



LEGAL MONITORING OF THE SERBIAN MEDIA SCENE

Report for the period January – May 2015



In the period covered by this Report there have been several physical attacks against journalists. The victims were Zarko Bogosavljevic in Novi Sad, Senad Zupljanin in Novi Pazar, as well as Goran Jesic in Indjija. The latter has stated that the reason for the attack against him was the fact that he is the brother of the former mayor of Indjija Goran Jesic and not his work as a journalist. Threats were made against Dragan Marinkovic, the journalist of *Juzne vesti* from Leskovac, Aleksandar Rodic, the owner of the daily *Kurir* and Milan Ladjevic, the Responsible Editor of that daily newspaper; Veran Matic, the Editor-in-Chief of the news program of B92 and Stefan Cvetkovic, journalist from Bela Crkva. A journalist and a cameraman of Sremska TV were also threatened, with a member of the Municipal Council of Sid told them he would “smash their cameras”. In most of these cases the police identified and apprehended the attackers and the persons that made the threats fairly quickly and pressed criminal charges against them. However, the same cannot be said of the prosecutor’s office. For example, the prosecutor in Leskovac did not find the text message “A bullet is what you would get from me” sent to journalist Dragan Markovic to be a direct threat against his life. Bearing all that in mind, the very existence of adequate legal protection of journalists in Serbia could be rightfully questioned.

In addition to the abovementioned threats, journalists were also subject to political pressure, which fact illustrates well the deep lack of understanding of the media’s role in a democratic society among the Serbian political elite. The centers of political power often react aggressively at mere hints of critical reporting by the media; they typically respond with *ad hominem* attacks against journalists, constantly questioning their good intentions, thus creating an atmosphere of fear and self-censorship, as indicated in the European Commission’s Annual Progress Report on Serbia for the year 2014. If journalists attempt to report on irregularities in public procurement or other types of embezzlement, they are called out as “liars” or “political activists in disguise” of the opposition (or the government, depending on which side the attack’s coming from) and accused of “bias” and being on somebody’s “payroll”. They are even disqualified based on their background or ethnicity. By acting in such a manner, government authorities in particular disregard completely the role and obligation they have in creating a favorable environment for cultivating free public discourse on all the topics of interest for the citizens, let alone demonstrating a greater level of tolerance for criticism.

Attacks on news portals continued in 2015, albeit in new, sophisticated forms, resulting in websites being temporarily down, visitors being transferred to a different webpage and content being altered or deleted. The news portal Teleprompter and Pescanik were subject to such attacks, as well as the online edition of the daily newspaper Danas. While the competent authorities and particularly the High-Tech Crime Department of the Serbian Ministry of the Interior and the Special Prosecutor's Office for High-Tech Crime reacted on time, they have limited capacities in fighting the ever more sophisticated attacks. The state has to upgrade these capacities, but also to pass the long-announced Information Security Act, which would establish the legal framework for a comprehensive response of the state to cyber threats. On the other hand, media portals would have to develop protection mechanisms focused on prevention rather than remedying the consequences of the attacks.

Two trials started before Serbia courts, which will serve as a foundation for jurisprudence, including in implementing the provisions of the Law on Public Information and Media, according to which a journalist may not be laid off, have his salary or fee cut or put in any other unfavorable position for having published or released an accurate allegation or opinion in a media, or for having stated his/her opinion outside of media realm as his/her private position. The aforementioned trials will also serve for building case law in the enforcement of the Anti-Discrimination Act and the Anti-Mobbing Act. These are the cases *Srdjan Skoro vs. Vecernje Novosti* and *Jasminka Kocijan vs. Tanjug News Agency*. Srdjan Skoro was dismissed from the job of head of the newsroom of Vecernje Novosti only 12 days after having criticized, in the morning news of RTS, certain personnel decisions on the day of the inauguration of the Government of the Serbia. Jasminka Kocijan, according to what she has alleged in her lawsuit, was exposed to mobbing after she wrote on her Facebook profile about claims that, due to the televised rescue of vehicles caught in the snow on the motorway during the blizzard, involving the then Deputy-Prime Minister and current Prime Minister Aleksandar Vucic, the Red Cross was unable to approach people cut-off by the blizzard.

In the case *Emir Kusturica against E-novine*, the Appellate Court in Belgrade confirmed the already existing practice of Serbian courts, according to which the fact that a piece of information has been passed on from a different media does not exclude the obligation of the media passing on such information to check its accuracy. In the aforementioned case, E-novine didn't just pass on the text – they also commented on it, altered the accompanying content by adding photographs that were also commented on – and there were also other interventions on the text in question. The first five months of this year were marked by the start of the implementation of project-based financing through open competitions, in accordance with the Law on Public Information and Media. The problems that emerged are partially the consequence of the lack of precision of the relevant regulations, but also of unpreparedness and the unwillingness to put the new system into operation, especially at the local level. Certain local governments continued the practice of calling

“public procurement for information services”, funding, which in reality means the provision of PR services for local government needs, instead of financing the realization of public interest in the field of public information. In some cases, presidents of municipalities altered the proposals of expert commissions, although under the Law, the latter – and not public authorities – are supposed to assess the suitability of projects for realizing the public interest. In other cases, the question of lawful establishment of expert commissions emerged, with the Coalition of Journalist and Media Associations announcing it will not participate in the work of unlawfully established commissions. Meanwhile, the provisions of the Law were consistently implemented to competitions called by the Ministry of Culture and Information. Since this is the first year of implementation of the system of project-based co-financing, such problems are to be expected. There will clearly be more of them as we go forward and a great deal need to be done in order to fully implement the system.

In the period covered by this Report, the Regulatory Body for Electronic Media has laid down the proposals of six rulebooks elaborating on the provisions of the Law on Electronic Media (the procedure of issuance of a permit for the provision of media services based on an open competition; the procedure of issuance of a permit for the provision of media services on demand; audio visual commercial communications; organization of prize competitions in the field of media services provision; the protection of human rights in the field of media services provision; and the obligation of media service providers during the electoral campaign). In order for the rulebooks to come into force, it is necessary to obtain (as in the case of other bylaws enacted by the Regulator) from the Ministry of Culture and Information an opinion about the constitutionality and lawfulness thereof, pursuant with the Law. Regulation in this field is delayed, since the statutory deadline for enacting the bylaws by the Regulator expired on February 13, 2015. The Regulator is expected to enact a series of other bylaws for the purpose of a more efficient implementation of the Law on Electronic Media (these bylaws may include rulebooks through which the Regulator elaborates in more detail on certain provisions of the Law, or instructions regulating more closely the manner in which the Regulator implements the provisions of the Law or other regulations pertaining to the obligations related to programming content. Until now, the Regulator has opted for enacting a rulebook, although for certain issues (for example, in the case of prize competitions, the protection of human rights or obligations of media service providers during election campaigns) passing an instruction was perhaps sufficient. On the other hand, the adoption of these rulebooks, especially the one on audio-visual commercial communications, will greatly facilitate the job of the media in implementing the new rules and enhance legal security. In this period, in March, three rulebooks of the Regulator entered into force – on the criteria for setting a list of the most important events and the realization of the right to access these events; on the protection of the rights and interests of minors in the field of provision of media services; and the manner of pronouncing measures against media service providers. ANEM Monitoring Report from December 2014 dealt with these three rulebooks; it is available [here](#).

The public debate on the Draft Advertising Act was held in January. The new Advertising Act isn't merely supposed to replace the previous one (adopted ten years ago), but also put an end to the reforms anticipated by the 2011 Media Strategy. At the moment of releasing this Report, however, that Law still wasn't adopted by the Parliament. The key changes it brings pertain to the very concept of regulation, since it will apply only to persons constituting merchants in the meaning provided for by the Law regulating the field of trade. This has practically narrowed down the scope of the general advertising rules, while completely ignoring advertising by private bodies, civil society organizations or public interest advertising. Hence, certain general advertising rules and standards will practically not apply to entire categories of advertisers and advertisement messages. If such concept is ultimately adopted by the Parliament, it seems that it will contribute to the emergence of many new dilemmas, instead of enhancing legal security. The Council of the Regulatory Body for Electronic Media issued a warning in March, followed by a temporary ban in April on releasing programming content against the national commercial TV station Happy. The ban was pronounced in relation to the reality show "Parovi" (Couples), which has been aired for months round the clock on the said station. The Regulatory Body for Electronic Communications estimated that "Parovi" has featured content that may be harmful for the physical, mental or moral development of juvenile persons, since it displayed, in particular, smoking and rude and aggressive behavior. The temporary ban on releasing programming content was the first one issued in Serbian regulatory practice. From the formal standpoint, the Council of the Regulatory Body for Electronic Media did what it could do. It issued, for the first time, the strictest measure within its statutory prerogatives. Meanwhile, Happy Television didn't air the reality show during the 24-hour ban, which means that the effects of the measure was limited – the ratings of the reality show remained extremely high after the ban, while the changes in the program itself were practically meaningless. On the other hand, the financial damage suffered by Happy Television was negligible, since most advertisers shunned the reality show in question anyway because it is utterly controversial, although enjoying high ratings. The future of Serbian television seems to greatly depend on who will be more persistent – the television stations in their commitment to such formats (since this is verified by high ratings) or the advertisers in their resolve not to advertise in such programs regardless of the high ratings.

The Press Council, as a self-regulatory body, ruled in the period covered by this Report, on the complaint by the daily "Politika" against the daily "Blic" in relation to releasing four of Politika's texts without the consent of that newspaper. "Politika" believes that move to be a violation of the provisions of the Journalist Code of Ethics on copyright, while "Blic" justifies its actions by the provisions on the Law on Copyright and Related Rights, under which copyright may be suspended in cases of reporting by the press, radio, television and other media about current events, in the scope that corresponds to the purpose and manner of reporting about such an event. The Complaints Commission of the Press Council ruled in its decision that three of the four texts in

question may not be characterized as “daily information and news that have the nature of press reporting”, but rather as author’s columns or analytical texts, which are not reports in terms of form and do not have daily topicality and hence may not be encompassed by the suspension of copyright provided for by the Law on Copyright and Related Rights.

In more general developments, the Ombudsman delved in his 2014 report on the state of play in terms of media freedoms. The report concludes that the “media in Serbia are not free to the extent appropriate for a modern European state and society, or the once already attained degree of media freedoms”. It particularly emphasizes that the actions of the government and the general circumstances on the media market favor the growth of self-censorship and biased reporting. The ultimate consequence being the erosion of the constitutionally guaranteed right of the citizens to receive accurate, complete and timely information about issues of public interest. The Ombudsman’s Report didn’t reveal anything new, since the media freedom situation worsened rapidly by the month and by the year.

“Tabloidization” and self-censorship have become a recurring theme on the media scene, with no solution for these problems in sight. The Ombudsman Sasa Jankovic was the target of a media campaign, waged particularly by the “Informer” tabloid, as well as some broadcast media (TV Pink). The occasion was an accident that happened more than 20 years ago in Jankovic’s apartment, when a close friend of his committed suicide with Jankovic’s gun. Some media persistently tried to create the impression in the public that Jankovic was to blame for his friend’s death, though according to the investigation and the findings at the time, Jankovic was not present in the apartment when the accident happened. The attacking media claimed that Jankovic didn’t possess a valid gun permit for the firearm his friend killed himself with, which was later disproved. By omitting certain details from the investigation that was completed two decades ago, they tried to compromise the Ombudsman ad hominem – a person who discharges one of the most important government functions diligently and in accordance with the Law. The media campaign against Jankovic was also fueled by the state (among others), which failed to release or selectively released data about the investigation. Certain officials of the ruling party joined the campaign, using the unfounded allegations made by the tabloids to settle some personal scores with the Ombudsman. This has shown once again the harmful effects of the “tabloidization” of the Serbian media scene on the authority not only of certain public officials, but on that of the institutions and democratic processes in the country.

The Report on the Application of the Law on Free Access to Information of Public Importance and Law on Personal Data Protection issued by the Commissioner for Information of Public Importance and Personal Data Protection pointed, among other things, to the possibility of having both the

media and the citizens' access information of public importance. The Commissioner also said that his earlier recommendations were mostly respected, while the number of the Commissioner's interventions as an authority passing decisions in complaint proceedings ordering state authorities and other public entities to furnish the requested data, are on the rise compared to 2013. The structure of the requests for free access to information remains such that they mainly concern the manner of expenditure of public resources. They also highlight insufficient cooperation of the government (which, under the Law, is supposed ensure that the decisions of the Commissioner are adhered to and enforced) as one of the key challenges in implementing the Law.

The period covered by this Report saw the shutting down of the analog TV signal in certain parts of Serbia in order for the country to complete the digital switchover of terrestrial television in the agreed time – by mid-June. It seems that the biggest challenge after the switchover is completed will be the price of digital distribution, especially after the transitional period during which the ETV network operator has granted substantial discounts. The discounts of up to 80% of the full price of digital distribution of television signal in the terrestrial network for local and regional stations will apply until the end of 2016 only.

The privatization process is also in full swing, while nonetheless being considerably late and it will most definitely not be completed in the statutory term, namely by July 1, 2015. The delays were caused by many factors, such as the sluggishness of local governments as founders of media, the failure to submit the required documentation by the media, as subjects of privatization, amendments to the umbrella Privatization Act envisaging new, unplanned obligations, etc. By the end of the reporting period there hasn't been a single public call for the privatization of media.

All the above shows that the Serbian media scene, in spite of some positive changes and unquestionable reform efforts, still faces a series of problems. Some of these problems have resulted in the far from unfounded assertion of the Ombudsman in his annual human rights report that not even the previously achieved degree of media freedoms is respected. On the other hand, the reform breakthroughs that were accomplished are yet to produce results. All this confirms that problems and challenges on the Serbian media scene will persist as we go forward.

The full ANEM Legal Monitoring Report No. 60, for the period January – May 2015, is available in Serbian on the ANEM website [here](#).