the Socialdemocrat Party of Serbia and the Party of Democratic Action. As we said in the section of this Report concerning the monitoring of the process of adoption of new laws (more specifically the new Law on Ministries), as opposed to the previous government, the new one does not have a single ministry covering both the media and electronic communications, since the latter have been entrusted to the Trade Ministry. The new Culture and Media Minister is Bratislav Petkovic, theatre director and writer, the founder and owner of the “Automobile Museum” and the “Modern Garage” Theatre. Electronic communications (relevant for broadcast media, since they cover media content distribution networks) have been entrusted to Rasim Ljajic, the Deputy Prime Minister and Minister of Foreign and Domestic Trade and Telecommunications. Ljajic headed the Ministry of Labor and Social Policy in the previous government. It remains to be seen who will be the competent state secretaries and assistant ministers.

5. *Commissioner for Information of Public Importance and Personal Data Protection*

On July 4, the Commissioner for Information of Public Importance and Personal Data Protection Rodoljub Sabic announced that activities on drawing up a draft of the Law on Protection of Whistleblowers had started. Sabic said that the protection of whistleblowers was one of the crucial presumptions for success in combatting corruption. The Commissioner reminded that, in Resolution 1729 (2010) dated April 29, 2010, the CoE Parliamentary Assembly called on all

member countries to review their relevant regulations so as to ensure adequate protection of whistleblowers. The Commissioner expects that in the following one-year period it will be possible to produce a good model of the Law on Protection of Whistleblowers, as a result of the efforts of the relevant national and international experts, a serious analysis of international and comparative law concepts and the organization of an international expert gathering on the topic of whistleblowers' protection. The Law would then be put on public discussion and ultimately tabled to the Government and Parliament for adoption.

Comprehensive regulation of whistleblowers' protection is relevant for the media sector too, since it also involves the issue of protection of journalists' sources. In addition to comprehensiveness, Resolution 1729 (2010) of the CoE Parliamentary Assembly requires a broad definition of the concept of a whistleblower, so as to include all persons who have, in good faith, decided to blow the whistle on various forms of illicit behavior, including human rights violations threatening the life, health or other legitimate interests of the citizens, not only by public authorities (including the military and secret services), but also by private companies. The regulation of the protection of whistleblowers must involve labor law related issues, so as to protect them adequately from unfair dismissal and mobbing at the working place; it should involve criminal and criminal proceedings law related issues, in order to protect whistleblowers from criminal prosecution for libel, breach of official or company secrecy, as well as to protect witnesses. Finally, regulation involves media right related issues, particularly concerning the protection of journalists' sources, as well as specific anti-corruption measures, modelled upon those contained in the CoE Civil Law Convention on Corruption (ETS No. 174). Serbia ratified the Convention in 2007 by passing the Law on Ratifying the Civil Law Convention on Corruption (Official Gazette of the Republic of Serbia – International Treaties, No. 102/2007). We have mentioned, in the part of this Report concerning the implementation of the Law on Personal Data Protection and the Law on Electronic Communications, the extent to which it is important to have this project of the Commissioner to succeed, particularly in terms of protecting freedom of expression. There we have pointed to the fact that in Serbia, the right of journalists to protect their sources is respected only declaratively, while in reality, it is easily circumvented, by breaching the secrecy of journalist communications.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

6. *Serbian music authors' organization – SOKOJ*

After ANEM addressed the Intellectual Property Office with a request for supervision of the work of SOKOJ, in order to determine why invoiced amounts that did not include discounts (that

were already approved by SOKOJ's managing board, as ANEM has learned), the Office scheduled a new meeting between SOKOJ and ANEM representatives for July 17. We remind that the new tariff of the fees charged by SOKOJ for the exploitation of music works on radio and television came into force in early 2012. That tariff was determined by SOKOJ's managing board, since the negotiations with ANEM, as the representative association of users, had not yielded any results. The said tariff involves a drastic increase of the amount of minimum fees for the exploitation of music works. SOKOJ and ANEM engaged in new negotiations, this time about the discounts to the tariff-determined amount of the minimum fee. Then, in late June, the stations started receiving invoices for January and February, involving lesser discounts than those that were negotiated. At a meeting in the Intellectual Property Office, SOKOJ had proposed greater discounts for the invoicing period starting from March 2012, than those included in the already issued invoices for January and February. In a concrete example, the discounts would mean that a radio station located in a town of 100 thousand inhabitants in Eastern or Southern Serbia would have to pay a fee for the exploitation of music works on radio in the amount of 11.550 dinars per month, instead of the 23.100,00 charged under the applicable tariff. The final agreement on the discounts is expected to be signed in August.

V THE DIGITALIZATION PROCESS

In early July, the public company "Broadcasting Equipment and Communications" (ETV) announced it would test the receiver equipment (set top boxes and TV sets) for all the importers and dealers in Serbia (that wished to have their equipment tested) until the state passed the official certificate. The devices meeting the required standards shall be issued a sticker guaranteeing (to both importers and dealers) the reception of the DVB-T2 signal. This announcement came as a considerable surprise. First, it announces the passing of an official certificate for set top boxes and TV sets by the state. This is in breach of the applicable Rulebook on Radio Equipment and Telecommunication Terminal Equipment (Official Gazette of the Republic of Serbia No. 11/2012), passed on the basis of the Law on Technical Requirements for Products and Assessment of Compliance (Official Gazette of the Republic of Serbia No. 36/2009), which expressly stipulates that neither the Rulebook, nor the procedure of compliance assessment, shall apply to radio and television sets intended solely for the reception of radio and television program. In view of the above, the Ministry passed both the Specification of Minimum Technical Requirements for Devices for the Receiving of Digital Terrestrial Signal in the Republic of Serbia and the Guidelines on the Manner and Procedure of Testing Devices (set top boxes and TV sets) – with the aim of assessing the fulfillment of the requirements for the receiving of digital terrestrial signal in the Republic of Serbia – in the form of a non-binding recommendation only. The next step should be the defining of a mechanism through which the state (and not ETV

or any individual company) would, by assigning to the equipment manufacturers and dealers the right to using the proper mark for the equipment meeting the minimum technical requirements, make it easier for the citizens to choose between equipment with different technical standards available on the market. Such a move by ETV (guaranteeing with its sticker for something it is not competent for) threatens to confuse the consumers and create a situation where the citizens would still not know what each label means and what each specific label on a product actually guarantees. In order to avoid such confusion, the state should launch, as soon as possible, its own model for labelling the equipment meeting the minimum technical requirements for receiving digital terrestrial television signal and promote that model as successfully as possible.

VI THE PRIVATIZATION PROCESS

The privatization process remains at a standstill, waiting for the new government and the position it will take as to the fate of the remaining state-controlled media. There were disturbing hints, however, by the leader of the parliamentary majority about the sale of the state's interest in the publisher of the daily "Politika". Namely, in the context of the announced withdrawal of the German media group WAZ from Serbian media (in addition to a share in "Politika", WAZ has one in "Dnevnik" from Novi Sad, while it has tried and failed to acquire "Novosti"), the media reported in mid-July that the German company sold 50% of its share in the company "Politika novine i magazini" to the Moscow-based "East Media Group" for a total of 4.7 million euros. The sale took place after the state owned "Politika" a.d., which controls the remaining 50% of the shares in "Politika novine i magazini", failed to use its right of first purchase. The controversy was created by the fact that the "East Media Group" from Moscow is a completely unknown company, which lead to doubts that it served as a cover for a Serbian tycoon connected to the Democratic Party, now in the opposition after having lost the elections. The sale of WAZ's share in Politika may be observed from two angles. One concerns the transparency of media ownership. We remind that a public debate was held back in 2008 and 2009 about the Law on the Transparency and Illicit Concentration of Ownership of Public Media, but the prepared draft never entered the parliamentary procedure. That draft foresaw that the nominal owners and persons for which the nominal owners held shares in the media, be considered as connected persons, as well as that data about the persons which the nominal owners held shares for in the media ought to be entered in the media register. Since the said draft never became the law, the obligation to register the persons which the nominal owners hold the shares for never came into effect. In that sense, even if the "East Media Group" is merely the nominal co-proprietor of "Politika", it is not obligated to disclose the information which it is holding the shares for. However, while on one hand, the fact that media ownership transparency in Serbia is objectively not sufficiently ensured, what is disturbing about the reaction of the leader of the new

parliamentary majority to the sale of WAZ's share in "Politika" is that this majority shows the ambition to control even the transactions related to the already privatized stakes in the media. If the new government is so worried about the already privatized 50% stake in "Politika" being passed on from one private foreign company to another, outside of the control of the state, one may ask how will that same government (obviously wanting to exercise absolute control over who possesses shares in the media) reconcile itself with the privatization of the remaining 50% of "Politika", i.e. the loss of the state share in it (entailing the loss of control in "Politika", as well as in the remaining unprivatized media in general). It seems that we are facing the hard task of achieving the right balance between the justified need to ensure the transparency of media ownership on one hand and, the ambition of the ruling oligarchy to ensure (under the guise of transparency requirements) that only their potential political allies may become owners of media, on the other.

VII CONCLUSION

In our earlier reports, we wrote about how the new government, which was finally elected on July 27, faced a serious task in the media field. It will have to work simultaneously on the reform of the regulatory framework, the withdrawal of the state from the media, the redefining of public service broadcasters, the control of state aid and combating monopolies on the media market and related markets (such as the advertising market and media content distribution market). An ongoing concern, however, is the fact that the leaders of the new parliamentary majority continue to send contradictory and unclear messages about their intentions in that domain. Thus, for example, after Aleksandar Vucic said last month that the media sector would be completely deregulated, he (who was elected first Deputy Prime Minister in the meantime, in charge of defense, security and the fight against corruption and crime and Defense Minister) announced an investigation over the purchase and sale of 50% of the stake in "Politika". Vucic accused the private company "Farmakom" of having acquired a share in "Politika", "under direct orders of the leaders of the Democratic Party". Vucic also claims that Farmakom owes almost 400 million Euros to the banks (the media reported that the 50% stake in "Politika" was bought for 4.7 million Euros) and that it received loans from DS-controlled banks. It remains unclear, however, what the new government intends to investigate and endorse. If it plans to promote the setting up of mechanisms that would guarantee more transparent media ownership, it definitely deserves support. If it is intent on promoting tighter independent control of the banking sector and releasing the same from the grip of politics that have led to awarding poorly secured loans to over-indebted media companies close to the government (allowing the politicians to control more easily the editorial policy of such media), it should be backed wholeheartedly. However, if the whole problem is solely in the new government's reluctance to

part with the control mechanisms it expected to have over certain media, the sincerity of its aim to reform the media sector (in a manner that would guarantee pluralism and media freedoms) should be rightfully questioned. Due to the incapacity of all governments since the democratic changes of 2000 to properly reform the media landscape in Serbia, the situation in the last few years stagnated, or even deteriorated.