

## **I FREEDOM OF EXPRESSION**

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

### **1. *Threats and pressures***

1.1. Vladimir Cvijan, MP of the Serbian Progressive Party (SNS) and Chairman of the Parliamentary Committee for Constitutional Affairs, has filed criminal charges against the Director and Editor of "Nase novine" Vuk Vucurevic and Antonije Kovacevic. Cvijan claims the two have endangered the security of his six-year old son, accusing them in the Parliament, in a statement to the media, of being maniacs and pedophiles. In his words, a day before he pressed the charges, he received a telephone call from "Nase novine". A female journalist asked him where he had spent his holidays, from which question Cvijan concluded that the paper had come in the possession of photographs of his son and wife from her Facebook profile. Cvijan claims that "Nase novine" threatened him with releasing the photographs of his juvenile son. He called on the authorities to investigate Vucurevic's and Kovacevic's motives and to take the appropriate measures against them. Cvijan described the director and the editor of "Nase novine" as people "with a long history of diverse abnormal behaviors, in their respective families, as well as them personally". He branded them "the worst pedophiles in Serbia" and warned parents to keep these two off their children, while telling journalists they should be distinguishing between the politicians occupying public functions and their families. After Cvijan's intervention in the Parliament, leaflets with Vucurevic's and Kovacevic's photos and the inscription "Warning! Pedophiles" were placed on cars parked near the offices of "Nase novine". Cvijan had previously shown these leaflets to journalists. The text over which "Nase novine" had asked Cvijan for a comment and the photographs he claimed were downloaded from his wife's Facebook profile were released in the newspaper was entitled "Downfall in Serbia, Cvijan in Dubai". The front page contained a teaser to the text saying "Cvijan Enjoys Luxury and Threatens Journalists". It also said that Cvijan's travel arrangement costs 1.400 euros and as the MP said, "it was a treat from his wife". The article went quoting the threats and insults Cvijan threw at the journalist. His dialogue with the journalist was described, as well as the alleged threats and insults "Nase novine" claimed Cvijan uttered. The EU Delegation to Serbia and NUNS condemned Cvijan's attack on "Nase novine", while UNS called to an investigation to determine if Cvijan was really the one to have distributed the above-described leaflets with photos of Vucurevic and

Kovacevic "Warning! Pedophiles. Parents beware; keep those two out off from your children! If you see them, report them to the nearest police station!". "Nase novine" asked for police protection.

Under the Public Information Law, it is prohibited to put any kind of physical or other pressure on public media and the staff thereof, or any influence that might obstruct their work. Until now, in Serbia at least, we didn't have a case of an MP, unhappy with media reports, accusing journalists of being pedophiles and pressing criminal charges against them for threatening the security of a juvenile person. The Public Information Law stipulates that persons occupying state and political functions have their privacy protection rights restricted, if the information is of public interest, in view of the fact the person the said information pertain to its occupying a certain public position. This restriction will be proportionate to the justified interest of the public to know in each particular case. Furthermore, the Public Information Law says that the MPs are obligated to make information about their work accessible to the public, under equal conditions for all journalists and all public media. Even though the reason for mutual accusations of the MP and the journalists was quite trivial (where the MP had spent his holidays), Cvijan's reaction and particularly distributing leaflets accusing the journalists of being pedophiles and calling on parents to watch out for their children and report the two to the police, is more than inappropriate and unheard of in Serbia to this day. Moreover, under the Criminal Code, wrongful accusations shall be punishable between three months and three years in prison. Apart from press releases condemning Cvijan's actions, it seems that there were no reactions by competent authorities. The President of the SNS and Deputy-Prime Minister Aleksandar Vucic said that the "state will protect the journalists of "Nase novine" and all other citizens", noting that he hadn't heard Cvijan's side of the story, but that he didn't think the Parliament to be the proper place for account settling between MPs and journalists. Vucic thus avoided answering if distributing leaflets accusing the journalists of being pedophiles in the community where they live and work is an acceptable reaction by politicians in cases where they are unhappy with media reports about them, or is it rather an intolerable lynching call the state should have reacted to.

1.2. The Association of Journalists of Serbia (UNS) called on the police in Prokuplje to establish and publicly announce all facts related to the claims of Biljana Roganovic, correspondent of "Juzne vesti" from that town, that she received a threatening text message from the President of the SNS in Prokuplje Darko Laketic. According to Roganovic, she received the message from Roganovic's number, saying, "This is a friendly warning to watch what you write and say. Stay away from SNS, my people and myself. If you have any questions, call me, don't call other people, for they will not be able to help you if you mess up like you have until

now". Laketic called Roganovic the next day telling her he didn't send her the message. After she reported the threats to the police, Laketic reported her for wrongful accusation. "I didn't send any text messages to Biljana Roganovic. I called on the police to establish who sent it as soon as possible and hold the sender to account", Laketic told UNS.

Late May also saw the case of the threats sent in a letter to Radio Sto plus in Novi Pazar. The letter was posted from Belgrade. The Editor-in-Chief of the station Ishak Slezovic said he is unable to point his finger at anyone since, as he says, "Radio Sto plus airs things people don't like on daily basis". The case was reported to the police.

Under the Public Information Law, it is prohibited to put any kind of physical or other pressure on public media and the staff thereof, or any influence that might obstruct their work. A particular concern, however, is the absence of timely reaction by the authorities in such cases, even in those that seem fairly straightforward. Namely, while it would perhaps be overly optimistic to expect the sender of the threatening letter to Radio Sto plus to be identified, that of the text message to the correspondent of Juzne vesti from Prokuplje could easily and quickly be found. According to the Electronic Communications Law, mobile operators are obligated to keep data that, among other things, may be used for identifying the source of communication and the equipment used for sending the communication, as well as the location of the mobile equipment at the time of sending. In the absence of a reaction by the authorities to threats to journalists, new threats occur; these threats are then reported, followed by wrongful accusation complaints to the police, all resulting in a feeling of insecurity by all journalists.

## ***2. Court proceedings***

2.1. The Higher Court in Belgrade has partially upheld the charges pressed by political analyst Djordje Vukadinovic against writer Svetislav Basara, committing the latter to pay Vukadinovic 150.000 dinars of damages for mental pain suffered over injured honor and reputation. Basara will also pay the default interest incurred until the payment is made. The verdict was passed in relation to Basara's column "The Bianniversary", published in the daily "Danas" on February 18, 2010, about the second anniversary of Kosovo's independence. In that text, Basara writes about the unrest in Belgrade on the day of the declaration of Kosovo's independence, saying that "the patriotic forces supported and abetted the mayhem, while Vukadinovic and Antonic, the journalist striking forces of Kostunica's Junta, denounced individuals 'keeping US flags in their homes' and 'directing the righteous destructive anger on TV

B92...” In his claim, Vukadinovic said that the author of the text, the editor the daily “Danas” and founder of that public media, had severely injured his dignity, reputation, honor and personal rights. He also said that branding him “a striking force of Kostunica’s Junta”, associating him to the perpetrators of the unrest and claiming he denounced individuals ‘keeping US flags in their homes’, and especially putting these claims in the context of instigating and abating unrest, constituted the public release of fictitious, offensive, unsubstantiated and absolutely inaccurate, personally damaging information. The court of first instance rejected the claim against the co-founder of “Danas” and the editor, explaining that “the text constitutes a value judgment of the first defendant and not a factual one, where the plaintiff was not labeled as the perpetrator of a criminal act and where no insults and other insulting names were used; had it been the case, the editor-in-chief and the founder of the public media would be held accountable”. Relative to the author of the controversial column, Vukadinovic’s claim was upheld, albeit in a fivefold lesser amount than that requested by the plaintiff. In the motivation of the verdict, the Court said that the defendant Svetislav Basara had failed to act with due journalist care, since he had not contacted the plaintiff. Defendant lodged an appeal with the Appellate Court in Belgrade.

The verdict in the case against Basara is interesting in many of its aspects. First, it shows the extent to which today, a decade after the ratification of the European Convention on the Protection of Human Rights and Fundamental Freedoms, the courts in Serbia are having a hard time enforcing it, especially the case law of the ECHR in applying Article 10 of the Convention. The first thing that’s striking is the fact that the Court found that the claims made by Basara about Djordje Vukadinovic were a value judgment, while at the same time being insulting and unsubstantiated. Relative to the first part, back in its decision in the case Handyside v. the United Kingdom from 1976, the ECHR found that “freedom of expression constitutes one of the essential pillars of such a society and one of the basic requirements for its progress and the development of every man” and that it is, “under paragraph 2 of Article 10, applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.” The ECHR concludes that these are the “requirements of pluralism, tolerance and free thinking, without which there is no democratic society”. Relative to the second part, also in an old decision in the case Lingens v. Austria from 1986, the ECHR found that “the existence of facts may be proven, while the truthfulness of value judgments may not be proven”. Paradoxically, while according to the ECHR, the truthfulness of value judgment may not be proven, the Serbian courts’ position is that a person may be sentenced to damages for failing to “substantiate” value judgments. Furthermore, the reasons for which the court made different decisions relative to the editor/publisher and the author of the text are a bit odd. According to

the Public Information Law, the journalist, responsible editor and the legal person that is the founder of the public media, which were all in the position to check the inaccuracy or incompleteness of the information in question prior to its release, shall be solidarily responsible for financial and non-financial damage caused by the release of that information. In the concrete case, the Court has created new grounds for excluding the responsibility of the responsible editor and the publisher, which grounds aren't based on the Law. The Court namely found that such responsibility, specific for damage caused by value judgments, would exist only if presumption of innocence had been violated and if insults and "other offensive names" had been used. It is to be expected that such a verdict will not withstand the test of the Appellate Court in the appeals procedure, but the mere fact that it was possible to deliver it and explain as in the motivation, is evidence to the great deal of work Serbia faces in boosting the capacity of its judiciary for handling media-related cases, in accordance with the Law, the Convention and the Constitution and the applicable international human rights and minority rights standards and the practice of international institutions overseeing their implementation.

2.2. In early May, the parties received the verdict of the Appellate Court in Novi Sad, reversing the first-instance verdict of the Higher Court in Sombor, rejecting as unfounded the claim by Petar Kovacevic and Branka Prodanovic-Kovacevic (the parents of Miladin Kovacevic) against the Broadcasting Company B92, Veran Matic (as the Editor-in-Chief of TV B92) and journalist Nikola Radisic. The controversial story in the news bulletin of TV B92 concerned the legal proceedings against Miladin Kovacevic, for the beating of his university colleague Brian Steinhower in 2008 in Boston. After the US authorities stripped Kovacevic off his passport, the Serbian consulate issued him a copy, with which he left the USA and avoided trial before an American court of law. The case resulted in a Belgrade-based trial against the Serbian Consul and Vice-Consul in New York. The news about Kovacevic's trial in Belgrade, aired on TV B92, ended with the reporter's conclusion that his case will cost one million dollar of Serbian taxpayers' money (100 thousand for the bail in the US and 900 thousand paid by the state of Serbia for Steinhower's medical bills). Miladin's parents claimed that the information was false and damaging to them, since they paid the bill with their own money. The Higher Court in Sombor awarded them damages in the amount of 200.000 dinars, but that decision was reversed by the Appellate Court in Novi Sad. The explanation of the second-instance verdict said that there was no causal-consequential relationship between the injured honor and reputation of Petar Kovacevic and Branka Prodanovic-Kovacevic and the release of the inaccurate information; the Court also said that B92, Veran Matic and Nikola Radisic were not obligated to pay the Kovacevic family any damages in relation to the release of the above-described information, since they are not mentioned anywhere in the text, nor is their morally or legally

unacceptable conduct pointed to. What's more, nothing at all is implied in relation to the Kovacevics at all.

The verdict of the Appellate Court of Novi Sad reversed a very odd decision by the Higher Court in Sombor and to some extent alleviated the uncertainty that existed in a series of long proceedings the Kovacevics conducted against different media before that same Court and for the same reasons. In the concrete case, the source of the erroneous information (that the state had spent on Kovacevic a million dollars and not 900 thousand) was the state, namely it was probably a slip of the tongue by one of Kovacevic's lawyers. What could have been dangerous in this whole case is the precedent that the verdict of the Higher Court in Sombor could have created, where in the dispute over information about how public money is spent, those that benefited from state payments could appear as plaintiffs, even if they had borne some part of the costs. The Appellate Court of Novi Sad rightfully observed the absence of a causal-consequential relationship between the injured honor and reputation of Petar Kovacevic and Branka Prodanovic-Kovacevic and the information about whether the state had paid 100 thousand dollars more or less for something. The Appellate Court even said that the negative image about the Kovacevic family with a certain number of people was the consequence of the public's negative image of their adult son, and not that of a mistake in the amount of money the state had paid or failed to pay, as reported by the media. This verdict may also be important because it is a rare court decision in Serbia confirming that a journalist is entitled to making a mistake and that not every journalist error automatically constitutes grounds for damages.