



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for May 2010



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I FREEDOM OF EXPRESSION

In the period covered by this monitoring report, there were several events suggesting possible infringement of the freedom of expression.

1. Threats and pressures

1.1. In the early morning of May 2, a Molotov cocktail was thrown at the house of Dragan Ilic, the Press correspondent from Krusevac. It set fire to the canopy covering the firewood in the courtyard. The fire was soon put out and two persons were apprehended. Ilic said that his daughter was a journalist too, and that in the course of past year she had been writing for „Svedok“ weekly about abusive practices of some political party leaders in Krusevac. The police, however, stated that some passers-by had a quarrel in front of Ilic’s house and that at one moment Lidija A. (33) from Krusevac threw an incendiary device towards Aleksandar Đ. (22) but it “accidentally landed in Ilic’s courtyard“. It was said in the police statement that suitable charges will be filed against Lidija A. The Press daily reported that their correspondent had doubts with regard to the statement of the police.

Good news is that the police has immediately apprehended the person who threw the incendiary device on the journalist’s house. What raises concern, however, is the fact that, irrespective of the timely and efficient response of the police, the journalist whose house the Molotov cocktail was thrown at expressed doubts regarding the description of the event as presented by the police. “In their public statement they said that it was about a fallout between the passers-by who threw Molotov cocktail at each other and that the incendiary device only accidentally ended up under the window of my house; as if it is only natural for people to go round with Molotov cocktails and fling them at each other,” Ilic said. The court will have a final say about what has really happened. There is no doubt that there has been a large number of unresolved attacks against journalists, after which the truth was never revealed and the perpetrators were never brought to justice, which created distrust both in the police and the judiciary. In the situation when for years we do not have the answer to the question who has killed Dada Vujasinovic, Slavko Curuvija, Milan Pantic, or who activated the bomb on the window sill of Dejan Anastasijevic’s bedroom, there is no wonder that there are suspicions in the police version of what happened, even when the police was superbly efficient.

1.2. Broadcasting equipment of Radio Pancevo on Milica brdo near the Belgrade settlement of Visnjica was damaged for the second time in the past two weeks. The damage was incurred on Monday, May 3. Even though the same site hosts transmitters and antennas belonging to several users, including Serbian Ministry of the Interior, it was only the Radio Pancevo cables that were cut. Tatjana Jelesic, Manager, said that they had an interview with Belgrade Police Administration inspectors on duty and that they will try to, together with other users of the antenna tower on Milica brdo, ensure 24/7 security or video surveillance.

Damaging of the radio station broadcasting equipment definitely constitutes an act of restricting of freedom of public information. To inhibit program broadcasting is a criminal offence defined in Article 149 of the Criminal Code; sanctions against this criminal act range from a fine to imprisonment of up to one year. In real life, however, even though there were many cases of damaging of broadcasting equipment, cutting or tearing of cables and breaking of antennas on transmitter locations, perpetrators were only rarely discovered. According to the information available to the authors of this report, the final ruling was made in one case only. Namely, a Perica Dimitrijevic from Nova Varos was convicted to 3-month imprisonment with one year suspended sentence because he had broken the antenna and cut cables of the B92 television transmitter on Cvjetnjak hill near Nova Varos. The first-instance ruling was passed in 2006 by the then Municipal Court in Nova Varos, and confirmed in 2007 in an appealation procedure by the then District Court in Uzice. Interestingly, the offence in this case was qualified as destruction and damaging of public equipment for which the law stipulates a prison sentence of three months to five years. In the end, Dimitrijevic was sentenced to suspended sentence.

1.3. The “24 sata” daily reported that on May 13 prison guards and security staff in the Belgrade Palace of Justice had physically attacked and inflicted head injuries to Masanorije Josida, “Alo” magazine photo-reporter, while he was taking photos of the apprehension of Velibor Dunjic, leader of a group of Red Star supporters, indicted for attempted murder. As the daily reported, the guards took by force the memory card from Josida’s camera and Judge Sladjana Markovic ordered that all previous photos be erased even though, only a day before, Josida had been granted regular accreditation and permit to take pictures in the court building by the President of the Higher Court, Judge Dragoljub Albijanic.

According to the court rules of procedure, any photos in the court building can be taken only subject to previous permission of the president of the court concerned. As reported by the media, this photo-reporter did have such permission. According to the provisions of the Law on Public Information, however, a photographic recording of a person cannot be published

without the consent of the person in question if he/she is identifiable from such a photograph. In this particular case, Velibor Dunjic was entitled to oppose publishing of his photograph regardless of the fact that the permit for making recordings in the court building was granted. What remains unclear, however, is the grounds on which Josida was seized the memory card from his camera and had its content erased. Moreover, there can be no dispute that a physical attack on a photo-reporter is a physical pressure against media workers applied to prevent them from doing their job, and that it constitutes an infringement of freedom of public information.

1.4. Milos Radisavljevic Kimi, leader of Partizan supporters, was arrested on May 21, on suspicion that he had committed a criminal offence of threatening against safety of B92 journalist Brankica Stankovic. The police stated that, upon consultations with the First Basic Public Prosecutor's Office in Belgrade, Radisavljevic was detained because of the presence of reasonable suspicion that on December 16, 2009, he had committed a criminal offence of threatening against safety referred to in Article 138 paragraph 3. On May 8, Radisavljevic was seen at the football match between Partizan and Red Star that took place at the Partizan stadium. Police director Milorad Veljovic said on that occasion that the police had noticed Radisavljevic at the stadium but did not have legal grounds to apprehend him due to a, as he explained, legal vacuum. Now Veljovic said for B92 that the decision on the arrest was made after a meeting with the Republic Prosecutor Miljko Radisavljevic, when an agreement about the new way of combating violence on football stadiums was made.

What brought this entire matter into the focus was the fact that, regardless of the search warrant issued against him, Radisavljevic was not arrested on May 8, when he was seen at the football game and when TV cameras recorded him walking along the athletic track, only a couple of meters from a police officer who showed no reaction whatsoever. The police director made a connection between the fact that Radisavljevic was not arrested and the rejection of the indictment against six other persons charged with a criminal offence of threatening against safety with regard to that same incident. What remained undisputed, however, is that the search warrant for Radisavljevic was in place before May 8, when he freely strolled in front of the police and that in this case, the failure of the police to act, put a question mark over their decision to have persons suspected of threatening safety of journalists seriously punished.

2. Legal proceedings

2.1. The First basic public prosecutor's office in Belgrade lodged an appeal with the Appellate court against the decision by which the indictment against six supporters of Partizan who threatened journalist Brankica Stankovic was rejected "because of a major infringement of the provisions of criminal proceedings, because of an infringement of the Criminal Code, and because the facts of the case were established wrongly and incompletely". The prosecutor stated in his appeal that the disposition of the decision was perplexing and controversial.

The decision by which the indictment against six Partizan supporters, who had threatened journalist Brankica Stankovic, was discussed in more detail in our April Report. The prosecutor's office had already announced lodging of an appeal at that time, and the media reported that the Ministry of Justice had submitted an initiative, supported by the Ministry of Youth and Sports, for the High Judicial Council to review the actions taken by the judicial panel which took the decision in question. The announcement of the initiative submission was seen by many as a pressure made by executive authorities on the appellate court which was to decide on the appeal.

2.2. The RTS management will file criminal charges against Aleksandar Vlajkovic, President of the Managing Board of the UTE (Association of TV Experts), and members of this Association "for tarnishing of business reputation of RTS and its management". "Because of repeated fabrications about RTS business which are tarnishing business reputation of the Company, false statements about the program, the work of the management and the Managing Board, unauthorized provision and publishing of official documentation, grave untruths, libels, and filing of criminal charges with false allegations, seven RTS directors and editors in chief are now filing criminal charges against Mr. Vlajkovic and his associates from the so-called Association of TV Experts with the competent prosecutor's office" – this was said in the statement forwarded to the media from the RTS Manager's office. The undersigned of this statement are Nebojsa Nedeljkovic, Branka Ruzic-Hinic, Vladan Ckrkic, Stanislav Veljkovic, Sandra Susa, Nenad LJ. Stefanovic, and Aleksandar Tijanac, the RTS General Manager. On May 19, UTE professional association said that criminal charges that the managers of Radio-TV Serbia had filed against the representatives of this Association could help establish the truth about the situation in that media house. On May 31, UTE protested with the RTS Program Board because the program was abused to protect personal interests and because of the unfounded attacks against those who had taken a well-supported action to draw attention to the irregularities in the work of the Public Broadcasting Service.

At the same time, UTE submitted to Ms. Slavica Djukic-Dejanovic, Speaker of the National Parliament, their Study of the Situation in RTS. The same study had already been submitted to the National Parliament's Committee for Culture and Information but this Committee never discussed it. UTE maintains that the situation in RTS gives rise to serious concern, that RTS fails to perform the main tasks of a public broadcasting service, that cooperation with independent production houses is absolutely non-transparent, that there are some abusive practices in the HRM and staff awarding policies, that malpractice is present in the social program implementation, that the Law on Advertising was drastically violated, etc.

Without going into whether the two criminal charges exchanged between the current management of RTS and members of the professional association, gathering some of this media house's former editors in chief, are founded or not, the authors of this Report can only express their regret for the fact that the focus of the debate on the functioning of the public broadcasting service and the level to which it is successful in its role has shifted to the criminal-legal sphere, considering that this debate can by itself contribute to improvement of the public broadcasting service and promotion of the quality of service intended for citizens. The charges can lead to cessation of any supported debate on discharge of the public broadcasting service function in Serbia and maintenance of the inherited situation which almost everyone describes as unsatisfactory.

2.3. On May 2, trial was postponed before of the Basic Court in Loznica against former policemen Lj. T. who is prosecuted for having incurred severe bodily injury to Vladimir Mitric, Vecernje novosti correspondent, on September 12, 2005. Since none of the witnesses appeared before the court, the following hearing was scheduled for June 30. Nino Brajovic, Secretary General of the Journalist Association of Serbia, said that it was Mitric who was punished instead of his tormentors, since he had been living constantly guarded by the police for a long time.

Namely, when he was attacked in 2005, Vladimir Mitric was broken his left arm and inflicted two dozen of head and body injuries. At the moment, proceedings against the person suspected of having committed this attack are under way, but it was never discovered who was really behind it. Instead, Mitric has been under police protection for more than three years. Earlier, a conviction in the first instance was cancelled, and the proceedings were to begin anew. Now these new proceedings are being postponed because the summoned witnesses did not appear before the court. Media did not report the reasons for their absence or what measures the court ordered to ensure their presence at the following hearing

scheduled for June 30. However, there can be no doubt that cases like this contribute to further deterioration of the status of journalists and increase of self-censorship in media.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Law on Public Information

1.1. Implementation of the Law on Public Information was partly discussed in the section about freedom of expression.

1.2. In their statement published on May 11, signed by the editors-in-chief of the Vecernje novosti, Blic, and Press daily - Manojlo Vukotic, Veselin Simonovic, and Dragan J. Vucicevic respectively, “Novosti“, “Ringier“, and “Press Publishing Group“, publishers of the dailies and periodicals with the largest circulation in Serbia, warned the Government of Serbia and Serbian general public that Stanko Subotic Cane and the German Media Group WAZ were trying to capture the entire press market in the country. The editors-in-chief accused WAZ of being behind the refusal of the banks – creditors of “Futura plus” Company undergoing bankruptcy proceedings to support the reorganization plan for this Company – the largest newspapers distributor in Serbia. The editors-in-chief maintain that WAZ has secretly purchased a part of the receivables from the banks, as well as that it is in its interest to have “Futura plus” bankrupt, since in such an event, being the owner of the competing “Stampa sistem“, it would take over the largest share of the Serbian press market and become a monopolist in newspapers distribution. The Journalist Association of Serbia (UNS) supported the largest publishers of print media stating that the danger that monopoly would occur in press distribution was real. In his response to these accusations, Stanko Subotic – Cane, indicted in Serbia for abuse of office and under a wanted warrant issued by Serbian authorities, claims that he has not had any business with WAZ since December 2008, and that only the guarantees he issued back in 2006 are now activated by this German Media Group. Subotic says that he guaranteed that Serbian businessmen Milan Beko and Miroslav Miskovic, who were buying “Novosti“ shares with WAZ money, would transfer those shares to WAZ, and that, since this did not happen in four years, WAZ is now compensating itself from his guarantees, which is why he is suffering a multimillion loss. Peter Lange, a member of the WAZ Media Group, claims that it is not in the interest of this Company to have “Futura Plus” bankrupt. He is also denying that WAZ has been secretly purchasing the receivables from the banks. Lange claims that, given that a loan secured by a WAZ bank guarantee underlies this

debt, WAZ took over the Raiffeisen Bank's receivables from "Futura Plus" at the amount of €2.5 million. Since the bank guarantee came due, Raiffeisen Bank collected its payment against it and WAZ became a direct creditor of "Futura Plus", to which extent it duly notified the bankruptcy court and the bankruptcy administrator.

The Law on Public Information provides that no one can have a monopoly in distribution of public media and that no one may, even indirectly, restrict freedom of public information, particularly not by abusing control over the means for distribution of public media. It is, however, important to note that "Novosti", "Ringier", and "Press Publishing Group" are members of the *Media Association* which on 15 September last year announced a boycott of "Futura plus", pointing out the large debts of this distributor, and called upon the Government to regulate the press distribution market. On the same occasion, the Ministry of Culture condemned the behaviour of "Futura Plus" as unprofessional, and practically supported the boycott. Veselin Simonovic, one of the signatories of the latest announcement made by "Novosti", "Ringier", and "Press Publishing Group", in the capacity of the Chair of the Media Association Managing Board, claimed on that occasion that the decision not to deliver to "Futura plus" was not a boycott but a business decision not to deliver goods to a non-paying customer," and that the Media Association was forced to make such a decision so as to diminish their loss. After some time, "Futura plus", which was believed to have capital ties with Stanko Subotic, went bankrupt and the boycott was terminated. New escalation was preceded by the exchange of accusations between the WAZ Media Group and the management of "Novosti", in the course of which it was discovered that WAZ had financed the takeover of controlling interest in "Novosti" by the companies controlled by the businessman Milan Beko, and that, allegedly, it was agreed that Beko, after some time, transfer the controlling interest to WAZ. This did not come to pass and the management of "Novosti" launched a campaign that invoked a national feeling advocating that their newspapers should "remain in Serbian hands" (even though the companies claimed by the media to be controlled by the businessman Milan Beko and holding a controlling interest in "Novosti" were established abroad). Only several days after publishing a joint announcement of "Novosti", "Ringier", and "Press Publishing Group", the plan for "Futura plus" restructuring was adopted. The developments with regard to "Novosti", however, suggest that last-year's amendments to the Law on Public Information and the introduction of media register did not provide for true transparency of media ownership. The Ministry of Culture has a while ago initiated a campaign for adoption of the Law on Media Concentration and Visibility of Media Ownership whose draft, which took a long time to complete, had already been drafted by the working group and submitted to the Ministry in the end of 2008. During a public debate, the members of Media Association were the most ardent opponents of the Law on Media Concentration. This draft provided for establishment of a more comprehensive

media register which would ensure respect of the right of the public to be informed about media, their founders, their ownership structure and the identity of persons who, based on holding an interest or otherwise, can influence the editorial policy. Moreover, the draft defined the concentration thresholds for print media (thresholds for electronic media and cross-ownership of electronic and print media are defined in the Broadcasting Law). If adoption of this Law were not given up, today we would probably not be in a situation in which the public can only guess (but cannot know for sure) who owns “Novosti“; namely, on whose behalf are “Novosti“ shareholders holding the shares of that company. Also, if adoption of this Law were not given up, it would be easier to determine whether possible takeover of “Novosti“ shares by the WAZ Media Group would result in exceeding the media concentration threshold. Namely, in Serbia, WAZ is already holding interest in “Politika” and “Dnevnik” in Novi Sad.

1.3. Belgrade-based Minority Rights Centre “most severely condemned the hate speech” in the “Nedeljno popodne sa Leom Kiš” (Sunday Afternoon with Lea Kis) program; Televizija Pink responded with public apology for offending members of Roma community. The Minority Rights Centre stated that “in the program broadcast on May 16, singer Zorana Pavic told two jokes which directly and clearly offended the Roma community”. “Behavior of the RTV Pink editors and presenters is intolerable. Although the joke was placed in the context of rivalry between “Red Star” and Partizan, it does not poke fun at the opposing football club but belittles and hurts dignity of an entire nation.” It is also stated that this was not a live program and that the content under dispute could have been removed in editing; this, however, did not happen. RTV Pink made a public apology in a statement submitted to Beta Agency. “Editorial staff sincerely regret the incident and we agree that an appropriate intervention by the presenter was missing; therefore, she will make a public apology on the occasion of her next appearance”, Pink stated.

The Law on Public Information prohibits publishing of ideas, information and opinions that provoke discrimination, hate or violence against persons or groups of persons because they belong or do not belong to a particular race, religion, nation, ethnic group, gender, or because of their sexual orientation, regardless of whether a criminal offence was committed by such publishing or not. A person who, as a member of the group, such information relates to, may file a lawsuit against the author of such information and against the editor in chief of the media in which such information was published, requesting that its republishing be prohibited and that the ruling be published at the expense of the defendants. The same lawsuit can be filed by any legal person whose objective is to protect human and citizen freedoms and rights, or by organizations whose objective is to protect interest of groups threatened by hate speech in this particular case. Discrimination of individuals or social

groups based on their gender, race, ethnic origin, religion, social or national affiliation is prohibited by the Code of Conduct for Broadcasters. In case of infringement of the Code, the Broadcasting Law envisages a possibility of issuing a warning, but also that of suspending or withdrawing the broadcasting license.

1.4 The Press Council Managing Board unanimously appointed members of the Appellate Commission. Upon the proposal of NGOs, the Board decided that general public would be represented by Miljenko Dereta, Zoran Ivošević, and Božo Prelević. On behalf of the founders, the members of the Commission would include: Tamara Skroza and Slavisa Lekić (NUNS), Ljiljana Smajlović and Petar Jeremić (UNS), Aleksandar Dživuljski, Filip Svarm and Milorad Ivanović (Media Association), and Stojan Marković (Lokal pres). As a self-regulatory body, the Council is responsible for monitoring of compliance with the Journalists' Code of Serbia in print media and processing of the complaints filed, with regard to particular contents, by either individuals or institutions. The Council is responsible for mediation between the affected individuals and institutions and the editorials, as well for issuing of public warnings in cases of violation of ethical standards set out in the Code.

The Press Council is a self-regulatory body the existence of which is not explicitly envisioned in the provisions of the Law on Public Information. The interest for setting up of the Council, and in particular its Commission for Complaints, is reflected in the need to promote reporting in compliance with the highest ethical standards of the profession, but also in the need to influence the quality of reporting and lessen the exposure of print media to court action through mediation, and responding by public warnings in cases of violation of the Code of Journalists of Serbia. The Commission for Complaints, however, can be hardly expected to perform its role without clear support of the authorities to the work of the Commission as well as the Council in general. We are still to see whether the Council will have such support.

1.5. “On several occasions, including our annual reports to the National Parliament, I called attention to the fact that some media were violating the rights, even the presumption of innocence, of those they wrote about, and that any effective response was missing on part of competent government authorities, but journalists' associations as well”, said the Ombudsman Sasa Janković for Danas. “The reasons underlying these texts are more often than not an urge for sensationalism and (false) exclusivity, bolstered by the knowledge that heavy or “piquant” words sell better“. He added that these cases were “surely not about wrongly perceived interest of the public to be informed, but rather about some other, much more tangible motives and interests“. Janković believes that media could and should be

formally liable if failing to publish the name and surname they have got, with regard to what they are writing about, to the Ministry of Internal Affairs or other government authority.

Article 37 of the Law on Public Information provides that in media no one can be described as a perpetrator of any punishable offence, namely proclaimed guilty or responsible, before a final decision is issued by the court or other competent authority. At the same time, Article 82 of the same Law provides that a journalist, editor-in-chief and legal person who is a founder of a media outlet shall not be liable for damage if untrue or incomplete information was truthfully taken over from a public parliamentary debate or a public debate in a parliamentary body or from court proceedings or from a document issued by a competent government authority. In real life it happens that the information in which presumption of a person's innocence is violated is transmitted truthfully by media from the documents or announcements made by government authorities, predominantly by the police. Although it is indisputable that presumption of innocence is a fundamental right which needs to be protected without any exception, the authors of this Report find it unacceptable that journalists should be held liable for infringement of presumption of innocence made by government authorities. Consequently, a mechanism for combating this indisputable violation of human rights should be to punish the journalists who are transmitting the information truthfully, rather than the government authorities which such information originated from. In practice we have already seen a trend that the provision of Article 82 of the Law on Public Information is narrowly interpreted; accordingly, in order to exclude a journalist's liability, it is sometimes insisted that the document issued by the competent government authority, from which the journalist has transmitted the information, is "official", whatever this means (Serbian law does not make a distinction between official and unofficial documents issued by government authorities), and any further narrowing of the field of application of the provision on exclusion of liability from the Law on Public Information would further aggravate the position and rights of media, but also freedom of expression in general.

2. The Broadcasting Law

2.1. In this Report, implementation of the Broadcasting Law will be discussed in the section dealing with monitoring of the work of the competent regulatory body, the Republic Broadcasting Agency.

3. The Law on Local Self-Government

3.1 The Danas daily reported that the municipality of Pirot had allocated 13.4 million dinars of municipal budget funds in order to support local media. The funds will be allocated on two different bases – 70 percent or 9.4 million dinars for regular media activities and performance of news-related activities, and the remaining four million dinars based on the projects. Vladan Vasic, the Mayor of Pirot, said that it is in the interest of the Municipality to have the media survive, possibly improve the quality of their news program, and report about any developments in the Municipality. Boban Nikolic, member of the Municipal Council, said that the allocated funds are considerable, that the task before the Municipal Council and the Fund allocation commission was not an easy one, but also that spending of these budget funds will be carefully monitored. For performance of its regular activities, Regional TV Pirot was allocated 2.6 million dinars, TV „PI kanal“ 2.1 million, Radio Pirot two million, “Sloboda“ weekly 1.7 million, and Radio “Sport plus“ a million dinars. A procedure upon a call for proposals with regard to project-based disbursement of remaining funds is now in progress.

The Law on Local Self-Government provides that municipalities and towns are responsible for taking care of public information of local interest and creating conditions for public information in Serbian language and the languages of national minorities spoken at the territory of the Municipality. The Law, however, does not define the way in which these funds are to be allocated; accordingly, relevant practices vary among different local self-governments. Local self-governments therefore decide, at their sole discretion, between a call for proposals, a procedure for public procurement of services, or direct negotiation process with a particular media outlet, and sometimes opt for a combination of these models. We often here complaints that the funds are allocated in a way which is not transparent, or non-discriminatory, but rather constitutes a state aid that either distorts or threatens to distort market competition and is forbidden by the Law on State Aid Control. As a pre-emptive action to avoid such complaints in future, Local press – association of local print media, ANEM, and NUNS, announced that, together with the Ministry for Public Administration and Local Self-Government, they will work on issuing a recommendation to uniformly regulate the manner in which municipalities and towns allocate relevant funds when discharging their legal duty to create conditions to ensure public information.

III MONITORING OF THE ADOPTION OF NEW LEGISLATION

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

The National Parliament adopted the proposed amendments to the Law on Free Access to Information of Public Importance by which powers are conferred to the Commissioner for Information of Public Importance to fine the persons responsible for non-compliance with the decisions issued by him.

The Law on Amendments to the Law on Free Access to Information of Public Importance was discussed in more detail in our previous Report, considering that it was in April that the relevant proposal was adopted by the Government as a result of an agreement reached on a meeting between the Commissioner for Information of Public Importance and the Prime minister Cvetkovic in March of the current year. It was agreed on this meeting that the Government will take concrete action to ensure full respect of the right to free access to information, including, inter alia, the proposed legal amendments. With the amendments, which are now adopted in the Parliament, the Commissioner is conferred a power to directly impose successive fines, up to 200,000 dinars, against any person not complying with the decisions issued by him. Only when compliance with the Commissioner's decision is still missing after these fines are imposed, its compliance shall be ensured by the Government, by application of the enforcement mechanisms.

2. Law on Amendments to the Law on Marking the Days of Mourning on the Territory of the Republic of Serbia

The National Assembly has adopted the Law on Amendments to the Law on Marking the Days of Mourning on the Territory of the Republic of Serbia, which transferred supervision over implementation of legal provisions relating to electronic media into competences of the Republic Broadcasting Agency. Prior to these Amendments, the Ministry of Culture was responsible for supervising of compliance with the days of mourning, both in print and electronic media. The provisions relating to the manner in which the days of mourning are to be marked in media have not changed; therefore, the only purpose of these amendments was to round up the competences of the broadcasting agency as a regulatory body for electronic media in Serbia.

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. The Republic Broadcasting Agency placed on its website a report made by their supervising and analytical department relating to the RTS compliance with legal and program obligations. The Report covers the period between January and March 2010.

This is the first report of this kind ever published by the Broadcasting Agency. Please note that supervision of the broadcasters, including the institutions providing public service broadcasting, is a competence of the Agency set out in the Law. The analysis is limited to quantitative overviews of compliance with minimum program requirements as provided by the Broadcasting Law (a share of the program in Serbian language, a share of own production, a share of independent productions), shares of individual program genres in the total program offer, and the share of programs intended for specific social groups (such as programs in Roma language). The Report does not include a comparative analysis with the programs of public broadcasting services in Europe or the region, nor does it include a comparative analysis with the programs of commercial broadcasters in Serbia. The conclusion of the Report is that RTS complies with all supervised program obligations, apart from the minimum 10% requirement for independent productions which was not fully achieved in the relevant quarter (to tell the truth, it is not envisaged by the Law that this obligation should be fulfilled in each individual trimester but rather on annual level). Other things can be noted from the statistical data offered by the Report, such as that the aggregate share of children's and scientific-educational programs is smaller than the share of advertising, TV sales and announcement of programs. Even though there is no doubt that it is good that this Report was prepared and made publicly available, it should be insisted that in future, besides the quantitative analysis, such reports comprise a comparative analysis of the program as well.

1.2. Srboľjub Bogdanovic from the Republic Broadcasting Agency said for the Danas daily that the number of infringements of the Advertising Law in the programs of electronic media decreased in the previous period. The number of certain types of infringements, the ones

most frequently seen in real life, was decreased by several times. Bogdanovic particularly underlined the example of advertising in running letters outside the advertising blocks the number of which decreased by four to five times. This was possibly partly due to the misdemeanor charges that RBA had filed for January infringements, as well as to the talks the Council had held with the representatives of broadcasters, Bogdanovic said. Namely, in the beginning of March, RBA filed the first misdemeanor charges against all six broadcasters with national frequencies for of the total of 329 infringements of the provisions of the Advertising Law that were noted in January; a press conference was held for the same purpose. Most frequently, non-compliance was relating to the provisions on the duration and marking of advertising blocks, the interval between them, duration of the TV sale programs, and broadcasting of commercials during the children's program. In the meantime RBA started to file misdemeanor charges against radio broadcasters with national frequencies.

Let us remind ourselves that the Republic Broadcasting Agency announced that in January RTS had 33 infringements of the Advertising Law, TV Pink 36, TV B92 63, Happy TV 102, Kosava 85, Fox six, and Avala four. Interestingly, Bogdanovic now describes a violation of the Law that is reflected in advertising in running letters outside the advertising blocks as an example of the type of infringement the number of which has now decreased by four to five times. Please note that at the time when the Agency presented the data on the number of infringements of the Law at its press conference in January, this infringement was not included in the numbers. Namely, had the number of these infringements been large at that time, the results would have been different, particularly bearing in mind that advertising in running letters outside the advertising blocks was extremely common, especially on TV Pink. Even though it is surely positive that the number of registered infringements is now smaller than in January, it is perplexing that the Agency finds reasons for optimism in the decrease of the type of infringements which in January, for the reasons that were never explained, did not even count as an infringement.

1.3. On May 21, the Republic Broadcasting Agency published an announcement in which it indicated to a large number of complaints because of ill-cultured content in the programs broadcasted by a number of national broadcasters. The RBA Council made a decision to invite representatives of broadcasters for a discussion in which they would be told it was unacceptable to broadcast the program a large part of which consists of curses, insults, and verbal extremisms of all kinds. The RBA Council underlined that TV and radio programs need to comply with the rules of basic decency and that the urge to have more viewers and attract more attention cannot justify broadcasting of scandalous and offending content, or promotion of values inadmissible in a civilised society. Only a few days later, on May 25, 2010, the RBA Council held an emergency meeting because of the inappropriate behavior of

the participants of the “Farm” reality show on TV Pink. Pink was requested to make a public apology because of the inappropriate content in the program, “not in the name of the “Farm” participants, but in its own name”. One of the requests is to have the daily reviews “cleaned” of curses and offending content, and that the editorial staff pays attention in the course of live transmissions. This means that, in case of an incident, a camera recording some other part of the estate on the “Farm” will be activated or the transmission will be discontinued, explained Srboľjub Bogdanovic from the Republic Broadcasting Agency. Pink was also requested to put a designation that the program is not recommended for persons under 18 years of age.

With regard to the war that the Republic Broadcasting Agency declared to “uncultured content”, in the first place to swearwords in TV and radio programs, revocation of Article 7 paragraph 1 of the Convention on Cross-border Television as a basis is particularly interesting. Namely, this provision reads that all items of program services, in terms of their presentation and content, shall respect dignity of the human being and fundamental rights of others. In particular, they shall not be indecent and in particular not contain pornographic content, or give undue prominence to violence or be likely to incite to racial hatred. The Republic Broadcasting Agency’s Code of Conduct envisages that broadcasters are under the obligation to suppress extremism and insults in their programs, both in view of program presenters and their guests. It seems, however, that there is a trend that these provisions are rather broadly interpreted and that any freer speech is a priori forbidden, even at the hours when children as a rule are not watching or listening and, what is even worse, even without pondering the context in which such speech is used; this could lead, in some cases, to disproportionate restriction of freedom of expression.

2. REPUBLIC TELECOMMUNICATIONS AGENCY (RATEL)

2.1. The Republic Telecommunications Agency submitted to the National Parliament of the Republic of Serbia the Report about its activities in 2009, with an outline operational plan for RATEL activities in 2010. The Parliamentary Traffic and Communications Committee discussed this Report on the meeting held on May 7. After the debate, the members of the Board unanimously adopted the Report.

The Law on Telecommunications provides that RATEL shall prepare and submit to the Government and the Parliament annual reports (accounts included) on their activities, particularly reports on development of telecommunications in the Republic of Serbia, implementation of tariff policy principles for the services envisaged by the Law, level of universal services implementation with assessment of the user satisfaction level, and

intended use and allocation of radio frequencies for civic purposes. The Law also provides that this report is to be published in a manner set out in the RATEL Articles of Association. The RATEL Articles of Association provide that reports shall be published on the Agency's website. This took place on May 19, when the 2009 Annual Report, Financial Report, and the Authorized Auditor's Report were published.

2.2. On May 24, 2010, RATEL issued two decisions to extend the deadlines within which radio stations were to commence operation against the licenses that had been issued earlier to the Public Company RTV Vrnjacka Banja.

Article 71 of the Law on Telecommunications provides that a radio station shall commence operation within a year upon obtaining of the relevant permit, unless a specific law provides otherwise. The same Article of the Law provides that if, for objective reasons, a user is not able to commission the radio station in the specific time period, they can, not later than 15 days before the expiry of the deadline for commencement of radio station operation, submit a request for extension of this deadline in writing, specifying the reasons for the delay. In this specific case, Public Company RTV Vrnjacka Banja referred to several failing auction attempts in view of privatization as the objective reason for their inability to, within the time period provided by the Law, commission the radio station; RATEL accepted this explanation.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

The National Parliament of the Republic of Serbia has adopted the Law on Amendments to the Law on Free Access to Information of Public Importance, and the Law on Amendments to the Law on Marking the Days of Mourning on the Territory of the Republic of Serbia, which will be discussed in more detail in the section dealing with monitoring of the legislation adoption process. Moreover, the laws on ratification of international acts related to the telecommunications of importance for pending digitalization of radio broadcasting were adopted. The ratified documents included the Final Acts from the Regional Conference on Radio Connections for Planning of Digital Terrestrial Radio Broadcasting Services held in Geneva in 2006, and the Protocol on amendments to particular segments of the Regional Agreement for the European Broadcasting Area (Stockholm, 1961) with the Resolutions (RRC-06-Rev.ST61). Article 12 of the Final Acts from Regional Conference RRC-06 defines duration of the period of transition from analogue to digital terrestrial broadcasting of TV

programs. Namely, this period expires on June 17, 2015. After the expiry of the transition period, all protected frequencies from the Analogue Plan will no longer be protected; or, only new digital distribution will be protected. It was in view of this Act, but also the Recommendation of the European Commission, COM (2005) 204, by which the member states of the European Union were suggested to cease analogue broadcasting and make a full transit to digital broadcasting of TV program before the beginning of 2012, that the Government of the Republic of Serbia specified, in the Digitalization Strategy, April 4, 2012 as a date for full transit to digital terrestrial broadcasting of TV program in Serbia.

4. THE MINISTRY FOR TELECOMMUNICATIONS AND INFORMATION SOCIETY

The Government of the Republic of Serbia adopted the Draft Law on Electronic Communications and forwarded it to the Parliament on May 28, 2010 to be adopted in an emergency procedure, announced the Ministry for Telecommunications and Information Society.

The Draft Law is in full compliance with the EU 2002 regulatory framework allows a more dynamic liberalization of telecommunications, strengthens the position and role of the independent regulatory body, introduces new mechanisms for protection of users, ensures greater transparency of the decision-making process, promotes predictability of the regulatory framework and rule of law. Having been composed by the Ministry for Telecommunications working group, the Ministry worked on further inter-ministerial harmonization of the text of the Draft before it was to be adopted by the Government. This legal proposal is of utmost importance for the media sector and, in the first place, for electronic media. Namely, the Draft redefines the requirements for provision of electronic communication services, which means the requirements for distribution of radio and television program. Unlike the licensing mechanism for provision of services of radio and television program distribution (e.g. permit for provision of services of radio and television program distribution through a cable distribution network, permit for provision of the services of radio and television program distribution via satellite, or permit for provision of Internet services), here it is proposed that these services should be provided against a general authorization regime, namely directly by virtue of law, and the permits are envisaged solely for use of numeration and radio-frequencies. As specifically envisaged in the Draft, when defining the requirements and methods for the use of radio-frequencies for distribution and broadcasting of media content, the Agency for Electronic Communications (which is taking over the relevant competences from RATEL) will establish cooperation with the body

responsible for broadcasting and, where it is so provided by the Broadcasting Law, permits for use of radio-frequencies will be issued only at the request of the broadcasting regulatory body. In addition, the Agency for Electronic Communications will be authorized to introduce mandatory transmission of particular programs at the request of the broadcasting regulatory body (so-called “must carry” regulatory obligation). The draft also envisages that the Ministry for Telecommunications and Information Society will issue an act about transition from analogue to digital broadcasting of TV program and access to multiplexed terrestrial digital broadcasting upon proposal of the Agency for Electronic Communications which is being prepared in cooperation with the broadcasting regulatory body. This act will specifically regulate the manner and time schedule for the transition, the requirements and timelines for setting up the network for digital television program distribution, the requirements for creation of multiplexes, the scope of the use of radio-frequencies, to the extent necessary for effective transition to digital broadcasting of television program. Public Company „Broadcasting Equipment and Communications”, in accordance with the above act, will be issued an individual permit for use of radio-frequencies and imposed an obligation to set up an electronic communication network for multiplexing, distribution and broadcasting of digital television program. How the remaining radio-frequencies intended for terrestrial digital broadcasting and for provision of broadband services (digital dividend) will be used, will be determined by the Government after the process of transition to digital broadcasting is completed, upon the proposal of the Ministry and after public consultations are held.

5. THE MINISTRY OF CULTURE

By mid-July, Serbia will have its media strategy, which is now being prepared by the Ministry of Culture, said Deputy Minister for Media Natasa Vuckovic-Lesendric at a two-day conference that took place in Belgrade Media Centre under the title “The Vishegrad Four: Learning from Experience”. “The Media Study” will show how much today’s media scene in Serbia is in line with European criteria. This document will be based on a comparative analysis of the situation on the media scene and the relevant legislation in three European countries – namely Denmark, Germany and Austria, chosen for their ethnic specificities, population numbers, status of public broadcasting services and local media – on one hand, and Serbia on the other, that was commissioned by the Ministry and prepared by European consultants. “In the course of this year we will adopt the new Law on Tanjug News Agency and amend the Decree on International Radio of Serbia, by which their respective statuses and funding will be defined,” announced Natasa Vuckovic-Lesendric. The Deputy Minister said that the Ministry was aware of the problems which occurred when only one of the news agencies was subsidized and intends to eliminate the possibility of unfair competition.

Namely, development of the media strategy is a kind of concession that the Government made to the media sector; it was preceded by the undivided criticism of the last year's amendments to the Law on Public Information, which the professional community qualified as unconstitutional and the act seriously impairing and restricting freedom of expression. Although at that time the Ministry had already set up a working group for media strategy drafting, the working group, composed of representatives of journalists' and media associations, was not active in the preceding period since the Media Study the Ministry had ordered to be made by EU consultants, financed from EU funds, was pending. It is to be expected, however, that after the Media Study is published in mid-June, this working group will be reactivated and used as a channel for broadest consultations with the journalists' and media associations about the developmental possibilities of the media sector in Serbia in the coming period.

COLLECTIVE ORGANIZATIONS

6. OFPS, the collective organization for the protection of phonogram producers' related rights

The negotiations about the uniform fees for broadcasting, rebroadcasting and publication of phonograms and interpretations recorded on them between the Organization of the Phonogram Producers of Serbia and the Organization for Collective Administration of Performing Rights (PI), on one hand, and the representative association from the ranks of the users of commercial broadcasters, the Association of Independent Electronic Media (ANEM) with the Association of Professional Broadcasters of Serbia (APRES), on the other, definitely fell short in May. According to the Law, the proposal of fees is now to be defined by the managing board of the Organization and forwarded for an opinion to the Commission for Copyright and Related Rights; only in case the Commission is of the opinion that the proposed fees do not cover the rights these specific organizations are licensed to exercise collectively, or in case the fee was not defined in accordance with the rules provided by the law, will the organizations be under the obligation to conduct new negotiations with the representative association of users, or to file a new proposal of fees the Commission for its opinion. In case that in this second round the Commission also finds that the fee was not defined in accordance with the rules specified by the law, it will be authorized to decide on the fee. The fact that the Government, which was to appoint the members to the Commission for Copyright and Related Rights, has not done it yet is complicating this process further.

The reasons underlying the collapse of the negotiations include the reluctance of collective organizations to make real concessions in view of relaxing their fees. Namely, the solutions of the new 2009 Law on Copyright and Related Rights relating to the manner of defining the fees for the organizations for collective administration were anchored in the unsustainability of the solutions from the previous Law, from 2004, which gave the organizations for collective administration the liberty to absolutely autonomously define the fee. During the negotiations, the collective organizations argued that their old fees, irrespective of the fact that they were defined autonomously and without consultations with the users, were so low that there was no room for further relaxation. The users, on the other hand, could not accept that the fees, which were defined in such an unfair manner that the legislator was forced to change the entire law, remained essentially identical in terms of the total level of fees. In the coming period it is necessary to exert further pressure on the Government to perform its legal obligation and appoint the members to the Commission for Copyright and Related Rights, and thus make it possible for the fees to be finally defined.

7. SOKOJ, the collective organization for the protection of musical authors' copyrights

The negotiations about uniform fees for broadcasting of musical works between SOKOJ – Serbian organization of the authors of music and the representative association from the ranks of users of commercial broadcasters, the Association of Independent Electronic Media (ANEM) together with the Association of Professional Broadcasters of Serbia (APRES) failed in May. All that was said in the previous section of this Report with regard to OFPS, the collective organization for protection of phonogram producers' related rights, applies to SOKOJ too.

V THE DIGITALIZATION PROCESS

On May 20, 2010, the Association of Independent Electronic Media (ANEM) held a workshop for its members on the topic of the pending digitalization and its implications for local and regional broadcasters. The intention of the workshop, which was attended by the representatives of the Ministry for Telecommunications and Information Society, regulatory bodies (RBA and RATEL), and the Public Company “Broadcasting Equipment and Communications”, was to inform the broadcasters about their obligations, as well as the new possibilities, attached to digitalization of television broadcasting. The joint conclusion of the

workshop was that implementation of the action plan to accompany the Digitalization Strategy is already late, but the deadlines defined in that act, including April 4, 2012 as the date envisaged for final closing down of the transmitter network, are still plausible, under the condition that full operability of the Public Company “Broadcasting Equipment and Communications” is ensured without delay, namely, under the condition that the Government appoints the Manager of this public enterprise and confers full powers to him without delay. Namely, the absence of a functional operator and partner in making preparations for digitalization places TV stations into a situation where they find it impossible to plan their obligations in the transition process. After the workshop, ANEM forwarded the Government of the Republic of Serbia a statement containing an appeal to have this appointment made without delay.

VI THE PRIVATIZATION PROCESS

In May, media reported about the consequences of several disputable media privatizations. Employees of Televizija Valjevo, which was sold at an auction in mid April for 147.000 dinars to Slobodan Pavlovic, owner of “Plus” Company, Obrenovac, claimed that they had not received their salaries for three months and that, because the electricity bill was not paid, this station was left without the terrestrial signal and was accessible only through cable. Before the privatization, the main funding source of this television was the town budget. The employees state that the new owner announced that erotic content and hot lines would be introduced as program items that would provide funds this television station needs to survive.

In Krusevac, after the termination of the sale and purchase agreement with the Bulgarian “Media svjat” company, the Share Fund appointed Dragoljub Antic, journalist of that media house a temporary asset administrator in the Publishing Company “Pobeda”. Antic qualified the situation in the Publishing Company “Pobeda” as difficult. Since the employees did not receive eight salaries and taxes or contributions were not paid, the debt of Publishing Company “Pobeda” amounts to about three million dinars on this basis only, while the amount of one million dinars more is owed to other creditors.

In RTV Vrnjacka Banja, 45 employees announced that they would start a strike because the new owner had not disbursed salaries for March and April, or paid the accompanying contributions. Snezana Milicevic, Director of this media house, says that the employees are

distorting the truth. According to her, RTV Vrnjacka Banja is still registered as a public enterprise, considering that, although three months have elapsed, the Business Registers Agency has still not issued a decision to enter the new ownership structure in the Register. Therefore, the municipality paid the employees their March salary, at the level of 90 percent of its full amount, and the full amount of contributions to the Pension and Disability Insurance Fund for the said month. The new owner paid the first installment at the amount of 100.000 dinars to the Electricity Company to repay the debt amounting to 1.000.000 dinars incurred before the privatization, as well as 350.000 dinars to SOKOJ for the outstanding copyright fees. Miodrag Radovic from Belgrade, the new owner of RTV Vrnjacka Banja, believes that, instead of threatening to go on strike, the employees should work harder and more effectively.

In Kraljevo, after the failed privatization and bankruptcy, the sale of “Ibarske novosti” was announced in May. “Ibarske novosti” has not been published for months, and radio and TV program is maintained at the minimum, namely only to ensure that regional television frequency is kept. These, together with the viewers and listeners that were acquired, are the only assets of “Ibarske novosti” since, after the failed privatization this company is in debt, does not have business facilities of its own, while its equipment is old. Some seventy or so former workers were beneficiaries of a social program and most of them are now looking for a new job having little hope that even a part of outstanding salaries will be reimbursed and that their pension contributions will be ensured for those two years in which no contributions were paid. The expected privatization did not take place, however, even though a buyer finally appeared. Namely, on May 20, “Kemo” Company, owned by the son of a famous Kraljevo businessman Dragan Cicic, offered 12 million dinars, slightly falling short of the announced price of 21 million dinars. Since the offered price was below the announced one, the consent of creditors was required for the company to be sold. Such consent was denied by the Tax Administration. Dr Ljubisa Jovasevic, Mayor of Kraljevo, blames the local Democratic Party Tax Administration Board for the denial of the consent. The President of Kraljevo’s Board of the Democratic Party, Milan Vukovic, refutes this and, in his statement for “Politika”, says that it was not only that the democrats did not influence the decision of the Tax Administration, but they were not even informed about the attempted sale of “Ibarske novosti”.

All this, and particularly the situation with the sales of “Novosti”, which was described into more detail in the section of this Report dealing with implementation of the Law on Public Information (although “Novosti” was privatized in accordance with the regulations that were in force at the time, the takeover of this company’s shares held by small shareholders and the government threatens to become an unprecedented scandal, if it has not already).

additionally complicate the status of both privatized media and those in which privatization is still pending. Still, there is a complete lack of any proposals which could provide systemic solutions for the issues that are obviously arising in connection with media privatization, so as to protect media pluralism and freedom of public information.

VII CONCLUSION

The scandal into which the situation with the takeover of “Novosti” threatens to grow is in fact a true picture of the Serbian media scene. There is hardly any problem faced by the Serbian media sphere that was not touched upon in public statements of different interested parties who have recently made public announcements in this regard, such as the absence of the vision of the media sector development, privatization – not as a mechanism intended to restrict the influence that executive authorities and centers of political power exert on media houses, but quite the opposite, a mechanism intended to secure it through intermediation of oligarchs trusted by the ones with political power, non-transparent procedures, non-transparent ownership structures, including ultimate invocations of patriotism once everything else fails. Without analyzing what is true and what is not from everything that could be read in media concerning the situation with “Novosti”, it is undisputable that the government, as a shareholder in this media house, did not have a clear vision of development of “Novosti“, just as it does not have a clear vision of development of the overall media scene in Serbia. Media are also often seen as a mere means for exerting influence on public opinion, the control over whom is important for winning or losing elections, and not as a forum allowing the citizens to take part in the broadest social and political debate about the things of public interest the functioning of a democratic society is inconceivable without. The procedures, whether concerning takeover of shares or obtaining a permit to implement concentration – as it was in the case of “Novosti“, or concerning obtaining of broadcasting licenses or local self-government budget funds intended to support media in complying with their legal obligation to create conditions for public information of local importance, are all equally non-transparent, frequently essentially unfair. Media ownership is extremely non-transparent too. The 2009 Amendments to the Law on Public Information, by which a media register was established in Serbia, have not produced any improvement in this regard and the general public is still denied their right to know the identity of the persons who, based on ownership or otherwise, can influence the editorial policy. Such a state of affairs, together with frequent physical attacks on journalists and threats that result in endless court proceedings or decisions on rejection of indictments because the courts’ finding that threats are not serious enough, and the appertaining increase of self-censorship, paint a media

landscape in which public consultations leading to adoption of a new media strategy should commence during the coming summer. The level to which such a media strategy responds to the above described problems will actually be the level to which it would be likely to contribute to improvement of the Serbian media sector.