

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 pronouncement of the first-instance verdict, against the suspects for the murder of French citizen Brice Taton on January 25 in the Higher Court in Belgrade, was marked by many incidents. The hooligans that were present in the courtroom shouted threats and insults and even physically harassed the reporters. According to media reports, due to the poor organization in the Palace of Justice, the verdict was delivered in one of the smaller courtrooms with a mere 45 seats, instead of in the main courtroom. The first incidents occurred when the hooligans tried to force their way into the courtroom, where the sentences against their friends were being pronounced. These incidents continued when they attacked the camera crews of Serbian and French televisions that were shooting interviews in front of the Palace of Justice. Larger incidents were prevented by the court security and the riot police.

Brice Taton was attacked on September 17, 2010 in the Obilicev Venac Street in downtown Belgrade, on the eve of the football match between Partizan Belgrade and the French team of Toulouse. He was beaten up and died of the injuries twelve days later. The first-instance verdict sentenced 15 Partizan supporters to a total of 240 years in prison.

The Public Information Law expressly stipulates that public information shall be free and in the interest of the public, as well as that it is forbidden to directly or indirectly restrict freedom of public information in any manner conducive to restricting the free flow of ideas, information or opinion or to put pressure on public media and its staff so as to obstruct their work. The same Law says that in the field of public information, foreign nationals – in the concrete case this includes French reporters and French camera crews – shall have the same rights as domestic citizens. Otherwise, according to the Criminal Proceedings Law, the pronouncing of the verdict shall always be public and hence the reporters were entitled to attend.

1.2. Every Tuesday, at the time when TV92 broadcast its investigative series “Insider”, the streets of Lazarevac, where the head office of the “Kolubara” coal basin is situated, were

plastered with posters with messages aimed against the said station. “Kolubara” is the company that is the integral part of the public electric provider “Elektroprivreda Srbije”. In its latest series, “Insider” uncovered the mass embezzlement in “Kolubara”. After the program was aired in the evening of February 15, the town was plastered with obituaries for B92, containing the names of the editor-in-chief and the authors and journalists of “Insider”, as well as of the names of mourners and organizers of the funeral. Many have perceived this incident as a call to violence. The local police told the media they did not know who was behind the posters. The Independent Journalists’ Association of Serbia (NUNS) said it considered the B92 obituaries as an overt threat against the B92 editor and the “Insider” team and called the competent authorities to urgently identify and prosecute the perpetrators. Interestingly enough, a large number of obituaries and posters containing messages aimed against B92 is located near the police station, which compromises the police’s claims that they do not know who the perpetrators are. “The obituaries undoubtedly represent an overt threat against journalists, but also a warning to potential witnesses to refrain from testifying publicly about the fraud in ‘Kolubara’”, NUNS Vice-President Jelka Jovanovic said. Serbian President Boris Tadic condemned the attacks and threats against the authors of TVB92’s “Insider” and vowed the state would deal with everyone threatening the security of the citizens of Serbia.

The Public Information Law expressly stipulates that public information shall be free and in the interest of the public, free of censorship, as well as that it is forbidden to restrict freedom of public information in any manner conducive to impeding the free flow of ideas, information or opinion. The Law prohibits anyone from putting pressure on public media and its staff so as to obstruct their work. Putting someone’s name on an obituary and plastering these obituaries to walls, as it was the case in Lazarevac, may represent a threat against the security of a person, by threatening to attack that person’s life or body. According to the Criminal code of the Republic of Serbia, threats against the security of persons occupying positions of public interest in the field of information, where such threats are made in relation to the tasks carried out by these persons – which condition was fulfilled in the concrete case relative to the editors and journalists of B92 – shall be subject to a prison sentence ranging from one to eight years. Until the time when this Report was finalized, the police in Lazarevac did not identify the persons responsible for plastering the obituaries for B92 in their city. NUNS in the meantime stated that their representatives, as well as the ones of the OSCE Mission’s Media Department, who visited Lazarevac together on February 17, were told by the Deputy Commander of the Lazarevac Police Vladan Sismic that there were clear clues about the perpetrators. Sismic also announced that the investigation would be completed in the next couple of days. Since that never happened, NUNS protested with the Director of the Police Milorad Veljovic. In a similar case back in 2005, the court in Belgrade

sentenced three persons to 10 days in prison, each for plastering walls with anti-Semitic posters containing slogans and calls for the boycott of TVB92.

1.3. On February 16, 2011, journalists Niko Perkovic, the correspondent of the daily “Dnevnik”, and Dragan Jovanovic from TV Kula, were physically removed from the session of the City Council in Kula. Perkovic and Jovanovic were then apprehended and taken to the police station. The reporters of other dailies – Ranka Ivanovska from “Blic” and Branka Baletic from “Vecernje Novosti” – were also forcibly ejected from the Council meeting. The personnel of the private security company, employed by the Municipality, pushed them out in the lobby while shouting threats. Niko Perkovic says it all started in the Council hall, when the President of the Municipality Zeljko Kovac told the journalists to leave the session because they allegedly did not have the valid accreditations. “I took the accreditation of my newspaper from my wallet and gave it to them, but they told me it was invalid and that we must have special accreditations issued by the Municipality to be able to report from the sitting. Shortly thereafter the private security came to me and my colleague from the television station. They started to pull our clothes. When the situation deteriorated further, two councilors came and tried to defend us, but to no avail”, said Perkovic. He claims he has been reporting from the Council sittings for the last seven years, during which he never had any similar problems. After they were expelled from the session hall, the journalists were asked by a police patrol in front of the hall to come to the station and give a statement. While the two expelled reporters were in the police station, the reporters of “Blic” and “Vecernje Novosti” were ejected too.

The Public Information Law stipulates that state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well as members of parliament and councilors, shall make information on their work accessible to the public, under equal conditions for all journalists and all media. According to media reports, the reason of the row of the Council majority in Kula and the media is the Rules on how to make the sessions of the Municipal Council in Kula and its working bodies open to the public, which were adopted a month earlier. The journalists consider these Rules to be utterly restrictive, one of the reasons being the fact that it introduced excessive formality in the process of issuing accreditation. It ought to be said that it is utterly unacceptable to obstruct the obligation of local self-government to make the information about its work accessible to the public by adopting bylaws that are essentially restricting media freedoms. Article 8 of the Public Information Law stipulates that no provision of this Law shall be interpreted and enforced so as to revoke a right guaranteed by law or to restrict the said right to an extent greater than the one prescribed by the law. In the concrete case, the enforcement of the provisions of Article 10 of the Public Information Law, introducing the obligation of local

self-government to make the information about its work accessible to the public, is restricted by adopting bylaws. In this case – the Rules on how to make the sessions of the Municipal Council in Kula and its working bodies open to the public, as well as the excessive formalities contained in these Rules regarding the issuance of accreditations, which is contrary to Article 8 of the Public Information Law.

2. Legal proceedings

2.1. Businessman Filip Zepter has pressed charges against the daily “Kurir” over three texts that the said daily has published about the business of his companies. Zepter requested 100 million dinars in damages, “Kurir” reported in its edition on January 26. The paper claims that the texts published in December 2010 claimed that almost all Zepter’s companies, according to reports by government authorities, have been accumulating losses for years and that they were cutting on the number of employees. “Kurir” journalists also wrote that it was suspected that the proceeds of these companies were somehow siphoned out of the country on the accounts of Zepter’s companies abroad, to off-shore destinations. “Kurir” also reported that it had learned that charges for violating the Law on Tax Proceedings were filed against Zepter. The daily claims its reporters were not able to obtain a comment from Zepter over these claims and that his representative in Serbia Mirko Rasic insulted “Kurir” reporter when she called him to get a statement.

The courts in Serbia traditionally do not have a favorable attitude towards multimillion claims and it is highly unlikely that the plaintiff in this case will be awarded even fifty times less the claimed amount, even if the claim is deemed justified. For that reason, these claims are rightfully considered as a pressure tool against media. However, an objective problem arising from such disputes is the fact that the court and legal office fees to be incurred by the media are charged according to the rate of the claim. According to the Law on Court Fees, the tax for the counter-statement alone to the claim worth 100 million dinars would amount to 48.750,00 dinars. The attorney fee for writing the counter-statement, as well as for each hearing, would amount to 31.250,00 dinars, namely 32.500,00 dinars, under the official attorney tariff. In view of the financial hardships endured by most media in Serbia, the danger of getting exposed to such costs, regardless if the claim of the plaintiff is justified or not, or whether the media will be entitled to a refund or not, leads to self-censorship, refraining from investigative texts and media conformism.

1.4. On February 14, 2011, the daily “Danas” published a column written by the Vice-President of the Muslim Youth Club Aida Rasljanin. The controversial text, rife with personal

insults and open threats, was a vitriolic attack against Aida Corovic, the President of the non-governmental organization “Urban in” from Novi Pazar. The reason was Corovic’s text published also in “Danas”, where she criticized the politicization of the right to publicly display religious symbols and questioned the authenticity of the “spontaneous collective decision” to wear hijabs on the debates of the Faculty for Islamic Studies in Novi Pazar. Ten days later, the media reported that Aida Corovic had been placed under police protection over fears that her security might be in danger.

The controversial column is one of the worst personal attacks that have recently occurred on the Serbian media scene and a drastic example of a threat against freedom of expression. The reactions were unanimous. Serbian President Boris Tadic condemned the demonization of Aida Corovic, saying that Serbia was never and will never be a country of nationalism, intolerance and hate speech. The Commissioner for the Protection of Equality Nevena Petrusic also branded the text of the Muslim Youth Club of the Islamic Community from Novi Pazar as overt hate speech. Petrusic pointed to sentences where Aida Corovic was called “a person without biography frustrated by failures in her personal life, at the peak of menopause” and was blamed for the “mass shooting of unsuitable citizens of Muslim faith”, Petrusic said that such phrases were contrary to the principles of dialogue and reasoned debate and that they were threatening Corovic’s integrity, calling for her lynching. In Petrusic’s words, such declarations are an insult to all women, since they contain a gender stereotype, according to which all unmarried women are frustrated and unsuccessful, while middle-aged women are in a “dangerous” state called menopause. We believe that there is nothing much to add to Petrusic’s assessment.

2.2. The Primary Court in Pancevo has sentenced Milana Savic, the Director, and Marija Andric, the Editor-in-Chief of the “Pancevac pres” newspaper, each to nine months of imprisonment two years probationary sentence, Politika reported in its edition on January 15 edition. “Pancevac pres” was previously obliged to change its name. In the meantime, Milana Savic has ceased to be the Director, while in November last year, the newspaper ceased to be published altogether. The Primary Court in Pancevo delivered its verdict for the criminal offense of unauthorized use of someone else’s company.

Article 233 of the Criminal code of the Republic of Serbia provides for the criminal offense of unauthorized use of someone else’s company, namely unauthorized use of someone else’s business name and other special product or service label, as the said offense is called since the enforcement of the amendments to the Criminal code in 2009. “Pancevac pres” was first published in February 2008 by a group of journalists and other staff of the then top-selling

local paper in Serbia, “Pancevac”, after they failed to buy the paper while it was being auctioned in privatization. From February to October 2008, when the court ordered that the paper’s name be changed, “Pancevac pres” resembled to “Pancevac” with its headlines, appearance, graphics and names of regular columns. The court found that this fact might be confusing for the readers. The owner of “Pancevac” filed charges for unfair competition and after nine months, “Pancevac pres” had to change its name. After having started to lose advertisers and being financially on the rocks, the newspaper was finally shut down in November 2010. On the other hand, “Pancevac” is in serious trouble because of the debt incurred when the paper was the guarantor for a loan obtained by another company from the same group, whose privatization contract was in the meantime cancelled by the Privatization Agency. Media operating under the same or similar external labels – names or graphic elements – are not rare occurrences in Serbia. Such cases were typically arising after the acquisition of a certain media outlet, where such acquisition was not endorsed by some or all the newsroom staff, which would then usually have established their own newspaper/station. One of the first cases happened back in the late nineties, when Milosevic’s regime took over Radio B92, after which B92 reporters launched a new program named B2-92 on the frequency of the then Treći program of Studio B (Channel 3). In other cases, “renegade” newsrooms would usually add the word “independent” or “new” to the name of their former media outlet. The case of “Pancevac pres”, however, is the first one that has resulted in an epilogue, namely a prison sentence, which is in this case a probationary one. Under the Criminal code, unauthorized use of someone else’s business name and other special product or service label is defined as using someone else’s business name, seal or other special product or service label, or the insertion of specific features of these labels in one’s own business name, seal or other special product or service label, with the aim to deceive the customers of the product or service in question. The above described offense shall be subject to a fine or a prison sentence of up to three years. The fact that in the case of “Pancevac pres” the court pronounced a prison sentence is, among other things, a sign of increased intellectual property protection in Serbia.

2.3. In mid-January, the media reported that the Higher Court in Novi Sad, presided by Judge Stanimirka Lalovic, had ordered the responsible editor and the founder of the Sremski Karlovci newspaper “Karlovacki list”, to pay 400.000,00 dinars damages to Sava Pavlovic from the same town, for anguish and breach of privacy, as well as 84.600,00 dinars of court and legal fees that the newspaper was ordered to repay him. The proceedings were conducted over a text published in “Karlovacki list” in April 2009, which concerned the row between the Vice-President of the Municipal Council Sremski Karlovci and Financial Advisor to the Head of the Southern Banat District Goran Savic and security worker Sava Pavlovic. “Karlovacki list” reported that the argument had taken place on March 31 in the offices of the Southern

Banat District in Novi Sad. According to the report, Pavlovic was subsequently taken to the police station to give a statement, while Savic reportedly sought medical assistance. "Karlovacki list" also published Pavlovic's statement given to the media in which he claimed that the whole row was stage-managed and that he was the victim of a smear campaign over his membership in the Democratic Party of Serbia (DSS). The text contained a photograph of Sava Pavlovic which the newspaper had stored in its archive and which was obtained from Pavlovic personally a year before, when he was running as a DSS candidate on the elections.

From the controversial article itself it is difficult to discern why the Higher Court in Novi Sad found that, in the concrete case, the duty of due journalist attention was breached, which is, under the Public Information Law, a condition for the responsible editor and founder of the public media outlet to be liable for damages. According to information available to the authors of this text, "Karlovacki list" merely conveyed undisputed facts and quoted the statement of the President of the Executive Board of the Democratic Party in Sremski Karlovci – the party which Savic is a member of – as well as a statement by Pavlovic himself. Both statements were also published by other media. Particularly unclear is the court's conclusion that Pavlovic's photograph was published without authorization. The Public Information Law stipulates that a photograph may not be published without the consent of the person on the photograph, if that person is clearly recognizable on the said photograph. However, the Law provides for several exceptions: one of these exceptions is that no consent shall be required if the person on the photograph has intended the same to be communicated to the public. The position of the Higher Court in Novi Sad, that a photograph may not be used but for the very purpose it was intended for public communication (which in this case should mean that Pavlovic's photograph may have been used to present him as an election candidate, but not for other purposes), represents a restriction to freedom of expression that is not founded in the law. Such restriction, if endorsed in court practice, would take away all purpose from keeping a media archive and practically disable the use of archived photographs, even where such photographs are intended for the public. The decision of the Higher Court in Novi Sad is a first-instance decision and may be subject to an appeal with the Appellate Court in Novi Sad.

2.4. The Commercial Court in Leskovac sentenced the Radio broadcasting company "EMA" from Bujanovac and its Director Oliver Trajkovic to a fine in the total amount of 250 thousand dinars, for the offense provided for by Article 215, paragraph 1, subparagraph 7) and paragraph 2 of the Law on Copyright and Related Rights. The court found that the station in question failed, in January, February, March, April, May, June and July 2010, to furnish the Organization of Phonogram Producers of Serbia (OFPS) with the log of used

phonograms. The station appealed the verdict with the Commercial Appellate Court in Belgrade.

There are more than 100 commercial offense proceedings currently underway in Serbia under Article 215, paragraph 1, subparagraph 7) and paragraph 2 of the Law on Copyright and Related Rights, against legal persons founders of media, radio and TV stations, over alleged failure to furnish to the OFPS information on the name of the protected object, frequency and scope of use, as well as on other circumstances relevant for calculating the fee charged under the tariff. The duty to submit information about the name of the protected object, frequency and scope of use, as well as on other circumstances relevant for calculating the fee charged under the tariff, is determined by Article 187 of the Law on Copyright and Related Rights. The series of similar cases, including the one of Radio “EMA”, represent, in the belief of the authors of this Report, a refusal by OFPS to receive the said log, rather than a failure of the stations to submit them. This is due to the legal chaos created by OFPS, when that organization adopted a number of legal acts regulating the same matter in different ways – the contents of the log and the form of submission. The founders of media, radio and TV stations, are thus led to a situation of absolute legal uncertainty. Namely, according to Article 187, paragraph 5 of the Law on Copyright and Related Rights, the OFPS may pass its own general acts determining how and in what form the stations must submit a log of used phonograms. What happened is that OFPS has prescribed the different ways and the form in which the log of used phonograms may be submitted, in its two general acts – the Tariff of the fees charged by the OFPS to the users (published in the Official Gazette of the Republic of Serbia no. 94/2009) and the Rules on submitting used phonograms’ log by broadcasters, (which was never published in the Official Gazette, but may be found at: http://www.ofps.org.rs/fileadmin/user_upload/DOCS/1Pravilnik_o_prijavi_emitovanih_fonograma_od_strane_emitera.pdf). That, in turn, has resulted in an arbitrary pressing of commercial offense charges against radio or TV stations for failure to proceed under any of the said two acts. Moreover, both the Tariff and the Rules deviate from Article 187, paragraph 2 of the Law on Copyright and Related Rights, by unlawfully broadening the requirements that the media must fulfill. Punishing legal persons, founders of media – radio and TV stations – and the responsible persons – the directors of such stations – for commercial offense, in a situation where there are no clear general acts determining in an unambiguous way the duties of the said stations, undoubtedly represents interference of the public authorities with freedom of expression guaranteed by the Constitution of the Republic of Serbia and Article 10 of the ratified European Convention on the Protection of Human Rights and Fundamental Freedoms.