

I FREEDOM OF EXPRESSION

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

1. Threats and Pressures

1.1. On October 12, 2010, the daily “Danas” called the Ministry of Internal Affairs of the Republic of Serbia to call to account the police officers who took part in the beating of the reporter Aleksandar Roknic, one of the editors of the said newspapers. Roknic was reporting from the streets of Belgrade during the riots caused of the opponents of the Gay Pride March on October 10. In the mayhem that erupted after a group of hooligans attacked the police in the vicinity of Roknic, the police officers clubbed Roknic on his head, back, ribs and arms, even after he already fell to the ground and in spite of having shouted that he was a reporter and having flashed his press card at them. In the hospital, Roknic was diagnosed with minor bodily injuries. Journalists’ associations condemned the attack, while the Police Minister Ivica Dacic apologized to the reporter and the “Danas” content team over the incident. “The police want to protect journalists and we had set up a special unit with that task for this occasion, but unfortunately an incident happened when the police reacted to the attack of the mob”, Dacic said.

The Public Information Law says that public information shall be free and in the interest of the public. Furthermore, it expressly prohibits any restrictions on freedom of information, free flow of ideas, information and opinions, as well as any physical and other pressure on a public media and its staff or influence aimed at obstructing their work. The Law on the Police stipulates that police affairs shall be carried out with the aim and so as to provide to each individual equal protection of their safety, rights and freedoms and to support the rule of law. That law also provides that the performance of police tasks shall be founded on the principles of professionalism, lawfulness and proportionality in the application of police powers, as well as on the principle on trying to work with the least damaging consequences. In carrying out police tasks, the use of force shall be in accordance with the law, so as to achieve the most professional outcome, without unnecessary harmful effects. “Danas” called on the Ministry of Internal Affairs to handle the beating of Aleksandar Roknic in accordance with the Law and bring to account the police officers involved in the incident. Until the expiry of the period covered hereunder, the

police failed to disclose whether the responsibility of police officers had been established, namely if it was determined whether the police officers had exceeded their powers in the incident.

Otherwise, during the riots of the opponents of the Gay Pride March on October 10 in Belgrade, the rioters attacked the RTS building in Takovska Street. One police officer was wounded in the attack and the building was damaged. Meanwhile, in downtown Belgrade, the mobile digital mammography facility was stoned and damaged while the checkup of female patients was underway inside. The mammography bus for early detection of breast cancer was purchased with donor funds collected in a campaign organized by RTV B92. The sole reason for the attack was B92's logo on the vehicle. The riots were initiated by radical extremist groups who tried to thwart the constitutionally guaranteed right to freedom of assembly of the citizens who came to support the rights of the LGBT population.

1.2. The Beta news agency has been told by the Zajecar police that B92's correspondent from that city Sonja Kamenkovic has been placed under police security due to the threats made against her by the suspended police officer Radomir Radovic from Majdanpek. Kamenkovic claimed that Radovic told a third person he would kill all journalists who had written about his case and directly singled out her and the correspondent of the daily "Alo!" from Majdanpek, Ivan Popovic. Radovic was suspended from office in August over the beating up of two youths with his gun.

The Public Information Law prohibits any restrictions on freedom of information, as well as any physical and other pressure on a public media and its staff or influence aimed at obstructing their work. According to the Law on the Police, on the other hand, the police shall, where legitimate reasons exist, take the proper measures in order to protect the victims of criminal offences and other persons threatened by the perpetrators of criminal offences or other individuals. In the Penal Code, the threat to attack a person carrying out tasks of public interest in the sphere of information, in relation to that person's duties, is envisaged as a qualified form of threats to security, subject to a prison sentence of up to eight years.

Definitively a positive sign is the fact that the police are proactively protecting persons facing threats and attacks. The above is most certainly not the first such case. We hereby remind that the police have been guarding the correspondent of "Vecernje Novosti" from Loznica for over

three years. TV B92 investigative reporter Brankica Stankovic has been under police protection since last December. In December 2005, Mitric was clubbed with a baseball bat, suffering a broken left hand and two dozen concussions on his head and body. The attacker, former New Belgrade policeman Ljubinko Mitric, was sentenced to six months in prison. However, Mitric is still concerned for his safety, since the people who ordered the attack against him remain unknown. Brankica Stankovic, who was put under protection after she was targeted in December last year over her investigative program about the criminal doings of the leaders of extremists football fan groups, reiterated several times that her work was seriously hampered by the police protection she was enjoying, namely when she was communicating with her sources. For that reason, police protection must be underpinned with the legal prosecution and punishment of the people who are threatening the safety of reporters, as well as with other adequate measures that aim at providing an environment in which they may work without fearing for their security.

1.3. On October 25, 2010, the reporters of the daily “Kurir” were attacked in the village of Mihajlovac, near Smederevo. They were investigating reports about the arrest of Ljubisa Vasic, the husband of the owner of “Nina” nightclub. According to the same reports, Vasic was apprehended together with eight girls, believed to be working as prostitutes in the said night club. The attack happened in front of the club and the media reported that the journalists were attacked by Rajko and Jagoda Jackovic, the parents of the nightclub owner Jelena Vasic. According to media reports, Rajko Jackovic kicked and punched “Kurir” reporter Oliver Nikolic several times in the chest, while Jagoda Jackovic was brandishing a kitchen knife.

The Public Information Law says that public information shall be free and in the interest of the public. Furthermore, it expressly prohibits any restrictions on freedom of information, free flow of ideas, information and opinions, as well as any physical and other pressure on a public media and its staff or influence aimed at obstructing their work. In relation to the above attack, journalists’ association requested an urgent reaction of the Public Prosecutor’s Office. The above described actions, as reported by the media, contain elements of the qualified form of the criminal offence of violent behavior. According to the Penal Code, violent behavior is “a major threat to the public order made by voicing serious insults at or ill-treating a person (s), violence against other people, causing fights or behaving offensively and disrespectfully. The qualified form of that criminal offence exists if the said offence has been committed in a group or has caused a minor bodily injury or major humiliation of citizens. In such a case, violent behavior may be subject to a prison sentence ranging from six months to five years. Only a month before,

the attackers against “Vreme” columnist Teofil Pancic were indicted for the same offence: Milos Mladenovic and Danilo Zuza were, however, sentenced to merely three months in prison each, which is below the legal minimum. On July 24, about 11 PM, Mladenovic and Zuza clubbed and punched Pancic in a public transportation bus. The Court found that it was justified to sentence them to a penalty below the legal minimum due to their young age and lack of previous criminal record. On the other hand, the Public Prosecutor’s Office said it would appeal the verdict, estimating it was too lenient. The above described case of the attack against the journalists of “Kurir” in the village of Mihajlovac is yet another reminder that freedom of expression in Serbia is not safe, in view of the practice of Serbian courts, in most cases where reporters are attacked, to sentence the perpetrators to penalties below the minimum provided for by Law. Such practice contributes to the growing self-censorship in the Serbian media and encourages new attacks against journalists.

2. Legal Proceedings

2.1. The Appellate Court in Novi Sad upheld the verdict of first instance of the Higher Court in Zrenjanin, sentencing the company NIP Zrenjanin, as the publisher of the weekly “Zrenjanin”, as well as the weekly’s Editor-in-Chief Dalibor Bubnjevic, to pay 300 thousand dinars of non-pecuniary damage to the spouse and children of the late Predrag Stiklica from Zajecar. On February 19, 2010, the above mentioned weekly magazine published a text about the assassination of Stiklica, who was shot on February 11 near his family home. Stiklica’s wife and children sued the weekly over the part of the text in which it was alleged that their husband and father had been killed in a showdown of criminal groups racketeering taxi drivers in Zrenjanin. The weekly stopped short of naming its sources, hinting however that they were close to the investigative department of the Zrenjanin Higher Court.

In keeping with the applicable regulations and according to the existing court practice in Serbia, family members are entitled to non-pecuniary damage caused by tarnished reputation of deceased kin. In the concrete case, although the authors of this report did not have access to court records, they wish to point to several disputable facts. Firstly, the Court failed to consider the circumstance that the plaintiffs had not resorted to the remedies they were entitled to according to the Public Information Law, which could have caused less harm. More specifically, the press releases of journalists’ association in relation to the “Zrenjanin” incident underlined that the court determined the plaintiffs to have failed to resort to the right to a correction and

reply, which, according to the court, did not diminish the damage they have suffered. It remains completely unclear how the court found that a reply published in the “Zrenjanin” weekly would not have alleviated the damage. Namely, the existing Law on Contractual Relations stipulates that non-pecuniary damage where personal rights have been violated – including tarnished reputation of deceased kin – shall primarily be in the form of publishing the verdict and/or correction, at the cost of the party that has caused the damage, the withdrawal of the statement that caused the violation or any other form suitable to realize the purpose achieved by the payment of damages. Furthermore, the Law provides that, only as an exception – if justified by the circumstances of the case and particularly the intensity and duration of the suffering, anguish and pain suffered by the plaintiff – the court will rule that damages be paid. In other words, pecuniary damages in such cases are an exception and not the rule. At that, when ruling upon a claim for damages for suffering, anguish and pain and the amount of such damages, the court should take into consideration the purpose of the damages, namely if these damages are incompatible with its social objective. At that, the restriction to freedom of expression – and the non-pecuniary damage due to violated personal rights charged to journalists and media obviously represent such a restriction – may not be considered compatible with the social objective of such a ruling. Secondly, it is difficult to discern from the media reports how the court considered the fact that, according to the defendants, their source was someone in the investigative department of the Higher Court in Zrenjanin. Namely, the Public Information Law says that a reporter, editor-in-chief and the legal person that is the founder of the public media shall not be liable for damages, even if these damages have been caused by untrue or incomplete information, if the said information was authentically conveyed from the court proceedings or from the documents of the competent public authority. It remains unclear if the first instance Court in Zrenjanin and the second instance Appellate Court in Novi Sad had access to the investigative records of the Higher Court in Zrenjanin, or whether the information about the circumstances of the violent death of the late Predrag Stiklica, which was published in the controversial text, has really been authentically conveyed from the court records. We hereby underline that, pursuant to the Public Information Law, the right to freedom to publish ideas, information and opinions about occurrences, events and persons of legitimate interest for the public shall be enforced regardless of how the information has been obtained.

2.2. Darko Saric, the alleged ringleader of a gang accused of smuggling of more than two tons of cocaine, has sued the dailies “Pravda” and “Press” for libel, as well as the member of the Security Committee of the Serbian Parliament Konstantin Samofalov. The Tomanovic Law Office, which is representing Saric, announced that they had pressed charges against the said

newspapers and the said MP before the First Primary Court in Belgrade. The reason for the lawsuit are the statements made to the media, as well as media reports in which Saric was accused of being the mastermind of the riots in Belgrade on October 10, as well as on the football match between the national teams of Italy and Serbia in Genoa two days later. Saric's attorneys have claimed damages in the amount of 10 million dinars from "Pravda" and Samofalov, over the latter's claim that "the riots by the hooligans in Genoa represented an attack against the state, masterminded by organized crime and Darko Saric, with the aim of hurting Serbia", as reported by "Pravda". Ten million dinars are also claimed from "Press", due to reports published in that newspaper claiming that "Saric is the mastermind of the riots in Italy and he is trying to wreak havoc in Serbia".

According to the Public Information Law, it is prohibited to label someone as the perpetrator of a criminal offense, or identify a person to be guilty or responsible, prior to the final decision of the Court or other competent state authority. In the concrete case, however, Darko Saric did not resort for protection under the Public Information Law, but opted to act under criminal legislation and decided to sue the newspapers for libel. Under the Penal Code, libel is defined as publicly making or communicating untrue assertions about a person so as to tarnish his/her honor and/or reputation. As of the passing of the amendments to criminal legislation in 2005, libel is not subject to prison sentences anymore, but only fines. These fines vary depending on whether the libel was made in the press, radio, television and other means of public information or on a public rally, namely whether it has caused severe consequences for the plaintiff, and may amount to up to 300.000 dinars or alternatively up to 180 daily amounts. A daily amount is the difference between the income and the essential costs of the perpetrator of the criminal offence in the previous calendar year, divided by the number of days in the year, which will not be less than 500 dinars and shall not exceed fifty thousand dinars. Damages are awarded in criminal proceedings. However, the Criminal Proceedings Law stipulates that, if the information from the criminal proceedings fails to produce reliable grounds for a complete or partial sentencing, the court will instruct the plaintiff to claim damages in civil litigation. This is typically what happens in practice and hence it is safe to expect that the Court, if the dailies "Pravda" and "Press", as well as the MP Konstantin Samofalov, are found guilty of libel, will instruct Darko Saric to claim damages in civil litigation. In the practice of Serbia litigation courts, damages in similar cases are awarded in amounts that are typically up to twenty times lower than the one claimed by Saric in criminal proceedings. For that reason, the libel claim of the Tomanovic law firm should be viewed as illicit pressure on a newspaper and its staff, as opposed to a genuine financial threat against the defendants.