

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. The Media Center Belgrade and the NGO “Urban in”, which have organized a visit for domestic and foreign journalists to Novi Pazar, have criticized the Mufti of the Islamic Community in Serbia Muamer Zukorlic over his treatment of the television station “Regional Television” from that city. The above mentioned organizations’ press release said that Zukorlic didn’t allow the said station to report, together with other television crews, from the meeting held on November 3 in the premises of the Mesihat. In the meantime, Zukorlic announced he would press charges against the Media Center “for spreading lies and untruths“. The press release of the Information Center of the Islamic Community in Serbia said that the Regional Television Novi Pazar had been, just like other media, properly informed about the above mentioned meeting and that it was treated evenhandedly in shooting and reporting from the meeting. The press release went on saying that the proof of the above was the fact that the Regional Television Novi Pazar aired the package and original footage from the meeting in its central news bulletin. The station responded that they had been invited by the Mesihat to report from the meeting with the journalists visiting Mufti Zukorlic. However, the press release of Regional Television Novi Pazar also says that “five minutes after the start of the shoot, the crews of TV Jedinstvo and the cameraman of Regional Television Novi Pazar were asked to leave the premises, while the only ones allowed to stay and shoot the whole course of the meeting was the crew of TV Universa from Novi Pazar”.

According to the Public Information Law, only state bodies and organizations, local autonomy and local self-government bodies, public services and public companies, as well as members of parliament and councilors, are required to make information about their activities available to the public and under equal conditions for all journalists and public media, without discrimination. However, the relevant provision of the Public Information Law should not be interpreted as a “permission“ for the Islamic community in Serbia or any other religious community to discriminate against certain journalists and media. The Law namely stipulates

that it is forbidden to restrict, directly or indirectly, the freedom of public information that is in the interest of the public, and particularly not by misusing private powers or rights, or in any other way that may impede the free flow of ideas, information and opinions. Since the meeting between the Chief Mufti of the Islamic Community in Serbia and a group of domestic and foreign journalists is undoubtedly an event the public has a justified interest to be informed about and since the media are entitled to freely collect and release information about such an event, the whole case may be interpreted as discrimination against TV Jedinstvo and Regional Television, both from Novi Pazar. All the above in view of the fact that the television crew of the third station – TV Universa – was allowed to shoot the entire meeting.

1.2. On November 4, 2010, the private Radio Television “Spektri” from Bujanovac, which is broadcasting in Albanian language, announced in a press release that “several inspectors” from the Vranje Police Directorate, paid a visit to this station and started an investigation in the premises at the orders of the Public Prosecutor’s Office in Belgrade. The press release went on saying that the reason for the investigation was the complaint filed by the Republic Broadcasting Agency (RBA), in which the regulatory body alleged “Radio Spektri to have been broadcasting without a license“. Moreover, the press release said, the inspectors inquired about the business records of the station in the previous three years and requested access to registration documents, and also wanted to know about the programming. RTV Spektra branded the actions of the inspectors unacceptable, politically motivated and aimed at discriminating against the Albanians in their legitimate right to be informed in their own language.

According to the information available, Radio Spektri has been broadcasting since 2001, while TV Spektri has been on the air since 2003. From the information available in the public registry of licenses issued to broadcasters kept by the RBA under the Broadcasting Law, the Spektri Broadcasting Company from Bujanovac possesses a broadcasting license for television program for the local area of Bujanovac. Spektri, however, doesn’t have a license for radio broadcasting. At the last open competition for regional and local licenses, according to the list released by the RBA on August 31, 2010 the local radio license for Bujanovac was issued to the public company Radio Bujanovac and not to the private Radio Spektri. According to the information published by certain newspapers, Radio Spektri ceased to broadcast its program, after the results of the open competition were released, only to be back on air in late October. In the concrete case, broadcasting without a license may represent a criminal offense under Article 353 of the Penal Code (unauthorized performance of activity), which provides for a fine or prison sentence of up to two years for unauthorized performance of activity and performance of activity for a

remuneration, for which the law requires the possession of a license issued by the competent authority. However, two things are questionable in the above case. First, have the police been really investigating anything related to the content aired by Radio Spektri? In the opinion of the authors of this Report, if the RBA really filed a complaint for an offence under Article 353 of the Penal Code and not for some other offense, the actions of the inspectors would have been unacceptable, unless they were trying to establish if Radio Spektri had broadcast program and charged for advertisements, since the latter might represent “remuneration” as provided for by the Penal Code in the definition of the criminal offense of unauthorized performance of activity. The second question concerns the extent to which the broadcasting of Radio Spektri is currently unauthorized. Namely, Article 119 of the Broadcasting Law says that the stations that were broadcasting at the time when the said Law entered into force – and Spektri is definitively among such stations, since it has been on the air since 2001 – shall freely continue to broadcast until the completion of the open competition for the issuance of broadcasting licenses. If that open competition for the issuance of broadcasting licenses is the one related to which the RBA released a list of recipients of the licenses on August 31, the question is when was the competition closed? Namely, since the competition was called for the issuance of licenses, it might be logical to assume that it was completed only when the licenses were actually issued and not at the moment when the list of recipients was published. According to the records from the public registry of issued licenses, Radio Bujanovac has still not been issued a license. Whatever the case may be, it remains to be seen what the Court will decide about the dilemma related to the interpretation of Article 119 of the Broadcasting Law.

1.3. On November 5, 2010, the workers of the company „RS partners PES“ from Surdulica, who have been on strike for the last six months, attacked the television crews while filming their protest. The workers prevented RTS cameraman Igor Ivanovic from shooting and shouted abuse and insults. They also threatened other reporters that they would break up their equipment. The police managed to thwart the attack. According to media reports, the workers didn't like the fact that the RTS and other media included in their reports the statements of the company management – they said they wanted only their voices to be heard. Member of the strike committee Violeta Djordjevic called for understanding and apologized to the reporters.

The Public Information Law prohibits anyone from putting physical or any other form of pressure on public media and the staff thereof, or any other influence that may obstruct their work. Moreover, according to journalist codes of ethics and the Broadcasting Law, the RTS, as a public broadcasting service, as well as all other electronic media, are required to provide

complete information about matters of public interest. In the case of strikes, this involves the duty to present the arguments of both sides – in this case the workers and the factory's management.

1.4. Vlada Djukanovic, the author and host of the radio program “Na liniji” (On the Line) on Radio Fokus has alleged that the signal of his station was being interfered with during the said program. “We have been suspecting for days that someone from the government is interfering with our program on purpose because it is critical towards them. Today, when the guest of the program – dealing with the topic of changes in Serbia – was Tomislav Nikolic, the signal suddenly disappeared at 11.50h only in Southern Serbia and the entire program was completely interrupted half an hour later”, Djukanovic told the daily “Alo”.

If Djukanovic's allegations would prove to be true, the perpetrator could be held legally accountable for the criminal offense of preventing the printing and distribution of print items and program broadcasting referred to in Article 149 of the Penal Code. That regulation makes it punishable by a fine or by a prison sentence of up to one year to unlawfully prevent or obstruct the broadcasting of radio and television program. If the said actions are performed by a functional person in discharging his/her duties, the offense is subject to a prison sentence of up to three years. We hereby remind that in the last couple of years in Serbia there were no cases of alleged willful interference of radio programs. Such allegations were formerly common, especially with the program “Pescanik” (Hourglass), aired on Radio B92 for years. According to the once banned book “Military Secret” by Vladan Vljakovic, which contained authentic minutes from the meetings of the Serbian military top brass during the Milosevic era, jamming the signal of independent electronic media in that period was routine practice, involving, among others, military security agencies. After these allegations came to light, Radio B92 pressed criminal charges, but to no avail since nobody was ever prosecuted or tried.

1.5. On November 13, 2010, the Journalists' Association of Serbia (UNS) announced that Violeta Popovic, the correspondent of Prva TV from Gornji Milanovac, had had her car vandalized twice in a week, at night, on the parking lot in front of her apartment building with side mirrors broken and the car sprayed with paint. UNS' press release warned that the journalists, due to their occupation and recognizability, were often exposed to such harassment without concrete reason. Such harassment is seldom punished and typically later evolves into physical assaults. UNS called on the police and the Prosecutor to qualify the perpetrators of such

incidents according to the provisions of the amended Penal Code, which provides for prison sentences of up to eight years for physical attacks, but also threats to physical security.

The amendments to the Penal Code from 2009 provide for more stringent sanctions, namely from 1 to 8 years in prison for threatening the security of persons performing jobs of public interest in the field of information, in relation to the performance of their duties. In the concrete case, however, it is unclear if the vandalizing of Violeta Popovic's car happened in relation to her journalist work and if such act may be interpreted as a threat of a renewed attack on her or merely as vandalizing. Namely, in order for such damage to be qualified for protection under the Amendments to the Penal Code from 2009, both of these conditions would have to be fulfilled.

1.6. On November 16, 2010, the correspondents of Politika and Vecernje Novosti from Krusevac Rade Stankovic and Zorica Avramovic have pressed charges against Bratislav Ivanovic, who, as they claimed, attacked them physically, in the churchyard of the St Nicholas Church in the village of Mala Vrbnica, where the reporters were talking to the locals. They were reporting about citizens' reactions to the decision of the City Council of Krusevac to withdraw the protection of the natural monument – an ancient oak tree in the village of Mala Vrbnica. In the charges they have pressed, the reporters claim that, while they were interviewing the villagers, Bratislav Ivanovic told them to “get lost immediately”. After they refused, Ivanovic stepped towards Zorica Avramovic threatening her and then swung his fist at Rade Stankovic, with the intent to snatch their cameras and smash them. The reporters say they don't know what could have been the motive of the attack, since they had never encountered Ivanovic before or the other villagers who happened to be in the churchyard at the time of the incident.

As we have already mentioned, the Public Information Law prohibits anyone from putting physical or any other form of pressure on public media and the staff thereof, or any other influence that may obstruct their work. In the concrete case, the attack on the reporters could include elements of the criminal offense of violent behavior, defined in the Penal Code as a serious public order offense in the form of insults or harassment, violence, provoking a brawl or rude or impertinent conduct. Violent behavior is subject to a prison sentence of up to three years; in its qualified form, when violent behavior is performed as part of a group of persons or when it has led to minor bodily harm or severe humiliation of citizens, it is subject to a prison sentence of up to five years.

2. Legal proceedings

2.1. The Court of Primary Jurisdiction in Cacak has sentenced in first instance the priest Vlasta Zlatic from Silopaj over the threats made against the reporter Zoran Marjanovic “that he would fare like (murdered journalist) Curuvija”. Zlatic was sentenced for the criminal offense of threatening the security of the reporter and slander with the fine of 40 thousand dinars. He was also ordered to pay the court costs. However, Marjanovic said he would appeal the verdict. “I am satisfied with the verdict, but not with the amount of the fine. Such low fines will not help protect the journalist profession”, he said. As a reminder, after the publication of texts in which Zlatic was said to have beaten up his unwed wife, the priest threatened the author Marjanovic by telephone and also in presence of police officers.

Under the Penal Code, threats against the security of a person, in the form of threatening to attack a person or that person’s next of kin, will be subject to a prison sentence of up to three years, while slur will be punishable by a fine ranging from 40.000 and 200.000 dinars. These penalties have been made more stringent with the Amendments to the Penal Code from 2009, namely 1-8 years for threatening the security of persons occupying jobs of public interest in the field of information, in relation to the performance of their duties, which category of persons most certainly includes journalists. At the same time, under criminal law provisions pertaining to alleviated penalties, if no lower threshold is provided for an imprisonment penalty, a fine or community service may be pronounced instead of a prison sentence. From the sketchy information available about the first-instance sentence of the Court of Primary Jurisdiction in Cacak, it is difficult to deduce that alleviating circumstances have been considered by the court when weighing the penalty in the concrete case. What is a concern, however, is the fact that the courts typically sentence the perpetrators of attacks against journalists to sentences below the legal minimum.

2.2. The Appellate Commercial Court has rejected the appeals filed by Television B92 and its News Director Sanda Savic against the first instance verdict of the Commercial Court in Belgrade, which ordered the station and Savic to pay a fine in the amount of 650.000 RSD. The Appellate Commercial Court and the former Commercial Court in Belgrade have found that, in its program “B92 Investigates: Dada Vujasinovic – the First Victim” aired in June 2007, B92 has unlawfully shown parts of the film “Sister” of author Nenad Krasavac, as well as parts of the material found by the courts to have been shot for use in the said film, albeit they had ultimately

not been used in it. B92 announced it would propose to the Republic Public Prosecutor's Office to file an extraordinary legal remedy against the Appellate Commercial Court's decision – Request for Protection of Legality.

The reason why this case is significant for the media in Serbia in general is the nature of the material used by TV B92 in its program about Dada Vujasinovic, the journalist murdered in 1994. After the attempted assassination of Vreme weekly's journalist Dejan Anastasijevic in April 2007, the said station aired a series of documentary programs about unsolved murders of journalists in Serbia in the last 20 years. TVB92 hasn't denied using in the program "Dada Vujasinovic – the First Victim" slightly less than three minutes of material from Nenad Krasavac's film. However, in several cases filed by Krasavac after TVB92's program was aired, he insisted that the material he had shot also included the footage of the court reconstruction of Dada Vujasinovic's death, handled by Dobrivoje Gerasimovic, the investigative judge of the then District Court in Belgrade, who died in the meantime. Professor Branimir Aleksic PhD and Graduated Engineer Milan Kunjadic also participated, as court experts, in the reconstruction conducted on May 5, 1998, in the presence of Vujasinovic's parents and their lawyer Branislav Tapuskovic. According to the testimony of the father of the late Dada Vujasinovic, judge Gerasimovic rejected his request to appoint different experts, but allowed the reconstruction to be recorded on camera. Vujasinovic insisted on the reconstruction to be recorded because the independent experts he had hired personally claimed that his daughter had been murdered, while Aleksandric and Kunjadic insisted on the suicide version. At the time when TVB92 was preparing its program, reports in the daily Politika suggested that the District Court in Belgrade, fourteen years after Vujasinovic's death, was close to giving up the official version – according to which she had committed suicide – and to finally qualify this case as murder. Vujasinovic's father then furnished the footage of the reconstruction to TVB92, with the proposal to include it in their program, which TVB92 ultimately did. Krasavac, who was hired by Vujasinovic's parents, with the approval of the investigative judge, to film the reconstruction, also used the parts of the same footage, with the consent of Vujasinovic's father, for his film "Sister". TVB92 claimed the said footage to be part of the court material, which, according to the Law on Copyright and Related Rights, was not to be considered as an author's work, particularly in view of the fact that the recording was conducted at the order or with the permission of the investigative judge and was requested and approved with the purpose of being used in the proceedings. If the verdict of the Appellate Commercial Court remains intact, it would substantially affect the manner in which the media will be able to report about legal proceedings in Serbia.