

## I FREEDOM OF EXPRESSION

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

### 1. Threats and pressures

1.1 On October 5, 2011, journalist of the Sabac-based newspaper “Podrinjske” and correspondent of Radio Free Europe Hanibal Kovac was physically attacked in downtown Sabac. Kovac was kicked in the back by an unknown man, who told him he was going to get “beaten or dead”. According to eyewitness’ statements, the man had gotten out of a jeep with no license plates, threatened and kicked the journalist and ultimately drove away. According to the same sources, everything happened just ten meters away from the traffic police, in an area covered by cameras. According to Kovac himself, the attacker presented himself as the body guard of a medical equipment dealer mentioned in the investigation in the Sabac General Hospital. Kovac had been investigating the dealings of that hospital for months, especially in the area of procurement. According to a press release, the police has identified the attacker, apprehended him and placed him in police custody, after which he is supposed to be taken to the judge of investigation.

According to the Public Information Law, it is prohibited to put physical or other pressure on a public media and its staff or exert any influence that might obstruct their work. According to the provisions of the Penal Code in the Republic of Serbia, Hanibal Kovac’s case might contain elements of the criminal offense of violent behavior, incriminating serious disruptions of public order, namely serious threats to the peace of citizens by gross insults against and/or harassment of other persons, violence against other persons, provoking a fight or rude or unscrupulous behavior. The Law provides for a penalty of up to three years in prison for violent behavior. If a person has suffered a minor bodily injury or such behavior has caused severe humiliation of the citizens, the perpetrator shall be punished by a prison sentence in the duration of between six months and five years. Additionally, also according to the provisions of the Penal Code of the Republic of Serbia, threats made against the security of a person by menacing that person with an attack on his/her life or body, or the life or body of a person close to him/her, if such threat is made against a journalist in relation to the his/her work in the domain of information, shall be subject to a prison sentence of one to eight years. A particular concern is, however, the fact that, as in other similar cases, including the notorious attack on Vecernje Novosti’s correspondent from Loznica Vladimir Mitric back in September 2005, the police remained silent as whether it had identified the persons that

had ordered the attack. Namely, despite Kovac's statement, released in the media, that the attacker presented himself as the body guard of a medical equipment dealer mentioned in the investigation in the Sabac General Hospital, which case Kovac had been investigating and reporting about for months, one may not infer from the police press release if any investigation about the attacker's identity has been conducted at all. Particularly worrying is the fact is that the investigation in a large number of attacks against the media typically ends up with the identification of direct perpetrators, but not of those who have hired them, the real instigators of the attack.

1.2 The editor of the aforementioned internet portal and correspondent of the daily "Danas" from Vranje Vojkan Ristic informed the police he was threatened over the phone by a high DSS official in Vranje. According to him, the threats are the reaction to information published on October 5 that the Prosecutor for Organized Crime has been investigating the assets of several persons from Vranje, members of the Democratic party of Serbia (DSS) or persons close to that political party. Using the information of an unnamed police source from Belgrade, the Vranje Press internet portal claims that the investigation is led in the scope of the operation that previously saw the arrest of the Director of the Kolubara Coal Basin.. Ristic claims he was warned not to write about the case again. Two days later, the media reported that Ristic had given a statement to the police, accusing DSS official from Vranje Misa Antic. The President of the City Board of the DSS in Vranje Dejan Stanojevic told a local TV station by telephone that "the threats are a product of Vojkan Ristic's imagination". According to Stanojevic, nobody from the DSS in Vranje has anything to do with what happened in Kolubara and nobody from Vranje has done any business with Kolubara. The City Board of the DSS in Vranje also protested over the reports by Vranje Press, labeling it a product of the impending electoral campaign and calling Vranje Press to reveal the source of the controversial information.

According to the Public Information Law, it is prohibited to directly or indirectly restrict freedom of public information, so as to restrict the free flow of ideas, information and opinion. It is particularly prohibited to put any pressure and influence on public media and their staff so as to obstruct their work. The Public Information Law particularly insists on the special responsibility and obligation of persons occupying political functions in that respect, pointing to their right to protection being restricted if the respective information is relevant to the public, since the person, which the information pertains to, is discharging a certain function. Of particular concern is the request made by the City Board of the DSS in Vranje, calling Vranje Press to reveal the source of the controversial information. According to the Law, the journalist shall not reveal his/her source unless the information related to a criminal offense, or perpetrator of a criminal offence subject to no less than five years in

prison. This rule, provided for by the Public Information Law from 2003, was mainly respected in the last eight years, although there were attempts by various sides to disregard it: for example, in early 2009, the daily Borba was called upon to reveal its sources of the information about the decision of the Serbian government in the Miladin Kovacevic case. The then Editor-in-Chief of Borba Olivera Zekic was questioned by the police, but refused to reveal the source of the information that the government was ready to pay damages to the injured student Brian Steinhower, in order for the fugitive Miladin Kovacevic to be allowed to stand trial in Serbia. The trivialization of the journalists' right to protect their sources, as well as the calls to breach this right for the sake of protecting the ratings of political parties, shows that the politicians in Serbia are ready to forego the importance of protecting journalist sources and hence freedom of expression in general, which are legally guaranteed in Serbia, among other things, by the provisions regulating the protection of journalist sources, if the aforementioned politicians estimate that it may bring them even short-term political gain.

1.3 In mid-October, the studio of RTV Prima from Bajina Basta was stoned – several windows were broken on the building and the tires on the station's company car were cut. RTV Prima said in a press release it was the third such attack on their company car in the previous three months. The attacks were reported to the police. The station said they were also under economic pressure, as well as that their employees suffered direct pressure too, with the aim of influencing the editorial policy.

The attack on RTV Prima in Bajina Basta is yet another confirmation of the increasing pressure on the media and attempts to instrumentalize them in the wake of the coming parliamentary and local elections. The pressure ranges from "friendly chats" to economic pressure in the form of cancelled marketing contracts or channeling local self-government funds allocated for public information to obedient and friendly media. At the same time, media are openly threatened and exposed to brutal attacks. Although media associations have requested from the authorities to investigate the background of the attack and hold the perpetrators to account, we are yet to see any official communication indicating that an investigation is underway, let alone that any results have been achieved.

## **2. Legal proceedings**

2.1 The prosecutor in Novi Sad has filed an indictment against journalist Jelena Spasic and Milan Bojovic, the editor of the defunct "Nacionalni gradjanski list" newspaper from Novi Sad, over the text "State Authorities Completely Unprepared for War". The indictment, which Jelena Spasic received on October 14, said that the controversial text, written on the

basis of a confidential report by the Serbian Defence Ministry about the preparedness of the country for defending itself in the case of war, “had damaged national security”. Jelena Spasic and Milorad Bojovic were accused of committing the criminal offense provided for in Article 98, paragraph 4 of the Law on Classified Data, namely that they had made available, for the purpose of publishing the article, the material prepared for the session of the Serbian Parliament, which was labelled as strictly confidential. They are also accused of having committed the criminal offense provided for in Article 333, paragraph 2 of the Penal Code, by not revealing the identity of their source. By doing so, in the Prosecutor’s opinion, they have helped their source – the perpetrator of the criminal offense subject to a prison sentence of more than five years. The Journalists’ Association of Serbia (UNS) has condemned the indictment against the journalist and the editor. “What they have published is not detrimental to Serbia’s security, as the indictment claims. On the contrary, it is a contribution to better informing the citizens about the real state of the defense preparations and security of the country”, UNS said. Jelena Spasic said that the Novi Sad Prosecutor’s Office had filed an indictment against her without even conducting an investigation or summoning her for an interrogation. She denied having divulged a secret, because the material in question was scattered around the parliament desks and tables in the parliament restaurant and hence could not have represented a secret. The Commissioner for Information of Public Interest and Personal Data Protection Rodoljub Sabic reacted with a press release published on October 15, in which he warned that the whole case was indicative of the deplorable state of the freedom of press and the right of the public to know. “Insisting on the responsibility of journalists, while at the same time not holding others, those that are really responsible, to account, will, regardless of the intentions of the Prosecutor, have detrimental effects on freedom of press and the right of the public to know”, the Commissioner said. Several days later, on October 22, according to media reports, the Commissioner said that “he was informed that morning by the Republic Prosecutor Zagorka Dolovac that the Prosecutor’s Office will not continue the criminal proceedings against the journalists of “Nacionalni gradjanski” (under the indictment of the Primary Prosecutor’s Office in Novi Sad, which has not come into effect yet) and that instead, the investigation will be extended to other officials, unknown persons, for the offense of divulging a secret”. The same day, the spokesperson for the Republic Prosecutor’s Office Tomo Zoric told Tanjug that the Extra-Procedural Council of the Primary Court in Novi Sad has returned the indictment against the journalist and editor of “Nacionalni gradjanski” for investigative proceedings and hence an investigation would now be conducted. “After the investigation is completed, depending on the facts that will be determined, the Prosecutor will reach a decision about this case,” Zoric said.

The case of Jelena Spasic and Milorad Bojovic has shocked the public. It reminded us of a time we have believed to be gone, when, for example, Miroslav Filipovic, the correspondent

of “Danas” and the France Presse agency from Kraljevo was sentenced in 2000 for espionage to seven years in prison by the Military Tribunal in Nis. Filipovic was allegedly a spy for having posted texts signed by him on the Institute for War & Peace Reporting’s website. Both Jelena Spasic and Milorad Bojovic have done their job – writing about the poor situation of certain national defense resources, citing concrete information from a document that was labelled confidential. From the text they had published it may be concluded that its consequences may only be beneficial – the remedying of indisputable omissions – and not harming Serbia’s security. Another concern for the media professionals was the fact that their colleagues were indicted without an investigation, as well as that the Prosecutor proposed the trial to be closed for the public. Article 244, paragraph 6 of the Criminal Procedure Law of the Republic of Serbia stipulates that, in the case of a criminal offense subject to a prison sentence of up to eight years, the Public Prosecutor may, without the consent of the investigative judge and without having interrogated the suspect, raise an indictment without having conducted an investigation, if the information collected about the criminal offense and the perpetrator provide sufficient grounds for doing so. Moreover, in keeping with Article 292 of the Criminal Procedure Law, the court may, *ex officio* or at the proposal of the parties, exclude the public from the entire main hearing or part thereof, among other reasons, if required by grounds of national security. Both provisions are exceptions from general rules – that an indictment must be preceded by an investigation and that the main hearing shall be public. The impression that the Prosecutor in Novi Sad resorted to that exception hastily in the first case was confirmed by the Extra-Procedural Council of the Primary Court in Novi Sad, which returned the indictment to the investigation procedure, i.e. to normal procedure. It is highly likely that, if there is a trial at all, the court will reject any proposals for exclusion of the public during the main hearing. It would namely be illogical to exclude the public from the hearing for reasons of confidentiality of a document that was, as the indictment claims, already made available to that same public. Finally, it seems that this case has exposed the fragility of the guarantees offered by the Public Information Law – both the ones concerning information about issues of relevance for the public and those pertaining to the right of journalists to protect their sources. Concretely, Article 4 of the Public Information Law stipulates that public media shall be free to publish information and opinions and phenomena the citizens are entitled to know about, unless provided for otherwise by the Law and regardless of the means by which such information was acquired. Matters concerning the country’s military preparedness undeniably seem to enter that category, regardless if the media in question has obtained such information by picking up documents scattered around the parliament restaurant, as Jelena Spasic so picturesquely put it. Moreover, Article 32 of the Public Information Law says that a journalist shall not be obliged to disclose information about his sources, unless such information concern a criminal offense or a perpetrator of a criminal offense subject to no less than five years in prison. It is simply unbelievable that the

Prosecutor has treated the above right of the journalist (not to disclose his source) as aiding a perpetrator of a criminal offense. Even if we disregard the fact that the protection of sources is not there to protect specific sources or, as alleged by the Novi Sad Prosecutor, in order to help those who commit the offense of divulging confidential documents, but rather in order to protect one of the key preconditions for freedom of press, without which the sources would be discouraged from talking to reporters and the public would be denied information it is entitled to learn. In the concrete case, the conditions for denying the reporters to protect their sources were not met at all. A journalist is namely obliged to reveal his source of information only if this information relates to a criminal offence or a perpetrator of a criminal offense subject to no less than five years in prison. The criminal offense in question is subject to 1-8 years in prison and in that sense the journalist was not obliged to reveal his source. At the same time, his refusal to reveal his sources could not have been construed as aiding a perpetrator of a crime.

2.2 The hearing of Velimir Ilic, the President of the Nova Srbija political party, sued by journalist Vladimir Jescic back in 2003, was postponed once again before the Primary Court in Novi Sad, after Ilic's attorney requested the exemption of the judge. Velimir Ilic failed once again to appear in court. Jescic pressed charges against Ilic for having kicked him during the interview for the Novi Sad television "Apolo" in 2003, after which he tried to physically attack him. After the postponement of the hearing, Jescic said that his case was proof of the existence of double standards in Serbia for politicians and ordinary citizens.

It seems almost unbelievable that, eight years after an attack on a journalist that was televised throughout Serbia, this case is yet to be closed in court. Namely, the first-instance verdict in 2006 was scrapped upon appeal by Velimir Ilic. Jescic's attorneys claim that the appeal was not timely filed (in 2009, after six years) but was nevertheless accepted by the court. Whatever the case may be, Jescic's claim about double standards for politicians and ordinary citizens only gets credence if the case where Velimir Ilic was the attacker is compared with another case in which Ilic was himself attacked: on February 5, 2010, in Knez Mihajlova street in downtown Belgrade, Dejan Stojadinovic punched Velimir Ilic while the politician was talking to the press in relation to his party's signature collection campaign for early elections. Stojadinovic was sentenced on April 6, only two months after the incident, to two years in prison. The verdict of first instance was delivered by High Court in Belgrade. Six months later, this verdict was upheld by the Appellate Court in Belgrade and it became final, which only confirmed that Serbian courts can be very efficient when they want to. Unfortunately, they are far from efficient in cases where journalists appear as the injured party.