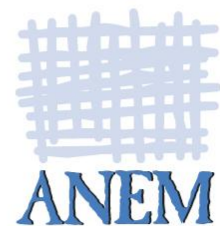




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for September 2012





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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 The Environment Protection Fund, whose Chairman of the Managing Board was the minister Oliver Dulic, has granted to the company Ringier Axel Springer (the publisher of the daily "Blic") the amount of 60.560.000 dinars from the budget, the daily "Informer" reports. The first contract, based on which 49.560.000 dinars were granted, was signed in January 2011 and it pertained to the co-financing of the project "Environment Protection and Ecological Problems". The second contract, concerning the co-financing of the project "Preserving and Improving the Environment in the Republic of Serbia" was concluded in March 2012, granting an additional 11 million dinars. According to the daily "Informer", the said agreements have led some to doubt that the former government was bribing the widely circulated daily "Blic". The former minister Dulic denied such allegations, explaining that the state co-financed projects due to poor awareness about the importance of protecting the environment. Dulic claims that less money was paid than originally agreed, stressing that the grants did not pertain solely to the daily "Blic", but also to various editions of Ringier Axel Springer. He also said that the project was opened for the whole year and that almost all media participated. The former minister believes that the results are visible, namely that the topic of environment protection was quite present in the media. Ringier Axel Springer said that they had performed their job in a professional and responsible manner, as well as that the contracts that were signed could not affect their editorial policy in any way whatsoever.

As early as back in September 2011, the Report of the Anti-Corruption Council, about the pressure against and control of the media in Serbia, said that Dulic's Environment and Spatial Planning Ministry had been spending at least 1.5 million Euros annually for promotional activities. The same report mentioned contracts that minister Dulic concluded with Ringier for the provision of environment research related services, the results of which Ringier was required to release in its daily newspapers "Blic" and "Alo", so as to make them publicly available. The Anti-Corruption Council said the latter was related to the many texts in "Blic" mentioning Oliver Dulic, mainly in a positive light and rarely criticizing the former minister. Whatever the case may be, insisting only on the case of Oliver Dulic and Ringier Axel Springer may be interpreted as an attack against that Group's media and especially against the highest circulating and most influential newspaper among

them, the daily “Blic”. Unfortunately, the problem runs much deeper. At its core is the absence of effective mechanisms in Serbia for controlling the expenditures of budget money and controlling of state aid, which is not only the case in the media, but in other sectors too. Therefore, each deal concluded between the media and the government/public companies is branded suspicious in advance. Ultimately, it all ends with a few texts in the media that resemble more a witchhunt against certain media or politicians, typically without any serious analysis and research. At the same time, legal proceedings in these cases, over alleged abuse of public funds or repayment of illicit state aid (even if reasonable doubt has been established) are most often never initiated.

1.2. On September 11, at the entrance of the premises of the Romanian association and the Romanian-Serbian radio-television station “Viktorija”, unknown persons wrote a nationalist graffiti “Romanians out!”. “We saw it when we came to work. I do not understand how we could have possibly caused someone to react like this, especially since our station, which broadcasts in two languages and is unique for that in the region, employs both Serbs and Romanians. All our employees have strongly condemned such vandalism”, said Mirjana Dedic, the Editor of TV “Viktorija”. The Vrsac municipality said that they were renowned for being a multiethnic and multicultural environment and that Vrsac had always been a place of peace, tolerance and religious and ethnic diversity. “We support the efforts of law enforcement agencies in identifying the perpetrators of this act,” the press release said. The nationalist graffiti on the entrance of the bilingual television station was also condemned by journalist associations.

The Public Information Law expressly stipulates that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion, or to put physical or other type of pressure on public media and the staff thereof so as to obstruct their work. Writing nationalist graffiti on the door of a bilingual media outlet undoubtedly amounts to illicit pressure and under the Criminal Code such messages amount to inciting ethnic, racial and religious hatred and intolerance, which is subject to a prison term of between six months and five years. The Criminal Code also provides for two more severe cases of inciting ethnic, racial and religious hatred and intolerance, when the offense has been committed by applying coercion, harassment, threats against security or mocking national, ethnic or religious symbols, damaging other people’s belongings, desecration of monuments or graves. In the latter cases, the prison term ranges from one to eight years, as well as up to ten years, when the offence has been committed by abuse of office or authority, or if the offence resulted from unrest, violence or other severe consequences for the coexistence of people, ethnic minorities or groups living in Serbia. In parallel with protecting the media and society as a whole from ethnic, racial and religious hatred and animosity, the legislator has imposed strict standards against hate speech in the media.

The latter are prohibited to publish ideas, information or opinions inciting discrimination, hatred or violence against a person or group of persons for their affiliation or non-affiliation to a particular race, religion, nation or ethnic group regardless if such publication constitutes a felony, namely even if it does not constitute a felony.

1.3. Ljubomir Bradic, a councilor representing the Citizens' Group "Pobeda" in the Valjevo Town Council, has sent to Milan Milinovic, the Director and Editor-in-Chief of the *Vujic Television* from Valjevo, the following text message: "Due to your biased reporting, you will not get a cent from the city anymore, nor will you get to do live transmissions of the Council sessions. If someone tries to back you on that, no sessions will be held." Bradic confirmed to "Novosti" that he had sent such a message to Milinovic. In his own words, he did it because Milinovic's station omitted, in its report from the Council session, the speech of the Vice-Mayor, a member of the Citizens' Group "Pobeda". The questions asked on the session by certain councilors of SNS, SPS and "Pobeda" (which together make the ruling coalition in Valjevo) were apparently also omitted from the report. According to Bradic, the same report contained several statements by the former DS Mayor. In relation to that case, the Journalists' Association of Serbia (UNS) issued a press release, saying that when they asked Bradic if he had sent the controversial message, he denied it, adding that "since Milinovic had complained, the decision would most certainly be made to ban Vujic Television from broadcasting Council sessions ever again". According to "Radio Patak" from Valjevo, Bradic sent another message to the Vujic Television's Director and Editor-in-Chief Milinovic, telling him once again he would see that his station be banned from broadcasting Council sessions and advising him to complain to UNS and ask UNS to pay them. Milan Milinovic said that Vujic Television had never allowed anyone to meddle in its editorial policy. "This was true in Milosevic's period, during DOS' rule and while the DS was in power and it remains the case today". "Radio Patak" aired two months ago the text message (SMS) in which Bradic asked from other councilors to initiate an inspection control of this radio station, after the station posted on its website the photographs of the leaders of the new ruling majority in town smoking in non-smoking areas of the City Hall.

The example from Valjevo is yet another account of how the authorities use the budget financing of the media in Serbia as a pressure tool for influencing editorial policy. According to the Public Information Law, the local government is required to make information about their work available to the public, under equal conditions for all journalists and public media. According to the Law on Local Self-Government, municipalities and cities/towns must attend to public information of local relevance and provide the conditions for it. In practice, this means earmarking money for live broadcasts of the local council sessions and reporting on the activities of the mayor and city and municipal councils. Unfortunately, it most often happens that local governments use the

aforementioned earmarked funds as a tool of pressure and blackmail: instead of providing conditions for information in the interest of the citizens, they make the financial support conditional on the media working in the interest of the local government. Journalist and media association have been pushing for some order to be brought to this domain for years. The aim was to avoid the support to local media, which is extremely important in the situation of economic crisis, to turn into a means of stifling critical reporting. Unfortunately, the most that was done in that respect came in the form of a non-binding recommendation adopted by the Ministry of Culture and Ministry of Local Self-Government, suggesting to municipalities and towns to appoint independent commissions to determine the designated purpose of the funds. The case in Valjevo has shown that the recommendation in question is typically shunned and that the local power players still believe that providing for the conditions for information of local relevance refers to the right to buy the obedience and servitude of the media, in the interest of maintaining power rather than fulfilling their legal obligation in the interest of the public.

1.4. The media reported in September about a fresh case of verbal and attempt of physical assault on Novosti's correspondent from Loznica Vladimir Mitric. The police forwarded the report about the attack to the Basic Public Prosecutor in Loznica. According to media reports, the attack happened on September 15, while Mitric was sitting in a restaurant with a friend during the closing of the Vukov sabor ceremony in Trsic. He was approached by a person that started threatening him over the text he wrote "about his friend". According to media reports, the attacker was identified as R.N. from the village of Grncari near Loznica, who works in Austria. At the time of the attack, Mitric (who has been under police protection for years due to prior attacks) did not call security for help. Some time before the incident, the policeman, who was escorting Mitric, received a telephone call from a colleague who asked about their whereabouts. This second policeman then came to the same restaurant and attacked Mitric over texts where he allegedly "conspired against his security", which, again, allegedly resulted in that policeman's reassignment from his border crossing job. When the owner of the restaurant attempted to intervene, R. N. punched him twice in the face and tried to attack Mitric.

We have often written about the case of Vladimir Mitric in our reports. Due to his texts on corruption in Western Serbia and Republika Srpska, he was attacked for the first time back on September 12, 2005 in downtown Loznica, at 10 p.m. in front of the entrance to his apartment building, from the back with a wooden object resembling a baseball bat. He suffered a broken left arm and other severe injuries. Since then he has been under constant police protection. Late last year, the Appellate Court in Belgrade sentenced a former police officer, Ljubinko Todorovic, for the attack. The news about the latest attack on Mitric is unfortunately evidence of a possible serious

omission in the work of the police officers protecting him. Not only were they not in his vicinity at the moment of the attack, but they disclosed Mitric's whereabouts to one of the attackers, thus enabling the incident to take place. This raises serious doubts about the level of training of the persons guarding Mitric and questions their commitment to the task assigned to them. We remind that Mitric is not the only journalist in Serbia that has been put under round-the-clock police protection. He is, nonetheless, the longest guarded journalist in this country. After the latest incident, the Internal Affairs Ministry should address more seriously the training level of its officers protecting threatened journalists. We will once again point to the fact that the persons that have ordered the attack on Mitric seven years ago are yet to be identified and that no investigation has been underway. This fact has undoubtedly been a disincentive for the people that have been protecting Mitric for seven years now, but also for other journalists that might find themselves in a similar situation. In that sense, the media and journalists' associations must continue to insist that the persons that have ordered the attacks on Mitric, but also on other journalists, to be identified and prosecuted, especially in cases of long-term police protection provided for attacked journalists, since it is not enough to merely indict the perpetrators of the attacks.

1.5. On September 23, the family of B92 journalist Tanja Jankovic was attacked during the wedding of her relative in Vranje. Jankovic's father Zoran suffered fractured jaw and nose, her sister Bojana a cracked nose (after which she had to undergo an emergency procedure), her fiancé a contusion of the sternum, while Jankovic herself suffered multiple bruises. Tanja Jankovic told the media that one of the attackers was a police inspector from Vranje Nenad Jovanovic. Bojana Jankovic claimed her family was being insulted and provoked during the festivity. Tanja Jankovic said the reason for the attack was her campaign on social networks and blogs about the disastrous security situation in her hometown of Vranje. In her campaign, Jankovic questioned the impunity for the crime wave that had swept Vranje in the last few years, from last year's setting ablaze of the Mayor's car to the fire in the Vranje Theater early July. After the incident, Tanja Jankovic said she came in the possession of a police report about that case, which says that the brawl was caused by the fiancé of her sister Bojana, which is inconsistent, among other things, with the CCTV tapes. After her deposition, the Police Minister requested the Internal Control Department of the Ministry to establish all the relevant facts about the incident.

There is no doubt that the physical attack on the journalist and members of her family (over the information she publicly posted on social networks and blogs) amounts to "influence that might affect her work". What is particularly disturbing in the case of the attack against Tanja Jankovic is the fact that the police may have attempted to minimize or conceal the responsibility of its officers. The police in Vranje issued a press release saying that it would file criminal charges against the

fiancé of Bojana Jankovic for allegedly inflicting minor bodily harm (with a bottle) to one person, while another three persons will be subject to misdemeanor charges for disturbing public order. However, the press release does not show if the police is intent on pressing charges over severe bodily harm (documented by photographs and medical reports released by the media) suffered by Zoran and Bojana Jankovic. If the internal control of the police fails to establish what really happened and if responsible for the injuries, but also for the possible police cover-up (for which, it seems there is some evidence) are not punished, this will continue to be a serious burden for the media in Valjevo and beyond. Such failure would demonstrate that if journalists publicly try to point to actual problems, they might put themselves and their families in harm's way. Only a thorough investigation of all the facts related to this incident will prevent the ensuing rise in self-censorship.

2. Legal proceedings

2.1. The Higher Court in Negotin rejected as unfounded the claim filed by a member of the Majdanpek municipal council Predrag Djordjevic, requesting 250 thousand dinars of damages from the Beta news agency for injured honor and reputation, allegedly caused by the text "Councilor in Majdanpek Allocates Scholarship to Himself". The Appellate Court in Belgrade upheld the verdict in the appeals proceedings. In addition to being a Councilor in Majdanpek's Municipal Council, Djordjevic is also the President of the Municipal Committee of the Nova Srbija political party in that town. In his claim against Beta, he said that the aforementioned text falsely claimed he had granted a scholarship to himself, since it was actually a decision made by the Municipal Council of the municipality as a collective body and not by himself as an individual. Both the Higher Court in Negotin and the Appellate Court in Belgrade rejected his claim, finding that Djordjevic, as a politician, was required to demonstrate a higher degree of tolerance of criticism than private persons, i.e. ordinary citizens.

According to what the authors of this Report have learned, Djordjevic also sued (apart from the Beta news agency) a number of media that have conveyed Beta's original information. The Higher Court in Negotin rejected, with the same explanation, at least two more identical claims (against the daily "Danas" and the B92 Television) and it is to be expected it will deliver the same verdict in a series of lawsuits filed by Djordjevic against the media that have conveyed Beta's information. The verdict shows that the case law of the European Court of Human Rights instituted back in the 80s of last century (e.g. in the case Ligens vs. Austria from July 8, 1986) is starting to be implemented by Serbian courts. In the aforementioned case Ligens vs. Austria, the ECHR found that "while the press must not overstep the limits drawn in order to "protect other people's reputation", it still must

convey information and ideas on political issues, as well as on issues in other domains of public interest. The press is tasked not only with conveying such information and ideas; the public is also entitled to receive them.” According to the findings of the Court in the same verdict, “freedom of press provides the public with one of the best tools to get to know the ideas and positions of political leaders and to create opinions about such ideas and positions”. “Hence, the limits of acceptable criticism are wider when they concern a politician than they would have been in the case of a private person. Contrary to the latter, the politician is conscientiously and unavoidably exposing himself to thorough scrutiny of every word he says and act he commits by the press and the wider public and hence must demonstrate a higher degree of tolerance.” We remind that the verdicts delivered by the ECHR in cases against Serbia for violations of Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms concerned the fact that the Serbian courts, in the hitherto practice, tended to provide politicians and public figures a higher degree of protection than to ordinary citizens. The example from Negotin is evidence of the extent to which the practice of Serbian courts in protecting freedom of expression has changed to the better in the last decade.

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 about freedom of expression.

1.2. On a session of the Bureau for the Coordination of Intelligence Services Operations held on September 20 and run by Aleksandar Vucic, the Government of Serbia passed a decision to establish an international commission that would investigate the assassinations of journalists Dada Vujasinovic, Slavko Curuvija and Milan Pantic. This was announced on an OSCE conference on media freedom in Southeast Europe by the Director of the B92 Fund and Editor-in-Chief of RTV B92 Veran Matic. Matic was also the initiator of the idea to establish that commission. In addition to representatives of Serbian intelligence services, the prosecutor’s office and the media, renowned international investigators will take part in the commission’s work, Matic said. The goal of the commission will be to “analyze all hitherto investigations so as to establish why those investigations have failed, as well as laying the foundations for new investigations”. The members

of the commission will be made known in the next few weeks and the work thereof will involve at least two police investigators with international experience and two representatives of Serbian media. OSCE media freedom officer Dunja Mijatovic said that her office would support the activities of the commission. "Continuance of an investigation of murders of journalist, if done in a serious and decisive manner, will send a strong message that Serbia will not tolerate impunity in these cases. I salute the setting up of that commission and I hope it will yield results soon. The families and friends of the slain journalists and society as a whole must be satisfied that justice has been done. Until the journalists stop fearing for their lives and for the lives of their families, we will not be able to say that we live in a free society", Mijatovic said.

The deaths of journalists Dada Vujasinovic, Slavko Curuvija and Milan Pantic have been a painful burden for the media landscape in Serbia for years. Vujasinovic, a journalist of the "Duga" magazine, was found dead on April 8, 1994. Her death was initially branded suicide and it took years and new investigations to prove what Dada's parents and the media community had claimed all along - that she was actually murdered. More than 18 years after her death, nobody has been held accountable. Slavko Curuvija, a journalist and publisher, was killed on April 11, 1999. In the meantime, it was established that State Security Service agents had been following him until right before the killing, when they were ordered to retire. Uncorroborated information repeatedly emerged in the public as to the identity of the killers, but nobody had been brought to trial for killing Curuvija. Milan Pantic, the correspondent of "Vecernje Novosti" from Jagodina, was killed on June 11, 2001 as he was entering the apartment building where he lived. The perpetrators were never identified. When war reporters writing about crimes, or when critics of the government or investigative reporters, uncovering embezzlement and corruption, are brutally slain without anyone being held accountable for more than a decade, the constitutionally guaranteed right to freedom of expression or the provisions of the Public Information Law, guaranteeing the same, remain a dead letter on paper. Bearing that in mind, the decision of the current government to set up an international commission to investigate murders of journalists and the causes of the failure of prior investigations constitutes an admission that the government is powerless to address that painful legacy. At the same time, it also shows the authorities' readiness to lead an open investigation. Before this report was closed, the members of the commission had still not been made public.

2. Broadcasting Law

2.1. The media have continued to deal with the issue of the financing of RTS. The citizens had the opportunity to learn about the estimates of the collectability of the TV subscription fee. The daily "Politika" wrote that the highest collection rate was recorded in 2008, when it ranged between 62% and 64%, which helped RTS secure a 100 million Euro budget. With the advent of the economic crisis, the collection rate started falling. According to "Politika", the average collection rate fell to 30% last month. In Belgrade, the rate is 67%; Novi Sad is also above the average, although the collection rate in that city fell from 66% to 52%. In poor regions, the situation is abysmal. In Presevo, for example, the collection rate plummeted to almost zero, while in Kragujevac it is merely 30%, namely equal to the overall Serbian average. The Deputy-Prime Minister Aleksandar Vucic told the daily "Danas" that the government would have to address the issue of financing of the public service broadcaster. He said that funds would be allocated in the revised budget, which did not mean, however, that these funds would actually be spent for that purpose. Four employee trade unions in RTS have requested that the uncollected difference be made up from the budget. There were also suggestions that the fee be given the status of a tax, namely that the non-paying citizens should be punished as if they failed to pay their taxes. The Minister of Culture Bratislav Petkovic said at the opening of the regional conference on media freedoms in Southeast Europe that a "set of necessary media laws" would be adopted. He stressed the priorities were boosting and consolidating the existing public service broadcasters RTS and RTV and addressing the question of their sustainable and durable financing. According to Petkovic, the issue of financing of the public service broadcaster must be dealt with by spring next year. He also announced "RTS will initially need support from the budget".

According to the Broadcasting Law, the activities of public service broadcasters pertaining to the realization of the general interest, as provided for by the Law, shall be financed from the TV subscription fee. The fee shall be paid by the owners of radio and TV sets. The Law says that the fee shall be collected by the public electricity company (EPS), according to an agreement entered into between that company and the public service broadcaster. In practice, however, if the citizens fail to pay the full amount of the debt, it shall be considered that the payment was made only for electricity, namely the amount paid is not proportionately divided into the outstanding debt for electricity and the outstanding debt for the TV fee. A considerable percentage of citizens deliberately reduce their payments by the amount on the bill stated as the TV fee. Meanwhile, according to media reports, the RTS is unable to claim all these debts in court, since it cannot afford to pay all the related court fees. This is not a new problem and many countries have faced the same

issues. The Chairman of the Executive Board of the Journalists' Association of Serbia (UNS) Predrag Jeremic told B92 that Turkey was the example to follow, which solved the same problem by prescribing that the TV subscription fee shall constitute a proportionate percentage of the electricity bill and not an extra to the same. The percentage is considered paid only when the entire electricity bill is paid. However, all the texts dealing with the issue of how to find a sustainable financing mode for public service broadcasters have stopped short of discussing the need to define more precisely the activities of general interest financed from the fee, as well as the issue of the savings the public service broadcaster could generate by streamlining its operations or controlling its finances more effectively.

3. *Law on Free Access to Information of Public Importance*

On the occasion of, the International Right to Know Day September 28, the Commissioner for Information of Public Importance Rodoljub Sabic said that Serbia had made progress in the area of access to information, but that more still needed to be done in order to enable citizens to realize that right more effectively. Sabic told the Beta news agency that the authorities should recognize better, as their uncontested duty, the obligation to communicate and to make available information of public importance, especially information concerning the expenditure of public money. Sabic stressed that the right to access information of public importance was increasingly being used by journalists. "Some media have been using that right in a systemic way, in order to collect an important quantity of information, thus contributing to fighting corruption and other social anomalies", Sabic said. On the other hand, he criticized the fact that certain media were enjoying special treatment by some political structures, which fed them „scoops“ inaccessible to other media, or could get hold of such exclusive information only after addressing the Commissioner or at the latter's intervention.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

No media related laws were adopted in the period covered by this Report. However, journalists' and media associations were concerned after learning that an informal group (the members of which remained unknown) in the cabinet of the Serbian President Tomislav Nikolic was working on a set of media laws. This was publicly confirmed both by the parliamentary speaker Nebojsa Stefanovic and the Minister of Culture and Media Bratislav Petkovic. The Independent Journalists'

Association of Serbia (NUNS) has issued a press release saying that the competencies of the President, provided for in the Constitution and in the Law on the President, do not include the drafting and proposal of media laws. NUNS insisted that the regulations and procedures of passing media laws ought to be respected. The Minister Bratislav Petkovic said that the work on the set of media laws would be managed by the Ministry of Culture and Media, which had set up the proper team. He added that there was no working group in the President's cabinet; these people were the President's advisors that would be helping the Ministry of Culture and Media. Petkovic also added that the Ministry was collaborating with OSCE in working on the aforementioned media laws. In any case, until the end of the period covered by this Report, the representatives of media and journalists' association have not been included in any manner whatsoever, or informed about what these formal and informal working groups (in the President's cabinet or in the Ministry of Culture and Media) are doing. The lack of transparency is definitively not helping this process.

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)*

At a session held on September 5, the Council of the Republic Broadcasting Agency (RBA) initiated the procedure of early revoking of the licenses of 35 broadcasters that have been in default as to the payment of the broadcasting fee for a longer period of time. We remind that, according to Article 61 of the Broadcasting Law, the license shall cease to be valid prior to its term when, among other things, the operator fails to pay the broadcasting fee in spite of receiving a written notice. The Law stipulates that the RBA will pass a decision to revoke the license in an objective and unbiased procedure, during which the operator must be allowed to pronounce himself about the relevant facts. The broadcaster's representative shall be entitled to attend the Council session, where the revoking of the license is to be discussed, and to present his defense orally. The decision of the Council on revoking the license shall be passed by a two-thirds majority of the votes of the overall number of Council members and it shall be explained and justified. The broadcaster, whose license has been revoked, shall be entitled to lodge an objection to the Council within eight days after passing the decision. If he is dissatisfied with the ensuing decision, he shall be entitled to initiate an

administrative procedure. Otherwise, the broadcasting fee itself shall be paid for the obtained broadcasting right and the payment shall be made to the bank account of the RBA. The amount of the fee shall be determined by the RBA, with the consent of the Government of the Republic of Serbia, on the basis of the number of inhabitants in the region covered by the broadcaster in question and depending on the origin and type of content. The economic crisis has created the situation where many broadcasters cannot afford to pay the fee anymore. However, even prior to the downturn, media and journalists' associations and especially ANEM have repeatedly highlighted the fact that the amounts of the fees have not been determined according to their purpose, which should be covering regulation costs. The total amounts of unpaid fees, especially prior to the crisis, far exceeded the actual regulation costs, while the surplus was channeled in the budget, instead of having the fees reduced or the surplus allocated for media projects of public importance.

2. *Republic Agency for Electronic Communications (Ratel)*

On September 11, the Republic Electronic Communications Agency (RATEL) released the current list of a total of 35 pirate broadcasters, including one practically national network with ten transmitters. The 35 broadcasters include two television stations and 33 radio stations. The worst situation persists in Novi Sad, where there are up to 9 radio stations in the city itself and a couple of them in the vicinity. Meanwhile, the media have reported that in Valjevo, RATEL performed the control together with the local police, in the local TV stations "Mars" and "Valjevo kronik", which have been broadcasting illicitly for quite some time. Criminal charges were pressed with the Valjevo Prosecutor against the responsible persons in the two stations, for having allegedly committed the criminal offense of unauthorized performance of activity provided for in Article 353 of the Criminal Code. The Criminal Code namely stipulates that the persons engaged in unauthorized performance of activity, which requires, under the Law or other regulations passed in accordance with the Law, a license issued by the competent authorities, shall be subject to a fine or a two-year prison term. According to media reports from Zrenjanin, the persons authorized to enforce the decisions of the RBA Council were prevented in enforcing the decision prohibiting the local KTV to broadcast. The said persons were physically stopped by a group of citizens (led by the owner of KTV Dana Radic) that said to be "viewers of the station". The RBA previously established that KTV was broadcasting on the 32th UHF channel and it claimed that the station had never been issued a broadcasting license for that channel, namely that the open competition for the latter had not yet been called. The events from Zrenjanin show that the competent authorities in Serbia are yet to find a single mechanism and procedure to effectively enforce their decisions and remove pirate broadcasters from the air.

STATE AUTHORITIES

3. *The Ministry of Culture and Media*

Opening the regional conference on media freedom in Southeast Europe, held in Belgrade on September 21-22, the Culture Minister Bratislav Petkovic announced that the Media Strategy would be redefined and that the state would seek to gradually withdraw from the ownership in media, as well as to ensure the transparency of ownership. He said that the priorities of his ministry would be to boost and consolidate the existing public service broadcasters RTS and RTV, as well as to address the issue of their financing in a sustainable and durable manner. Petkovic said that the issue of financing ought to be dealt with by next spring; in the meantime, RTS would have to be bailed out from the budget.

We remind that we have repeatedly pointed to the shortcomings of the Media Strategy in these Reports. These shortcomings are uncontested and the Strategy itself was typically described in the public as a compromise that did not make anyone completely happy, but nonetheless managed to highlight the long delayed issue of reforms in this domain. In that sense, if the announced redefining of the Media Strategy will remedy the aforementioned shortcomings, such as its part pertaining to the setting up of regional public service broadcasters or the other, pertaining to preventing unlawful concentration of media ownership, the aims of the Ministry should be commended. Unfortunately, the Ministry has embarked on this journey in an utterly non-transparent manner, without any contacts and communication with media and journalists' associations in the period covered by this Report and this is a cause of major concern.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

4. *The Organization of Musical Authors of Serbia – Sokoј*

4.1. In a statement released on September 12, Sokoј informed the public that cooperation protocols with the representative associations of users – the Employers Union, the Information Activities Union and ANEM, as the representative association of broadcasters, were signed. Sokoј said that the protocols are the final phase of long-term efforts to adjust the amount of author fees to the economic reality in Serbia, without compromising the system of collective protection of music

copyrights. The protocols are the outcome of months-long negotiations and they are expected to come into force on the eighth day after they are published in the Official Gazette of the Republic of Serbia. The Protocol entered into with ANEM was published in the Official Gazette no. 92 dated September 26, 2012. Meanwhile, ANEM announced that the Protocol had brought substantial discounts and benefits for the payment of the 2012 minimum fees for the exploitation of music authors' works and that it had settled the issue of outstanding debts from the previous period. Sokoj had previously (on the basis of the opinion of the Copyright and Related Rights Commission from December last year) passed a tariff that came into force on December 31, 2011, involving dramatic increases of the minimum fees. The aforementioned Protocol introduced discounts on minimum fees, amounting in certain cases to up to 75% of the applicable tariff. It also involves the possibility to repay debts in several installments, as well as to have the interest (or part thereof, if the broadcaster was taken to court) written off. In addition to ANEM members, the aforementioned discounts and benefits will be available to all other radio and TV stations, provided they have a valid agreement with Sokoj that they have been submitting lists of broadcast musical works on regular basis, as well as if they have been observing the payment terms provided for by the Protocol. For bills concerning the March-June period, the said terms will be no less than 60 days, namely 15 days for the bills to be issued by Sokoj after that. According to the Protocol, all radio and TV stations that are paying the minimum fee will pay only 50% of the fee for the period March 1 – December 31, 2012, regardless if they have unsettled debts. The 50% discount on the minimum fee shall be applied over the regional discounts where the latter are already in force, in keeping with the applicable tariff. This practically means that the overall discounts will amount to 65% in Eastern and Southern Serbia, 60% in Western and Central Serbia, 55% in Vojvodina and 50% in Belgrade, Novi Sad and tourism centers. Civil society broadcasters, which enjoy a tariff-provided 50% discount compared to the usual minimum fee, will be allowed to cumulate the discounts provided for by the tariff and the Protocol, until the overall discount reaches 75%. In addition, for the first time, the Protocol is putting on equal footing (with the possibility to use the discount) stations from local, ethnically mixed regions (broadcasting most of their content on one or several minority languages) with civil society stations. Sokoj will approve that convenience on the basis of proof issued by the RBA. Outstanding and unsettled debts may be paid in several installments, interest-free, by March 31, 2013, on the basis of an agreement that each station will enter into with Sokoj. The outstanding debts that have already been claimed and collected (settled) in Court plus the associated legal costs will be paid in the same period, whereas Sokoj will write-off 50% of the interest on these amounts. For the pro-forma invoices already issued by Sokoj under the new tariff for January and February 2012, a new term will be determined for the stations to make the payments with a 20% discount. Additionally, the Protocol says that, in September and October, Sokoj will provide all interested stations free training for using the online portal for submitting lists

of broadcast musical works. ANEM and Sokoj will oversee and evaluate the functionality of the portal and, depending on the objective possibility of the majority of stations to use it effectively, they will jointly set the date as of when the submission of lists of broadcast musical works via the portal will become a requirement for enjoying the discount. Simultaneously, ANEM and Sokoj will start analyzing the effects of the Protocol's implementation as of this autumn, so as to come to a new agreement that would pertain to the tariffs in 2013. The negotiations that preceded the signature of the Protocol were also mediated by the Intellectual Property Office. The Protocol constitutes a compromise between the tariff of fees (which was adopted at Sokoj's proposal and which came into force after the Copyright and Related Rights Commission approved it) and economic reality. It sends a very clear message that, under the tariff that was approved by the Copyright and Related Rights Commission, the lowest amounts of the fees for exploiting the objects of protection from Sokoj's repertoire (the minimum fees) were so unrealistic that that it was necessary to introduce additional discounts of up to 75%, in order for the tariff to be applied. An even better solution (than the Protocol introducing discounts) would have been to set a brand new, more appropriate tariff, but the Protocol might prove to be the first step in that direction.

4.2. The Commercial Appellate Court in Belgrade rejected as unfounded the appeal filed by Sokoj against the verdict of the Commercial Court in Subotica, in the dispute between Sokoj and the public company Radio Subotica. The dispute concerned the revenues included in the base for calculating the fee paid by Radio Subotica to Sokoj. The Appellate Court upheld the verdict of the first-instance court, under which the base for calculating the fee paid to Sokoj did not include the revenues of Radio Subotica, or the subsidies and donations paid for the production of news program in Serbian, Hungarian and Croatian language by the municipality of Subotica as the founder of the public company. "Radio Subotica has been claiming from the start that the subsidy obtained from the municipality is completely unrelated to music and that receiving it has nothing to do with the music repertoire of the station," said Toni Bedalov, the Director of Radio Subotica. He stressed that this fact was confirmed by the town of Subotica, because "under the contract between the local government and the radio, the town will only subsidize the production of news program in three languages. Sokoj refused for years to acknowledge that and we are happy that the Court has confirmed our position to be right".

The issue of the base for calculating the fees has constituted a point of contention between Sokoj and the broadcasters for years. Several trials were held with different outcomes and different verdicts. In that respect, we want to make the following clarifications. The Law on Copyright and Related Rights stipulates that, for broadcasting, the tariff shall be typically determined as a

percentage of the revenues gained by the user in the activity involving the use of the protected object (i.e. music). The problem arises in the situation when the operator has multiple sources of income apart from broadcasting. The situation is clear when the broadcaster, for example, makes money from renting office space. Logically, the part of the revenues from the rent does not constitute “revenues gained by the user from the activity involving the use of the protected object”. Nonetheless, sometimes the difference is not that obvious, although it actually exists. For example, the revenues of a broadcaster that has produced and aired radio/TV program, which were gained from commercials aired in the course of that program, shall definitely be counted in the base. The question remains, however, what happens if that broadcaster has ceded that same content to another broadcaster, namely will the revenues gained from licensing the said content be counted in the base or not? Namely, the activity involving the use of the protected object is broadcasting and not production. This is evidenced by the fact that independent production companies, which do not have their own television or radio channels (but merely produce and sell content) are not paying any broadcasting fees. If, in our case, the broadcaster would sell program (content) to another broadcaster and if the revenues from such licensing would constitute part of the fee base, then the broadcasters’ program on the market would be burdened by costs not incurred by independent productions. These are all matters that have not been conclusively settled and that are still the source of disagreements and dilemmas in the relationship between broadcasters and collective organizations. Subsidies and donations are merely part of the problem. It seems that the delimitation line in our case should be the grounds on which the subsidies have been awarded. If they have been awarded for content broadcasting, they should be made part of the base, regardless of the fact that music is not used in a concrete program. If the subsidies have been awarded only for production, the situation could be interpreted differently. It seems that it would not be too difficult to make the distinction by checking how the funds were allocated in the first place. If an open competition was called with the participation of independent production companies and a radio station was allocated the funds because it had the best offer, it seems that it would constitute grounds not to count the concrete subsidy or donation in the base. However, if the funds were allocated to the radio station precisely because it was able to air the program in addition to producing it, namely if the independent production companies were not eligible to compete, since they did not have their own channels, then it seems that the subsidy/donation in question should definitely be counted in the broadcasting revenues of the concrete station. In any case, the decision of the Commercial Court in Subotica and the Commercial Appellate Court in Belgrade shall apply to the concrete dispute only and may not automatically apply to all outstanding disputes. It is therefore important to consider introducing more specific regulations which would enable the distinction between the revenues counted in the fee base and those that will not be counted as a part of it.

V THE DIGITALIZATION PROCESS

In the statements he made after he was appointed to the position of State Secretary for telecommunications in the Ministry for Foreign and Domestic Trade and Telecommunications, Stefan Lazarevic announced that the digital switchover would start in the second half of next year and said the process would be completed by the end of 2014. The Ministry is currently working on two projects: the digital network that will enable the making of the switchover plan, as well as the modalities for helping disadvantaged families to buy the necessary appliances for receiving digital TV signal.

Under the Digitalization Strategy that was amended early this year, the design of the distribution network was supposed to be adopted in the second quarter of this year. That process is obviously overdue and, according to unofficial information, the aforementioned design will probably be adopted by late March 2013. The adoption of the network design is a precondition for obtaining the construction and operating permit for the digital network, as well as the licenses for the use of radio frequencies. As for the assistance scheme for the purchase and distribution of set-top boxes for disadvantaged citizens, the Action Plan accompanying the Media Strategy foresees only the obligation to draft a financial plan for implementing the said scheme. The assistance scheme for the purchase and distribution of set-top boxes is, however, tied to the many complex issues concerning personal data protection, as well as to the issue of technological neutrality of the assistance itself. The first issue is directly related to the manner in which the data on disadvantaged citizens will be collected. Namely, according to the Constitution and the Law on Personal Data Protection this data may be collected only with the consent of the persons concerned, or on the basis of a direct legal authority. Since such authority does not exist in the Law on Electronic Communications, the Ministry will have to find it either in some other law (e.g. those concerning social security) or to proceed with amending the Law on Electronic Communications itself. The second issue concerns the technological neutrality of the assistance scheme. Namely, the Law on State Aid Control stipulates that it shall be forbidden to allocate any kind of state aid that undermines or threatens to undermine market competition. As an exception, the law allows the provision of state aid of a social nature, which will be granted to individual consumers without discrimination as to the origin of goods and products constituting the said aid. In the case of the assistance scheme for the purchase and distribution of set-top boxes for disadvantaged categories of the population, non-discriminative measures need to be foreseen. Moreover, in this case, the requirements must be platform-neutral, so as to avoid excluding cable and DTH satellite operators from the aid scheme, since the overall objective is to enable continuity in receiving television signal for disadvantaged citizens and not to

expand the customer base of a particular market operator – in this case the customer base of the public company “Broadcasting Technology and Links“.

VI THE PRIVATIZATION PROCESS

In his first public appearance (on the conference entitled “Media Strategy – What’s Next”) since he was appointed to the post of Assistant Minister for Culture and Media, Dragan Kolarevic said that the state would withdraw from the media as owner in the time periods foreseen in the Media Strategy. “According to the Media Strategy, it is clear that the state must withdraw from media ownership and we will try to respect the deadlines, while providing for wide public debates and acknowledging the opinions of experts”, Kolarevic said. He added that the new government would continue with media regulations-related activities where the previous government had stopped and that it would not start from scratch. Kolarevic stressed that the Ministry of Culture and Media would not favor either state or private media, because it did not have the right to do so. At the same time, it is the Ministry’s obligation to ensure a stable source of financing and editorial autonomy for the public service broadcasters RTS and RTV. “We will leave enough space to private media to be able to freely and successfully operate on the media market. We will not have any favorites, since the Ministry is not entitled to have any,” Kolarevic said. His sentiments were echoed by other government representatives. At a meeting with the OSCE freedom of media representative Dunja Mijatovic, the First Deputy Prime Minister Aleksandar Vucic said that Serbia want to be a modern country and that it would do everything in its power to reach international standards in the area of media freedoms and that the government would accordingly guarantee full freedom of media. Vucic too said the state would withdraw from media ownership.

We remind that the Media Strategy provides for the withdrawal of the state from media ownership, with the exception of several particular cases, where the share of the state in the media will be regulated by Law. More specifically, the state might remain the owner of public service broadcasters, Serbian language media for the population in Kosovo and Metohija, specific media tasked with informing the citizens about the work of state authorities and public companies, as well as indirectly, through the national councils of ethnic minorities and minority languages media. Regarding the mechanisms for the aforementioned withdrawal, the Strategy mentions privatization, as well as the conversion of state ownership into shares and the assignment thereof free of charge. What is, however, extremely important and is still not being discussed, is the fact

that there will be no interested investors for acquiring state media until the media market is not properly regulated. At the same time, even if the state would distribute their shares (in the absence of interested investors) to the citizens free of charge, these media would not be able to survive amid the current state of the market. Therefore, the prerequisite for a successful ownership transformation of state-owned media is the withdrawal of politics from marketing space in the media, namely opening up the advertising market, putting an end to the practice of giving preferential status to certain media at the expense of others by misusing marketing budgets of public and state enterprises, preventing cartel-like agreements and abuse of dominant positions on the advertising market, as well as putting order in the system of budget financing of the media. The above should be done transparently, in a precisely defined public interest and in a way that will not undermine competition. At the same time, the state should demonstrate greater understanding for various situations existing in specific segments of the media market; it should also encourage (while not losing from sight the need to preserve media pluralism) the consolidation on the market of local and regional electronic media, bearing in mind that market potentials are conducive to the survival of the existing number of the aforementioned electronic media to survive and be self-sustainable. If the above is not ensured, the current situation will persist: the media will be privatized by shady investors, the privatized media will continue to disappear as soon as the local government cuts the budget funding, while the journalists and other media professionals, especially at the local level, will continue losing their jobs, with slim opportunities for new employment in their profession.

VII CONCLUSION

Opening the regional conference of media freedoms in Southeast Europe held in Belgrade, the Culture Minister Bratislav Petkovic said that the new government, in its first 40 days in office, had found a media landscape in disarray, where the real owners of certain media remained unknown, a public service broadcaster in crisis, legislative projects unfinished and state ownership in the media unclear. The right question to ask, however, is what the media landscape will look like after the term of office of the current government. Its first moves in this area are not encouraging. Lack of transparency, informal working groups, statements showing that the new government is yet to recognize the complexity and all the aspects of the problems faced by the media sector – these are all a cause of concern. Meanwhile, the public service broadcaster (PSB) could barely collect 30% of the TV subscription fee; another 35 broadcasters will see their licenses revoked for failing to

generate the revenues necessary to be able to pay their dues to the competent regulator. Unfortunately, there will be no progress in this domain until the new government recognizes the other side of the issue of sustainable and stable financing of the PSBs, namely the responsible expenditure of money for clearly defined functions of the PSBs, as well as that the unregulated media landscape will not be regulated merely by passing regulations no matter how good the latter are. The unregulated media landscape may be regulated only if there is political will to implement the mechanisms that will, on one hand, prevent abuse of political power and public revenues for influencing the editorial policy of the media and on the other, to prevent cartel-like agreements and abuse of dominant advertising market position in order, again, to influence editorial policy. In the contrary case, some future minister that will succeed Petkovic will only be able to lament on the “difficult burden” and “skeletons in the closets” left by previous government.