



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for July 2014





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SUMMARY AND CONCLUSION
OF THE ANEM LEGAL MONITORING REPORT No. 54
-SERBIAN MEDIA SCENE IN JULY 2014-

The month of July started for media professionals in Serbia with the physical assault on the Editor of the FoNet news agency Davor Pasalic and ended with the end of the debate in principle about the set of media laws the Government tabled to Parliament for adoption in urgent proceedings at the end of the month.

The Editor of FoNet Davor Pasalic was beaten up on July 2 in New Belgrade, not far from the apartment building where he lives. He was set upon close by three unknown young men and beaten up after he refused to give them money, even after they threatened him with a gun. They called him an “Ustasa” and a “Croat” and punched him and kicked him more than thirty times with their arms and legs. When Pasalic got up from the ground and headed towards his apartment building, he was attacked again and beaten and called an “Ustasa” and “Croat” by the same three young men. Pasalic had bruises and cuts on his head, face and mouth, broken teeth and bruises all over his body. One could infer that Pasalic was not attacked randomly in order to be robbed and that he was rather targeted as a journalist, because of his job, because of two things. First, the attackers reiterated the insults against Pasalic several times and these insults were ethnically motivated, which means the attackers were very well acquainted, before the attack, with their intended victim. Second, in spite of protests by media and journalists’ associations and the fact that the minister of interior himself, Nebojsa Stefanovic, condemned the attack, the perpetrators have not been caught. The latter makes the assault on Davor Pasalic more than typical for the Serbian situation, where attackers on journalists have been getting away with it for decades, even for murders of journalists (Dada Vujasinovic, assassinated back in 1994, Milan Pantic, killed in 2001 or Slavko Curuvija, slain in 1999). To this day, an indictment was raised only in the case of Slavko Curuvija, 15 years from the actual event. In our report we conclude that, even if Pasalic has not been attacked due to his occupation, he was inflicted serious bodily injuries, which are subject to between six months and five years in prison according to the Criminal Code. The ethnically motivated insults against him point to a possible hate crime, which would most definitely be considered as an aggravating circumstance by the court. If it is established that the incident was a targeted attack on a journalist, the penalty for inflicting such injuries could be even higher – from one year to eight years in prison.

In our report we have also highlighted three cases of threats against journalists. In Ruma, Nenad Tomic, the responsible editor and owner of the news portal Ruma, has been threatened by the owner of the local hotel “Borkovac” Dusan Dragisic. As the news portal Ruma reported, Dragisic told Tomic he would cut off his ears and bite off his nose over the texts about the illegal

connection of Dragisic's hotel to the municipal sewage network. To make things even stranger, from the news it may be inferred that the threatened editor claims he had nothing to do with the controversial text and that he did not understand why he was threatened. In Gornji Milanovac, Mileta Trisic, the President of the Local Community in the village of Zagradje, attacked, threatened and insulted Zivko Perisic, a journalist of the Beta news agency. The attack happened a few months after Perisic released a statement made by the Director of the Electric Company in Lazarevac Veselin Siljegovic, who said that Trisic had been indicted for stealing electricity, because he installed a special cable in his home to circumvent the meter. In the third case, in Smederevo, a member of the City Council of Smederevo and the leader of the Coalition For a Better Smederevo Milan Lukic has sent threatening Facebook messages to a journalist of the web portal "Smederevske novine", as well as to the correspondents of "Politika", "Informer", "Vecernje Novosti" and "Blic" from that city. The journalists had previously released the news about the police taking Lukic into custody, which was confirmed by the Police Administration of Smederevo. Lukic responded to the correspondents by posting a picture of the Grim Reaper on his Facebook profile. The "Smederevske novine" web portal reported that the Prosecutor's Office in Smederevo has confirmed that the case would be referred to the High-Tech Crime Prosecutor.

In the context of the said threats, we have also analyzed Article 138 of the Criminal Code of Serbia, which is often mentioned in the media in relation to threats against journalists. More specifically, this article of the Criminal Code says that whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him/her, shall be punished with fine or imprisonment up to one year. If the perpetrator in the above explained manner commits the offence against several persons or if the act has caused disturbance of the general public or other serious consequences, it is subject to a prison sentence of between three months and three years. The most serious form of this criminal offense exists when the security of the President of the Republic, member of parliament, Prime Minister or minister in the Government has been threatened, as well as that of a judge of the Constitutional Court, a judge in a court of law, public prosecutor, deputy public prosecutor, attorney-at-law, police officer or a person engaged in a profession of public importance in the field of information, regarding the task he/she is performing, which threat is subject to imprisonment of six months up five years.

The matter we are dealing with is what may constitute a threat against security in terms of Article 138 of the Criminal Code of the Republic of Serbia? We have concluded that the mechanism of criminal law protection from threats depends on whether the threat has been made explicitly or if it was merely hinted at, as well as on the personal attitude of the journalist toward the threat – if he/she takes the threat seriously or carelessly. Both the theory of law and case law say that making threats against someone's security only involves so-called qualified threats, namely implying the probable performance of a specific evil action. Furthermore, the

intended recipient of the threat must take the threat seriously. The Criminal Code in Serbia obviously does not support the expectations of media professionals to get the protection that will be comprehensive so as to also include (in addition to concrete threats) threats hinted at or expressed by concludent actions suitable to intimidate, as well as protection that will be objective and not take into account the personal attitude of the journalist towards the threat. It seems logical that such comprehensive and objective protection should be sought for elsewhere too, and not only in criminal law.

The report also deals with the activities of the Republic Broadcasting Agency, as well as with the Republic Agency for Electronic Communications, which was merged (after the recent Amendments to the Law on Electronic Communications), with the Postal Services Agency and is now called the Republic Regulatory Agency for Electronic Communications and Postal Services. The Report also follows the activities of the Ministry of Culture and Information and the Ministry of Foreign and Internal Trade, Tourism and Telecommunications, particularly in the context of bilateral screening, namely the analysis of Serbia's preparedness for joining the EU in relation to negotiations' chapter 10 (Information Society and Media). Finally, we also observe the work of the Commissioner for Information of Public Importance and Personal Data Protection (in the context of protecting the privacy and confidentiality of communications – the first results of the oversight of Internet service providers) and in the context of accessibility of information of public importance - we closely monitor the efforts of the Commissioner aimed at making information about public authorities available to the citizens by prescribing the obligation of such authorities to have information posted online, with the minimum content of such information regulated. In the part of the report about the activities of the Culture and Information Committee of the Parliament of Serbia, we have pointed out to the increasingly strong requests of film, theatre and television artists and performers for the regulation of the collective realization of their copyrights and related rights. More specifically, in the public hearing held before the Committee on that topic, the representatives of the Actors' Association insisted that the right to a fee for the broadcasting, re-broadcasting and public communication from an image carrier of film, television and drama works should be recognized to actors too, just like it has been recognized to performers for the broadcasting, re-broadcasting and public communication from a sound carrier. The Intellectual Property Office has confirmed that the final version of the Draft Law will expressly stipulate that the above mentioned right will be recognized to this category of performers too. However, we must bear in mind that such a fee has no grounds in comparative law. It would be absolutely unacceptable to have the issue of performers' fees for film, theatre and television artists resolved at the expense of Serbian television stations, which already lack the funds for the production or purchase of expensive feature and drama programs.

In the central part of the Report we have dealt with the process of adoption of new media laws. In late July, the government set out the draft laws on public information and media, electronic media, and public service broadcasters, respectively, and forwarded them to Parliament for urgent adoption. Journalists' and media associations that have constantly insisted on the adoption of media laws since the adoption of the Media Strategy, found themselves for the first time in the same situation they have protested against due to such haste at the end of a lengthy process.

Formally speaking, by sending the laws to Parliament for urgent adoption the procedure provided for by the Parliament's rules of procedure was complied with. Namely, under these rules, a Law may be urgently adopted if such law is, among other things, passed "in order to fulfil international obligations and align regulations with those of the EU". On the other hand, bearing in mind that these were three laws regulating an area that was last time systemically regulated more than a decade ago, we believe it would have been more useful to leave to the MPs more time to get to know the draft laws better and form an opinion. The MPs had only two days to review the draft laws and submit amendments, where appropriate. This resulted in a much lower level of parliamentary debate than those three laws objectively deserved. It has also cast a shadow over the procedure that preceded the adoption, which procedure was commended for its transparency and assessed as an example worth looking up to from various sides (including Transparency Serbia), particularly in the period after the government reshuffle in September 2013.

Going forward, we may only hope that the process of implementation of the solutions brought about by the new media laws (which solutions we will analyze in the coming period) will not be so lengthy and painstaking as the process of their writing and adoption. Media laws, including the Serbian Law on Public Information and Media, the Law on Electronic Media and the Law on Public Service Broadcasters, are an important precondition for the media to fulfil their function in a democratic society. The media laws *per se* are not the only such precondition. The significance of their adequate implementation should not be disregarded at all.

The full ANEM Legal Monitoring Report No. 55 for August 2014 in Serbian is available on the ANEM website [here](#).