

## I FREEDOM OF EXPRESSION

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

### 1. *Threats and pressures*

1.1 On March 6, the crew of the Federal TV of Bosnia-Herzegovina, which was shooting in Novi Pazar material for a program about Vehabits in the Balkans, was attacked in front of the building belonging to the Association of Islamic Youth "Furkan", while cameraman Refik Vejsilagic was filming the access to the building where the Vehabits gathered. Federal TV journalist Avdo Avdic told the police that they were approached by Abit Podbicanin, the leader of the Vehabit community, who had told them he was dissatisfied with their reporting. Podbicanin tried to make them delete the footage they had shot. When they refused, claiming they had merely been filming the street, the assailant grabbed Vejsilagic's camera and damaged it. Avdic said the crew had found the building they were shooting interesting in relation to Novi Pazar-born Mevlid Jasarevic, who had committed a terrorist attack on the US Embassy in Sarajevo in late October 2011. The police apprehended Abid Podbicanin, along with another person, ordering that they be placed in custody for 48 hours over the suspicion that they had committed the criminal offenses of violent behavior and destruction and damage of another person's property.

According to the Public Information Law, 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. In the above described case, the fact that a foreign television crew was victim of abuse does not make any difference, since the said Law stipulates the same rights and obligations for foreign and domestic persons, unless provided for otherwise by the law or a ratified international treaty. Serbian law recognizes, in principle, everyone's right to protect their privacy, among other things, by denying the approval for/opposing the release of photographs or videos containing their identifiable image. There are, however, exceptions to this rule. Some of these exceptions concern photographs or videos pertaining to a multitude or persons or voices (including passers-by and situations where a person is shown as part of the landscape, panorama, square, street or similar space). Furthermore, even if the aforementioned event was a case of breach of privacy, the latter, namely the right to a personal recording, may be

protected by a lawsuit claiming the non-release, handover, destruction or deletion of a recording, damages, that is to say, the publication of the verdict. It must not be claimed by violence or breaking up someone's equipment. While there was no official word on whether any proceedings had been initiated by the time this Report was completed, it is interesting to point out that the aforementioned persons were suspected by the police of violent behavior and destruction and damage of someone else's possession. While invoking the latter seems reasonable, the crime of violent behavior has apparently become a "blanket" offense, covering a range of attacks against journalists. In a similar incident in 2004, when TV B92's camera was damaged in front of the house of Milorad Lukovic Legija, which that station's crew was filming in the night of Legija's surrender, the attackers were prosecuted for the felony of "obstruction of broadcasting and prevention of printing and dissemination of print items". The said felony partly incriminates the unauthorized prevention or obstruction of printing, shooting, sale, dissemination or release of newspapers, other publication and radio and TV program. It seems that the violence in the form of damaging the TV crew's camera in the Novi Pazar case was precisely aimed at preventing the shoot and airing of television program criticizing the Vehabit movement and not at threatening the citizens' peace or disrupting public order, which are the values that are protected by the incrimination of violent behavior. A completely different issue (an issue concerning the penal policy in Serbia) is the fact that violent behavior in its qualified form (when conducted as part of a group, resulting in minor bodily harm or when involving severe humiliation), is subject to up to five years in prison, while obstruction of broadcasting and prevention of printing and dissemination of print items is subject to merely a fine or up to one year in prison.

1.2. On March 9, the President of the municipality of Becej Peter Knezi said that RTV Vojvodina reporter Nenad Jovicevic, who was prevented from reporting from Knezi's press conference after the security had barred him from entering the building, was not even invited to the conference. Knezi said in an open letter that, due to alleged innacurate reporting about the activities of the local government, he had personally told Jovicevic, that he would not invite him anymore to his press conferences, because he felt "unable to collaborate in a manner that is unprofessional and in breach of the basic journalism standards". Peter Knezi's actions were strongly denounced by journalists' associations.

According to the Public Information Law, state authorities and organizations, territorial autonomy and local self-government bodies, public services and public companies, as well members of parliament and local councilors, are obligated to make information about their work available to the citizens, under equal conditions for all journalists and all public media. In that context, the actions of the President of the municipality of Becej Peter Knezi are in direct breach

of the Law. Particularly striking is the fact that Knezi has not only discriminated against a particular reporter, but he had publicly stood by such action in an open letter, visibly persuaded he was entitled to it, according to his own arbitrary assessment of that reporter's professionalism. Such cases are, however, not an exception. They speak of a political reality in Serbia, where many still believe they are living in a system in which the media and journalists are accountable to the politicians and not vice-versa. Furthermore, such cases, while typically leading to public condemnation by the media, journalists' association and the democratic public, fail to result in punishments for politicians responsible for discrimination against the journalists and media. The aforementioned provision of the Public Information Law does not even foresee misdemeanor responsibility. The grounds for misdemeanor responsibility in such cases might be found in the Anti-Discrimination Law from 2009. That Law provides for misdemeanor responsibility and fines ranging from 10.000 to 50.000 dinars for an official, namely responsible person in a public authority body if he/she has engaged in a discriminatory practice. If we compare the amount of the prescribed fine in this case to the fines prescribed by the Public Information Law against editors or publishers of media for offences provided for by that Law, we will see that the latter are much more stringent. From that we may conclude that the Serbian authorities do not see their own discriminatory practices as a serious threat to society that require tougher sanctions.

1.3. The President of Zagubica Municipality Dragi Damnjanovic, a member of G17 plus, attacked the reporter of TV AS from Krepoljine Aleksandra Djordjevic on a citizens' rally in the village of Krupaja. Djordjevic told the daily "Danas" that she had come to Krupaja on March 9 to shoot the rally. At about 7 p.m., she was filming Damnjanovic shaking hands with the citizens. At one point he turned to her, asking what she was doing and if she had a permit to shoot. The reporter claims that Damnjanovic - reportedly unhappy with her answer - insulted her and punched the camera, which in turn hit her in the head. The journalist reported the attack to the police, which instructed her to have the doctors in the Pozarevac hospital check her for any injuries. Dragi Damnjanovic denies having attacked the reporter, claiming that he merely asked her who had invited her and if she possessed an authorization to shoot. He also claims the citizens had kindly asked Djordjevic not to shoot and to leave. Damnjanovic noted that TV AS from Krepoljine was a pirate television station owned by his rival candidate for the local elections in Zagubica, who is waging a smear campaign against him.

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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. It has been unquestionably established that TV As from Krepoljina appears on the lists of pirate stations released by RATEL, but the Public Information Law does not entitle local or any other officials to discriminate journalists on the basis of whether their media is lawfully using radio frequencies or not and it certainly does not entitle them to use physical or any other pressure against reporters. The issue of pirate broadcasting must be treated separately from the rights of journalists to report about the work of public officials, under equal conditions. This incident is unfortunately an indicator of the problems faced by the media and journalists, which are exacerbated by the fact that the electoral campaign is in full swing. On one hand, the survival of pirate broadcasters has largely rendered meaningless the regulation of the activities of broadcast media attempted by the RBA with its generally binding instructions pertaining to reporting about the election campaign. On the other hand, the government is behaving in such a way that one may rightfully suspect it does not care about unreasonable and unauthorized use of the broadcasting spectrum *per se*, until it is used neutrally towards the government – when pirate media start criticizing the authorities, then they start paying attention. The above described incident in Becej, just like this one near Zagubica, leave the impression that the “hunt” on reporters has started and that the latter have come under increased scrutiny by public officials, who have taken the freedom to decide if a reporter is professional or not, subject to whether it criticizes them or not. This results in an atmosphere of fear and self-censorship and the media are straying away from their fundamental role in a democratic society – to enable an extensive debate about matters of public interest. Instead, the media are being pushed into conformism, where there is no room for information about the players in the electoral game, especially information that is critically oriented; the media are rather expected to engage in naked uncritical promotion and propaganda.

1.4. The editorial staff of Timocka television and radio (TTR) from Zajecar has announced the station was ordered to move out of the premises it has been occupying since 1972, as the legitimate successors – in their words – of Radio Zajecar and Radio-Television Zajecar. On the same day, they also received a subpoena in the proceedings over the unlawfully installed transmitter on a site where it has been in operation for the last 17 years. Less than a week later, on March 27 and in breach of all the applicable contracts, the signal of TTR was switched off from the program of the cable operator Jotel d.o.o. All this happened after the Mayor of Zajecar Bosko Nincic, a high official of the United Serbian Regions (URS) political party, had announced that URS would demand from the RBA a 24-hour monitoring of TTR’s program, the managing board of which comprises of Nincic’s political rival Sasa Mirkovic, the Vice-President of the

Workers and Peasants Movement. “TTR not only violates the rules of the journalist profession, it has engaged in smear campaigns against just about everyone. They have been releasing lies and unsubstantiated information by the minute”, Nincic said. According to TTR, the row with the Mayor escalated after the station aired an investigative program about the privatization of the heating plant in Zajecar.

The situation with TTR from Zajecar is similar to the previously described case in Zagubica, the difference being that TTR is a major regional media holding valid broadcasting licenses and boasting a longstanding tradition. At the same time, just like in Zagubica, there is a conflict between the Mayor and the person running the chief television station, who also happens to be the counter candidate of the Mayor on the coming elections. In such a situation, on one hand, the mayor accuses his rival of misusing a station where that rival is a member of the managing board. On the other hand, the authorities are accused of putting pressure on the media and misusing their powers in order to restrict the free flow of ideas, information and opinion. In any case, the losing party are the citizens and their right to receive information of local and regional importance, but also media employees exposed to potential instrumentalization for electoral ends by their owners or managers, as well as to the mercy of local authorities. The absence of adequate mechanisms to protect journalists from the owners and managing board members, as well as from abuse of power in the election campaign, are a cause of concern.

## **2. Legal proceedings**

2.1 Olja Beckovic, the author of the influential weekly talk show Utisak nedelje (Impression of the Week), a landmark program of TV B92 for years, has received a subpoena by the court to be interviewed in the case of unlawful public commenting on legal proceedings, in relation to a statement made in the same talk show more than a year ago, featuring Aleksandar Vucic, the Deputy-President of the Serbian Progressive Party (SNS). Charges were pressed by Bogoljub Karic, the President of the Pokret snaga Srbije political party (PSS), which will take part in the elections as part of the coalition Pokrenimo Srbiju (Let's set Serbia Forward), led by Vucic's SNS. Karic, indicted for having siphoned out 60 million Euros from the telecom operator Mobtel, which was jointly owned by the state and the Karic family, fled the country in 2006, while the media reported in 2010 that he was being granted political asylum in Russia. Olja Beckovic confirmed she would respond positively to the subpoena. She told the daily “Danas” that she had asked Vucic “how did he plan on making an alliance with a man who had robbed half the country?” to which the SNS Deputy President responded that Karic was merely indicted, but not convicted and Beckovic concurred with such an assertion. Karic's attorneys then requested that their client's reply be read in the next talk show, which indeed happened. Karic's attorney

Milorad Panjevic, who is also a member of the PSS Presidency, said that by claiming that Karic had robbed half the country, Beckovic had violated the presumption of innocence. He stressed she had thus put pressure on the court and the independence thereof. Panjevic confirmed that Beckovic had Karic's reply read on the air in the following talk show, but noted she did not apologize for her statement, as insisted on by Karic.

Unlawful commenting on legal proceedings is a relatively new felony introduced in the Serbian legal system by the Amendments to the Criminal Code from 2009. Dilemmas persist over the interpretation and enforcement thereof. Article 336a stipulates that giving public statements in means of public information during the proceedings before a court of law, prior to the adoption of a final verdict, with the aim of violating the presumption of innocence or the independence of the court, shall be subject to jail term of up to 6 months and a fine. Those who have criticized that provision stress it forbids the commenting of current proceedings, while, as a paradox, failing to incriminate the commenting of final court verdicts, which could represent an even harder blow to the court's authority, is not prohibited. Going back to Beckovic's controversial statement, one may notice that she actually did not comment on the legal proceedings against Karic, but the decision of the SNS to enter into a political coalition with that political party. Furthermore, if we assume that the violation of the presumption of innocence in the media is the reason for Karic's lawsuit, then according to Serbian law, it is to be prosecuted as a misdemeanor under the Public Information Law and not as a criminal offense under the Criminal Code. Judging from the statements made by his attorney, Karic's motivation ignores the applicable provisions of the Public Information Law concerning the release of the reply. Namely, the responsible person, whom the contested information concerns, may claim that information to be untrue, incomplete or inaccurately conveyed. The Law provides for the duty of the media in question to publish such a reply, without any comments whatsoever, which TV B92 ultimately did. The apology, insisted on by Karic's attorney, would have been a personal gesture, which is not something that the law imposes to anyone. It remains, however, to be seen what position the court will take in the concrete case. Without consistent case law or clear regulations to distinguish between undermining the authority and impartiality of the court and violating the presumption of innocence not aimed at the court and court proceedings, the felony of unlawful public commenting on legal proceedings will continue to cause dilemmas and represent a restrictive factor for the journalists and the media, even when they are not directly reporting about legal proceedings.