

## I FREEDOM OF EXPRESSION

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

### 1. *Threats and pressures*

1.1. The leading political party of the new ruling coalition in Serbia, the Serbian Progressive Party (SNS), released in August a series of press releases accusing certain media of being “under the control of the previous regime”, of being “political party stooges falsifying the reality in Serbia”, “continuing to provide political support to the former regime”, of being “mouthpieces of the Democratic Party”, spreading “shameful lies”, resorting to “unbelievable untruths”, hinting that “the new government consists of murderers and incompetent people”. The first in this series of press releases was issued on August 4 and in it the SNS denies allegations concerning the newly appointed Head of the Security and Information Agency (BIA) Nebojsa Rodic. Only three days later, the SNS voiced accusations against radio and TV B92 in relation to the information about certain appointments in the Ministry of Internal Affairs (MUP), as well as to the fact that Vladimir Vukcevic would be sacked from the position of War Crimes Prosecutor. The information about the alleged dismissal of Vladimir Vukcevic was soon denied and B92 promptly aired the rebuttal. On August 31, the daily Blic came under fire over the information about the appointment of Dejan Carevic to the position of Chief of Staff of the Justice Minister Nikola Selakovic. “Blic” reported that, in the late 90s, Carevic used to work for the Sixth Department of the State Security Service of Serbia, which some associate with political assassinations, since the head of that department Ratko Romc was sentenced to seven years in prison over his involvement in the preparation of the assassination attempt on Vuk Draskovic in Budva in 2000.

The Public Information Law prescribes that public information shall be free and that it is forbidden to directly or indirectly restrict freedom of public information in any way suitable to hinder the free flow of ideas, information and opinions and especially to put any kind of pressure on media and the staff thereof, or exert influence that could obstruct their work. Continuous accusations against media for resorting to lies, untruths, fabrications, falsifying reality, submissiveness and support to the former regime, especially when such accusations are coming from the leading party of the ruling coalition, undoubtedly represent influence that could result in

self-censorship and avoidance of reporting on certain topics. The avoidance of reporting on certain topics of interest for the general public, one of which definitely is appointments made by the new government, would create a situation where the media would be devoid of the fundamental, watchdog role in society. The Public Information Law also contains provisions concerning the position of people occupying state and political positions, as well as state authorities relative to information released about them in media, which are based on 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. In a series of verdicts, of which the probably most famous is the one in the case Lingens vs. Austria from 1986, the Court found that the media were obliged not only to convey information and ideas about political and other issues in areas of public interest, but that the public was entitled to receive such information. According to the ECHR, freedom of press provides the public with one of the best tools to get to know the ideas and views of political leaders and form an opinion about these ideas and views. Therefore, the limits of acceptable criticism are wider when it comes to a politician than they are in the case of a private person. Unlike the latter, the politician is willingly exposing himself to greater scrutiny of his words and actions from journalists and the general public and therefore has to demonstrate a higher degree of tolerance. Similarly to the criticism against individual politicians and the possibility of general criticism of the Government over the decisions it makes, including decisions on appointments and dismissals of certain persons in the administration, represents an important field of freedom of expression and a mechanism that is the prerequisite for controlling the power by the public. Although the aforementioned press releases declaratively emphasize the need to “respect the absolute freedom of information” and say that “the SNS does not have anything against any kind of writing”, the SNS obviously (in the parts where it fails to point to any material and factual mistakes in reporting, but merely challenge the right of the media to analyze the developments in society in the light of the professional background of persons appointed by the new authorities to important positions in the state administration, particularly in the light of the positions these same persons had occupied during the undemocratic realm of Slobodan Milosevic), represent unacceptable meddling in and restriction of freedom of expression, which is guaranteed both by the Constitution and the ratified European Convention on the Protection of Human Rights and Fundamental Freedoms.

1.2. The Beta news agency reported that the crew of the regional television Sabac was physically attacked while reporting from the Village Olympic Games in Prnjavor near Sabac, in which attack the reporter Marija Damjanovic suffered serious face injuries. The incident happened on Sunday, August 26 in the afternoon and was unrelated to the competition.

According to the eyewitnesses and the TV Sabac crew, the reporter and the cameraman were attacked by R.K. (35), who was promptly arrested. He first insulted the reporter and then physically attacked the cameraman Zoran Milutinovic and punched Marija Damnjanovic in the face. The journalist told the S Media portal that an unknown man had started insulting her with no apparent reason and called her names. "My colleague warned him about his behavior, but then the man ran towards us. He started strangling my colleague and punched me in the chin", Marija Damnjanovic said. The media reported that the police had filed misdemeanor charges against the attacker for disturbing public order. The competent public prosecutor in Sabac and the high public prosecutor were informed of the incident and they are to decide whether to file criminal charges against the perpetrator.

The attack on the crew of TV Sabac is yet another evidence of journalists in Serbian being under threat. At the same time, these attacks are not necessarily unanimously condemned by the public. Marija Damnjanovic said that nobody had tried to help them, although the incident took place in a public space, with many bystanders present. In the concrete case, it will be interesting to see if the attack will be qualified only as a misdemeanor or as a criminal offense. Namely, under the Law on Public Order and Peace, any and all persons that disturb public order by an argument or shouting or threaten the security of citizens will be subject to misdemeanor responsibility and to a prison sentence of up to 20 days. Furthermore, where the peace of citizens or public order is disturbed by insults or abuse and violence against other people, provoking a brawl or taking part in a brawl, the perpetrators shall also be subject to a prison sentence of up to 60 days. The Criminal Code provides for a prison sentence of up to three years for violent behavior, which is defined as a major disturbance of the citizens' peace or disturbance of public order by gross insults or abuse, violence against other people, provoking a brawl or ruthless behavior. In the more severe case, when violent behavior has resulted in minor bodily harm or severe humiliation of citizens, the perpetrator shall be subject to a prison sentence ranging from six months to five years. The qualification in the concrete case will primarily depend on the assessment whether the attack on the TV crew constitutes a severe or less severe threat to the peace of citizens, namely a major or less severe disturbance of public order. The assessment of the authorities in this case will speak volumes about this case and the reputation and integrity of journalists, the media and media professionals in Serbian society.

1.3. The daily "Kurir" has published that Marijan Risticovic, the President of the Progressive Peasants' Party (NSS) (also known as the participant in the reality show "Farma" and unsuccessful presidential candidate on the elections in 2004 and 2008, as well as a MP elected to

the Parliament on the list of the coalition led by the ruling Serbian Progressive Party (SNS)), harassed and insulted by telephone a journalist of the daily "Kurir" over a text published on August 24, which claimed that the Director of the company owned by Risticovic's wife was under investigation for tax evasion. "Kurir" claims that its journalist phoned Risticovic asking for a comment on the police press release that criminal charges had been filed for tax evasion in the amount of 39 million dinars against the said director of the company, whose majority owner, according to the Business Registers Agency, is Risticovic's wife Javorka. "Kurir"'s press release also says that, after having insulted the journalist over the phone and threatened with a lawsuit, Risticovic sent a written denial, claiming that his wife had sold her shares in the company, which was, in his words, backed up by a contract verified in court, as well as that the buyer was obligated to register the transfer of the said shares in the Business Registers Agency.

The Public Information Law says that it is forbidden to put any kind of pressure on media and the staff thereof, or to exert any kind of influence so as to obstruct their work. Threats and insults made against a journalist over the phone definitely constitute illicit pressure. What makes this case serious is the fact that the threats came from a Member of Parliament. Under the Public Information Law, members of parliament have certain obligations in the field of public information, including the obligation to demonstrate a higher degree of tolerance, as well as the duty to make information about their work available to the public. The fact, that in the above described case the information did not concern the activities of Marijan Risticovic the MP, but the criminal proceedings initiated against the director of the company formally owned by his wife, cannot justify the threats and insults against "Kurir"'s journalist. Marijan Risticovic has already taken "Kurir" to court in June 2011, claiming 1.5 million dinars of damages. That the case is still pending in court.

## **2. Legal proceedings**

2.1. Pursuant to Article 112, subparagraph 7 of the Constitution of the Republic of Serbia, which foresees that the President of the Republic has the authority to grant pardons, to Article 110 of the Criminal Code, under which pardoning an individually determined person involves total or partial cancellation of penalty, and under Article 1 of the Pardon Law, stipulating that pardon for felonies prescribed by Law shall be granted by the President of the Republic, on August 3, Tomislav Nikolic signed the decision on pardoning journalist Laszlo Sas. Nikolic's cabinet said that the President had signed the proposal to pardon Laszlo Sas with the conviction that the right to freedom of opinion was one of the most fundamental achievements of

civilization and that it was, therefore, inappropriate for the journalist to serve a 150-day prison term only for having voiced his opinion, which was also contrary to all European standards and international conventions. Sas was released from the County Jail in Subotica the same day at about 2 PM. He thanked all his colleagues and journalists' associations for their support. A couple of days later, he personally thanked the President for the pardon. On that occasion, Nikolic said that Sas's pardon marked the beginning of the struggle for freedom of opinion in Serbia, as a fundamental achievement of civilization.

We have written about the case of Laszlo Sas in our previous report. In this Report, we will just remind that he was assigned to serve his prison term on July 20, according to the verdict of the Basic Court in Subotica for insult, confirmed by the verdict of the Appellate Court in Novi Sad. The first verdict has seen Sas ordered to pay a 150.000-dinar fine. Under a decision issued by the Basic Court in Subotica, the fine was replaced by a 150-day prison term for failing to pay the fine in the due term. Sas was fined in the trial initiated by a private criminal lawsuit by the leader of the Hungarian right-wing extremist movement "64 Zupanije" Laszlo Torockai. The reason was the text published in the form of a reader's letter on April 24, 2007 in the daily Magyar Szó. Laszlo Sas is a journalist who has been collaborating with Hungarian language dailies Magyar Szó from Novi Sad and Hét Nap from Subotica. In the controversial text, Sas criticized the actions of Torockai as a right wing extremist. Sas's case has confirmed that it is necessary to decriminalize defamation and insult in Serbia. The Draft Law on Amendments to the Criminal Code, which foresees decriminalizing defamation and insult, was tabled by the previous Government to Parliament for adoption on January 31. However, the Parliament did not have time to adopt it before it was dissolved on the eve of the May elections, while the new government withdrew it from procedure.

2.2. The Appellate Court in Belgrade reversed the first-instance verdict, under which the journalist of the weekly "Vreme" Milos Vasic was ordered to pay 350.000 dinars of damages to attorney-in-law Biljana Kajganic over anguish suffered due to stained honor and reputation. The plaintiff's claim was rejected in its totality. Kajganic had sued Vasic over a text from September 2004, in which he released the transcript of her intercepted calls with Dejan Mihajlovic Bagzi. At the time, Milenkovic was a fugitive in Greece, after having been indicted in Serbia for involvement in the assassination of Prime Minister Zoran Djindjic. From the said transcripts, it stems that Kajganic advised Milenkovic to turn himself in, since she had allegedly secured him a special status in an arrangement with the top brass of the Serbian intelligence service and

government politicians, provided he accused Ljubisa Buha Cume (the protected witness in the case against the Zemun Gang) for the unsolved murder of Momir Gavrilovic.

The verdict of the Appellate Court in Belgrade constitutes yet another victory for media professionals in Serbia and another proof of that Court's latest efforts to raise the standards of protection of freedom of expression. We have mentioned some of such verdicts by the Appellate Court in Belgrade in our previous reports. According to its findings in the Vasic case, the defendant, as a journalist and the author of the text, released information for which he believed to be true and which pertained to events and persons the citizens have the right to know about, since they concerned the criminal proceedings against persons indicted for the assassination of Prime Minister Djindjic. The release of the information in question, the Appellate Court found, was not aimed at harming the reputation and honor of Biljana Kajganic, but rather at shedding light on an issue of public interest. Accordingly, the Court found Kajganic's claim unfounded. According to the findings of the court, this information could rightfully have been released regardless of the manner in which it was obtained and did not constitute information the release of which was prohibited under the Public Information Law. The response of Biljana Kajganic to this information was also published in keeping with the relevant rules prescribed by Law. The Appellate Court reminded that guilt was also a prerequisite for declaring a journalist responsible for damage caused by publishing a piece of information, whereas the burden of proving the journalistic guild lied with the plaintiff. In the concrete case, it was Biljana Kajganic and she failed to prove her claim. Furthermore, according to the Appellate Court, what Kajganic had to prove was that Vasic had acted without due professional care. However, the Court found that Vasic did not fail to act with due professional care, since he had checked the information he obtained. The fact that he did not contact Kajganic personally does not constitute a decisive reason for delivering a different verdict. Finally, the Appellate Court found that the legitimate interest of the public to be informed about facts and developments related to the trial against the perpetrators of an assassination of a high state official (the Prime Minister) overrode that of the protecting the reputation and honor of the attorney at law of a defendant in that trial. Namely, the court found that the information released were not aimed at the person or professional activity of Biljana Kajganic as a lawyer, but at events that could have affected the trial for the murder of the Prime Minister. The Court also found that the requirements referred to in Article 10, paragraph 2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms were not fulfilled (the fulfillment of which requirements would allow the Court to rule damage to be paid to the plaintiff). This verdict points to some typical omissions made by courts of first instance in media-related cases. Firstly, when referring to due professional care, the Public Information Law stipulates that it means care appropriate to the

circumstances. In media-related cases, the courts of first instance have typically weighed that standard too abstractly, failing to conform it to the objective, real life circumstances in which journalists work, under time constraints and having in mind that information is “perishable goods”. Secondly, the Public Information Law says that ideas, information and opinions about developments, events and persons the public is rightfully entitled to know about shall be released freely in media, unless provided for otherwise by Law and regardless of how the information has been obtained. The courts of first instance have too often insisted on the latter, neglecting the fact that it is by and large irrelevant for the right to release information *per se* and the responsibility of journalists. The latter is particularly significant when considering the fact that Public Information Law, the responsibility of the journalist, editor and founder of the media for damage is excluded even if the information in question is inaccurate or incomplete, if it was faithfully conveyed from a trial or document of the competent state authority. Finally, although the Law stipulates that journalists shall not be obligated to disclose information about their sources (unless the information in question concerns a criminal offense or the perpetrator of a criminal offense subject to at least five years in prison), courts of first instance in media related cases have often penalized the reluctance of journalists to disclose their sources as absence of due professional care (since the protected source is unable to confirm that the contested information were actually checked by the journalist). In this concrete verdict, the Appellate Court showed that such a logical sequence was not correct or the only possible one, since it accepted, at the same time, the right of the journalist to protect its source of information and the fact that he did act with due professional care. We can only hope that such verdict by the Appellate Court will mark the beginning of a different practice by the courts of first instance and that we will be able to report on more first-instance verdicts that raise the standards of protection of freedom of expression in Serbia.

2.3. The Radio Television of Serbia (RTS) aired a story about journalist Milijana Stojanovic from Paracin, who wrote four years ago about a suspected case of child abuse by the mother and the failure of the prosecutor to timely launch an investigation. Stojanovic was recently fined by the Court with 30 thousand dinars fine for having slandered the then municipal prosecutor. To make things even more tragic, the unfortunate child she had written about was found dead, while the mother was found guilty a month and a half ago of neglect of the child, which died from the consequences of long-term starvation. According to the RTS story, in the controversial text, Milijana Stojanovic had referred to medical findings, official notes made by the municipal prosecutor and the charges pressed anonymously by the employees of the Center for social work. Stojanovic conveyed the information from the statement that, in October 2007, a social worker had found the child with a pillow over its head, a broken hand and blood suffusions. The

injuries were confirmed by a medical doctor and the case was reported to the police and the prosecutor. The municipal prosecutor launched an investigation only 1.5 years later and went on taking the journalist Milijana Stojanovic to court over her text in a daily newspaper. The Appellate Court in Kragujevac revoked two acquittals by the Basic Court in Paracin, reversing the verdict in favor of the plaintiff, who has been promoted in the meantime and currently works in the Office of the Higher Prosecutor.

The Criminal Code defines defamation as voicing or passing on falsehoods about a person, which may harm the honor or reputation of the latter. The authors of this report did not have the opportunity to examine the court records, but were not able to conclude on the basis of media reports what falsehood may have been passed on in the concrete case. Namely, in order for defamation to exist at all, it is necessary to have an inaccurate factual statement. In the concrete case, according to the story aired by RTS, it ensues that the journalist merely stated facts by quoting the official medical records, official notes and the criminal charges filed by the employees of the Center for social work. If the text did contain criticism of the work of the prosecutor, who failed to timely initiate an investigation and protect the unfortunate child, such criticism could not constitute defamation, since defamation is not a factual statement but a value judgment. Therefore, had that been the case, it would not have amounted to a defamation as a felony, but perhaps some other criminal offence, such as slur. The Criminal Code, however, stipulates that slur shall not be subject to a penalty, if it was made by a person exercising the journalistic profession, defending a right or protecting justified interests (which was undoubtedly the case here), provided that from the language or other circumstances it obviously was not done with humiliating intent. Whatever the case may be, it is always difficult to write about cases of child abuse, particularly in view of the requirements from the Public Information Law, that a minor may not be made recognizable in a piece of information that may harm his right or interest. Verdicts such as the one against Milijana Stojanovic, the journalist from Paracin, may result in increased self-censorship in the media and avoidance of themes related not only to child abuse, but also to challenging society's reaction (or the lack thereof) and that of the authorities to cases of child abuse.