

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. Prior to the Assembly of the Football Club Vojvodina on September 1 in Novi Sad, the club's President Ratko Butorovic threatened Miroslav Gajinov, the Editor-in-Chief of the website "Napred Vosa", saying that he will "smack him in the face". According to the press releases of the Journalists' Association of Serbia (UNS) and the Sport Journalists' Association of Serbia (USNS) respectively, Butorovic continued to insult Gajinov during the session the latter was reporting from as a journalist. USNS's statement also said that Butorovic had threatened Gajinov twice before because he was unhappy with the comments of Gajinov's website users. He also prohibited Gajinov from attending the match Vojvodina played in Novi Sad against Novi Pazar and hence the journalist was unable to report about it. In September, after these press releases, Gajinov was again expelled from Vojvodina's stadium, after he was told that he didn't have the proper press card issued by the club, although other reporters were allowed to watch the match holding only the USNS' press card, the same Gajinov had. After talking to the person that escorted him from the stadium, Gajinov learned he was banned from the game as a common supporter also, with an ordinary ticket. On a press conference, FK Vojvodina's officials explained the incident by invoking the text published on Gajinov's website, which allegedly claimed that one of the stands on the stadium was unsafe for the supporters of the guest team. FC Vojvodina said Gajinov had compromised the safety on the stadium with such texts. Gajinov denied that such a text existed at all on his website.

Gajinov was not the only sports reporter that was threatened in September. According to the daily Danas, the Vice-President of the Novi Pazar football club Tarik Imamovic threatened the correspondent of Sportski Zurnal Esad Kucevic he would have his life and had forbidden him from reporting from matches of the said club. Imamovic was reportedly unhappy with Kucevic's texts about the situation in FC Novi Pazar.

According to the provisions of the Public Information Law we have quoted here multiple times, public information shall be free and no one shall directly or indirectly restrict it in any manner conducive to restricting the free flow of ideas, information or opinion or to put pressure on public media and its staff so as to obstruct their work. Physical threats and

threats to one's life, like in the case of Esad Kucevic and actions that injure human dignity, may represent and do represent elements of a number of criminal offences under the Criminal Code. Journalists' associations have protested in both cases by issuing press releases. The media have failed, however, to report the complete absence of any kind of reaction by the authorities in Novi Pazar and in Novi Sad. Furthermore, what is specific in Gajinov's case is that, according to the information available to the authors of this Report, there is pressure to make his status as a journalist conditional on the formal registration of his web portal with the Business Registers Agency. Moreover, sports facilities, including the stadium where FC Vojvodina plays its matches, are public infrastructure within the meaning of Article 17 of the Anti-Discrimination Law and hence the prohibition to Miroslav Gajinov to access such a facility and attend a football match, even as a common supporter with the proper ticket, amounts not only to a violation of freedom of expression, but also represents a clear case of discrimination publishable under anti-discrimination regulations.

1.2. The Chief Mufti of the Islamic Community in Serbia Muamer Zukorlic has announced he would press charges against all the media in Serbia that have published the press release of the organization "Otpor Sandzaka" (*Resistance of Sandzak*), which accused Zukorlic of absolutism, crackdowns on those who think differently, manipulation and abuse of faith and hate speech. Zukorlic believes that "Otpor Sandzaka" as an organization does not exist and that it is a clear case of a personal attack against him by the government and particularly the Minister of Labor and Social Policy Rasim Ljajic. In the press release of the Mechat of the Islamic Community said that Mufti Zukorlic will claim the "highest possible damages" and prove before a court of law what he said to be the unscrupulous misuse of public information means.

We remind that Mufti Muamer Zukorlic has pressed charges against the daily "Blic" for a Photoshop published in June 2010, depicting him in the clothes of an Orthodox priest. Zukorlic claimed 100 million euros of damages, which he described as a "symbolic compensation" considering the vital and symbolic value of his stained reputation, pride and dignity for all Muslims. The proceedings are still underway. Zukorlic's threats that he will claim the "highest possible compensation for damages" are most definitively conducive to increased self-censorship and amount to a restriction of freedom of public information by misuses of right. It is also incontestable that Muamer Zukorlic, as a public figure, is required to demonstrate a higher degree of tolerance for criticism by the media, even in the aforementioned case, when media are conveying the press release of a until then completely unknown and anonymous organization.

1.3. TV Tutin's reporter Mersid Agovic and cameraman Tufik Sadovic were attacked while they were on an assignment, the Editor-in-Chief of the said station Amir Numanovic said on September 27. Agovic and Sadovic were attacked while they were shooting the works on the Cultural Centre building in the center of Tutin, in the immediate vicinity of the police station. The attackers first insulted and then attacked the reporter and cameraman from a local café. Agovic suffered minor injuries and serious consequences were avoided owing to the citizens and a policeman who happened to be on the spot. Journalists' associations condemned the attack, pointing to the fact that, after the incident, the police had taken the reporter and the cameraman in for questioning first, while the attackers were left to sit peacefully in the café, until they simply left the site of the incident. They were apprehended only later that afternoon.

The Public Information 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 or to put pressure on public media and its staff so as to obstruct their work. Unfortunately, in earlier cases similar to the incident in Tutin, even where the attackers had been taken to court for violent behavior, the penalties were symbolic, below the legal maximum and hence were not a deterrent for the perpetrators. We remind that violent behavior is defined by the Penal Code as threatening the peace of the citizens or major disruptions of public order by serious insults, harassment, violence, provoking a brawl or ruthless behavior. Violent behavior committed in a group of people or involving a minor bodily injury shall be subject to a prison sentence ranging from six months to five years.

2. Legal proceedings

2.1. On September 20, a hearing commenced before the Appellate Court in Belgrade in relation to the appeal against the first-instance verdict sentencing Ljubinko Todorovic, the former policeman from Belgrade, to six months in prison for inflicting severe bodily harm to Vladimir Mitric, the correspondent of the daily "Novosti" from Loznica. Mitric was attacked while he was entering the apartment building he was living in. In this incident six years ago, on September 12, 2005, Mitric suffered a broken left arm and twenty contusions on the head and body. The previous first-instance verdict was revoked for procedural reasons and the case was returned for retrial. The verdict delivered in the retrial was appealed against by both the defendant and the Public Prosecutor.

For the last six years, since he was attacked, Vladimir Mitric has been living and working under 24/7 police surveillance. Furthermore, although he was attacked in almost identical

circumstances to those in the case of the slain journalist Milan Pantic, the correspondent of Novosti from Jagodina, the attacker is accused of inflicting severe bodily harm and not for attempted murder. The penalty for the latter criminal offense could range between five and fifteen years, while for inflicting severe bodily harm it ranges from six months and six years. In cases of attacks against journalists, Serbian courts typically opt for penalties on the limit of the legally prescribed minimum or even below. Accordingly, both in the first trial and retrial, Ljubinko Todorovic was sentenced to the minimum prison term under the Law. In addition, the persons that have ordered the attack against Mitric are yet to be identified.

2.2. Criminal charges were filed against journalist Maja Uzelac for inciting to violence on the Twitter social network. The journalist wrote on Twitter that “people who run Apartman (a Belgrade night club) ought to be beaten up, long and hard”. Special Prosecutor for High-Tech Crime Branko Stamenkovic explained that the plaintiffs have pressed criminal charges against Maja Uzelac for the commission of the criminal offense of threatening their security and that, on the basis of these charges, the Special Prosecutor’s Office for High-Tech Crime has filed a request for collection of the necessary information. “In the scope of that process, Maja Uzelac was interviewed”, Stamenkovic said. Uzelac confirmed she was interviewed in the police station. However, she denied that interview had anything to do with hate crime against the gay population. “I am not accused of hate crime against the gay population and this whole case has nothing to do with it. The club I mentioned on my Twitter profile is incidentally a place where gay people meet”.

The media have reported that Uzelac’s contentious Twitter post pertained to the controversy about the performance of Croatian journalist, TV host and musician Ida Prester in Belgrade’s night club Apartment; Prester claimed she was not entirely paid for it. We mention this case not so much due to the fact that Maja Uzelac is a journalist, since nothing seems to indicate she was using Twitter for that purpose, but rather in the scope of a wider debate waged in Serbia about responsibility for content posted on social networks on the Internet. We don’t want to go deeper analyzing if there was a genuine serious threat in the aforementioned case or not and if the safety of the owner or that of members of the night club’s management was compromised, but it is indicative that Maja Uzelac was summoned for an interview with the police five months after her message was posted on Twitter. In that entire period, the threat wasn’t repeated or acted upon, which means that it perhaps wasn’t so serious in the first place. If one would assume the threat was serious, the fact that the police and the prosecutor reacted with a five-month delay, is most definitely a concern. In the last few years in Serbia, there are several final convicting verdicts providing for prison sentences for threats against people’s security made over social networks on the Internet, the most famous of which are those against B92’s reporter Brankica Stankovic for her investigative program Insider about

the leaders of extremist football fan groups and far right organizations. It seems, however, that the judiciary has fallen short in its attempts to curb hate speech, another increasing Internet phenomenon. In one of our previous reports we have written about the verdict against media delivered on hate speech charges, involving reader comments on an Internet edition of a daily newspaper, which were inciting discrimination. The newspaper in question was fined. The authors of statements inciting discrimination, hate or violence typically remain anonymous and unpunished.

2.3. The Higher Court in Belgrade fined in the first instance the B92 station half a million dinars in damages for a girl from the vicinity of Pancevo, for damaged honor and reputation, in relation to the teasers for the investigative program “Reakcija”, which said she was involved in prostitution and human trafficking. As a teaser, TV B92 aired a shot of a reporter, the author of the said program, Radoslavka Despotovic, searching for advertisements on the Internet. An advertisement for escort girls, which could have been seen on the screen, contained a photograph of the plaintiff. The plaintiff claimed she had never given such advertisement or taken a photograph for it and the Court did not take into consideration the fact that the controversial advertisement had been posted on a universally accessible advertising website in a period of an entire year and that it was seen by thousands of visitors before and after the aforementioned teaser was aired on B92. As soon it was warned of possibility that the photograph equipping the online advertisement had been misused, B92 changed the teaser for the show, but the Court still found that the station had, by airing the contested teaser, failed to proceed with due journalist care. B92 has lodged an appeal with the Appellate Court in Belgrade.

The verdict against B92 raises a whole array of questions that will remain open at least until the decision to be reached by the Appellate Court. First, the court of first instance found that, by airing the controversial teaser, B92 failed to act with due care. However, the court itself failed to define the actions that would fulfill the standard of “due attention” in the concrete case. Namely, under the Public Information Law, the special consent of the photographed person is not required for releasing on television the photographs that such person has intended for public use. Should the Appellate Court uphold the first-instance verdict, it would mean that journalists must not be guided by the assumption that the photographs accompanying the advertisements and commercials are intended for the public. They would rather have to check, in each particular case, if the advertiser was authorized to use the photograph or not. If we know that, in Serbian towns nowadays, it is virtually impossible to shot any outdoor shot without the camera catching a billboard or a poster with someone’s face, such an interpretation becomes quite problematic. Furthermore, the Advertising Law excludes the objective responsibility of the media when they release a commercial contained

a photograph of a person without the consent of the person on the photograph. Namely, the media that release such photograph shall be held accountable if the photograph in question was not properly declared by the producer, namely if the producer was not aware, and should have been reasonably aware, that the release of the photograph could harm someone. If the first-instance verdict against B92 is confirmed, it would mean that a media that has aired, just for illustration purposes, already published commercial on other media, is required to exert a higher degree of caution than the media that has previously released the said commercial as a conveyor of the advertising message and got money for that.