



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for April 2010

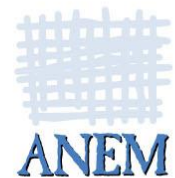


TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS	9
III	MONITORING OF THE ADOPTION OF NEW LEGISLATION	12
IV	MONITORING OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	13
	REGULATORY BODIES	13
	STATE AUTHORITIES	15
	COLLECTIVE ORGANIZATIONS.....	16
V	THE DIGITALIZATION PROCESS.....	18
VI	THE PRIVATIZATION PROCESS	19
VII	CONCLUSION.....	20

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 Madzowski, 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.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Law on Public Information

1.1. The implementation of the Law on Public Information has been partially elaborated on in the section about freedom of expression.

1.2 OSCE Media Freedom Representative Dona Mijatovic said on April 5th in an interview for the Beta news agency that the situation in the media in the last couple of years had worsened. In her words, cases of stifling free expression in the form of assaults on journalists in the entire region, as well as self-censorship, are on the rise. "The role that the media should have in every society is becoming less and less respected; the fact is ignored that conducting a public office entails responsibility towards the citizens and enabling the media to have free access in order to report about the work of public officials", said Mijatovic. She particularly warned of self-censorship as a form of threatening media freedoms, in which the journalists themselves played a major role.

Many other cases corroborate the opinion of the OSCE Media Freedom Representative Dunja Mijatovic, painting a bleak picture of the situation in Serbia, in addition to the herein described case of threats against Brankica Stankovic and the angry reactions of the public to the inappropriate response of the state to such threats. A case in point is the case of Novosti reporter from Loznica Vladimir Mitric. Mitric was attacked on September 12, 2005, sustaining a broken left hand and twenty-some concussions and bruises on his head and body. The police arrested their former colleague Lj. T, who was, at that time, already suspended from the service. However, the persons who ordered the attack were never identified. The Municipal Court in Loznica sentenced Lj. T. to six months in prison. The District Court of second instance in Sabac revoked the verdict for procedural reasons and ordered a retrial. A new pause ensued, due to the reform of the judiciary and the retrial before the Court of General Jurisdiction in Loznica began on April 13 this year, almost five years after the assault took place. Due to repeated threats, Mitric has been under police

protection for more than three years. Such cases undeniably result in self-censorship in the media.

1.3. On April 9, 2010, the Association of Jewish Municipalities of Serbia called upon the media to refrain in their reporting from communicating anti-Semitic views, the Beta news agency has reported. In a press release issued concerning the contradictory reactions to the story aired on March 31 on RTS about the trial of Peter Egner in connection to his participation in the execution of 17.000 civilians in World War Two – which ended with the reporter’s words “The Jews had to put money in the equation” – the Association voiced hope that such gaffes would not happen again. It also thanked State Secretary in the Ministry of Human and Minority Rights Marko Karadzic, who was the only official who reacted to this, as the press release called it, unacceptable view. The Editor-in-Chief of the RTS News program Nenad Lj. Stefanovic rejected the accusations made by Karadzic that the RTS was responsible for hate speech and discrimination of the Jews.

Under the Law on Public Information it is prohibited to publish ideas, information and views inciting discrimination, hate or violence against persons or groups of persons because of their race, religion or ethnic background. In the concrete case, the feature aired on RTS contained inappropriate suggestions about prejudices against the Jewish community. Although the Association of Jewish Municipalities of Serbia didn’t announce it would press charges, but merely called upon the media to refrain from publishing anti-Semitic views, in the case of the RTS report there is definitely grounds for legal action both against the author of the information and the responsible editor, requesting a ban on rebroadcasting the controversial report and the publishing of the verdict at the expense of the defendants.

2. Broadcasting Law

2.1 The Cacak Television refused to air for seven days and free of charge a press release of the local health center about the medical checkups for children that are to enroll elementary school in September. The station aired the information about the dates of the said checkups in their central news program “Gaskin”, but insisted on making further broadcasts under commercial conditions, in the form of paid advertisements. The health center refused to pay for the advertisement, claiming it was information of public interest.

According to Article 68 of the Broadcasting Law, the broadcasters’ general obligation is to communicate urgent information concerning threats to life, health, security or property. The

health center's press release about the time schedule of the medical checkups for soon-to-be first graders can hardly be considered as urgent information concerning threats to life, health, security or property. The health center's insistence on airing the information free of charge several times per day for seven days, as well as the threat to complain to the Broadcasting Agency if the request is not fulfilled, may be interpreted as an attempt to restrict freedom of expression, particularly since TV Cacak communicated the information in question in its central news program.

3. Law on Free Access to Information of Public Importance

3.1 In late April 2010, the Ministry of Public Administration and Local Self-Government filed more than one hundred misdemeanor charges after having established that 140 public authorities were not consistently adhering to the provisions of the Law on Free Access to Information. A press release issued by that Ministry said that, after inspections had been carried out in more than 200 public authorities, misdemeanor charges were filed against 41 mayors and municipality presidents, 92 directors of social affairs centers and seven officials of republic bodies. As it was explained in the press release, the Commissioner for Information of Public Importance and Personal Data Protection informed the Ministry in late February about the authorities that have failed to draft and publish an information booklet and submit a report about the implementation of the said Law. The Commissioner for Information of Public Importance Rodoljub Sabic said that the establishment of an organized and accountable government required for elected and paid civil servants occupying public positions to lead by example. "If they fail to do that, they should be held to account", Sabic explained, adding that there hadn't been such a case for years and that the number of persons that had infringed on the law and were prosecuted for it was symbolic.

Regarding the above mentioned misdemeanor charges, the authors of this report may only agree with the following words of the Commissioner for Information of Public Importance Rodoljub Sabic: "A successful transition process and the establishment of an organized and accountable government requires for elected and paid civil servants occupying public positions to lead by example in fulfilling their legal obligations. If they fail to do that, they should be held to account".

4. Law on Local Self-Government

4.1 After two failed competitions, the Local Council of Cacak has called a third public call for bids for live coverage of the sessions of the local parliament. The fact that only three

stations in the city are eligible for taking part in the competition is considered discriminatory by the Director of Radio Ozon Stojan Markovic, whose station is among the said three. “The competition was obviously called in order to award the right to broadcast the sessions to TV Cacak, for which they will be paid 350.000 dinars per day by the City Council”, Markovic said, warning he would not participate because he refused to give legitimacy to such competition. He also stressed that the conditions of the competition did not list the criteria against which a TV or radio station would be assessed in terms of the level of technical capacity for live coverage. Who will be making that judgment is also unknown.

The Law on Local Self-Government stipulates that the municipalities and cities are competent for public information of local interest and for ensuring the conditions for public information in the Serbian language and languages of national minorities used on the territory of the respective municipality. In that sense, the calling of competitions for the submission of bids for live coverage of local council sessions falls within the competence of local self-governments. In practice, however, the mechanisms that would ensure that the provision of funds for public information activities is transparent and non-discriminatory so as to avoid illicit state aid that would threaten competition on the market are unclear. In such cases, local self-governments may, at their own discretion, opt for calling a public competition or chose a public procurement procedure. In certain cases, they may decide to make direct arrangements with a particular station or newspaper. The authors of this report believe that it is necessary to regulate in a unified manner, at the national level, the provision of funds helping the media to meet the conditions for providing information of local interest, in accordance with the Law on Local Self-Government and with the principles of transparency, non-discrimination and protection of competition.

III MONITORING OF THE ADOPTION OF NEW LEGISLATION

1. Law on Amendments to the Law on Free Access to Information of Public Importance

On April 8, 2010, the Government of Serbia adopted in urgent proceedings the Draft Amendments to the Law on Free Access to Information of Public Importance and tabled it to the Parliament for adoption. The said Law authorizes the Commissioner for Information of Public Importance and Personal Data Protection to charge fines for non-compliance with his decisions.

Article 28 of the Law on Free Access to Information of Public Importance stipulates that the decisions of the Commissioner – which he is authorized by law to pass in relation to complaints of unsatisfied requestors for information – shall be binding, final and enforceable. The Law also says that the enforcement of such decisions of the Commissioner will be provided for, as appropriate, by the Government of the Republic of Serbia. In practice, the latter has never happened: not in a single case where it was requested by a party supported by the Commissioner’s decision has the Government undertaken any kind of forcible measure. Commissioner Rodoljub Sabic has warned several times that such state of affairs is actually encouraging those who infringe upon the law. The proposal tabled by the Government to Parliament for adoption resulted from a meeting of the Commissioner with Prime Minister Cvetkovic in March, where the two discussed the problems in the implementation of the Law and especially issues that may be blamed on the Government. Sabic and Cvetkovic agreed that the Government will ensure better conditions for the forcible enforcement of the Commissioner’s decisions and take concrete steps to enforce the decisions that have remained unenforced so far. A decision adopted by the Government authorizes the Commissioner – at the request of the party whose request was approved by the Commissioner’s decision – to successively charge fines up to the amount of 200.000 dinars until the decision in question is enforced. In case of further non-compliance, the decision is to be forcibly enforced by the Government. The general view is that the proposed amendment to the Law, as well as the decision of the State Administration and Local Self-Government Ministry to initiate a considerable number of proceedings (referred to in Section II, subparagraph 3 of this Report – Monitoring of the Implementation of Existing Laws), represents a serious step forward in the attitude of the authorities towards the exercising of the right to free access to information of public importance.

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. In April it was announced that the Republic Broadcasting Agency (RBA) had lost the case against journalist Miodrag Popov. The RBA had namely pressed criminal charges

against him for libel. Popov, a former journalist and editor of BK Television, has publicly criticized the RBA, claiming that the Agency has illegally revoked BK Television's license and that it has „degraded“ the media in Serbia by the manner in which it has allotted the frequencies. The court estimated that Popov's claims were value judgments for which the defendant had provided sufficient proof.

We shall be looking into this case in the section pertaining to the monitoring of the activities of the Republic Broadcasting Agency and not in the part about legal proceedings, because we believe it represents a case in point for understanding the modus operandi of the RBA in the previous period. Namely, the Agency tended to take any case of public criticism of its activities as a violation of Article 26, paragraph 3 of the Broadcasting Law and unwarranted influence on the RBA Council. The said article of the Law prohibits any influence whatsoever on the activities of Council members; it also says that Council members are not obliged to comply with anyone's instructions in their work, save the decisions of the competent court in the proceedings of controlling the work of the Council. This has resulted in a paradoxical situation in which a regulatory body, obliged by law to perform its regulatory competences taking into account civil rights and freedoms and especially freedom of expression and pluralism of opinions, is actually stifling freedom of expression by pressing charges against its critics; moreover, the RBA passes its decisions on issuing broadcasting licenses by taking into account, amongst other things, whether a particular applicant has publicly commented or not on the decisions of the Council. Truth be told, such behavior of the Council is today less the case than in the past and it is expected that the outcome of the Popov case will result in a more tolerant stance of the Council towards potential criticism.

1.2. On a session held on April 30, 2010, the RBA Council passed a General Binding Instructions about the conduct of television and radio stations (broadcasters) in covering elections for national minorities' national councils, to be held in 2010. The Instructions were published in the Official Gazette of the Republic of Serbia no. 30/2010.

The Instructions define the set of broadcasters that are not allowed to air election program (broadcasters of specialized content that have not included news and political programs in their program study submitted along with the application for the public competition); the manner of airing election program, the prohibition to implicitly or indirectly recommend election lists or candidates from such lists; the manner of informing the public about electoral activities of the proposers of election lists and the results of opinion polls about the elections; advertising in the election campaign, the presentation of election lists or candidates on the channels of the state broadcaster; stations or local or regional communities and the

civil sector; the presentation of election lists or candidates from these lists; as well as the airing of pre-election party advertising in paid time slots on commercial stations. The fact is that the RBA has a considerable experience with general binding instructions pertaining to the way in which electronic media handle various elections, which represent the bulk of general binding instructions passed by the Agency. What should be highlighted and commended is the fact that this particular general binding instructions exceed all previous regulatory activities of the Agency in terms of the degree of details and regulatory technique, which may be point to the strengthening of the RBA's regulatory capacity.

2. REPUBLIC AGENCY FOR TELECOMMUNICATIONS (RATEL)

In the period covered by this report, the Republic Agency for Telecommunications adopted 14 decisions prohibiting the work of certain radio and TV stations (transmitters). These decisions were passed within the competences of RATEL and apply to several pirate broadcasters, broadcasters that had their broadcasting licenses revoked by the RBA and one broadcaster possessing a license that was broadcasting on an unlicensed frequency.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

On April 14, 2010, the members of Parliament ended a debate in principle about four laws from the area of telecommunications aimed at providing the grounds for the transition from analog to digital television broadcasting. Among these four laws was the Draft Law on the Ratification of the Acts of the Regional Conference on Radio Communications for the Planning of the Digital Terrestrial Broadcasting Service in Parts of the Region 1 and 3 in the 174-230 MHz i 470-862 MHz frequency bands (RRC-06), as well as the Draft Law on the Ratification of the Protocol about Amendments to Certain Parts of the Regional Agreement for the European Broadcasting Zone (Stockholm 1961) with Resolutions (RRC-06-Rev.ST61), which are of significance for the coming broadcasting digitalization. Telecommunications Minister Jasna Matic reminded the MPs that the transition from the analog to the digital signal was in accordance with the recommendations of the International Telecommunications Union and the European Commission to carry out the transition by 2012 and enable unhindered reception of television signal for the citizens. In addition to the said laws, the Parliament also discussed the Draft Law on Amendments to the Law on the Day of Mourning on the Territory of the Republic of Serbia, which shall introduce the

obligation of the Republic Broadcasting Agency to oversee the application of the said Law by the broadcasters. By the end of April, the Parliament of the Republic of Serbia failed to adopt any of these laws.

4. THE MINISTRY OF CULTURE

The Ministry of Culture of the Republic of Serbia, together with the Delegation of the European Union in Serbia and the French Embassy, supported the Regional Broadcasters' Conference "TV Media as a Tool of Intercultural Exchange" organized in Belgrade on April 22 -23 by the Independent Association of Journalists of Serbia. The objective of the conference was to identify the reasons for the lack of cultural exchange of television content on the territory of the former SFRY, especially between those republics whose citizens spoke the language that used to be called Serbo-Croatian. The conference also aimed to find the way to remedy such state of affairs. At the opening of the conference, Culture Minister Nebojsa Bradic said that television as a media was the fastest road for culture cross borders, representing the link between people who wanted to exchange cultural content, experiences and knowledge. He stressed that everyone knew that television was a powerful media, which had "caused a lot of evil, hatred and hostility when in the hands of the wrong people".

COLLECTIVE ORGANIZATIONS

5. OFPS – the collective organization for the protection of related rights of phonogram producers

On February 2, 2010 a call was published in the Official Gazette of the Republic of Serbia, addressed to representative users' associations and individual users for participation in the negotiations about the single tariff of the fees for broadcasting, rebroadcasting and public communication of phonograms and interpretations recorded on these phonograms. The call was jointly made, in accordance with the Law on Copyrights and Related Rights, by the Organization of Phonogram Producers of Serbia (OFPS) and the Organization for the Protection of Performers' Rights (PI). As a result, two meetings were held in April with the representative associations. The status of representative association of users of commercial broadcasters was recognized to the Association of Independent Electronic Media (ANEM), which has engaged in the negotiations together with the Professional Broadcasters Association of Serbia (APRES) and in consultation with the Serbian TV Network. The topic of the discussion was the principles of the future tariff. The parties failed to reach an agreement

in the 60-days period from the announcement of the call and hence the negotiations were continued, in consultation with the Intellectual Property Office of Serbia, within the period (90 days from the announcement of the public call, expiring in May) provided for by the Law on Copyright and Related Rights for the submission of the proposal of the tariff to the Commission for Copyright and Related Rights. The negotiations were marked by conflicting expectations of the users that their participation in the tariff negotiations would automatically mean, on one side, that the tariffs would be reduced, as well as by the ambitions of the two collective organizations to increase the overall payments on the other. The parties were close to reaching an agreement about the revenues that would be encompassed by the base for calculating the fee. They failed, however, to agree upon the concrete amount of the fee determined as a percentage of this base, as well as upon the proposed division of the broadcasters in different payer groups, depending on the scope of the exploitation of the object of protection.

According to the new Law on Copyright and Related Rights, the tariff shall be determined by a mutual agreement between the collective organizations and the representative users' association, which would contain the amount of the fee for the use of author's works, the conditions of use thereof, the period and manner of payment, as well as the circumstances of utilization due to which the amount of the fee may be increased or reduced. In addition, the fee charged by the phonogram producers (OFPS) and the performers' fee (PI) are charged as a single fee and hence the negotiations need to reconcile the requests of these two organizations. Only if such an agreement is not reached, the proposed tariff shall be determined by the management board of the organization and tabled to the Commission for Copyright and Related Rights for opinion. In case the Commission finds that the proposed tariff does not include the rights that this organization is entitled, to collectively exercise in keeping with its permit, or if the fee is not determined in keeping with the rules for determining the tariff provided for by law, the organization shall repeat the negotiations with the representative users association or submit a new tariff proposal to the Commission. If the Commission again finds that the fee has not been set according to the rules provided for by law, it will itself determine the tariff. By the time this report was completed, the Government failed to appoint the members of the Commission for Copyright and Related Rights.

6. SOKOJ – the collective organization for the protection of musical authors' copyrights

Just like the OFPS and PI, the SOKOJ – the organization of musical authors of Serbia – has published, pursuant to Article 173 of the Law on Copyright and Related Rights – a call to

representative associations of users of musical works, as well as to individual users – if they are the only ones engaging in a particular activity in the Republic of Serbia according to the nature of their business – to take part in the negotiations about the author’s fee for the use of musical works, including the broadcasting thereof. ANEM has again seen its representative status of user of musical works recognized (among commercial broadcasters) and it has joined the negotiations together with the Professional Broadcasters Association of Serbia (APRES) and in consultation with the Serbian TV Network. In the course of the month of April, two meetings were held between SOKOJ and ANEM and APRES to discuss the principles of the future tariff. The parties again failed to reach an agreement within 60 days from the announcement of the call and the negotiations were continued in consultation with the Intellectual Office of Serbia until the expiry of the May deadline, provided for by the Law on Copyrights and Related Rights, for the submission of the tariff proposal to the Commission for Copyrights and Related Rights. The negotiations were again marked by conflicting expectations of the users that their participation in the tariff negotiations would automatically mean, on one side, that the tariffs would be reduced, as well as on the other side, by the ambitions of SOKOJ to have the overall payments increased or, at worse, to keep them at the current level. As in the case of OFPS and PI, in this case too, the parties were close to reaching an agreement about the revenues that would be encompassed by the base for calculating the fee, but not about the amount of the fee determined as a percentage of this base, as well as upon the matter of dividing the broadcasters in different payer groups, depending on the scope of the exploitation of musical works.

All the above, in relation to the concepts provided in the Law on Copyright and Related Rights about the determining of the tariff in the section of this Report pertaining to the collective organization for the protection of phonogram producers’ related rights, also applies to the determining of the tariff of the collective organization for the protection of musical authors’ copyrights.

V THE DIGITALIZATION PROCESS

On April 19, 2010, the Assistant Minister for Telecommunications Irimi Reljin told the daily Danas that Serbia's legal framework for digital television broadcasting was practically non-existent. Reljin said she expected the Draft Law on Electronic Communications, that was to replace the Law on Telecommunications and that would be dedicated to digital television, to be adopted at a session of the Government. The Assistant Minister added that the Broadcasting Law, as well as the Law on Telecommunications, contained no provisions about

digital television and that the amendments to the Broadcasting Law were currently in the works; she also said that it was necessary to pass the proper rules that would further regulate the domain of digital television. The costs of digitalization, in the part concerning the subsidizing the subscribers for the purchase of set top boxes alone, would amount to between 20 and 50 million Euros, while the broadcasting equipment would cost, as estimated in the Digitalization Strategy, about 75 million Euros. Irini Reljin confirmed that certain activities, envisaged by the Strategy, were late, but that Ministry was nevertheless intent on respecting all deadlines. She said that the biggest problem was the fact that the company “Broadcasting Equipment and Communications”, which was separated from RTS, still didn’t have a Director and might not start any activities. “The realization of the Action Plan that is the integral part of the Strategy for switching from analog to digital radio and television broadcasting in Serbia has started. A working group was set up for monitoring of the digitalization process, which has already begun and we will soon start with the drafting of the conceptual design of the distribution network”, Reljin explained.

In our previous monitoring reports, we have reiterated several times our concern over the delay with the activities provided for in the Digitalization Strategy. The Assistant Minister has confirmed such delay, while at the same time underlining the clear intention of her Ministry to adhere to the deadlines. She pointed to the biggest issue being the failure to appoint the director of the newly established company “Broadcasting Equipment and Communications”, which was separated from RTS. This omission is difficult to understand, since there is no apparent reason for the delay in appointing the said director. The rights and obligations of commercial broadcasters in the transition from analog to digital broadcasting were supposed to be already defined in the first quarter of 2010; moreover, the proposed designs of the distribution network (on the basis of the conceptual design, which is also yet to be proposed or adopted), have not been drafted; the decision on the allocation of the digital dividend has not been passed, and so on. Notwithstanding the resolved of the Ministry to adhere to the deadlines, it is evident that precious time has been lost and that the overall digitalization process has been threatened.

VI THE PRIVATIZATION PROCESS

1. The Privatization Agency has announced the sale of the assets of the information company “Ibarske novosti” from Kraljevo – in bankruptcy – for which written bids were to be submitted until May 20. “Ibarske novosti” possess a radio broadcasting license with local coverage. The estimated value of the company’s assets is 42.7 million RSD and the deposit for

participation in the tender is 8.56 million. The most valuable part of Novosti's assets is an 84 m² building. The public opening of bids will take place on May 20 and the administrative receiver shall, if the highest bid submitted is less than 50% of the estimated value, seek the approval of the Board of Creditors for accepting such bid. The Creditors' Assembly passed in March the decision on bankruptcy, according to which "Ibarske novosti" owe about 60 million RSD. The biggest creditors are the employees, most of which have in the meantime left the company in the scope of a social program. The creditors also include the Tax Administration, Banca Intesa and others. Ibarske novosti were sold in November 2007 to Dragica Tomic from Veternik, near Novi Sad, for 70 million dinars. The representatives of the trade union in the company, as well as the owner herself, filed a request for termination of the sales and purchase agreement in August 2008. Ibarske novosti included a weekly magazine, radio and television station.

2. After the second auction organized by the Privatization Agency on April 23, Radio Pirot has still not found a taker. The action failed because there were no interested buyers. The initial price was 2.9 million RSD, down from 4.3 million at the first auction, when there were also no takers. Radio Pirot has been in existence for 32 years and remains the only media in that city that has not been privatized.

3. The Privatization Agency has cancelled the auction for the sale of the assets of the public company Radio Medvedja from Medvedja. Such decision was passed in accordance with Article 23, paragraph 4 of the Regulation on Selling Capital and Assets by Public Auction. The said Article stipulates that the Agency may call off the auction if the principle of free market competition has been infringed on.

VII CONCLUSION

The period covered by this report was marked by two first instance judgments of Serbian courts. The first is the decision by the First Court of General Jurisdiction in Belgrade from April 22 to reject the charges against six persons accused to have threatened B92 journalist Brankica Stankovic, on a football match played on December 16, 2009, between Partizan Belgrade and the Ukrainian team of Shakhtar, shouting from the stands that she would fare like the assassinated journalist Slavko Curuvija, while piercing with a knife and kicking in the head a plastic doll representing Stankovic. The chamber of Judge Jelena Milinovic found that this threat to Stankovic 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. What is even more peculiar is the fact that in two cases of similar threats, posted on the Internet against the same reporter, the Serbian courts have

already sentenced the perpetrators – albeit not finally – to prison sentences. One may wonder why a threat shouted from the stands of a football stadium, on a match broadcast live in country and abroad, is less qualified and less serious than a threat posted on the Internet. It may be expected that in the appeal proceedings, announced by the Prosecutor's Office, the case law of the courts will be aligned. Diametrically opposite court decisions in essentially the same or similar cases will definitely have a harmful effect on freedom of expression boost self-censorship. Similar consequences will most definitely arise due to the first instance judgment of the District Court in Nis, sentencing the Editor-in-Chief of *Cacanske novine* Stojan Markovic to pay immaterial damages to MP, politician and former minister Velimir Ilic, over a humoresque.

If we disregard the positive effect of the Government's proposal of Amendments to the Law on Free Access to Information of Public Interest, there was no major breakthrough in the area of systemic changes and legal framework. The delayed fulfilling of obligations concerning digitalization under the Action Plan accompanying the Digitalization Strategy is becoming increasingly evident. The position of non-privatized media or failed privatizations thereof is still being resolved on a case-by-case basis and under provisions regulating privatization and bankruptcy, all while insufficiently taking into consideration the particular nature of media activities and the specific functions that the media should be carrying out in a democratic society.

A positive development in the area of free access to information of public interest – which development is indisputably the outcome of the meeting of the Commissioner with Prime Minister Mirko Cvetkovic held in March, where the two officials discussed the problems in implementing the law and agreed that the Government would take steps so as to further facilitate the enjoyment of the right to free access to information – represents yet another proof of the general feeling in the media sector that the key problem hindering the improvement of the legal framework and a better environment for the media is the lack of political will of the authorities to address these problems. When such will is there, the government is capable of making quantum leaps forward. It remains to be seen whether it will muster the political will for making the necessary changes in other areas of significance for improving the position of the media in Serbia.