

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. The daily "Nase novine" announced that Negovan Saranovic, the Secretary of the Podujevo municipality, had threatened Nedjeljko Zejak, the correspondent of this daily from Pristina. According to the press release, Saranovic told Zejak "the journalist of a miserable newspaper and those behind the text 'The Government's Commissioner for Kosovo is a Wanted Person' are welcome neither in Kosovo, nor in Serbia". The text published by "Nase novine" said, among other things, that the District Court in Pozarevac had sentenced Saranovic on October 21, 2008 to ten months in prison for abuse of office. Negovan Saranovic denied the claims in the text and his response was published by "Nase novine". The text also said that, despite the said prison sentence, Saranovic continued to occupy the position of Head of the Municipal administration in Pristina and was appointed Secretary of the Temporary Council of Podujevo. The criterion for appointment to these two positions is that the candidate is not under investigation or subject to criminal proceedings.

Under the Law on Public Information, the media shall freely release ideas, information and opinions about phenomena, events and persons relevant for the public interest, regardless of how the information was gathered. The Law explicitly says it is forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on media and their staff, or influence that might obstruct their work. In the concrete case, the journalist was reporting about a topic that was undoubtedly relevant for the public interest, using the data from a document of a competent public authority – a court verdict. For that reason, "Nase novine" were entitled to release information about the fact that the Secretary of the Podujevo municipality, despite the final verdict sentencing him to prison term, had occupied the position of Head of the Municipal administration in Pristina and was appointed the position of Secretary of the Temporary Council of Podujevo. Telephone threats made to the journalist for having released information about matters of public interest are undoubtedly suited to restrict free flow of information and obstruct the journalists' work. Under the Criminal Code of the Republic Serbia, anyone who threatens the security of a person performing a job of

public interest in the field of information (and the journalist in this case fits that description) and if the threat is directly related to this job, will be fined and sentenced to a prison term ranging from six months to five years. The media stopped short of revealing if charges have been brought against Saranovic at all.

1.2. According to the daily "Kurir", Dusan Stanojevic, the Director of the Clinic for Gynecology and Obstetrics (GAK) "Narodni front", insulted the reporter of the newspaper, who was involved in investigating the death of a baby at birth in that hospital. According to "Kurir", the reporter asked Stanojevic about the content of the internal control department report, which established that the baby's death was a doctor's error; she also asked Stanojevic if the doctor on call in the evening on Sunday, July 28 (who had refused to assist the woman to deliver the baby that had later died only because her delivery was scheduled for the following day), would suffer any consequences for her actions.

Under the Law on Public Information, public services shall be obligated to make information about their work available to the public, under equal conditions for all journalists and media. This definitely applies to GAK "Narodni front" in Belgrade. The Law stipulates that ideas, information and opinions about phenomena, events and persons relevant for the public interest, shall be freely released by the media, regardless of how the particular piece of information was gathered. The Law especially provides that it be forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on media and their staff or influence that might obstruct their work. The insults against the journalist that was investigating the reasons behind the baby's death and the findings of the internal control service that investigated that case undoubtedly constitute a violation of freedom of expression. Here we must underline that the insults made against the journalist undermine not only her right to report about an event, occurrence of person, but also the right of the public to receive such information unobstructed.

2. Legal proceedings

2.1. The Basic Public Prosecutor's Office has filed charges against Milutin Ilic, Director of the public utility company "Gradska Toplana" (municipal heating plant) from Nis and two of his associates, Dobrivoje Stanimirovic and Mija Jankovic. The three are believed to have threatened the editor of the Internet portal "Juzne vesti" Predrag Blagojevic. The charges say that Ilic,

together with Stanimirovic and Jankovic, with premeditation and of sound mind, repeatedly threatened Blagojevic by telephone. We remind that, according to media reports, Milutin Ilic threatened Blagojevic in early April, unhappy with the reports in "Juzne vesti" about the recruitment of politically affiliated people in Ilic's company. On the same day, two men, introducing themselves as "Jankovic, from the Heating Plant" and "colonel Dobrivoje, from Pristina", telephoned Blagojevic, warning him to "mind his writings" and to "stop messing with certain things". They invited him to meet them that same evening, "in order to sort some things out", while "colonel Dobrivoje" told him he would have to give a statement to the police in relation to his writing about the heating plant, otherwise he (the colonel) would fetch him the next morning accompanied by the police. According to portal's reports from last November, Dobrivoje Stanimirovic was described as one of the two members of the ruling SNS, which was employed in the heating plant owing to political affiliation and connections.

Under the Law on Public Information, public companies shall be obligated to make information about their work available to the public, under equal conditions for all journalists and all media. Furthermore, ideas, information and opinions about phenomena, events and persons relevant for the public interest, shall be freely released by the media, regardless of how the information was gathered. The Law especially says it is forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to restrict the free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on media and their staff or influence that might obstruct their work. The recruitment of employees in public companies is definitely a topic relevant for the citizens (one of public interest), so "Juzne vesti" were undoubtedly entitled to freely release information about the recruitment policy and the abuse thereof by giving the advantage to candidates affiliated with the ruling party. What is more, the heating plant was required to make this information available to the media, since the recruitment/employment policy is an integral part of the work and operation of public companies. Telephone threats against the editor and journalist over the publishing of information about matters of public interest are suitable to restrict the free flow of information and obstruct the journalists' work. In the concrete case, the Prosecutor has charged Stanimirovic and Jankovic for the criminal offense threats against security. Under the Criminal Code, threats made against the life of a person or against the life of that person's next of kin, shall be subject to a fine or prison sentence of up to one year. A qualified form of the same act exists if the threat was directed at the person performing jobs of public interest in the field of information and if the threat is directly related to these jobs, in which case the prescribed prison sentence shall be from six months to five years. After it receives the charges, the Court shall forward it to the

defendants and schedule the hearing, typically within a month or earlier. It may also call for additional investigative measures to be conducted.

2.2. In early August, the daily "Kurir" was furnished the lawsuit for damages filed by the former education minister Zarko Obradovic. Obradovic claims damages for anguish suffered due to injured honor and reputation caused by information published by "Kurir", relating to the cancelling of final exams for admission to high schools. Obradovic claimed 13.5 million dinars of damages, namely 900.000 dinars for each of the thirteen texts published by "Kurir" about that topic. "Kurir" issued a press release saying that, in addition to the lawsuit, they had received Obradovic's warning that he would press new charges if they continued writing about the matter. Journalists' associations have condemned the former minister's actions, calling them undue pressure on media.

Under the Law on Public Information, state bodies, including ministers, shall be obligated to make information about their work available to the public, under equal conditions for all journalists and all media. The Law particularly insists on the obligation of holders of political functions to show greater tolerance for criticism, reminding that their rights to privacy are restricted if the information in question is relevant for the public, since the person it pertains to is holding a certain position. On the other hand, filing charges for excessive damages and threatening with new charges, especially in the situation when it is done by a high state official, undoubtedly constitutes a restriction of the freedom of public information, abuse of one's office and of the very right to legal protection. Such restriction is suitable not only to obstruct the journalists of the media in question in their work, but also to intimidate other journalists, shielding part of the government from public criticism and control. It is undisputed, however, that Zarko Obradovic, who was still education minister at the time when the texts were published (since the cancellation of the final exams for admission to high schools on the entire territory of Serbia is definitely a topic of public interest), should have exercised a higher degree of tolerance for media criticism.

2.3. In mid-August, the Commercial Court in Belgrade delivered the verdict in the litigation (that started in 2008) between the plaintiff "SOS kanal" d.o.o. from Belgrade and the defendants, the Republic Broadcasting Agency (RBA) and the Republic Electronic Communications Agency (RATEL). According to the verdict, the 36th UHF channel, allocated to the plaintiff in an open competition for regional commercial televisions in the area of Belgrade, does not allow for quality reception of television signal. Under the verdict, the defendants are obligated to pay the

amount of 463.634.000 dinars, along with default interest for actual damages; the amount of 195.674.000 dinars with default interest for profits lost; the amount of 2.315.778,96 dinars as repayment of the amount paid for the rental of equipment and the transmitter; and the amount of 3.160.602,80 dinars for litigation costs. In addition, RATEL was ordered to repay to the plaintiff the amount of 5.118.634,92 dinars with default interest, for the received fee for the use of the radio frequency, while the RBA was ordered to pay the amount of 7.385.610,45 dinars with default interest as repayment of the fee for television broadcasting. Both RATEL and the RBA filed an appeal before the Commercial Appellate Court in Belgrade.

This verdict was accompanied by an array of media texts insisting on the responsibility of RATEL for the high damages to be paid to the plaintiff, at the expense of the taxpayers (the state budget). However, there was no deeper analysis, although the trial itself was very interesting. Namely, for the first time in the practice of Serbian courts, at stake was the extent of responsibility of the regulatory body in charge of electronic communications, in dealing with the problem of harmful interferences on the air. Since many broadcasters face such interference on daily basis, this matter is extremely important for them. What is unquestionable is that SOS kanal, a specialized sports TV channel, was issued a license for a regional television network in the Belgrade region on an open competition back in 2006. The network involved three transmitter sites and three broadcasting channels, including the disputed 36th UHF channel. After suffering harmful interferences by a TV station in neighboring Romania, SOS kanal repeatedly requested both RATEL and the RBA that its channel be replaced. RATEL addressed the Romanian regulator several times for assistance in the procedure of international coordination of the use of broadcasting spectrum, but to no avail. Meanwhile, RATEL has repeatedly indicated to SOS kanal that the potential of the network in question is not sufficiently utilized, that the transmitter on the 36th channel is not broadcasting with sufficient strength, as well as that several channels included in the network allocated to SOS kanal are not used at all. Ultimately, the Court has passed an unusual verdict, in the favor of the broadcaster, without, however, bringing much hope to other broadcasters suffering harmful interferences that they will obtain similar justice. No definitive answer has been provided to a whole range of questions. The cause of the interference remains unknown – is it illicit broadcasting from Romania, an omission in international coordination, an error in the national frequency plan, or the fact that SOS kanal broadcast with insufficient power and from only two, instead of three transmitter sites? If the interference may not be remedied, can replacing the channel solve the problem and what happens in the situation where there are no available channels in the national frequency plan? Moreover, may RATEL be held liable at all for the inability of cable operators to receive a sufficiently good signal for further cable distribution (the court has ordered RATEL to pay

damages on these grounds too)? Furthermore, even if know the interference is caused by errors in the frequency plans, we do not know who would be responsible for damage produced in this way - RATEL, which proposes the plan, or the Ministry adopting it? Also, what will be RATEL's responsibility for the harmful interference, if they have not been dealt with, due to the reluctance of the regulator from the neighbouring country to cooperate? Finally, can the broadcaster invoke harmful interference at all, without having previously put into operation the entire network it has been issued a license for, or if it has put into operation that network, but with far less power than prescribed? For all the above reasons, the decision of the appellate court will be very interesting.