LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for June 2013

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FONDACIJA ZA OTVORENO DRUŠTVO, SRBIJA
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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. According to reports in “Kurir”, correspondent of this daily Tomo Rakocevic was slapped in the face by a security guard of the hotel “Park” in Novi Sad, while reporting about the death of Ratko Butorovic. Buturovic, the President of the “Vojvodina” football club, who died on June 8 in the apartment in the hotel “Park”, which he owned. “Kurir” also reported that a police officer was present during the attack on Rakocevic, who was slapped for trying to defend his colleague from the daily “Blic”, verbally assaulted by the same security worker. “Kurir”’s editors and journalists have condemned the attack and called the competent authorities to protect journalists and allow them to work freely. The Independent Journalists’ Association of Serbia (NUNS) condemned the attack, reminding that, under the Criminal Code, occupations relevant for public information were considered occupations of public interest. The Journalists’ Association of Serbia (UNS) requested an investigation of the incident, stressing that the police ought not to ignore such incidents and that it should react, as it would react if a colleague of their own were under attack.

Under the Law on Public Information, it is prohibited to put physical or any other type of pressure on public media and journalists, or to exert any other kind of influence that might obstruct their work. On the other hand, the Criminal Code defines “occupations relevant for public information” (editor, journalist, camera operator, etc.) as “occupations of public interest entailing a greater risk for persons performing such occupations”. Although, after repeated attacks on journalists, we have seen many public debates about whether journalists should be declared “official persons” or not, the latter are yet to obtain that status. Meanwhile, increased protection is provided only if journalists or a person close to them is threatened in relation to the job they perform, or in the case of murder of infliction of serious bodily harm. However, the Criminal Code stops short of providing any kind of special protection in the event a journalist is attacked (or slapped in the face, as in the aforementioned case) and is prevented from doing his/her job, although the latter is defined as an occupation of public interest, entailing increased risk for the person performing it. Such a concept in the Criminal Code brings into question the implementation of the provision in the Law on Public Information, according to which it is prohibited to put physical or any other type of pressure on public media and journalists, or to exert any other influence that might obstruct their work. It seems that the failure to protect occupations of public interest entailing a greater risk for the performer, with stricter legal sanctions in a greater number of criminal offenses, has compromised the adequacy of the protection of not only journalists, but also other occupations, branded “occupations of public interest” by the Criminal Code, e.g. doctors and medical staff, employees in the public transportation system, or attorneys at law. According to “Kurir”,

the incident in Novi Sad took place in the presence of a police officer, who had seen everything, but looked away. In such a situation, we should ask ourselves how is a police officer supposed (and obligated) to react to such an incident? Firstly, the Police Code of Ethics stipulates the main goals of the Police and police officers to be maintaining public order and enforcing the law, but also protecting human rights and helping and serving the citizens in accordance with the Law and the Constitution. Under the Law on the Police, police officers are obligated, at all times, to take the necessary actions in order to protect the life and personal safety of people and property. As for human rights, the Serbian Constitution says that the physical integrity of each citizen shall be inviolable. Since, in the aforementioned case, a journalist was prevented from doing his job, we remind that the Constitution guarantees freedom of opinion and expression, as well as to receive and disseminate information and ideas by speech, written word, picture or other means. Freedom of expression may be restricted by Law, but only if necessary for the protection of the rights and reputation of others, preserving the authority and impartiality of the Court and protecting public health, morality and democratic society, as well as of national security of the Republic of Serbia. The latter was not the case in the aforementioned situation; had it been the case, such decision might have not been made by an individual, at his own discretion. This means that each police officer must take measures provided for by the Law and Professional Code of Conduct, in order to protect the rights of both those that inform the public and those that receive such information. The latter is particularly pertinent if we bear in mind that, in keeping with the Serbian Constitution, all guaranteed human and minority rights are to be enforced directly. Meanwhile, the provisions on human and minority rights shall be interpreted for the benefit of improving the values of democratic society, in accordance with the relevant international standards, as well as with the practice of international institutions overseeing the enforcement of these standards. Moreover, under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

1.2. The Finance Minister Mladjan Dinkic reacted to the reports in the daily “Informer” that the Special Prosecutor’s Office had suspended the investigation against him, on suspicion that he was involved in embezzling billions of dollars, siphoned out in secret to Cyprus following the democratic changes after October 5, 2000. “Informer” also wrote that Dinkic was under investigation for allegedly being involved in embezzlement over the establishing of the National Postal Savings Bank, also worth millions. In his response, Dinkic refuted the allegations and said it was a “notorious lie” that he had been involved in some kind of “robbery of the century”. Dinkic called on the Director of the Police Milorad Veljovic and Prosecutor Miljko Radisavljevic to “initiate all the necessary actions and promptly investigate all the claims in the text”. He requested that the entire case dealt with by “Informer” be opened for the public and that the Prosecutor’s Office inform the citizens about all the facts. Dinkic also called the President to call an urgent session of the National Security Council, stressing, “some elements in the police have conspired with tabloid journalists in order to orchestrate a lynching campaign”, thereby “threatening the security of each and every citizen”. The Finance Minister called on “Informer”

to tell the readers which of their journalists were financed by a rogue element of the police; Dinkic called on the sources to "stand up by name before everyone they are vilifying". He announced he was going to press criminal charges against the Editor-in-Chief of "Informer" and persons unknown in the Police.

Under the Law on Public Information, public information shall be free and in the interest of the public, free from censorship; it is prohibited to restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information and opinions. Furthermore, it is forbidden to put pressure on media and their staff, or to exert influence with the aim of obstructing their work. Possible pressure by state officials, in this case the Finance Minister, on the Prosecutor's Office, as well as alleged involvement in embezzlement during the establishment and privatization of the National Postal Savings Bank, definitely constitutes information about events and persons of interest for the public. Therefore, in such cases, it is necessary to protect the right to freely release ideas, information and opinions about matters of public interest. Under the Law on Public Information, every person subject to inaccurate, incomplete or other claims (as part of released information, the release of which is forbidden under that Law), which has been damaged by the release of such claim, shall be entitled to damages, irrespective of other legal remedies they have at their disposal. Hence, Mladjan Dinkic has legal grounds to press charges against the journalist, editor and founder of the media in question. However, in such and similar situations, the motivation for the lawsuit are relevant, namely will the lawsuit restrict freedom of information enjoyed by those performing jobs in the field of public information, as well as that of the citizens, who have not only the interest, but also the right to freedom of expression guaranteed by the European Convention, ratified by the Constitution? The said right entails the right to receive information, namely viewpoints and opinions of other persons. In this case, the claims by the Finance Minister about a "conspiracy involving part of the police and tabloid media", where "journalists are financed by rogue elements in the police" are noteworthy, since it remains unknown how the above has happened at all and why the proper measures have not been taken against these elements in the police. Unfortunately, this case merely reflects the communication culture between the politicians and the media in Serbia, which is characterized by sensationalist accusations typically backed up by anonymous sources and, on the other hand, threats of criminal charges and allegations of corruption, or unethical work of the police, accused of serving other interests than those of the citizens.

1.3. "Naše novine" claim that, after they had reported about Mladjan Dinkic not paying his taxes regularly, they received a warning from the tax administration to pay their tax dues within five days, or else they would be subject to forcible collection. Although the tax administration claims that these developments are unrelated, "Nase novine" and NUNS (while pointing out that everyone should pay their taxes) have branded the aforementioned warning yet another attempt of putting political pressure on the media. "Nase novine" reported that Dinkic was late with his property tax payments and that he was charged default interest in the amount of 2.119 dinars accordingly. Dinkic confirmed that, saying that he had accidentally failed to pay an instalment for the year 2011. However, he insisted he had never received a warning and that he had paid the due amount after discovering the omission himself.

If the Ministry is proven to have arranged with the tax administration to send a tax warning to a media over a text criticizing the minister heading that particular ministry, that would undoubtedly constitute pressure on the media, even if that media has failed to properly pay its taxes. It would actually amount to "silent" pressure, which is, by nature, much more dangerous than overt pressure, sending the message to the media to mind how and about what they will write. We remind that, under the Law on Public Information, public information shall be free and in the interest of the public, free from censorship; it is prohibited to restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information and opinions. Furthermore, in accordance with the same Law, holders of state and political office shall have their privacy protection rights restricted, if the information is relevant for the public interest, since the person the information pertains to holds a certain office. The issue of payment or non-payment of taxes by a state official is relevant for the public and the fact that the Finance Minister failed to pay his taxes is subject to criticism, regardless of the due tax amount.

2. Legal proceedings

2.1. Aleksandar Radojevic, MP of the Serbian Progressive Party (SNS), has withdrawn two lawsuits filed before the Higher Court in Cacak. The first was filed against journalist Nebojsa Jovanovic, over the text published in the (now defunct) daily "Press" and the second against the same journalist, as well as against the publisher of "Cacanske novine", over a text published in that local newspaper. In each lawsuit, Radojevic claimed 200.000 dinars in damages, offended by the texts published last October, which had conveyed his statement about the privatization of the Cacak factory for the production of potato chips, mashed potato and other potato products. On that occasion, Radojevic commented on the ethnic background and the origin of capital with which one of the three members of the consortium that acquired the factory had became the co-owner. Several media conveyed Radojevic's words, but he had sued only "Cacanske novine" and Jovanovic. Stojan Markovic, the Editor-in-Chief of the newspaper, said that the fact that Radojevic had sued only his newspaper and the journalist Jovanovic (although almost all media had reported about the event) pointed to a selective approach by the plaintiff and the intent on putting political pressure on "Cacanske novine". According to Markovic, Radojevic, a holder of public office, should have had a higher degree of tolerance for public criticism of his words and actions. However, since he opted to go to court, Markovic stressed, Radojevic should not be making a distinction between "suitable" and "unsuitable media". Radojevic's lawsuits caused many reactions of media associations, media and even foreign embassies. Finally, the President of Radojevic's SNS, the First Deputy-Prime Minister Aleksandar Vucic, said that the decision to file the lawsuits was wrong and that Radojevic would need to withdraw them, or be expelled from the party.

The "Indicators for Media in a Democracy" of the Council of Europe's Parliamentary Assembly (Resolution 1636 (2008)) says that a high number of court cases, involving the right to freedom of

expression, is an indication of problems in the implementation of national media legislation and should require revised legislation or practice. The means to change practice, not only that of the courts, but also the practice of prosecutors in such disputes, are well illustrated by the case of the MP Aleksandar Radojevic. His decision to withdraw the charges pressed against "Cacanske novine" and journalist Nebojsa Jovanovic is a good sign, regardless of the motivation. Particularly important is the fact that the public recognized that political pressure on a newspaper and its reporter has been the motivation behind Radojevic's lawsuits, as well as that the media and media associations have jointly condemned his decision to go to court. Secondly, the political pressure behind the lawsuits was condemned at the political level, by the very political party the plaintiff belongs to. Thirdly, the withdrawal of the lawsuits constitutes a public admission of the erroneous decision of the plaintiff, irrespective of whether Radojevic truly recognized the wrongness of his decision or if his decision to withdraw the lawsuits came as a result of adhering to political party discipline.

2.2. The Constitutional Court has decided that the Government must explain why are the working documents, which, after the assassination of the Serbian Prime Minister Djindjic in 2003, served as a basis for the report of the so-called Korac's Commission, still classified. Such decision means that the Administrative Court will have to repeat the proceedings in which it had previously rejected the request filed by the journalists of "Insider" in 2008, claiming the right to free access to information of public importance. The lawsuit concerned the request filed by the journalist of "Insider" to the Government of Serbia, in the scope of their investigation of the circumstances that had lead to Djindjic's assassination. The request was to be allowed access to the records collected during the mandate of the Government's commission, presided by the then Deputy-Prime Minister Zarko Korac. The goal of the Commission was to investigate possible omissions in the work of the late PM's security. Although the report of the Korac's Commission, which said there were many such omissions, was released for the public, the documentation based on which the report was compiled (including the minutes from the Commission's sessions and the interviews of the persons the Commission had interviewed) remains classified to this day. The said Commission was the only one to address the possible responsibility of the State Security Agency (BIA) and the Ministry of Interior (MUP). The Commission concluded that both institutions needed to be investigated, but the latter had never happened. The records compiled and acquired in the course of the Commission's work have never been released and have never been used (to the best of our knowledge) in the trial for the murder of the late prime minister. After the finality of the trial, the journalist of "Insider" requested that all records of the Korac's Commission be declassified in the interest of the public. However, all they received from the then Government was the report (which was publicly available in the first place). Access to the requested documentation was denied, with the Government invoking the label "classified" on it. The journalists went on pressing charges before the Administrative Court, which were rejected, after which they filed a constitutional complaint. In the ensuing proceedings, the Constitutional Court ruled that the journalists' right to a fair trial was denied and that the proceedings before the Administrative Court had to be repeated.

The decision of the Constitutional Court is an example of good practice and is expected to have a positive effect on freedom of expression in Serbia. It is an example and a guideline for all courts in Serbia as to how to proceed in similar situation. Its significance was recognized by the Constitutional Court itself, which requested that it be published in the Official Gazette, for its relevance for human rights and civil freedoms in Serbia, which is really a precedent. Particularly significant is the part of the verdict's explanation that practically cemented the position of case law, that the fact that a document is classified is not sufficient to deny access to the public; it is namely necessary to establish if, in the concrete case, the classification of the document in question as confidential is founded on a legitimate interest and whether such interest overrides the right of the public to know – all of which the Administrative Court failed to address in the proceedings preceding the constitutional complaint.

2.3. The Commercial Court in Belgrade has passed a first-instance decision in dispute involving B92 as a plaintiff, against the publisher of the daily "Informer". We remind that, in early May 2012, when the daily newspaper, in the meantime named "Informer", was launched, its publisher tried to go with the names "Insajder", "Insajd" and finally "Zabranjeni insajder" ("The banned insider"). The court ruled that such attempts had violated the trademarks of B92 and prohibited the publisher from using them, sentencing him to damages. The trademark "Insajder" has been used by B92 to label its investigative TV series "Insajder" (Insider), on the air since 2004. The author of the series Brankica Stankovic has received many awards, including the Dusan Bogavac Award, extended by NUNS for ethics and courage. She is also the two-times winner of the Jug Grizelj Award, for the highest achievements in investigative journalism in the service of developing friendship among people and removing borders between nations. She was also the laureate of the Erhard Busek Award, issued by the Vienna-based South East European Media Organization (SEEMO), for her contribution to better understanding in the region, as well as the journalism award of the City of Belgrade. The complete team of "Insajder" has received the investigative journalism award (extended by NUNS and the US Embassy to Belgrade) for their program about the embezzlement in the Kolubara coal mine "The Fraud of the Century". The series had extremely high ratings and in the traditional poll of the magazine "Status", involving many journalists and editors, Brankica Stankovic was voted "Journalist of the Year" in Serbia in 2005 and 2009. "Insajder" was branded "Best Program" in 2006 and 2008. In its verdict, the Commercial Court in Belgrade found that "Insajder" was undoubtedly known as a trademark of high reputation (well-known mark) and that the use thereof by the publisher of "Informer" would constitute drawing unfair benefit from such reputation and/or harming such reputation. The publisher of "Informer" is entitled to lodge an appeal against the decision with the Commercial Appellate Court in Belgrade.

The B92 had first filed a proposal for a temporary injunction against "Insajder tim" d.o.o. for the publishing of a newspaper under the titles "Nezavisne novine Insajder", "Nezavisne dnevne novine Insajder", "Insajder" or other name including the mark "Insajder". The proposal was accepted and B92 later filed a lawsuit. After several days, during which, due to the court's decision to impose temporary injunction, their newspaper would not be sold on the majority kiosks under the names "Insajder" and "Insajd", the publishing "Insajder tim" d.o.o. decided to change the newspaper's name to "Informer".

Although some believed the whole procedure with the injunction had actually helped “Informer” to gain publicity and that its editor had managed to acquire similar publicity in the past (after leaving the daily “Kurir”, he tried to launch the daily newspaper “Novi Kurir”, which later became “Press”), it seems that the biggest accomplishment of that whole matter is probably the first case in the practice of the Serbian courts where the name of a television program (an investigative one for that matter) has been recognized as a well-known trademark in terms of Article 6bis of the Paris Convention on the Protection of Industrial Property. Such marks enjoy special protection, which is not limited to identical or similar kinds of goods or services, but is very close to absolute protection. In this way, the investigative TV series “Insajder”, in addition to breakthroughs it has enabled on the media scene, has accomplished a great deal when it comes to the protection of intellectual property in Serbia, particularly in the field of protection of trademarks in the media sphere.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. Law on Public Information

1.1. The implementation of the Law on Public Information has been elaborated on in the section on freedom of expression.

2. Broadcasting Law

2.1. In our previous Monitoring Report, we have elaborated on the RBA’s failure (in accordance with Article 53, Paragraph 1, Subparagraph 2 of the Broadcasting Law) to publicly release (within seven days from the expiration of the deadline for submitting applications on the open competition for the issuance of broadcasting licenses) the list of all applicants that have submitted a complete and timely applications. In the case of the latter of the two competitions in 2012, called while the previous competition was still underway, the RBA was late in publishing the list of applications almost six months. The list was finally released on June 24, when the new deadline started (90 days for the issuance of the license, including licenses for radio stations – transmitters). That deadline expires on September 21. In our opinion, the delay points to a serious lack of capacity of the RBA to conduct several open competitions simultaneously. By calling an open competition for the issuance of broadcasting licenses for frequencies left vacant after TV Avala was stripped off its license, the situation was again created where two competitions ran in parallel. The solution for such a situation could be found either in simplifying competition procedures or by seriously strengthening the capacities of the Agency to cope with increased workload. As for the aforementioned list of applicants that submitted complete and timely applications on the other competition from 2012, it merely shows the extent of the crisis. For television, for probably the most attractive regional coverage, in Belgrade, as well as for the

most attractive local coverage, in Novi Sad, only one candidate applied. Only one application was submitted also for coverage of the region that included Kraljevo, Cacak, Pozega, Gornji Milanovac and several other towns. Several candidates applied only for regional TV coverage of Novi Pazar, Raska and Tutin, but not more than two. Judging from the list that was released, serious competition will exist only for the issuance of the license for the local radio in Krusevac, where there are as much as four candidates, as well as for the local television in Lazarevac, with three contenders.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. Law on Special Powers for the Efficient Protection of Intellectual Property Rights

In June 2013, the Ministry of Education, Science and Technological Development opened the public debate on the Draft Law on Special Powers for the Efficient Protection of Intellectual Property Rights. Although the basis of the Draft is the legitimate interest to consolidate the regulations in the field of intellectual property protection, some of its concepts are questionable, since they introduce disproportional restrictions of the right to freedom of expression, in addition to being utterly restrictive for electronic media. Most importantly, the Draft disregards the powers the regulatory bodies have under their governing laws. The RBA is obligated to tend to the electronic media's compliance with copyright and related rights. However, the way in which this is regulated in the aforementioned Draft Law on Special Powers for the Efficient Protection of Intellectual Property Rights far exceeds the jurisdiction and competences of the RBA under the Broadcasting Law. Firstly, the introduction of the RBA's jurisdiction over electronic communications network operators is questionable, since these operators have their own regulator, the Republic Electronic Communication Agency (RATEL). The Draft disregards RATEL's competences, under the Law on Electronic Communications, to decide about the rights and obligations of operators engaged in electronic communication activities. Under the Law on Electronic Communications, operators are defined as persons authorized to provide electronic communications services, pertaining to the transfer of signal in electronic communications networks, including media content distribution services. However, for the purpose of electronic communications regulations, the latter service does not include editorial control of media content that is distributed. Namely, the operators practically do not provide a media service, but a technical one – transfer of signal. The Draft Law construes a completely new concept – the concept of an operator for the provision of media services; the definition of that new concept is so broad and imprecise that it might include almost all operators of electronic communications networks and services, which is in complete contradiction with the Law on Electronic Communications. It should be said that Europe and the world have gradually started to define the principle that intermediaries in the transfer of works containing copyright or related right may not be responsible for the content they transfer, since the opposite would amount to creating mechanisms of self-censorship or private censorship, which would significantly violate the right to freedom of expression, all under the guise of protecting intellectual

property rights. Such a position is confirmed by the example of the recommendations of the OSCE representatives for freedom of media, concerning Internet services providers, but they may also apply to other operators. The OSCE Media Freedom Representative has expressly said that calling to account the intermediary of the content, conveyed or created by the users, greatly undermines the enjoyment of the right to free thought and expression. The latter, in turn, leads to the creation of self-protective and widespread mechanisms of private censorship, which are opaque and result in arbitrary decisions, ignoring the minimum procedural guarantees.

In addition, the provisions of the Draft Law concerning the powers and the procedure regarding the protection of the right to intellectual property, have been set broadly and vaguely relative to all media. If the Law is adopted in the current text of the Draft, danger looms from arbitrary implementation. Starting from the assumption that the protection of intellectual property rights is priceless, the Draft law disregards the necessity to also weigh, in each particular case, other conflicting interests, which also involve certain rights guaranteed by the Constitution and ratified international conventions, including the right to freedom of expression or right to have one's private and family life respected. Accordingly, the competent authority, in the concrete case the RBA, is entitled to pass a temporary injunction on broadcasting, rebroadcasting, interactively making available programming content containing a copyrighted work or object of related right, if there is "reasonable doubt" that it violates copyrights or related rights. However, the meaning of "reasonable doubt" has not been precisely defined and is completely subject to interpretation by the competent authority. In other words, it opens the door wide to potential abuse of powers. The Draft completely disregards the fact that the transfer of information is a specific service and that only one day of non-broadcasting may lead the ratings to plummet, which, in turn results in less future advertising revenues, in addition to losses that are the direct consequence of non-broadcasting. The Draft stops short of providing for specific provisions that would regulate proceedings related to damages incurred due to an injunction that was later proved as unfounded. A procedure established on such grounds may easily degenerate into an effective means of political censorship.

The Association of Independent Electronic Media (ANEM) has urged the Intellectual Property Institute and other stakeholders to have the provisions of the Draft concerning the media and the powers of the independent regulator reconsidered, in order to adequately satisfy both equally important interests – the interest of protecting the right to intellectual property and that of protecting the right to freedom of expression.

2. Law on Public Information and Media, Law on Electronic Media

On June 5, the Deputy Culture Minister Dragan Kolarevic said that the Draft Law on Public Information and Media would be forwarded to the Government for further procedure, after the completion of the deliberations of the competent ministries expected in 20-some days. Kolarevic stressed that informal

consultations with other ministries had practically been underway all the time. In his words, it is still questionable whether the Law on Public Information and Media could put the articles of some other laws out of force, such as the Law on Tanjug, the Law on Local Self-Government or the Law on the Capital City, or its articles would merely initiate amendments to the aforementioned laws. Media and journalists' associations have protested over the fact that, although the public debate about the Law ended back in mid-March, it is still unknown which of the many objections voiced during the debate will be incorporated in the version of the text that would be sent to the Government. Off the record, the opinions in the working group were split over the interventions made in the text after the public debate, without all its members being consulted. The Deputy Minister Kolarevic only confirmed his expectations that the text, to be tabled to the Government, would be changed compared to the one that went through the public debate. We remind that, in the course of the public debate, the contested questions that were subject to different opinions concerned the manner in which the transparency of media ownership was going to be ensured, as well as the mechanisms the state would use to fight against the concentration of media ownership, which could lead to the excessive influence of a publisher or a group of publishers on public opinion, namely the thresholds of concentration, the exceeding of which would be deemed intolerable. Another group of objections came from municipal and city public media, which had continued to oppose the concept from the Draft Law providing for their privatization. On the other hand, the commercial sector was concerned that further delay in adopting the new Law could postpone both the transition to a new model of project-based financing of the media for yet another budget year and, for a certain period of time, the withdrawal of the state from ownership of the media. Relative to the first of two objections, the Draft Law prepared by the working group (that was tabled by the Ministry of Culture for public debate), has provided that the state will, by September 15, call competitions for project-based financing of the media for next year and the suspension of budget financing as of January 1, 2014. Three lost months after the completion of the public debate and the usual summer recess in the Parliament have threatened to make these deadlines even more unrealistic. In the meantime, local governments have continued financing "politically suitable" media. A case in point was the one in Nis, where the funds were allocated in public procurement proceedings opaquely and for shady purposes, looking more like PR by the local government than at attempt to satisfy the citizens' need for objective information. This case was heavily criticized by the most relevant media and journalists' associations.

Although announced to have taken place soon after the debate on the Law on Public Information and Media, the debate on the Draft Law on Electronic Media is still pending. A detail has leaked, however, according to which the TV subscription fee for public service broadcasters (PSBs) was going to be scrapped. Certain members of the working group resisted vehemently such a possibility. The possibility for the subscription to be revoked coincided with the call for help of Radio-Television Vojvodina, which stated, in a press release, that the collection rate of the fee was at a historical minimum. A particular concern is the fact that the collection rate in Vojvodina, prior the hints that the fee will be revoked, was the highest in Serbia. This has demonstrated the harm done by these irresponsible speculations by certain politicians from the very top brass of the state, putting in danger the survival of financially

decimated PSBs. This is even more concerning, in view of the fact that a new financing concept is not even on the horizon. It is even unclear if a single Law on Electronic Media will be passed, or a separate Law will govern the organization and operation of PSBs. According to media reports, the European Commission has warned Serbia repeatedly of the delays in implementing the Media Strategy, and especially of the exceeded deadlines provided for by the Action Plan accompanying the Strategy. The Head of the EC Delegation to Serbia reminded that the EU had supported the Media Strategy by allocating 1.2 million Euros for its implementation, which ought not to be further postponed.

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)

We have elaborated on the activities of the RBA in the section of this Report concerning the implementation of the Broadcasting Law.

2. Republic Agency for Electronic Communications (RATEL)

In June 2013, RATEL continued its activities aimed at suppressing unauthorized TV and radio program broadcasting. RATEL said that in the last two years, in cooperation with the Department for Combating High-Tech Crime of Serbia's Interior Ministry, six illegal radio stations were closed down. Furthermore, RATEL continued to publicly release the lists of the remaining pirate TV and radio stations that illegally broadcast their programming. However, a particular concern is the fact that the number of illegal broadcasters has not changed in the last couple of years, in spite of the efforts of regulatory agencies and the competent state authorities. An example is one of the most notorious pirate stations, Radio Raka Esinger from Lazarevac, which was closed down twice – on March 14 and on May 14. The fact that the authorities had to close down the same station twice in a two-month period is evidence of the lack of deterrent effect of that measure for the pirates: Radio Raka Esinger merely changed its premises and continued to operate illegally. Radio Balkan is also a case in point, due to the fact it has been broadcasting for years at the national level, from multiple locations. Pirates do not even refrain from illegally taking over frequencies, despite not having any program at all. Hence, Radio Balkan is merely rebroadcasting the program of Radio Fokus from as much of 13 locations throughout Serbia. RATEL's lists of pirates also include an increasing number of TV stations. On the list released on June 4, there were four of them, including a number of stations that had continued broadcasting after their licenses were removed, thus becoming pirates.

A related question is what to do in order to combat piracy more effectively. First of all, it seems that the capacity or regulatory bodies must be strengthened by entrusting them with inspection powers. The aim is to regroup all the anti-piracy activities in one hub, so as to bring about greater effectiveness. We remind that, according to the current regulatory framework, two regulatory agencies and one inspectorate hold powers in relation to pirate RTV program broadcasting. Essentially, the procedure is that the RBA first establishes which broadcasters are operating without a license; RATEL goes on with establishing the locations and the frequencies used for broadcasting, after which the Inspectorate of Electronic Communications (part of the competent Ministry of Foreign and Domestic Trade and Telecommunications) acts, as the only body empowered to take the proper measures. In an ideal scenario, this system could work. However, the aforementioned Inspectorate lacks the funds and the manpower to work. Therefore, inspection powers could be transferred to regulatory bodies, the precondition being to amend the Law on Electronic Communications and the Law on State Administration. Such a concept would also be compliant with the European Electronic Communications Regulatory Framework from 2009, whose effectiveness is evidenced by the success achieved in some regional countries, such as Slovenia and Croatia. Moreover, criminal liability should be provided in the law for unauthorized TV and radio broadcasting by natural persons and misdemeanor responsibility for legal entities. Amendments to the Advertising Law should also provide for penalties against advertisers using the airwaves of illegal broadcasters. Finally, the judiciary should be streamlined, in order to avoid pirates benefiting from the statute of limitations due to foot-dragging by the courts. The enforcement of all these measures combined could yield success. The alternative is to wait for the digital switchover, which could technically stifle analog pirates, in a situation where the legal system has failed to produce the same result. However, since the digital switchover in radio is not even being considered, it is obvious that the second, "alternative" solution, would hardly resolve anything in the foreseeable future.

STATE AUTHORITIES

3. Commissioner for Information of Public Importance and Personal Data Protection

3.1. The Commissioner for Information of Public Importance and Personal Data Protection issued a press release saying that the European Court of Human Rights (ECHR) had passed a verdict on June 25, determining that the Republic of Serbia had breached Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECPHRFF) in the context of access to information of public importance. The verdict was passed in relation to the petition submitted by the Youth Initiative for Human Rights (YIHR). In October 2005, the YIHR requested from the Security Intelligence Agency (BIA), to provide information in accordance with the Law on Free Access to Information of Public Importance about the number of persons the communications of which had been intercepted during the course of that year. BIA had denied the request, invoking Article 9, paragraph 5 of the Law, stipulating that access to information could be denied. In December 2005, the Commissioner passed a decision ordering the Agency to fulfill the request. BIA ignored that order, while the

Government failed to pass a measure forcing the Agency to bow down to the Commissioner's order. In September 2008, BIA informed the YIHR that the requested information was not in its possession. The case before the ECHR was initiated in 2006. The Court unanimously determined that it was a case of violation of Article 10 of the ECHRFF, finding that the freedom of receiving information also involved the right to access to information. The Court's opinion was that the YIHR had been engaged in legitimate gathering of information of public interest, with the aim of communicating it to the public and thereby contributing to the public debate. The Court ruled that freedom of expression was interfered with. Although freedom of expression could indeed be restricted, the Court found that such restrictions ought to be in accordance with national legislation. Denying the right to free access to information of public importance by BIA was not, however, in line with the national legislation of Serbia. Regarding BIA's claim from 2008 that the requested information was not in the Agency's possession, the Court branded it "unconvincing, bearing in mind the nature of the information requested", but also BIA's initial response, where the Agency had first invoked grounds for restricting access to information of public importance. The Court concluded that the "stubborn refusal by BIA to proceed in accordance with the order issued by the Commissioner for Information of Public Importance and Personal Data Protection" was arbitrary and in contravention of the Serbian Law and hence in contravention of Article 10 of the ECPHRFF.

The significance of the above verdict is substantial, since it demonstrates that the ECHR creates case law according to which access to information of public importance is a constitutive part of the right to freedom of expression. This is the third verdict in a relatively short time span (after the verdicts in the cases Hungarian Civil Liberties Union v. Hungary and Kennedy against Hungary), where the ECHR has found that the public has the justified interest to learn about information held by a state authority; furthermore, the obstacles set in order to obstruct receiving such information may discourage those working in the media or generic fields in performing their vital function of "public watchdogs" and hence affect their capacity to provide accurate and reliable information and so, these obstacles should be removed. Meanwhile, an encouraging fact is that the verdict has justified the practice of the Commissioner, who found, back in 2005, that information about the numbers of eavesdropped persons at the annual level should not be confidential. Perhaps the most striking and forward-looking was the opinion of two judges of the ECHR, András Sajó from Hungary and Nebojsa Vucinic from Montenegro, who have noted that, in the Internet era, the difference between journalists and other members of the public, has faded and that there can be "no democracy without transparency, which should serve the benefit of all citizens".

3.2. Acting in the proceedings for determining the constitutionality of the provisions of the Law on Electronic Communications, initiated in 2010 right after the adoption of that Law by the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection, the Constitutional Court declared unconstitutional the provisions concerning access to so-called information withheld without a court decision, as well as to those pertaining to the powers of the competent ministry to enact a bylaw aiming at regulating more closely the requests for such

information. On the same grounds – the guarantee of the confidentiality of letters and inviolability of other means of communication referred to in Article 41 of the Constitution of the Republic of Serbia – the Constitutional Court also challenged the relevant provisions of the Law on the Military Security Agency and the Military Intelligence Agency, the Law on Security Intelligence Agency and the Code of Criminal Proceedings. Withheld information is information about communications that does not concern the content of communications, but is relevant to the type thereof, its source, destination, start, duration and end, communication devices and the location thereof. The disputed provisions of the Law on Electronic Communications have violated the guarantees provided for in Article 41 of the Constitution of the Republic of Serbia, saying that divergence from the inviolability of the confidentiality of letters and other means of communication shall be possible only for a certain period of time and on the basis of a court order, if necessary for conducting criminal proceedings or protecting the security of the Republic of Serbia, in accordance with the Law. In June 2012, the Constitutional Court declared unconstitutional the provisions of the Law on the Military Security Agency and the Military Intelligence Agency, under which access to withheld information was possible in certain cases, with the order of the Director of the Agency or a person authorized by him. It should be noted that the Constitutional Court is yet to declare itself about the constitutionality of the aforementioned two laws, but it is fair to expect it to declare certain provisions unconstitutional. Namely, under the Criminal Proceedings Code, access to telephone call records (listings), access to data about the base stations use or locating the site where communication takes place from, shall be made on the basis of a public prosecutor order and not that of the court. Meanwhile, the Law on the Security Intelligence Agency provides for the possibility to access withheld information on the basis of a decision of the Director of that Agency, with prior consent of the President of the Supreme Court of Cassation, without a detailed procedure provided for such a situation.

The decision of the Constitutional Court to declare unconstitutional the provisions of the Law on Electronic Communications (which allowed access to so-called withheld information without a court decision and authorized the competent ministry to regulate more closely, by a bylaw, the requests for such access) is particularly important because, as indicated in the comment posted on the website of the Commissioner for Information of Public Importance and Personal Data Protection, it raises up questions concerning the relationship between the Constitution and international regulations, more specifically the Universal Declaration on Human Rights, the International Treaty on Civil and Political Rights and the ECPHRFF. The Constitutional Court has concluded that, as far as the protection of the confidentiality of letters and means of communication is concerned, the Serbian Constitution "ensures higher inviolability standards than those provided for by international acts". Hence, "if in certain cases the state has already provided for guarantees higher than international standards, it has the obligation to enforce these standards", the Commissioner said in his comment.

Although these decisions pertain primarily to the protection of the right to privacy, namely the confidentiality of communications as a component of the said right, they also have implications on the

right to freedom of expression, since the contested provisions have threatened not only the privacy of citizens, but also the confidentiality of journalist sources.

4. The Ministry of Culture and Media

In June, the Ministry of Culture and Media allocated the funds for the co-financing of projects/programs from the field of public information for 2013. This year, a total of 28.146.774 dinars were allocated for 118 media projects, which is almost 20% less than last year's 34 million dinars for 83 projects. The Ministry received 248 applications, of which 130 were denied. The Minister of Culture and Media has passed decisions on the allocation of funds under the Law on State Administration and the Law on Public Information, on the basis of the motivated proposal of the Commission he has established himself, as well as on the basis of direct insight in the projects. From the formulation stating that the Minister has, in addition to the proposal by the Commission, made the decision on the basis of "his own insight in the projects", it stems that the Commission's proposal was not entirely respected. The reasons behind the Minister's "own insight in the projects" remain unclear. Whatever the case may be, the competitions the Ministry of Culture and Media calls on regular basis are probably the least disputed way in which the state (according to the currently applicable regulations) finances the media. Direct budget financing, circumventing open competitions and competition commissions, under different rules for different levels of government, is actually always arbitrary, insufficiently transparent and far more problematic. It has been under sharp criticism for years back, especially in view of the effects on the market and the violations of regulations on the control of state aid. The drafts of new media laws that are expected to be adopted regulate this practice in a completely new way. If the media reforms are not stopped, it is to be expected that the first competition to be called by the Ministry for the co-financing of media projects, will be implemented under brand new rules, which will be laid down by the new Law on Public Information and Media.

V THE DIGITALIZATION PROCESS

On June 26, the RBA hosted a regional conference under the auspices of the project Digi TV, gathering independent regulators from Southeast Europe. The topic was the digitalization process in the region. The representatives of the Ministry of Foreign and Internal Trade and Telecommunications said at the conference that the digital switchover process was placed "on healthy grounds" and that it could be completed by June 17, 2015. According to them, the Digital Broadcasting Network Plan has been completed and construction and other projects that were missing are being finalized, as well as the final cost estimations as to the funds needed to complete the broadcasting digitalization process. According to initial estimates, the funds will be 50% less than the estimates made at the beginning of the Government's term of office. The Ministry said the main obstacle was the lack of free frequencies; it said that freeing frequencies would be a huge boost for speeding up the digital switchover. The Minister of

Foreign and Internal Trade and Telecommunications Rasim Ljajic told the media that the competition called for a new television station on the frequencies formerly used by TV Avala had caused considerable damage, since the vacant frequencies should have been used, in his opinion, for speeding up digitalization. The Minister confirmed that the competitions were called in compliance with the proper procedure, but noted he was not happy they were called in the first place. Ljajic mentioned the example of Macedonia, which had completed the digital switchover and gained 30 million Euros from the sale of the digital dividend. In Ljajic's words, Serbia could generate greater profit than Macedonia. The conference also addressed the issue of costs to be incurred by the media in the switchover. The representatives of the Public Company "Broadcasting Equipment and Communications" (ETV) are still reluctant to estimate the fees to be charged to the media for the service of transferring the signal to the regional head-ends, as well as for multiplexing and broadcasting. Without data about the costs, it is unrealistic to expect the broadcasters to make a cost estimate for entering the multiplex and to compare the latter with the cost of migration to other platforms. On the other hand, the conference also mentioned the need to inform the public about the digital switchover process, as well as about the role of PSBs and other broadcasters in promoting digitalization and what should be done in order to establish the "user's basis" for the digital switchover process. The need for speeding up the digital switchover process is unquestioned, especially in the context of accelerated digital switchover in the countries of the region: Macedonia has recently completed its switchover; Bulgaria will follow suit this year, Bosnia and Herzegovina in 2014, while Romania, Albania and Montenegro will finish it by 2015. Let us recall that international treaties on the protection of analog frequencies expire on June 17, 2015. After that date, all surrounding countries that have switched over to digital will be able to air digital signals without paying attention to possible harmful interference for analog broadcasting. The latter may result in analog signal being completely eclipsed and the Serbian citizens might well end up without the possibility to capture it, if the country fails to finish the switchover, due to digital interference from neighboring countries. Moreover, having in mind that the process of the sale of digital dividend has been well underway in countries where the switchover has already been completed and that the space between channels 61 and 69 in these countries will be reserved for mobile broadband access, the analog television in Serbia could start creating harmful interference to the mobile broadband in the region, which, in turn, could incite mobile broadband operators from other countries to sue Serbia over the damage caused by analog interference. RATEL's representatives have warned of that possibility at the conference.

VI THE PRIVATIZATION PROCESS

On one hand, any further postponement of the adoption of new media laws will jeopardize the privatization deadlines provided for in these draft laws, in accordance with the Media Strategy. On the other hand, it will increase the concern that the list of exceptions from mandatory privatizations will be expanded, notwithstanding PSBs. One of the dilemmas in that regard has been removed after the interview of the Minister of Culture and Media Bratislav Ivkovic to the daily "Novosti". Petkovic has

confirmed that the set of new media laws will make media ownership more transparent and that "Tanjug will be privatized". The latter was one of the key questions in the period prior to the adoption of the Media Strategy, as well as during the implementation thereof, since the state has been undermining competition for years and stifling commercial news agencies by funding Tanjug from the budget.

VII CONCLUSION

In late June, Serbia received the "go-ahead" for the start of the EU accession talks. Next on the agenda is the analysis of the compliance of national regulations with those in Europe, as well as the opening of the first negotiation chapters. We already know that one of these chapters will be Chapter 24, concerning, among other things, human rights and freedoms, including the right to freedom of expression, which is fundamental for the media. Later the 10th Chapter will come, dedicated to information society and the media. Even if we know, from the experience of neighboring Croatia, that the chapters on the right of competition and state aid control were more relevant for the media than Chapters 10 and 24, the significance of the imminent deliberations should not be underestimated. Nevertheless, we will be entering the negotiations with mixed feelings. While on one hand, there is tangible progress, such as the extremely important decision of the Constitutional Court we have commented on in this Report, there is also considerable delay in the implementation of the Media Strategy. The Serbian Ministry of Culture and Media has not been able to forward the Draft of the new Law on Public Information and Media (which underwent public debate) to the Government for approval and to Parliament for further proceedings for months. It is legitimate to ask what our politicians' base their optimism on, on the eve of the negotiations with the EU, when it is an understatement to say that we have limited reform and regulatory capacities. One of the harmful consequences of these limited capacities is the ever-grimmer Serbian media scene.