LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for December 2010

ANEM

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I FREEDOM OF EXPRESSION

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

1. Threats and pressures

1.1. In the night between December 10 and 11, 2010, unidentified perpetrators broke the glass on the entrance door to the apartment building in the Novi Sad district of Liman, where Editor of the crime column of the daily newspaper "Nacionalni gradjanski list" and correspondent of the daily "Alo" from Novi Sad Nikola Travica is residing. Although they were immediately alerted, the police came only an hour after the incident. Travica says he does not know if the incident is related to his journalist work. Meanwhile, the media have learned "off the record" from police sources that the perpetrators rang on the intercoms of other tenants too, but nobody opened the door. The Independent Journalists' Association of Vojvodina (NDNV) requested from the authorities to find the perpetrators of the attack on Travica's apartment building. "We want to remove every doubt over the potential connection of last night's attack with Travica's work and therefore we call on the authorities to shed light on the background of this case", NDNV's press release said.

In the situation where many attacks on journalists remain unsolved, acts of violence such as the one in Novi Sad, even if they do not involve serious consequences, fuel the insecurity of media professionals. Although it is possible that Travica was not the target of the attack, the slow reaction of the police – which were alerted by a person for which they must have known to be potentially in danger, as the editor of crime column, due to the texts he writes or because of the reports published in the newspaper he works for – is of particular concern. In that sense, the NDNV's press release is justified. At the same time, it is imperative to remove all doubt as to whether the incident is related to someone's journalist work, as the precondition for creating a more favorable environment for journalists, free of self-censorship and fear for personal safety.

1.2. On the evening of December 16, 2010, Branko Zivkovic, a journalist and a longstanding activist of the Helsinki Committee for Human Rights in Serbia (HCHR), was attacked in Belgrade while walking his dog. He suffered serious injuries from a blow on the head by an unknown assailant. Zivkovic was administered an injection against Tetanus in the hospital and advised to rest for a week. He suffers from amnesia and doesn't remember the

circumstances of the incident. Zivkovic, who is also the administrator of the web portal of the HCHR in Serbia, was the target of a similar attack a month ago, which he managed to escape, although he was threatened and insulted. That case was reported to the police, which arrested the attacker shortly and pressed charges with the competent prosecutor. The HCHR in Serbia issued a press release condemning the attack against Zivkovic, saying it was related to the journalist's criticism in his texts about the situation in Sandzak.

Amendments to the Penal Code from 2009 introduced tougher sanctions, namely a prison sentence ranging from one to eight years, for threats against the safety of persons occupying jobs of public interest in the field of information, related to the job of these persons. In relation to the previous attempted attack against Zivkovic, accompanied by threats of beating up and murder, the media had reported that the attacker was apprehended and that the police had filed charges with the competent prosecutor. The media, however, did not report the details of the charges pressed against the attacker. If it is proven that the threats made against Zivkovic are genuinely related to his journalist work, namely, as defined in the Penal Code, related to jobs of public interest in the field of information, the perpetrator could be found guilty of the qualified criminal offense of threats against security, pursuant to the above mentioned Amendments to the Penal Code introduced in 2009. As for the second attack, the attackers in similar cases in the past have typically been sentenced for violent behavior. For the said qualified form of violent behavior, where minor bodily harm or sever humiliation is involved, the Penal Code provides for a prison sentence ranging from six months to five years. However, Serbian courts have typically sentenced the perpetrators of this qualified offense to penalties below the legal minimum.

1.3. In its edition for December 26, the daily newspaper Pravda reported that their correspondent from Pozarevac Momcilo Veljkovic had been attacked while interviewing the President of the Democratic Party (DS) City Committee in Pozarevac. Veljkovic said that he had seen the Mayor Miodrag Milosavljevic in the café "Sansa" and approached him to take a statement about internal elections for local functions of the DS. Milosavljevic invited Veljkovic to join him on the first floor of the café, where he was sitting with other local leaders from the DS. While interviewing the President of the City Committee and Member of Parliament Zarko Pivac, Veljkovic was grabbed by the collar of his jacket by the owner of the café Zoran Petrovic. Petrovic pushed Veljkovic outside of the café shouting insults and threats at him, as ascertained in the police report. Pravda claims that the incident was witnessed by the Mayor of Pozarevac Miodrag Milosavljevic, the Head of the Branicevo District Goran S. Petrovic, MP Zarko Pivac and the Director of the Water Management Company in Pozarevac Nenad Ratic. The spokesperson for the Police Department in

Pozarevac Jasmina Tisma confirmed that the police interrogated Zoran Petrovic and that, after interviewing the remaining witnesses, it would forward the report to the competent Prosecutor.

We will not speculate here as to whether the Prosecutor's Office will infer from the report of the Pozarevac Police Department the existence of reasonable doubt that a criminal offense prosecuted ex officio has been committed in the above case and consequently, if the Police Department will press charges. However, the above case illustrates the life and work of the journalists in Serbia, especially outside of Belgrade. Momcilo Veljkovic was thrown out of a café in Pozarevac – even if the bully in this case was the owner of the café himself – in the presence of high local and state officials, the Mayor, the Head of the District and a member of parliament, who reportedly did not oppose the violent act in any manner whatsoever. At that, the fact that Veljkovic was interviewing these officials about matters of relevance for the public (internal elections of the ruling party on both the national and local level) is an indicator of the hostile environment in which the safety of journalists and the activities of the media are seriously compromised. The Public Information Law is perfectly clear as to incidents like the one described above: it is forbidden to directly or indirectly restrict the freedom of public information by abusing private powers or rights or in any other means suitable to restrict the free flow of ideas, information and opinions. The Law also prohibits putting physical or other pressure or influence on public media and journalists with the aim of obstructing their work.

2. Legal Proceedings

2.1. The Higher Court in Belgrade has passed a first-instance verdict in the private libel case of singer Svetlana Raznatovic and her children Veljko and Anastasija against the daily newspaper Press and its Chief Editor at the time when the controversial reports were published, Dragan Vucicevic. The court ruled that the plaintiffs shall be paid the amount of two million dinars for "mental anguish and tarnished honor and reputation". Press' attorneys have announced they would appeal the verdict and said that the amount of the damages was not consistent with the practice of the court in similar cases. Press was namely sued over the interview with Radmilo Bogdanovic, who was police minister at the time of Slobodan Milosevic. In this interview, which was originally released by the weekly NIN and parts of which were published by Press, Bogdanovic spoke about the assassination of Ceca's husband Zeljko Raznatovic Arkan. On March 18, NIN published the interview and asked Bogdanovic about his opinion on Arkan's murder. The former police minister said that "many things seemed peculiar to me as of day one and I told the police officers that they

should investigate why Ceca went shopping with her sister to the boutique in the Intercontinental Hotel where the murder took place, while Arkan remained in front of the reception desk to wait for her". Radmilovic's words were conveyed the day after by Press in a text entitled "Ceca behind Arkan's Murder?" After NIN released the interview, Bogdanovic denied he had stated anything like that. In her lawsuit against Press, Ceca requested a mind-boggling 30 million dinars in damages.

Reporting back in April 2010 about this libel case, we pointed out to the following. Firstly, it is absolutely indisputable that excessively high damage claims, even before they are approved, may lead to self-censorship, which is fatal for freedom of expression. Secondly, it is also indisputable that, according to applicable Serbian legislation, Svetlana Raznatovic was in the concrete case entitled to chose whether she would press charges against either the person who had made the controversial statement, the outlet that had initially published that statement, a third party that had later conveyed the same statement or all of the said parties altogether. We also indicated that the positions and practice of Serbian courts regarding the damages awarded for mental anguish and tarnished reputation were not supportive of such high claims and that not a single actual case had ever involved such a high amount of damages claimed. The fact is, however, that the present claim, as sustained by the verdict of first instance, i.e. in the amount that is fifteen times lower than initially requested one, remains much higher than the ones typically awarded by Serbian courts. The latter especially in light of the fact that, pursuant to the Public Information Law, the responsible editor and the founder and/or publisher of the public media, shall be held accountable only if they have been able, prior to releasing the information in question and with reasonable care, to determine the inaccuracy or incompleteness thereof. In the article defining the term "reasonable journalist care", the Public Information Law expressly states that reasonable journalist care involves that information – if conveyed from another public media – shall be conveyed accompanied by a reference to the media from which it has been passed on. Since the explanation of the verdict has not been released, it is difficult to guess why the court decided to award two million dinar in damages. It the case of Raznatovic vs. Press, it should be indisputable that the controversial statement, regardless of the fact that it was later denied, has been faithfully transmitted from a reputed political weekly, which has never been sued for its initial release. It is also undeniable, on the other hand, that such a decision, even in first instance, may further strengthen self-censorship, even in cases where already released information are conveyed from respectable sources.

2.2. The Supreme Court of Cassation of Serbia for the City of Pozarevac ordered the local publishing company "Rec naroda" (*the People's Say*) and its former Director Ilija

Dimitrijevic and Editor Sinisa Ristic to pay Momcilo Veljkovic damages in the amount of 100.000 dinars for tarnished honor and reputation and mental suffering, the daily Danas has reported. The plaintiff Momcilo Veljkovic is the same Veljkovic who is, in the capacity of correspondent of the daily Pravda from Pozarevac, mentioned in the part of this Report concerning threats and pressures and who was attacked while interviewing local officials of the Democratic Party. The verdict of the Supreme Court of Cassation was delivered in the civil case of Veljkovic against the director and editor of the local weekly "Rec naroda" and the Municipality of Pozarevac, as the founder of the said weekly. Veljkovic has sued the latter over a series of articles in the weekly in July 2007, in which the Editor-in-Chief Ilija Dimitrijevic smeared Momcilo Veljkovic, as the Coordinator of the organization "Otpor" (*Resistance*) in Pozarevac and his late brother, journalist Mile Veljkovic. In earlier rulings in the same case, which were now scrapped by the Supreme Court of Cassation, the defendants were acquitted, while Veljkovic was ordered to pay them 450.000 dinars of court costs.

What makes this case specific is the fact that prior to the passing of the now scrapped rulings, the court sentenced Dimitrijevic in criminal proceedings for libel and fined him 20.000 dinars. On the other hand, the courts in the litigation for damages have ruled that Veljkovic has already obtained satisfaction in criminal proceedings. Namely, the Law on Contractual Relations, which contains general rules on damages, says that damages may be awarded for mental suffering due to tarnished reputation, honor or violated personal rights, if the court finds that the circumstances of the case and especially the intensity of the suffering and the duration thereof, justify such damages. Furthermore, the Law expressly says that, in case of violation of personal rights, the court may order the verdict or correction to be published at the expense of the defendant or order the defendant to withdraw the libelous statement or perform any other act in order to achieve the purpose attained by the damages. Unfortunately, such rulings are rare in practice and Serbian courts typically opt for financial damages for mental suffering. In that sense, the decision concluding that the plaintiff had already obtained satisfaction in criminal proceedings, in which the defendants were found guilty, was an exception. Another element making this example specific is the fact that, contrary to most cases, in which journalists typically find themselves better off in libel proceedings than in litigation for damages, in this instance the editor was quickly criminally indicted, while the verdict ordering him to pay damages was pronounced only by the Supreme Court of Cassation.

2.3. The Director of RTV Vranje Zoran Velickovic has pressed criminal charges with the Municipal Prosecutor against NUNS' Commissioner for the Pcinja District Radoman Iric, over the press release issued by Iric related to Veljkovic's decision to ban a film about the

Serbian democratic revolution on October 5, 2000. In Iric's press release issued in his capacity of NUNS Commissioner, more than thirty journalists extended their support to the Editor in Chief of RTV Vranje Ljubica Zdravkovic Dzonov. The media reported that the police in Vranje contacted several signatories of the statement of support to the editor in order to check the authenticity of their signatures.

We remind that on October 5, 2010, Velickovic removed the documentary about October 5, 2000 of author Predrag Bambic from the programming list, on his own initiative, in breach of his powers and without the consent of the editor-in-chief. Dzonov informed the local self-government and NUNS about the incident. "I am responsible for the program aired on RTV Vranje, and I insist on respecting the rules. Although I had scheduled Bambic's film the day before, to be aired on October 5 at 9 p.m., it was not aired at the request of the Director", Dzonov said. She explained that the documentary was not made using RTV Vranje's footage, because the station did not keep any material of the events on October 5 in Kraljevo ten years ago. Velickovic said that "the documentary about October 5 was removed from the programming because RTV Vranje, as regional station, exclusively leaned out on its own production in its programming grid. At the same time, the events of October 5, 2000 were already elaborated on in the station's news program". The charges pressed against NUNS' Commissioner for the Pcinja District are reminiscent of the ill fate of local public media and the fallout of local political rows on their management and editorial policy. In the concrete case in Vranje, the Director Zoran Velickovic is, according to media reports, a member of the Socialist Party of Serbia, while the Editor Ljubica Zdravkovic Dzonov is affiliated with the Democratic Party. The two political parties are currently coalition partners, while on October 5, 2000, they were on the opposite sides of the barricades. What is also indicative in this case is the politically appointed managers' poor knowledge of local public media as to the legal framework they are operating in. Velickovic, for example, claims that the documentary was removed because his station is relying solely on its own production, which argument is contrary to the provision of the Broadcasting Law, obliging public media to open their airwaves to independent production and even prescribing certain quotas for that.

2.4. On December 17, 2010, the daily Dnevnik reported that the Higher Court in Zrenjanin had rejected the claim of Dusko Markovic from Zrenjanin, filed by this unemployed heating and air conditioning installer and small dog breeder, against the newspaper "Zrenjanin" and its Director and Editor-in-Chief Dalibor Bubnjevic. Markovic claimed 300.000 dinars in damages for mental suffering caused by the text "Predrag Stiklica Murdered with a Gun", published in the regional weekly on February 19. In his claim, Markovic stated that the allegation in the text, claiming the incident in which Stiklica was killed and Markovic himself

wounded, had been the result of a prior conflict between Goran Dragic and the group including the late Stiklica and the plaintiff, was untrue.

We remind that in our report for October 2010 we have mentioned the decision of the Appellate Court in Novi Sad sustaining the verdict of first instance of the Higher Court in Zrenjanin, ordering the publishing company NIP "Zrenjanin", as the publisher of the regional weekly "Zrenjanin", as well as the weekly's Chief Editor Dalibor Bubnjevic, to pay a fine of 300.000 dinars, as well as to bear the court costs, for having caused mental suffering and violation of personal rights to the wife and children of the late Predrag Stiklica from Zrenjanin. Stiklica's wife and children sued the weekly over a part of the same text dated October 19, which claimed that the violent death of their husband and father represented a continuation of the showdown between criminal groups that were racketeering taxi drivers in Zrenjanin. In the meantime, in its verdict of first instance against Djordje Blazic from Zrenjanin, sentenced to 35 years in prison for the murder of Stiklica, the Higher Court in Zrenjanin confirmed the allegations from the controversial text in the weekly "Zrenjanin". In these proceedings, Dnevnik reported, Goran Dragic was found to have brandished a gun in front of his house on Nenad Velisaljev, Dusko Markovic, Dragan Zdravkovic and Predrag Stiklica. Dragic later met with Djordje Blazic and told him that the four men had threatened to kill him. Blazic, who had an old grudge with Dragan Zdravkovic, drove his car near Stiklica's house, where a car with Zdravkovic, Markovic and Stiklica was parked. Blazic fired several shots at them, wounding Markovic and killing Stiklica on the spot.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

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

1.2. The Constitutional Court ruled on July 22, 2010 that most of the provisions of the Law on Amendments to the Public Information Law, adopted on August 31, 2009, are not in line with the Constitution and ratified international treaties. At long last, this decision was published in the Official Gazette of the Republic of Serbia no. 89/2010 dated November 29, 2010, although it was made available to readers in December. The Court ruled the following provisions to be unconstitutional:

- The first sentence in Article 14, paragraph 1 of the Law, saying that "a public media may be founded by a domestic legal person (founder of the public media)". The Constitutional Court found that such provision was not line with the provisions of Article 50, paragraph 1 of the Constitution, stipulating, among other things, that everyone (and not only domestic legal persons) shall be free to establish newspapers and other means of public information;

- Paragraphs 5, 6 and 7 of Article 14a are unconstitutional, namely the procedural norms they contain, which prescribe that, in the case of a breach of the ban on: the founding of a public media under the same or similar name to the one of a public media that has been removed from the Public Media Register or has ceased to operate in some other way/ceased to be printed or published; as well as in the case of publishing a public media that is not registered with the Public Media Register; the competent public prosecutor shall without delay initiate commercial infraction proceedings before the competent court of law and request a temporary ban of the publishing on the public media (paragraph 5); that the court will, within 12 hours from the submission of the motion by the public prosecutor and in accordance with the Law, pronounce against the founder a temporary ban of the publishing of the public media until the completion of the proceedings with a final verdict (Article 6) and that in the said proceedings for pronouncing the temporary ban of the publishing of the public media, the provisions of Article 24, paragraph 7 of the Public Information Law will be applied. The Constitutional Court found that the above mentioned norms are in breach of the constitutional principle of the integrity of the legal system, which requests the main principles and legal institutes provided for by laws systemically governing a field of social relations to be also observed in separate laws (which is not the case here regarding the Law on Commercial Infractions) and especially in the area of penal legislation. The latter bearing in mind that regulating certain institutes of penal legislation differently from the concepts provided by the systemic law governing the same institutes, may seriously compromise the principle of universal equality before the Constitution and the Law referred to in Article 21, paragraph 2 of the Constitution and result in discrimination. The Constitutional Court also found that the said provisions are in disagreement with Article 4, paragraphs 2 and 4 of the Constitution, which stipulate that system is based on a separation of power between the legislative, executive and judiciary branch and that the judiciary shall be independent. The above cited provisions are also in disagreement with Article 142, paragraph 2 of the Constitution, which stipulates, among other things, that the courts of law shall be independent in their work. They are also in disagreement with Article 156, paragraph 1 of the Constitution, under which the Public Prosecutor's Office is an autonomous state body;

- Articles 92a and 92b providing for certain commercial offence have been deemed unconstitutional, as well as the amounts of the fines provided for in Articles 93 and 95 of the Law. The Constitutional Court found that the said articles were violating the constitutional

principle of integrity of the legal system and universal equality before the Constitution and the Law, as well as the freedom of media guaranteed by the Constitution. Namely, the provisions of Article 18, paragraphs 1 and 3 of the Law on Commercial Infractions prescribe the so-called general minimum and general maximum of the fine that may be charged for a commercial infraction committed by a legal entity or responsible person in that legal entity. In the Law on Amendments to the Public Information Law, this maximum has been exceeded. Furthermore, by providing for a ban on the activity of publishing public media, namely the ban on the performance of certain duties, as protective measures pronounced in the case of a commercial infraction (the commercial infraction being the failure to register the public media in the Register referred to in Article 92a), the obligation to register a public media is providing the character of an additional condition for establishing and operating a public media, which is precluded by the Constitution. Moreover, the violation of the presumption of innocence, or the violation of the protection of the interests of minors caused by releasing information in public media – as provided for by Article 92b – may not, in the opinion of the Constitutional Court, be considered a commercial infraction. A commercial infraction namely involves a violation of business or financial regulations. The Court has also found unconstitutional the introduction of a fixed fine in paragraphs 2 and 3 of Article 92b of the Law, as well as the concept contained in the provision of paragraph 6 of the same Article, under which the legislator has ordered courts of law to always sentence the first-time perpetrator of the prescribed infractions to a conditional sentence. The above provisions were ruled unconstitutional, since in both cases they restrict the right of the competent court to rule independently by applying the applicable rules on weighing the penalty.

On the other hand, the Constitutional Court found the following provisions to be in accordance with the Constitution:

- Provisions introducing the Public Media Register and stipulating that the same will be administered by the Business Registers Agency and that the Minister of Culture shall regulate more closely the manner in which the Register will be administered;
- Provisions restricting the right to assign or otherwise dispose with the right to a public media or the right to publish a public media, which also deem null and void any contract or transaction involving such assignment or disposal;
- Provisions prohibiting the founding of a public media under the same or similar name to the one of a public media that has been removed from the Public Media Register or has ceased to operate in some other way/ceased to be printed or published, within a year from the release of the last copy of the public media that has ceased to exist/be printed/published;

- Provisions regulating the submission of data from the Public Media Register to the line ministry and other competent authorities of the state administration.

Particularly interesting is the fact that, even relative to the provisions restricting the right to assign or otherwise dispose with the right to a public media or the right to publish a public media, which also deem null and void any contract or transaction involving such assignment or disposal, the Constitutional Court found that the public media itself may not be the subject of a transaction, but that the said provisions do not exclude the right of the founder to dispose with his/her founding right by the means of a contract or other transaction in accordance with the applicable regulations. It would be logical then to question the purpose of the norms that were found by the Constitutional Court to be in disagreement with the Constitution.

The only reproach the Constitutional Court might be liable to is the failure to designate as unconstitutional those provisions that seem to have no purpose at all. More specifically, the Amendments to the Public Information Law that have remained effective are merely a burden for the text of the Law, without having any deeper or meaningful purpose. The Public Media Register remains in place, without offering any new information relative to previous concepts in the Business Registers Agency or in the masthead of public media. The restriction remains as to the right to assign or dispose with a right to a public media and relative to the right to publish a public media, in relation to which restriction the Constitutional Court said it had not excluded the right of the founder to dispose with his/her founding right by the means of a contract or other transaction, in accordance with the applicable regulations. The Constitutional Court also left intact the ban on the founding of a public media under the same or similar name to the one of a public media that has been removed from the Public Media Register or has ceased to operate in some other way/ceased to be printed or published. That provision bears little practical value, since the names of public media were already and much more efficiently protected in the past under regulations governing the protection of intellectual property. Finally, what was also left untouched by the Constitutional Court is the obligation to submit data from the Public Media Register to the relevant ministry and other competent authorities from the state administration. This provision makes no sense, as the Law stops short of prescribing what the relevant ministry and other competent authorities are supposed to do with the data furnished to them.

Is there a reason for media professionals to celebrate? In the opinion of the authors of this Report, they unfortunately have no reason to rejoice, since the Constitutional Court's decision returned things to square one. It is now even more obvious that both legislators and

the competent ministries lack the capacity to meaningfully regulate, in a socially acceptable manner, some of the most important aspects of social relations in the media sphere.

2. The Broadcasting Law

2.1. Back in December, the Republic Broadcasting Agency (RBA) Council called yet another open competition for the issuance of broadcasting licenses. The competition concerns the issuance of 20 broadcasting licenses for local radio coverage. The RBA Council invoked in its advertisement its obligation contained in Article 49 of the Broadcasting Law, which stipulates that an open competition shall be called when, under the Radio Frequencies Allocation Plan, there is a possibility to issue new broadcasting licenses. This provision of the Broadcasting Law has been harshly criticized because it allegedly leads to an "inflation" of broadcasters in Serbia. At the same time, the Media Study – that was prepared by European experts and that was the topic of a series of round tables last autumn discussing future media regulations in Serbia – has conclude one of the key problems of the Serbian media scene to be the artificially generated abundance of media. The new competition that was recently called is yet another proof of the necessity to urgently adopt a media strategy. In the absence thereof, the situation on the media scene shall remain unchanged, which means that we are continuing with practices we have all agreed to be deeply wrong.

2.2. More than 40 radio stations are currently broadcasting without a license on the territory of Serbia. On the other hand, back in September 2007, when the shutdown of illegal broadcasters began, 161 stations ceased broadcasting, according to statements made on ANEM press conference on December 20, 2010. Of the above number, 11 illegal radio stations are operating on the territory of Belgrade and its surroundings, 8 in Novi Sad and a total of 12 on the territory of Vojvodina excluding Novi Sad. In the remaining part of Serbia, a total of 14 stations are broadcasting illegally. Keynote speakers at the said press conference, which was dedicated to measures that would be taken to effectively address this problem, included ANEM President Sasa Mirkovic, the Deputy President of the RBA Council Goran Karadzic, the Executive Director of RATEL Milan Jankovic, the Head of the Public Prosecutor's High-Tech Crime Department Branko Stamenkovic, Assistant Minister in the Telecommunications and Information Society Ministry Irini Reljin, Assistant Secretary in the Traffic and Telecommunications Sector of the Provincial Secretariat for Commerce Sinisa Isakov, as well as the Head of the General Supervision Department of the Ministry of Trade and Services Goran Macura. It was announced that in the coming period the radio piracy would be fought through prosecutions for the criminal offense provided for in Article 353 of the Penal Code of the Republic of Serbia. The said Article provides for a fine or prison

sentence of up to two years for unlawful and lucrative performance of an activity which requires, pursuant to the Law, a permit issued by the competent authority or entity. In the concrete case, according to the general opinion and particularly the one of Branko Stamenkovic from the Public Prosecutor's High-Tech Crime Department, by broadcasting commercial content (commercials and advertisements) without the proper license provided for by the Broadcasting Law, the "pirates" are committing the above mentioned criminal offense. In this way, after years of combating radio piracy without visible success, the state has accepted the new model of curtailing piracy, proposed by ANEM back in February 2010 at a meeting with Deputy Prime Minister, Minister of the Interior Ivica Dacic and the Director of the Police Milorad Veljovic.

3. The Law on Copyright and Related Rights

At the session held on December 9, 2010 the Government of the Republic of Serbia passed the decision appointing the President, Vice-President, members and deputy members of the Commission of Copyright and Related Rights. Slobodan Markovic PhD, professor at the Law School of the Belgrade University, was appointed President of the Commission, while Katarina Damjanovic PhD, professor at the Law School of the Union University, was appointed Vice-President. The members of the Commission include Miodrag Markovic, Istok Zagor, Zlatan Begovic and Dusan M. Stojkovic. The new deputy members of the Commission are Slobodan Gavrilovic PhD and Ognjen Uzelac.

We remind that ANEM, SOKOJ, OFPS and PI called once again in late November on the Government of the Republic of Serbia to appoint the President and members of the Commission of Copyright and Related Rights. In fact, the Law on Copyright and Related Rights adopted in 2009 could not have been fully implemented without the Commission being appointed. The Law actually provides that, if the talks between collective organizations and the representative users' association should fail to bring about an agreement on determining the tariffs, the Commission of Copyright and Related Rights shall provide an assessment of the proposed tariffs. The Commission's opinion shall determine if a specific tariff proposal will become effective or the talks are to be repeated. If the talks fail again and if the Commission judges that the new tariff proposal is again not conformed with the Law, the Commission shall determine the tariff on its own. Due to the Government's failure to appoint the Commissions, tariffs that have been determined pursuant to the previous Law (which has not been in force for more than a year) are still used. ANEM – as a representative association of radio and television broadcasters in Serbia – but also SOKOJ, OFPS and PI, as organizations that have been issued licenses for collective realization of copyright and related

rights by the Intellectual Property Office – were also of the opinion that such situation was unsustainable and that it had a harmful effect on the business of broadcast media and intellectual property protection in Serbia. In addition to requesting the appointment of members of the Commission, ANEM, SOKOJ, OFPS and PI have also called on the Government to opt for experts that are not in any way related to the collective organizations, the users themselves or users' associations or have any interest in the latter. That recommendation was obviously not observed, since one of the elected members of the Commission Vladan Begovic is employed in RTS and hence has an interest in RTS as a user of rights that are subject to collective protection. According to what the authors of this Report have learned, the Commission has held a constitutive session and the first results of the Commission's activities may be expected as soon as in early 2011.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Parliament of the Republic of Serbia did not discuss any legislation of special relevance for the media sector.

IV MONITORING OF THE ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

REGULATORY BODIES

1. REPUBLIC BROADCASTING AGENCY (RBA)

The Republic Broadcasting Agency (RBA) adopted in December a list of events of national interest for the citizens in the Republic of Serbia for 2011. This list is relevant for broadcast media, since Article 71 of the Broadcasting Law stipulates that the exclusive right to broadcast events from the list may be awarded only to a broadcaster whose coverage zone encompasses the entire territory of the Republic of Serbia, in other words, only a broadcaster possessing a license for national coverage. The Law also stipulates that such broadcaster must allow and enable all other interested broadcasters to record and air short reports from such an event. The list contains twenty cultural events, as well as certain sports events

related to football, basketball, volleyball, handball, water polo, tennis, track and field, swimming and cycling.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

The Republic Agency for Electronic Communications (RATEL) presented in December a Feasibility Study and conceptual design of radio coverage with digital TV signal on the territory of the Republic of Serbia. The Study was produced by the Telecommunications and IT Department of the Faculty of Electrical Engineering of the Belgrade University and the companies Konsing Group d.o.o. and Gisdata d.o.o. from Belgrade, in cooperation with experts from the Ministry of Telecommunications and Information Society, RATEL and the public company "Broadcasting Equipment and Communications".

The Study has analyzed the situation on broadcasting sites of the main grid and concluded that most sites were unable to fulfill technical criteria for reception, unobstructed and safe operation of the digital network, while certain sites did not have any facilities at all. Accordingly, the Study envisages that adapting the existing sites will cost almost four million Euros, while the costs of purchasing and assembling the equipment for the existing emission sites were estimated at more than 16 million Euros. On the other hand, the costs of building new emission sites were estimated – depending on which of the two alternative solutions would be opted for – to 3,5 and 4,2 million Euros, respectively. Along with the costs of purchasing measuring equipment and personnel training, this ultimately amounts to more than 26 million Euros. Nonetheless, the Study has concluded that the project is profitable and low-risk. In fact, it has been foreseen that the public company "Broadcasting Equipment and Communications" would generate an annual revenue of more than 20 million Euros. It remains unclear, however, on the basis of which estimate of broadcasting costs for content providers, radio and television stations with valid broadcasting licenses, have the authors of the Study concluded that the said revenues would be so high. We remind that according to the last available financial reports of the RTS concerning the year 2008, the national broadcasting service has generated merely slightly more than five million Euros from the provision of services on emission facilities, which have been assigned to the public company "Broadcasting Equipment and Communications". It remains to be seen how this company will generate four times more revenue in a situation where, in the estimate of the authors of the Study, the broadcasting costs for content providers are supposed to go down after digitalization, as foreseen in the Digital Switchover Strategy.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

As indicated earlier in this Report, in the monitored period, the Parliament of the Republic of Serbia did not discuss any laws of particular relevance for the media sector. Two sessions of the Parliament's Culture and Information Committee have been held. On the session held on December 23, the Committee reviewed the Draft Law on the Budget of the Republic of Serbia for 2011 – compartment 28, pertaining to the Ministry of Culture. The proposed budget for the Ministry, which will amount to 6.31 billion dinars in 2011, was explained by the Culture Minister Nebojsa Bradic. According to the Draft Budget, the subsidies for media shall amount to 378.8 million dinars. The members of the Committee have judged that the budget for culture for the year 2011 was not a small one and pointed to the need to address the issue of transformation of state media.

4. THE MINISTRY OF CULTURE

At a meeting held at the Ministry of Culture on December 29, dedicated to the drafting of the development strategy of the public information in Serbia and attended by the representatives of journalists' and media associations, representatives of the Council of Europe Belgrade Office, the EU Delegation and the OSCE Mission to the Republic of Serbia, the Minister Nebojsa Bradic announced that the Draft Media Strategy would be proposed by February 20, 2011, followed by a public debate. Bradic said that the Strategy was expected to be adopted in mid-2011 and stressed that the Ministry was ready to cooperate with all stakeholders and especially with media associations and the media industry. In Bradic's words, the goal of the Ministry of Culture is to make a strategy that will be in line with the highest European standards, as well as with the needs of the Serbian media market and Serbian society as a whole.

We remind that, after the release of the Media Study –produced by experts hired by the European Commission and declared a basis for drafting the Media Strategy, on a series of round tables in September it was announced that the Draft Strategy would be simultaneously worked on and that on each subsequent round table the Ministry would release the conclusions from the previous one. These conclusions, we have been told, were supposed to be aggregated into a document that would actually represent a Draft Strategy. The said Draft was supposed to be released in late September or early October. In October, the Minister of

Culture Nebojsa Bradic announced that the Draft Media Strategy would be issued in early November. Again, it had not happened and the Ministry of Culture told the journalists' and media associations that the Draft Media Strategy would be released first on November 16 and then on November 22. However, the release was again postponed and the end of January was mentioned as a possible release date. In the meantime, the Ministry of Trade and Services opened the public debate on the Draft Advertising Law, which we discussed in our November report. This document completely ignores all the input that was heard at the above mentioned round tables. Moreover, the Vojvodina Secretary for Information Ana Tomanova-Makanova said on December 23 that the Province had finished the Draft Media Strategy in the part concerning Vojvodina, emphasizing that the provincial strategy would be an integral part of the republic strategy. It remains to be seen to what extent the said Draft, which has not yet been publicly presented, takes into consideration the positions of media professionals voiced at the round tables about the Media Study. The fact remains, however, that further postponements make the entire process of adoption of the Media Strategy, as well as the potential scope thereof, increasingly uncertain.

COLLECTIVE ORGANIZATIONS

5. OFPS – the collective organization for the protection of phonogram producers' related rights and PI – the Organization for the collective realization of performers' rights

In our October 2010 Report, we wrote about the objections voiced by the Intellectual Property Office (IPO) regarding the business cooperation agreement between PI and OFPS signed on June 21, 2010. The IPO said that the agreement was not fully in line with the Law on Copyright and Related Rights. Namely, according to the said Law, the phonogram producers' fee for broadcasting, rebroadcasting and public communication, as well as the performers' fee for broadcasting, rebroadcasting and public communication, is to be charged as a single fee. The single fee shall be collected by a single organization, determined by an agreement entered into between the performers' organization and the phonogram producers' organization. According to the said agreement, these organizations must also determine the amount of the costs of collection of the single fee and the frequency of disbursement of part of the single fee to the other organization.

On December 29, 2010, the PI and OFPS signed, in keeping with the objections of IPO, an annex to their business cooperation agreement. Among other things, the annex changed the

name of the agreement, now entitled “Agreement on Business Cooperation in Collecting the Single Fee”. The single fee awarded to phonogram producers and performers will be charged by OFPS and the annex also stipulates that the OFPS shall in that regard enter into agreements with the users, register users on the ground and in the user database, invoice the fee and present the invoices to the users, perform administrative tasks, organize and control representatives on the ground, perform accounting and bookkeeping tasks related to the collection of the single fee, regulate the payment of VAT for the presented invoices, pay court and attorney fees, inform the IPO in accordance with the Law, perform the transfer of the collected amounts and prepare the cases for initiating legal proceedings.

The most serious changes concern the expert working bodies provided for by the main agreement, as well as the competencies of these bodies. Namely, instead of a common collection department, the Council of Phonogram Producers and Performers and the PI Coordinator as expert bodies, the annexed agreement provides for “instruments for the conciliation of positions of the contractual parties” – the Council for Supervision and Performance of the Agreement and the PI Coordinator. Both the Council and the Coordinator act only between the contractual parties and without direct effects for third parties and in particular the users.

The Council for Supervision and Performance of the Agreement shall bring into line the positions the contractual parties with regard to the performance of the Agreement and oversee performance on their behalf. The Council will also oversee the process of collection of the single fee, as well as the process of allocation of the fees between the organizations. It will be bringing into line the positions of the contractual parties with regard to initiating legal proceedings against users that are not paying the single fee, as well as the positions related to the hiring law offices, agencies and similar professionals and legal persons and oversee the work of the latter. The Council will also reconcile the positions of the two organizations regarding public relations, marketing campaign and activities to promote the obligation of payment of the single fee. The Council shall oversee the obligation to regularly update the RBA about broadcasters that are not submitting the list of broadcast objects of protection, broadcasters that are not paying the single fee regularly and do not have an agreement concluded with OPFS.

The PI Coordinator shall be entitled to receive all necessary information regarding the collection of the single fee, except for confidential information. It shall have access to the entire documentation related to the collection of the single fee, as well as the right to hire an external expert to analyze the findings he finds disputable or unclear.

V THE DIGITALIZATION PROCESS

The comments that have been received during the public consultations about the Draft Rule Book on Switchover from Analogue to Digital Broadcasting of Radio and Television Programs and Multiplex Access in Terrestrial Digital Broadcasting have been posted on the website of the Ministry of Telecommunications and Information Society. The comments were, among others, provided by the public company "Broadcasting Equipment and Communications", ANEM and RTS. We remind that the Draft Rule Book that were expected to be adopted back in the second quarter of 2010, govern the manner, conditions and the time frame for the digital television switchover; the manner and conditions of access to the multiplex, the cessation of analogue television broadcasting and associated services and the start of the operation of digital broadcasting networks. The Draft Rule Book also provide for an allocation of channels by coverage zones in the first and second multiplex and confirm the technical standards determined earlier in the Digitalization Strategy (MPEG-4 version 10 i DVB-T2). The Draft Rule Book also confirms April 4, 2012 as the date for the digital television switchover in the Republic of Serbia, as well as the appointment of the public company "Broadcasting Equipment and Communications" as the network operator. With regard to the latter, the Draft Rule Book provides for the obligation of RATEL to issue to the said company, at its request and outside of an open competition, an individual license for the use of radio frequencies. It is foreseen that the allocation of TV channels, as well as the number and type of other services that may be transmitted through each individual multiplex, shall be determined by the Telecommunications and Information Society Ministry in cooperation with RATEL.

The comments of the public company "Broadcasting Equipment and Communications" are mostly technical in nature and directed at the technical aspect of the process (e.g. they propose a different distribution of channels in order to reduce the costs and avoid harmful interference). One comment was, however, essential, since it concerned the provision denying "Broadcasting Equipment and Communications" to broadcast in high resolution, even if the capacities for such broadcasting existed and the content providers were interested. The public company "Broadcasting Equipment and Communications" said it was thus put in an unequal position with cable and IPTV operators, which already had this service in their portfolio. On the other hand, ANEM warned of the unacceptable reduction of the guaranteed throughput per single television channel from 3 Mbps – as provided for in the Digitalization Strategy – to 2 Mbps as provided in the Rule Book. ANEM also pointed out to the fact that the Rule Book did not contain a concept for the allocation of additionally available space in the multiplex: it is unknown whether this space will be distributed

proportionately (as provided in the Strategy) or in some other way. Furthermore, the Association pointed to the unacceptable shift of competences for regulating the conditions and procedure for broadcasting licenses issuance, after the digital switchover, to RATEL, in cooperation with the Ministry of Telecommunications and Information Society and the RBA. The conditions and procedure for the issuance of broadcasting licenses are an issue regulated by the Broadcasting Law, which expressly stipulates that the licenses shall be issued by the RBA upon the completion of the procedure provided for by the same Law and not by an act of RATEL. Finally, ANEM objected over the fact that the Rule Book had introduced the obligation of all broadcasters to participate without any remuneration in advertising the process of digital television switchover. ANEM believes that the Ministry should provide for a fee for participating in this process or at least introduce limits to one's obligation to participate without remuneration. On the other hand, one of the proposals of RTS was to postpone the date of the digital switchover from April 4 to the end of 2012. At the same time, RTS has called for the introduction of a provision in the Rule Book allowing the release of an entire multiplex for the national broadcasting service's needs. The authors of this Report believe that it would be absolutely unacceptable to regulate the number of television channels to be broadcast by the RTS by Rule Book of the Ministry of Telecommunications and Information Society. That issue is presently regulated by the Broadcasting Law and it should remain that way.

VI THE PRIVATIZATION PROCESS

In the period covered by this Report, no progress was made as to the privatization of the remaining state media. Instead of being treated as a violation of the applicable regulations and a mechanism helping the state to retain direct and unrestricted control over the media sphere, state ownership is viewed as a necessary condition for preserving the present unrealistically high number of media outlets in Serbia. Failed privatizations are highlighted as an example of the unacceptability of such model of media transformation in Serbia. At the same time, there is typically not much talk about the unwillingness of the government to regulate the media market in a way that would draw investments into this area. Even when the need to address the problem of transformation of state media is emphasized, such as on the December 23 session of the Culture and Information Committee of the Parliament, it is done from the standpoint of freeing the budget from funding these media and due to the need to reform the media system and ensure freedom of information.

VII CONCLUSION

It is beyond dispute that the Serbian media scene was marked in the past year by a change of focus and a different perspective on key issues faced by the media. We have entered 2010 with politicians saying the main problem in the sphere to be the absence of or insufficient responsibility towards the general public and the public word. At the start of 2011, the statements are different: politicians are not insisting on muzzling the media; instead, they have recognized the need for systemic changes of the legal and regulatory framework that is expected to regulate the Serbian media scene in line with the highest European standards, as well as with the needs of the Serbian media market and society as a whole. This shift of focus, however, remains merely verbal. This is best illustrated by the postponement of the release of the Draft Media Strategy, which on one hand demonstrates the lack of the state's regulatory capacity and on the other the unwillingness to regulate the media scene according to the proposals of media professionals, uninfluenced by petty political ambitions and needs. The postponement has resulted in an even more complex situation. An increasing number of media cannot keep up with the economic downturn, freefall of the advertising market and the fact that local self-government budgets are typically funding media that remain in state property. If some resources remain after these, they are typically awarded to those who are willing to trade their independence for financial support.

For 2011, there is little optimism; a positive element, however, is the fact that the most relevant media and journalists' associations have recognized their mutual interests and taken a united stance at the round tables discussing the Media Strategy. It seems that it was the first time after several years that they had managed to put quarrels from the past behind them and refused to be imposed a fait accompli, without voicing their own arguments for the government to hear.