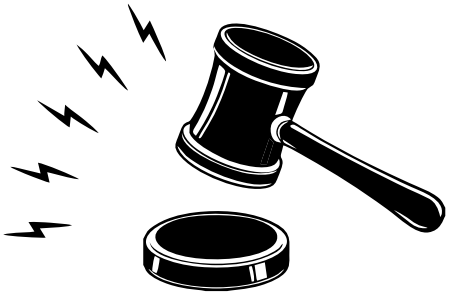
FREEDOM OF EXPRESSION BEFORE THE COURT

THE SECOND REGULAR REPORT ON THE PROTECTION OF FREEDOM OF SPEECH IN THE JUDICIAL SYSTEM OF SERBIA



Kingdom of the Netherlands

#ЕУ ЗА ТЕБЕ

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FONDACIJA SLAVKO ĆURUVIJA FOUNDATION

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Kingdom of the Netherlands

Belgrade, February 2022

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Introduction

The Freedom of Expression before the Court is the second analysis on the protection of freedom of expression in the judicial system of Serbia written together by Slavko Ćuruvija Foundation and Judicial Research Center.

Regarding the civil law, the goal of this year analysis was to ascertain to what extent the government office holders or other socially prominent figures might use the judiciary system to infringe or repress the freedom of expression. The analysis refers to the media disputes in the period 2017–2020, where the plaintiffs were public and political figures, businesspersons and persons not known to the wider public, but well-known in their local communities. The defendants in these cases were confirmed by the Press Council to rarely violate the Serbian Journalists' Code, meaning that in their work they primarily act professionally. These include dailies *Danas* and *Politika*, magazines NIN and *Vreme*, the media portals KRIK, *Peščanik*, *Žig Info*, Balkan Investigative Reporting Network (BIRN), Centre for Investigative Journalism of Serbia – Foundation (CINS), as well as the United Media Digital DOO Belgrade.

Through the analysis of the available cases, it was concluded that the media outlets rarely violating the Code are less often sued that the media outlets frequently violating the Code. The lawsuits against professional media outlets in the period concerned were neither massive nor the plaintiffs won much cases — less than half of claims were adopted only partially. Therefore, it could be concluded that in the observed period the lawsuits of the public office holders and other prominent plaintiffs were not the primary instrument of the pressure against the media.

However, in 2021, a significant change was spotted as lawsuits suspected to represent SLAPP suits – strategic lawsuits against public participation have emerged. We are still not familiar with the outcome of such strategic proceedings against the media, yet it is obvious that the national legal system will soon have to come up with the method of preventing such pressure to freedom of expression. The analysis offers some of the legal and practical solutions to solving the problem of the SLAPP lawsuits against the media outlets.

As for the criminal matter, this year analysis endeavours to detect problems of the lack of protection of journalists in criminal proceedings. Last year, it was established that in the period 2017–2020, the prosecutor's office dismissed extremely high number of criminal complaints on criminal offences against journalists and media workers (69%). By examining the cases, for the purpose of this analysis, it was established that the majority of criminal complaints on criminal offence of endangerment of safety of persons performing tasks of public importance in information — the most common

criminal offence reported to be committed against journalists, were dismissed by the prosecutor's office due to extremely restrictive interpretation of the concept of threats against journalists. The prosecutor's office usually considers threats against journalists not as serious, clear and unambiguous, not directly made against the life and body and with the absence of the feeling of danger and fear present with the journalists.

However, the analysis shows that this interpretation is not limiting further prosecution in the criminal proceedings regarding endangerment of safety of high government officials, such as the President of Serbia. Therefore, we can conclude that the prosecutor's office actions differ depending on the personal characteristics of the injured parties when the same criminal offence is reported. It means that it is not the normative obstacles but the actions of the prosecutor's office that create essential inequality and discrimination of journalists' regarding the protection under criminal law.

Such conclusions empirically confirm the findings of national and international experts who have been taking note for years now that political officials are protected from criticism, both through institutions and through media, while the journalists are unable to protect themselves from attacks and intimidation, especially when they dare to express criticism.

In 2021, the European Commission expressed concern due to continuing increase of the number of registered cases of media workers' intimidation, financial pressures and the government institutions hiding information relevant to the public. Other organisations globally monitoring the situation in the media, also analysing Serbia in their reports, have noticed the similar tendencies.

Freedom of Expression in Serbia in the global context

In addition to some domestic entities, many international bodies and foreign organisations monitoring the media freedom in Serbia have indicated the unfavourable media situation and coercion of journalists. The eye of the observer outside the borders of our country can have a more objective look at the actual situation in Serbia related to media and freedom of expression. In their research, the third-party foreign observers provide their own outlook in evaluating the degree of freedom of expression in Serbia through an independent and objective lens.

Reporters without Borders (RWB) is another non-governmental organisation with headquarters in Paris that investigates freedom of information

and press in the countries, continually monitoring the safety risk of journalists. In their reports, the Reporters without Borders analysed the situation in Serbia, establishing the absence of freedom in media coverage and more aggressive violence against journalists. In its 2021 analysis, Reporters without Borders mentioned that journalism was the best vaccine against the virus of disinformation, but that such vaccine was blocked in more than 73% of 180 observed countries.[1] The coronavirus pandemic only aggravated the situation in the media. In this analysis, Serbia ranked 93rd by RWB on its Press Freedom Index. For the sake of comparison, in 2017, Serbia ranked 66th, meaning that media freedom deteriorated in years. Reporters without Borders indicated that Serbia had a "growing trend of abusing journalists".

ARTICLE 19 is an international organisation working in human rights, freedom of speech, and free media, among others. From January to February 2021, in cooperation with the Independent Journalists' Association of Serbia and other partners, under the auspices of this organisation, a mission was implemented to assess media freedom and safety of journalists in Serbia.[2] This mission report stated that safety of journalists became an increasing concern in Serbia, which was additionally exacerbated by a coronavirus pandemic. The key indicators of such situation could be found in the arrest of journalists Ana Lalić due to her reporting on inadequate medical equipment in Novi Sad hospital, the arson attack against the home of journalist Milan Jovanović, and earlier unsolved murder cases of Slavko Ćuruvija, Milan Pantić, and Dada Vujasinović. They additionally pointed out the online harassment resulting in journalists self-censoring themselves out of fear, and local media were at particular risk. The journalists placed low trust in the police and judicial system, so they refrained from reporting cases of threats and attacks. Moreover, public officials openly threatening journalists is very worrying, for example, when pro-government tabloids falsely claimed a collaboration of KRIK with a criminal organisation. The report indicated a divided political landscape between pro-government tabloids that enjoyed the advantage of financial support from public funds and independent and critical media that were drained of much-needed resources. Attacks against independent journalists were perpetrated in different ways, such as smear campaigns either through pro-government tabloids or through online accounts from anonymous sources. A special part of the report

1 https://rsf.org/en/2021-world-press-freedom-index-journalism-vaccine-against-disinformation-blocked-more-130-countries

2 https://www.article19.org/wp-content/uploads/2021/04/MFRR-Serbia-mission-report.pdf, https://www.article19.org/resources/serbia-media-freedom-and-journalists-must-be-protected/

dealt with urgent recommendations to the Serbian government of undertaking various measures to ensure the right to freedom of expression in Serbia. Some of the measures included aligning Serbian legislation with international obligations, condemnation of all attacks on journalists and ending impunity for crimes against journalists.

Balkan Free Media Initiative is another non-governmental organisation advocating free media and journalism in the Balkans region. Their recent analysis "The Invisible Hand of Media Censorship: Three Examples from the Balkans" focused on media freedom in Serbia, Bulgaria and North Macedonia. The report chapter on Serbia mentioned that the existence of many media outlets created an impression of media pluralism but that the media were mainly pro-government. State control over media has been achieved through ownership, public procurement funding and other ways. The report mentioned that since Aleksandar Vučić and SNS came to power, the free media space disappeared. The influence of incumbent parties on media was huge, obvious from the fact that during March 2021, the ruling parties' representatives appeared in 87% of the primetime news slots, as mentioned in report.[3]

Based on mentioned articles and reports, the conclusion is that the Serbian media image is assessed as unfavourable in the global context. The collected statistical data, such as the growing number of attacks against journalists, ranking of Serbia on the Press Freedom Index (93rd out of 180 states) and specific court cases with journalists' victims, demonstrate that free journalism in Serbia only exists in the letter of the Constitution and laws, but that reality is different. Serbia has seemingly free and independent media and an illusion of freedom of expression, which is the joint position of all analyses and studies. The journalists who are honest and unbiased in their reporting on matters relevant for the state and its citizens are facing the consequences for that.

[3] https://static1.squarespace.com/static/607edb92071ad0422f427dcb/t/61645373f3eab25c6de–d87e0/1633965030745/The+Invisible+Hand+of+Media+Censorship.pdf

CIVIL LAW PROTECTION OF JOURNALISTS AND MEDIA WORKERS

Introduction

When analysing the statuses of plaintiffs and defendants in so-called media cases, it is still common that tabloids and the media outlets violating the Journalists' Code the most, more regularly participate in various forms of pressure on the media and independent journalists in their articles. This is obvious from the European Commission Report[4] on Chapters 23 and 24, mentioning concern due to continuing increase of the number of registered cases of media workers' intimidation, financial pressures, and government institutions hiding information relevant to the public. The local level journalists still experience discrimination and obstruction in their reporting when it comes to receiving information of public interest. The Beta News Agency published a statement of the Commissioner for Information of Public Importance and Personal Data Protection that journalists file complaints because the authorities are denying them information on the coronavirus. It was due to that every third complaint before the Commissioner belongs to the journalists. Those complaints were mostly well-founded and referred to the Ministry of Health and other institutions with main activities related to the citizens' health.[5]

The media continued with "hate speech" and "smear campaigns" against journalists. The owner of Informer was sentenced with the first instance decision of the First Basic Court in Belgrade for criminal offence of continuing insult against N1 journalist Žaklina Tatalović[6]. On a number of occasions, the Prime Minister repeated the statements referring to daily *Danas*, calling them "liars", "monsters", "investigative tabloids", "muddy".[7] In her press statement at the opening of the hospital, she said that

4 Europeanwesternbalkans.rs, 20 October 2021, Key findings of the European Commission Report on Serbia

5 Newspaper Danas, printed edition 3–4 October 2020, column Society

6 Newspaper Nova, printed weekend edition 18–19 September 2021

7 Newspaper t Danas, printed edition, 6 October 2021, NUNS press collection Dossier of Media p. 11

daily *Danas* "announced lies bombastically, since it is a political pamphlet, working for Dragan Djilas and Šolak".[8]

Within the same period, it was known that the company Twitter labelled the accounts of Serbian Broadcasting Company (RTS), Pink, TV Prva, B92 and TV Happy, the news agency Tanjug, and printed newspapers *Kurir*, *Informer*, *Politika* and *Srpski telegraf*, as "media cooperating with the Government of Serbia".[9] The obstruction of journalists' work has continued by constant refusal of public institutions to publish or deliver required information.[10] The survey of Journalists' Association of Serbia (JAS) showed that for nine months in 2020 the state allocated RSD 1.7 billion (about EUR 14,468,085.00)[11], i.e. RSD 77 million (about EUR 655,320.00) more compared to previous year, for co-financing of projects in the public information domain[12]. Most funds were allocated to the media, which, as confirmed, violated the Journalists' Code. In 2020, according to "Raskrinkavanje" research[13], the front pages of five newspapers featured almost 1200 false and speculative news (*Kurir*, *Alo*, *Srpski telegraf* and *Večernje novosti*). It was confirmed that these five media outlets were granted more than RSD 29 million (about EUR 246,808.00) in the calls for project proposals from the local self-government budgets. It was established that the government and tabloids have a mutually beneficial relationship.

During 2021, the number of lawsuits of the government representatives against the media outlets has increased. This phenomenon is observed as "intimidations and blackmail actions" since the politicians' lawsuits have been directed against the critical media outlets, which showed dissenting opinions, as a form of pressure "to make them stop writing about frauds, affairs and corruption, as sensitive topics for the authorities".[14] In 2021, the same plaintiff was filing a significant number of lawsuits against all media outlets and other persons who covered news and facts from press conferences of the opposition parties. The media space ensuring freedom of speech and opinion has shrunk, as observed, and the media violating the Journalists' Code, most often parties in the court proceedings, have been more seriously violating the rights of citizens. The outcome of such a situation is that court decisions neither effect changes in the work of the media violating the law nor appropriately protect the rights of citizens.

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8 Newspaper Danas, printed edition 17 August 2021, column Society, p. 7

9 Newspaper Danas, printed edition 3 September 2021, column Society, p. 6

10 Newspaper Danas, weekend printed edition 20–21 June 2020, column Rule of Law

11 Official middle RSD exchange rate of National Bank of Serbia on February 18, 2022 is 1 EUR = 117.58 RSD

12 Newspaper, printed edition, 1 September 2020, column Society

13 www.raskrinkavanje.rs, "*raskrinkavanje*" is a Serbian word for "exposing", "revealing", "debunking"

14 Daily Danas, printed edition, 20 August 2020, column Society, p. 5

Subject of the analysis and methodological approach

This analysis refers to the period 2017–2020 and it includes the cases referring to the group of media outlets that have a small number of violations of the Journalists' Code of Ethics. The number of complaints against such media outlets, hence the cases, is smaller compared to the 2020 analysis referring to five media outlets, that according to the Press Council information, were violating the Code the most. As far as the 2020 media outlets analysis is concerned, significantly more proceedings were undertaken against them as parties before the Higher Court in Belgrade, only competent court in the Republic of Serbia for proceedings regarding lawsuits for non-pecuniary damages pursuant to Law on Public Information and Media. Since fewer cases (in total 27) were analysed in this year report compared to the last year[15], in order to follow the obtained data more easily, the unique analysis was carried out for each piece of data and all media outlets in the entire period. It was assessed whether the court acted in accordance with the specific procedure typical for this type of cases.

The following characteristics were observed — the course of proceedings, its length, court efficiency, compliance with legal deadlines, types of decisions in all instances of trial, amount of compensation, application of international instruments and decisions of international courts.

The basic source of substantial law in methodology is the Law on Public Information and Media (LPIM)[16], regulating the matter of freedom of public information, matters of public interest, protection of media pluralism and prohibition of media monopoly, including the public nature of the media data, for the purpose of enabling citizens to create their own opinion[17]. The law provides for that the elected, appointed i.e. assigned public and political office holder is obliged to put up with critical opinion related to the results of his/her work, i.e. the political programme they implement, pertaining to his/her office, irrespective if he/she feels personally insulted due to expressed opinions.[18] The law defines journalist's due diligence.[19] The obligations of publishing basic information on the media outlets was established[20], as

15 https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Protection-of-freedom-of-speech-in-the-judical-system-of-Serbia.pdf

16 Official Gazette of RS, No. 83/14, 58/15, 12/16 – authentic interpretation

17 *Ibid,* Articles 5–7

18 *Ibid,* Article 8

19 *Ibid,* Article 9

20 *Ibid,* Section V

well as rights of journalists[21]. The special rights and obligations pertaining to public information were regulated[22] referring to presumption of innocence, publishing information in connection with criminal procedure, prohibition of hate speech, exemption from responsibility, protection of minors and prohibition on public display of pornography. The law contains provisions regulating publishing of the personal data[23]. It is specified who are public and political office holders that Article 8 of the law refers to.

Law on Public Information and Media also regulates special procedural rights, stipulating who can be plaintiffs and defendants as the parties in the proceedings.[24] The liability of journalists, editors and publishers is prescribed[25]. The urgency as the general principle of the proceedings is stipulated[26], inherent to all legal deadlines. In this type of civil proceedings, there is no preliminary hearing.[27] In all proceedings, except in a claim for publishing a reply, the obligation of the defendant is to respond to charges within eight days from the delivery of the actions. In the proceedings initiated by other claims, the deadline for the first hearing is 15 days from the day the court received a claim, and eight days under the charges for publishing a reply with predicted shorter deadline for restitution of the former status. The judgment shall be delivered within three days from the adoption[28]. The appeal against the judgment may be lodged within eight days of the day of delivery of the copy of the decision, and deadline for response to the appeal is three days of the day of the receipt.[29]

The revision shall be allowed against second instance ruling if a claim request is rejected, within 15 days of the day of delivery of second instance ruling. The only exception is the proceedings for publishing a reply, when the revision is not allowed. In the claim for compensatory damages, the revision may be filed both by a plaintiff and by a defendant in the proceedings.[30]

The law provides for that the publisher, if not included in the claim, must be delivered a copy of the final and binding ruling[31]. The law stipulates the actions of the

21 *Ibid,* Articles 49–55

22 *Ibid,* Section XI

23 *Ibid,* Section XII

24 Articles 102 and 103 of the LPIM

25 Articles 113 and 114 of the LPIM

26 Article 122 of the LPIM

27 Article 121 of the LPIM

28 Article 124 of the LPIM

29 Article 125 of the LPIM

30 Article 126 of the LPIM

31 Article 127 of the LPIM

plaintiffs if the editor-in-chief is changed during the proceedings. If the editor-in-chief changes after the charges are filed, and the plaintiff fails to modify the claim before the conclusion of the main hearing, the court shall dismiss the claim. Unlike in other civil proceedings, no consent is required from the parties before the modification of a lawsuit. If the change occurred after the ruling was adopted, the liabilities stipulated in the ruling shall be transferred to the new editor-in-chief, except the compensatory damages.[32] The fact that the lawmakers insisted on urgency is obvious from the fact that if the deadlines are exceeded, the president of the court reassigns the case without delay to another panel of judges, and the undertaken actions need not to be repeated[33]. In media disputes, the Law on Civil Procedure is applied as the general law for the situations in which the Law on Public Information and Media, as a special law, does not provide otherwise set out procedural solutions.

The law stipulates that a person may request from the court to hand down an interim order prohibiting the editor-in-chief to republish the same information, i.e. record, if the publishing would violate the rights or interest of the person, until the enforceable decree has been entered at the latest. The plaintiff must prove the probability that there is a specific danger that the information or record will be published again and that it would violate his/her right or interest. The court must consider the proposal within 48 hours, and the same deadline applies to the objection to the decision.[34]

Keeping in mind the results of the Press Council analysis, published every year at this authority website, this research includes the following media outlets: *Danas*, *Politika*, NIN, KRIK, *Peščanik*, *Žig Info*, Balkan Investigative Reporting Network (BIRN), Centre for Investigative Journalism of Serbia – Foundation (CINS), *Vreme* and the United Media Digital DOO Belgrade. The information and court decisions used in the analysis were obtained from the Higher Court in Belgrade as the first instance court, the Court of Appeal in Belgrade as the second instance court and the Supreme Court of Cassation, as the court of revision that decides on extraordinary legal remedies. In the analysed civil proceedings, the plaintiffs are public and political figures, businesspersons and persons not known to the wider public, but well-known in their local communities. In all the cases, the defendants were editors, journalists and publishers.

In the process of obtaining the necessary information and materials under requests for access to information of public importance, it is established that the courts keep the P3 electronic records for the media disputes only under the name of the first

32 Article 128 of the LPIM

33 Article 129 of the LPIM

34 Article 104 of the LPIM

defendant. It is very unusual that despite the electronic database maintenance the existing programme does not allow data search by using all three defendants' names. This search method prevents gathering complete information for this type of analysis, as this research is related to the media outlets cases, which always have three defendants. The person looking for the data relevant to the specific media outlet cannot always be familiar with the name of the journalist designated as the first defendant. In this situation, unless you know the name, you cannot obtain information on the specific case. To ensure as good as possible the database for the analysis, the editors-in-chief of the media outlets concerned were asked whether they had been the defendants in the proceedings, and if yes, in how many cases for the period concerned and what was their court case sign and number in the court records.

The Higher Court in Belgrade delivered a notification that[35] the defendant *Dan Graf*, *Danas* media outlet publisher, for the reported period was sued for 16 times. Four lawsuits were filed in 2017, and only one case ended with final and binding decision dismissing the complaint since the claim was withdrawn, while the remaining cases are ongoing even after five years. In 2018, four lawsuits were filed and cases have not been closed by legal and binding decision. In 2019, there were six lawsuits, five have not ended with legal and binding decisions, one was resolved with the final and binding decision of dismissing the complaint since the claim was withdrawn. In 2020, two lawsuits were filed and the cases were not resolved with final and binding decision. From the notification of the Court of Appeal in Belgrade, we have confirmed that from 1 January until 3 March 2021, a total of six cases was formed under the appeals to judgments from P3 records against the defendants *Dan Graf* and others; all the cases designated by the numbers of files in the court. Three cases are still pending, and the remaining cases have not ended under the decisions of that court.[36] Having in mind that this was potentially unreal, quite small number of cases, the CEPRIS researcher submitted a request to the editor-in-chief and legal department of *Danas*[37] to learn if they have been sued in media disputes (filed under sign P3) in the period from 2017 until the day of the request. If the answer would be positive, they would be asked to deliver court case numbers, for the researcher to demand those judgments from the competent court. Unfortunately, we have not received the required data that will help us make a more thorough analysis.

Under the request for free access to information, the Higher Court in Belgrade delivered a notification[38] that in the period concerned the total of 16 cases were formed under all charges against daily *Politika*, as follows: six lawsuits in 2017, two in 2018, two in

35 The Higher Court in Belgrade memo Su II-17a No. 43/21 of 23 February 2021

36 The Court of Appeal in Belgrade decision Su II 17a 21/21 of 3 March 2021

37 gl.urednik@danas.rs, pravna@danas.rs of 16 March 2021, 10:22:41

38 The Higher Court in Belgrade memo Su II-17a No. 43/21 of 23 February 2021

2019 and six lawsuits in 2020. Four cases ended with final and binding judgment, decisions on withdrawal of lawsuits were adopted in two cases, and a first instance decision was adopted and later appealed in one case. The proceedings are ongoing in 11 cases[39]. Three final and binding decisions were appealed, and the second instance court decided on the appeals, so these judgments were obtained and analysed.

The Higher Court in Belgrade delivered the information that through examination of the P3 electronic records it was established that Balkan Investigative Reporting Network (BIRN)[40] and Centre for Investigative Journalism of Serbia[41] are not found in the records of the defendants who participated in the proceedings, which means they were either not sued or were designated as the second and third defendants, meaning they were not recorded in the register. In 2018, 2019 and 2020 – one lawsuit each year was filed against the media outlet *Vreme*, still ongoing.[42] The Court of Appeal in Belgrade informed us that the media outlet *Vreme*[43] and others have one judgment against them from 2016, but it was not included in our analysis because of the date the lawsuit was filed. We were informed that there are no judgments registered in the Gž3 records against the defendants Balkan Investigative Reporting Network (BIRN) and others[44], nor against the Centre for Investigative Journalism of Serbia – Foundation (CINS)[45]. To be able to confirm with certainty that there were no lawsuits against them in the observed period, we sent a request to editors-in-chief of these media outlets to learn if in this period any disputes were initiated against them and if so, to deliver court case numbers to us. We explained the goal of our research (CINS[46], *Vreme*[47]). None of the editors-in-chief nor the legal departments delivered any of the requested information.

Under the request for free access to information of public importance, the Higher Court in Belgrade[48] notified us that no lawsuits were filed against the UNITED MEDIA DIGITAL DOO Belgrade in the period 2017–2019, and that in 2020 nine lawsuits were filed, and their proceedings are still ongoing. The Court of Appeal[49] notified us that it was not confirmed that any appeal was lodged against this defendant.

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39 Four cases were not analysed since they do not belong to the observed period.

40 The Higher Court in Belgrade memo Su II-17a No. 266/21 of 19 October 2021

41 The Higher Court in Belgrade memo Su II-17a No. 42/21 of 23 February 2021

42 The Higher Court in Belgrade memo Su II-17a No. 44/21 of 23 February 2021

43 The Court of Appeal in Belgrade Su II 17a 22/21 of 4 March 2021

44 The Court of Appeal in Belgrade Su II 17a 24/21 of 4 March 2021.

45 The Court of Appeal in Belgrade Su II 17a 23/21 of 4 March 2021.

46 E-mail memo of 16 March 2021 10:21:11 CET

47 E-mail memo of 16 March 2021 10:20:02 CET

48 The Higher Court in Belgrade memo Su II-17a No. 46/21 of 1 March 2021.

49 The Court of Appeal in Belgrade Su II 17a 30/21 of 4 March 2021.

We received the information from the memo of the Higher Court in Belgrade[50] that in 2017 and in 2020 there were no lawsuits against the weekly NIN. In 2018, one lawsuit was registered, and its proceedings ended with final and binding judgment (it was in detail described in this analysis as the case study). During 2019, two lawsuits were filed, one ending with final and binding decision, and for the other the proceedings are still ongoing.

From the memo of the Higher Court in Belgrade, it is confirmed that there were no lawsuits against *Peščanik* in 2018 and 2019, inclusive, and in 2017, two lawsuits were filed, in one case the proceedings ended with final and binding decision, and the other case is ongoing.[51] The Court of Appeal[52] informed us that in this court for the period concerned three appeals were initiated, one ended with decision, one case is ongoing, and one ended with final and binding decision.

The Higher Court in Belgrade[53] delivered information that in 2017, two lawsuits were filed against *Žig Info*, and these proceedings ended with final and binding decisions. In 2018, two complaints were filed, one withdrawn by final and binding decision and the other case is still ongoing. The Court of Appeal[54] informed us that in the period concerned, two appeals were lodged against these defendants and both ended with final and binding decisions. We carried out the analysis of the court decisions of the cases that ended.

In our desire to be as certain as possible about the exact number of cases against the media outlets, in this part of the research pertaining to the freedom of speech and its protection in our judicial system, we have analysed the cases of those media outlets that violate the Journalists' Code of Ethics to a smaller extent. For this purpose, we have sent a request/inquiry to the editors-in-chief and other editors in the media outlets *Peščanik*[55], NIN,[56] *Žig Info*[57], United Media[58], KRIK[59],CINS[60], *Vreme*[61] to notify us if, under their records, there are motions initiated against them before the Higher Court in Belgrade in the so-called media disputes for the period 2017–2020. We also asked them to inform us what

50 The Higher Court in Belgrade memo Su II-17a No. 50/21 of 1 March 2021.

51 The Higher Court in Belgrade memo Su II-17a No. 49/21 of 1 March 2021.

52 The Court of Appeal in Belgrade Su II 17a 28/21 of 4 March 2021.

53 The Higher Court in Belgrade memo Su II-17a No. 46/21 of 1 March 2021.

54 The Court of Appeal in Belgrade Su II 17a 31/21 of 4 March 2021.

55 info@pescanik.net 31 March 2021 7:31PM

56 office@nin.co.rs 1 April 2021 5:26 PM

57 ziginfo.redakcija@gmail.com 31 March 2021 5:09PM

58 office@unitedmedia.net 31 March 2021 3:58 PM

59 office@krik.rs 31 March 2021 7:28 PM

60 office@cins.rs 16 March 2021 10:21:11 CET

61 redakcija@vreme.com 16 March 2021 10:20:02

the court case numbers were. We regret to confirm that none of the editors of the media outlets mentioned has responded to our request/inquiry.

There were no cases under the complaints of journalists against the abovementioned media in the observed period.

Since the number of cases is rather small, we carried out the analysis for each media outlet regarding the observed period.

Duration of proceedings

Lawsuits against responsible persons in media outlet *Danas*						
Plaintiff	No. hearings held	No. hearings postponed	Average time period of scheduling hearings	Duration of first instance trial	Duration of second instance trial	Total duration of the proceedings
Producer	3	3	ca. 2.5 months	1 yr. 3 mth	4 mth	1 yr. 7 mth
*	/	/	/	1 yr.	/	1 yr.
*	/	1	ca. 2 yr.	2 yr.	/	2 yr.

Lawsuits against responsible persons in media outlet NIN						
Plaintiff	No. hearings held	No. hearings postponed	Average time period of scheduling hearings	Duration of first instance trial	Duration of second instance trial	Total duration of the proceedings
Director	2	/	ca. 4.5 mth	9 mth	/	9 mth
*	2	2	ca. 6 mth	2 yr.	/	2 yr.
Politician	4	/	ca. 1.5 mth	6 mth	9 mth	1 yr. 3 mth
Politician	5	8	ca. 25 dd.	11 mth	2 mth	1 yr. 1mth

Lawsuits against responsible persons in media outlet KRIK						
Plaintiff	No. hearings held	No. hearings postponed	Average time period of scheduling hearings	Duration of first instance trial	Duration of second instance trial	Total duration of the proceedings
Politician	2	1	ca. 6 mth	1 yr. 6 mth	/	1 yr. 6 mth
Politician	1	3	ca. 7 mth	1 yr. 7 mth	/	1 yr. 7 mth
Politician	2	1	ca.6 mth	1 yr. 6 mth	/	1 yr. 6 mth
Politician	4	5	ca. 2 mth	1 yr. 6 mth	/	1 yr. 6 mth
Businessman	3	/	ca. 5 mth	1 yr. 3 mth	8 mth	1 yr. 11 mth
*	/	2	ca. 1 yr.	2 yr.	/	2 yr.

Lawsuits against responsible persons in media outlet *Peščanik*						
Plaintiff	No. hearings held	No. hearings postponed	Average time period of scheduling hearings	Duration of first instance trial	Duration of second instance trial	Total duration of the proceedings
Politician r	6	/	ca. 5 mth	2 yr. 6 mth	9 mth	3 yr. 3 mth
Director	4	1	ca.7 mth	3 yr.	/	3 yr.
Politician	5	4	ca. 3 mth	2 yr. 2 mth	2 mth	2 yr. 4 mth
Photographe r	6	/	ca. 5 mth	2 yr. 6 mth	/	2 yr. 6 mth
Politician	8	4	ca. 2 mth	1 yr. 11 mth	2 mth	2 yr. 1 mth

Lawsuits against responsible persons in media outlet *Politika*						
Plaintiff	No. hearings held	No. hearings postponed	Average time period of scheduling hearings	Duration of first instance trial	Duration of second instance trial	Total duration of the proceedings
*	2	2	ca. 5 mth	1 yr. 9 mth	2 mth	1 yr. 11 mth
*	5	2	ca. 5 mth	2 yr. 5 mth	6 mth	2 yr.11 mth
Businessman	5	1	ca. 4 mth	1 yr.11 mth	10 mth	2 yr. 9 mth
*	3	1	ca. 5 mth	1 yr. 9 mth	2 mth	1 yr. 11 mth
Doctor	4	1	ca. 3 mth	1 yr. 6 mth	3 mth	1 yr. 9 mth

Lawsuits against responsible persons in media outlet *Žig Info*						
Plaintiff	No. hearings held	No. hearings postponed	Average time period of scheduling hearings	Duration of first instance trial	Duration of second instance trial	Total duration of the proceedings
Actress	3	/	ca.5 mth	1 yr. 5 mth	1 yr. 1 mth	2 yr. 6 mth
Politician	5	/	ca.5 mth	2 yr. 3 mth	8 mth	3 yr. 1 mth
*	2	1	ca. 7 mth	1 yr. 10 mth	/	1 yr. 10 mth
*	/	/	/	2 mth	/	2 mth

(*) – A plaintiff is a person not known to the public.

We have analysed three cases of the media outlet *Danas* and others as the defendants in the period 2017–2020. We established the number of hearings held and postponed, as well as the duration of proceedings. By analysing the obtained court decisions, it is established that no journalists filed complaints against this media outlet. In the proceedings that ended with final and binding decision based on merits, three hearings were held, and another three were postponed. The first instance proceedings took one year and three months. The second instance proceedings under the plaintiff's appeal, which was dismissed, took four months. The hearings were scheduled every two and a half months. It is noticeable that in the four-year period only six appeal proceedings were initiated against the defendant, indicating that few lawsuits for non-pecuniary damages were filed against these newspapers, which under the records of the Press Council had violated the Journalists' Code of Ethics in very few of its articles. The proceedings ended with decisions confirming the lawsuit as withdrawn for the other two decisions.

Four cases under the complaints against weekly NIN and others were analysed. The proceedings under the complaint of a person not known to the public took two years, the longest of all, and in total four hearings were scheduled every six months. The majority of hearings were scheduled under the complaint of the politician plaintiff, in total 13, out of which five were held and eight postponed. In the analysed group of cases, the hearings in the proceedings in this case were most frequently scheduled, on average every 25 days, and duration of the first instance and appeal proceedings took one year and one month. Average duration of proceedings is one year.

We have analysed six cases before the Higher Court in Belgrade against KRIK and others. The longest proceedings under the complaint of the plaintiff not known to the wider public took two years. The proceedings on average took one year and six months. It is interesting that the same politician filed four complaints against this media outlet, and after the first decision was adopted dismissing the plaintiff's claim, in the remaining cases he waived the claim, so the proceedings ended by adopting the decision dismissing the plaintiff's appeal based on waiver.

Five cases against *Peščanik* and others were analysed. The longest cases were those with a plaintiff photographer and a politician, two years and six months. The interval for scheduling hearings, depending on the case, ranged from two months to five months. The most hearings were scheduled under the complaint of politician plaintiff, in total 12, eight were held and four postponed, in the first instance proceedings that took one year and 11 months. The first instance proceedings on average took two years and six months, without larger deviations in analysed cases, and the second instance proceedings took, on average, five and a half months.

Five cases were analysed with daily *Politika* as a defendant, the plaintiffs included one businessman, one famous doctor, famous director's spouse, personally not known to the public and another two plaintiffs who are not known to the public. The majority of hearings were scheduled every five months, and the shortest scheduling period was three months in the case of the doctor plaintiff. The first instance proceedings took the longest in the case of the non-famous plaintiff — two years and five months. In that proceedings, in total seven hearings were scheduled, on average one every five months. In four of the second instance proceedings, they took about two up to ten months. The shortest proceedings took one year and nine months, and the longest two years and 11 months.

Four cases of the defendant *Žig Info* were also analysed. The plaintiffs included one local politicians, an actress and two persons who were not known to the wider public. The shortest proceedings involved plaintiff not known to the public, and it ended in two months by dismissing the complaint. The longest litigation concerned the complaint of a local politician. The first instance proceedings took two years and three months, with five hearings held, on average every five months. The second instance proceedings ended in eight months, so this was the longest proceedings against this media outlet that took in total three years and one month. Average duration of proceedings was one year and 11 months.

Conclusion:

We must take note that court's actions in all the cases, irrespective if those were plaintiffs of different job occupations or the duration of the proceedings varied, did not differ much in any of the cases. Unfortunately, the judges still on rare occasions schedule preliminary hearing, which is not provided for under the Law on Public Information and Media for this type of civil proceedings. There was in total 117 hearings in all analysed proceedings, and 82 were held, and 35 postponed, which is a lot. The data indicate that the court is still not close to the prescribed deadlines ensuring the required urgency that is highly relevant for this type of disputes, since the court has to decide and protect various rights, regardless if those are plaintiff's or defendant's. The duration of the first instance proceedings ranged from two months to three years and one month. The second instance proceedings ranged from two months to one year and one month. The total duration of the proceedings in analysed cases ranged from two months to three years and three months. It is obviously necessary to analyse the reasons behind such long duration of the proceedings for removing the origin of the weak efficiency.

If we compare this year report with the previous one[62], we fail to note here as well the irregular respect of deadlines in relation to various categories of plaintiffs and defendants. For both defendants' groups, in the last year and this year report, the court schedules preliminary hearings in few cases. In this year's group, as in the first time group of defendants, the time frame of the duration of the proceedings is unreasonable due to, some extent, obviously granted possibility that the parties at least occasionally "govern the proceedings" instead of the court. This results in a higher number of postponed hearings, and the court tolerates such behaviour with the parties. In average, the duration of the proceedings is somewhat shorter in the analysed cases this year.

Time period for adopting first instance decision

DEFENDANTS	NUMBER OF CASES	UP TO 15 DAYS	15–30 DAYS	1–3 MONTHS	OVER 3 MONTHS
Danas et al.	3	2	1	/	/
NIN et al.	4	2	2	/	/
KRIK et al.	6	2	3	1	/
Peščanik et al.	5	1	3	1	/
Žig Info et al.	4	2	1	/	1 yr. 1 mth
Politika et al.	5	1	4	/	/

62 https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Protection-of-freedom-of-speech-in-the-judical-system-of-Serbia.pdf

The law stipulates that the deadline for adopting and delivering the first instance decision is three days. The data indicate that the law is not observed in this aspect, though in the majority of the cases the deadlines for finalising the judgements were tolerable. However, there is no excuse that even one case, from the beginning of the proceedings until the judgment, takes more than one year, particularly in this type of disputes. Out of 27 analysed cases, 43 per cent of judgments were adopted within 15 days, 48 per cent were adopted within 15 to 30 days, nine per cent within the period of one to three months. Only one judgment adoption took one year and one month. Having regard to the workload of judges, who adjudicate in other cases too, not only this type of disputes, it could be concluded that this was a satisfying result, but it means that the legal deadlines are established notwithstanding the judges' capacities, as well as clerks and court stenographers. It is therefore necessary to either create such job classification that would enable efficient work, or amend deadlines in the law according to the real capacities of courts. That would not be a good solution, for sure, since the rights protected under these proceedings are immensely important (privacy, presumption of innocence, honour and reputation, rights of children, freedom of expression and opinion, etc.). There are minimal percentage variations in the number of court decisions adopted during different deadlines, confirming that the court's actions are the same for all defendants, regardless if those were the media outlets analysed in the first publication[63] or in this one.

Appeals and Decisions on Appeals

DEFENDANT	NUMBER OF CASES	APPELANT	FIRST INSTANCE JUDGMENT	SECOND INSTANCE JUDGMENT
Danas et al.	1	Plaintiff – 1 Defendant–/ Both – /	Adopted claim Partially adopted –1 Rejected claim –	Reversed – / Upheld – 1 Quashed – /
NIN et al.	1	Plaintiff – Defendant – 1 Both –	Adopted claim –1 Partially adopted – Rejected claim	Reversed – 1 Upheld –/ Quashed – /
KRIK et al.	1	Plaintiff –1 Defendant – / Both – /	Adopted claim – / Partially adopted -/ Rejected claim –3	Reversed – / Upheld – 1 Quashed – /
Peščanik at al.	3	Plaintiff – 1 Defendant – 1 Both – 1	Adopted claim – 1 Partially adopted – Rejected claim – 2	Reversed – 2 Upheld – 1 Quashed – /
Žig Info et al.	2	Plaintiff – / Defendant – 2 Both – /	Adopted claim – / Partially adopted -2 Rejected claim – /	Reversed – 1 Upheld – 1 Quashed - /
Politika et al.	4	Plaintiff – 1 Defendant – 3 Both– /	Adopted claim – / Partially adopted –3 Rejected claim – 1	Reversed – 1 Upheld – 3 Quashed - /

63 *Ibid.*

Out of 27 analysed cases, the decisions in 12 cases were appealed, the defendant only appealed in six cases, both parties appealed in one case and in four cases only the plaintiffs appealed. There were in total four appeals of plaintiffs and seven appeals of the defendants. In seven cases, the second instance court rejected the appeal and confirmed the first instance decision, and in four cases, it reversed the first instance decision. There are no indications that the defendants appeal due to high compensation claims. We cannot draw conclusions on any particular court behaviour, especially due to a small number of the second instance decisions the court ruled. The parties appealed in 30 per cent of judgments and no judgment was quashed. Such results indicate that the quality of trials is good and that the second instance court reaction is mainly directed to consolidation of case law.

It could be concluded that since some of the media are functioning in line with the Code of Ethics and the law, it decreases the number of complaints before the court, enabling better protection of the freedom of speech. The citizens do not need the court reaction since they do not need judgments to get their rights protected.

Compared to the results from the first report[64], when more cases were analysed since a higher number of citizens demanded court protection of their rights, we can only compare between the percentage of the appals and the total number of cases. In the first report we analysed 294 contested judgments — 110 judgments were reversed on appeal (37.4%), 170 judgments were rejected on appeal, meaning that 57.8% of judgments were upheld, and 14 judgments were quashed on appeal (4.8%). Out of 27 cases analysed in this report, appeals were filed against 12 judgments. None was quashed, seven were upheld, i.e. 60 per cent, and four were reversed, i.e. 40 per cent. These per cents indicate somewhat better quality of the first instance court decisions in this group of cases, though that is not so relevant, since the number of cases decreased and number of times the appellants addressed the court decreased. In the first analysis on the media outlets violating the Code of Ethics more, it was interesting to note that as defendants they appealed more than the plaintiffs did. In this year analysis of the media outlets observed, it is established that both plaintiffs and defendants appealed similarly.

64 *Ibid.*

Amount of compensation for damages in EUR[65]

Defendant *Danas* et al.			Appeal proceedings		
Plaintiff	Claim (EUR)	Awarded damages	Reversed	Upheld	Quashed
Producer	4,255.00	255.00	/	+	/

Defendant *Peščanik* et al.			Appeal proceedings		
Plaintiff	Claim (EUR)	Awarded damages	Reversed	Upheld	Quashed
Politician	5,957.00	rejected	425.00	/	/
Director	2,553.00	rejected	/	/	/
*1	2,553.00	1,530.00	rejected	/	/
*	3,404.00	rejected	/	+	/
Politician	1,700.00	1,700.00	1,276.00	/	/

Defendant KRIK et al.			Appeal proceedings		
Plaintiff	Claim (EUR)	Awarded damages	Reversed	Upheld	Quashed
Businessman	4,255.00	rejected	/	+	/
Politician	8,510.00	waived	/	/	/
Politician	8,510.00	waived	/	/	/
Politician	8,510.00	waived	/	/	/
Politician	8,510.00	rejected	/	/	/
*	3,830.00	withdrawn	/	/	/

Defendant NIN et al.			Appeal proceedings		
Plaintiff	Claim (EUR)	Awarded damages	Reversed	Upheld	Quashed
Politician	2,553.00	2,553.00	rejected	/	/
Politician	3,404.00	1,530.00	/	+	/
Director	4,255.00	425.00	/	/	/

Defendant *Žig Info* et al.			Appeal proceedings		
Plaintiff	Claim (EUR)	Awarded damages	Reversed	Upheld	Quashed
Politician	2,553.00	425.00	/	+	/
Actress	8,510.00	7,234.00	/	+	/
*	4,255.00	withdrawn	/	/	/
*	1,700.00	withdrawn	/	/	/

Defendant *Politika* et al.			Appeal proceedings		
Plaintiff	Claim (EUR)	Awarded damages	Reversed	Upheld	Quashed
*	2,553.00	1,700.00	850.00	/	/
*	2,553.00	425.00	/	+	
Businessman	4,255.00	rejected	680.00	/	/
*	4,255.00	850.00	/	+	/
Doctor	1,530.00	rejected	/	+	/

(*)- A plaintiff is a person who is not a public figure.

65 Official middle RSD exchange rate of National Bank of Serbia on February 18, 2022 is 1 EUR = 117.58 RSD

Out of three analysed cases against the defendant media outlet *Danas*, the complaint was withdrawn in two cases. In the compensation claim case of EUR 4,255.00, in its final and binding judgment, the court partially accepted the claim for non-pecuniary damages in the amount of EUR 255.00. The judgment was upheld in the appeal proceedings.

Five cases against the defendants *Peščanik* and others were analysed and the amount of compensation for damages requested by the plaintiffs ranged from EUR 2,553.00 to 5,957.00. In the first instance decisions, only one claim (politician plaintiff claimed compensation in the amount of EUR 2,553.00) was adopted partially for the amount of EUR 1,530.00 but this decision was reversed by the court of revision, rejecting the claim, while in the three remaining cases the claims were completely rejected. For the cases of rejected claims, the plaintiffs submitted appeals, two were denied, and in one case, with the compensation claim of EUR 5,957.00, the court reversed the first instance judgment and awarded compensation for damages in the amount of EUR 425.00 to the plaintiff politician. Deciding on the appeal of the defendants against the first instance decision partially adopting the claim, the court granted the appeal, reversed the judgment and rejected the claim. By the final and binding judgments, the appeal was finally in entirety denied in three cases, partially granted only in one, by awarding 14 per cent of the claimed compensation for damages to the plaintiff. The average amount of claimed compensation was EUR 3,234.00, and the amount of those awarded by final and binding judgments was EUR 850.00.

The compensation for damages was not awarded in any of the claims filed by six defendants against KRIK and others. One plaintiff (politician) filed four complaints with compensation claims in the amount of EUR 8,510.00 per each. After the first judgment was adopted rejecting the claim in entirety, he did not appeal, and in the other cases, he waived his claims, so the proceedings ended by the final and binding judgment based on waiving of the claim therefore the claim was rejected. In all cases, the same attorney represented the plaintiff, and this plaintiff was not awarded compensation in any of the court proceedings, that was particularly high in all cases compared to the existing case law. The claim for compensation in the amount of EUR 4,255.00 submitted by the businessman was rejected in entirety, while the plaintiff not known to the wider public withdrew the claim.

In the observed period, for the three cases with NIN and others as defendants, the amount of compensation was EUR 2,553.00, 3,404.00 and 4,255.00, respectively. All three claims were accepted in the first instance proceedings, two partially, and the smallest compensation claim was adopted in entirety. The average amount of the awarded compensation for damages in the first instance proceedings was about EUR 1,497.00. Deciding on the defendant's appeal, in one case, the second instance court

granted the appeal, reversed the first instance decision and rejected the claim completely. The highest amount of compensation claim was EUR 1,530.00, and the smallest was EUR 425.00.

In four cases of the complaints against the media outlet *Žig info* and others, the requested amount of compensation for damages ranged from EUR 1,700.00 to 8,510.00. The plaintiffs withdrew the complaint in two cases, while in the other two cases the claims were partially adopted. The average awarded compensation for damages was EUR 3,830.00.

In the five complaints submitted against *Politika* and others, the amount of compensation for non-pecuniary damages in two cases was EUR 2,553.00, in two cases EUR 4,255.00 and in one case EUR 1,530.00. The first instance court rejected the claim twice in its judgments, and one was reversed by partially adopted claim of EUR 680.00. The partially adopted claim of EUR 1,700.00 judgment was reversed and the defendants were imposed with obligation to pay damages of EUR 850.00. Other judgments were upheld. The highest amount of compensation for damages was EUR 850.00 and the smallest amount was EUR 680.00. The average awarded compensation for damages was EUR 680.00.

Conclusion

The analysis showed that the court decides on the amount of claims by assessing the specific statement of facts, regardless, who is a defendant, what is the plaintiffs' job, except in the cases of politicians, when the decisions are made in accordance with the legal provisions regarding the degree of suffering for this plaintiff's category. Having regard to the amount of awarded damages, on average about EUR 1,021.00, the smallest amount about EUR 255.00, and the highest EUR 7,234.00, it could be concluded that such amounts can hardly represent appropriate satisfaction for the mental anguish each of the plaintiffs suffered due to various violations of their rights. Some media outlets statement that due to draconic compensation for damages their survival is compromised is hardly acceptable. It could be rather concluded that due to frequent violations of the rights of the citizens, some media outlets, outside of the group analysed here, are experiencing a huge problem with a large number of judgments confirming the violation of the plaintiffs' rights and adopting the claims for non-pecuniary damages. On the contrary, it is questionable if the amount of compensation is adequate and proportionate related to the violated right and its purpose within the meaning of Article 200 of the Law on Contracts and Torts. Out of 27 analysed cases, the claims were adopted in only 12 cases, partially. It is noted that in this group of the media outlet defendants, the violation of freedom of speech and opinion was established in 40 per cent of the cases. In four years, the total amount of

all compensation for damages was EUR 14,382.00. Having regard to the court reports confirming that there were no recorded proceedings against some of the media outlets from the group that rarely or never violated the Journalists' Code of Ethics as defendants in so-called media disputes, it must be noted that there is a huge difference in their work compared to the media outlets examined in the first part of analysis[66]. That is reflected in fewer complaints against the media outlets that are violating the Code to a lesser extent.

It is questionable if the amount of the requested compensation claim is adequate, especially for the litigations in which the attorneys specialised in this type of disputes represent the parties. They are familiar with the case law, but the same attorneys, continually, usually for the same plaintiffs, determine the amount of compensation claim that is much higher than the customary amount in the case law. It is necessary to indicate that the courts must carry out serious analysis of the case law in all court instances and determine if the awarded compensation for damages represents the real satisfaction. It should be questioned if the awarded damages contribute to the increased lack of professionalism with the journalists in the media outlets frequently violating the provisions of the Law on Public Information and Media and the Journalists' Code of Ethics. The modifications of the case law should be considered by increasing the amounts of compensation for damages when the same plaintiff is winning in several cases against the same defendants who are repeatedly violating the plaintiff's rights.

If we compare the amounts of awarded compensation for damages in the first group of the analysed media outlets[67] with those analysed in this report, we can conclude that the case law is harmonised without greater variations. It is noticeable that the amount of compensation claims is even, though in both groups, there is a set of lawsuits with much higher compensation claims that the amounts awarded.

The court has specific position in the media disputes that should be emphasised. The court must hold complete independence in relation to the parties, presuming that the guarantee of independence is ensured in reality, not just proclaimed. More often the media outlets, editors, and usually those violating the rules of the Code of Ethics and laws — the reason they must pay the compensation for damages to the plaintiffs — abuse their powers and react improperly in the public. Insults and political labelling of the judges put their independence and autonomy at risk. However, the plaintiffs are more often high-profile politicians, businesspersons who inappropriately comment

66 https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Protection-of-freedom-of-speech-in-the-judical-system-of-Serbia.pdf

67 *Ibid.*

court proceedings and create the idea among the citizens that the judges rule and adopt decisions under pressure of such parties in the proceedings.

Publishing political parties' press releases commenting non-final and non-binding decisions creates citizens' perception pertaining to the functioning of the court as they learn about it through the media. Already poor image of the judges' and court independence is more deteriorated. In one daily, belonging to the group of media outlets rarely violating the Journalists' Code of Ethics, the political party press release taken from the Beta news agency was published[68]. It said that the Court of Appeal under the order of the government started annulling judgments or decreasing the compensation for damages amounts awarded in the first instance proceedings to the SSP President in the proceedings against the government representative since the number of judgements "turned out problematic". It mentioned that was a clear message to lower courts judges to amend their former practice. It said that this court reversed the first instance judgment sentencing Minister of Finance to pay EUR 1,276.00 because he accused the president of the party of "robbing the citizens while he was a mayor". It is mentioned that the court decided, with incomprehensible explanation, that the statement was not an insult and that the decision of reversing the judgment was quite rare, because, even if there were a mistake, the case would be returned to the first instance court for retrial. Without detailed explanation what would be the cause of such assessment, it is quite peculiar to conclude that the court took government's orders to reverse the decision, and it is even less probable that the court annuls the decisions under the order. Such political labelling of the court definitely does not contribute to the courts and judges' reputation, showing judges that prolonging the proceedings or quashing decisions even has a better effect on them and their status.

When it comes to this type of proceedings, the particular problem of the so-called SLAPP lawsuits started appearing before our courts too. The case law still has to be made, the statutory provisions do not clearly determine the working methods and how the court should handle this particular category of lawsuits. The courts could react by declaring the lawsuits inadmissible, could process the lawsuits as admissible deciding on the merits, or could simply assess if the compensation claim is too high. The amount of the requested compensation claims, due to the cost of the proceedings, potentially putting the media at risk, creates a problem regarding the equal position in the court proceedings that must be urgently regulated.

[68] Daily Danas, printed weekend edition 3–4 July 2021, column Society, page 8

Application of international instruments, the European Court of Human Rights judgments and the Journalists' Code of Ethics before the court in the observed period

In 27 cases we reviewed and 52 court decisions adopted in the observed period, only in the judgments the court referred to international instruments, the European Court of Human Rights (ECtHR) judgments, and in one judgment only, besides the law, the court applied the Journalists' Code of Ethics. In two judgements, the decisions of the Press Council Commission were quoted.

In the first instance proceedings, the Higher Court in Belgrade applied the European Convention on Human Rights (ECHR) in seven judgments, referring to the content of Article 10 of the Convention.

In the second instance appeal proceedings, the Court of Appeal in Belgrade applied the ECHR in three judgments, in one judgment it cited the provisions of the International Covenant on Civil and Political Rights and provisions of the Declaration on freedom of political debate in the media[69]. In one judgment, the Court quoted ECtHR case law as the source of law, without mentioning specific cases. In the judgment from 2017[70], the second instance court referred and quoted parts of the ECtHT judgments, the decisions such as **Thorgeirson vs. Iceland**, application No. 13770/88, judgment of 25 June 1993; **Thoma vs. Luxembourg**, application No. 38432/97 of 29 March 2001; **Handyside vs. United Kingdom**, application No. 5493/72, judgement of 7 December 1976; **Wirtschafts-trend Zeitschriften-Verlags Gmbh vs. Austria,** applications No. 66298/01 and 15653/02, judgment of 13 December 2005. In the second instance judgment, the appeal court quoted three international instruments and 12 ECtHR judgments. In addition to the judgments mentioned, it this judgment[71] the parts of following judgments are quoted: **Bodrožić and Vujin vs. Serbia,** application No. 38435/05, judgment of 23 June 2009; **Lepojić vs. Serbia**, application No. 13909/05, judgment of 6 November 2007; **Lingens vs. Austria**, application No 103/86 of 8 June 1986; **Castells vs. Spain,** application No. 11798/85, judgment of 25 June 1992; **Tusalp vs. Turkey**, application No. 32131/08 and 41617/08 of 21 February 2012 and 21 May 2012; **Oberschlick vs. Austria**, judgment of 1 July 1997; **Jerusalem**

69 The Council of Europe Committee of Ministers adopted the Declaration on 12 February 2004.

70 The Court of Appeal in Belgrade Gž3-57/17

71 The Court of Appeal in Belgrade Gž3-225/19

vs. Austria, application No. 26958/95 of 27 February 2001; **Dalban vs. Romania**, application No. 28114/95 of 28 September 1999; **Filipović vs. Serbia,** application No. 27935/05 of 20 November 2007; **De Hals and Gijsells vs. Belgium,** judgment of 24 February 1997 and **Axel Springer vs. Germany.** Unlike when some provisions of the Convention are completely implemented in our law, with established standards, and referring to those provisions is formal, it must be observed that the courts, when applying ECtHR judgments, most often quote the paragraph of the judgment citing its relevant content, enabling better protection of the law indeed.

Out of two judgments of the Supreme Court of Cassation (SCC) adopted in the cases of the defendant being a party whose situation we examined in this research, in one of them, the SCC quoted the Charter of Human and Minority Rights, International Covenant on Civil and Political Rights, the ECHR and the ECtHR judgments **Caspells vs. Spain; Vogt vs. Germany** and **Lingens v. Austria.** In the second judgment, the court cited judgments **Lingens v. Austria; Thoma vs. Luxembourg** and **Dyuldin and Kislov vs. Russia.** The court quoted key argumentation from each judgment.

We must observe that the court frequently uses and quotes judgments of the ECtHR in the cases otherwise known to the public, if the case is particular or the plaintiff is well-known, so it is expected that many interested parties will want to know about the judgment.

It would be very beneficial to continue with the training of judges who try in cases relevant for this sensitive and important matter so the quality of the court proceedings would be maintained and improved.

Extraordinary legal remedies

Law on Public Information and Media as the special law in relation to the Law on Civil Procedure as the general law regulates the matter of admissibility of the revision as the extraordinary remedy in a different way, what are the deadlines for filing the revision and which disputes do not allow the revision.[72]

As for the media disputes, we analysed the decisions that the Supreme Court of Cassation (SCC) adopted based on revisions filed by the competent persons against the second instance final and binding decisions in 2020. All decisions adopted in the period 2017–2019, including the cases with the media outlets as defendants that are analysed now, could be viewed in the first part of the report.[73]

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72 Article 126 of the LPIM

73 https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Protection-of-freedom-of-speech-in-the-judical-system-of-Serbia.pdf

In this year, the SCC adopted a decision based on merits dismissing the request for revision of the defendants as unfounded, citing the proper application of the substantial law and Article 10 of the ECHR. The court holds that "the article author acted with due diligence of a journalist since the published information originate from a memo, so the information represents truthful and complete delivery of the information from the memo". It is mentioned, "we cannot expect the journalist to establish the truthfulness of the facts as in the court proceedings, nor absolute truth, but it is enough to publish the information after inspecting the truthfulness in accordance with the circumstances of the case". It also said that in the defendant's article there were no offensive words against the plaintiff, but the information were conveyed referring to the third party who was not a party in the proceedings but the subject of the disputed article in the media.[74]

In the other judgment, the SCC[75] rejected as unfounded the revision the plaintiff filed against the overturning part of the judgment of the Court of Appeal from Belgrade rejecting as unfounded the claim of the plaintiff to impose the obligation upon the journalist and media publisher to compensate non-pecuniary damages to him due to violation of his rights of honour and reputation. The court said, "journalists have an important role of the protectors of the public. When a journalist acts with a legitimate aim, in the interest of the public, and with a reasonable effort to establish the facts, he/she is not responsible even if afterwards what was believed to be correct turned out false. It is important that there are enough facts for the expressed value judgment". In the reasoning of the judgment, the court of revision quoted the generally accepted standards of the ECtHR case law, listed along the quotes from these decisions. The court concluded that since the plaintiff is a public office holder, he is obliged to withstand criticism, in relation to fulfilling the duties of the office.

Three cases before the SCC ended with decisions. Two decisions rejected the revision as untimely[76]. The other two decisions rejected the revision as inadmissible[77] within the meaning of Article 126 and Article 410 paragraph 2 point 5 of Law on Civil Procedure. It should be noted that the extraordinary remedy to be decided before the SCC could be written only by an attorney, precisely because the knowledge of the law is required.

The SCC in a five-judge panel ended the case with a decision[78] on the special revision of the plaintiff filed by his attorney. In its decision, the court determined that

74 The SCC judgment Rev 3274/2020 of 3 September 2020

75 The SCC judgment Rev 5477/2020 of 25 November 2020

76 The SCC judgment Rev 3274/2020 of 3 September 2020 and Rev of 24 June 2020

77 The SCC judgment Rev 2234/2020 of 4 June 2020 and Rev 258//2020 of 8 October 2020

78 The SCC judgment Rev 2365/2020 of 29 October 2020

against the judgment of the Court of Appeal in Belgrade the plaintiff' revision is not admissible and the plaintiff's claim for compensation of court costs in the revision proceedings is rejected. In its decision, the court reasoned that the second judgment of the court of appeal submitted as a proof of the non-harmonised case law does not justify deciding on the plaintiff's revision. Although it was adopted in the same type of the dispute, the facts of the case are not identical in the subject matter decided under special revision, hence there is no need for harmonising the case law, including new interpretation of the law, taking into consideration the type of the dispute. There is an impression that the attorneys, only ones with the powers of initiating the proceedings by extraordinary remedies, mostly initiate the cases before the highest court without the necessary analysis of the requirements and reasons for using this legal remedy.

CASE STUDY

Nebojša Stefanović against Sandra Petrušić, Milan Ćulibrk and NIN

We will analyse in detail the court case that took more than four years, for the most of the observed period, when the courts ruled by decisions, judgments or any other verdicts quashing decisions for seven times, before three court instances. Strategically, this important case requires special analysis and could serve as an image of the functioning of the court system.

The defendants of the case included the editor-in-chief, NIN weekly publisher and the journalist whose article "The Main Phantom of Savamala" was published on 16 June 2016. Photo of Nebojša Stefanović was on the front page with this headline. Nebojša Stefanović, who was the Minister of Interior at the time, filed the claim for non-pecuniary damages before the competent court for the violation of his honour and reputation. He mentioned that the journalist in the weekly article "clumsily and subjectively explained who could have demolished the buildings in Hercegovačka Street during the election night". The plaintiff supposed that publishing a photo with that headline on the front page made a statement marking the Minister of Interior as the main organiser and perpetrator of the offence in Hercegovačka Street. The plaintiff mentioned, "in addition to the sensationalist headline, there are no confirmations on such allegations in the article reasoning". The author of the article writes about the information the Ombudsman obtained that, "he presented to the public in that report". The plaintiff suggested that the defendants should solidary undertake to pay the non-pecuniary damages of EUR 2,553.00 to him for the violation of his honour and reputation and publish the judgment in the following issue of the weekly.

The defendants disputed the claim. The journalist said that she did not have standing as the defendant in the proceedings because the editors decided on the headline, and the plaintiff himself said that the article featured nothing new, but just informed the public on the content of the Ombudsman report. The sued editor-in-chief claimed that the disputed headline did not constitute the violation of the right of the plaintiff, but represented an opinion based on the report of the Ombudsman. The third defendant disputed the claim.

Acting in accordance with the procedural provisions of the LPIM without preliminary hearing, the court adopted the first instance decision on 29 November 2016[79]. It is noted that from the Ombudsman decision of 9 May 2016 it was established that on the night 24 April 2016 and early hours of the following morning the motorised group of uniformed persons with balaclavas carrying telescopic batons and very bright lamps had taken over the part of the city known as Savamala. By using force, they were taking out citizens from the buildings and cars, confiscating their means of communication, hindered their movement, took away guns and a rifle they found in one office and videos from surveillance camera. They threatened citizens and assisted in demolition of several buildings by using some machinery. Before the article was published, it was not known yet who were the people with balaclavas, who was the organiser, who ordered it and assisted in it, and what was the purpose of those actions. Despite numerous phone calls, the police did not come to the scene. The wider public showed increased interest in establishing of the disputed facts since unknown perpetrators demolished legal and unlawful buildings in the described manner. Many journalists wrote about this. The defendant journalist wrote in her article "although in his (Ombudsman) report it was not designated who was behind the actions of the police, it could be assumed that it might have been someone very powerful from the executive, as it would be very difficult to perform such job without knowledge and help from Minister Nebojša Stefanović". The court estimated that the article published false and unacceptable information, that on the front page "plaintiff was designated as the organiser and facilitator of the events suspected to represent the action of criminal offence". The court believed that the article author and editor-in-chief must have had inspected the truthfulness and origin of this information with due diligence appropriate for the circumstances. During the proceedings, they have not provided any evidence that would indicate the liability of the plaintiff or his participation in the event. The court substantiated that Ministry of Interior was not authorised to give orders to the police administration and police stations. It is established that intentions of the journalist when writing the article was not relevant but what the readers gathered from it. "The information could not be understood based on journalist's opinion". The court

[79] The Higher Court in Belgrade judgment P3-299/16 of 29 November 2016

legal standing was that the journalist agreed with the headline, and that editor-in-chief was responsible for the content of the article and design layout. The court accepted the claim and imposed the obligation upon the defendants to solidary pay the compensation for non-pecuniary damages, and the second defendant, the editor-in-chief, was obliged to publish the judgment. The court rejected the claim regarding the publication of the judgment by the first defendant journalist and third defendant publisher. All defendants were imposed with obligation to compensate the proceedings costs to the plaintiff.

In its decision on the defendants appeal, the second instance court adopted a decision[80] overturning the first instance decision and rejected the plaintiff's claim in entirety. The decision on costs was reversed and the plaintiff was imposed with obligation to compensate proceedings costs to the defendants. The court argues that substantial law — provisions of the LPMI and the Constitution — was not properly applied to the correct and entirely established statement of facts. Citing ECHR and paragraphs from four judgments of ECtHR that became European standards, the court of appeal held the view that in this article the journalist expressed her critical opinion on the results of the plaintiff's work in his role of Serbian Minister of Interior. The court said, "as this is one of the highest offices in the executive, it is allowed that criticism of that role should display some level of exaggeration, i.e. provocation, which is the positon of ECtHR". It is further mentioned "that the first instance court has falsely established that the defendants have failed to perform journalistic due diligence". Proper interpretation exclusively refers to understanding the headline and article content as a single whole, and then, the court holds, it could be concluded that the headline represents sarcastic implication of the political lability of the plaintiff for the event otherwise known as "Savamala". The journalist has come to her conclusions based on the official document – the Ombudsman report of 9 May 2016. The court concluded that the journalist was not obliged to demand explanation from the plaintiff on the criticism directed against him, however, the plaintiff had the right for his response to criticism to be published, but he failed to do that. The competences of the plaintiff to give direct orders are irrelevant because in this article he was called upon to take over the responsibility as the holder of public and political office. The court's position is that the plaintiff has no right to demand compensation for damages because the purpose of his claim was to "prove to the public that defendants are liars", so the grounds for awarding damages within the meaning of Article 200 of Law on Contracts and Torts are not met.

[80] The Court of Appeal in Belgrade judgment Gž3-57/17 of 21 March 2017

The plaintiff filed for the revision – extraordinary remedy against the second instance decision,[81] so the SCC accepted it and quashed the second instance decision and referred the case back for a retrial, quoting three international instruments and three ECtHR judgments which include the standards that the second instance court did not weigh. In the repeated proceedings it was mentioned that it was necessary to "ponder the danger of violating plaintiff's rights to honour and reputation, on the one hand, and on the other hand, the media right to freedom of expression, establishing whose right was more endangered by the disputed article, which the second instance court failed to do. It has only provided the protection of the media freedom of expression". The court argued, referring to the ECtHR judgment, that the value judgments which do not require taking of evidence, must have some form of factual basis, otherwise they would be considered as exaggerated.

Deciding again on the appeal of the defendants, the second instance court in its decision[82] quashed the first instance decision in the appealed part and referred the case back to the first instance court for a retrial. The court said that the judgment has such deficiencies, which do not allow examination since the given reasons are incomplete and ambiguous representing a substantial violation of civil procedure rules. It is concluded that it failed to estimate the level of danger pertaining to the violation of the rights of the plaintiff as the public office holder and the right of the freedom of expression of the media, as well as to decide to what extent the rights of the plaintiffs have been violated.

In the repeated proceedings, the court of first instance weighed the allegations from the disputed article, the parties' statements and the Ombudsman report. In accordance with the provisions of the LPIM, Law on Contracts and Torts and the ECHR, the court concluded that right to honour and reputation referred to both politicians and public figures, even when they did not act in private capacity. The right of media to freedom of expression stands on the one side, and so the court afforded protection to the plaintiff's right being the prevailing interest. It is determined that the journalist must have known that the truthfulness of the information she was about to publish was highly suspected and she failed to verify the information adequately. The court said that the public has no interest to learn about the untruthful information. The court referred to the Journalists' Code of Ethics, as criticism of the Minister of Interior work must have been made in accordance with the code. The first instance court adopted the claim again and impose the obligation upon the defendant journalist and the publisher to compensate the non-pecuniary damages to the plaintiff for the violation of honour and reputation. The court rejected the same claim regarding the second

81 The SCC Decision Rev 1855/2017 of 30 May 2018

82 The Court of Appeal in Belgrade judgment Gž3-224718 of 9 November 2018

defendant, editor-in-chief, who was obliged to publish this judgment after it was final and binding. By the decision on the costs, the defendants were imposed with obligation to compensate the proceedings costs to the plaintiff, while the plaintiff was obliged to compensate the costs to the second defendant – the editor-in-chief.

Deciding on the appeals of the first defendant journalist and the third defendant publisher, adopting the decision on this case for the third time, in its judgment[83], the court of appeal reversed the first instance decision and rejected the plaintiff's claim related to the first defendant and third defendant on compensation for non-pecuniary damages. The court rejected as inadmissible the appeal of the first and third defendant against the decision of the second defendant obligation to publish this judgment (they were not obliged by the decision). The decision on costs was reversed and the plaintiff was obliged to pay the costs of the proceedings for the first defendant and third defendant. In its reasoning, the court mentioned that the expressed legal point of view of the first instance court could not be accepted due to wrongful application of the substantial law, as it has established the fact properly but made erroneous conclusion. The court referred to the relevant provisions of the LPIM, Constitution, four international instruments and quoted positions that the ECtHR expressed in 13 judgments, three of them against Serbia. The court also held that the article was published more than a month after the Ombudsman had completed the report on the misconduct of the police and more than a month and a half after the events in Savamala, also drawing attention to the inertness of the competent authorities, in particular, the police related to investigating the circumstances of the event and finding potential perpetrators. The public had the justified interest to be informed on everything. It is concluded in the judgement that "by analysing the headline, subheadings and the article as such, the journalist did not explicitly claim that the plaintiff had organised, ordered or assisted in committing any of the criminal offences…, so there is no violation of the presumption of innocence". By pondering the level of violation of the constitutionally guaranteed rights opposed here, adopting plaintiff's claim would be disproportionate, hence inadmissible. In this specific case, the interest of the society to have an open discussion on political matters prevails the right of the plaintiff because that would disproportionally restrict the media right to freedom of expression.

For the second time in the proceedings, the plaintiff used his right to extraordinary remedy, so the SCC in its judgment[84] rejected the revision and upheld the Court of Appeal judgment. As the SCC assessed, the second instance court decision was right. It was mentioned that in the disputed article there had been sufficient facts

83 The Court of Appeal in Belgrade judgment Gž3 225/19 of 14 May 2020

84 The SCC judgment Rev 5477/2020 of 25 November 2020

for the expressed value judgment. The journalist expressed criticism of the work of the Minister of Police, who must endure criticism. In this specific case, there were no justifications for restricting the freedom of expression. The court mentioned that the political responsibility of the plaintiff within the meaning of the Constitution and the law was questioned by the Ombudsman report, which represents the legitimate reason for the author of the article to express her opinion. The reasoning of the judgment and the court decision were corroborated by the provisions of the Constitution, the LPIM and mentioned paragraphs from three ECtHR judgments related to value judgments, along with the possibilities to use sharp tone of criticism, hyperbolic expressions, satire or creative figures of speech to convey a certain message, so painting the plaintiff as "The Main Phantom of Savamala" represented a metaphor indicating his political liability for the police conduct.

After more than four years, adoption of two first instance, three second instance and two revision decisions, this case court proceedings, otherwise urgent by the law, finally ended.

The analysis of the entire proceedings could give us various answers to the questions that are used to evaluate the actions of the court in accordance with the law.

The first of the first instance proceedings took three months. In accordance with the law, the court did not schedule preliminary hearing. Due to this, the incorrect comments appeared that this level of urgency was imposed because of the personality of the plaintiff, and not the statutory obligation, as the trial started without the preliminary hearing. Two hearings were held, with more than a month gap. The judgment was adopted during the second hearing. The second instance proceedings took more than two months. The proceedings in the framework of the extraordinary legal remedy, which has no indicative deadline for completion, took about one year, and the total duration of the regular proceedings under the extraordinary remedy took about two years.

The first time revision, the SCC quashed the second instance judgment, so the Court of Appeal decided, in the repeated proceedings, to allow the appeal and quash the first instance decision. It could be legally debated whether the second instance court could have immediately acted upon objections made by the SCC or it would have been more meaningful if it quashed the first instance judgment, ordering the repeated proceedings – the same as the SCC decision to the second instance court. The proceedings took about four months. The first instance proceedings were conducted for the second time, ending after two hearings were held with about three-month gap. The Court of Appeal adopted a judgment for the third time within about eight months, and after six months, the SCC decided on the revision of the plaintiff for the second time. In the period of about 50 months – the total duration of proceedings – the courts

adopted in total seven decisions, usually one every seven months. Statistically, the courts were highly efficient, in particular, having in mind that two decisions were adopted by the SCC, since its proceedings are somewhat more complicated and longer compared to regular proceedings. This kind of decision-making does not ensure efficiency since the final decision on the protection of very important but opposing rights in the media dispute is adopted after more than four years.

Taking into consideration the time it took for first instance decision to be adopted in this case, especially if we observe the number of cases each judge was assigned with, the duration could be assessed as satisfying, even better than the average in other analysed cases. The legal deadline of three days is definitely not possible to be accomplished in the existing work organisation in the Higher Court in Belgrade, as that is the only competent court in media disputes. The same goes for the time it took for the second instance decision and the decision on the extraordinary legal remedy. However, it must be concluded that very sensitive citizens' rights cannot be adequately protected in the total length of proceedings.

Neither the first instance nor appeal courts amended their legal positions, irrespective of the high number of used legal sources.

If we analyse the types of decisions, we can conclude that the parties' attorneys had blatant omissions in their actions. Therefore, the plaintiff's attorney made a claim to obligate all three defendants to publish the judgment after it became final and binding. The law sets out that exclusively the editor-in-chief could execute such a claim. The first and the third defendant's attorney filed an appeal against the part of the judgment establishing only the obligation of the second defendant. These actions definitely contribute to the fact that court decisions take longer, more complicated to follow, creating unnecessary expenses and existence of final and binding decisions with some parts that are not executable.

The amount of requested compensation for damages of EUR 2,553.00 was about the average from the case law. This was obviously the reason why the court determining that the claim was founded in entirety adopted it in its judgments. It could be legally assessed if the mentioned reason for the plaintiff's – Minister of Interior, official and a public figure – claim is admissible, since his motif for the compensation for damages was not the non-pecuniary damages for the mental anguish due to violation of his honour and reputation but he only wanted to prove to the public that the defendants were "liars". Such claims from the plaintiffs render pointless the role of the court in the real protection of the rights in such proceedings and create the citizens' perception that the court allows the abuse of the court protection by some categories of the plaintiffs.

In observing the application of international instruments and the ECtHR judgments, it could be noted that judges' knowledge of European Court of Human Rights judgments is excellent and that their application and quoting of the appropriate paragraphs became a standard. It contributes to a better solving of factual situations that could be interpreted in a different way in this type of disputes. However, comparing this case with other analysed cases and judgments, it must be observed that judges do not always act in the same manner, i.e. with due diligence in order to improve the quality of interpretation of the disputed issues and take well-selected and reasoned paragraphs from the ECtHR judgments. It is common that the judges more often quote the ECHR than the standards established by the judgments, but for these particular cases, the standards represent an even better source of protection of rights. These court actions indicate that in the cases of high public attention and pressure of the public, the trial itself and adopting of court decisions get more efficient, and the judgements have better quality reasoning, followed by application of national and international legal sources and accepted standards. However, we have to indicate that adopting final decision is especially tentative, which increases the entire duration of the proceedings, because the protection is not adequate under those circumstances, irrespective of the outcome and the content of the decision. When the courts work under certain pressure, the proceedings can take longer, although each separate court decision is adopted within the reasonable deadlines. We should also note that in this analysis we did not perform assessment of some of the legal positions.

We can conclude that this case exhibits all drawbacks and good quality of the courts' work in this type of civil proceedings.

RECOMMENDATIONS

The results of this analysis indicate that the recommendations from the last year analysis could be repeated here in entirety though with certain amendments. The measures suggested could improve the protection of citizens, journalists and the media, such as follows:

- Keep the competence of one court in Serbia to act as competent court in media disputes, but establish a special unit with specialised judges who will try in those cases, with obtained licence, necessary to be regulated by the LPIM. Establish specialised panels in the second instance court under the same principle. That would ensure the better quality of the citizens' rights protection and efficiency of actions in this type of civil proceedings. This is important for the harmonised decision-making in SLAPP lawsuits since these will become more frequent as seen in the other countries.

- Ensure continuing training for judges, attorneys and journalists via competent institutions regarding media disputes.
- Ensure continuing training on media rights, procedural rights and standards for journalists and other media workers via competent institutions.
- Ensure continuing cooperation of journalists and specialised responsible persons for cooperation with the media in courts, including their regular meetings.
- Ensure required number of judges and employees in court administration services to ensure respect of legal deadlines.
- Ensure implementation of legal provisions that regulate use of electronic mail that will contribute to the observance of prescribed deadlines in the media cases.
- The amount of awarded compensation for damages must depend on the frequency and repetition of the violation against the rights of the same defendants under the claims of the same plaintiff. This criterion should be inserted in the law (LPIM) to prevent intimidation campaigns, hate speech and discrediting of persons. This would reduce the possibility of the SLAPP lawsuits.
- The practice of establishing the violation of rights should be harmonised, and the amount of compensation for damages must be made in accordance with each specific factual basis to fulfil its purpose.
- In order to ensure the real freedom of expression, it is necessary to prevent awarding of the budgets funds meant for co-financing of the media projects to the media outlets continually violating the obligation of due diligence and the code of ethics, as this enables the media outlets to uninterruptedly finance the awarded compensation for damages with the budget money, which casts doubt on the meaning of the court protection as a whole.
- Enable administrative disputes against a decision on awarding of the budget funds from the project financing that must be completed within the deadline ensuring the efficiency of this legal remedy, which is not the case now.
- Amend Article 104 of the LPIM so that the provision regulating the possibility of adopting the temporary measure could be applied *ex officio* in cases with obvious repetition of the violation of the rights among the same parties (repetitive proceedings).

SLAPP – Strategic Lawsuits against Public Participation

"Short of a gun to the head, a greater threat can scarcely be imagined (to the freedom of expression than SLAPPs)."
Judge Nicholas Colabella, 1992

Strategic lawsuits against public participation (SLAPPs) represent a relatively new threat to freedom of expression in our region. This acronym is widely used now[85]. There is even a dictionary entry, and the definition says *a lawsuit alleging defamation that is in reality brought for the purpose of intimidating, burdening, punishing, or harassing the defendant for speaking out against the plaintiff on matters of public interest.*[86] This concept obviously stands for different situations and circumstances, which are difficult to capture and explain together, yet the definition is a good basis for understanding the phenomenon we are facing.

It is important to understand that SLAPP can be filed against any person, natural or legal. The media and journalists are most at risk, understandably, since they carry out activities related to information of public importance. However, the practice in the USA demonstrated that SLAPPs were frequently used to sue citizens, for example, for reporting the violations of environmental protection regulations, for testifying before public authorities, expressing concern to schools or taking part in protests.[87]

Predictably, the plaintiffs using this mechanism are usually affluent companies or individuals, who for the sake of protecting their own political, economic, reputational or other interests, sue those who act against them in public.[88] It is especially worrying to witness the practice in Croatia since there are some indications that even judges are resorting to such lawsuits against the media.[89]

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85 This term was coined in the United States. The concept was defined by the University of Denver professors, George Pring and Penelope Canan, in papers published in the 1980s, and further elaborated in the book *SLAPPS: Getting Sued for Speaking* Out, Temple University Press, 1996.

86 SLAPP suit., *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/SLAPP%20suit, accessed on 18 October 2021

87 Potter, L., "Slapp Lawsuits: Measuring the Treat against a Right to Petition", *Freedom Forum Institute*, 2015, https://www.freedomforuminstitute.org/first-amendment-center/topics/freedom-of-petition/slapp-lawsuits-measuring-the-threat-against-a-right-to-petition/, accessed on 17 October 2021. See also https://www.acluohio.org/en/what-slapp-suit, accessed on 17 October 2021.

88 Snow, B. M., "Slapp Suits", *The First Amendment Encyclopaedia*, https://www.mtsu.edu/first-amendment/article/1019/slapp-suits, accessed on 18 October 2021

89 Pavelić, B., "Slapping media with lawsuits", *Balkans Aljazeera*, 10 October 2021, https://balkans.aljazeera.net/teme/2021/10/10/samaranje-medija-tuzbama, accessed on 18 October 2021.

The object of claim in the SLAPP suits usually refers to a violation of honour and reputation or defamation. This is not always the case, so it additionally complicates the conceptualisation and recognition of this idea.[90] For purpose of explanation, since these are mainly civil lawsuits, in the states where defamation is not decriminalised, criminal lawsuits might be used to attain the SLAPP goals.[91]

The SLAPP suits are filed to intimidate and execute pressure on defendants. The work of the person attacked will suffer and this person will lose time and confidence.[92] Legal proceedings, which usually last for several years and involve court fees and legal representatives' fees, will probably materially exhaust the defendant completely. In the context of our region, where media are usually small legal persons with unsustainable income, such a financial burden may eventually cause them to shut down. Therefore, the goal of these suits is not to reveal the truth or to adopt the claim but to restrict and silence the public criticism that for any reason is not suitable for plaintiffs. After the proceedings, not only that the specific defendant, usually a media outlet, will be burdened by fear and self-censorship if it managed to survive the court proceedings in the first place, but also other media outlets might be apprehensive of what they will write, say and investigate.[93] In other words, the scope of SLAPPs is extending the mere impact on a specific defendant, as these lawsuits are detrimental to a much bigger audience that will give up in advance from critical reporting on those who are prone to using this mechanism.

The main goal of SLAPP is not to win in legal proceedings, so this could be used as a criterion for its recognition. Namely, the basis of such claims is often imprecise and contradictory, potentially even grounded upon false or unfounded allegations. Another characteristic of SLAPP is disproportionally high amount of claim, primarily meant to increase the costs of proceedings. Usually, due to financial circumstances already explained, this type of lawsuit has a more severe impact on the defendant than the plaintiff. Regarding the SLAPP suits, the plaintiffs will often deliberately choose the courts in those states with the greatest chance of winning the lawsuit. In such states where this phenomenon is not formally regulated and recognised, they would not have to bear the consequences of using this type of lawsuit (in elective jurisdiction, the practice of choosing the court in the state where the most favourable outcome will be

90 Pring, G. W., "SLAPPs: Strategic Lawsuits against Public Participation", *Pace Environmental Law Review*, 1989.

91 Borg-Barthet, J., Lobina, B., Zabrocka, M., *The Use of SLAPPs to Silence Journalists, NGOs and Civil Society*, *European Parliament*, PE 694.782, 2021, p. 46.

92 Injac, Ž., "Supressing media freedom with lawsuits, Novi Sad Cultural Centre, 9 December 2019, https://www.kcns.org.rs/agora/gusenje-slobode-medija-tuzbama/, accessed on 18 October 2021

93 *Ibid*.

most likely provided is known as the *forum shopping*).[94] In addition, the real intent and goal of the claim is visible in a large number of lawsuits by the same plaintiff (or associated persons) against the same defendant in a relatively short period. Naturally, we have only mentioned some examples of the criteria for detecting these lawsuits, but these are not mandatory and depend on the case.

In 2018, the Committee of Ministers of the Council of Europe explicitly invited the states to consider adopting appropriate legislative solutions to prevent the occurrence of SLAPPs, and other forms of civil procedures restricting freedom of expression.[95] Since the number of these lawsuits is increasing in entire Europe, Human Rights Commissioner of the Council of Europe released a statement in October 2020 titled "Time to take action against SLAPPs". This press release deals with this phenomenon and invites governments, journalists, organisations and individuals engaged in human rights protection and civil society to end this problem through joint action. The Commissioner specifically suggested three steps in approaching this phenomenon. The first would be preventing the filing of SLAPPs by allowing the early dismissal of such suits, with raising awareness among judges and prosecutors on this, then introducing measures to punish abuse, particularly by reversing the costs of proceedings and, in the end, minimising the consequences of SLAPPs by giving support to those who are sued.[96]

In the territory of the European Union, none of the states so far adopted anti-SLAPP (also known as SLAPP-back) legislation.[97] On the request of the Committee on Legal Affairs (JURI), the European Parliament has commissioned the expert study on this topic, published in June 2021. The study established that the EU and member states should adopt a series of anti-SLAPP measures, and that Brussels Ia Regulation and Rome II Regulation

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94 In the EU, this is enabled under the provisions of the Regulation Brussel Ia on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and provisions of Regulation Rome II on the law applicable to non-contractual obligations that are not applicable for defamation. For more information, see Heuting, L., Mileska, P., Seipp, T., "Strategic Lawsuits Against Public Participation threaten human rights and democracy. The EU must act", *Rule of Law*, 24 February 2021, https://ruleoflaw.pl/strategic-lawsuits-against-public-participation/, accessed on 18 October 2021

95 Committee of Ministers (Council of Europe), Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, 7 March 2018, para. 1.3.4, https://search.coe.int/cm/Pages/result_–details.aspx?ObjectID=0900001680790e14, accessed on 19 October 2021

96 Commissioner for Human Rights (Council of Europe), "Time to take action against SLAPPs", Strasbourg, 27 October 2020, https://www.coe.int/en/web/commissioner/-/time-to-take-action-against-slapps, accessed on 19 October 2021

97 Borg-Barthet, J., Lobina, B., Zabrocka, M., p. 5.

must be recast to ensure legal certainty and prevent forum shopping.[98] The study illuminates the solutions from other countries, the USA, Australia and Canada, especially emphasising the great procedural law reform in Quebec, whose legal system is the most similar to the EU Member States, compared to other mentioned.[99] In short, the Civil Procedure Code of Quebec provides for opportunity of the court initially dismissing the claim, but only if the court is satisfied that pleading is clearly unfounded, frivolous, intended to delay or if established that the proceedings is abused, that it is causing prejudice to another person, or attempting to defeat the ends of justice.[100] The study explained that the burden of proof should be divided, meaning that after the defendant in the main proceedings shows that the case concerns public participation in a matter of public interest, the burden shifts to the plaintiff to demonstrate that the claim does not satisfy the relevant definition of a SLAPP, that a claim has merit in law or is founded on a factual basis.[101] Additionally, it is suggested to propose some penalty measures to be imposed on the plaintiff, and these penalties might include either compensation of costs to the defendant or fines, not only to satisfy the defendant, but also to dissuade others from using this mechanism.[102]

A large part of the study analyses the provisions of the Model EU Directive on Providing Protection from Abusive Lawsuits against Public Participation, composed in 2020 on the initiative of the non-governmental organisations, as the basis for adopting appropriate EU-level instruments.[103] First, it is obvious from the title that "strategic lawsuits" are replaced with "abusive lawsuits", to indicate that potential victims who stated they were attacked through SLAPP do not have to prove that this case is a part of a broader strategy to suppress criticism.[104] The Model Directive recognised two elements in abusive lawsuits against public participation. The first element means that behaviour from which the claim arises expresses a form of public participation by the defendant on a matter of public interest, while the second refers to abusive nature of the claim that rests in the claim's lack of legal merits, in its manifestly unfounded nature or in the plaintiff's abuse of rights or of process law.[105] The Model Directive offers a

98 *Ibid*.

99 *Ibid*, p. 18.

100 Articles 51-56 Civil Procedure Code of Quebec, CQLR c C-25, see also Borg-Barthet, J., Lobina, B., Zabrocka, M., p 18.

101 Borg-Barthet, J., Lobina, B., Zabrocka, M., p. 48.

102 *Ibid*, 49-50.

103 Ravo L., Borg-Barthet, J., Kramer, X., "Protecting Public Watchdogs Across the EU: A Proposal for an EU Anti-SLAPP Law", *Liberties*, 2020, https://www.ecpmf.eu/wp-content/uploads/–2020/11/anti-SLAPP-model-directive-paper_final.pdf, accessed on 20 October 2021

104 Borg-Barthet, J., Lobina, B., Zabrocka, M., pp. 18-19.

105 *Ibid*.

more concise definition, in relation to lawsuits "*that arise from a defendant's public participation on matters of public interest and which lack legal merits, that are manifestly unfounded, or characterised by elements indicative of abuse of rights or of process laws, and therefore use the judicial process for purposes other than genuinely asserting, vindicating or exercising a right*".[106] The EU Member states should implement the necessary measures to enable courts to dismiss claims, in full or in part, during preliminary assessment, following that the defendant provides sufficient evidence on his/her form of public participation on a matter of public interest and that one of the following criteria is met – the claim lacks legal merits, it is manifestly unfounded, or characterised by elements indicative of abuse of rights.[107] In its determination whether the conditions are satisfied, the court should, inter alia, consider the following: prospects of success of the claim, having regard to the compliance with applicable ethics rules and standards of the conduct constituting the object of the claim in the main proceeding; the disproportionate, excessive or unreasonable nature of the claim, including the amount of damages claimed by the plaintiff; the nature and seriousness of the harm likely to be or have been suffered by the plaintiff and his/her choice of jurisdiction; the envisageable costs of proceedings; the existence of multiple claims asserted by the plaintiff against the same defendant in relation to similar matters; whether the defendant suffered from any forms of intimidation, harassment or threats on the part of the plaintiff before or during proceedings, and the actual or potential chilling effect of the claim on others regarding public participation on the concerned matters of public interest.[108]

It is encouraging that the European Commission has founded an expert group on SLAPP matters, additionally demonstrating the EU interest to tackle this problem.[109]

As pointed out, this is a global phenomenon also present in Serbia. The analysis demonstrated that some lawsuits filed before the Higher Court in Belgrade contain specific elements of SLAPP, but due to the absence of clear criteria and adopted definitions, it is impossible to establish that with certainty at the moment. Namely, various media outlets reported that company "Millennium team doo", engaged in some of the largest construction projects in the country, had filed suits against several dailies, portals, local media and cable TVs that covered the press conference of the opposition politicians in February 2021 in Vranjska banja and Leskovac. The business

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106 Article 3 para 1, point 1) of the Model, videti Ravo L., Borg-Barthet, J., Kramer, X., p. 30.

107 Article 5 of the Model Directive, see Ravo L., Borg-Barthet, J., Kramer, X., p. 33. For more detailed review, see Borg-Barthet, J., Lobina, B., Zabrocka, M., p. 20.

108 Article 6, para. 2 of the Model, see Ravo L., Borg-Barthet, J., Kramer, X., p. 34.

109 https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=3746 , accessed on 20 October 2021

activities of this company and suspicion of its illegal actions were referred to at these conferences.[110] It is indicative that the media sued did not express their value judgements or even comment on this company, as they just conveyed and quoted press releases and politicians' statements from the conference concerned.[111] In addition, according to the media outlets sued, the amount of claims is unusually steep, ranging from RSD 11,740,770 (about EUR 100,000) to RSD 23,481,541 (about EUR 200,000).[112] In collecting data for this analysis, the researchers obtained the report of the Higher Court in Belgrade, establishing that from March to May 2021, this company filed in total 34 claims in this court, and 27 claims were against the media outlets, which was 79% of total claims. The remaining claims refer to political parties and politicians who spoke about this company during their public appearance.[113] It is important to emphasise again that this referred only to claims filed before the Higher Court in Belgrade, and there is no information if this company had, and to what extent, filed claims before other courts in Serbia in the same period. Taking into account the characteristics of SLAPP suits, first, as in this specific case, the majority of claims are filed by the same plaintiff against the similar type of defendants (the media), the high amount of damages requested, and the fact that the factual basis is similar or the same, makes this case highly evocative of strategic lawsuits against public participation, with the primary of goal of preventing the public from being informed on business activities and potential irregularities related to this company, and preventing further coverage of this topic. In April 2021, the Coalition for Media Freedom characterised this event as "pressure on media".[114] The court reaction in the "Millennium team" case will be determinative for future actions and will define the future course of fighting against

110 "Millennium team" filed multiple suits for "harming company's reputation", *Danas*, 6 April 2021, https://www.danas.rs/vesti/drustvo/millenijum-tim-podneo-vise-tuzbi-za-nanosenje-stete-ugledu-kompanije/, accessed on 21 October 2021; "Millennium team" sued Info Vranjske for reporting from People's Party press conference", *JUGpress*, 6 April 2021, https://jugpress.com/millennium-team-tuzio-i-info-vranjske-zbog-izvestaja-sa-press-konferencije-narodne-stranke/, accessed on 21 October 2021; "Guests for N1: Why Millennium team selectively sued specific media, and not all the media covering conferences", *N1 Serbia*, 12 April 2021, https://rs.n1info.com/vesti/gosti-n1-sto-milenijum-tim-nije-tuzio-sve-medije-koji-su-preneli-vec-odredjene/, accessed on 21 October 2021

111 *Ibid*.

112 *Ibid*, see also "Millenium team" sued JUGpress too, but for EUR 200,000", *Info Vranjske*, 6 April 2021, https://infovranjske.rs/info-millennium-team-tužio-i-jugpress-ali-za-200000-evra/, accessed on 21 October 2021

113 The Higher Court in Belgrade Report Su II-17a No. 158/21 of 22 June 2021, obtained based on the request for information of public importance.

114 "Coalition for media freedom: pressure on media by threatening with high damages", IJAS, 6 April 2021, https://nuns.rs/koalicija-za-slobodu-medija-pretnje-visokim-iznosima-za-naknadu-stete-predstavljaju-pritisak-na-medije/, accessed on 21 October 2021

this phenomenon in Serbia. It is, therefore, of utmost importance to actively monitor and analyse the case law development on this matter since in the majority of cases mentioned, the trials have just started.[115]

Finally, irrelevant of the fact that Serbia is not an EU member at the moment, we should profit from the wave of a collective fight against SLAPP phenomenon and start amending relevant laws, act timely and allow courts to tackle this issue appropriately. When amending the laws, it is essential to take into account that anti-SLAPP provisions do not restrict the right of access to court,[116] but prevent the abuse of concept by the plaintiffs. Once again, although the EU decisions and acts are not legally binding in our country, it is worth reminding of the European Court of Human Rights position that Article 10 of the European Convention on Human Rights, as the legal source directly applicable in our country, shall also mean "*the positive obligations of the state to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even irritating or shocking to the latter*"[117]. Ignoring the SLAPP phenomenon is definitely not in line with the state's obligation referred, especially considering that filing SLAPP suits is just one aspect of innovative methods to restrict freedom of expression in society today. The practice shows that a mere threat of a lawsuit has a chilling and silencing effect and that those exploiting this mechanism often set up funds to offset the costs of third parties willing to pursue litigation against their common target, usually journalists and media companies.[118] The state will have a hard time preventing such covert and malicious methods in comparison to official lawsuits filed in court. It is therefore unacceptable to allow further spreading and evolving of this phenomenon. The timely reaction is essential, primarily to protect freedom of expression and media freedom, but also to alleviate courts of a number of cases and prevent abuse of legal proceedings.

115 "Pre-trial hearing held in the case Millennium team vs Vranjske News", *Vranjenews*, 7 October 2021, https://www.vranjenews.rs/news/održano-pripremno-ročište-u-procesu-millennium-team-vs-vranje-news, accessed on 21 October 2021

116 Borg-Barthet, J., Lobina, B., Zabrocka, M., p. 30.

117 *Uzeyir Jafarov v Azerbaijan*, App. no 54204/08, Judgment of 29 January 2015, para. 68.

118 Borg-Barthet, J., Lobina, B., Zabrocka, M., p. 8.

PROTECTION OF JOURNALISTS AND MEDIA WORKERS UNDER CRIMINAL LAW

The analysis Protection of Freedom of Speech in the Judicial System of Serbia on the criminal protection was carried out by Slavko Ćuruvija Foundation (SCF) and Judicial Research Center (CEPRIS) during 2020. This document included the analysis of public prosecutor's offices actions, and final and binding judgments for criminal offences against journalists and media workers from 2017 until 2020. The conclusions of the analysis showed certain trends in the criminal justice system that were used as foundations for the continuation of the research.

The conclusion of the previous analysis stated that most cases were not ruled by the court's decision but the prosecutor's decision (more than 70 per cent of resolved cases). It was used as a starting point to create a special analysis of the cases that ended by the prosecutor dismissed a criminal complaint. Moreover, it was a basis for investing causes and consequences of such actions to overcome the obstacles in protecting journalists. The first part of the analysis refers to the cases of dismissed criminal complaints on criminal offences against journalists aimed at drawing conclusions to improve the protection of journalists and their safety in the judicial system of Serbia.

The second part of the analyses in criminal protection strives for the same goal, referring to completed proceedings with final and binding judgments for the criminal offence of endangerment of safety of persons performing tasks of public importance from Article 138, paragraph 3 of the Criminal Code (CC). Besides persons performing tasks of public importance regarding information, this Article of the Code refers to the President of the Republic, members of Parliament, Prime Minister and members of Government, judges, public prosecutors and their deputies, lawyers and police officers. As the last year analyses included exclusively final and binding judgments on criminal offences against journalists, the research team was facing a matter of equal public protection and equal treatment of all persons referred to under this Article before the

courts and other public authorities, as guaranteed by the Constitution of the Republic of Serbia.[119]

The methodology for drafting the analysis included collecting, processing and analysis of documentation on the dismissed criminal complaints by the prosecutor's offices related to journalists' victims, and final and binding judgments on criminal offences of endangerment of safety referred to in Article 138 of the Criminal Code regarding all persons performing tasks of public importance from 2017 until the end of March 2021. As in the former analysis, it was of particular importance to learn about the outcome of judicial proceedings (penal policy) for criminal offence of endangerment of safety to compare actions and exercise of rights to equal legal protection and treatment before courts and other public authorities.

By the end of May 2021, in the data collection process, a request was sent to the representatives of the Public Prosecutor's Office from the Standing Working Group for Journalist Safety for obtaining documentation on 73 previously identified cases of dismissed criminal complaints on criminal offences against journalists[120]. By the end of September 2021, the entire documentation for 69 cases of dismissed criminal complaints was received, including decisions on objections of the injured parties. This documentation represents a sample of more than 94 per cent of dismissed criminal complaints cases regarding criminal offences against journalists.

In March and April 2021, the requests for information of public importance were submitted to all higher courts in Serbia (25) for information about criminal offences of endangerment of safety under Article 138 para. 3, as types of courts competent to act upon appeals in these cases, and the first instance courts for the cases of High Public Prosecutor's Office, Special Unit for Cyber Crime. Except the Higher Court in Zaječar, all courts have responded to the request of Slavko Ćuruvija Foundation efficiently and within the legal deadline. Most of the courts did not have cases related to criminal offence from Article 138, para. 3 of the Criminal Code[121]. The final and binding judgments were delivered only by the higher courts in Belgrade (46 judgments), Kruševac (two judgments) and Sremska Mitrovica (one judgment). As some of the delivered judgments were not relevant since they did not refer to the subject of the request or the analysis, the final number of cases the research team had at its disposal

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119 Constitution of the Republic of Serbia, "Official Gazette of RS", No. 98/2006, Article 36, Right to equal protection of rights and legal remedies

120 See the analysis Protection of Freedom of Speech in the Judicial System of Serbia, p. 97

121 There might be some reservations that the courts failed to adequately comprehend the essence of the request for information of public importance (some courts response was that the higher courts did not act upon such cases, although they are competent to act upon appeals in these cases).

was 42 final and binding judgments for endangering safety of persons performing tasks of public importance who were not journalists.

Cases resolved by the prosecutor's decision

The subject of this part of the analysis concerns 69 cases of reported criminal offences against journalists and media workers, which were ruled by the prosecutor's office decision, based on the records of the Republic Public Prosecutor, either by dismissing the criminal complaint and making an official note that there was no foundation to initiate criminal proceedings or by applying the institution of deferred criminal prosecution (principle of opportunity) in the period from 2017 until the end of March 2021.

The structure of criminal offences in analysed cases

There were **13 different criminal offences** in 69 analysed cases ruled by the prosecutor's decision. In 15 cases, there was no legal qualification of the offence since these referred to various types of reported and recorded events described in the official note as events that do not meet the requirements for initiating the proceedings. Specific criminal complaints include a higher number of reported offences, therefore, the total number of reported criminal offences is somewhat higher (75) than the number of complaints, i.e. the number of analysed cases (69).

CC Article	Criminal offence	TOTAL reported criminal offences
138	Endangerment of safety, para. 1 Endangerment of safety, para. 3[122]	12 30
138a	Stalking	2
137	Ill-treatment and torture, para. 3[123]	1
122	Light bodily injury	1
121	Serious bodily harm	1
144	Unauthorised photographing	1
145	Unauthorised publication and presentation of another's texts, portraits and recordings	1

122 We underline here this refers to para. 3 of the criminal offence of endangerment of safety since this paragraph refers to protection of the President of the Republic, members of Parliament, Prime Minister, Government members, Constitutional Court Judge, Judge, Public Prosecutor and Deputy Public Prosecutor, lawyer, police officer or persons performing tasks of public importance to information.

123 We underline here that the para. 3 of this criminal offence refers to perpetrator who is an official, and the offence was committed in discharge of duty.

148	Violation of freedom of speech and public appearance	1
149	Prevention of printing and distribution of printed material and broadcasting, para. 1 and para. 3[124]	2
329	Impersonation[125]	1
334	False reporting	1
344	Violent behaviour	4
387	Racial and other discrimination, para. 4	2
N/N	Various types of recorded and reported events not qualified in KTR (other criminal cases) prosecutor's records	15
TOTAL	13 different criminal offences	75

The majority of dismissed criminal complaints refer to criminal offence of **endangerment of safety from Article 138 of Criminal Code (42 cases or more than 60 per cent).** In two thirds (30), it was mentioned that the cases related to a qualified type of offence that was against a person performing tasks of public importance in information (paragraph 3), while one third of the cases (12) did not have such particular qualification, but referred to the basic type of this criminal offence (para. 1). As the action of committing such criminal offence consists of threat to attack life or body of a person or a person close to him/her, threatening to the tranquillity of a person, it could be concluded that the majority of reported cases referred to the threats. If we run this data across the cases before acting prosecutor's offices, the majority of cases were processed by the Special Prosecutor's Office for Cyber Crime (*for the purpose of this text, the English abbreviation SPOCC will be used*). Therefore, it could be concluded that most of the threats (43 per cent of cases) were made on the internet and by using communication technologies.

To establish the existence of such criminal offence it is important that the offence concerned meant a **serious threat,** since it is criminally relevant only if it is serious and **must refer to the attack on life and body of the injured party**. Besides, the threat anticipating the attack on life or body of the injured party, must be **clear and unambiguous** meaning that the perpetrator of the offence will in fact attack life or body of the injured party, irrelevant if he/she intends to do it. In addition, it is important that the threat caused distress, anxiety or fear for life and physical integrity with the injured party. This position from the court and prosecutor's offices case law resulted in dismissing the majority of criminal complaints on the events that included conditional threats.

124 For para. 1 of this criminal offence the prosecution is undertaken under proposal, while para. 3 refers to the perpetrator who is an official, and the offence is prosecuted *ex officio*. In two cases mentioned, one case referred to an official.

125 In this specific case, the criminal complaint was filed against persons impersonating as officials or members of the military.

Threats such as "I will destroy you as a journalist unless you write what I want"; "Beat it, you bitch, get gone, I am crazy, I have a certificate for that… I can kill you right now and won't go to court for that", or "What do you want, be careful if the video appears somewhere… Ask around about me, you will not get away with that, if this video leaks somewhere, you are doomed, we are not done yet", from the dismissed complaints were interpreted as threats conditioned by some future events, and were not sufficiently serious, clear, unambiguous and specific.

Regarding this specific criminal offence, in the analysed documentation it was detected that criminal complaints were either dismissed because the threat was not serious, clear and unambiguous, and not directed against life and body, or there was an absence of feeling of endangerment and fear with the passive subject, i.e. the injured party (the journalists stated that they did not feel endangered, they did not participate in the criminal prosecution and did not submit a compensation claim). In the majority of the dismissed complaints, the competent prosecutor's offices explained that reported actions constituted the criminal offence of insult from Article 170 of the Criminal Code, prosecuted under private action.

Through analysis of dismissed criminal complaints on criminal offence of endangerment of safety, it was obvious that the prosecutor's offices restrictively interpret the notion of threat in accordance with the case law. On the other hand, the journalists did not report feelings of endangerment and fear, did not submit compensation claims, which was a sign for the prosecutor's office that there were no elements of this criminal offence, therefore such criminal complaints also get dismissed.

The journalists' association filed a criminal complaint on endangerment of safety against an anonymous person administering the Facebook page "Serbia our Country" because of the post with the photo of a journalist and text: "the editor of Beta news agency has been publishing images of gallows and guillotine for days, justifying violence. Would you support gallows and guillotine in front of your door, Beta Agency? Is this the better Serbia?", followed by numerous comments with threats and insults. Since it was obvious that this post was not a direct threat, the prosecutor's office estimated that there were no elements of the criminal offence of endangerment of safety, but that it might be considered criminal offence of **racial and other discrimination**. Since the case was archived only with a short official note, it was not possible to conclude which type of comment regarding the post concerned instructed the prosecutor's office towards the criminal offence of racial and other discrimination[126].

[126] Article 387 of Criminal Code, para (4) "Who spreads or otherwise makes publicly available texts, images or any other representation of ideas or theories advocated or encourages hatred, discrimination or violence against any person or group of persons based on race, colour,

In other two cases, the journalists' associations used precisely this model and in a similar situation they filed criminal complaints on offences against journalists citing racial and other discrimination. The complaints were dismissed for both, and cases were closed in another form.

This model repeated on the page "Serbia our Country" but for a different journalist. The photo of a journalist was posted with the text "Vojvodina separatist, and Islam fundamentalist... who despises Serbia and Serbs". It has been mentioned in the criminal complaint that it was necessary to take into consideration the subsequent comments since it was a proof that the post concerned created consequences reflected in inciting hatred, discrimination and violence against journalist. The post was **sponsored**. The journalist stated he was not worried by the post itself but the number of comments that followed, mostly offensive, but also threatening (threats of beating, death and similar). In this case the prosecutor's office dismissed the criminal complaint with the decision reasoning that "mentioned post, although it could be considered offensive, obviously does not stand for any particular ideas or theories, and it does not advocate or encourage violence or hatred towards the injured party based on any of their personal characteristics, as the author of the post concerned had only expressed his personal attitude on religious and political choices of the injured party".

In another case, the prosecutor's office archived the case with an official note. The case referred to the post on the Facebook page "Serbian Public". The prosecutor's office established that the post did not contain ideas or theories advocating or encouraging hatred, discrimination or violence against a journalist, but potentially just included false or offensive allegations related to the manner the journalist carried out her job, and the profession was not a personal characteristic that could be used to discriminate against some person. Unlike the previous case when the injured party was given a possibility to submit objection (which was adopted), in this case the injured party was denied the possibility to object although the model of behaviour was similar.

Concerning the **physical attacks**, the majority of dismissed criminal complaints referred to **violent behaviour** from Article 344 of Criminal Code (four cases), and one case each for **light bodily injuries** (Article 122 of Criminal Code, para. 2, prosecuted *ex officio*) and **serious bodily harm**. However, in the event of the serious bodily harm, the case of a more severe type of this offence was not prosecuted (from paragraph 6, when offence was committed against a person performing tasks of public importance punishable by imprisonment of one to eight years), but the case of a basic type of this offence (punishable with imprisonment of six months to five years). We should mention that this case referred to the editor of the local portal Žig info, and it preceded to

religious affiliation, nationality, ethnic origin or other personal property, shall be punished with imprisonment of three months to three years".

burning of Milan Jovanović's house, a journalist from the same news desk. The first instance guilty verdict for the arson case was revoked at the end of 2021 and the retrial was ordered. The criminal complaint on serious bodily harm against the identified person was rejected, and the objection against the prosecutor's action was submitted, but dismissed as unfounded. Although the case was officially closed by the dismissal of the criminal complaint referring to the identified suspect, the case was restarted and currently could be found in active prosecutor's cases filed as KTN case, meaning that this was a case with unknown perpetrator. It has been three years since this serious criminal offence against life and body was committed, and the perpetrator is still unknown, so it could be concluded that the investigation was not efficient it this case.

As time goes by, the chances of solving the cases diminish, at least when it comes to the most severe offences against life and body; therefore, it is necessary to carry out fast and efficient investigation immediately after the event, which could be seen in good practice examples.

In at least four cases of dismissed complaints, the offences referred were **committed by officials in discharge of official duty** – ill-treatment and torture[127] by the police during the protests in 2008; prevention of printing and distribution of printed material and broadcasting[128], or regarding the discharge of duty – impersonation of an official or a member of military or endangerment of safety and preventing journalists from recording events relevant for the public interest.

The most drastic case is the police beating of the journalists during the 2008 protests organised by the Serbian Radical Party. Ten years after the event (2018), the High Public Prosecutor's Office in Belgrade sent a case to the competent First Basic Prosecutor's Office on the criminal offence of ill-treatment and torture by the official in discharge of duty. The First Basic Prosecutor's Office carried out several investigative actions in the course of six months, including re-examining of police officers who were on duty on the day concerned based on the previous report. Since 10 years after the event the examined police officers were not able to identify their colleagues who inflicted injuries to the journalists in this specific case, the prosecutor's office dismissed the 2008 police report that was considered as the criminal complaint.

The analysed documentation did not include cases of dismissed criminal complaints of police officers hurting journalists during demonstrations in July 2020[129],

127 Article 137, para. 3 of Criminal Code

128 Article 149, para. 3 of Criminal Code

129 In relation to these events, the journalists' associations stated that during the protests from 7 to 11 July 2020 there have been 21 attacks on media workers who covered these events (IJAS, 28 journalists, cameraman and photo journalists were attacked and hindered in their tasks, reporting from protests in Belgrade, Niš and Novi Sad. Among them, 14 were injured while 6 of

which inarguably happened so the complaints were submitted. Some of these cases are active, and by the end of 2021, the official report of the police internal control regarding these events was still pending. However, the documentation included the case of a dismissed complaint **against citizens** regarding these events. When covering and live reporting from the protests, TV reporter and cameraman were approached by a masked young man who threatened them and knocked microphone from reporter's hand, that was documented by a video. In his statement, journalist said that he had not felt threatened, while the cameraman said he was afraid for himself and his colleague safety. The suspect stated that he had no intention to harm anyone, but only expressed his dissatisfaction, and the injured parties stated that they were not interested to press criminal charges against the suspect, nor they wanted to submit a compensation claim. Since the feeling of uncertainty, endangerment and distress are inseparable elements of this criminal offence, as it was estimated the suspect's actions had not triggered those feelings, it was concluded that the reported offence did not constitute the criminal offence so the complaint was dismissed.

In another case, the prosecutor's office found that there were no criminal offences of endangerment of safety and violent behaviour during the convention organised for the inauguration of President of the Republic in 2017, when the participants of the gathering forcefully pushed away citizens and media workers. Five criminal complaints of seven injured parties were dismissed by the decision. The suspects claimed that they were present as citizens and supporters of the Serbian Progressive Party (SNS), denied that they threatened anyone, and claimed that they only distanced citizens and journalists from that place to prevent "lynch" and potential unrest. In its reasoning, the prosecutor's mentioned that "there is no reasonable doubt these criminal offences were committed, though there could have been a violation of public order and safety… The suspects' actions did not cause significant endangerment of citizens' tranquillity nor heavier violation of public order and safety, as, in fact, the gathering has continued until the end, when the citizens have peacefully left." In the repeated proceedings, after the objection, which was adopted, before the High Public Prosecutor's Office by one of the injured parties, the criminal complaint was dismissed again. The prosecutor's office concluded, "It is obvious that none of the suspects never threatened to attack her life and body, so her feeling that her safety was threatened was not, in fact, caused by the actions undertaken by the suspects in her regard, as such fear was obviously irrational". It could not be discerned from the analysed document if the prosecutor's office had filed a motion for initiating misdemeanour proceedings for violation of public peace and safety, as mentioned in the reasoning.

them had to receive urgent medical assitance (JAS). https://rs.n1info.com/vesti/a619872-uns-za-pet-dana-napadnuto-i-ometano-28-novinara-i-medijskih-radnika/

In addition to such most drastic examples regarding public gatherings, the dismissed complaints refer to the reported events regarding the protests against Pride parade, when participants caused light bodily injury to a journalist, obstructed the recording and made threats at the polling station, family protest, and various other manifestations and shows when journalists were moved away from the stage during the concert or the security prevented them to join the event.

The number of dismissed criminal complaints, related to public gatherings and protests covered by journalists and media workers for the interest of public is not negligible. Journalist are being threatened at protests both by the protesters and officials, police and security, so news desks have to assess risks and train journalists how to cover protests. On the other hand, special attention should be paid to cases when officials in discharge of duty are suspects, as it was noticed that investigations in such cases take long and turn inefficient.

In only few cases (three), criminal complaints are dismissed since the reported offences are prosecuted under private action (Article 144, para. 1 – unauthorised photographing and Article 145, para. 1 – unauthorised publication and presentation of another's texts, portraits and recordings) or undertaken by the prosecutor's office (Article 149, para. 1 – prevention of printing and distribution of printed material and broadcasting).

It should be mentioned that in at least one case from the analysed documentation it was observed that the prosecutor's office closed the case with the official note establishing that no elements of the criminal offence were recognised, however, other criminal offence elements were recognised which should have been prosecuted *ex officio*. Yet, the prosecutor's office did not continue with prosecution for the other offence prosecuted *ex officio*, it failed to forward it to the other competent prosecutor's office for further procedure and archived the case: "The case should be archived since from the criminal complaint against the anonymous person for endangering safety pursuant to Article 138 para. 3…it was established there was no basis for initiating criminal proceedings against any person for any offence under the competence of Special Prosecutor's Office for Cyber Crime to be prosecuted *ex officio*, though it could be potentially qualified as criminal offence of racial and other discrimination from Article 387, para. 4".

However, the elements of criminal offence prosecuted under private action (insults) or elements of misdemeanours from the Law on Public Order were recognised in the majority of cases, so the motion for initiating misdemeanour proceedings was filed in several cases, while criminal complaint was dismissed.

Acting prosecutor's office and manner of ending proceedings before the prosecutor's office

Among 69 analysed cases finally resolved by the decision of the prosecutor's office, the total number of participating prosecutor's offices was 20 basic public prosecutor's offices (BPPO) and the Special Prosecutor's Office for Cyber Crime (SPOCC). The majority of cases were resolved by the prosecutor's offices in Belgrade (38 cases or 55 per cent), Special Prosecutor's Office for Cyber Crime with 26 per cent, First BPPO 21.7 per cent, and five complaints (7.2 per cent) were dismissed before the Second and Third BPPO in Belgrade. The 2020 analysis revealed that the majority of active, open cases (more than 70 per cent) are before Special Prosecutor's Office for Cyber Crime and the First BPPO. However, the majority of the SPOCC cases were resolved with final and binding judgments, usually by plea agreements, and this office most commonly used the institution of deferred criminal prosecution (principle of opportunity) to sanction criminal offenders for offences against journalists.

Before prosecutor's offices at the local level, there were altogether 31 dismissed complaints (45%), with the note that Special Prosecutor's Office for Cyber Crime is acting prosecutor's office for the entire territory of Serbia.

Acting prosecutor's office

Competent prosecutor's office	Total number of cases	Decision on dismissing criminal complaint	Official note of no foundation to initiate criminal proceedings
Special Prosecutor's Office for Cyber Crime	18	11	7[130]
I BPPO	15	9	6
II BPPO	2	2	0
III BPPO	3	3	0
BPPO Leskovac	4	3	1
BPPO Jagodina	3	3	0
BPPO Zaječar	2	2	0
BPPO Zrenjanin	3	3	0
BPPO Mladenovac	2	2	0
BPPO Valjevo	2	2	0
BPPO Stara Pazova	2	2	0
BPPO Novi Sad	1	1	0
BPPO Sombor	1	1	0
BPPO Prokuplje	1	1	0

130 In one case, the official note was made to archive the case since the BPPO in Niš dismissed a criminal complaint regarding the event of identical factual and legal basis since the suspect had met the obligation ordered by the decision on deferred criminal prosecution of 2016.

BPPO Novi Pazar	2	1	1
BPPO Brus	1	1	0
BPPO Vranje	3	2	1
BPPO Niš	2	0	2
BPPO Gornji Milanovac	1	0	1
BPPO Vršac	1	1	0
Total	69	50	19

How proceedings ended

Among the analysed cases that ended by the decision of prosecutor's office – 50 cases (72.5%) were concluded by the decision on the dismissal of criminal complaint, while 19 cases (27.5%) ended by the official note establishing there was no foundation to initiate criminal proceedings.

The essential difference between these two manners of ending the proceedings before the prosecutor's office lies in the (in)ability of the injured party to submit objection and demand exercise of their rights before higher prosecutor's office.

The dismissal of the criminal complaint is regulated under Article 284 of the Criminal Procedure Code[131], providing for that public prosecutor will dismiss a criminal complaint by its decision if it proceeds from the complaint that:

1) the reported offence is not a criminal offence which is prosecutable *ex officio*,
2) the statute of limitations has expired, or the offence is encompassed by an amnesty or a pardon, or there exist other circumstances which permanently exclude prosecution,
3) there are no grounds for suspicion that a criminal offence which is prosecutable *ex officio* has been committed.

The official note is a prosecutor's document and the Rulebook on administration in public prosecutor's office, not the law, regulates its form.[132] In criminal cases, public prosecutor or deputy public prosecutor shall undertake to compose an official note if during or at the end of the investigation or main hearing, he/she makes a decision to abandon further criminal prosecution, for the cases recorded in KTR[133] register if

131 Criminal Procedure Code ("Official Gazette of RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Constitutional Court Decision and 62/2021 – Constitutional Court Decision)

132 Rulebook on administration in public prosecutor's office ("Official Gazette of RS, Nos. 110/2009, 87/2010, 5/2012, 54/2017, 14/2018 and 57/2019)

133 KTR register includes various requests, complaints, proposals, reports and other submissions of public authorities, legal persons and citizens, and it is used to keep the records of any kind of

he/she decides there is no foundation to initiate criminal proceedings regarding described event under the criminal law.

The official notes must contain:

- Case procedure description and actions undertaken,
- Brief statement of the facts in chronological order, if not required otherwise,
- Legal assessment of the criminal event.[134]

The Rulebook also provides for detailed content of specific official notes.[135]

More than a quarter of prosecutor's offices cases (27.5%) were closed by the official note that there was no foundation to initiate criminal proceedings, meaning that for one quarter of closed cases the injured party did not have an opportunity to submit objection.

By analysing the official notes, it is established that the cases were archived since there was no foundation to initiate criminal proceedings regarding described criminal event. However, the descriptions of some events' essence and their detailed reasoning, including the analysis of criminal offences they relate to, make us wonder why it was decided to dismiss the complaint that denied the injured party the possibility of submitting objection.

Regarding the message on the social media "I will get you, you mother f*****. When I catch, you will walk naked back to Indjija. You, traitor, Jessy James", that referred to him, the journalist stated that he felt upset and scared and concerned for his own safety. In his statement, the suspect said that he was revolted by journalist's reporting, and he had no intention to threaten him, but to express his own dissatisfaction with the manner of reporting. Threats made in such manner, could be interpreted as conditional, and in other cases, the complaint would be rejected by a decision or, in more drastic cases, the criminal prosecution was deferred and the perpetrator was imposed with certain obligations.

The same decision was adopted regarding the reported threat made by phone "I will destroy you and your portal", but in this case, the journalist stated that he did not want the competent authorities to pursue any further actions since in the repeated

writing in public media and records of events relevant for the work of public prosecutor, unintelligible criminal complaints, that are not considered as any source of information on the criminal offence or perpetrator, and such complaints that for any other reasons are inappropriate for KT register – Rulebook on administration in public prosecutor's office, Article 136, Types of entry intro register

134 Rulebook on administration in public prosecutor's office, Article 97, Official notes in criminal cases

135 Rulebook on administration in public prosecutor's office, Article 98, Specific official notes

phone call all the disagreements were resolved, and he reported the case just out of precaution.

In one case, the offence of threats and insults in the street was reported with the injured party allegations that one of the suspects owned a gun. The suspects stated that they had approached the injured parties and asked them nicely why they posted their photos in the media, that no threats or swear words were included, and that no one had guns. Despite such description and conflicting statements, the prosecutor's office briefly concluded in its official note that no elements of criminal offence prosecuted *ex officio* were established. The short description of the statement of facts, not taking any other evidence and reasoning of the decision that was not detailed, raises doubt regarding the correctness of the prosecutor's office decision. If the prosecutor concluded that there was no reasonable doubt of criminal offence, the criminal complaint should have been rejected by a decision, that the injured party would have the right to object to the higher instance.

Other cases were ended with notes, although they also had elements of other criminal offences prosecuted under private action, such as criminal offence of insult (on reported offence of racial and other discrimination), or criminal offence of publishing other persons' texts, portraits or recordings (regarding reported criminal offence of stalking).

Regarding the content, one part of the official notes, especially before the SPOCC, does not include the reasoning as prescribed by a Rulebook, but only notes that the case is archived with a short assessment stemming from briefly inspecting the complaint. In addition, there is no notification in the official notes on whom the note should be delivered to, if at all. Out of 19 available cases, in only two official notes it was mentioned they should be delivered to the injured party, while in two cases it was mentioned that the notes were not be delivered, and in one case the reason for not delivering the note was specified – the person filing the complaint was not the injured party (the complaint was filed by the journalists' association).

According to everything said, it could be concluded that the practice of prosecutor's office in ending the proceedings is inconsistent. This is obvious as similar actions and events are concluded with official notes but also with dismissals of complaints. The prosecutor's offices should make their practice consistent and whenever possible end the proceedings by enabling the injured party to exercise their right of legal remedy. Moreover, prosecutor's offices should consistently inform the injured parties and persons filing complaints on the outcome of the proceedings concluded by the prosecutor's decision.

Deferred criminal prosecution

This section will refer to another manner of ending the proceedings before the prosecutor's office, when the injured party does not have the right of objection. Applying principle of opportunity or criminal prosecution deferment results in sanctioning suspects for committing criminal offence, and after the suspect meets the imposed obligations within the limited time, the criminal complaint will be dismissed by a decision.

Deferring criminal prosecution is set out by Article 283 of Criminal Procedure Code, providing for that public prosecutor may defer criminal prosecution for criminal offences punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one or more of the obligations provided for by the law[136] and fulfils them within established time limit. When ordering deferred criminal prosecution, the public prosecutor shall establish a deadline not exceeding one year for the suspect to fulfil the undertaken obligations.

If the suspect fulfils the obligation imposed by the order within the prescribed time limit, the public prosecutor shall dismiss the criminal complaint by a decision and notify the injured party thereof. In this case, as set out under the Criminal Procedure Code, the injured party has no right to submit objection to the decision of the prosecutor.

In 50 analysed cases of prosecutor's office dismissing criminal complaint against the suspect, **nine cases** (18 per cent) refer to dismissed complaint after fulfilling the obligations based on deferring criminal complaint.

The majority of Special Prosecutor's Office for Cyber Crime cases ended in this way – six out of 11 cases of dismissed complaints or 54.5 per cent of all cases of this prosecutor's office. Before the Third BPPO in Belgrade (one third of total number of cases ended by dismissal of criminal complaint before this prosecutor's office), BPPO Valjevo and BPPO Novi Pazar – one case per each office ended in this way.

136 1) to remedy the adverse consequence caused by the commission of the criminal offence or indemnify the damage caused; 2) to pay a certain amount of money to the account allocated for the payment of public revenues, used for humanitarian or other public purposes; 3) to carry out certain community service or humanitarian work; 4) to fulfil maintenance obligations which have fallen due; 5) to submit to an alcohol or drug treatment programme; 6) to submit to psycho-social treatment for the purpose of eliminating the causes of violent conduct; 7) to fulfil an obligation determined by a final court decision, or observe a restriction determined by a final court decision.

Principle of opportunity per prosecutor's office

Competent prosecutor's office	Total number of cases, dismissed complaints	Complaints dismissed based on principle of opportunity
I BPPO	9	0
II BPPO	2	0
III BPPO	3	1
Special Prosecutor's Office for Cyber Crime	11	6
BPPO Leskovac	3	0
BPPO Jagodina	3	0
BPPO Zaječar	2	0
BPPO Zrenjanin	3	0
BPPO Mladenovac	2	0
BPPO Valjevo	2	1
BPPO Vranje	2	0
BPPO Vršac	1	0
BPPO Stara Pazova	2	0
BPPO Novi Sad	1	0
BPPO Sombor	1	0
BPPO Prokuplje	1	0
BPPO Novi Pazar	1	1
BPPO Brus	1	0
Total	50	9

Regarding the structure of criminal offences in the cases closed through the application of the principle of opportunity, in eight cases, the suspects were charged for criminal offences of endangerment of safety from Article 138 of CC and in one case, it was the criminal offence of prevention of printing and distribution of printed material and broadcasting. However, only in one case there is a description of the act of perpetrating of the offence the suspect was charged for in the decision on dismissal of criminal complaint.

Because of the threat made: "Someone should throw a bomb on your news desk or hang you all together in Republic square!", the perpetrator was imposed a fine of RSD 250.000 (about EUR 2,127) to pay for humanitarian purposes and carry out 80 hours of community service. Regarding the court case law, but also prosecutor's practice of dismissed criminal complaints, this is a type of conditional threat, using a conditional verb, when the defendant will be acquitted or the complaint will be dismissed without any obligations imposed. This example shows that cases of conditional threats could still be sanctioned in a certain way despite established practice in courts and prosecutor's offices of dismissing criminal complaints on such offences.

In a court case on endangerment of safety of a person performing tasks of importance for public information, the Supreme Court of Cassation interpreted the

conditional threats completely opposite from the prosecutor as described in the previous case and acquitted the defendants who were previously convicted by a final decision. In the findings of this court, the specific comments referred to the injured party: "People can fight! You should f*** him, this stinky kid!"; or: "What a scumbag! I really have an urge to explain to him something with bats on his ugly face. Horrible person, a sadist", and: "I hope someone will close one or both eyes to this "eye-opener" person, at least for a few days", only contain **the defendants' desires** for something evil to happen to the injured party regarding threat to his bodily integrity, but do not contain a statement that the defendant will harm the injured party in that way. These words only referred to **what defendants thought should be done to the injured party, what was their urge** in relation to the defendant and **what they would like for someone to do to the defendant** regarding the endangerment of his bodily integrity, but **it did not imply clear and unambiguous threat that precisely these persons (defendants) would attack the body and life of the injured party, which is an important characteristic of this criminal offence**".[137]

This interpretation of the Supreme Court of Cassation is not preventing judicial authorities to process cases regarding conditional threats, wishes, opinions and urges of the defendants, when the injured parties are high government officials protected under the same Article of the Law (Endangerment of safety from Article 138, paragraph 3 of Criminal Code). Final and binding convictions (mostly based on plea agreements before the prosecutor's office, later only confirmed by the court), were adopted based on the words referred to high government officials, including:

(1) "We have never killed a president of the state before"; (2) "xxx,[138] I will find you. I swear I will find you and your people. God help me, I will come and find you and break all your bones. Amen"; (3) "B*** m*, you motherf****, you will get a bullet one day"; (4) "How can you talk about political representatives of Serbs in Haradinaj's Shqiptar government – that is high treason, traitors just like xxx!!! Bullet to their heads!!!"; (5) "They sure construct a lot around the city, with our money. We should have a sniper for xxx to take him out of his shoes" or (6) "What would you do to him, you would probably kill him? I would take him to the mountains, and then piece by piece".

However, there were cases of acquittals of suspects for conditional threats, wishes and opinions directed against government officials when the court was to decide on the merits regarding the following statements: (1) "Death to traitor xxx and

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137 Supreme Court of Cassation Judgment KZZ 1203/2015 of 20 January 2016, available at https://vk.sud.rs/sr-lat/kzz-12032015

138 The xxx mark was used to anonymize the personal names of state officials and persons to whom the insulting words referred

collaborators"; (2) "F*** you and all your kin, may God neutralise your family, and take away all your precious people, I will say prayers for you every day in church, may you and your family suffer, you bastard, you keep the complaints against the colleagues violating the law in your drawer, you confirmed that yourself, I will chase you away with smoke, I will f*** you, you twat, you won't be able to see what's coming", or (3) "When will you stop, you big-mouthed bastard? I will f*** dead xxx and up your flimsy a**, you, schmuck".

For the acquittals, the prosecutor's offices demonstrated readiness and initiated proceedings before the court despite the threats not being clear and unambiguous that precisely these persons (defendants) will attack the life and body of the injured parties. Before pronouncing her not guilty, in one case the defendant has spent six months in detention. It should be mentioned that often when the injured parties are high government officials there is no examination of subjective feelings of fear and endangerment for offensive words, as done by the rule if the injured parties are media workers, and if this element of the criminal offence is missing, the prosecutor's office shall dismiss the complaints by the rule and abandon initiating the court proceedings.

We think it is important to emphasise that threats of offensive words should not be relativized in any way whatsoever irrelevant to whom they were referred to – media workers or high government officials and public servants since it is equally horrendous and disturbing. However, the actions and practice of judicial authorities should be examined regarding different persons protected under the same article of the law for consolidating the case law, enabling equal legal protection of all protected persons under the equal conditions.

In other analysed cases of the dismissals of complaints based on deferred criminal prosecution there were no specific threats mentioned, or behaviour or actions that the suspect was charged for, so it was not possible to perform analysis and mutually compare the imposed obligations in order to ascertain whether the treatment before the government authorities was equal and the protection of rights, too. Our investigative team also failed to learn what those threats were including the inappropriate behaviour in these complaints by directly contacting one of the journalists, who was the injured party in three cases closed under the principle of opportunity. Namely, the journalist concerned filed several criminal complaints regarding different events, and regarding the outcome of the cases closed under the principle of opportunity, he was not officially informed on the outcome by the prosecutor's office.

About the obligations imposed to the perpetrators by the application of the institution of deferred criminal prosecution, the most common measure was the payment of the fine for the humanitarian purposes or other public purposes, ranging

from RSD 15,000 up to RSD 250,000 (about EUR 127 to 2,127). In two cases, the obligation of community service was imposed (in one case, cumulative with monetary obligations, and in other case, without the monetary obligation).

The principle of opportunity – imposed obligations

Competent prosecutor's office	Criminal offence	Imposed/fulfilled obligation	Time limit to fulfil the obligation
III BPPO Belgrade	Article 138, para. 1	EUR 425.00	Immediately, obligation fulfilled the following day
Special Prosecutor's Office for Cyber Crime	Article 138, para. 3	EUR 340.00	Eight months
Special Prosecutor's Office for Cyber Crime	Article 138, para. 3	EUR 255.00	10 months
Special Prosecutor's Office for Cyber Crime	Article 138, para. 3	EUR 340.00	No data. The order was issued five months after the event, and obligation was met five months after the issued order
Special Prosecutor's Office for Cyber Crime	Article 138, para. 3	EUR 2,127.00 and 80 hours of community service in PUC Greenery Belgrade	15 days for the fine and two months for community service
Special Prosecutor's Office for Cyber Crime	Article 138, s para. 3	80 hours of community service in PUC Lazarevac, funeral sector	Three months Obligation fulfilled for 13 days, from 10 until 23 January 2018
Special Prosecutor's Office for Cyber Crime	Article 138, para. 3	EUR 425.00	10 months
BPPO Valjevo	Article 138, para. 3	EUR 425.00 for recovery of flooded areas	Two months
BPPO Novi Pazar	Article 149, para. 1	EUR 127.00	One month

The highest fine of RSD 250,000 (about EUR 2,127.00) referred to the case of the *Srpski telegraf* editor as the injured party, with 15 days' deadline to meet the obligation. Along the monetary obligations, the defendant was obliged to complete 80 hours of community service in PUC Greenery Belgrade, cumulatively. Only in this case, the decision on the dismissal of the criminal complaint contained a description of the act of perpetrating the offence that the suspect was charged for that evidently was a conditional threat.

In other cases of dismissed criminal complaints based on the principle of opportunity, the imposed amounts of money were much less and relatively equal – RSD 30,000 to 50,000 (EUR 255.00 to 425.00). In these cases, the injured parties were mostly journalists of the independent media (one journalist in three cases) and journalists at the local level. The smallest amount of money to be paid was RSD 15,000 (about EUR 127.00) imposed to the defendant at the local level, with one-month time

limit. In one case, the obligation of the defendant was the community service of 80 hours, without a monetary obligation.

Such a great difference between the highest amount of money and the other amounts, opens the issue of different processing in specific cases – the defendant who was imposed with five times higher monetary obligation – was it because of the act of perpetrating or due to the identity of the injured party. As mentioned before, the act of perpetrating in the case with the largest imposed monetary obligation referred to the conditional threat against the tabloid editor as the injured party, while in other cases the act of perpetrating was not known, therefore it was not possible to draw a conclusion why in one case the imposed monetary obligation was five times higher compared to all other cases.

This case is analogous to the case of the high government official as the injured party, regarding both the act of perpetrating and the amount of monetary obligation imposed to the defendant under the institution of the opportunity. The information on this case was taken from the media since this analysis was based only on the documentation from the cases of journalists as the injured parties.

After he learned the information that two ministers from the Government of Serbia had spent a significant amount of money on wine, the suspect obtained the phone number of the Minister of Labour, Employment, Veteran and Social Affairs and sent her a message: "Did you enjoy the EUR 16,000 wine?", "You are lying to the people", "I will notify the media". The Minister reported the case, and the suspect was identified as Serbian citizen living abroad. On the first occasion he came back to Serbia, the members of the Security Information Agency waited for him at the airport and he was taken into custody for 48 hours since he was suspected to have stalked the minister. **The suspect confessed to the prosecutor that he did send the message, but he denied that he had threatened the minister and refused to reveal** the source of information on the movements and whereabouts of the government officials. We also learned from the media that in his case, the institution of deferred criminal prosecution was applied and he was imposed with a monetary obligation to pay RSD 200,000 (about EUR 1,700.00) for humanitarian purposes.[139]

It remains an open question whether this act of the suspect contains characteristics of the criminal offence he was charged for (stalking) or it was a criticism of the behaviour, accountability and work of the government official who was the injured party, yet, it is in the nature of her work to endure criticism. The messages: "Did

[139] "Did you enjoy the EUR 16,000 wine": Sent messages to Darija Kisić Tepavčević, and fined with RSD 200,000 for humanitarian purposes | Nedeljnik; Criticised Darija Kisić for the café bill, BIA arrested him - NOVA portal

you enjoy the EUR 16,000 wine?", "You are lying to the people", "I will notify the media", definitely did not constitute a threat to life and body from Article 138, para. 3, as the court interpreted those threats, as well as prosecutor's office in many cases of dismissed complaints when journalists were the injured parties. Such act of perpetrating does not signify the essence of the criminal offence of stalking from Article 138a of Criminal Code, which means that someone during a specific period of time persistently follows another person without permission or takes other actions with the aim of getting physically closer to such a person contrary to his/her will, attempts to establish contact with him/her directly or abuses personal data for the purpose of ordering goods or services. By analysing the case law, this act of perpetrating from the criminal offence would probably result in acquittal.

It is unquestionable that through application of the opportunity certain obligations are imposed to the defendants for criminal offences against journalists, even in the cases of conditional threats when the criminal complaints are usually dismissed without imposing any obligations. Such sanctioning of the defendants could be considered preventive, but the prosecutor's practice should be more aligned as there is a huge gap between imposed monetary obligations regarding, on the one hand, media workers from tabloids close to the government and high government officials, and on the other hand, independent journalists and local level journalists.

We would like to once again mention here the earlier problems regarding the application of the institution of the deferred criminal prosecution, referring to the great liberty of the prosecutors in applying this institution, including the absence of the higher instance control or potentially the court,[140] thus creating possibilities for different actions in similar or same situations. This creates unequal status of citizens, especially as the injured parties do not have the right to object the prosecutor's office decisions.

Statute of limitations

Among the analysed cases, there were no dismissed criminal complaints based on the statute of limitations on criminal prosecution. Nevertheless, we would like to draw attention to the case of dismissing criminal complaint 10 years after the event, although the complaint was not dismissed due to the statute of limitations. It is the case of journalist being beaten by the police during the protests organised by the Serbian Radical Party in 2008. The competent prosecutor's office received the case through High Public Prosecutor Office (HPPO) 10 years after the event (2018). Criminal complaint was dismissed due to the lack of evidence, and the reasoning mentioned that it was unquestionable that in this particular case the statute of limitations on

[140] Critical points in the system of safety of journalists, Slavko Ćuruvija Foundation, pp. 26–27

criminal prosecution expired, so it was not even considered. From the delivered documentation, it was not completely clear if the case was formed in the HPPO in 2008 or 2018[141], and it was not possible to establish if the case was withheld by the police for 10 years or the HPPO. As the police report dated from 2008, it is highly likely that the case was stuck for 10 years in the non-competent prosecutor's office.

In another case, the statute of limitations on the misdemeanour proceedings expired so the misdemeanour proceedings ended. The basic public prosecutor's office, 10 months after the security at the public gathering attacked the journalist during the event of 31 January 2019, submitted a motion for initiating misdemeanour proceedings against the suspect based on misdemeanour from Article 9 of the Law on Public Order (insults, violence, threats or fights) and archived the case with an official note. In February 2021, the proceedings before the Misdemeanour Court were terminated due to statute of limitations, that nevertheless occurred two years after the day of the committed offence.[142]

As in several analysed cases of dismissed criminal complaints the prosecutor's office submitted a motion for initiating misdemeanour proceedings, it is of particular importance to take care that time limits for statute of limitations on misdemeanour proceedings are much shorter.

Right to legal remedy

The Constitution of the Republic of Serbia[143] guarantees that everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests.[144]

Criminal Procedure Code, among other rights of the injured party, provides for that the injured party has a right to be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor and to submit objections on the public prosecutor's decision not to conduct or to abandon criminal prosecution.[145]

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141 In dismissed criminal complaints different numbers of HPPO cases are mentioned twice.

142 Law on Misdemeanours ("Official Gazette of RS", Nos. 65/2013, 13/2016, 98/2016 – Constitutional Court Decision, 91/2019 and 91/2019 – other law), Article 84, Statute of limitations for initiating and processing misdemeanour proceedings

143 Constitution of the Republic of Serbia, "Official Gazette of RS", No. 98/2006

144 Constitution of the Republic of Serbia, Right to equal protection of rights and legal remedies, Article 36

145 Criminal Procedure Code Article 50, Rights of the injured party

Public prosecutor shall undertake to **notify the injured party on his/her decision to dismiss criminal complaint,** discontinue the investigation or abandon criminal prosecution until the indictment is confirmed **and to advise him that he/she shall may submit an objection to the immediately higher public prosecutor.**[146]

Criminal Procedure Code provides for the obligation of the public prosecutor to notify the injured party within eight days about the dismissal of the criminal complaint and the reasons thereof and advise him/her of his/her rights, and if the criminal complaint was submitted by a police authority, he/she shall also notify that authority.[147] Special paragraph in this Article allows for public prosecutor to dismiss the criminal complaint on criminal offences punishable by a term of imprisonment of up to three years if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full, and in view of the circumstances of the case the public prosecutor finds that pronouncing a criminal sanction would not be fair. In this case, the provision of Article 51, paragraph 2 of this Code shall not be applied, which practically means that in such cases the injured party has no options to submit objections.

As mentioned before, the right of the injured party to submit the objection refers solely to those cases when the proceedings ended by dismissal, and not the official note. However, if the criminal complaint was dismissed by a decision based on the application of the institution of deferred criminal prosecution, the injured party also has no right of objection, but has the right to be notified on the dismissed criminal complaint.

The subject of our analysis focused on whether the dismissed criminal complaints included instruction of legal remedy. Out of 50 cases ended by the decision on dismissing criminal complaint, in 32 cases (or 64%) the decisions on the dismissal of the criminal complaints did not include the instruction of legal remedy, while it was included in 18 cases (36%).

Out of 18 public prosecutor's offices that ended cases in this way, the six prosecutor's offices consistently used the instruction of legal remedy, however, these prosecutor's offices did not have a large number of proceedings (one to three cases the most). However, the examples of poor practice belong to those prosecutor's offices that had the most cases. In Special Prosecutor's Office for Cyber Crime among the total of 11 cases (one fifth of all cases ended with dismissal) the injured party was not advised of the legal remedy in any of them, while only one case out of nine analysed cases of the First Basic Public Prosecutor's Office had an instruction of legal remedy.

146 Criminal Procedure Code Article 51, Objection of the injured party

147 Criminal Procedure Code Article, Article 284, Dismissing criminal complaint

Among nine cases resolved by the application of the principle of opportunity, the instruction of legal remedy about appeal or objection not being permissible could be found in only two cases, which belonged to prosecutor's offices at the local level. Remaining seven cases do not have this legal remedy. In only one case, the decision on the dismissal of the criminal complaint on this basis contained the information about whom it should be delivered. In direct communication with the journalists as injured parties, our research team received a confirmation that the injured parties did not receive official information of criminal complaint being dismissed based on principle of opportunity.

Competent prosecutor's office	Total decisions on dismissal of criminal complaint	With instruction of legal remedy	Without instruction of legal remedy
I BPPO	9	1	8
II BPPO	2	2	0
III BPPO	3	0	3
Special Prosecutor's Office for Cyber Crime	11	0	11
BPPO Leskovac	3	0	3
BPPO Jagodina	3	2	1
BPPO Zaječar	2	1	1
BPPO Zrenjanin	3	3	0
BPPO Mladenovac	2	0	2
BPPO Valjevo	2	1	1
BPPO Vranje	2	2	0
BPPO Vršac	1	1	0
BPPO Stara Pazova	2	2	0
BPPO Novi Sad	1	0	1
BPPO Sombor	1	0	1
BPPO Prokuplje	1	1	0
BPPO Novi Pazar	1	1	0
BPPO Brus	1	1	0
Total	50	18	32

Instruction of legal remedy is the first step of the injured party exercising their rights in the criminal proceedings of submitting the objection to the immediately higher public prosecutor. Such a high number of dismissed complaints without instruction of legal remedy prevents the injured parties to exercise their right so the prosecutor's offices should consistently use the instruction of legal remedy, as well as the information on the recipients of the copy of the legal document.

Moreover, the issue about legal remedy is to what extent the objection could be considered efficient and effective remedy, what is the frequency of its use by the injured parties and how higher prosecutor's offices decide on objections.

The injured party has a right to submit an objection within eight days from the day of the receipt of the notification and instruction of legal remedy. If the injured party has not been notified, he/she shall be entitled to submit an objection within three months of the date when the public prosecutor dismissed the complaint, discontinued the investigation or abandoned criminal prosecution. An immediately higher public prosecutor shall within 15 days of receiving the objection referred to in paragraph 2 of this Article, deny or uphold the objection by a decision against which an appeal or objection shall not be allowed. By the decision upholding the objection, the public prosecutor shall issue a compulsory instruction to the competent public prosecutor to conduct or resume criminal prosecution.[148]

Out of 41 analysed case[149], the objection on the decision of the first instance prosecutor's office was submitted in 13 cases, which is almost one third of cases (31.7 per cent). Out of these 13 cases, six of them had instruction of legal remedy, while seven cases did not include it.

Higher prosecutor's offices decisions on objections

Competent prosecutor's office	Case No. without opportunity	Number of objections	Dismissed as unfounded	Adopted
I BPPO	9	3	2	Once more dismissed 1 criminal complaint
II BPPO	2	1	1	
III BPPO	2	0	0	
Special Prosecutor's Office for Cyber Crime	5	1	1	
BPPO Leskovac	3	1	1	
BPPO Jagodina	3	1	0	Once more dismissed 1 criminal complaint
BPPO Zaječar	2	1	1	
BPPO Zrenjanin	3	1	1	
BPPO Mladenovac	2	0	0	
BPPO Valjevo	1	0	0	
BPPO Vranje	2	0	0	
BPPO Vršac	1	0	0	
BPPO Stara Pazova	2	2	2	
BPPO Novi Sad	1	1	0	1 No information on decision in repeated proceedings
BPPO Sombor	1	0	0	

148 Article 51 Criminal Procedure Code, Objection of the injured party

149 Subtracting nine complaints referring to opportunity when the injured party does not have right of objection out of the total of 50 decisions on dismissed criminal complaints

BPPO Prokuplje	1	1	0	Once more dismissed 1 criminal complaint
BPPO Novi Pazar	0	0	0	
BPPO Brus	1	0	0	
Total	41	13	9	4

Out of 13 submitted objections, in 9 cases the objections were dismissed as unfounded (69.2 per cent), while in four cases (30.8 per cent) the second instance prosecutor's office accepted the objection and issued an instruction to the competent public prosecutor to conduct or resume criminal prosecution. After additional actions implemented by the order of the higher public prosecutor's office, the criminal complaint was again dismissed in three cases, while for one case, there was no information in the analysed documentation about the decision on repeated proceedings.

Based on aforementioned, it could be concluded that the objection is not efficient and effective legal remedy for journalists to realise their rights of criminal protection. However, the injured parties still have the right to be informed and advised of legal remedy so the public prosecutor's offices should consistently apply instruction on legal remedy in their documents.

Conclusion

From the analysis of the dismissed criminal complaints on criminal offences against the journalists committed from 2017 until March 2021, it could be concluded that existing criminal protection of journalists is not sufficient, as the prosecutor's offices interpret the threats restrictively, in line with the existing case law, at least, when the injured party are journalists. Regarding the criminal offence of endangerment of safety of persons performing tasks of public importance in information, the majority of criminal threats are dismissed either because the threat is not serious, clear and unambiguous, or directed against life and body evidently, or the feeling of endangerment and fear is missing with the passive subject, i.e. the journalist as an injured party, which is interpreted by the prosecutor's offices as the case without elements of that criminal offence. However, it is obvious that this interpretation is not limiting actions in cases of the endangerment of safety of high government officials. Such cases are processed even when the threat is not clear and unambiguous and directed against life and body, and when the subjective feeling of threat is missing. The journalists at risk, their representatives and journalists' associations are trying to overcome the deficiencies in protection of rights of journalists under the criminal offence of endangerment of safety, and draw attention of the prosecutor's offices to the entire context of the attacks on journalists through qualification of other criminal

offences prosecuted *ex officio* (racial and other discrimination and stalking), but these attempts had little success.

It is obvious that through application of the institution of deferred criminal prosecution certain obligations of preventive character are imposed to the defendants regarding criminal offences committed against journalists, even when it comes to conditional threats, as in these cases, criminal complaints are usually dismissed without imposing any obligations. However, the difference in imposed obligations is evident when it comes to different injured parties – on the one hand, media workers in tabloids close to the government and high government officials, and on the other hand, independent journalists and local level journalists, so there should be the consolidation of the case law in the prosecutors' application of this institution.

Inconsistent case law of the prosecutor's offices is noticeable in the completion of the proceedings regarding the legal form. Similar actions and events are concluded with the official note that, on the one hand, establishes no grounds for initiating proceedings, and on the other hand, dismisses criminal complaints, so the injured parties will or will not have the opportunity to submit an objection. Based on the analysis of higher instance responses upon the objection of journalists as injured parties to the decision of the first instance prosecutor's offices, the conclusion is drawn that objection is not very efficient and effective legal remedy in exercising journalists' rights to criminal protection.

Such practice in protection of media workers could be improved either by broader interpretation of threats by the prosecutor's offices (as in the cases of other government officials being injured parties under the same article of the law or regarding the principle of opportunity), or by amending the criminal code to include the behaviour that causes feelings of distress, anxiety or fear with the media workers, which does not represent the essence of the criminal offence of endangerment of safety but it does indisputably create (negative) consequences on the freedom of expression.

It should be also emphasised that after certain period of time the chances of identifying the perpetrators and solving the cases of attacks on journalists are weakened, which particularly refers to physical attacks and attacks during public rallies and protests, when journalists are targets of attacks by both protesters and officials in discharge of duty, the police and security, since the practice demonstrated that the investigations in these cases are not sufficiently efficient.

The analysis of court proceedings ending with final and binding decision in prosecuting criminal offence of endangerment of safety of the President of Republic, members of Parliament, Prime Minister, members of Government, judges, prosecutors, deputy prosecutors, attorneys and police officers

In this part of the report, we analyse 42 proceedings that ended with a final and binding decision for the purpose of protecting the safety of persons under the provisions of the law regarding the most serious type of criminal offence of endangerment of safety (Article 138 para. 3 of Criminal Code).[150] This report will not include proceedings conducted to protect safety of media workers, since that was the topic of the last year analysis of the Judicial Research Center (CEPRIS) and Slavko Ćuruvija Foundation (SCF)[151]. However, in this report we will present cumulative data referring to the type of criminal sanctions imposed in proceedings conducted to protect safety of media workers. In order to learn whether the media workers in the judicial system of Serbia have been equally treated during the same period as other persons whose safety is protected by the qualified type of the criminal offence of endangerment of safety, this part of the report will include comparisons between the findings from this and the last year report.

As visible from the tables, the majority of cases concerned messages (of threats) on the internet. Only two cases concerned verbal threats — threats made to an attorney and a judge. As certain proceedings included several persons (criminal offences in joinder[152] or the same

150 (1) Whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him, shall be punished with fine or imprisonment up to one years.

(2) Whoever commits the offence specified in paragraph 1 of this Article against several persons or if the offence causes anxiety of citizens or other serious consequences, shall be punished with imprisonment of three months to three years.

(3) Whoever commits the offence specified in paragraph 1 of this Article against the President of Republic, member of Parliament, Prime Minister, government members, constitution court judge, judge, public prosecutor and deputy public prosecutor, attorney, police officer or person of importance to public information, shall be punished with imprisonment of six months to five years.

151 Vida Petrović Škero, Relja Radović, Nataša Jovanović, Kruna Savović, researchers: Ana Zdravković and Nataša Stojadinović, Protection of Freedom of Speech in the Judicial System of Serbia, Slavko Ćuruvija Foundation, Belgrade, 2021.

152 Several acts of perpetrating offence referring to several persons were committed.

message was directed towards more persons — for example, threats against the President of Serbia and the member of Parliament), for the purpose of making the report easier to read, the proceedings in the tables are sorted by the office/tasks that a specific person performs with a note on who are other persons included in the proceedings.

The most considerable number of threats was directed against the President of Serbia. We want to draw attention to that the current President received some of threatening messages while he was a Prime Minister (in total, six proceedings due to endangerment of safety of the Prime Minister), so the proceedings regarding protection of safety of the Prime Minister and the President were consolidated in this report.

The tables below indicate the information on the manner of committing criminal offence, the number of cases, duration of proceedings and how they were concluded, as well as the information on criminal sanctions sorted by the number of cases.

Criminal offence: Endangerment of safety In total: 42		
How criminal offence was committed	Number of cases	The outcome of proceedings
Threats via the internet	40	25 judgments accepting plea agreements Nine convictions[153] One decision pronouncing security measure of psychiatric treatment and confinement in a facility Two decisions pronouncing security measure of compulsory psychiatric treatment at liberty Three acquittals
Verbal threats	2	Two convictions

Out of 42 analysed court cases, the majority ended by the court accepting the plea agreement. More than half of the cases had been resolved in this way — 25 such judgments were adopted. Out of these, 23 proceedings referred to the protection of the President's safety, and, besides the President, only one out of 23 included a member of Serbian Government.

Among the cases analysed, the court adopted a total of 11 convictions, and three acquittals. Three cases ended by the court adopting a decision on the security measure of compulsory psychiatric treatment at liberty or in appropriate mental health care facility (mentioned security measures were pronounced as individual measures).[154]

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153 The judgment of the court accepting the plea agreement is the conviction, but for the purpose of easier overview in the report, this type of judgment will be separated as a specific form of conviction.

154 Article 80 para. 2 of Criminal Code stipulates that *mentally incompetent criminal offender* shall be imposed with compulsory psychiatric treatment and confinement in health care institution and compulsory psychiatric treatment at liberty as individual sanctions. In addition to these

Criminal offence: Endangerment of safety Total number of proceedings ending with final and binding decision: 42 Total number of the injured parties: 20			
Person against whom the offence was committed	How many persons	Number of proceedings sorted by tasks performed by the injured parties	How the proceedings ended
President of Republic/Serbian Prime Minister[155] (including family members)	6	32	23 judgments accepting plea agreements Five convictions[156] Two acquittals One decision imposing security measure of compulsory psychiatric treatment and confinement in facility.[157] One decision imposing security measure of compulsory psychiatric treatment at liberty[158]
Member of Parliament[159]	5	6	Two judgments accepting plea agreements Three convictions One decision imposing security measure of compulsory psychiatric treatment at liberty
Member of Government [160, 161]	2	2	One judgment accepting plea agreement One conviction
Judge[162]	2	2	One decision imposing security measure of compulsory psychiatric treatment at liberty One conviction

measures, ban on practising certain profession, activity or duty, ban on driving a motor vehicle and seizure of objects may also be ordered.

155 In six prosecuted cases, the target of threats was the Prime Minister. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

156 One out of five convictions, as the media reported, was reversed so the Court of Appeal in Belgrade acquitted the defendant of charges that she endangered the safety of the President of Serbia. Since Higher Court in Belgrade delivered the judgment concerned as final and binding, it will be recorded in this report as conviction.

157 Imposed as individual measure.

158 Imposed as individual measure.

159 Regarding various threats made against an MP, three separate proceedings were conducted, and one proceedings had been conducted for threats against two MPs. Two MPs were involved in proceedings that as the injured parties included the President of Serbia and a member of Provincial Government.

160 Member of Serbian Government and a member of AP Vojvodina Government.

161 In one proceedings the injured parties included the President, and in the other proceedings a member of Provincial Government and an MP from AP Vojvodina Assembly had the status of injured parties.

162 Misdemeanour Court and Basic Court.

Police officer[163]	2	2	One acquittal One acquittal
Public prosecutor	1	1	One acquittal
Deputy prosecutor	1	1	One acquittal
Attorney	1	1	One acquittal

The President of Serbia received the most considerable amount of threat messages. Unlike for the MPs, Prime Minister, members of Government, judges, prosecutors, deputy prosecutors, attorneys and police officers, who received personal threats, among the threats directed against the President, in addition to personal, there had been threats against members of this family too, in total five.

Results of the last year report demonstrated that when it comes to endangerment of safety of media workers, in total 13 cases ended in court (three of these were resolved through acquittal, dismissal or rejection of charges). At the same time, when safety of the President of Serbia was endangered, 32 cases ended in court (two ended by acquittals).

Criminal sanctions and duration of court proceedings

In the cases of endangerment of safety of the President of Serbia (or members of his family), in total, 20 suspended sentences were imposed. For the majority of cases ending by suspended sentence (there were in total 11 cases) one-year prison sentence was imposed. In remaining cases, the duration of imprisonment ranged from three to nine months. Probation period ranged from one to three years.

Regarding imposed prison sentences (cases including the President of Serbia), there was in total eight sentences. We emphasize that one of the mentioned cases referred to the member of Serbian Government. In the majority of cases the imprisonment sentence of eight months was imposed (in four cases). In remaining cases, the imprisonment sentence ranged from three to 12 months. In four cases, the court adopted a decision that the convicted will serve the sentence in prison, while in the remaining four cases it was predicted that the convicted will serve the prison sentence in the premises where he/she lives (in three cases with application of electronic surveillance, in one case without). Security measure of treatment and confinement in a facility, as well as security measure of treatment at liberty, was pronounced in total twice. The proceedings that ended with adoption of decision imposing security measure of treatment at liberty included the member of Parliament.

[163] Only one of the proceedings referred to threats made against public prosecutor, deputy public prosecutor and police officers. Although threats were made against non-specified number of police officers, for the purpose of clarity of this report that case will be noted as a threat against one police officer.

In the proceedings conducted for the purpose of protecting the safety of MPs, the suspended sentence was imposed three times (all three proceedings were conducted with an aim of protecting safety of the same MP). Duration of prison sentence ranges from six months to a year. The imprisonment (sanction served in prison facility) was pronounced twice — in one case, for the duration of six months (proceedings involved two MPs and another five persons, two of them being involved in tasks of importance for public information), and in another case one-year prison sentence (the proceedings involved the President of AP Vojvodina Government). Security measure of treatment at liberty was imposed as individual sanction only in one case. The proceedings involved the President of Serbia and an MP.

In two cases conducted for the protection of safety of the member of Government, the defendants were imposed prison sentence. In both cases the duration of sentence was the same — one-year prison sentence. The proceedings concerned involved the President of Serbia and an MP. The sentences differed depending on the location of the defendant serving the sentence. In one case it was a prison sanction in prison facilities (MP was involved in the proceedings), and in the other, the sentence was to be served in the premises where the defendant lives (with application of electronic surveillance).

One proceedings had been conducted regarding protection of safety of the public prosecutor, deputy public prosecutor and the police officer, and in this case, the sentence pronounced was the prison sentence to be served in prison facility for two years and two months.

Due to endangerment of safety of a judge in one case the suspended sentence was pronounced in duration of one year and six months, and in the other case the security measure of compulsory psychiatric treatment at liberty was pronounced. In the case of endangerment of safety of an attorney, one suspended sentence was pronounced confirming prison sentence of six months (probation period of two years).

Among the analysed cases, the average duration of *all* proceedings (from the day the offence was committed until the day the applicable first instance decision was adopted) is nine months and 20 days.[164] The shortest proceedings (18 days) referred to the protection of safety of the President of Serbia, and the longest proceedings happened in the case of endangerment of safety of an attorney (proceedings lasted for three years, six months and 22 days).

[164] The statistics did not involve proceedings for which the researchers had no information on the date of committing of the offence (due to anonymization of decisions).

Criminal sanctions[165]

Media workers		
Suspended sentence Total number: 6		
Prison sentence (in months)	Probation period (in months)	Number of cases
6	24	1
8	24	1
8[166]	33	1
12	36	3
Prison sentence Total: 2		
Duration (in months)	Location where the defendant serves the sentence	Number of cases
8	In health care institution[167]	1
12	In premises where he/she lives, without electronic surveillance[168]	1
Treatment and confinement in facility/treatment at liberty Total: 2		
Duration	Location of treatment	Number of cases
As long as treatment is necessary, but no longer than three years	At liberty[169]	1
As long as treatment is necessary, but no longer than three years	At liberty	1

Findings of the last year report on the proceedings conducted for the purpose of safety of media workers,[170] have indicated that specific tendencies lead to a conclusion that national case law is inclined towards lenient penal policy.[171] Out of ten analysed cases, the court imposed suspended sentence six times. The imprisonment sentence was pronounced two times, both for criminal offence in joinder (in one case, the defendant served the sentence in health care institution, while in the other case, the

165 The tables show criminal sanctions pronounced in proceedings conducted for the protection of safety of media workers, as well as other persons whose safety is protected under Article 138 para. 2.

166 Criminal offence in joinder

167 Criminal offence in joinder

168 Criminal offence in joinder

169 Offence against journalist and members of his family

170 The analysis included cases prosecuted for committed criminal offences of endangerment of safety, causing general danger, stalking, violent behaviour and inciting national, racial and religious hatred and animosity.

171 Vida Petrović Škero, Relja Radović, Nataša Jovanović, Kruna Savović, researchers: Ana Zdravković and Nataša Stojadinović, Protection of Freedom of Speech in the Judicial System of Serbia, Slavko Ćuruvija Foundation, Belgrade, 2021, p. 125.

defendant served sentence in the premises where he lived). In two cases the security measure of compulsory treatment at liberty was pronounced.

President of Serbia		
Suspended sentence Total number: 20		
Prison sentence (in months)	Probation period (in months)	Number of cases
12	36	10
12	24	1
10	24	1
8	36	1
8	24	2
6	36	2
6	24	1
6	12	1
3	12	1
Prison sentence Total: 8		
Duration (in months)	Location where the defendant serves the sentence	Number of cases
12	In premises where defendant lives, with application of electronic surveillance [172]	1
8	Prison	3
8	In premises where defendant lives, without electronic surveillance	1
6	In premises where defendant lives, with application of electronic surveillance	1
4	Prison	1
3	In premises where defendant lives, with application of electronic surveillance	1
Treatment and confinement in facility/treatment at liberty Total: 2		
Duration	Location of treatment	Number of cases
Until confirmed that it is no longer necessary	In facility	1
As long as treatment is necessary, but no longer than three years	At liberty [173]	1

Regarding the protection of safety of the President of Serbia, the most considerable number of proceedings ended by the court accepting the plea agreements. In majority of cases, the imprisonment sentence was pronounced even if the offences were not criminal offence in joinder (with the same or some other criminal offence). This was not a case regarding proceedings prosecuting criminal offence of

172 The proceedings involved the member of Serbian Government.

173 The proceedings involved the MP.

endangerment of safety of media workers. The prison sentence served in prison facility was pronounced in four cases — the threatening messages referred only to the safety of the President of Serbia in all four cases.

Member of Parliament		
Suspended sentence Total number: 3		
Prison sentence (in months)	Probation time (in months)	Number of cases
12	36	1
8	48	1
6	24	1
Prison sentence Total: 2		
Duration (in months)	Location where the defendant serves the sentence	Number of cases
12	Prison[174]	1
6	Prison[175]	1
Treatment at liberty Total: 1		
Duration	Location of treatment	Number of cases
As long as treatment is necessary, but no longer than three years	At liberty[176]	1

Member of Government		
Prison sentence Total: 2		
Duration (in months)	Location where the convicted person will serve the sentence	Number of cases
12	Prison[177]	1
12	In premises where convicted person lives, with application of electronic surveillance[178]	1

Regarding other political officials, the imprisonment for endangerment of safety of MPs was pronounced twice and in both cases it was determined that the convicted person will serve the sentence in prison facilities. In each case, the proceedings involved several persons — in the first case, besides the MP of the AP Vojvodina

174 The offence committed against an MP and a member of AP Vojvodina Government.

175 The offence committed against several persons – against two MPs and another five persons, two of them working on tasks of importance for public information.

176 This case involved the President of Serbia.

177 The proceedings included an MP.

178 The convicted person committed several criminal offences in joinder. In addition to the member of Serbian Government, the President of Serbia was also the injured party in this case.

Assembly, the President of AP Vojvodina Government was also an injured party, and in the second case, the proceedings involved two MPs and another five persons (two persons involved in tasks of importance for public information).

In endangering of safety of the member of Government, in addition to abovementioned case, in one proceedings prison sentence was pronounced (it was determined that the convicted will serve the sentence in premises where he/she lives, with application of electronic surveillance). We mentioned that the proceedings included the President of Serbia. There were no other cases.

Public prosecutor, deputy public prosecutor, police officer[179]		
Prison sentence Total: 1		
Duration (in months)	Location where the convicted person will serve the sentence	Number of cases
26	Prison	1

Judge	
Treatment and confinement at liberty Total: 1	
Duration	Number of cases
As long as treatment is necessary, but no longer than three years[180]	1

Suspended sentence Total number: 1		
Prison sentence (in months)	Probation time (in years)	Number of cases
18	36	1

Attorney		
Suspended sentence Total number: 1		
Prison sentence (in months)	Probation time (in years)	Number of cases
6	24	1

Among analysed cases of endangerment of safety of judges and attorneys it was noticed that threats against those persons, in addition to those made on the internet (in the case of the judge), also included verbal threats. Both cases happened at the

179 The same proceedings included all referred persons.

180 Criminal offence in joinder committed along with criminal offence of endangerment of safety and stalking. Criminal proceedings included two persons dealing with tasks of importance for public information, two persons whose safety was not protected by qualified type of criminal offence of endangerment of safety (it does not concern the group of people included in this analysis), but basic type and a person against whom the same convicted person committed criminal offence of stalking.

location the mentioned persons were present to perform their jobs. Threats against the attorney were made directly, while the other convicted person threatened the judge in front of the court building. Direct contact between the judge and the convicted was prevented by the court security. In both cases, the suspended sentences were pronounced, one in duration of six months (threats against the attorney), and the other in duration of one year and six months (threats against the judge).

Duration of proceedings

President of Serbia	
Judgments accepting plea agreements	
Imposed criminal sanctions	Time period of completing the proceedings
Suspended sentence – one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)	Seven months and seven days from the day the offence was committed until the day of the judgment
Suspended sentence – one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (mobile phone with SIM and memory card)	Six months and 13 days from the day the offence was committed until the day of the judgment
Eight-month prison sentence *Security measure* – seizing objects (two mobile phones and phone number)	Six months and 28 days from the day the offence was committed until the day of the judgment
Suspended sentence – one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)	Four months and 28 days from the day the offence was committed until the day of the judgment
Suspended sentence – one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)[181]	Two months and 16 days from the day the offence commenced until the day of the judgment
Suspended sentence – eight-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)	Four months and seven days from the day the offence was committed until the day of the judgment
Suspended sentence – one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)[182]	Twenty-one days from the day the offence was committed until the day of the judgment

181 Threats directed towards members of President of Serbia family.

182 Threats made against close family members of President of Serbia.

Six-month prison sentence (it is determined that the convicted person will serve the sentence in premises where he/she lives, with application of electronic surveillance, however, if he/she once for longer than six hours or twice for up to six hours willingly leaves the premises where he/she lives, the court will order that the remaining of the prison sentence will be served in the prison facility) *Security measure* — seizing objects (one mobile phone and a SIM card)	Four months and 27 days from the day the offence was committed until the day of the judgment
Single prison sentence[183] of one year (it is determined that the convicted person will serve the sentence in premises where he/she lives, with application of electronic surveillance, however, if he/she once for 12 hours or twice for up to six hours willingly leaves the premises where he/she lives, the court will order that the remaining of the prison sentence will be served in the prison facility) *Security measure* — seizing objects (two mobile phones and a SIM card) *Security measure of the ban on approaching and communicating with the injured parties* for three years after the day of the final and binding judgment	Two months and 16 days from the day the offence commenced until the day of the judgment
Eight-month prison sentence (it is determined that the convicted person will serve the sentence in premises where he/she lives, *without* electronic surveillance, however, if he/she once for longer than 6 hours or twice for up to six hours willingly leaves the premises where he/she lives, the court will order that the remaining of the prison sentence will be served in the prison facility) *Security measure* – seizing objects (one mobile phone and prepaid phone card) [184]	One month and 24 days from the day the offence was committed until the day of the judgment
Suspended sentence — one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (one mobile phone, SIM card and a laptop)	18 days from the day the offence was committed until the day of the judgment
Suspended sentence —one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (one mobile phone and SIM card)	Two months and 1 day from the day the offence was committed until the day of the judgment
Three-month prison sentence (it is determined that the convicted person will serve the sentence in premises where he/she lives, with application of electronic surveillance, however, if he/she once for longer than 6 hours or twice for up to six hours willingly leaves the premises where he/she lives, the court will order that the remaining of the prison sentence will be served in the prison facility) *Security measure* – seizing objects (one mobile phone and SIM card)	Two months and 24 days from the day the offence was committed until the day of the judgment

183 Besides President of Serbia, the injured parties in the proceedings included a member of Serbian Government. The criminal offence in joinder (several different offences were perpetrated against several persons) were as follows: one criminal offence of endangerment of safety under Article 138 para. 1, with determined prison sentence of three months, and two criminal offences of endangerment of safety from Article 138 para. 3 pertaining to para. 1 of Criminal Code, with determined prison sentences of six-month prison sentence for each.

184 Threats against close family members of President of Serbia.

Suspended sentence – six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (one mobile phone and SIM card)	Five months and 2 days from the day the offence was committed until the day of the judgment
Suspended sentence – six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (one mobile phone and SIM card) *Security measure of compulsory psychiatric treatment at liberty,* as long as treatment is necessary, but no longer than three years[185]	Three months and 3 days from the day the offence was committed until the day of the judgment
Suspended sentence – ten-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment) *Security measure* – seizing objects (one tablet) *Security measure of compulsory alcoholic disorder treatment,* to be carried out in specialised facility, as long as treatment is necessary, but no longer than two years	Five months and 27 days from the day the offence was committed until the day of the judgment
Suspended sentence – eight-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment)[186]	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not possible to determine the duration of proceedings. Six days from the day of signing the agreement until the day of the judgment
Suspended sentence —one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not possible to determine the duration of proceedings. Fourteen days from the day of signing the agreement until the day of the judgment
Suspended sentence – six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of one year from the day of the final and binding judgment)[187]	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not

185 The offence was committed when convicted person was in the state of decreased understanding of the offence and reduced ability to control his actions.

186 Threats against close family member of the President of Serbia.

187 Threats against the Prime Minister of Serbia. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

	possible to determine the duration of proceedings. Two months and 28 days from the day of signing the agreement until the day of the judgment
Suspended sentence – eight-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment) *Security measure* – seizing objects (hard-disk)	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not possible to determine the duration of proceedings. Twenty days from the day of signing the agreement until the day of the judgment
Suspended sentence —one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (one mobile phone)	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not possible to determine the duration of proceedings. One month and four days from the day of signing the agreement until the day of the judgment
Suspended sentence —one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment) *Security measure* – seizing objects (one mobile phone)	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not possible to determine the duration of proceedings. Fifteen days from the day of signing the agreement until the day of the judgment
Suspended sentence – three-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of one year from the day of the final and binding judgment)	For the purpose of the data anonymization, the date of the committed offence was redacted with black ink. For that reason, it was not possible to determine the duration of proceedings. The agreement signed on the same day the judgment was adopted.

President of Serbia	
Convictions	
Imposed criminal sanctions	Time period of completing the proceedings
Suspended sentence – six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment)	One year, four months and 21 days from the day the offence was committed until the day of the judgment

Security measure of compulsory psychiatric treatment at liberty, as long as treatment is necessary, but no longer than three years [188] *Security measure* – seizing objects (one mobile phone and SIM card) [189]	
Eight-month prison sentence [190]	Two months and 16 days from the day the offence was committed until the day of the judgment
Four-month prison sentence *Security measure* – seizing objects (one mobile phone and SIM card) [191]	Two months and 21 days from the day the offence was committed until the day of the judgment
Suspended sentence – one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment) [192]	Nine months and 1 day from the day the offence was committed until the day of the judgment
Eight-month prison sentence *Security measure* – seizing objects (hard-disk) [193]	One year, two months and 16 days from the day the offence was committed until the day of the judgment
Decision pronouncing security measure of psychiatric treatment and confinement in facility	
Imposed criminal sanctions	**Time period of completing the proceedings**
Security measure of compulsory psychiatric treatment and confinement in health care facility, that the court will suspend after confirming that treatment and confinement in health care facility is no longer necessary	Four months and four days from the day the offence was committed until the day of the judgment

President of Serbia/Member of Parliament [194]	
Decision pronouncing security measure of compulsory psychiatric treatment at liberty	
Imposed criminal sanctions	**Time period of completing the proceedings**
Security measure of compulsory psychiatric treatment at liberty, as long as treatment is necessary, but no longer than three years	Eight months and 18 days from the day the first offence was committed until the day of the judgment

188 The offence was committed in the state of substantially diminished mental competence.

189 Threats against close family member of the President of Serbia.

190 Threats against the Prime Minister of Serbia. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

191 Threats against the Prime Minister of Serbia. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

192 Threats against Prime Minister of Serbia. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

193 Threats against Prime Minister of Serbia. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

194. The convicted person committed criminal offences in joinder. The offences were committed in the state of mental incompetence (two criminal offences of endangerment of safety under Article 138 para. 3 pertaining to paragraph 1 of Criminal Code, one criminal offence of endangerment of safety from Article 138 para. 1 and one criminal offence of provoking national, racial and religious hatred and animosity). Besides the President of Serbia, the injured parties in the proceedings included an MP and other persons not included in this analysis.

Regarding the type of criminal sanctions in proceedings conducted for the purpose of protecting safety of the President of Serbia, it could be noticed that in the majority of cases, the sentence or suspended sentence were accompanied by an appropriate security measure.[195] Since the offences were committed via the internet, the court opted for the security measures of seizing objects (mobile phone, tablets, SIM cards and others). In addition to the security measures concerned, other sanctions were also imposed, such as the ban on approaching and communication with the injured party, compulsory alcoholic disorder treatment and compulsory psychiatric treatment at liberty.

Member of Parliament	
Judgments accepting plea agreements	
Imposed criminal sanctions	Time period of completing the proceedings
Suspended sentence — one-year prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)	Eleven months and 29 days from the day the first offence was committed until the day of the judgment
Suspended sentence — six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment) *Security measure* – seizing objects (mobile phone and SIM card)	One month and 14 days from the day the offence was committed until the day of the judgment
Convictions	
Imposed criminal sanctions	Time period of completing the proceedings
Six-month prison sentence *Security measure* – seizing objects (mobile phone with accompanying cards)[196]	Four months and four days from the day the first offence was committed until the day of the judgment
One-year prison sentence *Security measure* – seizing objects (mobile phone with SIM card)[197]	One year from the day the first offence was committed until the day of the judgment
Suspended sentence — eight-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of four years from the day of the final and binding judgment)	One month and 16 days from the day the offence was committed until the day of the judgment

195 Article 80 of Criminal Code

196 This was a continuing offence (continuing offence shall mean several identical offences or offences of the same type committed in temporal continuity by the same offender). Besides two MPs, the proceedings involved another five persons, and two of them were persons performing tasks of importance for public information.

197 The proceedings involved a member of Provincial Government.

Member of Serbian Government	
Convictions	
Imposed criminal sanctions	Time period of completing the proceedings
One-year prison sentence *Security measure* – seizing objects (mobile phone with SIM card)[198]	One year from the day the first offence was committed until the day of the judgment
Judgment accepting plea agreement	
Imposed criminal sanctions	Time period of completing the proceedings
Single prison sentence[199] of one year (it is determined that the convicted person will serve the sentence in premises where he/she lives, with application of electronic surveillance, however, if he/she once for 12 hours or twice for up to six hours willingly leaves the premises where he/she lives, the court will order that the remaining of the prison sentence will be served in the prison facility) *Security measure* – seizing objects (two mobile phones and SIM cards) *Security measure of the ban on approaching and communicating with the injured parties* for three years after the day of the final and binding judgment	Two months and 16 days from the day the offence commenced until the day of the judgment

Public prosecutor, deputy public prosecutor, police officer	
Convictions	
Imposed criminal sanctions	Time period of completing the proceedings
Single prison sentence [200] of two years and two months *Security measure* – seizing objects (three mobile phones)	One year, six months and 19 days from the day the first offence was committed until the day of the judgment

198 The proceedings involved an MP.

199 The criminal offence in joinder (several different offences perpetrated against several persons) were as follows: one criminal offence of endangerment of safety under Article 138 para. 1, with determined prison sentence of three months, and two criminal offences of endangerment of safety from Article 138 para. 3 pertaining to para. 1 of Criminal Code, with determined prison sentences of six-month prison sentence for each. Besides the President of Serbia, the injured parties in the proceedings included a member of Serbian Government.

200. The criminal offence in joinder (several different offences perpetrated against several persons) were as follows: three criminal offences of endangerment of safety from Article 138 para. 3 pertaining to para. 1 of Criminal Code, with determined prison sentences of seven-month prison sentence for each. Besides mentioned offences, the convicted person committed criminal offence of attack on government official in discharge of duty from Article 323 of Criminal Code. The offence of one year was determined for this offence.

Judge	
Decision pronouncing security measure of compulsory psychiatric treatment at liberty	
Imposed criminal sanctions	Time period of completing the proceedings
The decision determined that treatment will continue until necessary, but no longer than three years[201]	Two years, eleven months and 19 days from the day the first offence was committed until the day of the judgment
Convictions	
Imposed criminal sanctions	Time period of completing the proceedings
Suspended sentence — one-year and six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of three years from the day of the final and binding judgment)	Two months and one day from the day the offence was committed until the day of the judgment

Attorney	
Convictions	
Imposed criminal sanctions	Time period of completing the proceedings
Suspended sentence —six-month prison sentence (at the same time, it is determined that it shall not be enforced provided that the convicted person does not commit a new offence during a probation period of two years from the day of the final and binding judgment)	Three years, six months and 22 days from the day the offence was committed until the day of the judgment

Proceedings that ended with acquittals	
Person against whom the offence was committed	Time period of completing the proceedings
President of Serbia[202]	Three years, three months and 28 days from the day the offence was committed until the day of the judgment
President of Serbia	Nine months and five days from the day the offence was committed until the day of the judgment
Police officer	Three years and 15 days from the day the offence commenced until the day of the judgment

The tendency of imposing security measures (seizing objects) with sentences or suspended sentences was observed with other persons included in this analysis. When it comes to judges and attorneys, the security measure with suspended sentence were not pronounced.

201 Perpetrator committed several criminal offences: three criminal offences of endangerment of safety from Article 138 para. 3 (against judge and two journalists) and one criminal offence of stalking from Article 138a para. 1 points 2 and 4 (against person whose office/occupation could not have been identified).

202 Threats against Prime Minister of Serbia. Since the same person now performs duties of the President of Serbia, the proceedings conducted to protect both offices will be consolidated.

Difference in treatment of persons protected under Article 138 para. 3 of Criminal Code — factor of importance

Comparing the findings from this year report to those from the last year report on the cases of attacks against media workers, we learn that in the cases of endangering safety of media workers there were no prison sentences pronounced for the defendants to serve in prison facilities. The situation is similar in the cases referring to the protection of judges and attorneys. It is *not* the same in proceedings conducted for protecting safety of political officials (the President of Serbia, members of Parliament, Government of Serbia members). We underline that in the case of endangering safety of the prosecutor, deputy prosecutor and police officers, the defendant was to serve the imposed prison sentence in prison facilities. It is important to note that here one proceedings involved all those persons.

By analysing received court decisions, it was established that the President of Serbia, and/or Prime Minister, during the proceedings before the prosecutor's office and/or court did not give his oral testimony as an injured party, which is not the case with other persons whose safety is explicitly protected under Article 138 para. 3 of Criminal Code. In some decisions (judgments accepting plea agreements) it is only noted that members of the Armed Forces Police were hired to closely physically protect and secure the President of Serbia, and/or Prime Minister and that they raised the protection measures for that person to the *highest* level. In some cases, the witnesses in the proceedings were members of the security of the President of Serbia, and/or Prime Minister. The court concluded that the injured party had felt fear and feeling of uncertainty from the statements of these witnesses, and not from the statement of the President of Serbia.

Pertaining to abovementioned, it is important to note that the lawmaker prescribed the criminal offence of endangerment of safety (Article 138 para. 1 of Criminal Code) with an aim to provide criminal protection of personal safety for *all* citizens (in paragraph 3 of this criminal offence the lawmaker provided increased protection to only specific persons). Citizens' safety is perceived as a subjective feeling of safety. So, the consequence of the given action is manifested through *feeling* of uncertainty, and the injured party should provide testimony on that, irrelevant if his/her safety was objectively in danger.

This position was confirmed by the applicable case law of the Supreme Court of Cassation in Belgrade. It its decision, the court mentioned the following:

Namely, the Law on Public Order and Peace ("Official Gazette of RS", No. 6/2016 and 24/2018) regulates public order and peace in the public spaces and establishes unlawful acts against the public peace and order. So, the object of protection of the

misdemeanours provided for under Law on Public Order and Peace, and misdemeanours from Article 9 of the Law on Public Order and Peace, shall be public order and peace, while with criminal offence of endangerment of safety from Article 138, paragraph 1 of Criminal Code, the object of protection refers to freedoms and rights of a man and a citizen. From the abovementioned it is deduced that a consequence of the threat against life and body of the injured party and persons close to him/her in the criminal offence of endangerment of safety from Article 138 paragraph 1 of Criminal Code shall mean endangering safety of the passive subject manifested in his/her feelings of fear and insecurity, as established by final and binding judgment, while with violation from Article 9 para. 1 of the Law on Public Order and Peace, the consequence of such threat is disturbing public order and peace, which is not the case in the specific situation.[203]

In the cases processed due to endangerment of safety of the President of Serbia, the feeling of fear was established by assuming or taking the witness testimony, which was not the case with other persons. In one of its decisions, Higher Court in Belgrade ascertained the feeling of insecurity and fear with the President of Serbia indirectly, through the assumption, and based on testimony of the witnesses (head and deputy head of the President of Serbia security), such as follows:

Having in mind that during the proceedings it was undoubtedly confirmed that the injured party was aware of threats against his kids and was familiar with the defendant's statement concerned, its content and one highly aggressive and very morbid mentioning of the injured party's kids in extremely vulgar context (which resulted in certain actions and measures taken in relation to the persons concerned by the security services hiring more people, funds, equipment and other, since the threats were taken very seriously, in accordance with written documentation from case files and witness testimonies, that the injured party also must have noticed); the court holds that this must have caused feelings of anxiety and distress with the passive subject, immanent to every human being in such situation, which constitutes the effect and consequence of such criminal offence.[204]

As the media reported, this judgment was adopted after the Court of Appeal quashed the previous decision of the Higher Court and indicated that during the first instance proceedings no evidence was taken to confirm that the message the defendant had sent via her Twitter account caused the feeling of endangerment with

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203 Republic of Serbia, Supreme Court of Cassation, Kzz 88/2021, 3 February 2021.

204 Although the authors of this report had been delivered the quoted judgment of the Higher Court in Belgrade as the final and binding, the media reported that this judgment was reversed, so the defendant was acquitted. See the article: "Janković Aranitović acquitted of charges for threats against Vučić", article author: Jovana Tomić, CINS.

the injured party. In its decision, the second instance court noted that feelings of endangerment and distress with the injured party could not have been assessed without taking oral testimony from him. In repeated proceedings, the Higher Court in Belgrade *did not take the statement* from the President of Serbia, but in a described way, circumstantially, assumed and established that the injured party *must* have been influenced by the message causing feelings of anxiety and distress with him.[205]

According to the information from the media, the mentioned decision was reversed (although the authors of this analysis received this judgment as final and binding), and the defendant was freed of all charges. The reasons for adopting the acquitting decision was not the absence of the President of Serbia statement, yet the Court of Appeal in Belgrade justified its decision determining that in this specific case there was no criminal offence of endangerment of safety, because the threat interpreted was neither serious nor specific. The case concerned caused additional reactions because during the proceedings the defendant's detention was six months.

In another (final and binding) decision regarding the protection of safety of Serbian Prime Minister, the same court established from the witness statement (head of Prime Minister's security) that the injured party felt anxiety and fear for life and bodily integrity of a person close to him. (The act of perpetrating in criminal offence of endangerment of safety consists of threats against life and body of a person or a person close to him/her).

Relevant part of the judgment reasoning is as follows:

Namely, the witness (the witness name is mentioned but hidden due to personal data protection), a head of security of the Prime Minster from the Military Police Special Operation Battalion "Cobra" in charge of planning, organisation and implementation of technical protection of Serbian Prime Minister and coordination of all services and bodies involved in Prime Minister security, in his statement mentioned that on that day […] he became familiar with the comment on social media […] which was, as the witness said, taken very seriously, he as the head of security as well as all services and bodies participating in the system of security of Prime Minister of Serbia, as well as the Prime Minister, whom he had personally informed about the threat, and bearing in mind the content of threat and the fact that threat was made by a person previously convicted of criminal offence with elements of violence, as they had been informed by the Prosecutor's Office for Cyber Crime identifying the accused as the person posting the comment concerned, and immediately taking special security measures regarding Prime Minister and members of his family […]

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205 The article: "Judgment for alleged threats to Vučić revoked", author: Jovana Tomić, CINS.

When comparing the argumentation from the basis of the final and binding decisions from the proceedings regarding protection of, on the one hand, media workers safety, and on the other hand, political officials, there is a tendency of interpreting threats against political official as certain, although it is not entirely obvious if those are really threats (threats expressed as potential), as it is not conclusive who would, if at all, carry out such threat, which contradicts the practice of the prosecutor's office and court regarding the analysed proceedings on protection of safety of media workers.[206]

The message is as follows:

[...][207] he should be killed since he is a traitor of Serbian people refusing to allow tsar to come and hiding from the people the realisation of prophecy from 1997, he is a mason and leads Serbia to the EU and NATO.

In the argumentation of its position, the Higher Court in Belgrade said in its decision:

Pertaining to legal question asked in the criminal proceedings, the court accepted the position of public prosecutor's office that perpetrated acts represent acts of criminal offence of endangerment of safety. Although the formulation *should be killed* does not provide individual specification who should do it, this manner of expression does not exclude the message sender at the same time, though it is evident that the defendant wrote it, so he was thinking about it. Besides, specific reasons why it should be done were mentioned in the message — a traitor of Serbian people, mason, leads Serbia to EU and NATO. It is evident that these are not at least trivial reasons. It should be mentioned that other reasons (tsar, prophecy from 1997) could be understood only by the defendant. The court holds that such statements must be assessed not as individual statements but in wider context, involving moments regarding the personality and behaviour of the injured party, general situation in the society at the time of defendant actions, and his/her personal situation. Specifically, for complete understanding and interpretation of incriminating message via electronic mail, the growing tension in our society is very relevant, as there is no sense of proportion and distance towards public figures, along with unfortunate tradition of political assassinations in our history.

The interpretation of (threatening) messages against political officials is not applied in interpreting messages directed against media workers, obvious in the next example,

206 Vida Petrović Škero, Relja Radović, Nataša Jovanović, Kruna Savović, researchers: Ana Zdravković and Nataša Stojadinović, Protection of Freedom of Speech in the Judicial System of Serbia, Slavko Ćuruvija Foundation, Belgrade, 2021, pp. 126 and 127.

207 The name of the official was not revealed due to personal data protection.

when threats made against the news desk of "Južne vest"[208] were relativized to such extent that they ceased to be threats at all. The competent prosecutor's office said:

Pertaining to this, the disputed comment under the post "City of Niš budget" on the official profile of "Južne vesti" page represents the critical opinion of the defendant. As the means of public information and due to the nature of their work, the media often face such criticism, so the mentioned comment cannot be seen as a serious threat directed against someone's life or violation of the integrity of one or several persons.

Regarding the proceedings for the purpose of protection of media workers' safety (the topic of the last year report), there is a tendency in the prosecutor's office work to take upon the criminal prosecution only if, judging from the case law, it estimates that the court might adopt convicting judgment in the initiated proceedings. If not, the proceedings are ended by dismissing criminal complaint.[209]

The case law in cases of the endangerment of safety of highest political officials (especially the Serbian President) is completely different. The prosecutor's office readily institutes criminal prosecution. The messages sent to media workers are, ideally, estimated as insults, defamation or similar, but if those are sent to highest officials, they are interpreted as threats to be processed. In majority of cases, the prosecutor's office concluded plea agreements with the defendants so the court only has to accept such agreements.

Conclusion

From all abovementioned, the following is concluded:

1) Number of cases of endangerment of safety that ended in court is twice as high for cases referred to the President of Serbia than the cases of all media workers together.
2) The mandatory oral testimony for received threats is not requested only from the President of Serbia.
3) The prosecutor's office shows more readiness to assess messages as *threatening* if those are addressed to high political officials (especially the President of Serbia) than media workers.

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208 Vida Petrović Škero, Relja Radović, Nataša Jovanović, Kruna Savović, researchers: Ana Zdravković and Nataša Stojadinović, Protection of Freedom of Speech in the Judicial System of Serbia, Slavko Ćuruvija Foundation, Belgrade, 2021, p. 101.

209 Vida Petrović Škero, Relja Radović, Nataša Jovanović, Kruna Savović, researchers: Ana Zdravković and Nataša Stojadinović, Protection of Freedom of Speech in the Judicial System of Serbia, Slavko Ćuruvija Foundation, Belgrade, 2021, p. 127.

4) When safety of high political officials is threatened (especially the President of Serbia), the penal policy is significantly stricter than in cases of media workers' endangerment of safety (for example, prison sentence in prison facility was not imposed for any of the threats against them).

Four illustrative cases regarding the (absence of) conditions relevant for media workers' job

The cases mentioned here will be observed as representative cases regarding the atmosphere in which the media workers do their job. They are relevant because through the analysis of these cases we can detect not only weaknesses but also aspects that should be upheld for the purpose of proper functioning of the society.

In analysing the cases of Jelena Zorić, Daško Milinović, Bojana Pavlović and art group "Momci" ("Boys" in Serbian), the attention will be paid both to intimidation (implicit and explicit) the media workers have to put up with, and attacks they were exposed to (body and work).

Jelena Zorić Case

Jelena Zorić, former TV N1 reporter, covered the trial of Predrag Koluvija, who was brought to trial by the Prosecutor's Office for Organised Crime under the charge of committing a criminal offence of unlawful production and circulation of narcotics with a group of other persons.[210]

Media company N1 published a press release stating that Jelena Zorić was approached by one of Predrag Koluvija's attorneys in front of the Higher Court in Belgrade, Special Unit for Organised Crime at the end of December 2020, who said the following: "Please, be precise in your reports, since my client Predgrad Koluvija is an honourable man and great believer, because, when I went to visit him, he told me: "Zorić is destroying me in her reporting, but I am praying to God for her health, and I am praying for the health of the prosecutor Saša Drecun and the arresting officer, Slobodan Milenković". Svetislav Bojić, Predrag Koluvija's attorney, also underlined to her that "anyone who did any wrong to Pedja did not get away with it". Jelena Zorić was in the company of TV N1 cameraman on this occasion.[211]

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210 In the meantime, another indictment against Predrag Koluvija was confirmed. Under these charges he was accused of criminal offence of criminal alliance.

211 The article "Threats to N1 reporter Jelena Zorić for Jovanjica case, published on 30 December 2020, TV N1 portal.

A day later, the same attorney approached her again and said: "Pedja was almost released from custody today, and Pedja told me to tell you he sends his best to you".

In his statements, attorney Bojić never denied that he talked with journalist Jelena Zorić in front of the court building about the proceedings against his client. However, in his statement for Tanjug, that other media outlets published, he claimed that he only explained to the journalist that his client was a good man who prayed to God for everyone, for those who arrested him as well. He prayed for her for the same reasons.[212]

Journalists' associations evaluated that messages Jelena Zorić received were *direct threats,* and Jelena Zorić approached the Standing Working Group for Journalists Safety because of these threats, so the criminal complaint against attorney Bojić ensued. Television N1 attorneys required that the police should perform urgent threat assessment for the journalist and provide appropriate protection to her according to the results of the assessment. Moreover, TV N1 demanded reactions from the competent bar association, but, the then president of the Belgrade Bar Association took a different position and stated that the Bar Association was obliged to protect the attorney who was the target of the media hunt.[213]

Disciplinary action against attorney Mr. Bojić was brought before Belgrade Bar Association.[214]

Attorney Bojić pressed criminal charges against journalist Jelena Zorić for criminal offence of false reporting. In written media statement, he emphasised that journalist Zorić never qualified their conversation as a threat nor she ever felt threatened because of the "informal chat while passing by", yet she did that only after she had talked to Veran Matić, the president of the Commission for Investigating Journalists' Murders, who "instructed" her that "sending his best" meant threat. [215]

Mid-June 2021, attorney Bojić's trial started. The proceedings are still ongoing.[216]

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212 The article "Attorney Bojić: neither me nor Koluvija threatened Jelena Zorić", published on Cenzolovka website, 31 December 2020.

213 The article "Threatening Jelena Zorić – urgent reaction of responsible authorities and threat assessment required", published on 31 December 2020, N1 portal.

214 The article "Complaint against Bojić to bar association for threatening Jelena Zorić", published on 8 January 2021, N1 portal.

215 The article "Koluvija attorney filed complaint against Jelena Zorić", written by Ivana Nikoletić, article published on Danas portal, 19 January 2021.

216 Article 138 para. 3 pertaining to paragraph 1 of Criminal Code.

Attack on Daško Milinović

In second half of April 2021, Daško Milinović, radio talk show host, journalist and anti-fascist activist was attacked by two men in the early morning. One of the attackers first sprayed his eyes, and then Daško received several blows against his hand by a metal bar.

In his statement for media, Milinović mentioned that attackers followed him two days before the attack, that the morning of his attack they followed him, so he was prepared for what followed. The fact he saw them enabled him to take defence position and alleviate the blows that ensued. Milinović indicated that he was a victim of threats before, mostly via social media, and that someone had broken into his apartment and stolen his laptop. [217]

Journalists associations condemned attack against Daško Milinović[218], as well as many NGOs[219] and Ministry of Culture and Information.[220] The incident was reported to the police and Standing Working Group for Journalists Safety.

Soon after this event, suspects for attack against Milinović were identified — two persons charged for criminal offence of violent behaviour in co-perpetration, as well as one person charged for inciting the other two to commit criminal offence concerned. These persons where charged in less than a month before the prosecutor's office. In the charges, the prosecutor's office proposed that a person suspected of inciting the attack and charged for causing light bodily injuries to Milinović should be imposed with maximum sentence — imprisonment for up to five years.[221] In the first half of December 2021, the first instance conviction was ruled: the first defendant was sentenced to one-year and two months prison sentence, the second defendant to ten-month prison sentence, and the person inciting the defendants to attack Daško Milinović was sentenced to one year and four months of prison.[222]

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217 Article on Daško Milinović: "People who attacked me are the ones following me for two days. It cannot be just two psychos' whim, its organised attack by fascists", author: Danijel Apro, article published on portal Cenzolovka on 16 April 2021.

218 NDNV: Arrest attackers on radio talk show host Daško Milinović immediately, Independent Association of Journalists' of Vojvodina press release, published on 16 April 2021.

219 "Attack on Daško Milinović is a consequence of impunity in cases of endangering journalists safety", Slavko Ćuruvija Foundation press release published on 16 April 2021.

220 Ministry of Culture and Information press release, published on 16 April 2021.

221 The article "Prosecutor demands five years of prison for attackers on journalist Daško Milinović", published on portal Radio 021.

222 The article: Deputy prosecutor: Attackers on Daško Milinović sentenced to prison, article published on N1 portal.

Stopping journalist Bojana Pavlović

In the evening of the first half of June 2020, Bojana Pavlović, KRIK investigative portal journalist, was on a journalist task to take photos of the President of Serbia son. He was in one of Belgrade cafes at the time, in company of several men, among them a member of "Janjičari" hooligans group. This person was under trial since with other members of the hooligan group concerned the had demolished one night club in Belgrade.[223] [224] One of Bojana Pavlović's journalistic assignments was to cover that trial. According to information that KRIK portal journalists had at their disposal, the Ministry of Interior of Serbia data base on this person identified him as a member of the Kavači clan from Montenegro.[225]

KRIK portal journalist was in front of a café, which is public ground. She made a photo through the café window with her mobile phone, and she came to the site based on a tip from KRIK portal reader. After making photos, Bojana Pavlović wanted to leave the café place. She was soon approached by three men behind her back. Those men stopped her identifying themselves as "the police" and asked her who she worked for. All three persons were in plain clothes, and only one of them showed the badge. Bojana Pavlović explained that she was on a journalistic assignment, gave her ID card for inspection, as well as her press pass KRIK portal issues for its journalists. Immediately after, one of these three men requested from journalist to delete photos she had previously made, while the other (in phone conversation with unknown person) inspected her personal data. She was told she should not have made the photos and that they could be in trouble because of that. She was not explained what sort of trouble that would be.

After trying to persuade her for short time, the journalist took back her phone and agreed to delete photos. At that moment another two men showed up (coming from the direction of café where the photos were made). Persons previously talking to journalist announced her that police patrol would be coming. Journalist demanded to talk to her editor in order to inform him that she would not be available and required attorney assistance to be provided to her.

At that moment, one of the two men who approached Bojana Pavlović later, snatched her phone. She tried to take back her phone, asking them to explain such

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223 It pertains to criminal proceedings for criminal offence of violent behaviour under Article 344, para. 2 pertaining to para. 1 of Criminal Code.

224 The article: "Trial for demolition of "Komitent" continued", hooligans made comments in front of KRIK journalist, author: Jelena Radivojević, published on KRIK portal 11 June 2021.

225 The article: KRIK journalist's phone taken away while she took photos of Andrej Vučić and Aca Rošavi, published on KRIK portal 10 June 2020.

behaviour. The man who took her phone told her that he had to explain nothing to her because she was a civilian. At the moment, another two men showed up (from the group President's son was seen with). Those were two members of Partizan hooligan group "Janjičari". After one of them approved it — the hooligan who was in trial for violent behaviour, journalist Bojana Pavlović got back her phone and permission to leave. The persons who identified themselves as officers were not at the scene, and police patrol did not show up.

This case was recorded on the website of the Council of Europe Platform for the Protection of Journalism and Safety of Journalists[226] as an example of harassment and intimidation of journalists, and the journalists' associations also reacted on this occasion.[227]

KRIK portal news desk notified the public on this event the same night. The competent institutions, except Ombudsman, have not taken any actions *ex officio*.[228]

Immediately after this event, KRIK portal news desk addressed the competent institutions, such as: Ministry of Defence (with request to examine actions of Serbian Army representatives towards journalist Bojana Pavlović), Ministry of Interior[229] (with request to examine actions of police officers) and the First Basic Public Prosecutor's Office (by pressing criminal charges against unknown person for committing criminal offence of abuse of office[230], dereliction of duty[231], impersonation[232], endangerment of safety[233] and the other criminal offences prosecuted *ex officio*).

Ministry of Interior responded that in the event concerned police officers *had not* participated. Serbian Armed Forces response was that in this specific case all legal requirements were met for a responsible member of the Army Police securing the protection of the President's son (as protected person) to apply appropriate preventive police powers — issue a warning. Upon the warning, the journalist reacted by willingly deleting photos she made. The responsible officer did not hold up journalist Bojana

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226 The report: "Serbia: Journalist harassed in front of the police who confiscated her phone".

227 The article: "Journalists' associations: Police must urgently determine who took away KRIK journalist phone", author: Jelena Radivojević, published on KRIK portal 11 June 2021.

228 The article: "KRIK journalist's phone taken away while she took photos of Andrej Vučić and Aca Rošavi", published on KRIK portal 10 June 2020.

229 In line with provisions of Article 3, para. 2 of the Police Law ("Official Gazette of RS", No 6. 6/2016, 24/2018 and 87/2018), only Ministry of Interior and Ministry of Defence have the right of using the name "Police".

230 Article 359 of Criminal Code

231 Article 361 of Criminal Code

232 Article 329 of Criminal Code

233 Article 138 of Criminal Code

Pavlović, did not inspect her ID documents and did not seize her mobile phone. In Serbian Armed Forces response third persons' participation is not mentioned.

The First Basic Public Prosecutor's Office *dismissed* the criminal complaint against an unknown person with explanation that in this specific case there were no elements of criminal offence prosecuted *ex officio* (impersonation, endangering safety or some other criminal offence). The prosecutor's office noted that during field inspection no security cameras were spotted potentially recording disputed event. The conclusion of the prosecutor's office was that journalist's reaction and her subjective feeling of endangerment were not conditioned by objective actions of unknown persons, since these persons did not threaten her.

The objection was submitted against a decision dismissing the criminal complaint. It indicates that the prosecutor's office did not examine all relevant facts pertaining to this event, i.e. persons identified in criminal complaint were not heard; the statement that there were no security cameras spotted in the location of the disputed event was not true (attached photos of cameras from surrounding buildings); and the journalist's statement was only partially taken into consideration. The High Public Prosecutor's Office rejected the objection without any explanation regarding the observations the injured party had indicated.

The Ombudsman took a statement from the journalist, but without any further feedback about (potentially) undertaken activities.

Breaking into the exhibition of the art group "Momci"

Marko Somborac[234], Nikola Vitković, Goran Rajšić, Dalibor Novak and Andrej Vojković are members of the art group "Momci", active in the art scene from 1992 until 2001 with the same members. After 22 years from their last exhibition in Art Gallery "Old Captaincy", in the framework of the 11th international festival of independent comic books "New Age – Last Age", and through documentary-historical exhibition "There was a glow about them", the public was then able to see their *earlier* works, with dark humour as a legitimate view of the reality.

[234] In addition to other activities (graphic designer, illustrator), Marko Somborac is well known to the wider audience as the author of short, daily comics he writes and draws for "Blic strip" (daily "Blic" comics from the end of 2005) and "Stripolovka" ("Cenzolovka" portal publishes the comics since second half of 2018). As Marko Somborac works on daily politics in his comics, the authorities are exposed to criticism in his works, so reasons for breaking into the exhibition could be found in his engagement. For these reasons, this case is placed in the list of representative cases regarding (absence) of conditions for media workers to do their job.

In the evening of the first half of October 2020, a group of ten young men broke into the premises of Art Gallery "Old Captaincy", ripping and destroying exhibited works and throwing tear gas in gallery.

One day before the exhibition was invaded, the legal representative of the association organising the exhibition notified the competent police officers in Police administration for City of Belgrade that Art Gallery "Old Captaincy" Facebook page received a threat saying: "Hey, Art Gallery "Old Captaincy", did you for a second thought that someone who is normal will burn your gallery, also literary opening your "boys". Have a nice day." She notified the competent police officers on other threats directed both to association organising the exhibition, and authors of exhibited works. Although on that occasion the legal representative of the association showed to a police officer many other threatening messages, the police only noted the abovementioned message. After she finished with her statement regarding threats, the legal representative of association was told to go to High Public Prosecutor's Office (Special Prosecutor's Office for Cyber Crime[235]) and file criminal complaint there. However, despite the fact that police authority was made clear that there were strong indications that threats made electronically could be realised in reality, the competent officers did not take any further actions to prevent that event.

Only a day later, the reasonable assumption on the potential attack on exhibition came true. Unidentified group of ten men raided the exhibition, destroying the exhibited works and throwing tear gas in gallery.[236]

Three days after the attack at the exhibition, in total five persons were identified (two adults and three minors) and criminal complaints were filed against them. All five of them concluded plea agreements with the prosecutor's office. By the day of writing this analysis, the remaining persons, as well as the organiser of the group breaking into the exhibition, were not identified.

Since in this situation the police failed to react properly, the authors of the exhibition approached the sector of internal control of the Ministry of Interior in November 2020, with a request to examine the actions of police officers. The sector of internal control delivered the response on a completed interview with the police officer who received the request of the legal representative of the exhibition since it was his failure to notify his immediate officer on conversation with the legal representative of the exhibition organiser, and, depending on the assessment of the head of sector, that

235 This prosecutor's office, among others, is competent to act in criminal offences against the rights and freedoms of a man and a citizen, as well as public order and peace, offences that could be considered cybercrime criminal offences depending on how they were committed or which means were used.

236 Violent behaviour from Article 344, para. 2 of Criminal Code.

would have been used as a basis to potentially take appropriate security measures on the next day.

Dissatisfied with this response, the members of art group "Momci" approached the Ombudsman at the end of January 2021, with complaint on the work of Ministry of Interior. It took six months for the Ombudsman to adopt an act establishing that there were a series of irregularities in the work of the Ministry of Interior. The Ombudsman mentioned in his document:

There have been shortcomings in the work of Ministry of Interior, Police Directorate, Police Administration of City of Belgrade, Police Station Zemun, regarding the actions of police officers pertaining to events of 13 October 2020 that refer to untimely and inefficient actions upon being notified by the parties filing complaint who had received threats of death and destruction of property, as follows:

Upon the information on threats of death and destruction of property, all immediate necessary measures were not taken with the aim of processing the complaint submitted to prevent threats against safety of citizens and their health and destruction of their property in premises of the Art Gallery "Old Captaincy" timely.

Due to mentioned misconduct in the work of Police Station Zemun, a group of ten persons easily broke into the premises of the Art Gallery "Old Captaincy" on 13 October 2020, where they tore down art drawings from the walls and also put safety and health of persons present at risk, since they threw tear gas in the room. This caused disturbance of public order and peace in the territory of municipality Zemun in premises of the Art Gallery "Old Captaincy", violations of the rights of citizens who were present in the event concerned, violations of the parties filing complaint property rights and rights to efficient action.

In his act, the Ombudsman provided specific recommendations — that Ministry should take all measures to establish identity of (all) persons breaking into the exhibition, and undertaking all activities related to collecting available evidence, ensuring that in legally prescribed deadline, the liability of persons for mentioned actions would be established. The Ombudsman recommended that competent authority should carry out disciplinary proceedings against the police officer who failed to notify the superior officer on allegations of the legal representative of the gallery of the association organising the exhibition. The final recommendation of the Ombudsman for the Ministry of Interior referred to future activities of this authority — police officers of the competent police station should in their future work "take actions in accordance with legal regulations and principles of performing police tasks and correctly and lawfully, meaning without delay, efficiently and with due care act upon the citizens' complaints".

In the second half of October 2021, a year after the exhibition was broken into, the Ombudsman completed the procedure of the control of legality and regularity of the work of Ministry. The parties submitting complaint received the information that Ministry of Interior proceeded in everything in accordance with the recommendation received from the Ombudsman, and that in total *five* persons breaking into the exhibition were identified, and that the inspector who had made failures in his work, after the completed procedure for heavy violation of duty, was fined.

Therefore, although Ministry of Interior did not establish the identity of other persons who broke into the exhibition (five participants were identified before the parties addressed the Ombudsman), and despite the fact that Ombudsman did not receive data on activities undertaken to collect available evidence for establishing responsibility of all persons for actions concerned, the Ombudsman's position was that the Ministry in the end did act upon the given recommendations.

Regarding the breaking into the gallery and destroying of the art works many individuals, public figures, associations and organisations strongly condemned such actions.[237] The Ministry of Culture and Information sent a short press release.

Since this was quite a problematic press release, the exhibition authors submitted a criminal complaint against the Minister of Culture and Information and the author of the press release[238] (criminal complaint was dismissed). This is the entire text of the press release:

The Ministry of Culture and Information strongly condemns every form of violence over art freedom and threats to physical integrity of the authors and visitors to cultural events, but also believes that showing and affirming obscene and immoral content, cloaked in supposed creative art, is provoking negative reactions of the majority of public with good reason.

Scenes of butchered babies with severed limbs or with axes in the babies heads rather represent pathology and deviation of the mind, and not any form of art. Despite anyone claiming otherwise, this society can still distinguish right from wrong in their basic form and will continue to do so as long as possible.

This attack should not have happened, but the exhibition with such harrowing individual works should not have been opened. Through its so-called underground

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237 The article "Condemning hooligans breaking into comics exhibition in Zemun", author: Mladen Savatović, nova.rs, published on N1 Portal, 14 October 2020.

238 The article: "*Momci* submitted criminal complaint against Vukosavljević", published on portal SEEcult.org, 12 November 2020.

content, it belongs to the "underground" of human spirit, similar to the attackers who belong to hooligan underground.

We strongly condemn both models of behaviour and invite the entire society to respect the legal norms and general moral principles to avoid all potential or similar situations, and we ask for the competent authorities to find and arrest persons who broke into the exhibition, putting public order and peace at risk through this and other actions."

Numerous associations of artists and people engaged in culture, associations, and other non-governmental organisations, have strongly condemned this press release, indicating that, in fact, it encourages hooligans to decide what is "true art" and "use battering to bring justice to theatres, galleries and concerts".[239]

Conclusion

As obvious from the examples, the government has adequate legal mechanisms to sanction behaviour detrimental to media workers. The problem is that these mechanisms are applied only when *assessed* it is appropriate, which should not be the case. Sanction mechanisms must be implemented consistently, without exception, with the aim of creating stimulating environment for journalists to do their job, which is particularly relevant for investigative journalism, and all other forms of critical expression.

Recommendations:

- In the system of the protection of journalists, the government authorities must re-examine the established practice in their actions, and review in detail specific circumstances of each particular case, to avoid automatic actions — such as qualification of offence, evidence collection and establishing all facts relevant for adopting proper and lawful decision, also including allegations to be found in the reasoning of the prosecutor's decisions on dismissing criminal complaint, as well as court decisions determining guilt and criminal sanction.
- The following should be harmonised:
    - Penal policy in cases of endangerment of safety of journalists, on the one hand, and on the other hand endangerment of safety of high political officials

[239] Reaction regarding Ministry of Culture and Information press release, published on the website of the Independent Culture Scene of Serbia on 16 October 2020.

    - Prosecutor's office and court case law regarding the assessment of the feeling of personal endangerment (the President of Serbia was the only person who was not asked to give a statement in the proceedings before the prosecutor's office and the court).
- Consistent application of sanctioning mechanisms for prohibited behaviour should be ensured for the purpose of creating stimulating environment for the media workers to do their job.
- The prosecutor's offices should consistently apply the instruction of legal remedy, including the information who are the recipients of the legal document in their acts.
- It is desirable that whenever possible, the prosecutor's offices end the proceedings so as to enable the injured parties to exercise their right to legal remedy, and to consistently inform the injured parties and parties submitting the complaint on the outcome of the proceedings resolved by the decision of the prosecutor's office.
- The prosecutor's office should provide reasoning in the official note stating that no foundation is established to initiate proceedings regarding reported events in a manner prescribed by the Rulebook on administration in public prosecutor's office and ensure that second instance authority could review the decision of the acting prosecutor's office.
- When submitting motion for initiating misdemeanour proceedings, it is especially important to take care that statute of limitations for misdemeanours is one year, and that in any case, it expires two years after the day of committed misdemeanour.
- Special attention should be paid to monitor the cases of suspects who are officials in discharge of duty, as it was observed that the investigations regarding these cases take long and turn inefficient.
- Work on assessing risks at the level of each news desk and train journalists to cover protests and public assemblies, and provide conspicuous clothes and recognisable badges for media representatives.
- Consistently inform journalists on importance of expressing feelings of fear and endangerment for their life and body as important elements in criminal offence of endangerment of safety, as well as relevance of them joining the criminal prosecution and filing compensation claims in proceedings they initiate by reporting the criminal offence.