



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for March 2010



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I FREEDOM OF EXPRESSION

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

1. Threats and Pressures

1.1. On March 9, 2010, the Politika daily reported that the police in Novi Sad had been guarding for several days the building in which the newspapers „Građanski”, „Subotičke”, „Kikindske”, „Somborske novine”, „Poljoprivredni oglasnik”, as well as the „Tabloid” magazine, are printed. Security was set up after the owner of the printing company had notified the police that he had received serious threats from Petar Matijevic, the owner of the Matijevic meat company, urging him to stop printing „Tabloid“, the paper that has published critical texts about Matijevic in several editions.

Article 2, paragraph 4 of the Law on Public Information stipulates that it is prohibited to put any physical or other kind of pressure on a public media and its staff or exercise any influence in view of obstructing the activities thereof. Article 149, paragraph 1 of the Criminal Code says that unauthorized obstruction of printing, sales or distribution of magazines, newspapers or other similar print items will be subject to a fine or a one-year prison sentence.

1.2. Montenegrin businessman and former associate of Montenegrin Prime Minister Milo Djukanovic has written on the Daily News Montenegro blog that journalist Jugoslav Cosic „isn't any different from the assassins and criminals he lets speak in his program“. Knezevic's text is part of a campaign against Jugoslav Cosic and the B92 television station that was launched after Cosic's interview with Montenegrin opposition politician Nebojsa Medojevic. At one point during the program, Cosic and Medojevic were joined on the air by telephone by businessman Stanko Subotic. Although during the live program Medojevic accepted such arrangement, he later claimed that it was a set-up and that he could have been consulted about Subotic joining them on the air before the show and not while it was underway. Medojevic had claimed in the past that Subotic, who is wanted by the Serbian police, was hiding in a house owned by the Montenegrin police in Zabljak. After he joined B92's program by telephone, Subotic said that he was calling from Geneva and accused Medojevic of attacking him for the account of Serbian businessmen Miroslav Miskovic and Milan Beko.

Stanko Subotic is charged in Serbia with abuse of office, a criminal offence subject to a prison sentence ranging from 2 to 12 years. Switzerland, the country where Subotic resides, has refused to extradite him; namely, the Swiss law does not provide for such criminal offence in the case of private companies. In the concrete case and the said accusations against Jugoslav Cosic and TVB92, their critics said they should not have allowed a person wanted by the law in Serbia to join their television program on the air. However, the latter is not correct. Namely, Article 37 of the Law on Public Information stipulates that public media are obliged to observe the presumption of innocence of defendants in criminal proceedings (in this case Stanko Subotic), who must be regarded as innocent until a final verdict is reached. We hereby remind that one of the reasons why the media protested over the Broadcasters' Code of Conduct, passed by the Republic Broadcasting Agency ("Official Gazette of the Republic of Serbia", no. 63/2007), was the fact that the said Code prohibits the media from interviewing "perpetrators" in the course of the investigation. In the motion for the assessment of constitutionality filed to the Constitutional Court by the Belgrade Center for Human Rights (BCHR), that organization claims that the absolute ban on interviewing a defendant during the investigation, without any regard for the public interest, may not be considered necessary in a democratic society. The BCHR stressed that such prohibition is not appropriate for the protection of the authority of the court or for any other goal that would require a restriction of freedom of expression.

1.3. In the night between March 18 and 19, 2010, the premises of the Cacak television "Galaksija" were burglarized. Three cameras were stolen, as well as the discs with the archive footage from the program "Krajem nase ulice", which dealt with fascist graffiti in Cacak. Misula Petrovic, the owner and director of TV Galaksija said that the employees had discovered the demolished offices when they came to work in the morning. According to Petrovic, the news program of the station had been obstructed because the burglars tore out cables from the wall. "This wasn't a classic robbery, because the burglars didn't take laptops and expensive equipment, they have only stolen archive footage. We believe that the ones we dubbed hooligans in our program are trying to stop us from airing it", Petrovic said.

Article 2, paragraph 4 of the Law on Public Information stipulates it is prohibited to exercise any influence on a public media and its staff so as to obstruct them in their work. The described case, in addition to certain classical criminal offences (for example aggravated theft from Article 204 of the Criminal Code), could be considered as a case of obstruction of broadcasting referred to Article 149, paragraph 2 of the Criminal Code, in view of the fact that

the theft of cameras and discs with archived footage, as well as the tearing out of cables from the walls, has unlawfully prevented, namely obstructed TV Galaksija in broadcasting its television program.

1.4. On March 2, 2010, several media reported that the journalist and the cameraman of the Sremska television station had been attacked and their equipment destroyed while trying to report on a fire in a refrigerator facility in Indjija. The son of the owner assaulted the cameraman, took away his camera and smashed it to the ground. The television station said that a possible reason for the attack could be an attempt to conceal the real cause of the fire, namely that it was a case of deliberate arson in order to cash in from insurance.

Article 2, paragraph 4 of the Law on Public Information says that it is prohibited to put any physical or other type of pressure on public media and its staff or exert any influence with a view of obstructing their work. The above incident involves several classic criminal offences (e.g. destroying and damaging someone else's belongings from Article 212 of the Criminal Code), but could be considered as a case of obstruction of broadcasting referred to Article 149, paragraph 2 of the Criminal Code, since by the destruction of its camera, Sremska televizija was unlawfully prevented from recording the said refrigerator fire and hence from program broadcasting.

2. Legal Proceedings

2.1. On March 4, 2010, the First court of original jurisdiction in Belgrade sentenced Stefan Hadziantonovic from Belgrade to a year in prison for threats made against TVB92 journalist Brankica Stankovic. Hadziantonovic, who has been convicted of the criminal offence of threats against personal safety, admitted during the trial that he had posted the threats against Stankovic on Facebook. He also apologized to the journalist. Hadziantonovic was sentenced to a single sentence of a year and three months in prison, since he had been previously sentenced to three months in jail for violent behavior.

Article 138, paragraph 1 of the Criminal Code stipulates that threats against personal safety made by death threats or physical threats against a person or its close relatives or friends shall be subject to a prison sentence ranging from one to three years. Paragraph 3 of the same Article says that the same offence committed against a person occupying jobs of public interest in the area of information, which is related to the job of that person, shall be

punishable by 1 to 8 years in prison. Since in the above case the threats were made in relation to the program “Insajder” that was dealing with the criminal proceedings against the leaders of extremist supporter groups, the sentence pronounced was actually the lowest possible punishment provided for by the Criminal Code.

2.2. On March 15, 2010, the trial against priest Vlastimir Zlatic from Silopaj village started before the Court of original jurisdiction from Gornji Milanovac. Charges against Zlatic were pressed by daily “Kurir” journalist Zoran Marjanovic from Gornji Milanovac. After a text published in “Kurir” and “Glas Javnosti” in May 2009, the priest told Marjanovic by telephone: “I will show you the gun, you will fare the same as Curuvija”. After failing to appear at the trial several times, Zlatic denied, at the first hearing yesterday, the allegations from the indictment. The proceedings will be resumed on June 10,, 2010.

Prior to the latest amendments to the Criminal Code, which became effective in September last year, threats against personal safety made in the form of death threats or physical threats against a person or its close relatives or friends were only prosecuted if private charges were pressed (unless threats have been made against a larger number of persons or if such threats have caused widespread concern among the citizens or other serious consequences) and were subject to up to one year in prison. After the amendments in September, which however do not pertain to threats made before these amendments became effective, any threats made against journalists in relation to his/her work shall be always prosecuted *ex officio* and subject to between one and eight years in prison.

2.3. TVB92 and its news editor Sanda Savic have been sentenced before the Trade Court in Belgrade for the commercial offence of breach of authors’ rights in the program “Dada Vujasinovic – the First Victim”. The verdict is not final, the attorney of the plaintiff Nenad Krasavac announced. B92 said it would appeal the verdict.

The object of the dispute in the above case is the footage of the court reconstruction of the death of journalist Dada Vujasinovic, which was carried out in 1998 by experts Branimir Aleksandric and Milan Kunjadic before the investigative judge of the District Court in Belgrade, Dobrivoje Gerasimovic. The family of the deceased journalist was unhappy with the appointed experts, who had initially found that Dada Vujasinovic had committed suicide. The parents namely requested for the reconstruction to be recorded with a camera, which was approved by the investigative judge. Nine years later, since other experts, hired by Vujasinovic’s parents, found that it was a case of murder and not suicide, the family furnished the footage to TVB92. The Serbian public had the opportunity to see it in June

2007 in the program “Dada Vujasinovic – the First Victim”, aired as part of the series “B92 Investigates”. Immediately after the program was aired, Nenad Krasavac, who taped the reconstruction in 1998, pressed criminal charges against B92, commercial offence charges with the Public Prosecutor, as well as charges with the then District Court in Belgrade with a proposal for prohibiting TVB92 from rebroadcasting the program. Krasavac also filed a claim with the Republic Broadcasting Agency. In his complaint and lawsuit, he alleged that his authors’ rights were violated. The first-instance verdict for commercial offence is the first such verdict passed in these proceedings. B92 has filed an appeal. The hearing in the Criminal proceedings against the author of the program is scheduled for September 2010. The litigation is still underway. The Republic Broadcasting Agency was the only one to dismiss the claim. However, these proceedings have raised the awareness about how the program about Dada Vujasinovic’s death – which, among other things, shows how court experts Aleksandric and Kunjadic had carried out the reconstruction – is being kept from the eyes of the public. In the meantime, based on the findings of other experts hired to investigate the case, the Prosecutor’s Office has announced it believes that Vujasinovic was murdered and did not commit suicide. The investigation is still underway.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1 Law on Public Information

1.1. The implementation of the Law on Public Information is elaborated on in the section concerning freedom of expression.

2. Broadcasting Law

2.1. Although the RTS has claimed that in the course of last year they have pressed charges against 116.000 citizens not paying their subscription fee regularly, according to a report in the daily „24 sata” from March 10, 2010, the spokesperson of the First Court of Original Jurisdiction in Belgrade Gordana Vuckovic said that the said court had received merely a hundred enforcement motions. Enforcement decisions under the said motions are yet to be passed. If the payers in default fail to lodge an objection within three days from receiving the enforcement decisions, the forced collection procedure will start. According to the typical procedure, their movable property will be inventoried or a ban on the disposal of income will be introduced. According to the RTS, the number of subscription fee payers ranges between

1.4 and 1.5 million, while only between 720.000 and 780.000 of them are actually paying the fee. Between 680.000 and 780.000 citizens fail to pay on regular basis. The General Manager of the Public Service Aleksandar Tijanic told “24 sata” he expected that the missing funds due to unpaid subscription fees would be paid from the state budget. He stressed that such a solution was necessary in order to ensure "financial stability and maintain RTS' independence".

The Broadcasting Law stipulates that the activities of the Public Broadcasting Service, which concern the realization of the general interest as provided for by the Law, shall be funded from the radio and television subscription fee. RTS has on several occasions deplored the low collection rate of the fee, short statute of limitations concerning the enforcement of court decisions, as well as slow and inefficient courts. However, what makes one wonder is the fact that, despite between 680.000 and 780.000 people who don't pay the fee regularly, RTS has, according to its own words, pressed only 116.000 charges. It is also strange to hear that the First Court of Original Jurisdiction in Belgrade has received merely a hundred enforcement motions. Therefore, one may rightfully doubt the veracity of the number of procedures initiated against payers in default stated by the RTS. On the other hand, the proposal by Aleksandar Tijanic that the missing funds for the Public Service be provided from the budget gives rise to many other issues. One is the question whether these funds are lacking because of the failure of subscribers to pay the due fee, or because of RTS' inappropriate use of the available legal means to secure collection. One might also ask to what extent potential funding from the budget would threaten the independence of the Public Service, namely would the RTS in such case be capable of protecting itself – as the law requires – and particularly its news program, against unwarranted influence of the Government. Moreover, due to the fact that the Public Service is a competitor of commercial stations on the advertising market, direct budget funding as described above could undermine the competition on that market. In keeping with the Law on the Control of State aid passed last year, state aid provided in any form, which is undermining or threatens to undermine competition on the market, shall be disallowed. It is true that the Law envisages exceptions, but the question is whether any of these exceptions are applicable to the concrete case. The authors of this report are of the opinion that the solution to the problem of the low collection rate for the RTS subscription fee should entail the introduction of measures aimed at boosting the collectibility of the fee and avoid returning to direct budget financing.

2.2. The Council of the Republic Broadcasting Agency has passed a decision to call a public competition for the issuance of radio and/or television broadcasting licenses, namely one local television license and two regional and 50 local radio licenses.

The Broadcasting Law stipulates that a public competition shall always be called when, under the Radio Frequency Allocation Plan, there is a possibility to issue new broadcasting licenses. The latest amendments to the above Plan were published on January 15, 2010 in the Official Gazette. Broadcasters' associations and especially ANEM have protested over the calling of the competition. According to what the authors of this report have learned, the goal of the amendments to the Radio Frequency Allocation Plan that have added a number of new frequencies thereto was to provide the resources for additional coverage and not the issuance of new broadcasting licenses. Article 58 of the Broadcasting Law namely says that the broadcasters, whose desired service zone is not entirely covered, may submit a request for additional coverage. On the other hand, the said request for additional coverage is impossible to fulfill if the frequency needed for additional coverage is not provided for by the Allocation Plan. By calling the said public competition, the RBA maintains the situation in which the Article 58 of the Broadcasting Law remains a dead letter on paper and the existing broadcasters are prevented from applying for additional coverage. Furthermore, the question of the number and the type of broadcasters and their service zones is a matter that is regulated by the Broadcasting Development Strategy. However, instead of laying down the number and type of broadcasters according to the needs of the society (and hence the absorption capacity of the market), as provided for by the Law, the Broadcasting Development Strategy has tied the number of broadcasters to the technical maximum enabled by the available band. The issuance of a large number of licenses for analogue broadcasting might also prove to be a problem from the aspect of the pending transition to digital terrestrial broadcasting.

3. Law on Free Access to Information of Public Importance

3.1. On March 16, 2010, the Commissioner for Information of Public Importance Rodoljub Sabic tabled to the Parliament the Report on the Implementation of the Law on Free Access to Information of Public Importance in 2009. The Commissioner has furnished the same report to the Serbian President, Serbian Government and the Ombudsman. Sabic said the report confirmed the continuity of positive trends and in particular the increasing interest of the public to exercise its rights. At the same time, he pointed out that the problems, highlighted in his previous reports, had unfortunately persisted. In 2009, the Commissioner's office handled about 2800 cases. The inflow of new cases had increased by about 23% and the number of decisions passed in these cases was by 29% greater than in the previous year. The Commissioner believes that these numbers must be considered in the light of the fact that by April 2009 his office had only five civil servants and that by the end of the same year, it had only 11 staff of 69 provided for by the Law. In about 90% of the cases, the actions of the Commissioner have yielded results and an applicant obtained the information

previously denied to him. Sabic has also singled out the Government's non-compliance with the obligation to ensure the enforcement of the Commissioner's decisions when necessary, which has objectively encouraged those who breach the law. Mr. Sabic also pointed to the rising number of complaints filed by the government authorities against the Commissioner's decisions. These complaints are typically rejected by the Supreme Court and the Commissioner believes that they represent a waste of the time and taxpayers' money with the objective of denying them their legitimate rights. Sabic stressed that it was irrelevant if these complaints were motivated by unacceptable ignorance or if they were an attempt to delay the realization of citizens' rights, which is even more unacceptable. The fact that, due to insufficient activity of the competent ministry, only 7% of 1800 registered infringers of the law (the actual numbers are believed to be incomparably higher) are held accountable, also serves as an encouragement for the offenders.

The Law on Free Access to Information of Public Importance has not equipped the Commissioner with mechanisms to ensure the forcible enforcement of his decisions, punish the infringers or even to initiate misdemeanor proceedings against them. Regarding the enforcement of the Commissioner's decisions, the Law stipulates that, when necessary, they shall be enforced by the Government. The Law also says that the Government may pass bylaws in order to regulate more closely the manner of enforcement. Until now, however, the Government has failed to pass such bylaws. Furthermore, according to the Law, a breach of the right to free access to information of public importance entails only misdemeanor responsibility. However, the Commissioner is not authorized to initiate misdemeanor proceedings – the latter may only be initiated by the Public Administration and Local Self-Government Ministry, namely the Administrative Inspectorate. Several days after the announcement that the report on the implementation of the Law on Free Access to Information of Public Importance in 2009 had been tabled to the Parliament, the President, the Government and the Ombudsman, the Commissioner declared on March 19, 2010 that he had held a meeting with the Prime Minister Mirko Cvetkovic and the Minister for Public Administration and Local Self-Government Milan Markovic. At that meeting, they agreed that the Government would pass, without delay a special bylaw or conclusion, as well as a proposal for amendments to the Law on Free Access to Information of Public Importance, so as to ensure better prerequisites for the enforcement of the Commissioner's decisions. In addition, the Government would take concrete steps to ensure the enforcement of the already passed but unenforced decisions and for that purpose the Administrative Inspectorate would press a considerable number of misdemeanor charges, the Commissioner's Office has announced.

4. Law on National Councils of National Minorities

4.1. On February 26, 2010, at a session held in Senta, the National Council of the Hungarian National Minority in Serbia concluded that the editorial policy of the "Magyar so" daily did not suit the interest of the Hungarian minority in Serbia and announced the establishment of a council that would monitor the said editorial policy. Such decision was condemned by the Journalists' Association of Serbia (UNS), the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina, while the Vojvodina Ombudsman Dejan Janca called on the National Council of the Hungarian National Minority to reconsider its decision. Janca also reminded that the Law on Public Information prohibited anyone from restricting, even indirectly, the freedom of media. On March 2, 2010, the Editorial Board of "Magyar so" published a press release saying that, by alleging that "the daily's editorial policy was bad and that it should be steered back to the right course", the National Council had revealed its true nature. "We remind that the agenda of the Editor in Chief, who was unanimously appointed by the National Council, contains one condition: any external influence on the editorial policy shall be deemed unacceptable and only the Editorial Board, which enjoys the support of all our journalists, shall be competent for the editorial policy." Therefore we view the decision of the founders as an attempt to belittle the professional competence of our journalists."

The disputed intent of the National Council of the Hungarian National Minority in Serbia points *inter alia* to problems caused by last year's adoption of the Law on National Councils of National Minorities. This Law authorizes national councils to establish media outlets. At the same time, it enables the Republic, Autonomous Province or local self-government unit to partially or entirely transfer the control of public companies and institutions in the area of public information, which entirely or in part broadcast/publish in the language of the national minority, to the national councils. In the concrete case, under the said law, the National Council of the Hungarian National Minority in Serbia is today the founder of the "Magyar so" daily. Since the national councils are typically elected by the representatives of minority political parties, the danger is that the minority party or coalition, that has secured the majority in the National Council, will be in the position to control the media tasked with informing the entire minority community in the language of that minority. Neither the Law on National Councils of National Minorities nor the Law on Public Information contains appropriate mechanisms to protect minorities' media in such a case. The protective provisions of the Law on Public Information are merely declarative and probably ineffective in such cases.

III MONITORING OF THE ADOPTION OF NEW LEGISLATION

1. The Law on Amendments to the Law on Corporate Income Tax

The Parliament of the Republic of Serbia has adopted the Law on the Amendments to the Law on Corporate Income Tax. The Law was published in the Official Gazette on March 23 and became effective the next day. This Law has serious repercussions for the media sector, because the amendments it introduces also affect Article 40 of the previous Law concerning the 20% withholding tax on the income of non-residents from authors' fees. The said amendments contain a special definition of authors' fees, which differs from the one in the Law on Copyright and Related Rights: it namely encompasses not only fees generated on the basis of an author's right, but also the ones earned on the basis of related rights and all other industrial property rights. According to the new, wider definition of the author's fee, the 20% withholding tax shall be for the first time charged on all fees that domestic companies, including the media, pay to foreign media and film and video production companies for the right to broadcast their program in Serbia. The same tax will be also charged on the fees domestic cable operators pay to foreign channel owners in order to broadcast these channels in the Serbian cable system. Higher license fees could result in less space for program, news and cultural information exchange with foreign countries, further plummeting of the quality of Serbian electronic media, increased isolation of Serbian citizens and deepening of the technological and cultural gap with the most advanced countries in the world. As in many cases in the past, in addition to having both a direct and indirect effect on the operations of Serbian electronic media, the amendments to the Law on Corporate Income Tax were adopted without any public debate whatsoever or consultations with media associations. We remind that, last year, the Parliament adopted the Law on the Amendments to the Law on the Personal Income Tax in a similar manner, by reducing the amount of recognized expenses exempted from taxes charged on fees. After numerous protests, among others by media associations, that law was shortly amended again and the amount of recognized expenses was raised, but it nevertheless remained lower than the initial one, which have resulted in a greater tax burden facing media.

IV MONITORING OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

1.1. As previously indicated in this report, the Council of the Republic Broadcasting Agency has passed a decision calling a public competition for the issuance of radio and/or television broadcasting licenses, namely one local television license and two regional and 50 local radio licenses. In addition to meeting the legal requirement (publication in the Official Gazette of the Republic of Serbia, in at least one widely available daily newspaper and in at least one local or regional newspaper in the area for which the competition is called), the text of the public competition was posted on RBA's website on March 15, 2010. The deadline for the submission of applications for the public competition was May 31, 2010, which is in accordance with the Law, which stipulates that this deadline may not be less than 60 days from the day the advertisement was published. The text of advertisement is available [here](#), only in Serbian.

Section II elaborates on the potential practical negative consequences of the RBA Council's decision – Monitoring of the Implementation of Existing Laws, subsection 2.2.

1.2. At a session held on March 23, 2010, the RBA Council concluded that the broadcasting of political parties' (namely their local boards) greetings in the form of paid advertisements for Easter or other holidays was prohibited. Explaining its conclusion, the Council referred to Article 106 of the Broadcasting Law, that stipulating that it was disallowed to advertise political organizations outside of the election campaign. The RBA Council took into account Article 2, paragraph 2 of the Advertising Law, which defined the advertisement message as a message that was, among other things, praising the advertiser; hence, the RBA Council was of the opinion that in the concrete case, the advertiser was a political party (its local board). The Council also invoked Article 13.6 of the Broadcasters Code of Conduct, the provisions of which stipulated that it was prohibited to directly or indirectly advertise, outside of the election campaign, political organizations and their gatherings, rallies or actions of any sort, during which their full or short name is mentioned or displayed. Although an Easter or other kind of greeting is not the content that directly recommends the advertiser, the Council concluded that, in accordance to Article 13.6 of the Broadcasters Code of Conduct, it was also prohibited to indirectly advertise political organizations.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

2.1. In an interview for the daily Blic, published on March 1, 2010, the Telecommunications Minister Jasna Matic said that RATEL was currently in the procedure of commissioning a design of the digital terrestrial broadcasting network. RATEL itself has not made public any information related to the design of the said network. We hereby remind that the Action Plan accompanying the Strategy of the Transition from Analog to Digital Television and Radio Broadcasting in the Republic of Serbia – adopted by the Government of the Republic of Serbia on July 2 last year and entailing the production of a conceptual design of the distribution network, including the choice of channels by allocation zone, the drafting of the distribution network (primary and secondary) design and the design of MFN/SFN networks – assigns the production of that conceptual design to RATEL. The deadlines for the said task have elapsed in the last quarter of last year and the first quarter of this year respectively.

2.2. During March, RATEL has furnished to radio stations new decisions and calculations of fees for the use of radio frequencies. We hereby remind that, pursuant to the new Rules on the Amount of the Fee for the Use of Radio Frequencies that became effective in early February, these fees were significantly reduced. Namely, the base for calculating the fee was reduced by more than 10%. Certain coefficients were also reduced, leading to an overall reduction of the fee by up to 50% in the case of some broadcasters. Such reduction of fees may be considered, if not the only, then as one of the rare effects – albeit considerably belated – of last year's Government measures to help the media in crisis. By adopting this set of measures – passed at the request and proposal of the media sector – the Government recommended the regulators to lower the fees. However, paradoxically and in spite of RATEL's readiness to fulfill this recommendation, the Government had first rejected RATEL's decision on lowering the fees, requesting the passing of new Rules. When RATEL passed the new Rules so as to fulfill the recommendation of the Government, the latter waited for two months before approving these Rules so that they may enter into force.

STATE AUTHORITIES

3. SERBIAN PARLIAMENT

On March 23, 2010, the Parliament of the Republic of Serbia passed a decision to appoint journalist Gordana Susa as member of the RBA Council. Susa was appointed to the Council

from the list of candidates proposed by Culture and Information Committee, on the basis of the proposals of the associations of broadcasting public media, journalist association, the association of filmmakers and drama artists and composer associations. In this way, the authorized proposer - consist of media, journalist and artistic associations - has finally had its candidate appointed to the RBA Council, after three candidacy procedures and reconciliation of candidate lists, the adopted amendments to the law, a failed vote and the Committee's decision. The appointment took place more than 13 months after the expiry of mandate of the previous Council member, Slobodan Djoric. Namely, after the Culture and Information Committee refused last June to table for voting a list with three names agreed upon by media and journalist associations, the Parliament amended the Broadcasting Law. These amendments have authorized the Culture and Information Committee, in case that the said associations fail to agree upon on a list with only two names, to shortlist the candidates. When the media and journalist associations subsequently managed to agree upon a list with two candidates, none of them received sufficient number of votes in Parliament. Gordana Susa has been for the whole time one of the proposed candidates. She was finally elected from the third candidate list laid down by the Committee on the basis of the proposal of media, journalist and artistic associations. In the opinion of the authors of this report, Susa could have been appointed earlier, without the unnecessary feet dragging and law amendments; the media and journalist associations prevailed in this battle owing to their determination and unity.

4. THE MINISTRY OF CULTURE

On March 27, 2010, the Culture Minister Nebojsa Bradic said in an interview for Vecernje Novosti that earlier this year the European Commission Delegation had approved the funding for a project of the Ministry of Culture entailing the drafting of a media study. In Bradic's words, the study will contain a comparative analysis of Serbian and the European media legislation and institutions in charge of implementing media policies. The Minister also announced an analysis of the media market in Serbia, an analysis of the outcomes of media privatization and the position of the state news agency Tanjug. Particularly interesting was Bradic's assertion that the Law on Unlawful Media Concentration was well in the works, which would particularly also deal with the issue of vertical concentration. "One of the biggest problems is that there is currently no legal obstacle for a publisher of a daily newspaper to be at the same time the owner of the distribution network. This is not in line with good European practice and it will be changed," Bradic said.

After last year's amendments to the Law on Public Information –criticized by media professionals and media and journalist associations – the Ministry made a concession by

accepting the proposal of the said associations for the drafting of a Media Development Strategy in Serbia. A working group was initially set up comprising the associations' representatives. However, the associations objected that the working group might not be functional if there were no adequate analysis of the as-is situation as the groundwork for its activities, on which a vision of development would be laid upon. In that sense, the said study funded by the European Commission and the analysis of the media market in Serbia could be a valuable starting point for working on the strategy.

However, what is surprising is Minister Bradic's claim about the Law on Unlawful Media Concentration being well in the works. Namely, the Culture Ministry had set up a working group more than two years ago, which produced the draft of Law on Unlawful Concentration and Transparency of Ownership of Public Media, better known in the public as the Law on Unlawful Media Concentration. This draft, which dealt only with horizontal, but not vertical media concentration, had passed the public debate and was finalized in late 2008. The "working version" of that draft is still posted on the website of the Ministry of Culture. Ministry officials had previously said that the draft was in the procedure of obtaining the approval of other ministries in the Government and that it would be subsequently tabled to the Parliament. However, the draft was practically forgotten after that – the only ones making any mentions of it were certain associations that insisted on its adoption. Last year's adoption of the Law on the Amendments to the Law on Public Information was viewed by many as a proof that the Government had given up on the Law on Unlawful Media Concentration. Namely, the Amendments to the Law on Public Information regulate the Media Register differently from the Law on Unlawful Concentration and Transparency of Ownership of Public Media. In that sense, the statement made by Minister Bradic comes as a complete surprise.

Since the statement that the "Law on Unlawful Media Concentration is well in the works" could not have been corroborated from another source, it is possible that Bradic was misunderstood or that he has sided with one party in the row between the management of Vecernje Novosti and the German WAZ-Mediengruppe. In the context of the said row, Bradic's pointing to the problem of vertical concentration is particularly indicative. His allegation that "one of the major problems is that there is no legal provision barring the publisher of a daily newspaper from being at the same time the owner of a distribution network" could be interpreted as being directed against WAZ, which is one of the shareholders of the dailies *Politika* and *Dnevnik*, while being the sole owner of press distribution company *Stampa sistem*. Otherwise, the row between Vecernje Novosti and WAZ-Mediengruppe escalated after Stanko Subotic had accused businessmen Milan Beko and Milorad Miskovic on TV B92 and Montenegrin TV In of having acquired Vecernje Novosti with his money. WAZ-Mediengruppe joined the debate by alleging that the said acquisition was realized with that company's money; the Germans also announced they

would take over Vecernje Novosti after they received the approval of the Competition Protection Commission. When the management of Vecernje Novosti launched a campaign against the said takeover, WAZ furnished the media its contract with the Director and Chief Editor of Novosti Manojlo Vukotic. The said contract reveals that Vukotic, while running the daily Novosti, had at the same time provided consultancy services to WAZ in relation to the takeover of his own media company. The media also received proof of payments made abroad to Vukotic under this contract. Vukotic did not explain if and how he had paid taxes on these proceeds.

COLLECTIVE ORGANIZATIONS

Although SOKOJ on one side and OFPS and PI on the other invited in late February representative user associations to the negotiations on the tariff of the author's fee for the use of protected items from their repertoire, during March, these negotiations have not started yet. One of the reasons is the dilemmas related to the matter of proving the representativeness of the above mentioned associations. Under the new Law on Copyright and Related Rights, as representative shall be considered the user association representing the majority of users from a certain industry and/or the association, the representativeness of which has been recognized under other regulations. In the context of radio and television broadcasters as users, the great number of issued licenses means that no association comprises the absolute majority of users in its membership. On the other hand, none of these associations have been recognized as “representative” on the basis of media regulations. Even the establishment of the number of users of a particular association has been made difficult due to the fact that, since the adoption on the Company Law, the associations may not register anymore new members with the Business Registers Agency. The Company Law namely does not provide for the concept of “business association”, which was the form of association embraced by legal persons, founders of the media, in accordance with the previous Company Law. This absence of any reference to the above concept makes it practically impossible to prove one’s representativeness by invoking the number of members, since the registers have not been updated for six or more years. Alternatively, the Law on Copyright and Related Right stipulates that representativeness shall be established based on the activities of the associations, the degree of their organization and similar criteria, which leaves room for arbitrariness. The deadline for reaching an agreement is 60 days from the publication of the public call, but such agreement is unlikely. However, since the said deadline is not preclusive, there is still hope that the agreement on tariffs will be reached after all and that the latter will not be determined in a procedure before the Commission for Copyright and Related Rights.

V THE DIGITALIZATION PROCESS

On March 1, 2010, the telecommunications Minister Jasna Matic told the daily Blic in an interview that Serbia has received a 12.5 million euro grant from the European Union for the purpose of switching from analog to digital television broadcasting. The prerequisite for starting to use these funds is the appointment of the Director of the new public company “Broadcasting equipment and communications”, which appointment is still pending. “For the time being, we have an Acting Director and I was told that the Director will be appointed at the next session of the Government”, the Minister said. However, although more than a month has passed since the interview, the Director of named public company had still not been appointed at the time when this Monitoring Report was completed.

In her interview, the Minister also explained why it was necessary to establish a separate company. The European practice is that there is a single broadcasting system in order to reduce the costs, instead of having every television station set up its own network of transmitters. Until now, several stations have broadcast their program through the RTS network, but it always leads to an awkward situation. The European practice is that you ought to make a single system dealing only with that”, Jasna Matic said.

Asked about the modalities of the transition from analog to digital broadcasting and the duration of the potential simulcast period (the simultaneous digital and analog transmission), the Minister explained that the transition in Serbia may not be gradual. “Our Broadcasting Law stipulates that, as soon as a frequency is freed in the broadcasting spectrum, it shall be immediately assigned to someone else on an auction. In other countries, the spectrum is not that saturated and hence there is enough room for you to move it bit by bit. We don’t have that option here and consequently we shall make an instantaneous transition from analog to digital broadcasting.”

Apart the fact that the Director of “Broadcasting equipment and communications”, has not yet been appointed, there has been no visible progress in the period covered by this Monitoring Report in any of the activities provided for by the Action Plan of the Strategy for the Transition from Analog to Digital Radio and Television Broadcasting in the Republic of Serbia. This brings into question the sincerity of the state’s intentions to proceed with digital television broadcasting in April 2012.

VI THE PRIVATIZATION PROCESS

On March 4, 2010, the Privatization Agency issued a public call for participation in the public auction for the privatization of the public companies Radio Leskovac, Radio Televizija Brus, Televizija Pozega and Radio Pirot respectively, the Public Company for Information

Mladenovac and the Public Information Company Radio Pozega, to be held on April 23 in Belgrade.

On March, 12, about a week later, the media reported that the Public Company “Stampa, radio i film” (SRIF) from Bor has accused Branislav Rankic, the Mayor of that city from the Serbian Radical Party (SRS), of having placed a ban on the salaries of the employees of the said company, because they had aired a one-hour film about the trial of the SRS leader Vojislav Seselj in The Hague. The row of SRIF and Rankic erupted after a 20-minute propaganda film about the 20th anniversary of the Democratic Party (DS), which was aired by SRIF in the scope of a live program featuring several officials from the DS Municipal Board. SRIF published a press release saying Rankic had been a one-hour guest appearance on TV Bor to be aired instead of the controversial film about the Seselj trial in The Hague, which Rankic refused. Rankic also confirmed to the Beta News Agency that he had refused to make a transfer from the municipal budget for SRIF salaries and said he would do it “when SRIF starts treating the SRS as they treat the DS”. “SRIF now has the opportunity to make amends, or to ask DS for the salaries”, Rankic said. SRIF noted that Rankic’s decision to withhold the salaries of its employees was tantamount to blackmail and an attempt to interfere with the editorial policy. The company reminded it was not supposed to receive funds from the budget of the SRS but from the municipal budget, which was financed by all citizens of Bor.

The events in Bor represent yet another testimony about the untenable position of local public media and an additional argument in favor of privatization. The fact is also that the current legal framework does not provide for any systemic mechanisms for defending the independence of the editorial policy of these media. Their employees are left at the mercy of local power players and are unable to autonomously pursue their editorial policies in the interest of the public.

VII CONCLUSION

With the appointment of Gordana Susa after more than a year, the RBA Council is now complete. Furthermore, the study funded by the European Commission and the analysis of the media market in Serbia should enable further activities on the media strategy. Finally, empowered by last year’s amendments to the Criminal Code, the courts are more stringent in cases of threats and attacks against journalists. In light of these encouraging examples, one might conclude that Serbia has taken a good direction in finding solutions for the many problems faced by the media. On the other hand, however, there are not so encouraging developments and case of obstruction of reform attempts, including the amendments to tax legislation that have dramatically increased the price of foreign television content, as well as

the serious delay in the discharge of obligations under the Action Plan accompanying the Strategy of the Transition from Analog to Digital Television and Radio Broadcasting. Moreover, the problems that will arise due to the delay and avoidance of the privatization of public media, which media associations have been pointing to for years, have been fully exposed in the period covered by this Monitoring Report. The lack of any mechanisms of systemic protection of public media, financed from the budget, from external pressure on their editorial policy by their formal founders – national minorities’ national councils as in the case of the “Magyar so” daily, or local authorities, as in the case of SRIF from Bor – has once again confirmed the urgent need to complete the privatization of public media. At that, the examples of failed privatizations may not be an excuse to give up the privatization process as a whole, since society simply has no mechanisms to prevent taxpayers’ money from being misused for the promotion of political parties and leaders, at the detriment of the public interest. As long as the Government keeps changing the focus of its new media policy agenda according to its own political needs or the need to make big capital happy, the media in Serbia cannot hope for a meaningful recovery. The statements made by the Minister of Culture have only confirmed that the Government is acting precisely as described above. While the Minister was saying last month that the most pressing problem in the media sector was the lack of accountability towards the public and the public word and that the Law on Public Information was encouraging for the organization of the media scene, this month Mr. Bradic tried to play the intermediary in the row between domestic tycoons and the German WAZ-Mediengruppe, shifting the focus to the matter of vertical concentration, namely the situation in which the publishers of daily newspapers are at the same time the owners of distribution networks. All indications are that in the coming months, the Serbian authorities will focus on some new topic and that no progress whatsoever will be made with regard to accountability for the public word or in stopping further horizontal or vertical concentration.