

## I FREEDOM OF EXPRESSION

There have been several cases pointing to possible violations of freedom of expression in the period covered by this report.

### 1. Threats and Pressures

1.1. The RTS Editorial Board issued a press release saying that Nova Srbija's leader Velimir Ilic, in his appearance in the show "Upitnik" (*Questionnaire*) on April 12, breached the standards for appearing on the Public Service by insulting MP Jelena Trivan. The press release also said that Ilic, together with Nova Srbija MP Miroslav Markicevic and two bodyguards had continued to insult and threaten Trivan after the show was over. The Editorial Board decided to refrain in the future from inviting MPs who behaved in breach of the standards of civil decency and RTS standards. It has also decided to prohibit the bodyguards of politicians from entering the RTS building, unless with a special police permit. On the other hand, Nova Srbija accused the RTS of having "placed itself in the service of the Democratic Party" and of continuing "the media lynching campaign" against Velimir Ilic. The Public Prosecutor's Office asked the RTS to submit a copy of the show and Spokesman Tomo Zoric announced that the RTS security service was going to be questioned in relation to the events that had happened after the end of the show. The media have reported that Jelena Trivan was placed under police protection after the incident in RTS.

The Broadcasting Law stipulates that every broadcaster must enable free, complete and timely information for the citizens. According to that Law, the public broadcasting service has a special obligation to observe the principle of impartiality and objectivity while dealing with various political interests and stakeholders in the making and broadcasting of their news program. Notwithstanding the fact that threats made against people that the media invite to participate in their shows may realistically restrict the free flow of ideas, information and opinions in public media – by, among other things, discouraging collocutors to participate in the said shows – the RTS Editorial Board's press release is problematic from multiple aspects. First, the Law does not know for a body called "RTS Editorial Board". The RTS Statute provides for a Business Advisory Board and a Program Advisory Board of RDU RTS, as well as for a Business Advisory Board and a Program Board of the Radio and Television. These are, however, only advisory bodies. The question is on what grounds an advisory body is making decisions affecting the freedom of journalists and editors to independently create television programs and decide who they will invite as a guest for their shows. Furthermore, who is going to determine the standards of civil decency and RTS standards for the purpose

of applying the decision of the RTS editorial board? Finally, how will a general decision, made in advance, that someone is breaching the standards of civil decency and RTS standards, affect RTS' duty to observe the principle of impartiality and objectivity while dealing with various political interests and stakeholders in a situation where, for example, the interests of the citizens are at stake, which are represented by MPs, exemplified by the above mentioned Velimir Ilic? The RTS Editorial Board's press release fails to respond to any of these questions. Paradoxically, although the press release itself was induced by Ilic's unacceptable behavior in the first place, it poses a threat to freedom of expression.

1.2. Slobodan Pajkic, innkeeper from Zajecar and member of the Main Board of the „I Live for Krajina“ movement of Zajecar's Mayor Bosko Nincic, has threatened Vlada Madzoski, the owner of „Timocka revija“ and his associates, the Marketing Director Miljko Stojanovic and Goran Ristevski, the newspaper has announced. Pajkic reportedly asked not to publish a text the journalists had been preparing for the next edition, which pertained to the construction works executed by Pajkic's wife in downtown Zajecar and the sale of the resulting building to the Public Housing Company. Slobodan Pajkic admitted he had called Miljko Stojanovic, but denied making any threats and announced he would press charges for slander and claim damages.

Article 2, paragraph 4 of the Law on Public Information stipulates that it is prohibited to put any kind of physical or other pressure on a public media and its staff or any influence suitable for obstructing their professional activities. In the above case, if it is established that threats have been made, these threats would have been directly aimed at restricting free flow of information.

1.3. In late April, the Acting Editor-in-Chief of the Sabac weekly Glas Podrinja (*Voice of Podrinje*) Ljubisa Djukic asked to be placed under permanent police protection. Djukic, who has been the editor of the said weekly for merely a month, requested protection after having received an anonymous letter with threats against his teenage daughter, if he did not resign from his post. According to a report by the Tanjug news agency, Djukic gave a statement to the police twice. However, the details as to the reasons for the threats against him remain unknown.

In the above case, all particulars point to the criminal offence of threats against physical security provided for in Article 138 of the Criminal Code. That Article says that any threats to the physical security of a person or that person's next of kin will be punished by a prison sentence of up to three years. After last year's amendments to the Criminal Code, where the

security of person occupying positions of public interest in the area of information is threatened – which is the case of Ljubisa Djukic as the Acting Editor-in-Chief of Glas Podrinja – in relation to his professional tasks, since the threat contained the request for him to step down from his position – the said threats are subject to a prison sentence ranging between one to eight years.

## **2. Legal proceedings**

2.1. The Editor-in-Chief of Cacanske novine Stojan Markovic was sentenced by the District Court in Cacak to pay 180 thousand dinars to the leader of Nova Srbija Velimir Ilic, as damages for breach of honor and reputation. The District Court found that Ilic's honor and reputation had been stained in the humoresque "The Impotent Mandarin" and the commentary "Time for Settling the Accounts is Near", published in February 2009. The Editor of Cacanske novine is also expected to stand trial in relation to the same texts, since Ilic has also pressed private criminal charges for slander. Stojan Markovic said he would lodge an appeal before the Court of Appeals in Kragujevac. Markovic claims that it is true that Ilic may have recognized himself in many elements of the humoresque "The Impotent Mandarin", stressing, however, that the same applies to many other politicians. The second text over which Markovic was sentenced to pay damages to Ilic is the commentary about Ilic's famous statement, from the time he was a minister, that he would tolerate "pilfering", in relation to allegations that certain people from his party were suspected of embezzlement.

While it is not our intention to comment on a court decision that is not final, we hereby want to point to two circumstances that may be of significance for this case. Firstly, since a humoresque is a written author's work, it is subject to protection granted by the Constitution of the Republic of Serbia; namely Article 73 of the Constitution guarantees freedom of artistic creation. Secondly, since Velimir Ilic is a politician and in the period the controversial article refers to he was also a minister in the Government, it would be appropriate for him to be more tolerant of media reports dissecting his role in certain affairs that took place in the areas which he was in charge of as a minister. It remains to be seen whether the Court of Appeals in Kragujevac will take into consideration the extent to which the above principles were shunned by the District Court in Cacak.

2.2. The singer Svetlana Raznatovic pressed charges against daily newspaper Press, claiming 30 million dinars of damages in relation to a statement made by the former police minister Radmilo Bogdanovic, which was published by the said daily, after having originally appeared in the weekly NIN. In that statement, Bogdanovic hinted that Arkan's widow knew

that her husband was about to be assassinated. Asked about his opinion about the assassination of Zeljko Raznatovic Arkan, Bogdanovic said that "many things seemed strange from day one and I told the police to look into why Ceca went with her sister to a local shop (in the hotel where Arkan had been shot), while Arkan remained in front of the reception desk to wait for her". Svetlana Raznatovic didn't press charges over that statement against NIN or Bogdanovic. Press has in subsequent texts hinted that Raznatovic's charges were the direct consequence of the Law on Amendments to the Law on Public Information, adopted in 2009.

There is no doubt whatsoever as to the fact that excessive damage claims filed even before they are approved may lead to self-censorship, which is fatal for freedom of expression. There is also no doubt that, according to the current regulations, Svetlana Raznatovic is entitled to choose whether she will sue the person who made the controversial statement, the media in which it was originally published, the media that published that same statement later or the lot of them all together. However, the charges that were pressed are not a direct consequence of the Law on Amendments to the Law on Public Information passed in 2009. Namely, the said Amendments have not modified the provisions concerning the award of non-pecuniary damages. Nevertheless, it is possible that the excessive fines provided for by the Law on Amendments to the Law on Public Information for misdemeanors and commercial offences going to up to 10 or even 20 million dinars have incited the prosecutors to claim excessive damages. However, the attitude and the case law of Serbian courts in awarding non-pecuniary damages are not favoring such excessive damages. Furthermore, no changes have been observed after the passing of the Amendments to the Law from 2009 and such high damage claims are yet to be approved in practice.

2.3. Goran Tasic Gokce, a former member of the Nova Srbija political party of Velimir Ilic, of whom he is a close associate and, according to media reports, party's main man in Vranje – who is currently standing trial on two counts of attempted murder – announced on a press conference he would press charges against Vukasin Obradovic, the Editor of the Vranjske newspaper. According to reports published in Vranjske, Tasic – who was expelled from the party after having threatened that party's MP Radoslav Mojsilovic – has 21 criminal offences in his police file, including attempted murder, kidnapping and fraud. Vranjske claimed Tasic was affiliated to the so-called "Keka's group", one of the leading Belgrade-based criminal gangs. Tasic claims he has pressed charges against Obradovic and the responsible people from the police, the prosecutor's office and the judiciary: he believes his rights have been infringed on, since the information about his previous convictions were supposed to be deleted from his criminal record and hence not allowed for publication.

According to Article 102 of the Criminal Code, the information from one's criminal record may be furnished only to the court, the public prosecutor and the police in relation to criminal proceedings against a person that has been convicted in the past; also, to the authority for the enforcement of criminal sanctions and the authority participating in amnesty, pardon or rehabilitation proceedings or authority deciding about the cessation of legal consequences of a conviction; as well as to guardianship authorities, when necessary for the performance of activities from their competence. Information from one's criminal record may also be furnished to other state authorities that are in charge of uncovering and preventing criminal offences, when provided for by a separate law. Upon justified request, this information may also be furnished to a state authority, company or other organization or entrepreneur, while the legal consequences of a conviction or injunction are still effective and where there is a justified interest based upon the law. It may also be furnished to the citizen whose conviction or lack thereof the said information pertains to, at his/her request. Information about a conviction deleted from the criminal record may not be disclosed to anyone. Article 4 of the Law on Public Information stipulates that ideas, information and opinions about occurrences, events and persons the public has the right to know about, may be published freely in public media, unless provided for otherwise by the Law, regardless of the manner in which this information has been obtained. Hence, it is our opinion that, in the case referred to in the previous paragraph of this report, there are no grounds to hold the journalists accountable for publishing this information. However, in the eventuality of legal proceedings, the journalist might have to face the practical problem of having to prove the information published if they pertain to data about a deleted sentence, the disclosure of which is prohibited by the Law. In the concrete case, the journalist would have to prove the authenticity of the information about the deleted sentences only indirectly; at the same time, the person that indeed has a criminal record, if his convictions have been deleted, may apply for an official excerpt from the criminal records stating that he/she has never been previously convicted.

2.4. The Court of General Jurisdiction in Novi Sad has sentenced 25-year old Vladimir Samardzic from Novi Sad for threats against journalist Brankica Stankovic posted on Facebook. The sentence is not final, but Samardzic has served his term while in custody from December 8, 2009 to March 10, 2010.

Article 138, paragraph 1 of the Criminal Code stipulates that any threats to the physical security of a person or that person's next of kin will be punished with a prison sentence of up to three years. Paragraph 3 of the same article says that, where the security of person occupying positions of public interest in the area of information is threatened in relation to

his/her job, the said threats shall be subject to a prison sentence ranging between one to eight years. Since the threats in the above case were made in relation to the content of the program “Insider” dealing with criminal proceedings against the leaders of extremist football fan groups, it may be concluded that the sentence pronounced was below the statutory minimum; namely, it was reduced to the maximum extent possible under the Criminal Code. A sentence that is below the legal threshold may be pronounced when the court establishes the existence of particularly mitigating circumstances and if it believes that such reduced sentence may help achieve the purpose of punishment. In the concrete state of affairs, of which Brankica Stankovic had notified the court in December last year, Samardzic’s case somewhat differed from other threats posted on Facebook. Samardzic has namely withdrawn his threats by e-mail and sent an apology before he was exposed and arrested, hence Brankica Stankovic did not request that he be prosecuted – charges were pressed against Samardzic by the Public Prosecutor’s Office *ex officio*.

2.5 On April 22, 2010, the First Court of General Jurisdiction rejected the charges pressed by the Public Prosecutor’s Office against Goran Kljestan, Aleksandar Perisic, Milan Gudovic, Dragan Djurdjevic, Nemanja Odalovic and Nemanja Bogdanovic on the grounds that they were filed by an unauthorized prosecutor. Namely, the Court ruled that the alleged actions of the defendants did not contain elements of criminal offences of threats against personal safety and violent behavior but merely of slander. Kljestan, Perisic, Gudovic, Djurdjevic and Bogdanovic were subsequently released from custody. They were arrested after the football match between Partizan and the Ukrainian team Shahtjor on December 16, 2009 where Partizan’s fans sang from the stands that B92 journalist Brankica Stankovic would fare like the assassinated journalist Slavko Curuvija. The fans shouted insults against Stankovic while kicking and piercing a plastic doll impersonating the reporter. The Prosecutor’s Office announced that it would appeal the court’s decision to reject the charges.

The Law on Criminal Proceedings stipulates that, during or after the conclusion of the main hearing, the Court may pass a decision to reject the indictment if it has established that it has no subject matter jurisdiction over the case, that the proceedings have been carried out without a request by the competent prosecutor, namely that there are other circumstances that are temporarily precluding prosecution. In the concrete case, the court found that the proceedings had been carried out without a request by the competent prosecutor. What has stirred vehement reactions from the public is the fact that the court rejected the charges at the very beginning of the main hearing, before any evidence had been presented. The chamber, headed by Judge Jelena Milinovic, found that the threat to Stankovic that she would fare like her assassinated colleague Slavko Curuvija did not contain a qualified and

serious threat against to physical security. At that, the evidence that could point to the seriousness of the threat was not presented at the main hearing. The Prosecutor's Office announced that it would appeal the court's decision to reject the charges. The media reported that the Justice Ministry had launched an initiative, supported subsequently by the Ministry of Youth and Sports, to have the High Judicial Council review the court chamber that had passed the controversial decision.