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Current problems in the implementation and enforcement of media freedom in Serbia¹

There have been no significant changes in the media sphere in Serbia in the last nine months. Problems burdening the media and media professionals have not been solved during this period either. The authorities still have not addressed the real cause but only the consequences of violations of the freedom of expression, and this in an inadequate way, thus contributing to the continuation of threats and pressure on journalists. Some journalists have been placed under police protection and they have been living in a kind of home prison. The freedom of expression has become impossible for them because they are unable to carry out their work freely, while the perpetrators of the attacks on journalists have been sentenced to minimum sentences of imprisonment.

Unresolved murder cases of journalists *Dada Vujasinovic* and *Slavko Curuvija* that occurred 15 or more years ago during the regime of *Slobodan Milosevic* and whose perpetrators, as well as the perpetrators of other numerous attacks on journalists that have happened in the meantime, have not even been discovered thus creating additional self-censorship among a large number of journalists.

The number of indictments against journalists is increasing and in smaller towns and municipalities in Serbia journalists are facing the pressure coming from local politicians and institutions. Influence of the authorities on the media is often manifested by means of amendments and additions to the laws that limit the freedom of expression. The connection of the authorities with different media politics could be characterized as frivolous and unfair.

In this Report, current problems in the implementation of the freedom of the media are divided in 4 main groups: 1) threats to journalists and their editorial boards as a form of pressure on the media, 2) court proceedings against journalists and media, 3) influence of the authorities on the media and 4) relation of the authorities toward public media policies.

I. Threats to journalists and editorial boards as a form of pressure on the media

Journalists and media are still facing numerous threats and pressure in Serbia. In some cases, in addition to verbal and other threats, journalists have been subjected to physical violence. Famous journalists as well as journalists from local print and electronic media have been subjected to physical attacks and threats. The most drastic cases include the beating of *Teofil Pancic*, a famous journalist, and the court proceedings following the incident as well as the threats directed at RTV B92 related to the revelation of the big

¹ Bei diesem Beitrag handelt es sich um die überarbeitete Fassung des Vortrags des Verfassers auf dem konstituierenden Symposium der Art. 10 EMRK-Arbeitsgruppe am 29.4.2011 in Sofia, siehe den Tagungsbericht in *Osteuroparecht* 2011, Nr. 2 S. 208 ff.

affair in Serbian mine „Kolubara“. In addition to those two cases, which particularly stand out, we will briefly point out several similar cases that have occurred during the last few months.

1. The case of beating the journalist Teofil Pancic.

One of the currently most famous Serbian journalists, the columnist of the weekly „*Vreme*“, *Teofil Pancic*, was beaten on 25 July 2010 in the city bus while returning to his apartment. Two young hooligans, 18 and 19 years old, dissatisfied with Pancic's statements and views regarding the participation of Serbia in the war crimes in Croatia and Bosnia and Herzegovina during the war on the territory of the former Yugoslavia in the 1990s, approached the journalist in the bus and beat him with a metal bar. The perpetrators were quickly found and the two young men, *Milos Mladenovic* (18) and *Danilo Zuza* (19), were convicted of beating up the journalist (criminal offence; violent behaviour) and sentenced to imprisonment of three months each at the end of September 2010, which is below the statutory minimum provided for this criminal offence.

2. Misuse in the state mine Kolubara and threats to the Television B92 and the authors of the new series of the „Insider“

In February 2011, in the new series of the show „Insider“ broadcasted on TV B92, numerous abuses were discovered in the state coal mine Kolubara, near a small Serbian town of Lazarevac. In this episode, called „The Fraud of the Century“ the „Insider“ discovered that through different types of misuse more than 130 million Euros were transferred from Kolubara to private accounts in the previous eight years. After broadcasting the show „Insider“ on 15 February 2011, Lazarevac was full of posters – death certificates directed against RTV B92 in which the chief editor of B92 and the authors of the „Insider“ were namely stated as deceased. However, the local police did not manage to discover the perpetrator who was behind this call for violence against the channel and the editor of the show for three months. Recently, one of the representatives of a political party managing the mine when these frauds were committed and now in the opposition has been suspected and the Journalist Association of Serbia condemned the call for violence against this television and the author of the show. The opposition political party is now urgently seeking its member's release from detention claiming that the B92 leads a negative media campaign against it.

Regarding this, the European Federation of Journalists (EFJ) reacted and addressed at the end of March a letter to Serbian President Boris Tadic and Prime Minister Mirko Cvetkovic in which they expressed „the greatest concern about the serious threats against the authors and journalists of TV show 'Insider' and B92 for programs that deal with large financial abuses at the mine Kolubara“.

The public revelation of this affair finally intensified the persecution work on this case by the police. The arrests and pressing charges against 17 former mine directors took place in the beginning of October 2011. Despite an inappropriate response of the state regarding the protection of journalists and media in this case, B92 demonstrated how important the role of media as a „guardian dog“ of democratic society can be.

3. An attack on the journalist of the daily „Kurir“ in Belgrade

In the middle of May 2011 *Ivona Palada*, a journalist of the daily „Kurir“ (five months pregnant at that moment), and a photo reporter *Damir Dervisagic* were physically attacked during their journalistic assignment by Z.T. Despite the journalist's warnings that she was five months pregnant the attacker shouted at her and threatened with beating her up before trying to steal her identity card out of her hands. Z.T. also tried to hit the journalist but her colleague, the photo reporter, prevented him from doing that. The bully threatened to beat the journalists up. Just the arrival of the police after the editorial's call prevented a more serious incident. The Independent Association of Journalists' of Serbia not only strongly condemned in its announcement this physical assault on the journalist crew but also demanded the competent police and judicial authorities to punish the assailant in compliance with the Criminal Code.

4. Threats to journalists in Lesklovac

At the beginning of July 2011, during a political party youth performance in the town of Leskovac in Serbia and related to an unbuilt sports and tourism complex in the vicinity of the town, a local activist of the party named *Igor Coguric* acted carelessly and insulted journalist *Ivana Velickovic* and the local television „Protokol K1“ crew. During that he tried to prevent the journalist at task from capturing footage and also attempted to deprive them of the recorded material. Corugic also tried to attack the journalist and the crew physically but was prevented by the police. Minor offence proceedings were initiated against Corugic after that.

5. Journalist crew beaten in Tutin

Only a few days earlier, on 27 September 2011 a journalist crew of the local television was attacked in Tutin whilst an assignment. The police took into custody the four assailants known as the supporters of the main mufti of the Islamic community in Sandzak (a part of the Republic of Serbia between Montenegro and Kosovo largely populated by Islamic population). The four assailants attacked journalist *Mersid Agovic* and cameraman *Tufik Sadovic* physically and subjected them to several hits on the head. Journalist Agovic suffered some visible injuries on his face. The local television Tutin characterized this assault as a direct attack on this institution and the freedom of the media. The Association of Journalist of Serbia highlighted in its announcement that it was „flabbergasted by the fact that the crew of television Tutin were the first to be taken into custody with the aim of giving a statement while the assailants went on to sit in a cafe prior to leaving the venue without being disturbed.“

6. A physical attack on a journalist in Sabac

At the beginning of October 2011 *Hanibal Kovac*, a journalist of Sabac weekly „Podrinjske“ and an associate of the radio „Free Europe“, was attacked in Serbian town Lazarevac. He was attacked by a local businessman's bodyguard in the middle of the day nearby a police station in his hometown. The attacker threatened that Kovac would be either beaten or dead. The assailant was arrested a few hours later and the journalists' associations of Serbia required the investigating authorities to identify the mastermind of this assault on journalists which has not been done yet.

II. Threats to journalists and the media by local politicians and limitation of the access to public institutions

In recent years there has been a notable increase in criminal and civil indictments against journalists, which has especially been evident in the last six months. Furthermore, the number of court judgments against journalists is increasing constantly. It is also notable that a large number of judgments against journalists for criminal offences of insult and defamation are acquittals, but the journalists are losing in civil proceedings based on the same facts.

Furthermore, the fact that politicians are once again increasingly suing the media and journalists and even threatening and insulting journalists and denying them the ability to perform their profession is concerning.

1. Velimir Ilic /. „Cacanske newspapers“

In 2009 former minister in the Government of Serbia and president of the political party New Serbia, *Velimir Ilic*, submitted an indictment against the chief editor of „Cacanske newspapers“ for civil and criminal insult and defamation with regard to the text „Weak Mandarin“. In March 2011, the editor in chief of „Cacanske Newspapers“ *Stojan Markovic* was convicted by the Higher Court in Cacak for „non-pecuniary damage for infringement of honor and reputation“ and ordered to pay compensation of 180.000 RSD. On 21 April 2011 the editor of Cacanske was also expecting criminal proceedings for the same published text because Ilic indicted him before the criminal court for criminal offence of insult and defamation. Regarding the conviction from the civil proceedings, the Independent Journalists' Association of Serbia held round-table discussions with media experts and attorneys at law.

The European Court of Human Rights particularly stressed in its numerous judgments that the limits of permissible criticism are greater when it comes to politicians than in cases of private persons and a similar judgment was reached in 2002 against journalist *Zeljko Bodrozic*. The judgment against journalist *Zeljko Bodrozic* was challenged before the Human Rights Committee of the United Nations, when the Committee in its guidelines from the 85th session found that Serbia in this way violated Article 19 of the Covenant on Civil and Political Rights of the United Nations.

2. Judgment against daily newspaper „Danas“

This is hardly a lonely case. Several other similar proceedings before the courts are even now being indicted against journalists and the media by politicians, government officials and even police officers. One of these cases is the judgment against daily newspaper „Danas“, sentenced to compensation of damage in the amount of 9.000 Euros. At the beginning of April 2011 this daily newspaper was sentenced to pay an astronomical fine for alleged violations of honor and reputation of three police officers from Pozarevac.

However, the daily newspaper „Danas“ just reliably transferred the information from the other two newspapers the „Kurir“ and the „Glas javnosti“ in 2008. According to Serbian law, in this case the plaintiff does not need to sue the media which first published the information, but any media transferring such information. With regards to this case *Vesna Rakic Vodinelic*, professor of law, said that the increasing number of indictments against media for compensation of damage is indicative and that courts, usually acting

very slowly in these cases, are becoming very up to date. According to her Serbian courts are assessing due journalistic attention more stringently than the European Court of Human Rights.

She added that the courts in Serbia with their judgments are still more in favor of privacy and to detriment of the freedom of information. Serbian judges often do not make difference between value judgments and factual statements. Regarding this case, professor Vodinelic pointed out that European practice is that only factual statements can be proved.

3. Indictment on *charges of disclosing a state secret*

The Basic Public Prosecutor's Office in Novi Sad filed charges against *Milorad Bojovic*, the editor of the daily „*Nacionalni Gradjanski*“ and *Jelena Spasic*, a journalist of the same newspaper, for disclosing state secrets in the middle of October 2011. The daily had stopped being published just a few days before due to losses. In the middle of June 2011 the journalist was forwarded a secret report on the state of defence preparations in Serbia for 2010 by an unknown resource. At that time the report was being discussed by the National Assembly of the Republic of Serbia and prepared by the Ministry of Defence. The journalist had cited, in the text entitled „Serbia is not Ready for War“, parts of the Report saying that the country's defence system preparations were poor; the personnel unprofessional and armaments outdated, which shows that the army would not to be prepared for war. This text caused the Ministry of Defence to press charges which both the police and the Prosecutor's Office reacted to. At the beginning of August the journalist was required to disclose the source providing the information (despite the fact that it is forbidden by Serbian Public Information Law) which she refused to do. Having assessed that the country's safety had been jeopardized by publishing the secret document, the Prosecutor's Office pressed charges. This was followed by reactions of all journalists, media associations and the Commissioner for Information of Public Importance and Personal Data Protection.

The Commissioner also stressed the fact that journalists could not be responsible for disclosing the secret. The contents of the document, marked as secret with a reason or without it, had been revealed by an unknown, or more precisely, by a functional person or a Government official. Consequently, if there was a need for seeking the responsible, they should be sought among them. The Commissioner argued that such an action could be regarded as infringement of the freedom of the press and the public's right to be informed. „In the course of doing their job, the journalists wrote about a bad state of certain defense resources referring to the concrete data from a document labeled secret. At least a bit well-meaning approach to what they have done leads to a conclusion that the journalists had only wanted to contribute to attempts at removing oversights and improving the defense resources. The journalist did not make public either the army units distribution or the locations where armaments and fuel are kept and so there are no reasons for pressing charges and it also leads to a conclusion that insisting on the journalists' responsibility will have negative consequences on the freedom of the press,“ the Commissioner concluded.

Journalists' associations pointed out in their announcement that this sort of court case against journalists is in total opposition to both Serbian media legislation and European Court of Human Rights practice. According to them, this can be regarded not only as political-judicial pressure on media but also as a serious persecution of journalists. The aim

of the charge would be the prevention of the professional reporting on the position of Serbian Armed Forces and moreover about the events taking place in it as well. These associations highlight the fact that the journalist had sensibly judged the public's right to be familiar with the conditions of the defense system in the country to have been more important than potential consequences of publishing a document labeled secret.

III. Influence of the authorities on the media

The authorities have tried in various ways to maintain their influence on the media during this period as well. One of the ways the authorities are obstructing the freedom of expression is violation of the Broadcasting Act related to the election of the Republican Broadcasting Agency (RBA). The second way is related to inappropriate influence of the National Council for Ethnic Minorities as the founder of the media in minority languages with regard to their editorial policy.

1. The political criteria as a condition for the election of the Broadcasting Agency Council Member

The authorities are still trying to spread influence on the work of electronic media. Once again the National Assembly elected a person who isn't a media expert, as it is stipulated by the Broadcasting Act, but the person close to the political party in power to be member of the Broadcasting Agency in April 2011.

Goran Petrovic, a „media specialist“ and a graduate lawyer, who is completely unknown to the public whose two previous employments had been in the local administration of the town of Kragujevac, more precisely in the City Pharmaceutical Institute and the Health Center, and a member of the ruling Democratic Party, was elected member of this important and supposedly independent state body. In the CV of this member of the RBA it is pointed out that he was practicing journalism while working for one newspaper and a local radio-channel in his youth. In the Article 24 of the Broadcasting Act it is explicitly stipulated that for becoming a member of the Council of the Agency a person should be proposed if he or she enjoys the reputation of a prominent media professional, an expert in advertising, or a distinguished expert in the field relevant for the work of the Agency. It is obvious that Goran Petrovic, who is now already elected member of the Council of the Agency, was not eligible as a candidate member of the Council of the Agency. However, it happened once again, as it has been the case that every government tries to place this body as its "representative" since the adoption of the Broadcasting Act in 2003.

The other candidate in this case, Natasa Gospic, met all the requirements in the view of expertise that is relevant to the RBA. However, it was not enough because in the election of a member of the Council by the National Assembly political criteria rather than expertise won again.

2. National Councils of Ethnic Minorities as Media Founders

The second problem is related to the right of National Councils of Ethnic Minorities to lawfully become founders of public media in the founding ethnic minority's language.² At the beginning of September a group of Vojvodina Hungarian intellectuals addressed a letter to the Minister of Culture in which they criticized the way National Councils ran the media they had founded and expressed their dissatisfaction with the Government's intention not to change anything about that. The authors of the letter still believed that at that particular moment National Councils of Ethnic Minorities should remain the founders of minorities' media, that is to say newspapers, but they nevertheless added that the state had to adopt a concept which would ensure minimization or complete removal of the elite's influence on editorial policies. The intellectuals argued that guarantees of editorial autonomy and independency had to be found in the strategy as well as in the amended Law on National Councils and they also highlighted the case of the once renowned daily „Madjar so“ in which the National Council of the Hungarian Ethnic Minority in Serbia made the editor in chief redundant for not focusing enough on the activities of Hungarian political parties.³

3. The relation of the authorities toward public media policies

The Republic of Serbia has been working on a draft of the Media Strategy for more than two years. Although it was announced that the Strategy would be adopted by the end of 2010, the work lasted until September 2011. The newly established Ministry of Culture, Media and Information Society finally presented the Draft Strategy in early June, related to which public discussions were held in several Serbian towns. In the course of the summer 2011, a new Working Group of the Government was established and tasked with the production of the final text of the Strategy after the public debate. The Draft Proposal of the Strategy for Development of Public Information System in the Republic of Serbia by 2016, which Government prepared on 8th September, had not been available to media professionals and public experts before the Government finally adopted it on 28th September. The Strategy shows that the state has no intention of minimizing its influence on the media because it is reluctant to renounce its founding rights and property. This assertion may help to find an answer to the question why the work on the Media Strategy had taken so much time (two years) and why it had not been finished much earlier. It seems that the rationale behind the whole process was „one step forward, two steps back“. The participation of the representatives of journalists and media associations in the work group that had prepared the Draft Strategy served only as a cover, since the Government later established a special working group that would give its final verdict on crucial issues. This verdict will probably see the Government renouncing some key concepts proposed by media professionals, which shows that the government is reluctant to give up its influence on the media.

A grave concern is the seemingly final decision of the government to establish, in the Strategy, the concept involving six regional public service broadcasters, which are to be

² B. Cvejić, Councils of national minorities may establish media, „Danas“ Newspaper, 14.9.2011 http://www.danas.rs/danasrs/drustvo/saveti_nacionalnih_manjina_mogu_da_osnivaju_medije.55.html?news_id=223649.

³ The impact of the National Councils reduced to a minimum, NUNS Newsletter, No. 20, 15.9.2011. Letter published in „Dnevnik“ Newspaper; and signed by: Laslo Vegel, Zuzana Serences, Bela Garai, Caba Presburger i dr. <http://nunsnewsletter.blogspot.com>.

established by the Republic of Serbia. The modality of the financing as well as the manner in which these broadcasters will be managed in the future is definitively something that will be an additional burden. As opposed to the Draft Strategy from June, which stipulated that the public duties and functions of the public service broadcasters would be discharged by public service broadcasters on the republic and provincial levels, the new document – if it remains unchanged – will introduce regional public service broadcasting as well.

Ever since the beginning of the work on the Media Strategy this concept has encountered fierce resistance from journalists and media associations. The main stance taken up from the very beginning by ANEM, NUNS, UNS, NDNV, Local Press and others is that the state needs to withdraw from the ownership of media, in order to curb political influence on their program content and to ensure an equal position of media, as well as for the budget funds to be spent transparently. The concept of regional public service broadcasting is completely contrary to this position. The journalists' and media associations reiterated once again, in their joint statement on 14th September, a few days before the Government adopted the Strategy, that such proposal was totally unacceptable and unsustainable. They also demanded the part of the Proposal of Strategy concerning regional public service broadcasting to be removed.⁴

According to the published information in certain media, the European Commission (EC) is not satisfied with such a concept either. In the comments to the Proposal of Strategy, the EC expressed its serious concern for the financial sustainability of the new regional public service broadcasting. The EC stressed that if these broadcasters were established, this process ought to be elaborated on in more detail, including organizational aspects and precise rules concerning the state aid that ought to ensure their sustainability. Furthermore, the EC demanded the possibility of the state to influence the content of these services to be excluded. The Commission said there were other alternatives to satisfy the needs for regional programming of public interest, namely by observing the relevant CoE recommendations.

Certain countries in the EU have regional public service broadcasting indeed and there is no point denying that. However, the explanation that „the working group opted for such concept in order to ensure an equal legal position of the citizens and the possibility for them to receive, throughout Serbia, information of public interest“,⁵ is highly problematic, if one observes the „genesis“ of the media policy in Serbia since the democratic changes in 2000.

The general impression is that the authorities in Serbia, even ten years after the democratic reforms, have failed to provide an appropriate level of the freedom of expression. As a consequence, among the other things, there is a large number of the citizens of Serbia addressing the European Court of Human Rights due to the injury and violation of Article 10 of the European Convention. Serbia being on its way towards the European Union must devote more attention to the freedom of expression and provide independent and impartial work of the media, free of political and other influences.

⁴ Journalists' and Media Organizations Unhappy with the Proposal of Strategy, NUNS Newsletter, No. 20 from 15.9.2011. taking up the news released by the Fonet news agency <http://nunsnewsletter.blogspot.com>.

⁵ Jelena Trivan about the Relations in the Coalition, Voting, Conditions from Brussels and the Media Strategy, Večernje novosti, 22.9.2011: The text may also be found on the ANEM webpage: <http://kampanje.anem.rs>.