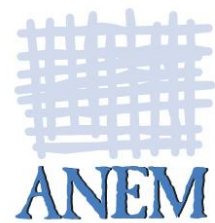




LEGAL
MONITORING
OF THE
SERBIAN
MEDIA
SCENE

Report for January – February 2012





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TABLE OF CONTENTS:

I	FREEDOM OF EXPRESSION	3
II	MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS.....	7
III	MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS.....	12
IV	MONITORING OF THE WORK OF REGULATORY BODIES, STATE AUTHORITIES AND COLLECTIVE ORGANIZATIONS FOR THE PROTECTION OF COPYRIGHT AND RELATED RIGHTS	12
	REGULATORY BODIES.....	12
	STATE AUTHORITIES	14
V	THE DIGITALIZATION PROCESS	16
VI	THE PRIVATIZATION PROCESS.....	17
VII	CONCLUSION.....	18

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 In a text published on January 11, the journalists and editors of the daily "Politika" denounced the threats made against their correspondent from Nis Tomislav Todorovic. Todorovic, who also writes for "Sportski zurnal", sports daily newspaper also issued by "Politika", received several threats back in mid December last year. The case was reported to the police and a suspect was identified – allegedly an official of the "Radnicki" football club from Nis. Journalists' associations have requested from the Nis public prosecutor to prosecute that person immediately. The spokesperson of the Serbian Public Prosecutor's Office Tomo Zoric confirmed that the public prosecutor in Nis had filed a motion for investigative measures over the suspicion that a criminal offense of threats against security had been committed. The Journalists' Association of Nis issued a press release calling for the "Radnicki" football club to make a statement regarding the case.

Tomislav Todorovic is yet another sports reporter being exposed to pressures and threats over his work. This is an evidence of undermined freedom of expression in Serbia and of a unstable situation in Serbian sports in general. According to the applicable Public Information Law, public information shall be free and in the interest of the public. Furthermore, 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 physical or other type of pressure on public media and the staff thereof so as to obstruct their work. Under the Penal Code, the aforementioned threats, over which the prosecutor has filed a motion for investigative measures, are defined as a threat to life or body of a person or that person's next of kin, endangering his/her security. This Law is subject to up to three years in prison or up to five years, if the threats have been made against several persons or if they have led to "citizens' anxiety or other severe consequences". If the security of a journalist – or, as defined by the law, a "person occupying jobs of public interest in the field of information" – has been threatened in relation to the job he/she is performing, the penalty ranges from one to eight years in prison. In prLawice, however, the offenders are often sentenced to penalties at or below the minimum prescribed by law. Journalists' and media association have repeatedly stressed that such lenient penal policy has encouraged people to even publicly threaten journalists, without fear of legal retribution. On the other hand, the good news is that prosecutors rarely give up prosecuting the

perpetrators in such cases, which may provide an opportunity to courts to reconsider their penal policy. In the previous period, there were several cases where second instance court have reversed the decisions of lower courts sentencing perpetrators to penalties at or below the minimum prescribed by law. Late last year, for example, the Appellate Court in Belgrade increased the prison terms against Milos Mladenovic and Danilo Zuza by 7 months each, sentencing them to one year in jail for the attack against the columnist of the weekly "Vreme" Teofil Pancic. Almost at the same time, the said court doubled the penalty in a similar case - the attack and severe bodily harm inflicted to Vladimir Mitric, the correspondent of "Vecernje Novosti" from Loznica. If or when a trial in the case of the threats made against Tomislav Todorovic is initiated, it will be interesting to see to what extent the recent decisions of the Appellate Court have influenced the lower courts.

1.2. On February 22, the crew of TV Studio B, of the reporter and two cameramen, was attacked in downtown Belgrade. The attacker was apprehended and put in police custody for violent behavior. The television crew was shooting a simple story about the public transportation in Belgrade. Without any reason, the attacker insulted them from a nearby terrace and started threatening them, yelling "you will not escape alive". He ultimately went out on the street and punched the assistant cameraman in the face and kicked him in the stomach. The police promptly came and arrested him. According to media reports, the attacker told the police he was provoked by the law that "the crew was shooting commercials while the people in Serbia barely make ends meet". The First Basic Public Prosecutor's Office in Belgrade requested from the court to initiate an investigation and have the attacker, Dejan Zitic, placed in custody. The spokesperson of the Serbian Public Prosecutor's Office Tomo Zoric said that criminal charges were filed against Zitic for committing a joinder of criminal offenses - threats against security and violent behavior.

According to the applicable Public Information Law, public information shall be free and in the interest of the public. Furthermore, 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 physical or other type of pressure on public media and the staff thereof so as to obstruct their work. The attack against the TV Studio B crew is evidence of the extent to which the reporters are exposed to attacks in carrying out their daily work, even when they are dealing with ordinary topics concerning the functioning of municipal services in cities. In addition to threats against security, which is subject to between one and eight years in prison when committed against journalist while on their job, in the above case the prosecutor also asked for an investigation of the crime of violent behavior. According to the Penal Code, violent behavior involves serious disruption of public order and the peace of the citizens, by gross insults or harassment, violence, inciting fights or rude and ruthless behavior. Qualified forms of violent

behavior, involving minor bodily harm or severe humiliation of citizens, shall be subject to between six months and five years in prison. In the above case, the prosecutor said it would request maximum prison terms as provided for by the law.

2. Legal proceedings

2.1 In early January, the hearing in the case of the journalist of the former TV “Apolo” (today “Novosadska televizija”) Vladimir Jesic against the leader of the Nova Srbija political party Velimir Ilic, was held before the Higher Court in Novi Sad. The case concerns the incident that took place back in 2003, while Jesic was interviewing Ilic. According to media reports from that time, Jesic had said that, while the interview was being shot, Ilic had kicked him in the knee, swearing and insulting him, after which the shoot was interrupted. “When I asked him about the tobacco factory in Cacak and how it was built, asking him if he was related to Strahinja Ilic (allegedly his cousin) who is rumored to be connected with the whole case, Ilic reacted angrily, stood up from his chair and kicked me in my right knee. He continued threatening me and swearing. Of course, everything was recorded on camera”, Jesic said. Ilic, however, said he had never kicked Jesic, claiming he had merely kicked the folder, which the reporter was reading his questions from, angry over the mentioning of the members of his immediate family. Back then, Ilic claimed he was the victim of a setup devised by Vladimir Popovic Beba, the then head of the government’s Information Office. Ilic said Popovic wanted to tarnish his reputation on the eve of the presidential elections, when Ilic was supposed to run for office. He claims that Jesic made a pause in the shoot, requesting that a table standing between the two of them be removed, after which the shoot continued and the reporter started touching him between the legs with his own leg. Ilic claimed he then jumped from his chair and kicked Jesic’s folder and not his knee. The leader of Nova Srbija requested that two security guards that were assigned to him during the interview be questioned, who, as he claims, were present in the room where the interview was shot. The court went on questioning cameraman Slavisa Malic, who said that Ilic’s female assistant was present behind the stage the whole time of the interview. That associate, Malic recounts, was giving signs to Ilic by making grimaces and faces and ultimately interrupted the shoot by shouting and gesticulating with her hands. “Ilic then stood up and I clearly saw and heard how he kicked Vladimir in the knee. Ilic then walked over to our second cameraman and told him to give him the recorded material, after which he grabbed me by the arm, also requesting the tape. Vladimir gave him some other blank tape to calm him down”, Malic said. One month later, in early February, another hearing was held, on which occasion Ilic and his attorney failed to show up, allegedly “due to the snow”. Nonetheless, another witness was interviewed – a member of the TV crew Goran Trajkovski. He echoed what his colleague Malic said, claiming that the interview was proceeding normally until Jesic asked Ilic if he was related to Strahinja Ilic. “At that very moment, the woman that was standing behind the stage, probably

someone from Ilic's political party, demanded that the shoot be interrupted. Velimir Ilic started shouting and insulting Jesic and ultimately kicked him in the knee. Then he continued shouting and swearing, while trying to take the tape out of the camera." Trajkovski also said Ilic had swung with his leg so hard it looked like he was going to hit Jesic in the face. After hitting him in the knee, Ilic's leg ended up at the level of Jesic's head, hitting the folder he was holding in his hand. The court scheduled the next hearing, when a neuropsychiatrist will be heard in the status of a court expert. Vladimir Jesic claims that the whole case is a proof of the existence of double standards for politicians and ordinary citizens in Serbia. He reminded that the man who had attacked Velimir Ilic on the street in downtown Belgrade had been promptly arrested and sentenced to two years in prison. In contrast, Jesic has been waiting for justice to be done for almost nine years.

What makes the whole case particularly interesting is the fLaw that the defendant, accused of physically attacking a journalist, is an Lawive politician, who after the incident ended up becoming a minister in the Government and a member of the Parliament. Jesic is suing him for damages. Criminal proceedings against Ilic were never conducted, because he invoked his parliamentary immunity and the Parliament voted against stripping him from immunity. The second interesting circumstance the media have reported about during the trial, which is yet to be elucidated, is the fLaw that the court has already passed a verdict in Jesic's favor and that Ilic's appeal against that verdict has been approved, although it was filed three years late. From a legal standpoint, this was possible only if the initial verdict against Ilic hadn't been furnished to the defendant for three years, since the deadlines for lodging an appeal start from the moment when the sentence is furnished to the defendant and not from the moment when the court passes the verdict. However, the fLaw that the decision of the court was not furnished to Ilic for three years is impossible to comprehend, since he was everything but inaccessible in view of the positions he was occupying at that time and being a person that was constantly in the public spotlight. If these circumstances are not clarified and if the persons responsible for not furnishing the verdict of the court to Ilic – if this is really the case – are not taken into account (the other possibility is that Ilic received the sentence and that the evidence of that were not preserved or were destroyed), the whole case will point to the stark reality of politicians in Serbia being shielded from justice in cases of attacks against journalists.

2.2. On February 2, the Apellate Court in Belgrade announced to have reversed the sentence against Milan Savatovic and Stefan Milicevic, found guilty in the first instance of being part of a group that had attacked B92 cameraman Bosko Brankovic. The court approved the appeal of the First Primary Prosecutor's Office and sentenced Savatovic to one year and Milicevic to six months in prison. The court of first instance sentenced Savatovic to 10 months of house arrest and Milicevic to six months in jail (suspended to three years). Savatovic was established to have

kicked Brankovic's camera and his left shoulder, while Milicevic and Nikola Lazic (Lazic's four month-jail term – three years suspended – was confirmed), were found to have been part of the group that continued to stamp on and kick Brankovic after he fell. Brankovic was attacked and severely injured on July 24, 2008, while he was reporting from the protests against the arrest of Radovan Karadzic. He suffered a broken knee.

The offense which Brankovic's attackers were sentenced for is defined in the Penal Code as participation in a group of persons that has killed or severely injured someone. The penalty provided for by the Code for merely being part of such group is between three months and five years in prison, while the group leader shall be sentenced to between one and eight years. According to the findings of the Apellate Court in Belgrade, the court of first instance gave too much weight to extenuating circumstances, while at the same time properly considering the seriousness of the committed criminal Law and the degree of guilt of the defendants as the perpetrators, the level of threat and the injuries of the plaintiff, namely the motives of the Law and brutality and ruthlessness displayed by the group that attacked Bosko Brankovic for no reason whatsoever, inflicting him severe injuries. This decision of the Apellate Court represents, in our opinion, the continuation of a trend observed as of late last year – similar to that in the aforementioned cases against Milos Mladenovic and Danilo Zuza, the attackers on "Vreme" columnist Teofil Pancic and Ljubinko Todorovic, the attacker on Vladimir Mitric, "Novosti" correspondent from Loznica. Interestingly enough, however, the new sentence against Savatovic, if the court considered him to be the ringleader of the group that had attacked Bosko Brankovic, is at the minimum prescribed by law, which is evidence of a lenient penalty policy, although some might think it has undergone a serious change. Just like in the case against Velimir Ilic for attacking Vladimir Jesic, the attack on Bosko Brankovic was recorded on camera and shown in all media. Savatic's brutal kicking of Brankovic was broadly condemned by the public. One may reasonably ask how would the attackers fare in court had it not been for the cameras that recorded it all and had it not been for the public outcry.

II MONITORING OF THE IMPLEMENTATION OF EXISTING REGULATIONS

1. *Public Information Law*

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

1.2. On January 25, the Independent Journalists' Association of Serbia (NUNS), in collaboration with the Ministry of Labor and Social Policy, held a seminar about the role of the media and enforcement of ethical standards in reporting about the reform of the social security system and the beneficiaries of social services. NUNS Vice-President Jelka Jovanovic said that the media in Serbia often misused and violated the rights of the said beneficiaries. She stressed that journalists needed to be cautious when reporting about vulnerable groups such as children, the elderly, disabled persons and the poor.

According to the Public Information Law, journalist and responsible editor of a public media must check with reasonable care the origin, accuracy and completeness of such information, prior to releasing information containing data about a particular event, occurrence or person. The Law especially protects minors, which must not be made recognizable in the information that might violate their right or interests. According to the Law, information related to the private lives of all citizens may not be released without the consent of the person concerned, if such information point to the identity of the person in question. The issue of protecting the privacy of the beneficiaries of social security services, especially in the times of economic hardship, when the number of such persons is on the rise and who are typically unable to protect their rights in lengthy and expensive trials, has become increasingly important. This is particularly true of children as beneficiaries of social security services: there have been many cases in prLawice where the rights to special protection of minors are violated. It is therefore important to work on continuously educating all profiles of journalists, including by having them attend seminars such as the one organized by NUNS. It would be useful, however, to include the Ministry of Culture in these programs, as the institution competent for proposing amendments to media regulations, so as to adequately protect all vulnerable categories, while preserving the balance between the right to free expression and the right to have one's privacy protected. It would be also reasonable to somehow involve the judiciary, which often creates more problems that it solves, due to inadequate enforcement of existing regulations.

1.2. Dilemmas about the implementation of Article 82 of the Public Information Law in the case law of Serbian courts are all but dispelled. The said article namely stipulates that a journalist, responsible editor and the legal person – founder of the public media – shall not be held accountable for the damage, if an untrue or incomplete information was faithfully conveyed from a public parliamentary debate, public debate in a parliamentary body, court proceedings or from a document of the competent state authority. Dilemmas are particularly associated with quoting documents of state authorities, most notably related to conveying police press releases.

The case we wrote about in February concerns the local weekly “Zrenjanin” from Zrenjanin. This weekly was taken to court over the information posted on its website, which was merely the police press release about the arrest of a group of persons from Zrenjanin and Novi Sad, suspected of setting up car accidents in order to scam insurance companies. In the first instance trial, the publisher of the weekly was released of responsibility precisely on the basis of Article 82 of the Public Information Law. However, in second instance, the Appellate Court found that the Higher Court in Zrenjanin too had mistakenly enforced material law, since the title of the controversial text – which violated the presumption of innocence - “Faked Accidents in Insurance Scam”, was not conveyed from the police press release. In prLawice, however, there are far more drastic cases, where in identical sentences, the courts conclude that a particular piece of information has been faithfully conveyed from a document of a competent authority, only to approve the plaintiff’s claim, saying that the media failed to Law with due journalist care by not double-checking the information from the police press release or document of other competent authority. This is also in breach of the case law of the European Court of Human Rights, which was made binding for Serbian courts by Article 18, paragraph 3 of the Serbian Constitution. The Court has, in a series of verdicts (e.g. Bladet Tromsø and Stensaas against Norway dated May 20, 1999. Colombani against France dated June 25, 2002), taken a very clear position that the media and the journalists, when quoting a document issued by a competent authority, are not obligated to double-check the veracity of slanderous and libelous claims quoted and shall not be held accountable for publishing such claims. Specifically, in paragraph 68 of the sentence in the case Bladet Tromsø and Stensaas against Norway and paragraph 65 of the sentence in the case Colombani against France, the court said the media must be entitled – when they are contributing to a debate about issues the public has the right to know about – to trust the veracity of official reports and press releases, without needing and being obligated to independently check the content of such reports and press releases. In every other case, the European Court of Human Right says, the vital role of the media as the public’s watchdog would be compromised. It seems that the Serbian courts are well-behind the case law of the European Court of Human Right in this respect. We remind that earlier sentences of the European Court of Human Right in cases against Serbia, concerning the enforcement of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guaranteeing freedom of expression, pertained mainly to how the Serbian courts had handled the obligation of state and political officials to demonstrate a higher degree of tolerance for critical texts in the media. This issue has seen some progress in the last few years, unlike the matter of the exclusion of responsibility for faithfully conveying information from parliamentary debate, legal proceedings or state documents. It is therefore to be expected that the next burning issue related to respect of right to freedom of expression in Serbia will be the issue of the right of Serbian media and journalists, in a debate about matters of public interest, to confide in the veracity of

the content of official reports and press releases, while being free of any fear from retribution and without the need to independently check the content of such reports press releases.

2. Broadcasting Law

2.1. The strike on TV Avala, that had started back on December 22 last year, was put to an end by a decision of the employees two months later. The strike was held in protest against unpaid salaries to employees and outsourcers, who were owed four and a half and five salaries, respectively. After making several payments in the course of the strike itself, the employers still owe another two salaries. During the strike, all dues to the regulatory agencies (RBA and RATEL) were also paid. The strike on TV Avala was the first one in a commercial national television station in Serbia. There are no instructions or guidelines whatsoever in Broadcasting Law or the bylaws of the RBA as to how to organize and conduct a strike on a television station, what are the obligations of the employees as to maintaining minimum operations or the rights of the employer in that respect. The Strike Law stipulates the Lawivity of employers in the field of public information, particularly radio and television, to be Lawivities of public interest and that the employees carrying out such Lawivities may start a strike only if they secure minimum operation. The strike on TV Avala ended, but it has remained unclear what constitutes “minimum operation” on a commercial national television station, what is the role of the regulatory agency in the case of a strike and how should the provisions of the Broadcasting Law about obligatory programming quotas be interpreted. The same is true of the requirements contained in the license on the programming concept of the TV station, which was definitely not respected for two full months.

Furthermore, it seems that the strike on TV Avala was a good opportunity to discuss many other issues concerning the enforcement of the Broadcasting Law. A topical issue in that respect is the criteria according to which the RBA issued broadcasting licenses to national broadcasters, as well as the meaningfulness of the issuance of the approval for the changes of ownership structure to broadcasters holding valid licenses. Unfortunately, the debate never took place. Namely, one of the requirements for the issuance of the licenses back at the time when TV Avala obtained its license – which requirement remains valid today – are the guarantees the applicants had to provide with their financial potential, namely that they will be able to realize the proposed programming and editorial concept. It remains unclear how the RBA assessed this requirement in the case of TV Avala and if it assessed it at all when the ownership structure of the station had subsequently changed. We remind that the largest single interest in Avala’s stock is held by the Austrian company Greenberg Invest GmbH. However, details concerning the financial, organizational or other potentials of the company remain unknown. The only available

information in Serbia is that the owner is a certain Werner Johannes Kraus, attorney from Vienna. During the course of the strike, the Balkan Investigative Reporting Network BIRN released data from Greenberg Invest financial reports, which have shown the Austrian company to have had, in late 2009, less than 200 Euros of capital and almost 200 thousand Euros of debt. At the time when BIRN's article was posted on the Internet, the company was yet to release its financial reports for 2011. Hence, it remains unclear what the RBA had assessed when it had allowed the Austrian company to buy 48.41% of the capital stock of TV Avala.

It remains to be seen if any lessons have been drawn from the strike. The first opportunity for that will be the tenders for national broadcasting licenses, scheduled in two years, or the next change of ownership structure of a national broadcaster.

2. On February 3, 2012, the RBA issued a broadcasting license to the cable television station Kopernikus 3 (Svet plus). The agency's decision caused a controversy due to media reports that certain members of the Main Board of the Serbian Progressive Party (SNS) and Zoran Basanovic in particular, had participated in the purchase of eight hours of air time on the said station a couple of months ago. Tanja Vidojevic, a member of the SNS Main Board, is an editor on TV Kopernikus 3. RBA's Supervision and Analytical Department has controlled the Lawivities of that station several times. According to the daily "Blic", the January report concluded that Kopernikus 3 was showing bias in favor of the SNS and waged a campaign against representatives of other political parties. Furthermore, the station was found to air content that takes advantage of the credulity of the viewers. One of the reports also said that the "news program is dominated by bias in favor of one political party and SNS coalition and discrediting of a leader of the other party and ruling coalition".

Cable broadcasting in Serbia remained unregulated for a long time. Until recently, the regulator issued no licenses for that type of broadcasting and failed to penalize unlicensed broadcasting, although it is obligated to do so under the Broadcasting Law. The latter prescribes that the broadcasting license may not be issued to a media established by a political party, organization or coalition, or a legal person established by a political party, organization or coalition. Kopernikus 3 (Svet plus), although not formally being owned by the SNS, was suspected of having leased up to a third of its air time to that party. It seems, however, that the problem with the said station lies in the expected violation of Article 68 of the Broadcasting Law, which provides for the obligation of all broadcast media to secure free, complete and timely information of citizens. The General Binding Instruction on the Conduct of Broadcasters – Broadcasters Code of Conduct adopted by the RBA back in 2007, expressly bans the property and programming affiliation of broadcasters to political parties, organizations or coalitions, or to

legal person established by a political party, organization or coalition. That provision, however, came under fire as soon as the Code was adopted – it was perceived as unclear as to the meaning of the concept of “programming affiliation of a broadcaster to a political party” and the interpretation thereof. In the concrete case, the RBA said it would closely monitor the program of TV Kopernikus 3 and that the station would be penalized in the event of any violations of the Broadcasting Law or the Code. The RBA also said it was never in the position to deny the issuance of the license. Namely, as one of the requirements, the Rules on the Issuance of Licenses provides, the “conduct of the broadcaster in the previous period”. However, it contains an additional criterion, according to which the above applies solely to applicants that are already broadcasting at the time when the public call is announced. Since in the concrete case the license was issued at request and not on an open competition, it stems that, due to poorly written Rules (which have not been even published in the Official Gazette and they should have been), the Agency did not have the grounds to deny the issuance of licenses, even after it was established that the Broadcasting Law and the Code of Conduct had been repeatedly violated.

III MONITORING OF THE PROCESS OF ADOPTION OF NEW LAWS

In the period covered by this Report, the Serbian Parliament did not adopt any media-specific regulations. The activities in the scope of the implementation of the Media Strategy Action Plan will be elaborated in more detail in the part hereof pertaining to the activities of the Ministry of Culture, Media and Information Society.

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

REGULATORY BODIES

1. *Republic Broadcasting Agency (RBA)*

1.1. The Activities of the RBA have been partly elaborated in the section concerning the implementation of the Broadcasting Law.

1.2. At a session held on February 3, the RBA Council passed a decision to request from RATEL to enact a decision declaring the cable operator SBB an “electronic communications

network operator for the distribution and broadcasting of media content”, which is required to air certain television programs, at the local level in Novi Sad and Kikinda. In this way, a procedure was opened in order to settle the current disputes between SBB and certain local television stations in these two towns, especially TV Kanal 9 in Novi Sad and VK Televizija in Kikinda. Namely, these two stations have publicly protested over the decision of the dominant cable operator in their respective towns to exclude them from its cable offer. Last year, RATEL published an analysis of the retail media content distribution market, showing that media content distribution services in Serbia were offered by 81 registered operators, of which 76 cable operators, 2 IPTV operators and 3 DTH operators. At that, 7 largest operators constitute more than 85% of the market, of which more than 50% has been steadily occupied for years by SBB. In line with the above, RATEL passed a decision determining SBB to be an operator with major market strength on this market. According to that decision, SBB has been prohibited from charging excessive fees, denying other operators from entering the market or restricting competition by charging excessive or dumping fees, giving unjustified preference to certain end users, obtaining RATEL’s approval to the forming and change of service fees in the case of the connection thereof, the control of individual tariffs and cost-based prices, namely establishing the price on the basis of prices charged on comparable markets. However, this failed to solve the problem existing on the other side, since there were complaints over SBB’s alleged practice of entering into distribution contracts under different conditions for different television stations/content providers. That has resulted in a situation that certain operators holding local or regional terrestrial broadcasting license have practically been excluded from the cable program, which is worrying in communities with a high degree of cable penetration (typically urban environments that are the most attractive for advertisers). Such situation has led to a dispute in Novi Sad, where the court ordered SBB twice to restore Kanal 9 program in its cable offer. RBA’s decision gives hope that the problem could be solved by imposing the dominant operator the so-called must carry obligation. Namely, pursuant to Article 101 of the Law on Electronic Communications, RATEL is entitled, at the request of the RBA, to determine the communications network operator for the distribution and broadcasting media content, which is required to broadcast one or several radio or television channels, at national, provincial, regional or local level, when:

- A substantial number of end users is using the electronic communications network of that operator as the sole or primary channel for receiving media content; and
- This is necessary in order to realize clearly determined objectives of national interest, which is to be determined by an authority responsible for broadcasting, in compliance with the principles of proportionality and transparency.

In the concrete case, RBA’s request represents a first step towards introducing a must carry solution that will encompass, on the territory of Novi Sad, Kanal 9 television, TV Delta, TV Mozaik and Novosadska TV, and in the Kikinda area VK TV and TV Rubin. RATEL is soon

expected to analyze the number of users utilizing SBB's electronic communications network as the sole or primary means of receiving media content and accordingly introduce the proper must carry solutions.

2. *Republic Agency for Electronic Communications (RATEL)*

The activities of the Republic Agency for Electronic Communications were elaborated on in the part concerning the digitalization process.

STATE AUTHORITIES

3. *Ministry of Culture, Media and Information Society*

In an interview for the daily "Danas" dated January 31, 2012, the Minister for Culture, Media and Information Society Predrag Markovic said that the Action Plan accompanying the Media Strategy was being implemented as planned and that the Law on Electronic Media, which is expected to replace the current Broadcasting Law, is already in the works. Markovic noted that the process of setting up a working group for drafting a new Public Information Law will soon be completed, as well as that an additional working group will be created to work on the new Public Broadcasting Services Law. The Minister also confirmed that an initiative has been addressed to several ministries with the aim of considering the possible amendments to the Law from their field of competence, in line with the goals of the Strategy. Furthermore, in his words, commissions will soon be set up in order to review the applications for the open competitions for the co-financing of media content. However, despite the Minister's optimism, the impression is that the communication channels set up between media associations during the work on the Media Strategy have been undermined, since both media and journalists' associations have learned about the formation of the working group from newspaper interviews, instead of being informed directly. This does not help confidence in the transparency of the process of drafting regulations, whose adoption was announced in the Action Plan accompanying the Media Strategy. It is namely not clear enough what will be the priorities of the Government in making the amendments to the laws, since the Media Strategy is not always clear as to these amendments. Moreover, the question remains what will be the fate of the draft laws, if they are produced prior to the appointment of a new government, in a situation where such new government would involve changes in the ruling coalition, since the opposition was not involved in the work on the Media Strategy and was not consulted in any way whatsoever, which could point to its ambitions and plans in that respect.

5. *Copyright and Related Rights Commission*

In its Opinion dated December 5, 2011, the Copyright and Related Rights Commission found that the proposed tariff for the fees, charged by the Organization of Music Authors of Serbia (SOKOJ) for the airing of music works on radio and TV stations, included all rights for which SOKOJ held a license issued by the Intellectual Property Office. The same Opinion said that such tariff was determined in accordance with the rules on setting the tariff prescribed by the Law on Copyright and Related Rights. The above has put an end to the tariff dispute between the Association of Independent Electronic Media (ANEM) and SOKOJ on the tariff. SOKOJ's new tariff was published in the Official Gazette and has been practically implemented since early January. The tariff involves fees ranging from 2.20% to 4.20% from television revenues and from 2.50% to 4.50% from radio revenues. Broadcasters were unhappy with the previous tariff, but the new tariff is cheaper merely for TV stations whose content contains less than 10% of music. ANEM announced it would press charges in order to prove before a court of law that the aforementioned Commission's Opinion was not founded upon the law.

In late January, however, ANEM announced that the Administrative Court of Serbia had passed a decision rejecting its claim against the Copyright and Related Rights Commission as inadmissible. ANEM announced it would address SOKOJ with a proposal to renew the negotiations about the fee tariffs, but that it would also press new charges in order to have the tariff revoked, with a proposal for a temporary measure, so as to postpone the implementation of the tariff until the court reached the final decision. Almost at the same time came, an attempt by the government to directly interfere in the regulation of the fee amounts. The Government adopted new draft amendments to the Law on Copyright and Related Rights, which would drastically restrict the tariff of fees for public communication. This measure has rightfully been dubbed an electoral trick of the government in order to gain popularity. It was also unrealistic, on the eve of the elections, to expect this proposal to be reviewed by the Parliament. Nonetheless, it is also true that the collective organizations have themselves contributed to such reaction by the state, which has opened a new problem, putting at stake the very survival of the system of collective protection of copyright and related rights in Serbia and the protection thereof from excessive government interference. In early February, ANEM announced that the talks with SOKOJ were renewed, while SOKOJ ceased to charge fees under the new tariff. Meanwhile, the Copyright and Related Rights Commission remained silent (we remind it was precisely the Commission that caused the whole problem with its controversial opinion invoking not the law, but the "standards for determining the tariff, which are generally recognized internationally and are based on the principles and recommendations of the World Intellectual Property Organization and CISAC"), without quoting these standards and recommendations. We remind that a tariff dispute is still going on before the Commission, between ANEM, as the

representative association of broadcasters and OFPS, the collective organization for the protection of phonogram producers' related rights. From the above, it stems that the problems of collective protection of copyright and related rights in Serbia persist, constituting a severe burden on the media scene.

V THE DIGITALIZATION PROCESS

Public consultations about the Draft Amendments to the Rulebook on the Transition from Analog to Digital Broadcasting and the Draft Decision on the Amendments to the Strategy for the Transition from Analog to Digital Broadcasting, which started on December 22 last year, were completed on January 5. While RATEL criticized a whole array of proposed concepts, it also claimed it had never participated in the drafting of the aforementioned Draft Amendments to the Rulebook. This is a highly controversial statement, since under the Law on Electronic Communications, it is in RATEL's competence to make the draft and submit it to the ministry. However, in the objections voiced on the public debate, RATEL called on the Ministry of Culture, Media and Information Society to "rewind" a year back the whole procedure of amending the Rulebook and reconsider the draft of the same Rulebook written by RATEL back in November 2010. The purpose of initiating the procedure of amending the Strategy and the Rulebook were to transition to a new, more realistic concept involving digitalization in stages, which is believed to suit everyone. The old concept namely foresaw the digital switchover in Serbia to take place in one day, as early as in April, without simulcast, which would enable the testing of the new network and avert the possibility of the citizens to remain without any kind of terrestrial television signal. In view of the above, it is difficult to understand the reasons for the latest rown between the Ministry and the sectoral regulator. Anyhow, by late February, it became clear that the government had given up the simultaneous adoption of both the amendments to the Strategy and amendments to the Rulebook and that RATEL and the Ministry would engage in a new round of talks. We have already written in our previous report about the text of the amendments to the Strategy, which was ultimately adopted on March 1, but we will nonetheless go over the most important ones.

By adopting the amendments to the Strategy, Serbia has given up April 4, 2012 as the date of the complete transition to digital terrestrial television broadcasting and the one-day switchover concept. Instead, it opted for a switchover in stages and in the time period provided for in Serbia's international obligations, i.e. no later than by June 17, 2015. The regions that will be switching to digital broadcasting will contain one or several allocation zones. It is foreseen that the Government will adopt a Digital Switchover Plan, which will lay down the sequence and time

schedule for the “phased switchover” in each of the regions, as well as that it will define a period of no more than six months for the shutdown of the analog signal in each of these regions. Prior to the adoption of the Digital Switchover Plan, consultations will take place with RATEL, the RBA, the public company “Broadcasting Equipment and Communications”, public broadcasting services and holders of TV broadcasting licences. Furthermore, the Government will determine, at least nine months in advance, on which exact day in the six-months period prescribed by the Digital Switchover Plan the analog signal will be switched off in a particular region. In that way, the Government will have room for planning the digital switchover according to the circumstances, as well as to set the framework it will have to adhere to and how to guarantee to all stakeholders the predictability of the entire process. Prior to switching off the analog signal and switching over to digital broadcasting, the RBA will have the broadcasting licenses replaced, by replacing licenses for radio stations, as integral parts of the broadcasting license, by a single license for the use of radio frequencies, issued to the public company “Broadcasting Equipment and Communications”. The result will be that broadcasting licenses will still be valid after the switchover. Technical and commercial requirements for access shall be regulated by an agreement entered into between “Equipment and Communications” and each particular broadcaster. During the digital switchover process, two multiplexes will be put into operation. Additional multiplexes will be put into operation and filled in after the switchover, subject on market needs and financial feasibility.

After the adoption of the amendments to the Strategy and to the Allocation Plan, the public company “Broadcasting Equipment and Communications” will be enabled to put into operation the initial digital signal testing network, which will secure a simulcast for about 40% of the Serbian population. The said initial network is expected to include public broadcasting services at the level of the Republic and the province, as well as national commercial channels. In any case, provided a successful and timely resolution of the disputes between RATEL and the Ministry about the text of the Digitalization Rulebook, Serbia will have obtained a more realistic and feasible Digitalization Strategy. However, the key risk that remains unaddressed – in addition to the said row between RATEL and the Ministry, remains the fact that the broadcasters are yet to be included in the planning of this process, without knowing what will be their specific obligations imposed by the coming digitalization.

VI THE PRIVATIZATION PROCESS

After the adoption of the Media Strategy, the withdrawal of the state from media ownership was again postponed indefinitely, namely by 24 months after determining the legal grounds. It

remains unknown, however, what “determining the legal grounds” means. In the meantime, in a time when everyone expects the parliamentary and local elections to be called, the pressure on local, commercial and even state media is on the rise. Furthermore, the state is not doing anything to solve the problems of the media that were again nationalized after failed privatizations. For example, the local television “Valjevo” ceased broadcasting in the cable networks after its equipment was seized by the court over employee claims for unpaid salaries. The media reported that TV Valjevo’s signal disappeared after three cameramen and editors seized the remaining equipment “hoping they will sell it and thereby settle the debt”. The salaries in TV Valjevo remain unpaid as of March 2010, when the station was acquired on a repeated auction by Slobodan Pavlovic from the village of Urovci near Obrenovac, for the sum of 147.000 dinars. The Privatization Agency terminated the contract with Pavlovic back on March 28, 2011, due to non-compliance and in May last year, mechanical engineer Branko Trifunovic from Arandjelovac was appointed as temporary representative of capital. The local self-government was reluctant to bring back TV Valjevo, which has not aired news program since January 20, 2011, to budget financing, due to the debts amounting to more than six million dinars last summer, while, in the meantime, intending to take Pavlovic to court for unpaid lease of the premises, unpaid electricity, water and other utilities bills. Anyhow, problems similar to those in TV Valjevo may be observed in other municipalities too. Local governments cannot afford to revitalize over-indebted media, while giving scarce resources at the expense of local private media, which could be competitive enough to survive on the market. At the same time, there are no investors for a business that is currently unprofitable, while the state cannot seem to produce a plan that would clearly state if Serbia can afford to finance small local television stations. Not even the concept stipulated in the Media Strategy, involving the setting up of a number of regional public service broadcasters, is not a clear enough of a message: the Strategy did not point to any concrete media, leaving many in the hope that, with strong enough lobbying and political connections, they could ultimately come in the position to be one of these potential regional public service broadcasters, which would perhaps be able to survive.

VII CONCLUSION

The expected calling of the elections on all levels additionally complicates the situation on the media scene in Serbia. Tasks that have been started remain unfinished, while the government either loses interest or cannot afford to make any systemic moves. In such a situation, the only good news is the fact that the Appellate Court in Belgrade has continued to reverse the first-instance verdicts in cases of attacks against journalists, by sentencing the attackers to stricter penalties. After two such decisions passed late last year, in the case of the attack on Teofil Pancic and Vladimir Mitric, verdicts were reversed in the cases of the attack of TVB92 Bosko Brankovic.

While the decisions of the Appellate Court in Belgrade remain closer to the legal minimum prescribed for the criminal acts in question, they are at least above such minimum, unlike in most similar cases in recent years. It remains to be seen if such stricter penalty policy will act as a deterrent for attackers against journalists, but it is good that the courts seem to have finally understood that their earlier practice has become unsustainable. Unfortunately, when it comes to damage claims, the Serbian judiciary is still lagging behind the aspired principles and there remains a great deal to be done in this respect before any changes start to emerge.

When it comes to the implementation of the Action Plan accompanying the Media Strategy, in spite of the optimism expressed by Predrag Markovic, the Minister of Culture, Media and Information Society, who said that everything was going as planned, uncertainty remains over the insufficiently transparent work on the announced amendments to the Law. In the same vein, one may rightfully lament the belated adoption of the Strategy (at the end of the current government's term of office), which has compromised the implementation thereof. Addressing the key issues continuing to plague the position of the media in Serbia – such as the withdrawal of the state as a media owner, putting order in state assistance to media or, better to say, the manner in which the state supports obedient media thereby undermining competition on the media market and freedom of expression – will obviously be the task of the new government. Meanwhile, the crisis and the current market conditions have continued to decimate Serbian media, with the biggest victims being small local media. The economic downturn did not spare national media either, as evidenced by the strike on TV “Avala” and the accumulated debt of that station.