



LEGAL MONITORING OF SERBIAN MEDIA SCENE

Report for January/February 2011



TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS ...	11
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS....	16
IV	MONITORING OF THE ACTIVITIES OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	16
	REGULATORY BODIES	16
	STATE AUTHORITIES	18
	COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	19
V	THE DIGITALIZATION PROCESS.....	20
VI	THE PRIVATIZATION PROCESS	21
VII	CONCLUSION.....	22

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.

II MONITORING OF THE IMPLEMENTATION OF EXISTING LAWS

1. Public Information Law

1.1. The implementation of the Public Information Law has also partly been elaborated on in the section about freedom of expression.

1.2. In an interview for the daily “Danas” published on February 7, the Public Prosecutor Zagorka Dolovac spoke, among other things, about the assassination of the journalist of the “Duga” weekly Radislava Dada Vujasinovic, as well as about the investigation of the fraud in the “Kolubara” mining basin – both cases were the topic of TVB92’s investigative program “Insider”. Zagorka Dolovac said that the death of Dada Vujasinovic, formerly qualified as a suicide, has been qualified as a murder in the renewed investigation. “All experts involved in that case have been interviewed. New and old witnesses are being interrogated and re-interrogated. All of them are expected to help shedding light on the circumstances of Vujasinovic’s assassination. It is not suitable for me to speculate whether there are clues pointing to the conclusion that she was killed by the state security service. However, in view of the manner in which the inquest was conducted in the Curuvija case, one may see that similar omissions were made in cases of Dada and Curuvija”, Zagorka Dolovac said.

According to the Public Information Law, it is forbidden to put any kind of physical or other pressure on public media and its staff so as to obstruct their work. The fact that the murder of journalist Dada Vujasinovic, as well as the assassinations of Slavko Curuvija and Milan Pantic, remain unsolved – in Vujasinovic’s case for almost 16 years – is seriously undermining the confidence of the media in the institutions and the constitutional and legal guarantees concerning freedom of speech. Although in the above-mentioned cases the judiciary is not proceeding according to the Public Information Law, but according to criminal legislation, the feet dragging in the investigations indirectly affects freedom of expression in Serbia and the enforcement of the Public Information Law, by increasing the feeling of insecurity among journalists and fueling self-censorship in the media sector.

2. Broadcasting Law

2.1. On February 18, 2011, the Council of the Republic Broadcasting Agency held an extraordinary session in the attendance of the representatives of two national televisions – Pink and Happy. The urgency of the meeting was explained by the escalation of verbal and

physical violence in reality programs aired by the said two stations. The Council went on ordering the said stations to remove from their reality programs everything that was violating the Broadcasting Law and the Broadcasters' Code of Conduct. The Council also prohibited further broadcasting of programs, the contents of which were threatening the physical, mental and moral development of minors and human dignity. An emphasis was put on programs justifying and inciting violence; the Council requested that the participants of reality programs be banned from consuming alcohol and tobacco, that entire sentences containing foul language and insults be covered by a sound signal in the rebroadcast episodes, as well as that the programs be accompanied by a warning in the form a crawl every five minutes saying that these programs might be unsuitable for children and youth. The Council also decided to initiate misdemeanor proceedings against TV Pink, but reminded that the proceedings initiated in 2009 against Pink, also over the content of a then reality program, were still not finished. In the press release issued after the meeting, the RBA Council reiterated it would ask the Ministry of Culture to send as soon as possible the Draft Amendments to the Broadcasting Law to the Parliament for approval in urgent proceedings. These amendments, as it is the case in some countries in the region, would enable the RBA Council to pronounce direct financial sanctions for violations of the Broadcasting Law, the enforcement of which is within the competence of the Council. The RBA Council would also be authorized to order a temporary or permanent ban of a particular television program.

Only one week after the extraordinary session of the RBA Council on February 18, the situation in the reality show "Dvor" (the Castle) on Pink Television escalated further. In the night between February 24 and 25, one of the participants in the program, singer Maja Nikolic, was evicted from the show over antisemitic declarations made during a live transmission. Another participant of the program, singer Milos Bojanic, who supported Maja Nikolic over her antisemitic declarations, also left the show. The RBA reacted with a request for sanctioning hate speech. Israeli Ambassador in Serbia Arthur Cole said he was appalled by the antisemitic content aired in the reality program "Dvor" on Pink, the Israeli embassy in Belgrade said in press release. "We have been able to see as of late a rise of antisemitic incidents in Serbia, the last of which is the most evident one. This is a cause for concern and requires the full attention of the relevant state authorities", Cole said. Pink Spokesperson Tanja Vojtehovski said that Maja Nikolic had been punished by disqualification for verbal violence and hate speech. "After the incident, our station publicly stated that it did not endorse the views expressed during the live transmission of the program by Maja Nikolic and Milos Bojanic, branding their declarations as an incident and hate speech and apologized to all those who might have been offended by these declarations", Vojtehovski said. The Public Prosecutor has launched pre-criminal proceedings against Maja Nikolic and Milos Bojanic over hate speech in the reality program "Dvor". The Jewish Community also announced it

intended to press charges against Pink television. The RBA announced it would pass a binding order prohibiting the live transmission of reality programs. “It is a too risky television format. We had a situation we must all be ashamed of and we must react”, said Goran Karadzic, the Deputy Chairman of the RBA Council.

Article 21 of the Broadcasting Law says that the RBA shall ensure that the broadcasters’ programs do not contain information inciting to discrimination, hate or violence against persons or groups of persons over their political affiliation or race, religion, nation, ethnic group, gender or sexual orientation. Hate speech is also prohibited by Article 38 of the Public Information Law. In accordance with this provision, it is prohibited to publicly release ideas, information and opinions inciting to discrimination, hate or violence against persons or groups of persons over their political affiliation or race, religion, nation, ethnic group, gender or sexual orientation, regardless of whether such public release represents a criminal offense. Where the broadcasters fail to adhere to the ban on hate speech, the RBA may pronounce the proper measures, irrespective of other legal possibilities at the disposal of the plaintiff. These measures, under the Article 17 of the Broadcasting Law, include a reminder, warning and a temporary or permanent revoking of the broadcasting license. In addition, the RBA may launch, before the competent court or other government authority, proceedings against the broadcaster or the responsible person thereof, if their actions, or failures to act, amount to a punishable offense under the law. The fact that, in the concrete case, due to its failure to timely issue a warning, the RBA placed itself in the position to be unable to pronounce an even tougher sanction – temporary revoking of license. Namely, under the Broadcasting Law, a broadcaster’s license may be temporarily revoked only when the broadcaster continues to breach the law or its obligations in spite of the received warnings. The failure of the RBA to timely issue warnings creates the sense that the Agency does not have the adequate tools to enforce the hate speech ban in practice and protect the public from unacceptable content. Furthermore, RBA request, to be authorized to directly pronounce fines against broadcasters, fails to take into account the fact that temporary revoking of the broadcasting license ultimately results in financial losses of that broadcaster, since it would be prevented from generating income. On the other hand, the RBA has also failed in its regulatory work. Out of ten general binding orders adopted by the Agency, eight pertained to election reporting. It is particularly noteworthy to recall that back in 2007, the Council recommended the broadcasters to refrain from airing programs involving soothsayers, horoscope tellers and the like, because of possible manipulation of gullible viewers. At the same time, RBA recommendations and orders did not concern reality shows, which had caused the same amount of controversy in the public as soothsayers and horoscope tellers, if not more. As for the charges announced by the Public Prosecutor against Maja Nikolic and Milos Bojanic, these charges concern the criminal offense of inciting ethnic, racial and religious hatred and

intolerance, provided for in the Criminal code of the Republic of Serbia and which is subject to a prison sentence ranging from six months to five years.

2.2. After its meeting of January 31, the RBA Council released after a public call for nominating candidates for nine members of the Managing Board of the Public Service Broadcasting Institution of Serbia and six members of the Managing Board of the Public Service Broadcasting Institution of Vojvodina.

According to the Broadcasting Law, the Managing Board is a managing body of the Public Service Broadcasting Institution of Serbia. It enacts the Statute of the Agency with the RBA's consent and adopts plans and reports about the activities and commercial transactions of the Public Service Broadcasting Institution of Serbia, as well as periodic and annual statements of accounts, about which it must inform the public, the RBA and the Parliament. The Managing Board also appoints and removes the General Manager of the Public Service Broadcasting Institution of Serbia, the managers of radio and television and the editors-in-chief, at the proposal of the General Manager; approves the general act of the General Manager about job systematization and tasks in the Public Service Broadcasting Institution of Serbia, adopts investment plans, reviews the recommendations of the Programming Committee and performs other tasks laid down by law and the Statute. The Managing Board has nine members appointed and removed by the RBA, from the ranks of journalists and reknown media, management, law and finance experts, as well as other reputable persons. The following persons may not be members of the Managing Board: members of parliament, members of the provincial parliament, members of the RBA Councils, members of the Government, namely employees of the executive branch of the Autonomous Province, or appointed or designated persons in the Government, employees of the executive branch of the Autonomous Province or republic or provincial bodies, as well as the officials of political parties. The term of office of the members of the Managing Board shall be five years and a person may be appointed to the membership of the Managing Board not more than two consecutive times. The current Managing Board was constituted on April 19, 2006 and hence its term of office is about to expire. The same rules apply to members of the Managing Board of the Public Service Broadcasting Institution of Vojvodina, the difference being that members of that body may only be persons living and working in the Authonomous Province of Vojvodina. The reason for the public call for proposing candidates being called only for six members of the Managing Board of the Public Service Broadcasting Institution of Vojvodina is the fact that the remaining three members of the Managing Board were appointed in early 2009 after the resignation of three out of nine members of that body in December 2009.

3. Law on Local Self-Government

In its edition on January 9, 2011, “Vecernji Novosti” reported that media associations had recommended that the resources earmarked for information be allocated in a transparent manner, on the basis of a public competition and under equal conditions for all. ANEM, IJAS (NUNS) and Local Press requested from the Ministry of Culture and Ministry for Public Administration and Local Self-Government to use their competences laid down in the Law on Ministries and send a recommendation to local self-government units as to the manner of realizing their competences laid down in Article 20, paragraph 1, subparagraph 34 of the Law on Local Self-Government. The said provision stipulates that the municipalities shall take care about public information of local relevance and ensure the conditions for public information in the Serbian language and the languages of ethnic minorities used on the territory of the municipality.

ANEM, NUNS and Local Press have insisted on equalizing the position of public and private media in applying for these funds, as well as on keeping the same level of funds allocated to municipalities for public information, namely keeping these funds at the level that existed prior to the privatization of public local news companies, if the privatization has already been carried out in the given municipality. NUNS, ANEM and Local Press have also insisted that the funds be allocated transparently, on public competitions for the co-financing of media projects, under equal and non-discriminatory conditions, as well as that the said public competitions be called in regular and predetermined time intervals. One of the requests of the above-mentioned associations also was that the right to participate in public competitions is restricted exclusively to the founders of media that possess broadcasting licenses for the territory of the local self-government in question, namely licenses for distribution on the territory of the local self-government for print media. Independent production companies, according to this request, would be eligible to apply, provided that they present a valid contract guaranteeing the broadcasting/release of the content in question. These media associations also requested that the main criteria for selecting projects on public competitions should be: the relevance of the project for realizing the right to public information about matters of local and regional importance; the project’s contribution to the diversity of media content and pluralism of ideas and values at the local and regional level; a valid explanation of the project, adequate budget specification adjusted and explained relative to the planned project activities, as well as the sustainability of the project. According to the same request, any additional criteria for selection shall be agreed upon through consultations with journalist and media associations. Furthermore, the above mentioned media associations insisted on the formation of independent commissions that would select the projects, whose work would have to be transparent and which would consist of the

competent representatives of the public, professional associations and the non-governmental sector. Membership to these commissions would be barred for members of parliament, councilors, appointed and designated persons in the Government, executive branch of provinces and local self-government units, but also for persons appointed to managing positions in public companies and institutions, as well as for political party officials. By the time when this Report was finalized, the Ministries did not send such recommendation to local self-government units. According to what the authors of this Report have learned, the main stumbling block is the insisting of ANEM, NUNS and Local Press on the independence of the commissions, whereas the ministries believe that the commissions should include representatives of municipal authorities. In the meantime, according to media reports, in municipalities throughout Serbia, the funds for the above mentioned purpose are still being allocated in a non-transparent manner: state-owned media and those close to local authorities are being treated more favorably than, respectively, private media and those that criticize the aforementioned authorities.

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 debate any legislation of particular 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 has called another public competition for the issuance of 20 licenses for the broadcasting of radio program with local coverage on the territory of the municipalities of Blace, Bosilegrad, Crna Trava, Dimitrovgrad, Lebane (two licenses), Nis, Trgoviste, Sjenica, Boljevac, Golubac, Negotin, Razanj, Arilje, Krupanj, Mokra gora (three

licenses), Banja Koviljaca and Kovin. The last day for submitting applications was March 2, 2011.

Under Article 49, paragraph 2 of the Broadcasting Law, the public competition for the issuance of broadcasting licenses shall be called when, according to the Radio Frequencies Allocation Plan, the possibility exists for the issuance of new broadcasting licenses. In our previous reports, we repeatedly emphasized that such concept was unsustainable. Namely, in the process of passing the Serbian Media Strategy, one of the rare opinions that have never been contested is the acknowledgment that the number of broadcast media in Serbia is economically unsustainable. Calling new public competitions and the issuance of new licenses, in the midst of the economic crisis, in the situation where the media market remains unregulated and in which the applicants tend to be economically unsustainable, is worsening the position of the media in Serbia. By doing so, the RBA is observing its legal obligation, which, in turn, is not conducive to reasonable use of the radio frequency spectrum or the development of broadcasting in Serbia. On the contrary, such actions will lead to further deterioration of the overall media situation.

2. REPUBLIC AGENCY FOR ELECTRONIC COMMUNICATIONS (RATEL)

The Republic Agency for Electronic Communications posted on its website on February 9, 2011 a notice about the deadlines for the submission of technical documentation and issuance of individual licenses for the use of radio stations' radio frequencies for broadcasters that have been issued by the RBA licenses for broadcasting television and radio program for local areas.

In the concrete case, 18 licenses are issued – 17 for local radio stations and one for a local television station – issued by the RBA on the basis of a public competition from 2010. After the expiry of the deadlines for complaints, namely after the RBA Council delivered its decisions about the complaints that were submitted on time, the Council forwarded its decisions to RATEL for further consideration. RATEL issued a notice inviting the applicants to furnish, within 30 days (until March 10, 2011), technical and other documentation required by the Rules on the Issuance of Licenses for Radio Stations and the data and documentation to be submitted along with the application for the issuance of a radio station license. In further proceedings, in accordance with the Law on Electronic Communications and the Broadcasting Law, under the conditions prescribed by the Law on Electronic Communications and regulations governing this field, RATEL will issue licenses for

transmitters, which are an integral part of the broadcasting license. The said procedure is regulated in detail by the Protocol on Cooperation between the RBA and RATEL.

STATE AUTHORITIES

3. THE PARLIAMENT OF THE REPUBLIC OF SERBIA

3.1. As we have already explained, the Parliament of the Republic of Serbia did not discuss in January and February 2011 any legislation of particular relevance for the media sector.

3.2. In mid-January 2011, the Parliament issued a call for applications for the radio and television live coverage of parliamentary sessions. The state budget has earmarked 80 million dinars for this purpose. The media have speculated that RTS or B92 might be interested in these transmissions. The General Manager of RTS Aleksandar Tijanic said, however, that his station would not enter into new agreements with the Parliament, until the latter repaid the debt due under previous agreements, estimated by Tijanic at 3.3 million Euros. Tijanic has included in that amount the losses RTS has incurred due to the transmissions of parliamentary sessions in the past. B92, which was interested in transmitting parliamentary sessions, but on its cable channel, was unhappy with the conditions of the tender, which were not platform-neutral and required terrestrial transmission only. The deadline for the applications expired on March 14. We hereby remind that until now, the parliamentary sessions have been, although reluctantly, transmitted by RTS. On September 24, 2007, the RBA passed a binding order, obliging RTS to transmit all sessions in the two regular annual sittings of the Parliament. After less than a month, under pressure from the public, which believed that mandatory transmissions of parliamentary sessions represented a violation of the public service broadcaster's independence, the RBA replaced its binding order with a recommendation with the same content. RTS has adhered to this recommendation, but insisted it should be paid for live coverage of parliamentary sessions.

4. THE MINISTRY OF CULTURE

4.1. In early February 2011, the Ministry of Culture called five competitions for the co-financing of projects and programs from the field of public information; for the co-financing of projects and programs from the field of public information on minority languages; for the co-financing of projects and programs in the area of information for disabled persons; for the co-financing of projects and programs in the area of information for Serbs living in countries

of the region; as well as for the co-financing of projects and programs of broadcast public media in Kosovo and Metohija. The budget of the Republic of Serbia has earmarked a total of 96 million dinars for the aforementioned five competitions.

4.2. In spite of the assurance given by the then Minister Nebojsa Bradic – made on December 29, 2010 at the meeting in the Ministry of Culture, attended by the representatives of journalists' associations, media associations, the Council of Europe Belgrade Office, the EU Delegation and the OSCE Mission to Serbia – that the Draft Media Strategy would be proposed by February 20, 2011, this had not happened by the time this Report was concluded. Several meetings were held in February between the representatives of journalists' and media associations with the State Secretary in the Ministry of Culture Snezana Stojanovic Plavsic and Minister Bradic. These meetings discussed how to include the representatives of journalists' and media associations and independent experts in the process of drafting the Draft of the Media Strategy. To this day, however, there is no definitive agreement on that subject.

COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS

In the period covered by this Report, no positive breakthrough was achieved concerning the disagreements in the relations between the organizations for the collective protection of copyright and related rights and broadcast media in Serbia. Despite the fact that the Government appointed the President and the members of the Commission for Copyright and Related Rights on December 9, 2010, it is yet to furnish a request for opinion about the tariffs proposals of the collective organizations to the representative association of broadcasters, as required by the Law on Copyright and Related Rights. This omission has further postponed the beginning of the enforcement of the Law, adopted back in early 2009.

In the meantime, the Organization of Phonogram Producers, OFPS and the Organization of Musical Authors of Serbia, SOKOJ, have pressed dozens of charges against media. We have written about one of these cases in this Report. Our impression is that these charges are utterly arbitrary and without valid foundation. OFPS has filed more than a hundred charges against stations throughout Serbia and their directors, by sending petitions to the RBA. The RBA declared itself incompetent for deciding about such petitions and forwarded them to public prosecutors. Public prosecutors are now initiating commercial infraction proceedings, involving fines ranging from 100.000 to 3.000.000 dinars. In its petitions, OFPS claimed that the broadcasters were not sending the log of used phonograms in the required OFPS

format posted on its website. At the same time, the submission of the log of used phonograms is also regulated by the Tariff, which was also adopted by the OFPS managing board. This tariff is still valid and represents the only act that has been actually published in the Official Gazette. It stipulates that the submission of the log of used phonograms in the required OFPS format is merely one of several alternative forms in which these lists may be submitted, but not the only one. In the example described in this Report, the Commercial Court in Leskovac, acting as a first-instance court, did not accept this rationale. The media appealed with the Commercial Appellate Court, whose decision is pending. One of the more drastic example of arbitrary and unfounded proceedings concerns an ANEM member station in Nis, which has been sued by OFPS for 4% of its total revenues for 2008, although the tariff, on which OFPS' claim is founded, has ceased to be valid in May 2008, when it was replaced by a new tariff, under which the highest fee amounted to 3% of total revenues. In relation to that particular case, ANEM requested from the Intellectual Property Office, as the authority in charge of overseeing the work of collective organizations, and from the RBA, as its sector regulator, to take urgent measures to protect Serbian media from the arbitrariness of collective organizations.

V THE DIGITALIZATION PROCESS

On February 18, 2011, the then Ministry of Telecommunications and Information Society adopted Rule Book on switchover from analogue to digital broadcasting of radio and TV programs and access to multiplex, which was published in the Official Gazette of the Republic of Serbia no. 12/11 on February 25, 2011. The Ministry's press release said that the Rule Book was an important step in the process of digitalization of television program in Serbia and that its goal was to establish technical standars and ensure the necessary conditions for a successful digital switchover, in accordance with the Digital Switchover Strategy in Serbia, the recommendations of the European Union, practice of neighboring countries and the Law on Ratification of the Final Acts of the Regional Conference on Radio Communications (RRC-06).

We remind, however, that the adoption of the said Rule Book with the Action Plan accompanying the Digitalization Strategy, was planned for the second quarter of 2010, which means that the Rule Book is at least nine months late. Moreover, the Action Plan was expected to define the rights and obligations of commercial broadcasters in the digital switchover process, with full respect for the rights enjoyed by those broadcasters under the licenses whose term exceeds the deadline for the switchoff of analog signal. Instead, the sole

innovation that the Rule Book has brought is the allocation of channels by allocation zones for the first and second multiplex in the scope of the network for the allocation, broadcasting and multiplexing of digital television program. Everything else was already presented in the Digitalization Strategy, whereas even the guaranteed throughput inside the multiplex per television channel was reduced to at least 3 Mb/s to 2 Mb/s. The good thing is that provision, stipulating that the conditions and the procedure for the issuance of broadcasting licenses will be determined after the switchover to digital terrestrial broadcasting by RATEL, in cooperation with the Ministry and the authority in charge of broadcasting, has been deleted from the Draft Rules. Such provision was unacceptable, since the conditions and the procedure for the issuance of broadcasting licenses are issues regulated by the Broadcasting Law, which expressly provides that the broadcasting licenses will be issued by the RBA under the procedure provided for by the Broadcasting Law and not under any other act passed by RATEL. Another good development is the removal of an article establishing the obligation of all broadcasters to take part in the promotion of the digital switchover not only free of charge, but also without any clear limit as to the extent of that obligation. The matter of defining the essential rights and obligations of commercial broadcasters in the digital switchover process remains unsolved. In the opinion of the authors of this Report, it should be dealt with through consultations between the holders of the license and the RBA, with an active participation of RATEL and the Ministry of Telecommunications and Information Society. These consultations would concern the extension of the validity of the existing broadcasting licenses, pursuant to Article 59, paragraph 3 of the current Broadcasting Law, rather than changing the conditions of the license – which is a possibility unknown to the Broadcasting Law – namely negotiations with the license holders about the introduction, for all stakeholders acceptable regulatory obligations, as a precondition for the extension of the current licenses validity. At that, the regulatory obligations might be introduced in the form of binding or general binding orders under the Broadcasting Law.

VI THE PRIVATIZATION PROCESS

No breakthroughs were observed as to the privatization of media in the period covered by this Report. However, the media have reported about the problems faced by an ANEM member station, Radio Sombor. That station's Internet and phone connections were switched off due to unpaid bills and its employees have not been paid for more than a year. On February 25, electricity was also cut off and the station's program came to a halt. We remind that, after having annulled the privatization of Radio Sombor, the state took over the station through a representative appointed by the Privatization Agency. After three years state

management, the debts of the station now exceed four times its assets and the last appointed Director resigned after only one month on her post. The agony of Radio Sombor has only confirmed the absence of any state concept or plan in the media sector, particularly relative to sustainable models of withdrawal of the state from media ownership.

VII CONCLUSION

The beginning of the year was marked by the resurgence of hate speech on the Serbian media scene. It remains to be seen if the reaction of the state and the general public has been sufficient for suppressing such incidents and free the media scene for communication rife with hate, stereotypes and prejudice. Moreover, the concern that such incidents are threatening to escalate beyond verbal violence is further evidenced by the increasing number of journalists, editors and civil society representatives – like in the case of Aida Corovic – who were put under police protection because of the Ministry of Interior’s belief that their security was threatened over their activities and positions voiced in the media. At the same time, the processes that should result, at least on the mid-term, in finding sustainable solutions of the problems faced by Serbian media, remain halted, without any breakthrough in sight. The government remains deaf to proposals and requests coming from the media sector, as evidenced by the unwillingness of the Ministry of Culture and Local Self-Government to instruct the municipalities – at least in the form of a binding order – to entrust the allocation of the funds for the co-financing of media projects to genuinely independent commissions. The already difficult situation is further marred by rows in the ruling coalition and the long-awaited government reshuffle that took place in March, due to which media and journalists’ associations were left without an interlocutor on the side of the state.