

I FREEDOM OF EXPRESSION

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

1. Threats and pressures

1.1. On a special press conference on March 1, 2011, the Democratic Party of Serbia (DSS) announced that it had suspended all communication and cooperation with TV B92. DSS official Andrija Mladenovic had previously left the studio during the show “Insajder debata” (Insider debate), in protest of having been denied the opportunity to read DSS letter to the editors of Insider and B92 Editor-in-Chief Veran Matic. The participants of the program were discussing the embezzlement and fraud in the Kolubara mining basin, while DSS had previously accused B92 of waging a campaign against DSS leader Vojislav Kostunica, to whom B92 had sent a letter with questions about the political background of the assassination of Zoran Djindjic. The above happened against a backdrop of investigative reports “Insider” aired by TV B92, about the fraud in Kolubara that was taking place while this state-owned company was run by people close to the DSS.

According to the Public Information Law, political parties are not expressly required to make information about their work available to the public and under equal conditions for all journalists and all public media. However, such requirement is imposed to state authorities and organizations, territorial autonomy authorities and local self-government, public offices and public companies, as well as for MPs and councilors. The DSS currently counts 20 MPs in the Serbian Parliament. The decision to suspend communication with a media, even if it relates to a political party’s members of parliament, is in direct contravention of the explicit provisions of the law and represents a restriction of the freedom of public information that may impede the free flow of ideas, information and opinions. Namely, DSS has not made it secret that the reason for the boycott is the series of investigative programs about fraud in a state-owned company that took place while DSS was in power. At the same time, the boycott as a pressure mechanism may definitively hamper B92 in further investigations about events the public is entitled to be informed about. It is also worth pointing to the reason used by DSS as the direct occasion for the boycott: a letter sent a couple of months earlier in which it accused B92 of waging a dirty campaign against them after DSS officials had refused for seven years to participate in TV B92’s programs about Djindjic’s assassination in 2003, which means that the then informal boycott over one topic has now become formal and comprehensive.

1.2. In the previous report we have written about an incident that took place on February 16, involving the reporters of Blic, Vecernje Novosti, Dnevnik and TV Kula, which were physically removed from the session of the municipal assembly in Kula, two of which reporters were taken to the police station. On the following session on March 4, only the journalists of two media were allowed in the room. The explanation was that such decision was in line with the Rules about publicity of work on the sessions of the municipal assembly of Kula and working bodies thereof, which the journalists find overly restrictive due to excessive formalities for accreditation. After the incident on February 16, the representatives of OSCE and journalists reacted and the reporters now claim that the representatives of the municipality promised the OSCE at a subsequent meeting that they would amend the restrictive Rules. However, to this day, these Rules have not been changed.

We remind that, under the Public Information Law, state authorities and organizations, territorial autonomy authorities and local self-government, public offices and public companies, as well as for MPs and councilors are required to make information about their work available to the public and under equal conditions for all journalists and all public media. Nonetheless, local governments continue to obstruct this requirement with Rules that essentially restrict media freedoms. This is also in contravention of the explicit provision of the Public Information Law, which prescribes in Article 8 that its provisions will not be interpreted and enforced so as to revoke a right guaranteed by the Law or restrict such right to a greater extent than prescribed. In this case, that is precisely what is happening: a technical regulation and unreasonable requirements in the accreditation process are denying the public information on the work of the local government.

1.3. On March 5, 2011, the Belgrade police apprehended fourteen members of the right wing organization “Nasi 1389”, who were protesting in front of the building of TV B92, unsatisfied with their reporting. The police had previously banned their protest, but the organization chose to ignore the ban. They were carrying a banner with the message “Truth and love for Serbia will beat your lies about us”, which also displayed swastikas besides the logo of TV B92. The movement “Nasi 1389” later announced that four of their activists were sentenced to 15 days in prison, while another four were fined 20 thousand dinars each. The Independent Journalists’ Association of Serbia (NUNS) said in a press release the extreme right-wing rally in front of the B92 building was yet another overt attempt to put pressure on the journalists and editorial policy of the said television station. “NUNS is requesting from the authorities to enable the reporters and editors of TV92 to work in normal conditions and calls for legal measures to be taken against the supporters of the extreme right-wing organization “Nasi 1389” that have taken part in the protest”, the press release said. NUNS reminded that B92 had long been targeted by extremist organizations, whose militants had

openly threatened certain journalists and editors, putting their personal safety and fundamental professional freedoms at risk. The President of the Journalists' Association of Serbia (UNS) Ljiljana Smajlovic said that the protest in front of the building of TV B92 represented unlawful and unacceptable pressure on that station. "The Law expressly stipulates when a media is required to broadcast or publish a rebuttal, while the party requesting a rebuttal must comply with the conditions provided for by the law. Everything else amounts to racketeering the media, pressure and political manipulation", Ljiljana Smajlovic said.

The occasion for the right-wing protest in front of the TV B92 building was the decision of the station to reject their request to broadcast on TV a rebuttal of a value statement posted on B92 website. In the concrete case, the Public Information Law supports the decision of the media not to broadcast the denial. The Law namely says that a person that finds that a certain piece of information has violated its right or interest may request from the editor to publish/broadcast free of charge the person's response claiming that the said piece of information is untrue, incomplete or wrongly reported. However, the response must be published in the same media and not some other media. "Nasi 1389" requested the response to the controversial information posted on www.B92.net to be aired on TV B92, which the said TV station had not released in the first place. In the concrete case, there were other grounds for not airing the response. Namely, Article 58 of the Public Information Law lists, among the reasons for not publishing a rebuttal, the circumstance that the rebuttal/response pertains to an opinion and not a claim about facts. In the concrete case, the members of "Nasi 1389" did not contest any fact reported by B92; they contested an opinion on the character of their movement. On the other hand, holding a protest in front of the television building, despite the police ban, undoubtedly amounts to putting pressure on a public media and its staff that may hamper their work.

2. Legal proceedings

2.1. The Primary Court in Cacak found that Stojan Markovic, the Director and Responsible Editor of the daily "Cacanske novine", was guilty of slander against former minister Velimir Ilic. The slander was committed by Markovic's editorial piece "Time to Settle the Accounts: Davidovic, Jovic and Saranic, the next one is..." and his satire "The Impotent Mandarin", published in "Cacanske novine" in February 2009. Markovic was fined with 100 thousand dinars. We remind that in April last year, the Higher Court in Cacak ordered Markovic to pay Ilic 180 thousand dinars of damages for anguish and suffering over sullied reputation and honor in the same texts. In the meantime, the verdict was upheld by the Appellate Court and

Stojan Markovic filed a constitutional appeal, which is still being reviewed by the Constitutional Court of Serbia. NUNS has voiced its concern over such verdict and claimed that the courts were protecting the politicians from reasonable criticism, which was in contravention of international conventions and the Serbian Public Information Law.

Velimir Ilic was a minister in the Government of the Republic of Serbia until July 2008; before that, he was a longstanding head of the local self-government in Cacak and as of 1998 the President of the Nova Srbija parliamentary political party, which participates in local governments in several towns in Serbia, including Cacak, where the controversial texts were published. That being said, the aforementioned court decision failed to take into consideration the legally instituted restriction of the politicians and civil servants' right to protection of privacy in relation to information of special interest to the public in view of such persons' positions; as well as the right to substantiated criticism by journalists, recognized as grounds for relief from liability in the Penal Code. Moreover, such a decision by the Primary Court ignores the constitutional duty of the courts to interpret the provisions on human and minority rights – including those pertaining to freedom of expression – so as to improve the values of democratic society and in line with applicable international standards and practice. The Council of Europe's Resolution 1636 from 2008, laying down the indicators for the situation of the media in democratic society, expressly stipulates that state officials – which includes Ilic as a former minister, current member of parliament and leader of a political party in power in the town of the court that passed the controversial verdict – may not enjoy a higher degree of protection from criticism and insults than ordinary citizens. It seems that this verdict is yet another proof of the problems Serbia is facing in its attempts to comply with the basic indicators of media freedoms.

2.2. After the 2 million dinar damage claim against Petar Lukovic, the Responsible Editor of the web portal E-novine, (E-papers) over the text “New Year Fairy Tale for Murderers”, published on January 15, film director Emir Kusturica has sued Lukovic once again. Kusturica is now pressing charges over the text “A Sarajevo Analysis: the Reputation and Honor of Emir K”, reposted by E-novine from the Sarajevo web portal Protest.ba on February 15. The new claim for damages amounts to three million dinars. Kusturica's attorney Zdenko Tomanovic told the Beta news agency that his client's lawsuit was not an attempt to close down a public media, but rather a request for protection of rights guaranteed by domestic and international standards.

Although Kusturica's attorney claims that his client's claim for damages was not attempt to close down E-novine, the amounts he is claiming might just lead to that. What is interesting

in both these cases is that the claims against E-novine have been filed over texts reposted from other Internet portals in Serbia and the region and that in both cases the portals that originally published the texts were duly identified. However, Kusturica has not sued the media that have first published the texts.

2.3. On March 23, 2011, the media reported that the Primary Court in Sabac had sentenced Bogdan Simanic to two years in prison for threats made against “Vecernje Novosti” reporter Aleksandra Delic. Simanic, a former priest of the Serbian Orthodox Church and co-owner of the weekly “Glas Podrinja”, told Delic’s colleague reporter Tatjana Cvejic he would “wipe the asphalt with Delic on the first occasion he saw her and that he would break her bones”. Simanic was unhappy with Delic’s text where she made a reference to the police press release about Simanic’s criminal record: he has actually been charged of embezzlement in the amount of 4.6 million dinars.

Under the Penal Code, threats against physical security are defined as threats to attack a person or that person’s next of kin or close friend. The Code provides a punishment ranging from one to eight years in prison for this criminal offense, as well as its qualified form, committed by threatening a journalist or, as the Law puts it, “a person occupying positions of public interest in the field of information, when the threat is made in relation to that person’s job”. The above mentioned two-year prison sentence is a rarity in Serbian court practice. Serbian courts typically sentence offenders to the one-year minimum or even to lower sentences. The verdict is a first-instance one and may be subject to an appeal.