

## 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. In early December, the right-wing movement "SNP NASI" called the competent authorities to revoke the national frequency of TV B92, shut down the dailies "Blic" and "Danas", the weekly "Vreme", the magazine "Republika" and the "Pescanik" online portal. "SNP NASI" also requested that the Voice of America and Radio Slobodna Evropa (Free Europe) be prohibited from operating on the territory of Serbia. The organization's press release said that there was "reasonable doubt that certain media in Serbia were funded by dirty money of the Albanian and Croatian mafia". The press release also demanded the state to investigate "who are the owners of anti-Serbian media", as well as their financial transactions and operations. "SNP NASI" accused the aforementioned media of "demonizing their own people in the last 20 years through crafty media manipulation and portraying Serbs as a genocidal and criminal nation, responsible for the wars of the '90s, for which there is plenty of evidence to back such claims and that is why the general public considers these media as stooges of international power players". "SNP NASI"'s call came after the Constitutional Court of Serbia had rejected the request of the Public Prosecutor that the organization be banned for activities aimed at violently subverting the constitutional order and violating constitutionally guaranteed rights. The Ombudsman Sasa Jankovic told Radio B92 that the media should refrain from giving too much exposure to the said right-wing organization and its demands. Jankovic said that it was merely an attempt of political advertising, on top of which the request was unrealistic, since the state was obligated to respect human rights and not encourage such behavior. "The state should be more consistent in its work related to the respect of human rights and such consistency would shrink the space for many groups that are encouraged by inconsistency", Jankovic said. The Independent Journalists' Association of Serbia (NUNS) called for urgent action of the authorities against "SNP NASI". "The pogrom-style press release by "SNP NASI" aims at returning Serbia to the recent past, when the citizens and the media were divided into traitors and patriots, where the 'traitors' were persecuted, the media banned, journalists fired and their families threatened with financial ruin", NUNS' press release said. "SNP NASI" has recently made a list of non-government organizations they wanted banned by the government. According to the daily "Danas", the Republic Public Prosecutor's Office (RPPO) believes that the refusal of the Constitutional Court to ban the aforementioned right-wing organization has actually sent a message of

encouragement to “SNP NASI”, by describing its activities as socially acceptable. “Danas” wrote that the RPPD would not react to “SNP NASI”’s list of politically incorrect media. They will instead advise those injured by the said list to file a libel/hate speech action under the Public Information Law, the daily wrote.

The Public Information Law expressly stipulates that public information shall be free and in the interest of the public, not yielding to censorship. The same law says 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. It is also prohibited to put physical or other type of pressure on public media and the staff thereof to obstruct their work. The request by “SNP NASI” has no basis in Serbian regulations, since, according to the Public Information Law, the distribution of domestic and foreign public media shall be free. As an exception, the Law allows the Court, at the proposal of the Public Prosecutor, to prohibit the dissemination of specific information, if such prohibition is deemed necessary in a democratic society in order to prevent: calls for the violent subversion of constitutional order; undermining the territorial integrity of the Republic; inciting to war, direct violence or promoting racial, ethnic or religious hatred that incites discrimination, animosity or violence, while releasing the information itself constitutes direct threat of a grave, irreparable consequence, the occurrence of which may not be prevented in any other way. However, although it would be legally unfeasible to fulfill the request of “SNP NASI”, even if the government would want to do something like that, Serbia’s history has taught us that the attacks by extremist right-wing organizations against the media and the civil sector have typically constituted a prelude to discrimination and continued attacks, including physical ones. The RPPD’s decision not to initiate any fresh proceedings against “SNP NASI” is to a certain extent understandable after the decision of the Constitutional Court, passed on November 14, 2012, to refuse the proposal for the ban of the activities of the right-wing movement. Otherwise, the Criminal Code provides for the criminal offense of violating equality by denying or restricting the rights of the person and citizen, for reasons that include political or other convictions or some other personal attributes. The Criminal Code, however, stops short of expressly saying if calling for someone’s rights to be denied or restricted also constitutes a criminal offense. In the concrete case, “SNP NASI” is doing just that – calling for denying of someone they deem “anti-Serbian”. The rights to freedom of expression and freedom of media, guaranteed by the Constitution and ratified international treaties, are interpreted as the rights of every person to freely and without the need for an approval, establish newspapers and other public media, namely to establish television and radio stations under the Law. At the same time, since the freedom of expression involves the freedom to receive information, calling for the shutting down of media which ideologically do not correspond to the positions of an extremist

organization, amounts to calling for the restriction of the right to freely receive information from these media by all the citizens.

1.2. At the session of the Pirot City Council on December 16, the Mayor of Pirot Vladan Vasic prevented the Editor of "Pirotske novine" Bogoljub Najdanovic to record the debate. Although the session was being transmitted live on TV, Vasic switched off the voice recorder of "Pirotske Novine" and removed it from the speaker's stand. Vasic claims that the voice recorder was placed on the stand after the beginning of the session and that the journalist was obstructing the session. The Mayor was backed by the Speaker of the City Council Milan Popovic, who prohibited the photographer of "Pirotske novine" to take pictures of the session. "Pirotske novine" claim that Vasic has been refusing for years to give statements and interviews to this media. "Pirotske novine" have been engaged in a dispute with the municipality since 2009, when the latter suspended the payments under the contract it had entered into earlier with the newspaper. The reason for such move, according to "Pirotske novine", was the "critical tone in their reports about the work of the local government". According to media reports in November, in the said dispute, the Appellate Court in Belgrade ruled in favor of "Pirotske novine", ordering the municipality to pay to the newspaper the outstanding debt of 500.000 dinars plus interests. In the local council, Vasic dubbed the newspaper "a political party mouthpiece", hinting at the ties with the opposition group "Pirotska nova snaga" (Pirot's New Force) in the municipality's council. Vasic's statement was judged by the newspaper's editors and reporters as a political pressure and an attempt to influence their editorial policy. They claim that the municipality has been earmarking from its budget each year substantial funds for the media (on par with the allocations for agriculture), expecting positive reporting about the local government in return. They also said that "Pirotske novine" were the only media in Pirot not having received any assistance from the budget since 2010.

Under the Public Information Law, local self-government bodies, including the mayors and the councilors in the local councils, are obligated to make the information about their activities accessible to the public, under equal conditions for all journalists and all public media. Switching off a journalist's voice recorder, preventing photographers to take pictures, denying information to a particular media – all that constitutes unacceptable discrimination against media. What makes the case of "Pirotske novine" particularly interesting is the fact that the newspaper had risen against such misuse of the municipal funds allocated to the media as a tool of pressure on editorial policy and was ultimately done justice with the court ruling that the municipality had wrongfully suspended the allocations for the newspaper due to alleged "biased reporting". The misuse of state aid, as a pressure tool against editorial policy, was described in detail in the 2011

report of the Anti-Corruption Council about the pressures on the media and the attempts to control the same. Bearing that in mind, the Media Strategy has regulated in detail the issue of awarding state aid to the media. Among other things, the Strategy insists on the transparency of the procedure of allocating such funds and on non-discriminatory criteria. The Strategy highlights the need to set up independent commissions that will pass thoroughly explained decisions on the allocations. Unfortunately, nothing has been done so far on this matter.

1.3. The journalists in Valjevo were the target of vicious insults by local councilor Slobodan Gvozdenovic, Deputy Mayor Dragoljub Krstic and several councilors of the ruling coalition at the session of the Valjevo Assembly. The incident happened after the editor of the local station (and ANEM member) Radio Patak, Darija Rankovic, fetched her voice recorder from the speaker's stand. Gvozdenovic, who was at the stand, threatened he would "personally throw out" anyone who dares "remove the microphone" away from him. He was supported by the councilors and supporters of the citizens' group "Pobeda", which blocked the working presidency of the Assembly, while the Deputy Mayor Dragoljub Krstic demanded that the journalists be expelled from the session, calling Darija Rankovic "a scum". The journalists of "Politika", RTS, the weekly "Napred", VTV, Radio Patak, Radio 014, the magazine "Kolubara" and the Beta news agency left the hall in protest, leaving behind only the crews of the public information company Radio Valjevo and the private station TV Mars (which are providing the live transmissions from the session). The journalists were followed by the councilors of the Democratic Party and the Liberal Democratic Party, while the Speaker of the City Assembly Mihajlo Jokic, from the Serbian Progressive Party (SNS), promised better working conditions for the correspondents in order to "prevent similar situations from happening".

Under the already mentioned provisions of the Public Information Law, local self-government bodies are obligated to make the information about their activities accessible to the public, under equal conditions for all journalists and all public media. Freedom of expression also involves the freedom to collect information, which includes the right of journalists to decide on their own which speech at the assembly stand they will record. The pretext that removing one's voice recorder allegedly disturbs the concentration of the speaker is identical to and equally unconvincing as the justification we had heard in Pirot a few days earlier (that placing a voice recorder on the speaker's stand after the start of the session constitutes a disturbance). In any case, in both instances – in Pirot and in Valjevo – it is evident that the attitude towards the media at the local level has not improved, on the contrary.

## 2. *Legal proceedings*

2.1. On December 12, the Constitutional Court of Serbia initiated, in relation to the initiative by the Association of Independent Electronic Media (ANEM), a procedure for determining the constitutionality of the provision contained in Article 17, paragraph 2 of the Law on the Protection of the Rights and Freedoms of National Minorities, in the part where that provision says that the state may establish separate radio and television stations broadcasting content in the language of ethnic minorities.

We remind that ANEM tabled the initiative in January 2011. In addition to the aforementioned Law on the Protection of Rights and Freedoms of National Minorities, that provision also encompasses the provisions of the Law on Local Self-Government, the Law on Capital City and the Law on National Councils of National Minorities, which also foresee the possibility of establishing media that would be indirectly or directly owned by the state. ANEM has insisted for years (and particularly in the public debate that preceded the adoption of the Media Strategy) on the complete withdrawal of the state from ownership in media, as well as on amending the regulations whose provisions are in collision with the Public Information Law and the Broadcasting Law. These two laws have provided for the transformation of the state television into a public service broadcaster and the mandatory privatization of all remaining state media. Unfortunately, the privatization was stopped, among other things, by adopted laws that were in direct collision with media regulations. In its initiative, ANEM emphasized that the contested provisions of the Law on Local Self-Government, the Law on Capital City, the Law on National Councils of National Minorities and the Law on the Protection of Rights and Freedoms of National Minorities were in direct disagreement with the principle of the single legal system, as one of the basic pillars of the constitutional and legal order of the Republic of Serbia. In the opinion of the Constitutional Court, which it delivered in several prior decisions, the principle of a single legal system entails that the main principles and legal institutes provided for by the laws, systemically regulating a certain area of social relations, must be adhered to in separate laws as well, unless a particular systemic law expressly stipulates that the same matters may be regulated in a different manner. In the concrete case, the Public Information Law, as a systemic law in this field, stipulates that the state and the territorial autonomy, or an institution, company or other legal person predominantly owned by the state, or partially or predominantly financed from public resources, may not be, directly or indirectly, founders of a public media. The Public Information Law provides for only two exceptions: the first pertaining to the possibility of establishing a public broadcasting service and the second the establishing of a state news agency. In direct contradiction with the aforementioned exceptions, the Law on Local Self-

Government says that the municipality shall be competent for establishing television and radio stations; the Law on Capital City provides for the competence of the City of Belgrade for establishing television and radio stations, newspapers and other means of public information. The Law on National Minorities' National Councils has entitled these councils to establish news and publishing and broadcasting institutions and companies. Furthermore, under that Law, the Republic, Autonomous Province and units of local self-governments, as the founders of public media companies and institutions providing information in the language of a particular national minority, shall transfer their founding rights to the National Council. Under the Law on the Protection of Rights and Freedoms of National Minorities, the state may establish separate radio and television stations to broadcast content in the language of ethnic minorities. In the initiative, ANEM also says that the contested provisions constitute unacceptable interference by the authorities in the realization of the right to freedom of expression, for which there are no legitimate grounds and, even if there were a legal basis, such interference would be disproportionate. ANEM believes that the interest of providing public information of local relevance and reporting in the language of ethnic minorities may also be realized and has already been realized through media that are not owned by the state. Moreover, not a single law the initiative pertained to provides for a systemic mechanism that would ensure the editorial independence of public media founded by the municipality, capital city, namely the national council, from the founders. It will be interesting to see what the position the Constitutional Court will take in the concrete case, especially bearing in mind it has decided not to debate the initiative as a whole, although with regard to all requests voiced by ANEM, the arguments that they are unconstitutional are identical. On the contrary, the Constitutional Court has even refused to debate the same initiative relative to the Law on Local Self-Government and the Law on Capital City. The question that was raised with the initiative was put back into the focus with the current debate about the regulations governing the business of public companies, which will be further elaborated on in the part of this Report dealing with the adoption of new regulations.