LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for Decembar 2013

http://serbia.nlembassy.org/

This project is financially supported by the Embassy of the Kingdom of the Netherlands.

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This project is financially supported by the Open Society Foundation, Serbia.

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I FREEDOM OF EXPRESSION

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

1. Threats and pressures

TV B92's Jovana Stetin and Dejan Goljevac, as well as TV Prva's Biljana Gavric and Lazar Vukadinovic were attacked on December 15 in front of the polling station in Backi Gracac, during the local elections in the Vojvodina municipality of Odzaci. The two television crews came to make a report about the allegedly interrupted vote in Gracac due to a brawl between local political activists. The police protected the reporters from direct physical attack at the polling station, but they had to leave since the police could not guarantee their protection from potential new attacks. TV B92 filed criminal charges against the attackers for a qualified form of the criminal offense of endangerment of safety. The attack was also condemned by the Association of Independent Electronic Media (ANEM), as well as by the Minister of Justice Nikola Selakovic, which both called on the competent authorities to urgently identify and prosecute the attackers.

Reporting about the electoral process is most certainly one of the most sensitive media tasks. For many years now, whenever elections are held, the media are accused, often without any grounds, of being biased and siding with one or the other political option. What makes the incident in Odzaci specific is the fact that the attackers tried to prevent the TV crews from reporting about the interrupted vote at the polling station. By doing so, they violated the provisions of the Law on Public Information banning all forms of censorship and influence on the work of public broadcasters, while guaranteeing their independence and the independence of their newsrooms and journalists. Furthermore, since it is an election-related incident (with elections being undoubtedly an event of public interest), there was a breach of the Law on Public Information which stipulates that ideas, information and opinions about phenomena, events and persons relevant for the public interest shall be freely released by media. The above described attack on television crews could constitute violent behavior, a criminal offense subject to six months up to five years in prison under the Criminal Code. The latter defines violent behavior as threatening the tranquility of citizens or severe breach of public order by harsh insults or harassment, violence, provoking a brawl or by rude or ruthless behavior. A qualified form of this criminal offense exists where violent behavior has taken place within a group or if it has caused a minor physical injury to an individual or severe humiliation of the citizens. In its press release, ANEM stressed that the electoral process in a democratic society is inconceivable without creating a climate in which the media may freely report about that process and supply the citizens with all relevant information about the election as a fundament and essence of democracy. An attack of journalists covering the electoral process, especially a

physical attack, is impermissible in a democratic society. The good news is that the Justice Minister condemned the thugs, but only a comprehensive investigation of the incident and the prosecution of the attackers will be the proof of the state's preparedness to secure freedom of expression.

1.2. The Radio Television of Serbia (RTS) crew tried to film a story about painted street lamps in Vojvode Stepe Street in Belgrade, but a group of unidentified young men tried to prevent it from doing so. They threatened the members of the RTS crew, took pictures of them on their mobile phones and encircled them. Shortly after the incident, a cameraman from the RTS crew received a telephone threat from an unknown number stating that none of the attackers is to be ever shown on television. The proof of their seriousness, he was told, was the fact they managed to find his mobile phone number in half an hour. RTS had sent the crew to film the story after many citizens complained about the street lamps that were obscured by paint, threatening the security of people and particularly that of the elderly and children.

Under the Law on Public Information, public information shall be free and in the interest of the public. Furthermore, 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 is also forbidden to put physical or other pressure on a media outlet and its staff or exert influence that might obstruct their work. This is not the first time a TV crew is attacked in Belgrade while performing a routine assignment and filming public utilities-related stories. Less than two years ago, a TV Studio B crew was attacked while filming a piece about public transportation. That incident, however, involved a single attacker, who was quickly identified and detained, before being indicted of endangerment of safety and violent behavior. What makes the case of the RTS crew even more dangerous is the fact that they were attacked by a group of thugs, who continued to threaten them after the incident by finding the cameraman's private number and sending him threatening text messages.

1.3. Radio 021 from Novi Sad reported on its website that the Health Insurance Fund (RFZO) has given a company car and a driver to Milena Tabakovic, the daughter of the Governor of the National Bank of Serbia (NBS) Jorgovanka Tabakovic, to take her to her university lectures from Novi Sad to Belgrade twice a week. Radio 021 also posted on its website the memo of the RFZO Director Momcilo Bacic, referring to his decision from October 31. The decision informed the directors of the RFZO subsidiaries and the acting director of the Provincial Health Insurance Fund that employees from out-of-Belgrade branch offices attending healthcare management university studies at the Medical Faculty and the Faculty of Organizational Sciences in Belgrade may use company cars to travel to lectures in the capital. Numerous media outlets carried this information. However, for reasons unknown, the news was later withdrawn from the website of Radio 021 and a several other websites. The Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina (NDNV) reacted by expressing concern over self-censorship that may result from political interference in public

information matters. According to Momcilo Babic, the RFZO has sent off 22 persons for professional development, including the daughter of Jorgovanka Tabakovic. He noted that all these persons are entitled to use company cars and to have overnight stays in Belgrade paid by the RFZO. "We decided it would be cheaper to use a company car. They go to Belgrade for professional development purposes, but they also perform various coordination tasks and bring documentation to RFZO. People come by company car from Pirot, Novi Pazar and Kraljevo, why wouldn't they come from Novi Sad as well?", Babic said. He stressed that the RFZO regularly sends its employees to master or doctoral studies in the area of healthcare management and that the Institute bears half of the tuitions. The employees pay the other half, while the RFZO also pays for travel and accommodation costs. He explained that classes are held on Fridays and Saturdays on the Faculty of Medicine and the Faculty of Organizational Sciences in Belgrade and that the RFZO management estimated that the fuel costs related to the use of company cars are lesser than potential meal and accommodation expenses. The RFZO also explained that the right to use a company car for travelling to Belgrade for lectures may be enjoyed by those employees living less than 200 kilometers from Belgrade (including Novi Sad and Pozarevac), while those living at a greater distance (more than 200 kilometers away – Nis, Novi Pazar, Krusevac) have their hotel expenses paid by the RFZO. The Governor of the NBS Jorgovanka Tabakovic issued a press release demanding an "equal chance" for her children as for all other children in Serbia. To make things worse, the original news taken over from the Radio 021 website was removed in a hacking attack from the websites of the media that transmitted it and did not remove it themselves (including Autonomija.info). Moreover, a story about the withdrawal of aforementioned texts (about the Governor's daughter being entitled to a RFZO company car and a driver to attend lectures) from other websites was erased from the website of the Serbian Center for Investigative Reporting (CINS).

Under the Law on Public Information, public information shall be free and in the interest of the public. Furthermore, it is forbidden to directly or indirectly restrict the freedom of public information in any manner suitable to hamper free circulation of ideas, information and opinions. It shall also be forbidden to put physical or other pressure on a media outlet and its staff or exert influence that might obstruct their work. In the concrete case, the fact that certain benefits enjoyed by persons sent by the RFZO for professional development are financed from the public budget is not at dispute. This is most definitely an issue of public interest. Under the Law on Public Information, ideas, information and opinions about phenomena, events and persons relevant for the public interest, shall be freely released by the media, unless proscribed differently by the law, regardless of how the particular piece of information was gathered. Putting an emphasis on the fact that one of the persons enjoys specific benefits (the daughter of the NBS Governor) is not questionable either, since under the Law on Public Information, the right to privacy of the holders of state and political functions are restricted, if the information in question is relevant for the public (since the person the information pertains to holds a public office), in proportion to the justified interest of the public in each concrete case. In this case, one gets the impression that pressure has caused an accurate piece of information to be withdrawn from the media even before it could have been reasonably estimated if the intrusion in the privacy of the Governor of the NBS was

justified or not. A particular concern, however (an even greater one than the call to the editors to remove certain texts from their online portals), is the hacking of those websites that did not remove the text and even the hacking of the websites that merely analyzed the phenomenon of the withdrawal of the texts. Such practice is unheard of in Serbia. Hacking attacks in the past were typically aimed at denying access to certain websites and were never directed at individual, specific texts; the attacks were typically blamed on international hackers, most often Albanian ones. The hacking of the websites of CINS or Autonomija.info undoubtedly could constitute a criminal offense, probably that of computer sabotage, subject to up to five years in prison according to the provisions of the Criminal Code. This case also demonstrates that it is necessary to introduce, in some future amendments to the Criminal Code, a change in the definition of the criminal offense of obstruction of printing and disseminating printed items and obstruction of broadcasting contained in Article 149 of the Code. Namely, in its present text, this clause protects freedom of expression solely in relation to traditional media, by prohibiting the unauthorized obstruction of the printing, recording, sale or dissemination of books, magazines, newspapers, audio and video tapes and other similar print or recorded items and the unauthorized prevention or obstruction of television and radio broadcasting. This case has proven that the scope of protection provided by Article 149 of the Criminal Code should be extended to new media services, so as to include sanctioning of the unauthorized prevention or obstruction of the distribution of media content through all applicable platforms. In addition to the press and radio/television programs, such protection would involve Internet media portals.

1.4. The Editor-in-Chief of the Novi Sad-based weekly “NS reporter”, Milorad Bojovic, received more than 30 threats by text messages sent from different telephone numbers. Bojovic claimed to have received the first threatening SMS on November 29. The Journalists' Association of Serbia (UNS) requested on December 4 from the Novi Sad police to establish who is threatening Bojovic and put the latter under police protection. Several days later, on December 10, the media reported that the *South East Europe Media Organization (*SEEMO) called on the Serbian police to urgently start an investigation about this case. Milorad Bojovic believes the threats to be related to his texts published in “NS reporter”. He says that in the last few months the weekly published a series of articles about “pre-arranged” tenders in the healthcare system of Vojvodina, as well as investigative texts about phony companies that have received money from various provincial funds.

Under the Law on Public Information, it is forbidden to 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 a media outlet and its staff or exert influence that might obstruct their work. In the concrete case, the SMS threats to the editor may constitute threat against personal security, referred to in Article 138 of the Criminal Code of the Republic of Serbia. The qualified form of that criminal offense, when the threats have been made against a person holding an occupation in

the domain of public information, which is considered to be of public interest (when the threat is related to this particular occupation and tasks), is subject to six months up to five years in prison.

2. Legal proceedings

2.1. The Appellate Court in Kragujevac delivered an acquittal sentence in the criminal trial against the former President of the Municipal Council of Prijepolje Dragoljub Zindovic, who is currently the Head of the Zlatibor District. Zindovic was on trial for the criminal offense of insult and endangerment of safety of the journalists of TV Forum. In that case, four reporters of TV Forum pressed criminal charges against Zindovic over the insults and threats he made in March 2011. According to the journalists, Zindovic entered the premises of TV Forum requesting to see the package aired the previous day in the news bulletin. The then present journalists allowed him to see the requested footage, after which Zindovic told them they were "worthless persons", while threatening the cameraman who filmed the footage that he personally or someone else will "beat the crap out of him" and that "he deserved a beating", warning that "this is not over, personally or business wise". The Basic Court in Prijepolje acquitted Zindovic of the charges for endangerment of safety, sentencing him for insult. According to the findings of the court of first instance, the trial stopped short of proving that Zindovic had actually uttered all the aforementioned threats. The Court nonetheless indicted Zindovic for insult, explaining that he had offended the journalists telling them, in a loud voice, that they were worthless persons. In the appeal procedure against the first-instance verdict, the Appellate Court in Kragujevac upheld the acquittal delivered by the Basic Court in Prijepolje and went even further by acquitting Zindovic of the accountability for insult. The Court explained, "It is clear that the defendant made the incriminating statements with the aim to defend and protect his legitimate interests and not with the goal of humiliating the plaintiffs. He was merely reacting to the broadcasting of the informal part of the conversation with him after the television interview."

One of the indicators of media freedom in a democratic society, according to Resolution 1636/2008 of the Parliamentary Assembly of the Council of Europe, is the extent to which journalists are protected from physical threats or attacks related to their job, which involves the extent to which prosecutors and courts adequately and timely act in cases pertaining to threats received by journalists or attacks on them. The Zindovic case is yet another proof that the aforementioned indicator has unfortunately not been fulfilled in Serbia. The court of first instance found that "certain differences in the statement of the plaintiff and witness, who has, to a certain degree, mitigated his statement during the trial", were sufficient to deliver an acquittal for Dragoljub Zindovic. Meanwhile, the court of second instance found that what Zindovic told the journalists did not constitute insult, since he, according to the court, reacted in defense of his legitimate interests. Hence, it seems that Serbian courts do not find threatening a cameraman that someone will "beat the crap out of him" to be a serious threat against someone's life or body and that calling journalists "worthless persons" is not an insult, but a manner for politicians to

protect their rights and legitimate interests. The worst thing in such cases is not the fact that the reporters of TV Forum were left unprotected from the attacks of the former President of the Municipal Council of Prijepolje and the actual the Head of the Zlatibor District. The worst outcome is that a precedent was created in the court practice by that incident conveying a message that there were circumstances, loosely defined as "defense of a right or protection of legitimate interests", which apparently allow grave insults to journalists without any consequence. This sends a message that politicians can get away with anything, including insulting and threatening journalists, while the latter may not even release authentic recordings in the media if the politicians assess (and the courts typically respect such assessment) that the released recording is an off-the-record chat and not an on-the-record interview. Moreover, it is unclear if either the court of first instance or the court of second instance has taken into account the provisions of the Law on Public Information which expressly state the circumstances under which it is allowed to broadcast audio/video recordings of a person without that person's express consent. One of these circumstances is that the recording in question may concern a person, phenomenon or event of public interest and particularly a holder of a state or political office and that the release of such recording is relevant in view of the fact that the said person holds such office. Unfortunately, in practice we have seen that the politicians in Serbia still believe, and the courts seem to support such belief, that they are the ones to decide if a piece of information or recording about them may or may not be released by the media. There will be no respect for media freedoms in Serbia if such state of affairs persists.

2.2. At its 39th session, held on December 26, 2013, the Constitutional Court passed a decision determining that the provisions of Articles 13, 14 and 15 of the Law on the Security Information Agency ("Official Gazette of the Republic of Serbia" no. 42/02 and 111/09) are not in conformity with the Constitution. These provisions concern the authority to implement certain measures, including access to withheld communication data. It is perhaps the most controversial topic of our legal system in the past three years. We wish to remind here that the Constitutional Court has already passed decisions No. IUz 1218/2010 and No. IUz 1245/2010, declaring as unconstitutional certain provisions of the Law on the Military Intelligence Agency, the Law on the Military Security Agency and the Law on Electronic Communications. The same fate probably awaits certain provisions of the Criminal Code concerning access to withheld data based on a decision by the prosecutor and not that of the court. Under the Law on Electronic Communications, withheld data is data necessary for tracking and identifying the source of communication, determining the destination thereof, determining the beginning, duration and end of the communication, the type of communication, identifying the terminal equipment of the user and the location of the user's mobile terminal equipment.

The Constitutional Court has found that the provision (which was found unconstitutional) of Article 13 of the Law, which provision prescribes an exception from the principle of inviolability of letters and other means of communication, is insufficiently clearly and precisely formulated. The Constitutional Court

presented a very pertinent interpretation of the authority of the Security Information Agency (BIA) saying that, irrespective of the fact that BIA performs highly confidential tasks, the provisions of the Law governing the manner in which the Agency performs its tasks must be predictable to a reasonable degree in the given circumstances. In the Court's opinion, Article 13 of the Law, prescribing that, if necessary for national security reasons, the Director of the Agency may enact a decision, based on a prior court decision, ordering certain natural and legal persons to be subject to certain measures diverging from the principle of inviolability of letters and other means of communication, is neither precise nor specific or definable. This makes it impossible for citizens and other legal entities to find out what rule will be applied in given circumstances, denying them therefore the possibility to protect themselves from unlawful restriction of rights or arbitrary meddling in the right to have their private life and correspondence respected. Such an interpretation could actually be considered a step forward in the protection of privacy and correspondence of all persons, since it was confirmed that even security services must be subject to a predictable legal framework in their work. On the other hand, the decision of the Constitutional Court to delay the publication of that decision by four months appears completely unjustified; the Court namely invoked "legal consequences of the cessation of the contested provisions of the Law on the Security Information Agency, which consequences will take place after the publication of that decision" and which would give the possibility to the legislator to "regulate the contested matters in a manner that is in conformity with the Constitution" within the given deadline. The Constitutional Court resorted to the possibility offered in Article 58, paragraph 4 of the Law on the Constitutional Court, but it remains entirely unclear what the legal consequences are justifying the decision to give BIA four months to comply with the decision of the Constitutional Court. Moreover, what are the "contested matters" that must be regulated during that time to ensure compliance with the decision? Article 58 of the Law on the Constitutional Court stops short of expressly stating the criteria under which Constitutional Court may postpone the publication of a decision on the unconstitutionality of the provisions of a Law; it merely states that the delay may not last more than six months and that it requires a special decision. Furthermore, if the same delay was not granted for conforming the Law on the Military Intelligence Agency, the Law on the Military Security Agency and the Law on Electronic Communications with the Constitution (which also pertain to measures related to withheld data), what specific circumstances have compelled the Court to rule differently? Unfortunately, the public will not have access to that decision until it is published and hence will not know the reasons for the aforementioned delay. Interestingly enough, this possibility was introduced only with the amendments to the Law from 2012 and the formulation of the relevant clause makes it clear that it is an exception to be used in particularly sensitive situations. It seems that everything concerning BIA is considered "particularly sensitive", including delaying the publication of decisions without stating a valid reason. Paradoxically, the Constitutional Court rescinded the provisions of a Law invoking the absence of a minimum of legal security and predictability, only to ultimately postpone the publication of that same decision invoking a provision that is also questionable in terms of legal predictability.

2.3. At a session held on December 18, 2013, the Constitutional Court passed a ruling on launching a procedure for the assessment of the constitutionality of the provisions of Article 19, paragraph 1, subparagraphs 3 and 4 of the Law on the Film Industry. According to these provisions, the funds intended for the development of the national film industry shall be earmarked in the amount of 20% of the funds gained from the fees the broadcasters pay the Republic Broadcasting Agency (RBA), in accordance with the law regulating broadcasting. The fee is paid for the right to broadcast program, if the amount does not exceed the difference between the total revenues and total expenses of the RBA. Furthermore, the film industry in Serbia shall also be financed with 10% of the funds from the fee which public telecommunication operators pay to the Republic Agency for Electronic Communications (RATEL) for the obtained right to build, possess or exploit the public telecommunication network and for the provision of public telecommunications services, for the funds gained from the fee for the use and allocation of radio frequencies, the funds gained from the fee for the issuance of certificates, as well as the funds from the fee charged for technical inspection and other costs related to license issuance.

Defending the interests of its members and all electronic media and convinced the adopted Law on the Film Industry may have serious consequences on their operations and the independence of regulatory bodies in the field of broadcasting, ANEM filed, back on May 30, 2012, an initiative with the Constitutional Court for the assessment of the constitutionality of the disputed provisions. ANEM proposed to the Constitutional Court to rule that these provisions are not in conformity with Articles 18, 20, 46, 50, 51 and 194, paragraph 1 and 3 of the Constitution of the Republic of Serbia. In the initiative, ANEM said that the aforementioned provisions undermine the unity of the legal system in the Republic of Serbia, which is in contravention of the Constitution. ANEM reminded that the Constitutional Court had repeatedly, in several prior decisions, insisted on the unity of the legal system and rejected the practice of special laws undermining the founding principles contained in systemic regulations governing other areas, such as the Broadcasting Law and the Law on Electronic Communications. In addition, the disputed provisions of the Law on the Film Industry are definitely noncompliant with the constitutional guarantees of freedom of opinion and expression, freedom of media and the right to be informed, and particularly with freedom of thought and expression through radio and television, media freedom in the field of broadcasting and the right to be informed through radio and television, since these provisions entail the undermining of the system of financing of regulatory bodies in charge of broadcasting. The latter, in turn, constitutes meddling in the independence of these regulatory bodies and renders the mechanism of financing of regulatory bodies dependent on *ad hoc* decisions of the public authorities. In the aforementioned initiative to the Constitutional Court, ANEM warned that the system of allocation of the fee the regulatory bodies charged from the broadcasters and operators is undermined by these provisions too. In the explanation of the ruling on initiating a procedure, the Constitutional Court stated that, from the standpoint of constitutionality, the following questions may be raised as controversial: have the controversial provisions of the Law on the Film Industry undermined the unity of the legal system? Has the prescription of mandatory allocation of a part of RBA's and RATEL's revenues undermined the constitutional and legal position of the holders of public authority, as special regulatory bodies, which

typically enjoy functional and financial independence? Should the resources for the development of the film industry be earmarked from the budget? And finally, are the disputed provisions, in terms of legal security, sufficiently precise, clear and predictable for RATEL, which is supposed to implement them, bearing in mind that these provisions call for different fees than those provided by the Law on Electronic Communications? The answers to these questions will clarify the position of independent regulatory bodies in our constitutional and legal system, particularly relative to the question whether it is possible, by the means of laws not directly related to the field of electronic communications and media, to regulate broadcasting fees and fees charged to operators, which fees, according to their "mother" laws, serve the purpose of covering "regulation costs". Another question is which regulations may regulate the manner of allocating the potential extra revenue relative to the expenses of the regulatory bodies.

2.4. The Appellate Court in Kragujevac upheld the verdict of the Higher Court in the same city, ordering "Svetlost AD" and Miroslav Jovanovic, who was the responsible editor of "Svetlost" twenty years ago, to pay almost one million dinars to the plaintiffs Mirjana and Stevan Josimovic, who at the time ran the private pharmacy "Planta medika". This verdict ended a trial that lasted 19 years, five months and 26 days from the publication of a controversial text in the "Svetlost" newspaper. The text "Robbery" was published On June 9, 1994 in a short forms section which featured sketches, notes and reviews. Two years and three months later, on September 4, 1996, the Josimovics sued "Svetlost" and its responsible editor over the material and non-material damages they had suffered due to the aforementioned text. Their claim amounted to a total of 22.274.160,00 dinars. On June 11, 2013, the Judge of the Higher Court in Kragujevac Marija Petkovic ordered "Svetlost" and the responsible editor of the newspaper in 1994 to pay the plaintiffs 789.051,19 dinars with default interest as of December 14, 2012, as well as the legal costs of the trial. The defendants appealed, but the Appellate Court upheld the verdict of the Higher Court in Kragujevac. The defendants received the verdict of the Appellate Court on December 5, 2013. The trial was thus finished after 19 years, five months and 26 days from the publication of the above-mentioned text. After receiving the verdict, the defendants said they would resort to all legal remedies at their disposal, but voiced their doubts as to the fairness of the trial since "Svetlost" was a pro-opposition newspaper in the 1990s. In their opinion, the final verdict was "payback time" since the plaintiffs are, to the best knowledge of the defendants, employed in the Ministry of Health.

Trials that last for years, and even decades, are nothing new for the Serbian judiciary. Although the right to a fair trial within a reasonable time is guaranteed by the European Convention of Human Rights as one of the fundamental human rights, as well as by the Constitution of the Republic of Serbia, it is often violated in practice. The vast majority of the 14 thousand constitutional complaints to the Constitutional Court have been filed for that very reason. Meanwhile, Serbia is also the top country in terms of the number of appeals submitted by its citizens to the European Court of Human Rights (ECHR) in Strasbourg. Although "reasonable time" is a legal standard where "time" is appraised on a case-to-case basis, the mere fact that a trial lasts several years leads to the conclusion that the right to a trial within a

reasonable time has been breached. The ECHR estimates that the average time in which a dispute must be completed is about two years. Bearing in mind the specificity of media-related disputes, these proceedings should take less time. The Law on Public Information expressly provides for the urgency of damages proceedings. Multi-year and even multi-decade trials, as in the above mentioned case, apart from constituting a significant burden for the parties, especially for the defendant, lead to legal uncertainty since untimely "justice" often does not yield the same effects as justice delivered on time. This is particularly true for media-related cases. It should also be stressed that the very merits of the verdict passed after 20 years are questionable, since dramatic changes have happened in the meantime affecting the laws governing the field of information, but also changes to legal standards and practice. In order to avoid such violations of rights, the new Law on the Court System, which came into effect on January 1, 2014, provides for the possibility to lodge a petition with the superior court for a violation of the right to fair trial within a reasonable time. The superior court will rule about such petition in urgent extra-judicial proceedings. Apart from setting the deadline for the completion of the proceedings, the superior court will also be able, at the request of the petitioner, to award damages for violated right to a fair trial within a reasonable time. It should particularly be emphasized that the new Law stipulates that the said damages will be paid from the portion of the budget earmarked for the operation of courts of law, which means that they will indirectly affect the salaries of court employees. The legislator has attempted in this way to compel the judges to pay more attention to the right to trials within a reasonable time in order to avoid future violations.

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 about freedom of expression.

2. Broadcasting Law

In the period covered by this Report, the Council of the RBA has issued two warnings, causing reactions by journalists' and media associations as well as media professionals. They expressed concern that the regulator has overstepped its authority by censoring (which is prohibited by the Constitution) programming content and "disciplining" public service broadcasters and commercial broadcasters.

2.1. The Republic Broadcasting Agency (RBA) has issued a warning to Radio B92 over the humoristic program « Mentalno razgibavanje » (Mental Stretching), namely a satirical package with edited news of the public broadcaster Radio Television of Serbia (RTS). The controversial part for the RBA was the sequence with the words "the Government... sacked... President Nikolic, who was pimping young boys to the former Bishop Vasilije Kacavenda". The RBA Council estimated the controversial sound bite to have been completely outside of the context of the story concerning the months-long reshuffle of the Serbian government. In reality, the program was introduced with a clear warning that it was a deliberately edited feature; it went on the air containing sound bites saying, among other things, that the government was reshuffled so as to have "18 ministries", including "the ministry of intestinal pains", "the ministry of the all-Chinese people's congress", "the ministry of corruption", "the tralala ministry" and "the ministry of Novak Djokovic", with the goal of such reshuffled government being to have the Socialist Party of Serbia "controlling as many ministries as possible" and that such government "has dismissed... President Nikolic for having pimped young boys to the former Bishop Vasilije Kacavenda". The RBA Council was of opinion that airing such content has injured the dignity of the person and the office of the President, who was placed in the context of "committing the grave criminal offense of procuring minors for sexual intercourse", punishable under the Criminal Code.

Under the Broadcasting Law, the RBA is authorized to initiate proceedings against broadcasters based on complaints by viewers/listeners, but also *ex officio*, although the latter possibility is not expressly mentioned. From the intent of the provisions of the Law, it may be concluded that reacting to the complaints by viewers/listeners is a rule, while acting *ex officio* is an exception. The latter should hence be limited to cases where the public interest is threatened to such an extent that it requires the reaction of independent regulators. In other cases, such act by the RBA could be interpreted as disproportionate intrusion into the right to free expression. In the concrete case, neither the RBA, nor Radio B92 received any listener complaint; unlike the RBA, the listeners realized that the controversial content was a satire of the months-long government reshuffle and did not implicate the President in the commission of a crime. The qualification of "violation of the Broadcasters' Code of Conduct (BCC)" is also questionable. The RBA's press release stated that the broadcaster had violated the obligations arising from subparagraph 10.2 of the General Binding Order on Broadcasters' Conduct (GBO) concerning the ban on extremism and insulting speech. The quoted provision of the GBO indicates that broadcasters must suppress extremism and insults in their programs, both relative to the conduct of the anchor of a certain program and to that of his/her guests. Since the above described case concerned a satire criticizing the lengthy (months long) reshuffle of the Government, and it did not contain any form of extremist speech or insults against the President, the decision by the RBA Council is reminiscent of a precedent of the Higher Court in Cacak and the Appellate Court in Kragujevac. Back in 2011, these courts sentenced to a fine Stojan Markovic, the editor of Cacanske Novine, who was sued by Minister Velimir Ilic. Markovic was fined for publishing a humorous article that "did nor contain enough true facts". Particularly concerning is the fact that, by passing such a decision, the RBA Council is actually defining the standards of acceptability of political satire, while being even more restrictive than the Criminal Code. Namely, under

Serbia's criminal legislation, insult shall not be punishable if uttered as a part of serious criticism in a work of art or in the performance of the journalism profession, if no attempt at humiliation may be discerned from the manner of expression or other circumstances. In the concrete case, even if a part of the package with edited news of the public service broadcaster could constitute an insult of the President, the circumstances of the case made it clear that there was no intent to humiliate him, but merely to criticize the authorities for delaying the arrangement on the Government reshuffle.

2.2. Simultaneously with the warning issued to Radio B92, an identical measure was pronounced against Radio-Television Vojvodina (RTV) over the interview with Kosovo politician Atifeta Jahjaga. The objection was that the journalist did not stand up to Jahjaga with additional questions. At the same time, the RBA Council did not object the fact that the interview was conducted without adequate simultaneous translation, due to which the journalist (in his own words) did not fully understand the interviewee. Ignoring that issue the RBA Council patronized RTV over the format of the interview and even questioned the veracity of the interviewee's statements. An interview is a distinct form of journalism expression and, as such, is not subject to the same criteria as reporting about current affairs. It is completely absurd to hold accountable a media outlet or a journalist for the personal opinions voiced by an interviewee about a certain issue, namely because the journalist did not notice that such views are not true. By doing so, the regulator embarked on assessing the veracity of a personal position (not facts) and meddles in the free practicing of the journalism profession. Journalist Laszlo Tot, who conducted the controversial interview, was in the meantime sacked from RTV.

What makes this interview highly controversial is the doubt that emerged over the possibility that the footage was in some way pre-approved or censored. Namely, a member of the RBA Council Goran Pekovic told the media that the RTV representatives had said, in their defense, that the Government "asked them if they could take a look at the interview". The Government office in Gracanica, where a part of the interview was reviewed, merely objected the fact that the journalist addressed Jahjaga with the words "Ms. President". So, the representatives of RTV thought the latter to be the Government's official stance and decided to air the interview. The legitimate question is if this was an introduction of a kind of low profile censorship in reporting about Kosovo. Also, what would happen had the Government office in Gracanica opposed the interview and would that mean it would not have been aired at all? The RBA said in a press release about the warnings against RTV that the broadcaster had violated the obligations contained in Article 3, paragraph 1 (the Principle of Professionalism) and Article 79 of the Broadcasting Law, as well as those in section 2, paragraph 1, subparagraph 2) Objectivity and 3) Impartiality from the GBO. The above-mentioned provisions of the BCC confirm that the broadcasters must enable every view to be presented with a minimum of objectivity (without malicious editing, inserted comments, etc.). Furthermore, when the broadcaster and an individual or organization referred to in the broadcaster's program are in some way connected or if the program mentions any kind of interest-related connection, such connection must be clearly mentioned in the program (objectivity). At the same time, the

broadcasters are entitled to their own independent editorial policy, while respecting a minimum of impartiality in reporting. Minimum impartiality entails the obligation of broadcasters to clearly separate factual reporting from positions, opinions or comments, while being obligated to make sure that the personal convictions and opinions of editors and journalists will not discriminate against the choice of any particular topic and the manner in which that topic will be presented. Furthermore, it is not allowed to manipulate with statements, press releases and similar content with the aim to change their core meaning (malicious editing, shortening or removal of key parts of the content in question, etc.). As the RBA Council practically accused the interviewing journalist of lack of objectivity and bias, it is necessary to analyze what these qualifications are based on. First, there is no apparent interest connecting Atifeta Jahjaga with Laslo Tot and RTV. Second, in the interview, Jahjaga mainly voiced her positions and not facts. Furthermore, the assertion that the journalist could have "discriminatorily affected the choice of topics and the manner in which they were presented" in the interview, while not fully understanding (in his own admission) the responses of the interviewee, is questionable to say the least. For all those reasons, the decision of the RBA Council is utterly problematic. Namely, it seems undeniable that RTV did violate the principle of professionalism and independence – firstly, by broadcasting an interview where the interviewer did not understand the interviewee, since she spoke in a different language and simultaneous interpretation was inadequate; secondly, if the interview (as some claimed) had really been sent for "approval" to the Government. However, even if the grounds for pronouncing the measure exist, RBA's explanation was disturbing. In the explanation, the Agency did not refrain from accusing journalists of not asking certain questions, which is in contradiction with the allegedly breached principle of professionalism and independence. Finally, we remind that, in the famous case *Jersild v. Denmark*, the ECHR found that the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question and that it was not for that Court, nor for the national courts for that matter, to impose on the press manners of reporting that should be adopted by journalists. This naturally also pertains to the RBA Council, which should not be the body that will impose on the PSB or any other media outlet the manner in which their journalists will be reporting and asking questions, neither should it impose on the media the obligation to stand up to interviewees. Furthermore, interviews are one of the main means by which the media perform their core function in a democratic society. Punishing a journalist or a media outlet for conveying the statements of a third party in an interview restricts the possibilities of the media to contribute to the necessary debate about public interest matters and as such constitutes illegitimate meddling in freedom of expression.

2.3. In December 2013, the RBA Council submitted to the Parliamentary Committee for Culture and Information a report on the work of the Agency for 2012. The Committee debated the report on its 19th session. Presenting the report, the President of the RBA Council, Bishop Porfirije (Peric) said that 48 reprimands were pronounced in 2012, as well as 1 public warning. Furthermore, 19 decisions prohibiting unlicensed broadcasting were passed and 22 criminal charges were filed. Members of the Council Goran Karadzic and Bishop Porfirije emphasized that the RBA is trying to do the best possible job in fulfilling its statutory duties and that it does not act as a censor or meddle in the media editorial policy.

Particularly interesting is the statement made by Karadzic, who said that there would be no broadcasters at all in Serbia "if the RBA was rigid in enforcing the Law, and that it is not in the interest of the public that all broadcasters be closed. The members of the Parliamentary Committee inquired about the authority of the RBA relative to banning certain content and about the existence of mechanisms that would enable the RBA to exert a stronger influence on the creation of Serbia's media landscape. The Committee also analyzed the work of PSBs and commercial TV stations and discussed the need to have more culture-related programs on channels with national frequency, as well as the amount of the remunerations of the members of managing boards of all independent regulatory bodies.

At first glance, that session of the Committee does not appear unusual, with a regulatory body submitting a report about its work in accordance with the Law. What is questionable, though, is the fact that the report about 2012 was submitted in December 2013. Furthermore, it is questionable that the session of the Committee debated the rigidity with which the RBA enforces the Law. If Serbia were indeed left without a single broadcaster due to "RBA's rigid enforcement of the Law", it would be logical to question the restrictiveness of the Law itself. Moreover, the RBA Council's definition of "rigidity" remains unclear. What matters more than "rigidity" in enforcing media laws is consistence and predictability. It seems that the lack thereof in the RBA's implementation of the laws is a far greater problem than lesser or greater rigidity.

2.4. A round table was held in Belgrade on December 17, organized by UNICEF, Journalist's Association of Serbia (UNS) and the RBA, after two similar round tables at the beginning of the month in Nis in Novi Sad. Two reports concerning the protection of children and youth by labeling TV programs by age group they are suitable for were presented at the round table. One of the reports, prepared by RBA's Oversight and Analysis Department, covered the programs of national broadcasters in the first four months of 2013. The second report pertains to the analysis conducted by the UNICEF office in Serbia and UNS. They analyzed the programs of RTS 1, RTS 2, TV B92, TV Prva, TV Pink and TV Hepi in the period from early January to late June 2013. The analysis was complemented by a study involving the parents of children 10-17 years of age, who were interviewed in focus groups in Nis, Novi Sad, Subotica, Cacak and Belgrade. The results of the analysis have shown that the labeling of the programs is well underway and that the most labeled are films, series and reality shows. It was observed, however, that the label of certain content (mainly entertainment reality shows) is too low; meanwhile, some documentary, science and cultural/artistic programs were labeled for a certain age group without any obvious need. The survey of RBA's Oversight and Analysis Department has shown the problem also lies with the reruns of films in inadequate time slots, as well as the teasers, which contain scenes of violence, brawls, obscenities from films and reality shows, which teasers are aired every once in a while during the day. Four measures were proposed to remedy this. The first is to establish minimum standards to help determine the content labels. Meanwhile, with the help of psychologists, UNICEF and UNS have compiled specific criteria for labeling content that may harm the physical, mental or moral development of children.

It seems that the analyses and research could be a good introduction to comprehensive public consultations through which solutions might be found to protect the interests of children and youth from improper content. It is already clear that films and series may not be judged the same as reality and pseudo-reality programs, and that the potential inadequacy of the content may be established only relative to a particular context. Moreover, since in Europe and the world there are organizations dealing with the categorization of films by age group, which is a practice that does not exist in Serbia, it seems that the RBA should, within the scope of its authority and in collaboration with broadcasters and other stakeholders, regulate this matter with the aim of creating a clear, predictable and unambiguous legal framework. In that sense, the criteria for labeling programming content that may harm the physical, mental or moral development of children prepared by UNICEF and UNS could constitute the initial proposal to be further elaborated on with the goal of reaching a wider consensus and finding a sustainable model of co-regulation in this field.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

1. Drafts of new media laws

The representatives of the Ministry of Culture and Information have voiced hope that the new media laws would be adopted by the start of the EU Screening that, relative to media laws (Chapter 10: Information Society and the Media), is planned for May and July 2014. Assistant Minister of Culture and Information Sasa Mirkovic said that the Draft Law on Public Information and Media has been tabled to the competent ministries for review and that work on the draft law on public service broadcasters and draft law on electronic media is underway. Mirkovic explained that the Ministry intends to send them by the New Year to ten different addresses for consideration, in order to receive the responses after the holidays. In the period covered by this Report, the representatives of the Ministry confirmed that Tanjug will be privatized and that the idea to transform the state news agency into the Press Office of the Government of the Republic of Serbia was abandoned.

2. Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutors’ Offices

December has seen the coming into force of the new Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutors’ Offices, which introduces significant changes concerning the jurisdiction of courts for trials in media related cases and intellectual property cases and particularly cases concerning copyright and related rights. In accordance with the new Law, which will be enforced starting from January 1, 2014, the Higher Court in Belgrade will be competent to rule in the first instance on the ban on disseminating print media and spreading information by media, as well as to rule in disputes related to

the publication of the rectification of information and reply to information due to the violation of the prohibition of hate speech, protection of the right to a private life and the right to a personal records, failure to publish information and damages related to the publication of information, as well as in copyright disputes, for the entire territory of Serbia. These changes as to the jurisdiction of courts in the first instance also entail changes in the second instance. Hence, upon an appeal against the verdicts of the Higher Court of Belgrade, the deciding body will solely be the Appellate Court in Belgrade. The aim of these amendments is to harmonize the case law in media and copyright related disputes. The judges ruling in media disputes will have to undergo additional training in the domain of media law. Formerly initiated proceedings in media and copyright related disputes will be continued before the courts that have hitherto been in charge for such disputes.

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

1.1. In late December, the RBA issued a statement saying that it had shut down the pirate radio station "Minic" from Kursumlija. This was achieved in a joint operation by the RBA and the Prosecutor's Office for High-Tech Crime, in collaboration with the Republic Agency for Electronic Communications (RATEL) and with the assistance by the police. During the operation, the entire equipment of the station was seized and criminal charges were pressed against the owner. The statement went on saying that the RBA, in collaboration with other state authorities, had taken part in shutting down several pirate stations and that criminal charges had been pressed in nine cases. Seven decisions prohibiting broadcasting activities had been enacted.

The collaboration of the RBA, the Prosecutor's Office for High-Tech Crime, RATEL and the police in cracking down on radio piracy is most certainly good news. However, the reaction of state bodies appeared to be effective only in those cases where reasonable doubt existed that illegal broadcasting was accompanied by the commission of another criminal offense. In other situations, there are apparently no effective mechanisms as yet to suppress illegal broadcasting. Hence, there are still more than 30 illegal

broadcasters, some of which even have national coverage. It seems that the ministry in charge of telecommunications still lacks proper capacities to conduct effective and efficient inspection control, which it is to carry out under the Law on Electronic Communications. Therefore, it seems that it is necessary to consider a reform of inspection control in this field, namely moving the authority of inspection control from the Ministry to the independent electronic communications regulator RATEL. This should be the subject of some future amendment to the Law on Electronic Communications.

STATE AUTHORITIES

2. Ministry of Culture and Information

The Ministry of Culture and Information called on December 21st an open competition for the co-financing of projects and programs from the field of public information in the Republic of Serbia in 2014. The competition was called for the co-financing of production and distribution of programming content of the media in the Republic of Serbia and countries of the region, which is relevant for the realization of public interest. Apart from general projects, it also involves projects and programs from the field of public information in minority languages; public information for Serbian nationals in the countries of the region; information for disabled persons, as well as projects and programs of media based in Kosovo and Metohija. The projects will be appraised based on their relevance for the realization of the right to public information, contribution to the diversity of media content and pluralism of ideas and values, valid argumentation of the project and adequate budget specification, consolidated and explained from the standpoint of planned project activities. The competition will be open until January 21, 2014. The maximum amount of funds that may be committed to each individual project shall be between 700 thousand and one million dinars.

The novelty relative to the open competitions called in the previous years is that public service broadcasters (PSBs), public companies and media founded by ethnic minorities' national councils are not eligible to participate. This is the result of the strategic commitment by the state not to financially help publicly owned media until they are privatized and not to finance PSBs and media established by ethnic minorities' national councils as long as they are funded from the public budget. This competition is a foretaste of the future media financing system, in accordance to what is foreseen by the Media Strategy and the Draft Law on Public Information and Media, which was discussed at the public debate in March 2013. However, in order for the new system of media financing from public sources to be fully implemented, we will have to wait for the adoption of the set of new media laws, when the sustainability of the solutions provided in that set of laws will also be subject to the adequate implementation of state aid control and competition protection regulations.

3. Ministry of Foreign and Domestic Trade and Telecommunications

In December 2013, the Ministry of Foreign and Domestic Trade and Telecommunications presented the new Draft Law on the Amendments to the Law on Electronic Communications. According to representatives of the Ministry, the amendments were necessary primarily due to the Decision no. IUz 1245/2010 of the Constitutional Court, which has declared unconstitutional the provisions of the Law on Electronic Communications concerning access to retained communication data. In addition, major amendments pertain to the merger of two regulatory agencies – RATEL and the Republic Agency for Postal Services. The changes are clearly not comprehensive since they do not take into account the new European regulatory framework for electronic communications from 2009. Therefore, the reform of electronic communications regulations will probably have to wait for the EU Screening (Chapter 10: Information Society and the Media), which is planned for May and July 2014.

As for media-relevant provisions, they include the changes to Article 128, which pertains to the grounds for access to retained information, as well as certain changes concerning the help scheme for the purchase of STB devices. The latter is relevant for the digital switchover and we will examine it in detail in the section dedicated to that process. The aim of the amendments to articles 128 and 129 and adding a new article 130a was harmonization with the Constitution and the decisions of the Constitutional Court passed at the initiative of the Commissioner for Information of Public Importance and Personal Data Protection and the Ombudsman, which have been warning for some time that these clauses of the Law threatened the privacy of citizens and particularly the confidentiality of journalists' sources.

The amendments to Article 128 of the Law on Electronic Communications confirmed that the retained data (data necessary for tracking and identifying the source of communication, determining the destination thereof, determining the start, duration and end of the communication, the type of communication, identifying the terminal equipment of the user and the location of the user's mobile terminal equipment) constitute an integral part of communication and as such are subject to the same degree of constitutional and legal protection as the communication itself. Therefore, access to retained data (e.g. telephone call listings) require the respect of constitutional guarantees, which stipulate that such access may exceptionally be allowed, but only for a limited time, on the basis of a court order and only for the purpose of a criminal trial and the protection of national security of the Republic of Serbia. In some segments, the proposed amendments to the Law remain unclear, since they have extended the list of situations in which retained data may be accessed, which was stressed by the Commissioner for Information of Public Importance and Personal Data Protection during public debate. Namely, since the degree of the protection of retained data in Serbia is higher than the protection of other personal data (since it is related to the confidentiality of communication), direct harmonization of the Serbian law with European directives in this field would amount to lowering the achieved degree of human rights protection. It should be emphasized that the concept of "retained data" is quite problematic also in the EU

from the aspect of protection of fundamental human rights (especially the right to privacy). A procedure for the assessment of the conformity of Directive 2006/24 (supplement to Directive 2002/58), which pertains to retaining communication data, with the European Charter of Human Rights, was recently initiated before the European Court of Justice.

V THE DIGITALIZATION PROCESS

The Draft Law on the Amendments to the Law on Electronic Communications includes the provision concerning the digitalization process. It is contained in the new Article 104a, which constitutes the legal grounds for passing regulations to deal with certain issues related to financial assistance for procuring equipment for receiving digital television signal. The Article stipulates that the Government, at the proposal of the competent ministry, will enact regulations to regulate more closely the eligibility for receiving assistance, the type of assistance, the source and the manner of earmarking the funds for implementing the help scheme, keeping records about the beneficiaries and other matters related to the help scheme.

While it is useful to create the legislative framework for implementing the help scheme, the formulation of the Article shows that the state is still far from making the decision as to who will be the beneficiaries of the financial assistance for buying the STB devices and the manner of the assistance provision. It seems that the answer to this question is being delayed and left to some future bylaw. The decisions that the Ministry will have to propose to the Government primarily concern the categories of the population that may expect the financial help of the state when purchasing STB (set top box) receivers. If we make the analogy with the persons relieved from paying the television subscription fees, these would probably be elderly people and disabled persons. The assistance could come in the form of vouchers for the purchase of digital receivers, possibly including the installation thereof. The main problem remains the fact that it is still unknown how much money the state can afford to earmark for this purpose. Finally, the question of protection of personal data, the collection of which is entailed by the implementation of the help scheme, also needs to be addressed. Data need to be collected about persons that fall in the category of vulnerable population based on their old age, disability or other grounds, whom the state wants to help be prepared for the digital switchover. Under the Law on Personal Data Protection, personal data may be collected based on their express and informed approval in writing. If the idea is not to take directly such data from the beneficiaries, but to obtain them from other organizations that already have such data, such as centers for social work, such manner of data collection should be prescribed by the Law and not by a regulation of lower rank.

VI THE PRIVATIZATION PROCESS

The month of December 2013 did not see any developments related to the privatization of state-owned media. The entire process is still awaiting the adoption of the set of new media laws.

VII CONCLUSION

In 2013, Serbia made a significant step forward in the EU accession process. Namely, on April 22, the European Commission gave the green light for the opening of the negotiations with Serbia. On June 28, at a meeting in Brussels, the European leaders decided to begin the negotiations no later than January 2014. The Screening process started on September 25. It was announced that the screening of the media-relevant Chapter 10 (Information Society and Media) would be held in May and July 2014. The EU ministers adopted on December 18 in Brussels the negotiating framework for Serbia, giving the green light for the start of the accession negotiations. At the EU Ministers' Council, it was decided that the first inter-governmental conference between the EU and Serbia would be held on January 21.

It remains to be seen to what extent the start of the accession negotiations will affect the media reforms in Serbia. However, we may already notice that a year ago, we ended our monitoring report for December 2012 with the good news about the accelerated legislative activity on regulations the adoption of which is prescribed by the Media Strategy. Unfortunately, a year later, not a single law from the set of new media laws that have been prepared for years has been adopted. Meanwhile, the Government was reshuffled, a new information minister and his assistant were appointed, and they are currently fighting against the still strong opposition to the necessary media reforms. On the other hand, we are witnessing the hard blows inflicted to freedom of expression in Serbia from various sides – physical attacks against journalists, threats, pressure on media to release or not to release certain news, with somewhat forgotten blatant censorship being increasingly mentioned as a fact of life in the media landscape. In such an environment, it seems that the enthusiasm of media professionals for the reforms has been waning, as if everyone is already tired of waiting. As if every hope and expectation is matched by even stronger reservations and caution.