



CRITICAL

POINTS

IN THE SYSTEM

OF SAFETY OF

JOURNALISTS



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OF JOURNALISTS

IMPRESSUM

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Introduction

According to the World Press Freedom report of the Reporters Without Borders for 2019, that represents sum of all indicators used for measuring freedom of reporting in one country, Serbia dropped 14 places compared to previous year and is on a 90th position out of total of 180 countries. Report states that Serbia has become surroundings in which journalism is neither a safe profession nor it receives support from the government. Authors state that number of media attacks is increasing, including death threats, and zestful statements of the officials against journalists are often heard, followed by a warning that many of the attacks on journalists have remained uninvestigated and unresolved, and perpetrators unpunished. Current status of journalism is characterized by aggressive campaigns against investigative journalists that are being conducted by pro-government media and these campaigns are in full swing.

According to the report Defend Media Freedom Campaign, almost a thousand journalists and media workers have been killed in the past decade.¹ In percentages, 93 percent of killed journalists and media employees, worked in local environments, and seven percent were reporters from abroad.² Nine out of ten cases of murdering journalists remain unresolved.³ Final years show obvious increase of all sorts of attacks on journalists.⁴

According to the results of annual report of Human Right Watch about human rights status, in the chapter on freedom of media in Serbia, status of journalists remains insecure, with attacks, threats and lawsuits for reporting on sensitive topics. „Threats to journalists and attacks were continued, without proper reaction of Serbian authorities. Pro-government media still continue to slander independent media and journalists“, states the report.

According to the results of annual report of Human Right Watch about human rights status, in the chapter on freedom of media in Serbia, status of journalists remains insecure, with attacks, threats and lawsuits for reporting on

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- 1 · Committee for Protection of Journalists;
 - 2 · UNESCO data;
 - 3 · UNESCO data;
 - 4 · International Federation of Journalists;

sensitive topics. „Threats to journalists and attacks were continued, without proper reaction of Serbian authorities. Pro-government media still continue to slander independent media and journalists“, states the report.

Report of European Commission for 2018 shows that data on intimidation of journalists, cases of threats, intimidation and violence over journalists are still concerning. Reports states that there are numerous credible reports on verbal and physical attacks to journalists and attacks on their property, that the convictions are still rare and that serious efforts are necessary for identification and prosecution of persons suspected for violation of freedom on the internet. In that regards, Serbia must elaborate guidelines to clarify their classification as criminal acts or acts of other type and to carefully monitor compliance of the bodies in charge of law implementation.⁵

Findings and recommendations from the report are a result of perennial attempts of domestic and foreign organizations to indicate to numerous problems and questions that lead to absence of adequate reaction and relation towards attacks on journalists, but also the attempt to raise safety of journalists to a higher level. Number of attacks – incidents involving journalists is increasing every year, journalists’ fear is increased because of complications with prosecution, severity of verdicts for the attacks, numerous forms of threat and pressure that from some reason is not possible to prosecute.

Intention of this research is to point out to main loopholes in implementation of the laws and procedures in practice, and in the contexts of non-punishing of crime against journalists in Serbia. The goal is defined – to secure improvement of journalists position in the criminal law as being jeopardized or suffering damage, by submitting recommendations that would improve their protection in practice.

Research is being implemented as part of the project „Towards safe environment for free and independent journalism in public interest“.

5 · From the annual European Commission Report on Serbia for 2018;

Subject and reasons for research

Basic task of the research is to identify and determine critical points in the system of safety of journalists in the Republic of Serbia, and based on that, to offer recommendations for their overcoming.

Critical points comprehend most common or individual problems that are being recognized as items with key role and influence to certain matter related to safety of journalists. Their changing will contribute to progress in preventing of non-punishing of attacks on journalists. Critical points identified refer to regulations, their implementation through practice, procedures and certain events.

Subject of research, in the goal of recognizing critical points in the safety of journalists' system, is defined by following bullet points:

1. Incidents that were characterized as various forms of endangering safety of journalists, complete procedure from reporting of endangering to further prosecution by authorized organs, were investigated and monitored
2. Implementation of legal framework was considered, with special attention to previously noticed loopholes in regulations and their implementation, measures and recommendations for amendments were proposed (Criminal Code, Law on Criminal Procedure, Law on Organization of Courts, Law on Police, Law on Public Prosecution)
3. One of the measures for promoting safety of journalists is establishing of Permanent Working Group for the safety of journalists (hereinafter: PWG), that deals with cases of endangering safety, legal framework and practice of protection of journalist. Analysis of efficiency and protection of journalists by Criminal Law in the RS, is created as part of one measure and activity of the group, used as basis for this research.
4. Activities of authorized organs in the Republic of Serbia related to endangering safety of journalists were monitored (authorized public prosecution, Ministry of Interior, authorized courts) and PWG.
5. Analysis of publicly stated opinions of the government officials and other representatives of the government related to violence and threats to journalists, was created.

Most of the research refers to 2018 and 2019 (cases of endangering, practice in proceedings and detailed analysis of the work of group).⁶ Cases considered, occurred from the beginning of 2018 to May 2019.

6 · 2016 is taken as the beginning of specific activities for recognizing the problem and attempt to resolve it, therefore, besides specific cases of endangering safety, most important details from previous years were considered in this research (Agreement, Permanent Working Group, implementation, previously mentioned Analysis of the efficiency of protection by Criminal Law);

Methodology of research

Basis for research were recorded cases of endangering safety of journalists (incidents or attacks, depending on terminology used by the Ministry of Interior, prosecution and associations of journalists)⁷, reporting, proceedings of authorized prosecution, police and courts, specific questions related to journalists and associations. Cases of attacks on journalists were recorded, course of the procedure was analyzed, potential obstacles and irregularities in the implementation of procedures and laws were identified.

In 2016, Agreement on Cooperation and Measures for Increasing Level of Safety was signed, which envisaged implementation of certain activities.⁸ First activity was successfully finalized: Permanent Working Group for the safety of journalists was established and became operational. Parallel with the beginning of work of the Group, specific activities on defining the problem, anticipating and implementation of measures with the goal of increasing the level of safety of journalists were implemented. Agreement, Permanent Working Group and Action Plan play an important role in increasing the level of safety of journalists. Therefore, we dedicated special attention to implementation of the Action Plan of the PWG, that foresees implementation of measures from the Agreement, as well the work of PWG itself.

In the first phase of research, data were collected and recorded related to identified attacks, proceedings of victims, proceedings of authorized institutions, as well as data on current status and outcome of the cases.

Following methods for collection of data were used:

- Insight into available databases (Database of attacks on journalists of the Independent Association of Journalists of Serbia – NUNS⁹ and Safe Journalists database¹⁰);
- Insight into delivered information on periodical monitoring of cases of endangering safety of journalists, provided by Republic Prosecution Office for 2018 and 2019
- Requests for free access to information sent out to authorized prosecution and courts. Responses with requested information and documents related to cases

7 · Having in mind that there is no precise definition of the activity that represents attack on journalists, several milestones are used in practice: endangering safety of journalists, incidents involving journalists and attacks on journalists. It seems that milestone that corresponds the most to practice and regulations is endangering safety of journalists;

8 · <http://www.rjt.gov.rs/sr/aktivnosti/sporazum-o-saradnji-i-merama-za-podizanje-nivoa-bezbednosti-novinara>

<https://javno.rs/vest/sporazum-o-bezbednosti-novinara-samo-prvi-korak-ka-zastiti> ;

9 · <http://www.bazenuns.rs/srpski/napadi-na-novinare/1> ;

10 · Safe Journalists database on endangering safety of journalists;

- of endangering safety in the Republic of Serbia were received
- Interviews with 30 victims journalists and their legal representatives, to find out their standpoints related to cases of endangering of their safety, familiarization with procedures and regulations of criminal protection (their rights and obligations), information from the representatives of the victims related to experiences and data that was possible to obtain, having in mind the status of the procedure;
 - Interviews with representatives of expert public, lawyers, advocates and media professionals to obtain interpretation and practical experiences in work;
 - Information from the members of the Permanent Working Group for the safety of journalists for better understanding of work and results accomplished, activities planned and goals foreseen;
 - Interviews with representatives of authorized institutions to best meet their standpoints related to safety of journalists, results accomplished and their plans;
 - Insight into other professional analysis on the subject of criminal protection, reports on status on the safety of journalists, as well as conclusions and recommendations from the Analysis of the Efficiency of Criminal Law protection that was made as one of the side instruments in the work of Permanent Working Group;
 - Information from professional round tables about safety of journalists and relation between media and judiciary, as well as from other meetings dedicated to safety of journalists.

Database on the attacks on journalists of NUNS represents most comprehensive document that records and monitors incidents in which journalists are victims. Cases of the attacks on journalists are recorded in several ways: as pressure, verbal threats, threat to property, attack on property and physical attack. Since January 2018 by May 2019 database recorded 177 forms of attack on journalists, out of which 38 refers to verbal threats, 110 to pressure, and seven cases of physical attack. Out of 177 attacks that are defined as one form of endangering safety of journalists, according to insight into database and according to available information, in the period monitored, just 40 cases were somehow initiated or reported.

In seven cases of physical attack following forms are noticed:

- Attack on the body of journalist with the attempt to damage the property;
- Attack with a vehicle resulting with damage to the vehicle owned by a journalist;
- Throwing solid objects;
- Hitting with various solid objects;
- Hitting with limbs;
- Damaging the property by instigating arson and burning the house, alienating and damaging property of the journalist;
- Damaging the vehicle of the journalist with the intention to cause malfunction or accident;
- Blocking with vehicle movement of journalist.

When it comes to verbal threats, we notice their various forms:

- Threats through papers (we recorded threats such as: „... I will punish her, personally, write that name there Jelena Diković, and move it to blue“);
- Face to face threats (threats in a phone call, threats on the street, other public spaces, in assembly hall, oral threats and shouting on the street from a car, face to face directly with large number of insults, curses and threats, and some of them said in especially dangerous context: „What are you filming, mother f**er, we will burn you and the car“);
- Verbal threats to the edge of physical attack, with attackers in their face limiting the movement of journalists, followed with various insults;
- Especially dangerous and numerous threats through social media and in other ways. Threats with murder through social media like Twitter, Instagram and Facebook, threat with other types of attack in the comments below articles, other forms of insults and pressure, invitations to lynch or marking the journalists as negative targets for the attack, with the invitations to endanger their safety. We stress out Facebook page „Naša zemlja“ from which in at least five cases reported serious threats were sent out by the administrators and by followers' numerous negative comments (indirect death threats, „bullet in the head“, „to Kalemegdan and bullet in the head“, „traitors should be hanged“). Also, emphasis on numerous other threats from different accounts („... you will get a bullet in the head by us“, „Shock-bombs and gunstock for them“, „... Who wants to watch let them, and when the hall is full and the film begins, block all the entrances and switch off the ventilation“ followed by a comment: „and release the gas“; other case „We will slaughter you c*nt if you ever again talk about Šešelj with your dirty mouth“ or „God forbid that I meet you somewhere. I will f*ck all of the traitors, I f*ck your family and traitors blood... Radicals are plenty you will see what you put yourself in!“);
- SMSs and threats in several cases („exponents of such attitudes should be severely hunted, not just verbally, if not institutionally, then outside of the institutions“);
- Physical violence, with taking of the camera from the journalist;
- Insults and attacks on public places, in assembly hall („Besides continuing to insult me, he threatened to find me and kill me“);
- Physical intrusion into the premises of media, photographing the car of the journalist with the threat of blowing it in a letter.

Periodical information about the status of the case and proceeding of public prosecution related to criminal acts with journalists as victims related to their safety, state that from the beginning of 2018 to April 2019, 77 cases were initiated on the basis of filed criminal charges or reports on criminal acts where victims were persons that are engaged on activities of public importance in the area of information.

Since 1 January by 31 March 2019, 20 cases were initiated by public prosecution offices. Out of this number, two were terminated:

- One case was closed with acquittal;
- One case with official note;
- While in 18 cases process is still ongoing.

In the period from 1 January 2018 to 31 December 2018, 57 cases were initiated on the basis of submitted criminal charges/reports on criminal acts where victims were persons that are engaged on activities of public importance in the area of information, and in relation to the work they do.

Out of that number, 26 cases were terminated:

- Two cases were terminated with acquittal;
- In one case by the decision of the court, criminal charges of the prosecutor were dropped;
- In one case perpetrator was sanctioned by imposing the obligation in compliance with the Code on Criminal Procedure about implementation of delayed criminal prosecution (opportunity), and these obligations were fulfilled completely;
- In 15 cases decision on discarding;
- In seven cases official note.

Proceedings in 28 cases are still ongoing, in pre-investigative or investigative phase.

In individual investigated cases researched, first available data and information related to specific procedures were collected. Out of total number of monitored cases (77 cases in prosecution), 49 are still ongoing cases, so the information about procedure is still not available for them, but only the information on course and phase in which these cases are. Out of 28 finalized cases, partial insight into 15 cases was made, while no data received for 13 cases.

Without commenting on the decisions on proceeding of authorized prosecution, subject of our interest was practice of proceedings. We tried to notice specific problems that occur in various phases of the procedures, and influence to the course of the procedure and possibility to decrease the protection of journalists.

Details that were specially considered in these phases:

- Phase from the moment when the assault occurs (incident) to reporting to the police or the prosecution;
- Phase from reporting, or from proceedings and first reaction of the police or prosecution, depending on to whom the report was filed (includes the phase of proceeding of the prosecutor as prosecutor investigation and proceeding of the police) to submitting of indictment or discarding of the report;

- Phase of court proceeding until the termination of procedure (since initiating till termination of the court procedure).

Current status and noticed progress in criminal protection of journalists in relation to already existing findings and recommendations

As a result of joint activities in the Chapter 23, Republic Prosecution, Ministry of Interior and media associations agreed upon the scope of future cooperation, which resulted in Agreement on Cooperation and Measures for Increasing the Level of Safety, that was signed on 26 December 2016. Agreement was signed by the Republic Prosecution, Ministry of Interior and journalists' associations – Association of Journalists of Serbia (UNS), Independent Journalists' Association of Serbia (NUNS), Association of Journalists of Vojvodina (UNV), Independent Association of Journalists of Vojvodina (NDNV), Association ANEM, Media Association (AM) and Association of online media (AOM). Implementation of the Agreement foresees fulfilling of the obligation of the Republic of Serbia in compliance with the Action Plan for Chapter 23. Measures that this document foresees, refer to improvement of communication and coordination of all signatories, education of all signatories, establishing and updating of databases on the attacks on journalists, their comparison and analysis of efficiency of existing legal framework. As part of the agreement Permanent Working Group for the Safety of Journalists is established, that represents basic instrument for spotting and implementation of recommendations related to safety of journalists. Some raising issues are strengthening the status of Permanent Working Group, its authorities and methods for involving judiciary organs into matter of the safety of journalists.¹¹

Permanent Working Group, accomplished results and further plans

Permanent Working Group began with its work in 2016. It consists of the members of RPP, MI and nine journalists' associations (one member of the working group and its deputy). This body, practically, represents only instrument that systematically works on promotion of the safety of journalists in Serbia. In the first half of 2019 group largely fulfilled Action Plan for implementation of the activities that foreseen implementation of the Agreement (two thirds of foreseen activities).

11 · Conclusions of the consultations between prosecution, police and journalists, and from meetings between courts and media held in the period from April to June 2019;

Specific cases of endangering safety of journalists are discussed in group meetings, and that is its main activity. Cases are chosen by taking into consideration level, difficulty and proceeding, and in such level possible (related to course of procedure and the phase the procedure is in).

Agreement on Cooperation and Measures for Increasing the Level of the Safety of Journalists established mechanism of contact points, appointed by each member of the PWG.¹² Contact points (contact persons) represent persons for contact and coordination, and Rulebook further defines their duties and appoints them as persons representing journalists' associations, Republic Public Prosecutor (RPP) and Ministry of Interior (MI) in administration and various levels of organization. RPP appointed contact points in the highest level and in appellate public prosecution offices for Belgrade, Novi Sad, Niš and Kragujevac - in total 12 contact persons. MI foreseen 95 contact points distributed in following manner: General Police Directorate, Criminal Police Directorate, Police Directorate, Traffic Police Directorate, Border Police Directorate, Unit for safeguarding certain personalities and objects, Gendarmerie and in the police administration for Belgrade, Bor, Valjevo, Vranje, Zaječar, Zrenjanin, Jagodina, Kikindu, Kragujevac, Kraljevo, Kruševac, Niš, Leskovac, Novi Sad, Novi Pazar, Pančevo, Pirot, Požarevac, Prijepolje, Prokuplje, Subotica, Smederevo, Sombor, Sremsku Mitrovicu, Užice, Šabac, Čačak also by Coordination Directorate for Kosovo and Metohija – Peć in Kragujevac, Uroševac in Leskovac, Đakovica in Jagodina and Priština in Niška Banja. Journalists' associations appointed one person in each association, which is in total eight contact points.

Contact points have authorities to report cases of endangering safety of persons engaged in a profession of public importance in the field of information regarding the task he/she is performing. Contact points exchange information related to specific cases, in compliance with the law. In case of development foreseen by the Agreement that lead to endangering safety of journalists, journalist as a victim or contact person within the association to which the journalist turn to, immediately inform contact person in authorized police directorate and public prosecution.

If the victim reported the incident to organizational unit of MI and public prosecution, Rulebook foresees announcement on reporting without delay by those who received the report and delivering it to authorized contact point of the stated organs in compliance with the Agreement, and on the basis of corresponding acts of MI and public prosecution.

12 · <http://www.rjt.gov.rs/aktivnosti/sporazum-o-saradnji-i-merama-za-podizanje-nivoa-bez-bednosti-novinara> ;

If not done before, journalist as a victim or contact person in the association that journalist turned to, after actions undertaken related to reporting of endangering safety, notifies authorized contact person in the police or prosecution about the development.

After received notice, authorized contact person of the association can establish direct communication with territorially authorized contact points in appealation public prosecution and organizational units of the Ministry of Interior, for reception of the notice on activities and measures undertaken by authorized organs, in compliance with the law.

Having in mind established rules on the work of contact points and their implementation, members of the Permanent Working Group agreed that it should be more carefully considered which are the cases for initiation of the mechanism on the level of PWG, which conditions are necessary to fulfill: it is necessary that the level of incident is appropriate, and reporting and exchange of information should function predominantly through system of local contact points.

Group consists of two subgroups: Subgroup for Analysis of Criminal Code and Subgroup for Analysis of Recent Method of Communication and Level of Transparency of Institutions towards Media.

PWG foresees certain measures of different level of importance with Action Plan. Measures whose urgent implementation is necessary:

- Adopted Rulebook on the work of Permanent Working Group, that officially formalizes and organizes work of the group;
- Established principal agreement (acceptance of current status) on formal procedures for communication between contact points that should deal with defining of still open question of active legitimation of representatives of journalist and media associations for accessing data during the investigation¹³

Measure that refers to adoption of internal documents that determine obligation of urgent proceedings in the cases of criminal acts against journalists is partially implemented. Ministry of Interior created internal document – Guidelines of the Obligation of Urgent Proceedings in the Case of Endangering Safety of Journalists – that, according to police claims, already became effective, while RJT in this phase works on preparation of proposal of new internal

13 · Active legitimation is proposed model of participation of representatives of journalist associations in consideration of cases within the PWG that foresees high level of access to information and procedure before authorized organs by the representatives of journalists associations, and in a similar way as official persons within public prosecution and MI. Model of active legitimation remained in the status of insufficiently elaborated proposal, today it seems closer to discarding than to further consideration and introduction;

document. Otherwise, Agreement in the article 2 foresees the obligation of creating internal acts that would regulate the obligation of urgent proceedings in the cases of criminal acts against journalists. That means that in the case of endangering safety it is primarily necessary to determine suspicion in criminal acts in order to implement the obligation of urgent proceeding. Measures marked in the Action Plan of the PWG as those necessary to be implemented most urgently:

- Defined method in which MI keeps records on cases of endangering safety of journalists by clearly and undoubtedly determining how this is being done, and to enable receiving of such information;
- Accomplished agreement on harmonization of common criteria for keeping of all records of the attacks on journalists;
- Current Criminal Code (CC) foresees only three acts against person engaged in a profession of public importance in the field of information regarding the task he/she is performing. PWG during its work identified other acts that can result with endangering safety of journalists, and especially acts that Permanent Working Group deals with as one of its tasks in the sense of keeping records and considering individual cases. Efficient work related to this is accomplished through Subgroup for Analysis of the Provisions of the Criminal Code and Proceeding of Authorized Organs, with initial plans for expansion of the activities that specially refer to process elements and Law on Criminal Procedure;
- Established Subgroup for Analysis of Recent Method of Communication and Level of Transparency of Authorized Institutions towards Media foresees creating of analysis of recent communication and level of transparency of authorized institutions.

One of planned tasks, that is considered as not implemented yet, foresees determining of proposal for amendments to Criminal Code and other laws and by-law acts related to method of endangering safety of journalists, in the following period. Proposal should be based on findings of the Subgroup for Analysis of the CC, however, having in mind complexity and difficulty, task requires additional time and multi stakeholder activities, that at this point overcome Permanent Working Group (scientific workers, law professors, judges).

As part of the realization of measures from the Action Plan, status of internal investigation in the MI for the assault of journalists during presidential inauguration on 31 may 2017 is determined¹⁴. In internal investigation about

14 · After being twice discarded, criminal charge submitted by one of the victims, journalist Lidija Valdtner, First Basic Public Prosecution in Belgrade noticed that there are still elements of endangering safety, so on the basis of that, initiated misdemeanor charges against persons that assaulted the journalist. Misdemeanor charges were submitted for disturbing the public order in compliance with the Law on Public Order. According to available data of the Misdemeanor Court, so far, besides material evidences, statements of all participants of this incident were collected and final verdict is expected and potential misdemeanor verdict <https://www.cenzolovka.rs/pritisci-i-napadi/pone-ovo-odbacena-krivicna-prijava-lidije-valtner/>;

proceeding of police officers during the assault on journalists during presidential inauguration, MI determined that there were no mistakes in the work of acting police officers, but that, on the other hand, there were no official reports or complaints to the proceedings of police officers in duty at that time by journalists or other persons. In the continuation of proceedings against dismissed criminal charges of journalists, authorized prosecution initiated misdemeanor procedures for disturbing public peace and order against persons suspected to apply force against journalists.

First key point in the work of PWG is the event from 31 May 2017, confronted standpoints and disagreement of members related to reaction to current events – attacks on journalists that primarily refer to endangering safety of journalists in the inauguration of the President of the Republic of Serbia.¹⁵ Dissatisfaction of journalists' associations with proceedings of authorized organs, MI and Prosecution¹⁶ ambiguity and insurmountable obstacles related to different standpoints of the members of the group in providing protection to journalists, culminated in October 2017 by freezing the status of the representatives of journalists' associations in the Permanent Working Group.¹⁷ In the October 2018, with the support of Mission of OSCE, compromise was made related to further joint action, and PWG revised recent activities and continued with work.¹⁸ That period represents a milestone in the work of the group. Step towards finding of solution for opposed stance was made (Prosecution and MI on one side and journalists' associations on the other) related to problems of criminal protection of journalists, especially around wider interpretation and consideration of criminal acts against journalists, urgent reactions and coordination between contact points.

On the other hand, biggest problem in recent work of the group was opposed stance of journalists' associations on one side and MI and Prosecution on other, related to qualification of individual cases of attack on journalists. Besides, members of the group have different understanding of the status of journalists, the way it is defined by the Criminal Code. One of the consequences of such disagreement is lack of active communication of PWG with

15 · Attack on journalists during presidential inauguration on 31 May 2017, by persons whose role could not be determined at the moment of the attack;

16 · <https://www.cenzolovka.rs/drzava-i-mediji/udruzenja-insistiraju-na-ispunjavanju-uslova-za-povratak-u-radnu-grupu-za-bezbednost-novinara/>;

17 · More on link <https://www.cenzolovka.rs/drzava-i-mediji/radna-grupa-za-bezbednost-novinara-skoro-godinu-dana-neradna/>;

18 · In a meeting held on 24 October 2018 MI and RJT offered detailed answers related to disputable cases of the attack to journalists on presidential inauguration. Journalists recognized responsibility and the intention of the prosecution and the police to provide as much accurate information as possible. In this specific case, it is about reporting on undertaken measures and activities until finalization of all cases;

public, that is naturally extremely interested in information and reaction of the Group to specific cases of endangering safety.¹⁹

Critical Points In The System Of Safety Of Journalists

CRITICAL POINT 1:

Relation of the Permanent Working Group with public; Communicating the activities of PWG and reaction to cases of the assault and other incidents; results of work of Permanent Working Group are poorly visible and promoted in public

1

Proposal: *Regular informing of the public about the jurisdiction, activities and results accomplished. One of the forms of notifying the public could be a model of periodical publishing of the report on the work of PWG.*

CRITICAL POINT 2:

Structure of the working group, problem with absence of court organs

2

Huge flaw in the work of group is the absence of court organs, which is also identified by the Permanent Working group itself. Having in mind that journalists' associations were needed several years to introduce Prosecution and MI to the specifics of the journalist profession (whose efforts made serious progress in work and processing), it is obvious from the proceedings of the courts that should sentence in the last instance that they have no sufficient information nor experience in working with them²⁰ We have realistic situations in practice where criminal charges of the prosecution are easily refused.²¹

Proposal refers to consideration of including representatives of court organs in the work of PWG, potentially their involvement as informal participants or observers that could participate in the work but not during the process of decision making.

Comparing the good example of the progress of MI and public prosecutions

19 · Having in mind intended role of PWG and legal obligation not to influence the cases, especially due to participation of RJT and MI, PWG can engage after submitting of the reports of the attack, to react to submitted reports, invite to submit reports in order to determine whether there are elements of act, however, it is very important that it keeps its objectivity during the whole process;

20 · Striking examples are opposite stances related to criminal act of endangering safety from the article 138 CC, of the court in charge on one hand and Prosecution and MI on the other, in the case of terminating detention to suspected Simonović, and awarding protection after conducted estimation of safety of the victim Milan Jovanović;

21 · Cases of the attack on journalists in which prosecution accepted journalists' statements and such established practice of treating certain forms of endangering safety as criminal acts;

in relation to greater understanding of the specifics of the risk related to journalist profession (since signing of the Agreement in 2016 till today), key step is mutual cooperation, exchange of experiences, understanding built with time, recognizing and analysis of the problem, taking over of models and learning. Results of work of group show in which direction it goes and the impression is, that even now, participation of court organs is necessary. On the other hand, essentially it is more important to involve court organs in the work related to matters of safety of journalists, than their technical participation in decision making in the Permanent Working Group. It is possible, which is more realistic, to regulate participation of court organs in consideration of most important matters on the subject of safety of journalists through consultative meetings, trainings, transfer and exchange of knowledge, calls and presence in the debates on key issues, participation in the proposal for amending Criminal Code, therefore formal participation of the representatives of the court organs in the working group is not necessary.

Proposal: *Involving court organs into the work of the group as observers, asking of the opinion from the court organs, consultations related to most important questions (especially related to existing court practice and identified criminal acts).*

3

CRITICAL POINT 3:

Criminal Code, absence of special acts against journalists related to their engagement, implementation of identified acts through guidelines of the MI and RJT

One of the noticed problems in protection of journalists is existence of criminal acts that journalists are or could be targeted with, and in which persons „that perform work of public importance“ and considered to have „increased risk of safety of acting person“ receive special protection.²² Legislator recognized safety risks that refer to performing of journalist profession, with the fact that very few criminal acts really refer to protection of journalists as especially sensitive category (the one that performs activities of public importance) and comes down to just three criminal acts.²³ Nakon brojnih debata, rasprava u javnosti i u okviru rada grupe, važan korak u rešavanju problema postignut

22 · Analysis of the efficiency of criminal protection, material aspect of criminal protection – Criminal Code of the RS (special part), page 26 and 27;

23 · Analysis of the efficiency of the criminal protection, quote, page 27;

Special form of criminal act aggravated murder against causes person who performs work in the public interest in connection with performance of their duties (article 114 para 1 line 8 CC)

Special form of criminal act serious bodily harm against person who performs work in the public interest in connection with performance of their duties (article 121 para 6) and

Special form of criminal act of endangerment of safety against person who performs work in the public interest in connection with performance of their duties (article 138 pars 3);

je identifikacijom i zajedničkim usaglašavanjem SRG oko krivičnih dela iz Krivičnog zakonika u vezi sa bezbednošću novinara koja su predviđena da se uključe kroz primenu posebnih uputstava MUP-a i RJT.²⁴

Special Subgroup for Analysis of the Criminal Code in the Permanent Working Group, consisting of one representative of legal profession by each of members of PWG, identified all criminal acts that can be considered as acts against journalists:

Chapter XIII of the Criminal Code – offences against life and limb

- Murder from article 113;
- Aggravated Murder from article 114 para 1 point 1, 2, 3, 5, 11 with the remark that paragraph 1 point 8 incriminates deprivation of life of person engaged in a profession of public importance in the field of information regarding the task he/she is performing (article 112 of the CC defines that work in the public interest shall mean practicing a profession or performing a duty which entails an increased safety risk for the person involved and it refers to occupations that are relevant to public information, healthcare, education, public transport, as well as legal and professional aid before judicial and other state authorities);
- Serious Bodily Harm from article 121 para 6 – incriminated serious injury of another or causes serious impairment of health person engaged in a profession of public importance;
- Light Bodily Injury from article 122 para 2 – criminal prosecution of the perpetrators of criminal offence from article 122 para 1 CC under private lawsuit;
- Brawling from article 123 CC – if the participants of the brawling were aware that victim is a journalist;
- Threat by Dangerous Implement in Brawl or Quarrel from article 124 CC – if the participants in brawling or quarrel were aware that victim is a journalist.

Chapter XIV of the Criminal Code – criminal offences against freedom and rights of man and citizen

- Unlawful Depriving of Liberty from article 132;
- Abduction from article 134;
- Coercion from article 135;
- Extortion of Confession from article 136;
- Ill-treatment and Torture from article 137;
- Endangerment of Safety from article 138 st. 3 – person engaged in a profession of public importance in the field of information regarding the task he/she is performing;

24 · New Guidelines on the proceeding of police officers in the cases when criminal act or misdemeanor is made against person engaged in a profession of public importance in the field of information regarding the task he/she is performing by MI (2018), while RJT so far implements existing guidelines from 2017, simultaneously working on preparation of the new one;

- Persecution from article 138a;
- Infringement of Inviolability of Home from article 139 para 2;
- Illegal Search from article 140;
- Violation of Privacy of Letter and other Mail from article 142 para 3;
- Unauthorized Wiretapping and Recording from article 143 para 3;
- Unauthorized Photographing from article 144 para 2;
- Unauthorized Publication and Presentation of another's Texts, Portraits and Recordings from article 145 para 2;
- Unauthorized Collection of Personal Data from article 146 para 3;
- Violation of Freedom of Speech and Public Appearance from article 148;
- Prevention of Printing and Distribution of Printed Material and Broadcasting from article 149 para 3;
- Prevention of Public Assembly from article 151 para 2;
- Prevention of Political, Trade Union or other Association and Activity from article 152 para 2.

Chapter XXV of the Criminal Code – criminal offences against general safety of people and property

- Causing of General Danger from article 278 CC;
- Failure to Eliminate Danger from article 285 CC – if the suspect was aware that criminal offence from the article 278 from the CC was made against journalist;
- Grave Offences against General Safety from article 288 CC.

Chapter XXX of the Criminal Code – criminal offences against the judiciary

- Accessory After the Fact from article 333 CC – if the primary criminal offence was made against journalist;
- Violation of prohibition determined with safety measure from article 340a CC – if the measure of safety is restraining order and prohibition of communication with the victim to the defendant for criminal offence against journalist, regarding the task he/she is performing.

Chapter XXXI of the Criminal Code – offences against public peace and order

- Violent Behavior from article 344 CC;
- Violent Behavior at Sporting Events or Public Gatherings from article 344a CC;
- Forming a Group for the Purpose of Committing Criminal Offences from article 346 CC – if related to criminal offences of endangering safety of journalists;
- Making and Obtaining Weapons and Tools intended for Commission of an Offence 347 CC;
- Participation in a Group Committing an Offence 349 CC.

Chapter XXXIV of the Criminal Code – criminal offences against humanity and other right guaranteed by international law

- Use of deadly device from article 391v CC.

Listed acts are in the process of introduction by implementation of internal acts, obligatory guidelines or directives for proceedings of the MI and RJT. At the same time, identified acts should become part of the initiative of the PWG for amending Criminal Code to comprehend cases of endangering safety of person engaged in a profession of public importance in the field of information regarding the task he/she is performing.

After identification of acts from the CC, it is necessary to organize continuous introducing and trainings of the police and prosecution to pay special attention in their work to these acts against journalists.

Proposal: *Kontinuirano praćenje implementacije predviđenih uputstava RJT i MUP-a, naročito u vezi sa primenom identifikovanih dela, uključivanje u rad sudskih organa po pitanjima promene stavova sudske prakse kod ključnih krivičnih dela, priprema i izrada Propozala za izmenu i dopunu KZ.*

CRITICAL POINT 4:

Limitations of the implementation of the institute of prosecution investigation, speed of procedure, duration of procedure

4

In the system of criminal protection of journalists, prosecution becomes today the most important link. Introducing the institute of „prosecution investigation“, extends its role in criminal procedure, therefore authorized public prosecutor represents „investigative organ“ in pre-criminal procedure and during the investigation,²⁵ and decides on prosecution or initiating of criminal charges.²⁶

Since the introduction of prosecution investigation the biggest problems in practice that influence the work of public prosecution in criminal and pre-criminal procedures were identified so far. Noticed problems also appear in proceedings on endangering the safety of journalists:

1. **Influence to the prosecution** can occur, primarily during the process of election, in decision making on termination of prosecutor's function and during the election of members of State Prosecutors' Council, as well as participation in the work of that organ.²⁷

Public prosecution is independent, but not entirely independent state authority organ. Such, cannot act completely independently in the judiciary

25 · Law on Criminal Procedure, article 43;

26 · Analysis of the Efficiency of Criminal Protection, Organization of Public Prosecution, page 47;

27 · Ibid, page 47;

system, which can automatically result in influence (that doesn't have to be direct) and disable proper leading of investigation.

Influence to prosecution primarily occurs during the election process. Law on Public Prosecution foresees that public prosecutors are elected by the National Assembly to the proposal of the Government of Serbia, while State Prosecutors' Council can submit its list of candidates to the Government.²⁸

Reasons for dismissal are widely regulated, and decision on dismissal from the post is also adopted by the National Assembly to proposal of the Government. Along with jurisdiction to keep track on independence of the public prosecution, State Prosecutors' Council considers reasons for dismissal and decides on them in compliance with the Law on Public Prosecution.²⁹

Having in mind such organization, public prosecution can be subjected to various forms of influence by the legislative and executive authority. Therefore, it is logical that such status of public prosecutors can at least in one part, cast a doubt to their objectivity in certain cases. When it comes to the cases of endangering the safety of journalists, influences can come in various forms, mostly through certain types of pressure to the work of prosecutors: especially pronounced pressure of different executive organs, that is manifested differently. Pressure of the authority organs can be characterized as political pressure, especially in the cases where attackers to journalists belong to the government or are in certain relation with the government (e. g. members or activists of ruling political parties). Forms of pressure can be divided to direct and indirect, by negative campaigns assisted with pro-government media.

2. Experts and public criticize unfitnes to the role of carrier of investigative procedure and related to that: **poor organization, therefore excessive hierarchy dependence of the lower prosecution offices from the supreme prosecution, occurs.** Dependency is reflected in issuing of obligatory guidelines and inexistence of independent authorities of deputy prosecutors, solely delegated, which logically leads to the possibility that supreme prosecutor has insight into work of lower prosecutor, and thereby to certain form of pressure.³⁰

Prosecution is managed by one public prosecutor, that has certain number of deputies, and most of the cases from its jurisdiction are handled by the deputies.³¹ That means that work on cases is not directly in the hands of public prosecutor. Public Prosecutor is accountable for the work of complete pros-

28 · Law on Public Prosecution, article 74;

29 · Law on Public Prosecution, article 97;

30 · Law on Public Prosecution, articles from 18 to 21.

31 · Law on Public Prosecution, article 12;

ecution office, while deputies are accountable only to him/her as executive. Prosecutor's investigation requires strong guarantees of independency of the prosecution³², which our legal system does not provide. In specific cases potential pressure of the prosecutors to their deputies, in relation to their cases, is noticed, pressure to public prosecutor by others, reflected on acting deputy. On the other hand, there are positive examples of pressure, in the cases of journalists' safety, to work on preparation, introducing of obligatory guidelines, but also to control related to urgent proceeding in the cases of endangering safety of journalists.

3. Basic goal of introducing prosecution investigation was acceleration of court procedures. However, that hasn't occurred in practice in wanted way.³³ Judges that trial on criminal acts have fewer cases, but prosecutors now have much more. At the same time, number of prosecutors is not increased. That speaks about resources that prosecution is missing. Freedom in proceedings and lack of precise deadlines, provide space for arbitrary proceeding. There are no deadlines for proceeding by criminal charge, which is one of the flaws of the procedure and which prolongs the whole procedure. Such flaw refers also to criminal acts against journalists.³⁴ On the other hand, there are certain cases that are handled quickly.

Problems can be also other prosecutors with the intention to speed up procedures, in order to act affirmative to better protection of the journalists, aimed to accomplish better results, however, it can lead to mistakes. Potential problem related to that, is overly fast investigations with insufficient evidences for conviction, public pressure or pressure by other institution that can lead to wrong estimations and negative influence to the outcome (fast conclusions, less or insufficient evidences, huge public pressure and by the institutions to speed up the process, which can have negative effect to further course of the process).

On the other hand, there are cases that are handled much faster, compared to usual cases of endangering journalists' safety (e. g. cases of the attack to Milan Jovanović or Tatjana Vojtehovski, or cases of endangering safety of journalists of some media that can be considered as close to the authorities).

32 · Law on Public Prosecution, article 5, Independency in work: Public prosecutor and deputy public prosecutor are independent in performing of their authorities. Every influence to the work of public prosecution and to proceedings in cases by executive and legislative authority is forbidden, by using public post, media or in any other way that can jeopardize independency of prosecutor's work;

33 · Exception is only the examples of so called huge cases. Such cases are characterized by special elements: aggravation of the consequences, famous journalists that enjoy certain social status, huge public pressure, pressure of other authority organs, political pressure, but also obvious overcoming of current maximum capacities of the police and prosecution;

34 · Analysis of the efficiency of criminal protection, pre-investigative (pre-criminal procedure);;

In most cases of that kind, prosecutors and police jointly indicate to unrealistic expectation on duration of every process, but that even in such cases result of the effort is almost completely above the maximum possibilities (directing of all available resources only to those cases). They feel that such speed of the process cannot be realistic example for all other cases. Problems with the speed of the processes can be different: in some cases (especially severe or with huge pressure from the public) prosecution and police make maximum efforts and resources to accelerate the process and resolve the case.³⁵ Most often these are the efforts that overcome their real possibilities, capacities and resources (participation of many officers of MI, redirecting from other cases towards especially severe ones, which can influence negatively conducting of other cases). On the other hand, there are also other groups that are especially endangered as journalists that begin to suffer pressures in the goal of increasing the speed of the procedures in that case as well. MI and prosecution consider that if it is set up as a standard, the impression will, unfortunately, be that the prosecution and the police are slow, or that cases from other areas are handled with insufficient quality or speed. On the other hand, that should not become excuse to slow down resolving of the cases even more than necessary. It is clear, that in general, speed of the process is not really on expected level. Speed must be adequate to realistic problems on the field and must remain maximal depending on the circumstances.

Investigation is the crucial phase of the criminal procedure and contributes significantly to the outcome of the process, which means that it is extremely important to be constructed properly. Public opinion stances go in the direction of the elements of ideal models of investigation: sufficiently fast procedure – so that the courts could deal with large number of cases in their jurisdiction, strong authorities of the organ in charge of prosecution – to perform its function in satisfactory way, and protection of the right of the offender.³⁶ Prosecution investigation is introduced with clear intention to speed up the trials, however, in practice, it actually burdened the prosecution even more, that now receives huge number of cases that are technically impossible to realize in real timeframe. Unpreparedness for such striking capacity, individuality of each case and problems that occur in work, are some of the reasons behind increasing number of cases, and prosecution is not able to adequately handle them. For example, in the period from 2012 to 2014 one deputy prosecutor in the First Basic Prosecution in Belgrade had in average 1.300 cases.³⁷

35 · Examples of so-called „Large Cases“;

36 · Experts' stance;

37 · Data from Advocacy Bar of Serbia;

One of the reasons for such prolongation of procedures is **lack of evidences**, and that is one of the problems that acting organs face with, during the collection of data in the cases of endangering the safety of journalists. Problem refers to most of the cases³⁸, and especially to criminal act of endangering safety from the article 138 para 3 of the CC, that most often occurs in practice. Key question of what is the problem with collecting the evidences and who is, in wider sense, responsible for that segment of criminal procedure, arises. Victims, especially when it comes to threats over the internet, do not have technical possibilities to collect all the evidences, and must rely on the police.^{39 40} Victim hardly recognizes what is or should be the evidence. However, full responsibility should not be placed on him/her. Victim is not obligated to know these procedures. According to the examples from large number of cases⁴¹, reasons for difficult obtaining of information and evidences can be various: individual situations in the cases where it is really impossible to collect evidences, like complete physical damage or missing of the phone that could carry the content, physical assault in the dark when journalist can't see the attacker, and there are no witnesses or appliances that can reveal the identity or movements and similar, weak coverage of streets, public places or objects with filming equipment, dysfunction of that equipment when set up, problems with access to data from that equipment, failure of the technical capacity of the organs that collect data or that limit them in collecting of the information. Also related are working conditions, lack of cooperation of other organs, long period from the criminal act to collecting of the evidences, redirecting to other cases and lack of sufficient attention.

Proposal: *One of the models of promotion can be involving the prosecutors into field work, alongside with the police, with the goal of better access to information, managing the procedure and communication with the police officers, thus automatically increasing the chances to speed up the process.*

38 · Especially problematic and dangerous are the cases of the attack through internet platforms, where journalists are being endangered through articles, comments or direct messages in portals, social media or other web pages. In certain cases even the MI or prosecution cannot reach data in proper timeframe;

39 · Analysis of the efficiency of criminal protection of journalists;

40 · Computer evidence must be authentic. Court expert for information technologies (IT expert) must confirm that evidence is unchanged compared to its original status. This is of crucial importance for accepting the evidences on the court (forensic evidence). Key elements for acceptance of the evidences on the court are how they were obtained, kept, transported, protected from the changes and manipulated, Digital Evidences, Lazar Petrović Police Academy;

41 · We emphasize that these are the data collected from the cases recorded by journalist associations. Best database for such cases is the one kept by NUNS;

Proposal: *Considering of the existence of potential influence to work of prosecution in certain cases. Proposal refers to the work of State Prosecutors' Council (having in mind that the task of SPC is to keep track on independence of prosecution), that would consider potential influences to the work of prosecution in especially sensitive cases (cases with noticed pressure, other types of attacks or influences to prosecution through media, by other authority organs etc.)*

Council would receive reports related to cases with noticed internal or external pressure to the work of prosecution. Reports related to the cases of pressure to the work of prosecution could be delivered by Permanent Working Group, Republic Public Prosecution or individual prosecution offices. PWG should establish commission, comprising out of three members, that would investigate potential influences, create reports that, after their adoption by PWG, would be delivered to the SPC.

Proposal: *Implementation of the research related to the work of prosecution on cases of endangering safety of journalists. Activities related to monitoring and analysis of work can be implemented by Association of Public Prosecutors.*

Proposal: *Findings show that more of internal verifications of proceedings are necessary, primarily because of general improvement of the speed and quality. Verifications refer to amplified consideration of disciplinary accountability in the cases of violation of rights or inadequate proceedings of the prosecutor. Verifications would be done in compliance with the rules that regulate accountability of public prosecutors.*

Proposal: *Creating and conducting the survey among prosecutors that worked on the cases of endangering the safety of journalists. The goal is to determine existence of negative impacts to their work, potential pressure and necessity to additionally protect prosecutors and their deputies. Model of the questionnaire and the survey could be implemented by PWG for the safety of journalists, with the support of RPP.*

5

CRITICAL POINT 5: Criminal Procedure Code

When it comes to Criminal Procedure Code, we noticed following problems: freedom of the prosecutor to implement the institute of defer of criminal prosecution, inexistence of efficient legal remedy against decisions on dismissing the criminal charges and lack of external court control in the cases of deferring criminal prosecution.

Public prosecutor has **freedom in implementation of the institute of deferring criminal prosecution from the article 283 (so called opportunity)**⁴², or dismissing criminal charges in the cases from the article 284 para 3 of the Law on Criminal Procedure Code⁴³. In such situations prosecutor is the one that freely estimates whether legal conditions for implementation of this institute are fulfilled, which opens up the possibility for arbitrariness, and in these situations victim does not even have the right to objection to the supreme prosecution. Victim has no option to influence the implementation of this institute, and as a form of reaction there is no external court control. Prosecutors justify implementation with various social interests, resocialization, first time offenders, but also by existing de facto approval of the judge for implementation of this institute. Accepting the institute of deferring criminal prosecution, so called opportunity, represents a problem in the cases with potentially justified and realistic possibilities to prosecute offender even stronger and demand serious verdict than deferring of criminal prosecution. Precisely due to disproportionality, implementation of the institute of deferring criminal prosecution has completely negative connotation in public. We researched public reaction related to this issue on social media and reached the data that in over 80 percent of the times, citizens are revolted when this institute is being used or suspect validity of its implementation, which can speak about general negative public stance on the decisions of the authorized organs.⁴⁴

It is noticed that there is no efficient legal remedy against decisions on dismissal of indictment. In the case of dismissal of indictment during the pre-criminal procedure, the only legal remedy available to the victim is objection to directly superior prosecution. However, the percentage of adopted objections is low.

42 · The public prosecutor may defer criminal proceedings for criminal offences punishable by a fine or a term of imprisonment of up to three years, if the suspect agrees to carry out one or more of the following measures:

- 1) rectify the detrimental consequence resulting from the criminal offence and compensate the damage caused,
- 2) pay a certain amount of money to a humanitarian organization, foundation or a public institution,
- 3) perform certain public service work or humanitarian work,
- 4) fulfill pending support obligations,
- 5) undergo treatment for alcohol or narcotics addiction,
- 6) undergo psycho-social therapy,
- 7) fulfill an obligation determined by a final decision of a court, or observe a restriction determined by a final decision of a court

43 · Public Prosecutor will inform the victim about rejecting of the report and about reasons for it, in eight days deadline, and inform him/her of his/hers rights (article 51 para 1), if the criminal charge was submitted by police organ, and will notify that organ;

44 · Special emphasis on monitoring of reactions on social media and comments of the news that published information on accomplished opportunity. Selected cases of the attack to Milan Jovanović and Tatjana Vojtechovski;

Having in mind hierarchy of the prosecution, this type of control of decisions, by its effects, resembles internal control (proceeding of supreme prosecution like in the case of internal control, using the similar methods for consideration). On the other hand, internal control can be more efficient because nature of adopting specific decision is of less intensity and significance. In the official procedure by filled objection, decision of the prosecution creates far larger consequences and the one who acts upon the objection is more careful. Basic goal of internal verification is amending and correction of the system in proceedings, removing of mistakes, therefore the one implementing it can be more free, to point out to more irregularities that in the procedure upon objection. Clearly it is also possible to notice irregularities that require debate on responsibility in the internal procedure.

Part of the problem is **lack of external court control in the case of deferring criminal prosecution.**

Proposal: *Having in mind various effects of two compared legal remedies 1) objection to direct supreme prosecution as legal remedy during the procedure 2) procedures of internal verifications and considerations, in the cases of dismissing the objection, we propose additional internal control to analyze more precisely, from several angles, specific reasons for dismissal and proceeding of the prosecutor in specific case. One of the goals is improving the system of proceedings, wherefore prosecution should make continuous internal verifications to remove mistakes in the proceedings in practical examples.*

6

CRITICAL POINT 6:

Information and knowledge of the officers on obligations in proceedings in the cases of endangering the safety of journalists and similar incidents, communication between authorized organs

Work of the police is regulated with the Law on the Police (Official Gazette of the RS, number 6/016). With introducing the prosecutor's investigation, police takes over the role of „assisting organ“ of the prosecution and the court in criminal procedure, and therefore participates in „pre-investigative and investigative procedure“ by implementing „police authorities regulated by Criminal Procedure Code and proceeds by the warrant and requests of the public prosecutor and the court“.⁴⁵ However, Ministry of Interior is the only one with the real capacity and resources to discover the perpetrator and to provide evidences, therefore it is still crucial in this part of the process. It is necessary to mention that MI established special Service for Fight Against High-tech Criminal for

45 · Analysis of the Efficiency of Criminal Protection of Journalists, role of the police, page 43, Criminal Procedure Code, Law on the Police;

criminal acts under the Law on Organization and Authorities of State Organs.⁴⁶

In the sense of its role in increasing the safety of journalists, MI established 95 new contact points in territorial police directorates that are determined and differentiated as primary and secondary contact points. According to the Guidelines on Urgent Proceedings Related to Criminal Acts against Journalists, persons that receive the reports must immediately, without delay, inform authorized prosecutor, and afterwards contact point for the safety of journalists in their territorial directorate.

All contact points, according to Guidelines of the Minister are obliged to submit written report on their work once a month. Content of the report is defined by internal Rulebook on the Reports of MI,⁴⁷ in compliance with the Law on the Police. .

According to available information, General Police Directorate (Bureau of the Police Director)⁴⁸ established a team for supervision, procedure of supervising all individual cases that refer to endangering safety of journalists.⁴⁹ Planned part of their activities, of the members of the team – supervisors, is to ask from the officers – contact points, information about realization of daily activities in cases, especially information on consultations with prosecution related to cases, so that each detail from each individual case is known, to avoid potential omissions (police to prosecution and vice versa).

Concerning recent results of the work of contact points of the MI, effect is various and it varies depending on several elements. In the environments with more attacks, contact points established practice of proceeding and they transfer their influence to the acting officers.⁵⁰ However, even the environments with frequent recorded attacks to journalists, go through painful phases of implementation of introduced rules, therefore there are still oversights in

46 · More about the Service for Fight Against High-tech Crime http://arhiva.MI.gov.rs/cms_lat/UKP.nsf/sbpok.h?OpenPage;

47 · Police proceeds in compliance with the Law on the Police, internal acts and in the cases of attack to journalists in compliance with the internal Instruction on Urgent Proceedings related to criminal acts against journalists;

48 · More about Police Directorate on the web-page of the MI http://www.MI.gov.rs/wps/portal/sr/direkcija-policije!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zi_S19zQzdDYy8LTzd3QwczQw-MPQ08zQwNnAz0w8EKDHAARwP9KEL6o1CVuJu5Ghk4Bppbuni7WhhbeBhAFeCxoia3wiDTUVER-AOJg4zQ!/dz/d5/LOLDUmITUSEhL3dHa0FKRnNBLzROV3FpQSEhL3NyX1JTYnMYXRu/

49 · Example of implementation of provisions of Instruction is in the case of attack to journalist Verica Marinčić, with implementation of supervision by the assistant director of the police. In this case, upon request of the members of Permanent Working Group, from the highest contact points from the Police Directorate, information on undertaken activities of the members of the MI about proceedings in this case were provided;

50 · Cases of attack to journalists reported in larger urban environments, like Belgrade, Novi Sad, Niš, Leskovac

the speed of reaction and expected proceedings.⁵¹ In the environments in which, since signing of the Agreement and introducing of Guidelines, were no cases of the attack on journalists, contact points often made mistakes or haven't proceeded due to lack of information, which reflected to the acting officers, therefore level of urgency or special attention in the cases of attacks on journalists was missing. Officers were often left without feedback about the Agreement, Permanent Working Group or contact points and their role. We even have examples of implementation of special rules to the cases with „public figures“. On the other hand, in the past few months, we record good examples of several supervisions over work of MI and contact points, as well as exchange of information with victims and representatives of journalist associations in PWG.

Proposal: *It is necessary to continuously introduce, primarily officers of the MI, but also prosecutors and their deputies, with the Agreement, contact points, findings related to criminal acts that can be related to attacks on journalists, guidelines on work referring to prosecutors and the police related to cases of endangering the safety of journalists, and to train them accordingly (in relation to their institutions).*

As continuation of the process of increasing the level of knowledge, it is necessary that the contact points transfer⁵² their knowledge to the colleagues dealing with individual cases, officers of the MI that receive the reports, more local and regional communication between contact points and officers proceeding in the cases of endangering the safety of journalists.

Proposal: *In the goal of better communication with prosecution and completing the data on the course of the case, constant informing is necessary, inquiries to the prosecution, consultative meetings and exchange of information related to the cases that will help the MI to become even more efficient.*

51 · Example of the case of endangering safety of journalist Verica Marinčić, where in the series of incidents by the suspect, one of the executives did not have proper information about the role of the contact points (third pressure from the series of the suspect for endangering safety), yet classified the case with proceedings related to public personalities. Reaction of the MI was good and timely, regardless of the ignorance of the roles of contact points by all members of the police that came into contact with the victim, however, shows the need to inform the officers about the case so that they could act urgently and without delay. In this case officers on duty took over proceedings from the inspectors in charge of proceedings, due to their engaging on other important activities;

52 · Contact persons that were appointed on the basis of the Agreement to represent journalists' associations, RPP and MI – have the authorities to report cases that lead to endangering safety of person engaged in a profession of public importance in the field of information regarding the task he/she is performing, exchange information related to specific cases, in compliance with the law;

CRITICAL POINT 7:

Relation of the prosecution and the police, potential and practical problems in work

7

Criminal Procedure Code authorizes the public prosecutor to lead the pre-investigative procedure and investigation, but also guides the prosecution and the police to cooperation.⁵³ Public prosecutor manages pre-investigative procedure and decides on initiating or delay of criminal prosecution.⁵⁴ Although prosecutor is *de iure* manager of pre-investigative procedure and issues warrants for proceedings, pre-investigative procedure is *de facto* under the control of the police, having in mind that direct implementation of operational and evidence related activities in that part of the process is in the hands of the police.⁵⁵ Additional problem is impression of insufficiently regulated managerial role of public prosecutor and related to that, according to the stance of experts, somewhat unclear and confusing relation between public prosecutor and the police in this stage of criminal procedure.⁵⁶

In most proceedings upon criminal acts in Serbia, police is the one initiating criminal charges. Afterwards are victims, while even fewer - lawyers. When it comes to cases of the attacks on journalists, most of the initiators are the victims, followed by the prosecution.⁵⁷ Having in mind special character of such cases (which journalists themselves fought for), reason that prosecution more often initiates charges lies in the fact that police in such cases proceeds upon prosecutors' warrants and remains very careful having in mind sensitivity of endangering safety of journalists. Other reason of such relation is the fact that most of the attacks refer to criminal act of endangering safety, and mostly related to verbal threats through social media, then through mobile phone messages, and finally face to face, verbally or physically. In the last ones, police acts immediately and collects the evidences, therefore it is logical that afterwards it turns to the prosecution.

Although it seems that prosecution receives the report from the police in a simple way, it is actually organ that actively participates in initiating of criminal charges and prepares groundwork in evidences and data for its initiation. That means that prosecutors must analyze received qualifications and consider

53 · Also, Law on the Police obliges the police to proceed upon the warrant of the public prosecutor, article 18;

54 · Criminal Procedure Code, article 43;

55 · Analysis of efficiency of criminal protection, quotation;

56 · Experts' opinion;

57 · Data from the research on the relation of public prosecution and the police, implemented in 2017;

other eventual sources. In simple cases police regularly proceeds without consulting public prosecutor and after termination of criminal processing, submits criminal charges or the report on the incident. In Serbia, practice in simple cases, with usual routine police actions, most often without notifying the prosecutor, submits criminal charges upon which prosecutor proceeds. In more complex (severe) cases, investigation is preceded by activity that police does independently or by prosecutor's warrant, that is directed to discovering and prosecuting criminal act perpetrators, and there cooperation is necessary.⁵⁸ Cooperation continues when the prosecutor is better familiarized with the case, and afterwards, further measures and activities are being undertaken upon consultations with the prosecutor, his/hers opinion is requested in all legally related matters, and especially related to identification of evidences to be collected, and afterwards criminal charges are drafted as a result of joint action.

Situation changes when „basis of doubt“ is determined for criminal act prosecuted by official duty (a set of facts that indirectly indicate to criminal act or that certain person did that criminal act).⁵⁹ If the police has adequate level of doubt that criminal act has been done, it should inform the prosecution within 24 hours about measures and activities undertaken that resulted with discovery of the criminal act. In the cases of attack to journalists that provision is accelerated to the level of urgent informing (in the shortest possible deadline in relation to permission for the specific activities in the case).⁶⁰ Public prosecutor then takes over managing pre-investigation and police then becomes obliged with instructions from the prosecutor, which would mean that level of autonomy of the police work in this stage is drastically decreased. However, the impression is that that isn't always the case in practice. In most of the cases, prosecutor, although informed, awaits for the police to conduct first activities on collection of evidences, and afterwards decides how to proceed. According to Guidelines of the Ministry of Interior, urgent proceeding without delay is foreseen, which indicates to acceleration of already regulated proceedings.⁶¹ That means that in the cases of attack on journalists, prosecutor should be informed in less than 24 hours.

According to research on public prosecution and police, implemented in 2017, by Association of Prosecutors of Serbia, problems that concern untimely informing of public prosecutors about activities from the field were identified,

58 · Criminal Procedure Code, article 5;

59 · Ibid;

60 · Agreement on safety of journalists and guidelines of the MI and RPP on urgent proceeding;

61 · Instruction of the MI on proceeding of police officers in the cases of criminal act or misdemeanor against person engaged in a profession of public importance in the field of information regarding the task he/she is performing;

which often results in missing to collect the evidences in compliance with CCP and cannot be used as such.⁶²

One of the biggest problems in relation of the police and prosecution, according to the opinion of prosecutors, is that the police does not treat evidences in a way that public prosecution does.⁶³ Prosecutors consider that in some cases certain evidence activities of the police become compromised in further course of the procedure. According to the same research, although it does not refer directly to endangering safety of journalist, however involves also that type of criminal acts, slightly less than three quarters of prosecutors found themselves in a situation to dispose with evidences from the investigations that were unusable because of the method of their collection.⁶⁴

Recommendation of the police is that for all severe criminal acts prosecutor should be involved into field work, by public prosecutor on call sitting in the same room with officers of the police, representatives of team for investigation on call. According to the opinion of the police representatives, thus time and resources would be saved, since often from the moment criminal act occurs to getting to the crime scene, or the information reaches the prosecutor, couple of hours pass, which certainly carries a risk and is contrary to the emergency of the situation. According to the data from the research, prosecutors consider that crime scene, after passing of that time, becomes compromised or unusable for collecting of information. Essentially, that is only one of the problems in the complete process of collecting of evidences, but having in mind that they are related to safety of journalists and that urgent proceeding and quick investigation are the key and the goal, it represents very important element.

Police officers stress out as one of the biggest obstacles, that prosecutors, when issuing request for collecting of necessary information, most often provide general formulation, which then puts the police in charge of undertaking of all activities. Thus, public prosecutor transfers the authorities to the police to undertake all the actions that police officers think are necessary. General stance of the police is that general requirements should not be issued, neither giving up to the police officer to decide on which action to undertake and more precisely, that the police should not receive any more new requests for collecting the data.⁶⁵ It often occurs in practice that after the reception of the

62 · Research: Public Prosecution and the Police, 2017 <https://www.uts.org.rs/images/javno.tuzilastvo.i.policija.pdf> ;

63 · Research: Public Prosecution and the Police, 2017 <https://www.uts.org.rs/images/javno.tuzilastvo.i.policija.pdf> ;

64 · Public Prosecutor in pre-investigative procedure issues a warrant to the police for collecting necessary evidences in more than half of cases, Research: Public Prosecution and the Police,, 2017;

65 · Answers of the experts on the police work, as part of the research on the attacks on journalists

report and evidences that prosecution receives from the police, prosecutor issues another warrant for collection of necessary evidences so that the police should recollect certain information or try to obtain new ones (which represents additional step that requires time and resources, and efforts to avoid that could be invested). Since the prosecutor leads the investigation and can best estimate what is necessary to decide on further course of the procedure, he/she has to state as precise and urgent as possible, requests for collecting of evidences.⁶⁶

According to information about the work of MI, it often occurs that police officers do not have all the information related to the cases in which they collected evidences. That primarily refers to information about further course of the case before the prosecution. Data collected by the police are delivered to the prosecutor, and if the prosecutor collected all that is necessary (regardless of initiating or dismissal of charges), it happens that the police does not receive feedback about the further course of the procedure. On the other hand, we noticed the cases in which police hasn't show special interest for further course of the case or proceedings of the prosecution.⁶⁷ Prosecution continues with the procedure and police can be reactivated if necessary by prosecutors warrant. We noticed that there is no strict obligation in practice to inform about undertaken activities. Very realistic and often situation is that victims or interested public address the MI related to the status of the case, and that officers of MI don't have complete answers. In this respect, it is necessary to show more interest in collection and completing of all data about the status of the case.

Proposal: *Most efficient and effective direction is better coordination of the work of police officers and deputy prosecutors. In the cases of the attack to journalists, obligatory coordination between primary contact points and prosecutors and their contact points is foreseen. Coordination would comprehend joint monitoring and harmonization of data about proceedings of authorized officers of the MI and deputy prosecutor.*

Proposal: *To make police work more efficient, public prosecutor should provide useful and clear consultation and in cooperation with the police create plan for execution of evidence activities in the goal of determining of key facts and collection of necessary evidences that identifies leaders and defines deadlines. When the criminal act is executed, and the investigation is necessary, joint filed work in the place of attack to journalist is necessary, with arrival or informing the contact points that de facto have supervisory role.*

66 · Research: Public Prosecution and the Police, 2017 <https://www.uts.org.rs/images/javno.tuzilastvo.i.policija.pdf> ;

67 · Answers from the research on the cases of the attack on journalists

CRITICAL POINT 8:

Contact points

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Agreement on cooperation and increasing the measures of safety of journalists for the first time introduces the term „contact points“.⁶⁸ Agreement foresees that role of the contact point should be closely regulated with Rulebook on work of Permanent Working Group. Rulebook foresees that signatories of the Agreement will appoint persons for contact and coordination, for exchange of information and proceedings in the cases of suspicion to criminal acts against journalist and that will be in regular contact. Contact persons (contact points) have the authorities to report cases of endangering the safety person engaged in a profession of public importance in the field of information regarding the task he/she is performing and exchange information related to specific cases, in compliance with the law.

Proceeding of contact point is regulated with article 21 of the Rulebook on the work of Permanent Working Group. In the case if the incident foreseen by the Agreement that lead to endangering the safety of journalist occurs, journalist as a victim or contact person in the association that journalist turned to, immediately informs the contact person in authorized police directorate and/or public prosecution. If the journalist reports the incident to organizational unit of the MI and/or to public prosecutor, notification on reporting will without delay be delivered to authorized contact point of stated organs in compliance with the Agreement, and on the basis of corresponding acts of the MI and public prosecution. If not previously done, journalist as a victim or contact person in the association that journalist turned to, after undertaking activities (from the para 1 article 21 of the Rulebook), informs the authorized contact person in the association about the incident. After received notification, authorized contact person of the association can establish direct communication with territorially authorized contact points in the appellation public prosecution and organizational units of the Ministry of Interior, for receiving the notification about undertaken activities and measures of authorized organs, in compliance with the law.

Guidelines created by the MI and RPP more closely regulate the role, procedures, notifying and informing contact persons.⁶⁹ In April 2019, MI adopted new and improved Guidelines and foreseen greater level of accountability of its contact points.

68 · <http://www.rjt.gov.rs/sr/aktivnosti/sporazum-o-saradnji-i-merama-za-podizanje-nivoa-bezbednosti-novinarar>

69 · Guidelines adopted in compliance with the regulations that regulate proceedings of the MI (Law on the Police, by-law acts and internal regulations) and public prosecutors (Law on Public Prosecution, by-law acts and internal regulations that regulate proceedings more precisely);

In recent practice communication between contact points and work on cases of endangering the safety of journalists turned out differently. Like in many attempts to introduce certain models and roles to the system, certain initial problems occur with implementation of rules and proceedings of first contact points. In environments where police administration and prosecutors have more opportunities to meet with cases of endangering, contact points more consistently followed obligation of urgent informing and special attention related to the attacks on journalists, while this can't be said for smaller environments. However, such practice occurred just after several years of proceedings and overcoming of initial problems, like missing out to act, wrong information, misunderstanding of those who submit reports to inspectors of the MI or deputies in prosecution, misunderstandings in specific cases between contact points from journalists associations. On the other hand, positive practice still does not refer to environments in which inspectors of the MI meet for the first time with some of the forms of endangering safety of journalists. That especially refers to smaller environments. One of the most common examples, visible even today, is that to the request of the victim or the contact point to provide the information, the answer is that it is not possible to obtain such information, that they are not in the possession of such information, and that it is necessary to turn to person for public relations within the MI or prosecution. We have good examples of recognizing the need to share the information, in available format, to media and the public.⁷⁰

However, journalists that are victims, are often unclear about the role of contact points of all sides participating in the procedure. Journalists are not familiarized with their role, mission and significance in specific cases, therefore, they most often relate them to the procedure itself. It seems that ambiguity occurs due to lack of direct contact and further notification on the course of cases and overlong investigations. Also, negative stance and ignorance about their role, does not mean that contact points are not true to their role, and one of the reasons lies in the fact that most of the work stays outside of the horizon of the victims and the public.

Like in previous points, it is expected that the Guidelines of the MI and prosecution should resolve most of the problems regarding roles and proceedings. However, it is necessary to monitor the implementation and first results of the implementation of Guidelines to be able to evaluate the progress in practice. Previous period showed existence of ambiguity and misunderstanding between contact points by journalists and also by representatives of the police

70 · We have good examples in practice from the work of the Appellation Public Prosecutor in Niš in the cases of providing information to journalists upon received requests for free access to information of public importance, where prosecutor recognized well the need to share the information, in a form that does not affect further course of the procedure, to journalists and public;

and prosecution. Ambiguities most often occur in situations when authorized police administration gets contacted by a contact point of the association trying to reach the information related to specific cases of the attack on journalist that is a member of that association. Often in smaller communities, where police officers did not have the experience of processing the attack on journalists, and especially in situations where contact points are persons unknown to the officers of the MI (contact points from other parts of Serbia).

Having in mind that **MI and prosecution noticed certain oversights and recognized the need of urgent proceedings, Guidelines are foreseen to provide the solution.** MI designated new and renewed certain old contact points from 2017, foreseen submitting of monthly reports by contact points to the Police Directorate. That represents a good example of internal control with the goal of identifying oversights and efficiency of acting. Minister of Interior adopted obligatory „Guidelines on proceeding of police servants in the cases where victims of the criminal or misdemeanor act are person engaged in a profession of public importance in the field of information regarding the task he/she is performing“. Document contains instructions related to key elements that represent greatest problems that occur during processing by the police officers. Members of the MI are obliged to inform urgently and without delay, authorized public prosecutor for consultations, qualifications of the criminal act or misdemeanor and for implementation of measures and action from the domain of the MI, they are obligated to immediately inform police officer that is appointed as contact person of the police administration in the cases of execution of criminal acts against journalists. Police officers, in the goal of collecting the facts and evidences that refer to circumstances of criminal act or misdemeanor, are obliged to implement all necessary measures and actions without delay, implement authorities in compliance with the Law on the Police and other regulations that refer to proceedings of the members of the MI. To the request of the victim or its advocate, police servant will provide general information related to the course of procedure and the status, and in compliance with laws and other regulations that regulate work of the police.

MI appointed new contact points (95 new points in 26 territorial administrations in the Republic of Serbia), status of contact points from 2017 is revised, having in mind that certain officers are not in those posts anymore or in the service. In cooperation with the prosecution, trainings of the members, introduction and contact, exchange of experiences and information were organized. MI foresaw delivering of periodical reports on each case of the attack on journalists. Assumption is that in these cases contact points in territorial administrations will report, which is logical. In this respect, it is very important to see whether this provision will refer to acting police officers or contact points. They should submit written reports once a month to Criminal Police Directorate, which represents certain level of internal control,

with simultaneous informing of its contact point in the Directorate. On the basis of available information, contact points from second line of work are appointed (e. g. SBPOK).

In relation to previous problem is **slow proceeding of contact points of the police and prosecution**. In cases that we monitored, we notice delay in informing the police in territorial administrations (especially in smaller environments), missing to inform, lack of information of the contact points, especially in smaller environments, related to the tasks and further steps, poor informing of victims and their advocates on the proceedings, lack of information on potential further endangerment of safety of the victims and potential providing of protection.

Comparing the data from 2018 to 2019, it is noticed that there were a lot of complaints of the victims and the public to the reaction of investigative organs, speed of implementing investigations, efficiency and effectiveness in the work of police and prosecution.

Most important result of implemented actions should be full law enforcement and providing of the protection to the victims. Faster and efficient must not endanger effectiveness of the procedure in the sense of faster solution and superficial results in the sense of finalization, but must mean undertaking and execution of all actions possible to increase the efficiency of the process, and thereby achieving maximum effectiveness and the result.

Other necessary direction, is increasing of awareness and understanding of the victims, that should understand longer duration of procedures in situations when circumstances of the case does not allow finalization of the investigation in deadlines expected by the victims and the public. Speed and urgent reaction means that foreseen steps, since reception to indictment, should be implemented maximally properly and quick, in accordance with the characteristics of the specific case. In this respect, speed of the procedure should be adjusted to accomplishing of the goal. However, having in mind that we noticed clear examples of long lasting procedures in stages from the reception to collecting of information, untimely reactions in certain cases, difficulties in discovering perpetrators or collecting of evidences, in some cases more than obvious political pressure to authorized organs, undercover pressures, it is completely clear why there is justified dissatisfaction of victims and the public.

On the other hand, in some cases that can just be an impression and not realistic result. For example, reasons for that, can be submitting of reports through contact points in journalist associations, and not direct reporting to

the MI or prosecutors.⁷¹ In some cases, impression is, that it is possible that the procedure slows down due to one additional step, practically one sort of intermediary in the process of reporting. Representatives of the MI and the prosecution consider that direct report to the police and prosecution is necessary, primarily because of participation of some other organs in the process (e. g. report of the specialist doctor on the level of injuries, concerning body injuries). We even have situations where the MI and prosecution unofficially found out about the incident, and thereby undertook certain introductory action and verifications to reach the precise information that indicate to reality of the attack. MI considers that there are crucial issues to be resolved before the procedure is initiated, which refers to undertaking of actions by the prosecution and the MI (potential abuse by the journalists, conscious and intentional instigating of the attack and journalists' questions).⁷² However, undoubtedly, reporting on the attack on journalists by contact points is very useful, therefore it is necessary to regulate in more details, method of further informing or instructing of the victims.

It is noticed that since the attack to journalist Milan Jovanović, on 12 December 2018, there has been certain change of the proceedings, like faster reaction in couple of serious cases of endangering safety of journalists. Such reaction should become standard and model for proceeding of all authorized institutions that receive the report, especially because we noticed several attacks with serious consequences that were preceded by pressures or endangering of less volume.

Proposal: *Introducing of certain, at least internal, deadline for implementation of pre-investigative activities, giving of precise warrants for collecting of data - not to be repeated, and as final result, we would get faster procedures.*

Proposal: *Strengthening and implementation of internal control to determine the standstills in work and provide recommendations for improvement. Consideration of disciplinary procedures against deputies and prosecutors accountable for mistakes (example of the mistake of the deputy from Niš and wrong decision on authorities, missing to take the statements of the victims).*

Proposal: *Implementation of Guidelines that should make stages in proceedings more urgent and efficient, verification of proceedings in the goal of internal control of work in order to notice and correct mistakes in proceedings.*

71 · This method of reporting by contact points in the associations is essentially one of the solutions for accelerating the reports and reaction of authorized organs, but the fact is that it represents one additional step compared to direct reporting to the MI or the prosecution by the victim;

72 · Answers from experts of the MI, as part of the research of the cases of attacks on journalists;;

Proposal: *Permanent Working Group should continuously monitor implementation of the Guidelines of the MI and RPP. Monitoring could be based on the reports on work.*

Proposal: *Delivering of the reports to individual contact points in journalist associations, in such level possible, taking into consideration course and status of the case, as well as to contact points of journalists.*

Proposal: *Trainings and introduction with the work of the members of the MI and prosecution, connecting of contact points, establishing of subgroups in local or regional level, whose work would lead to exchange of data and intensive cooperation of all sides of the process.*

Proposal: *Reporting of all sides and their contact points on the same cases, intersection of the reports, consultations of all contact points, more trainings, meeting of contact points.*

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CRITICAL POINT 9:

Problem of processing of the attacks on journalists in social media and portals

In relation to the number of all attacks (pressures and severe attacks), as much as 30 percent comes from the on-line space. When it comes to verbal threats, 34 percent came through various social and on-line media (Facebook, Twitter, Instagram, portals, web-pages, and forums).⁷³

Out of total number of cases before the prosecution in 2018 and 2019 (73 cases), 29 cases refer to endangering the safety of journalists through various forms of cyber-attacks (over 39 percent out of total number).⁷⁴ In almost all cases endangering is related to the article 138 para 3 of the Criminal Code.

Although in 2019 we recorded identical number of cases with journalists as victims, records of journalists' associations show increase of 15 percent compared to previous year of various forms of on-line endangering of safety. This finding can indicate the expectations for types of attacks in the future. Not only related to the cases of attacks to journalist, on-line communication has long time ago become sensitive area in need of more attention. Social media became a place where almost each segment of people's lives unfolds, from private to business relations. Networks are a place where majority of

73 · Percentage received compared to total number of recorded attacks in 2018 and 2019 by journalists' associations;

74 · Data received on the basis of regular notifications of RPP related to cases in which victims are journalists;

communication occurs, which gives an impetus to the potential attackers due to lack of personal contact, such treats in majority of the cases wouldn't be said face to face. Most of the attacks occur in social media. Internet attacks appear in various forms: various forms of pressure, direct attacks, instigating of group hatred or group attacks, targeting for other attackers, endangering of privacy, harassment, causing injury, stalking, unscrupulous attempts or accessing the private content of the journalists, and often creating of special web-page with the intention to attack certain journalist or media.

Certain characteristics of on-line technology increase probability of abuse (certain level of anonymity, difficulty of discovering identity, remoteness from the victim, group, public space and public). Compared to physical harassment, cyber attackers can often remain in complete anonymity of the virtual space with just limited data on identity. If they are skilled in using of technologies, have enough knowledge on covering traces of use, potential attackers can cause a lot of damage to the journalist (by using instant e-mail accounts, open internet space, pseudonyms, applications and programs for instant chat). Experts consider that on-line space which includes social media and public communication is missing certain form of supervision. In such space, attackers easily decide to threaten the journalists. They can team up more efficiently than in traditional forms of attack (physical or verbal contact, face to face), since there is almost no limitation of the number of persons that can join. On the other hand, consequences to the victims can be severe. Besides the fear and real threats to life of the victim, attacks cause different emotional responses: vengeance, frustration, anger, depression, isolation, social rejection etc.

Reasons for such trend of cyber-attacks are numerous:

- Absence of face to face communication, that requests more courage and responsibility behind threats;
- Group attacks, with support, approval or accomplice of other persons, providing the sense of greater protection and freedom to attack;
- Public posts, that are visible in longer period, therefore available to numerous audience of wide spectrum and possibility of on-line support (likes and support comments), nourishing the need for certain type of attestation before large audience, which is difficult to accomplish in real life,
- Ethics and values of the society in which there is no condemnation of intolerance for those that are not like-minded, which is even encouraged. Internet becomes crucial place for easy and harsh manifestation of dissatisfaction with the stances of others, due to less responsibility for the threats and lack of face to face relation. Today, it is still necessary to explain to the citizens how important it is to defend freedom of speech and right to an opinion, that regulation does not allow surpassing the limits of intolerance. Unfortunately, practice and de facto impunity show differently;

- Greater possibilities for hiding the identity, thereby difficulties in discovering the perpetrators. Perpetrators become more aware of the difficulty to collect the evidences related to their identity, complexity of the process, deadlines and uncertainty of receiving the data from the police and prosecution, which gives them the swing for further harassment and attacks;
- Possibility of removing the posts, and thereby evidences;
- Some cases show absence of consciousness about the consequence of the act. Impression is that those who attack most often are not aware of their rights and obligations, or accountability on social media, significance and consequence of written threats. They often mix behavior on social media with acting face to face;
- On the other hand, consciousness of those who already attacked and potential perpetrators of the limit that shouldn't be crossed, increases (using of conditional and the way threats are defined, where the limit is in-between threats, insults and pressure). This is subconsciously assisted with negative practice of courts and prosecution;
- State of de facto impunity of similar procedures, especially on the internet (including threats to other persons without special attention and protection that journalists receive);
- Specific relation of one part of authorized organs, where especially lower ranked servants and smaller environments are missing condemnation and reaction ('he/she didn't mean it', 'doesn't know what he/she writes about', 'don't say that, you don't know each other', etc.)⁷⁵;
- Practical problems in processing before authorized prosecution and the police, reflected in mentally hard process of collecting and delivering the evidences by victims (which they were referred to⁷⁶), represents serious form of secondary victimization and some of the reasons for withdrawing from further prosecution or non-reporting new attacks;
- On the other hand, processing of authorized organs show problems in collecting of information related to the incidents and identification of the suspects due to location of the server or portals outside of Serbia, difficulties around collecting data from authorized organs in the countries they are registered (long period), slow cooperation with the police from those countries.

One of the larger problems is determining of the cause of the attacks. Very often, various statements, comments and activities are in the service of so called "targeting" certain journalists, therefore mere execution of the attack represents logical consequence. In this respect, it is necessary to determine real cause of the attacks, primarily to work on the prevention and estimation of future attacks.

75 · Examples were collected during the research on the attack on journalists and interviews with the victims;

76 · According to information from the attacked journalists and their advocates, victims are often refer to collecting and delivering of data on the assault to prosecution and the police;

In most of the cases, when serious threats are made through social media, police and prosecution react by addressing the companies who own social media (Twitter, Facebook, and significantly less Instagram) for urgent delivery of data on user accounts that were used for threatening. In the meantime, MI and prosecution use available resources to determine the identity and prosecute the suspects.

In relation to the organization and resources dedicated to prevention of criminal acts, the impression is that high-tech criminal is behind other areas. Having in mind increase of cyber-attacks compared to other criminal acts that have been given the priority for a long period of time, this area has fewer assets intended. We feel that increase of noticed threats must be followed by adequate reorganization and increasing capacity in all levels (professionals, assistance in services that deal with research and collection of notifications and data). On the other hand, there is also the problem of experts necessary to engage for such type of work. Since this is technical profession that is well paid and wanted on the market, we doubt that state organs can be competitive with the assets they dispose with and keep cyber experts for a longer period of time.

Proposal: *Having in mind the findings, recommendations for changes concern creating of special analysis of risks of endangering of journalists on social media, special investigation processes and monitoring of groups that were identified to promote hate speech and insults to journalists. This especially goes to the pages with specific purpose, created intentionally for the attacks. Since the attacks are most often consequence of targeting by certain groups or individuals, police and prosecution should analyze true causes of the attack and prevent it.*

Proposals refer to special trainings for the journalists and creating of special manual that would assist the journalist to timely and efficiently recognize, react, report cases of the attack and protect themselves from negative effects of the attack (new attacks and pressures). One of the solutions can be special support group for the victims whose goal would be to encourage and strengthen the journalist profession.

Proposal: *RPP and the MI should increase their capacity and resources for proceeding with cyber-attacks. Thus, they will create conditions for better reaction in the cases of attacks on journalists. Police and prosecution should not expose victims to additional victimization, rather to be especially active in the process of collecting data and notifications related to the attacks.*

CRITICAL POINT 10:**Problem with deciding to report the attack, withdrawing of victims from reporting**

First problem is related to reporting, or more precisely – deciding of the victim whether to report the attack or not. Journalists find themselves in the „dilemma“ whether to submit the report or not. Having in mind negative experiences of other colleagues, rejection of reports, public characterizing and rejection with severe pressures, journalists face with when deciding on whether to enter the process that still produces more unbeneficial consequences than those from endangering safety. Even in this stage, first forms of victimization occur, regardless of the consequences of the attack.

Special problems that can influence reluctance of the journalists to report the attack have been noticed – large number of cases in which the investigation is still ongoing (according to the last harmonization of data of the RPP, there are 48 such cases), impunity of pressures, lack of trust into work of authorized institutions, pressure to institutions that journalists are aware of, impression of unclear role of Permanent Working Group that leads to couple of other impressions: perception of poor results, impression that PWG can't affect the resolving of problem and the attack, impression of abuse of representatives of journalist associations for the goals of administration, effect of so called large cases, problems of small environments – it is very important to provide as much as possible data to victims. It is necessary to introduce journalists far better to reporting procedure, especially about the role of contact points of journalists, police and prosecution, provide them with the opportunity to receive answers to their questions.

We recorded several new cases during the course of this research, through interviews with other journalists, prosecutors, police and members of the Permanent Working Group, that journalists haven't officially reported or these cases were not recorded in the existing databases of the attacks on journalists. Reasons for this are different: journalist do not perceive it as a form of attack, though by the experience of previously dismissed cases they decide not to report although they are aware of the attack, problems with the incrimination of acts and confusion with journalists on what the act is and what is the pressure, fear and desire to remain anonymous for unwanted consequences and the effects of reporting. We recorded that reasons are fear of retaliation and other more severe consequences, as well as secondary victimization.

On the other hand, indignation of journalists and the public due to the fact that authorized organs are not able to help them, therefore the impression is that system does not function or there are loopholes (pressure is not defined

as criminal act, police and prosecution cannot act in the specific case, and the impression is that there are no efforts to resolve the problem systemically).

Proposal: *Consider amending Guidelines of the MI and the prosecution, that would foresee direct involvement of contact points in the work with journalists that are victims (depending on the status and the elements of the case, one of the tasks of contact points would refer to providing of necessary information to the victims. Having in mind less attacks compared to other acts and scope of work in other cases (regular procedures) contact points could fulfill that goal. Effect would be very positive in several levels.*

CRITICAL POINT 11:

Journalists that are victims often are not well aware of the procedure and method for reporting endangering of safety (23 cases), they are unclear of their further role as victims, as well as further steps in the proceedings of the police and prosecution, but also of the Agreement and work of PWG

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If they decide to reports the attack, journalists in most of the cases do not know well the procedure of reporting and notifying of authorized organs related to the specific incident⁷⁷ They are unclear whether it is more efficient to submit the report to the prosecution or the police, thereby often mixing of their roles, which creates additional confusion. Also, often ask for additional information related to the method of reporting, especially because of lack of information and knowledge related to the elements of acts. This results in often creating of wrong conclusions and creates impression of their weakness as victims, thereby often participating in verbal conflicts and misunderstandings even with the police officers.

On the other hand, MI and prosecution expect from the victims high level of knowledge of procedures and qualification of acts against them. Specific instructions and feedbacks from the persons that receive the report are missing, which leads to incomplete reports or reports with missing elements for qualification of the act. Victim journalists often notice that they haven't stated all of the necessary information, which affects the continuation of the procedure. Journalists should know their rights and obligations, but in extraordinary situations they are in need of additional assistance and proactive attitude of the police and contact points.

During the submission of the reports it is necessary to act urgently, which means that servant that submits the complaint should process it further in order to make it more efficient. Therefore, the best way to provide the victim with more data is with notification of contact points of the MI and prosecution

77 · Over 70 percent out of 30 journalists - victims interviewed as part of the research;

(territorial ministry or authorized prosecution), with the assistance of contact points of journalist associations. Official should provide the victims with information on further steps, procedure by complaint, possibilities, on how to submit the report properly or to give a statement, which key information are needed for the authorized organ, what are his/hers rights and obligations as victim, which should or shouldn't be done during the investigation. Urgent proceeding and forwarding of the information to contact points slowly hits the goal and is well recognized in the Rulebook on the work of PWG, as well as the Guidelines of MI and RJT.

We determined, through collecting of information on familiarity with the role of contact points, how well are journalists that are victims, aware of the work of the Permanent Working Group for the safety of journalists. In most of the cases **journalists, that are victims, were not aware or insufficiently knew before the attack about the role of the contact points in journalists' associations, police and prosecution** (70% of the cases).⁷⁸ Journalists are unclear of the role of contact points of journalists' associations (17 cases), where, for example, we noticed cases in which journalists considered that the attacks should be reported through contact points in journalists' associations, and not personally by going to the MI or prosecution. Journalists that are victims, most often do not have sufficient information about the role of contact points, which can lead to wrong conclusions of their authorities.

Journalists in general, and those that are victims, we often notice, **have incorrect or wrong information related to work and mission of Permanent Working Group**. Journalists consider that PWG participates in resolving of cases and that role of contact points is to provide assistance in the investigations. On the basis of such understanding, if certain cases are still in the investigation phase or criminal charges were dropped, journalists consider that to be part of the accountability of PWG as well. Having in mind number of unresolved cases, some of the conclusions are that contact points and PWG actually do not do their work, and to the question on why they think that, the answer is that the impression of the public is that cases of the attack are not being resolved and that public questions justification of the existence of PWG.

One of the problems noticed in the procedure of reporting occurs when case is being reported by contact points of the journalists' associations. MI and prosecution initiate their pre-investigative or investigative actions and very often occurs that during that process cooperation with the attacked journalist is still unneeded – in the function of the victim and witness. We noticed that in several cases, misunderstanding of journalists and public occurs in regards to actions of the police and prosecution, which can result

78 · List of questions to victims that were interviewed;

in wrong conclusions. Although intentions of the MI and prosecution are not negative, it is clear that their proceedings are directed to active investigative actions and collecting of evidences that can avoid the victims at that moment, such cases lead to additional victimization.⁷⁹ MI and the prosecution should dedicate more attention to the victims, to understand the level of difficulty of the problem, and to address them in the shortest possible period after receiving of the case, but, on the other hand, associations with their contact points can teach journalists and point out to practice and regulation related to proceedings of the police and prosecution (rights and obligations). Associations should take over the role of link between prosecution and victims, especially in the cases they report through their contact points.

Proposal: *It is necessary to promote the role of PWG, to remove ambiguities related to authorities and educate journalists and authorized institutions about the work of PWG and contact points. Contact points should involve into providing assistance and support to the victims in the process of reporting. Proposal comprehends preparation of guidelines for contact points that would contain necessary data that should be communicated to the victims, with the goal of clarification of the role and future steps of authorized institutions.*

It is necessary to consider potentially more significant role of PWG compared to current one. Expectations of the journalists are obviously far greater that PWG can offer today, therefore it is beneficial to determine whether and in what level it is possible to strengthen the authorities in the work of Permanent Working Group.

Proposal: *On the occasion of reporting the incidents, MI and prosecution should provide assistance to journalists on the reports, in the sense of clearly stated procedures, rights and obligations of the victims, but also in the sense of careful collection of all relevant information that should become part of the report. It is necessary to provide proactive relations of persons that receive the complaint and contact points of the police and prosecution. This includes urgent informing of contact points from journalists' associations.*

Proposal: *It is very important to monitor the work and the proceedings upon new Guidelines on proceedings of police officers in the cases of criminal acts and misdemeanors against person engaged in a profession of public importance in the field of information, of the MI from April 2019, in the following period. Monitoring should enable collection of data on implementation and functionality of internal documents.*

79 · Example of the case of endangering safety of journalists Marko Vidoković and Nenad Kulačina, where by application of NUNS prosecution acted urgently, however, victims did not have complete information on specific actions of authorized organs, which resulted in negative stance of victims in media related to information about undertaken action;

Proposal: *More engagement of the contact points related to giving of feedback to the victims, assistance in giving of statement. Proposal refers to amending of obligatory Guidelines that would foresee such role of contact points in the MI and prosecution. On the other hand, contact points of journalists' associations have to cooperate, and provide additional assistance to the victims in the form of advice or information.*

Proposal: *Education of journalists, assistance of contact points by being present during the statement and providing assistance to mitigate the consequences of secondary victimization and accomplish the best results in collection of data from the victims. Guidebook/manual for journalists related to safety.*

Proposal: *Instructions to journalists explaining how to submit and to whom, the report, obligation of submitting to the MI to speed up the proceedings, and what are the key elements and expressions that have to be included in the reports.*

Proposal: *Communication between the victims, contact points of journalists' associations, acting prosecution and the police, where more attention should be dedicated to informing of journalists on the status of the case, but also to teach journalists on active interest and insight into cases.*

12

CRITICAL POINT 12:

Pressures to journalists, problem of impunity of pressures, level of accountability of authorized organs

Journalists today are well aware of the meaning of „pressures“, and more than 79 percent of interviewed knew that something of such exists even before the pressure was made upon them.⁸⁰ However, they are still unable to make a precise difference between pressure and criminal act, which is illustrated with the result of almost 70 percent of the cases out of 30 interviewed journalists that were subjected to endangering of safety. One of the examples is pressure of the MPs from the parliamentary platform which may correspond to insults, preventing of access to press conferences, individual pressure of the servants in authorized organs and statements related to the status of journalists, certain threats said in conditional, that are neither criminal (nor insults), nor misdemeanors, pressure of other authority organs to the victim and its family as a consequence of submitting of the report etc.) When victims find out that large number of cases has been dismissed due to insufficient elements for execution of criminal act, if they themselves are

80 · Interviews with journalists that were victims of endangering safety made as part of this research. They were posed 20 questions related to attacks, procedure of reporting, knowing of rights and obligations, proceedings of the police, prosecution and journalists associations, familiarity of the work of PWG and role of contact points, expectations etc.;

not convinced into the existence of the act, if they can't tell the difference between criminal act or pressure or in previous period experienced attack that was characterized as pressure (report rejected or denied), journalists have harder time to decide to report.

According to the Analysis of efficiency of criminal protection, pressures refer to various forms of endangering the right to freedom of expression in the widest possible sense: smear campaigns, preventing of journalists to perform their duties by the police officers, authority organs or private persons, requests to remove the footages or photos, suspicion to political replacements of journalists and editors in public media, denying of the right to attend press conferences or removing from the press conferences, prohibition of filming and photographing, pressures through press releases of the political parties and authorities, threats with firing and decreasing of salary for politically tricky questions, submitted criminal and misdemeanor charges against journalists, verdicts in litigations against media and journalists in compliance with the Law on Public Informing and Media. Although they don't have the treatment of criminal or misdemeanor acts, pressures create certain damage that can very often lead to serious consequences. Damage and negative consequences can be equal if not even bigger than those imposed by criminal acts. We recorded cases in which negative campaigns resulted in sending of letters with serious threats, than ostracization of journalists from smaller local environments, as well as causing of fear and insecurity with these journalists that were subjected to long term campaigns. However, having in mind that such campaigns in most of the reported cases are qualified as pressures, journalist's reports were dropped.

Practice of rejection of reports that refer to such campaigns, results in growing number of acts that can be qualified as pressure and as such do not undergo criminal or misdemeanor prosecution. Consequence of implementation of such practice actually raises the scale of pressures and attacks that can hold elements of incrimination, but became tolerated by the prosecution and the courts.

Thus, we create unintentionally certain models of impunity behavior and actually offer instructions to potential attackers to what level they can endanger the safety of journalists, by just applying pressure. With such cases, **critical point of the highest level is the obligation to find the way to include pressures into punishable acts.**

Most of the reported acts that were characterized as serious pressures refer to „endangering safety” from the article 138 of the CC. It seems that in most of the cases there were preconditions for initiating procedure.

Legally binding acquittals were sentenced in the previous period in couple of cases related to criminal act of endangering safety from the article 138 of the CC. Analysis of efficiency of criminal protection is considering that this act and the findings confirm controversial stance that activity of executing basic form of criminal act of endangering safety (from the article 138 of the CC) implies objective and subjective element: qualified threat, or threat that is objective and concrete, as well as subjective sense of endangerment that represents consequence of that threat. Most often problem is that stated treats do not have the character to induce sense of endangerment. That is the standpoint that is literary implemented by both prosecution and the courts that could in general be justified. However, what is most important in this situation is that the treats come from the persons in power and have the resources available to realize the threats. Such acquittals create a practice that makes certain behaviors acceptable in real life.

With this and similar acts, in some cases, it is possible to prosecute with private criminal charges perpetrator for the insult. However, reducing of endangering the safety and stated threats to an insult does not correspond to real situation. Victims were exposed to endangering safety in the sense of verbal attack, and not to some insult that reflects consequences in a completely different way.

General conclusion, of most of the research related to safety of journalists, is that threats in conditional should not be neglected („I would put a bullet through you“), picturesque threats („... if you live till the next morning“) or direct threats („we know where you live“), because precisely such threats, if they reach certain centers of power, are eligible to be considered as serious (qualified) and in practice influence the most to the sense of being unsafe.⁸¹ Such sensations in practice lead most often to journalists withdrawing from certain topics - auto censorship. Having in mind that it looks like in practice part of the problem and obstacles for prosecuting of such threats are legal formulations, therefore logical proposal is amending legal provisions in a way to provide appropriate protection of the journalists.

Impunity of pressures leads to continuation of identical and similar actions, and in certain way encourages the perpetrators to continue doing it. Facts show that negative actions through pressure towards journalists, not only that they end with finalization of the act but often increase due to impunity, thus creating sense of helplessness with victims, which can often lead to mistrust into the police or judiciary and protection, which is especially pronounced after negative experiences. These are the reasons that influence the journalists to give up on reporting the attacks. Database on the attack

81 · Analysis of efficiency of criminal protection, quotation

on journalists recorded at least 110 of such cases from the beginning of 2018. Pressures represent various types of extended attacks as a form of retaliation for reporting and prosecuting.

It is noticed that in 36 percent, identical types of pressure, repeat. Pressure is made, most of the times, by addressing the journalists in comments or by direct addressing through social media or portals. Having in mind specific access to the internet, primarily to social media, availability and wide audience, in several individual cases, we noticed dozens of pressures that gave impression of organized action against journalists.⁸² In 25 percent of the cases pressures were made through statements in television and other shows;

Over 90 percent of pressures were caused by the reactions of authorities, members of political parties or their sympathizers. Unlike other forms of journalist attacks, pressures most often relate to representatives of the executive and legislative authority. Thereby, representatives of the government are most often not mistaking, very rarely crossing the limit between pressures and serious acts or provide reason for more serious consideration of endangering the safety of journalists;

In 37 percent of cases, pressures were directly made by the representatives of other authority organs;

Unlike other forms of pressure, government representatives use media statements in 18 percent of the cases;

In 45 percent of the cases, pressures tend to turn into insults or verbal threats against journalists;

In 53 cases out of 110, pressures were made in Belgrade, in 17 cases pressures occurred in the autonomous province of Vojvodina (the most in Novi Sad), while remaining 50 cases refer to central Serbia with Kosovo and Metochy (the most in Niš, Zaječar, Vranje and Kragujevac);

In 54 cases or 49 percent out of total, pressures were made towards individuals (journalists). Out of that number in 22 cases, targets were female journalists (50 percent out of total number of individual pressures or as much as 25 percent out of total number of recorded pressures);

82 · Such forms of pressure are recorded as single attack, since they refer to specific case of attack to certain journalist or media;

Authorized organs are informed in 36 cases (40 percent out of total number of the cases of pressure), however, we haven't recorded any further reaction or processing.

In almost 40 percent of the cases we noticed continuation of initial pressures that were continued in various forms.

In eight cases, pressure was made through lawsuits by the government representatives (nine percent out of total pressures). Number of such lawsuits, criminal charges or initiating misdemeanor charges, reports to different inspection services as forms of pressure, is in practice most likely higher.⁸³

U odnosu na broj uočenih i zabeleženih pritisaka, u posmatranom periodu⁸⁴ in average, every four days, one serious pressure is made to some male journalist, female journalist, or media in Serbia. However, from the interview with the victims, in an attempt to make retrospective of pressures we concluded that number of pressures in reality is much higher than the number of recorded. Journalists, during the time, adapted to certain forms of pressure, and due to lack of reaction even stopped considering them as forms of attack and to report. Members of the MI and prosecutors are persons that act upon official duty. If the pressures are forms that have certain type of incrimination, but obviously insufficient, then it is necessary to proactively find the ways to transfer such forms of endangering into indictable form. In favor of this, is the stand point of the police and prosecutors, who agree with journalist associations, that before mentioned attacks produce certain damage and negative consequences, that there is certain, but insufficient level of violation. Therefore the duty of the MI and prosecution is to determine reasons for such state and find a way to resolve problems of pressure.

Following the cases of endangering safety, we noticed forms of pressure to victims during the procedure on the attack on journalists, before the prosecution or the court, that practically abuse the justice system:

- Counter lawsuit of the suspect or defendant as a form of pressure, where especially suspects from certain positions of power can try to exhaust the victims by constant lawsuits in litigation or criminal charges, to financially drain the media (lawyer expenses and court taxes), diminish the importance of their acts and build positions of defense by proving that they are actually the ones being damaged;
- Manipulation with health condition of the defendants, pressure by stating alleged evidences of endangering of their health condition by the articles and writing of

83 · Only in the case of attack on journalists of Žig info portal Željko Matorčević and Milan Jovanović, there are ten lawsuits as a form of pressure to victims;

84 · Monitored period is 2018 and 2019 and total number of recorded threats is 117;

the victims - journalists.

Proposal 1: *Proactive action of the prosecution and the police, involving of court authorities into debate and finding of solution through changes of court practice or changes and amendments of Criminal Code. Proactive approach of the prosecution and the police and their support to the victims, regardless of the technical absence of incrimination.*

Proposal 2: *Continuation of proactive role of journalist associations with the goal of resolving problems. Continuous training of journalists that would comprehend subjects related to pressures. Establishing of special sub-commission or subgroup within PWG that would deal with issues of pressure, and that has to include in its work representatives of court authorities or judicial associations, could be one of the methods.*

CRITICAL POINT 13:

Defining of the victim status of the journalist

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In certain cases, especially in smaller environments, through testimonies of victims, the impression is that members of the MI deal more with the question whether the victim is journalist, and just afterwards state data related to the attack.⁸⁵ Consequence of that is the effect of constant imposing of negative pressure towards persons that are engaged in informing, but that is not their primary occupation, or are engaged on information portals (that are most often not registered as media or legal entities, which they are not obliged to in compliance with the regulations of the Republic of Serbia) rather than in traditional media⁸⁶. Such procedures often distract the journalists from reporting of the attacks.⁸⁷ Unfortunately, authorized organs and political power holders still question whether the victim is working on informing in a way that they could be considered as journalists and use this question to discredit them.⁸⁸ Equally dangerous are ideas on licensing of journalists, as

85 · One of the examples is one of the first statements of the deputy commander of MI in Grocka, after the attack on journalist of news portal Žig Info Milan Jovanović, that was also communicated by the Ministry of Interior <https://www.cenzolovka.rs/pritisci-i-napadi/pokusaj-ubistva-novinar-a-milana-jovanovica-spaljena-kuca-pucano-na-ulazna-vrata/>;

86 · Law on Public Informing and Media, article 29;

87 · Last similar case is endangering of safety of journalist Verica Marinčić, whereby social media were used for the debate on whether the victim is a journalist. This thesis was even imposed by the Member of the Parliament, who instead of condemning obvious attack to journalist offered information as evidence that Verica Marinčić is not a journalist;

88 · Example of the complaint of Dragoljub Simonović against web-potal Žig Info and the owner Željko Matorčević, contesting the portal and stating that portal is not media, as main reason for compensation of the damage and that this should be the main reason for accepting the complaint request;

alleged solution to this problem.⁸⁹ If the victims during each pressure or threat are forced to deal with proving the nature of their work, than they could very easily stop reporting the attacks as journalists. Similar problem is recorded after submission of the report, during the procedure of collection and data processing. Same problem is recorded as still an open issue even in the work and the debates of PWG.

Issue is raised about forcing the reason for limiting the circle of persons that are considered as persons that are engaged on public informing. Not elaborating the reasons of authorized institution, that are of pure technical nature (less cases of the attack, less pressure to authorized organs, less resources used), the answer could be found in reasons of purely political nature.⁹⁰ In the context of providing criminal protection, it is not that useful to define the meaning of journalist, because criminal protection should be the same for all persons that are engaged on public informing, regardless of the form in which it is being done. Coming from relevant documents of the UN, OSCE and Council of Europe, the only solution should be abstinence from attempts of introducing licenses for journalists. In several cases of serious attacks to journalists and threats, especially in local environments, we recorded questioning of their professional status being the first reaction of authorized institutions or holders of political functions after submitting of the report.

Proposal: *As part of already existing continuous trainings of authorized institutions, with special emphasis on involving the servants and PR officers that make public statements or persons participating in public appearances, where contact points should transfer their knowledge to their colleagues.*

Proposal: *It is necessary to educate members of the MI and prosecution more on the safety of journalists, that from the moment of the attack to journalists, contact points of the MI and prosecution should cooperate with acting inspectors and persons authorized for giving statements.*

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CRITICAL POINT 14:

Consequences of missing to emphasize, during the submission of the report, that the victim is in the capacity of journalist and that attack is related to its engagement

If the attack is made in relation to the work of journalist, we noticed situations in which **the victims missed to emphasize their status of journalist in the**

89 · <http://www.nuns.rs/codex/Mediji-u-demokratiji/Sloboda-ulaska-u-novinarsku-profesiju.html> , <https://www.cenzolovka.rs/misljenja/zig-za-novinare/> , <https://www.danas.rs/drustvo/novinari-protiv-licenci/> ;

90 · <https://www.cenzolovka.rs/misljenja/zig-za-novinare/>

initial phase of reporting or taking of the statement from the authorized police officer. There are cases where victims consciously missed to stress their journalist status.

Authorized organs mostly proceed upon the severity of endangering of someone's safety. However, if the victim misses to emphasize its profession of journalist and point out that the attack has to do with that, contact points won't be informed and the guidelines that foreseen urgency and attention in resolving the case won't be implemented. Procedure, at least initially, won't be specially recorded, until the journalist status is confirmed, which then affects the recording of real number of journalists attacks. It remains unknown whether the MI or the prosecution, in the moment of receiving this information, will initiate mechanisms of urgent reaction and monitoring of the case as attack on journalist if the victim does not emphasize its status. MI foreseen through special guidelines, monitoring the course of the cases and proceedings of its servants, and submitting of the report once a month to authorized Police Directorate. All of these details provide guarantee for regular and fast processing, which is one of the wanted results.

One of the noticed problems is wrong estimation of reasons for the attack and possibility that victim reports the attack that has nothing to do with the work of journalist. Journalists are often not able to precisely determine whether the attack is related to journalist engagement or there are other reasons behind it. Reason for that could be of objective nature, having in mind that forms of the attacks are different (there is a difference between physical attack by an unknown person without previous communication or announcement of the attack that can provide reason for it, verbal cyber-attack with clear stating of reasons for it). Estimation is also influenced by current status of the victim, fear of previously experienced pressures or attacks and other problems. We noticed cases with verbal threats or forms of pressure by neighbors or fellow citizens, for which the journalists are uncertain of their true reason.

Proposal: *Members of the MI and prosecution, upon knowing that the victim is a journalist, should urgently proceed and implement mechanisms that additionally protect safety of journalists. It is obligatory to transfer the cases, where victims did not stress out their profession and that the attack occurred in the capacity of the work they do, to the form of attack on journalists. Proposal refers also to obligatory notifying of primary contact points in the RPP and Police Directorate in the MI, as control factor. Proposal comprehends widely set campaign – training of journalists to introduce them to reasons on the importance of stressing the information that they have been attacked related to their engagement.*

CRITICAL POINT 15:**Consequences of missing out to estimate the level of endangering safety by the journalists or persons in the procedure**

In most of the cases, **journalists were not able to identify the level of endangering their safety themselves** or safety of the members of their families, therefore, most often, possibility to indicate the need of potential protection or other additional measures to acting police officers, is missing. On the other hand, According to statements of the victims, on the occasion of giving statements or submitting of the reports, members of the police did not ask them about what they think of their safety in the period to come, and on potential future threats.

In certain cases, police and prosecution **miss out on recognizing the severity of the situation of the victim** (whereas we especially indicate to the status of the safety of the victim) and it is necessary to pay special attention in that direction and react timely not to deteriorate the situation (examples of the attacks to journalists Milan Jovanović and Željko Matorčević). Also, we have examples of good timely reactions, in so far most difficult cases in the past two years. In accordance with the information received from the victims, about the details of the case, the impression is that the reaction is best in the cases that have more media coverage and that are in focus of the public, with well-known journalists or with more public influence, but also related to incidents in larger urban environments. We noticed especially urgent and adequate assessment of the police when it comes to journalists that report about the authorities in positive context.

During the reporting of the cases of attack and during the course of the procedure, journalists are rarely given instructions related to further acting or asking for protection.⁹¹ Job of the police is to make an assessment, on the basis of additional verifications, in the period after the attack and to conclude based on specific situation and data available whether it is necessary to additionally protect the victim. Of course, most of the cases do not require such sort of protection.⁹² In the short period after the attack there are no sufficient data for detailed and serious estimation, and victim most often is not aware of potential additional threats. Precisely from that reason, it is

91 · In just three cases, journalists stated that acting officer instructed them to call in the case of additional questions or some problems and to leave their contacts. In specific situations, this happens in smaller environments, acquaintance and greater connection of the members of authorized organs, attackers or victims. In other cases we have opposite examples where journalists feel that smaller environment and personal acquaintances influenced to worse status of the victim before authorized organs;

92 · According to insight into information from the cases we monitored, in over 90% of the cases that refer to the attacks to journalists there was no need for additional protection;

very important to inform the victim of such possibility and give them basic instruction related to filing of request (way of addressing, stating of reasons for further endangerment, consequences of collection and processing of data, taking of statement and similar). There is certain level of negative influence, with all the victims, that came from fear and pressures they suffer, and that police and prosecution have to understand, therefore such stances must not be exclusive reason for denial, but reason for understanding and reaction.

On the other hand, in several cases (orally and in written addressing to the police or prosecution) victims indicated to potential further endangerment of their safety, however, they are of the opinion that they haven't received an adequate answer from the authorized organs. In several more severe cases, where based on the specific circumstances number of the attacks is measured in dozens,⁹³ victims were introduced to the procedure of addressing to the Ministry of Interior related to the estimation of safety and providing protection (if they feel unsafe or endangered) in the period after submitting of the report for the attack, but also prior to the attack itself, or incident). We noticed larger number of cases in which the same journalists were attacked several times and that are aware of such possibilities, but haven't used them so far as legal remedy.⁹⁴ We also record absence of reaction of authorized organs. Research on the practice of proceedings leads to the conclusion, that journalists in the estimation of their own safety and undertaking of measures for further protection are on their own, and they are burdened with procedure when requesting for protection.

From the interview with the victims we haven't noticed any of the cases, in which during the reporting or the procedure of taking of statements, regardless of the method of reporting, members of the MI pointed out to such possibility. We think that each authorized deputy prosecutor, if he/she receives such report, orally or in written, should obligatory notify the police for verification and collection of additional information related to matter of safety of the victim, and that each member of the MI should undertake basic action of verification and consultation related to estimation of the safety of endangered journalist.

Proposal: *Journalists most often are not able to notice the level of endangering of their own safety. They are in need of attention, suggestion and assistance of the members of the MI and the prosecution. This task could be awarded to contact points of the MI and prosecution that would in cooperation with contact*

93 · Attacks in social media to journalist of NDNV Nedim Sejdinović;

94 · According to data that we had insight in, only in one case the protection was awarded (case of journalist Milan Jovanović), while several times attacked journalist Nedim Sejdinović submitted request for estimation of safety;

points of journalists associations keep an eye on the status of safety in certain cases in need of special attention and necessities.

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CRITICAL POINT 16:

Relation of victims to information and evidences in the procedure, lack of information about the method of proceeding with evidences

Victims do not have sufficient knowledge on how to behave after they suffer attack, and primarily in relation to evidences in the procedure or relation towards attackers and the public. Journalists do not have sufficient information about what is necessary to do **related to evidence material** (if it exists), **what are the concrete evidences in the procedure, which activities not to undertake after the attack, what are their concrete obligations as witnesses-victims, not know the fact that it is necessary to primarily submit the report, and then state details on suffered attack,** and with special attention due to potential influence to the procedure against suspect. Mainly those journalists that already reported attacks are introduced to the procedures, and from personal experience, and not on the basis of guidelines or information they received from the police and prosecution.

When the treat was made electronically (by sending SMS through mobile phone, through applications Viber and WhatsApp), comments or direct messages in social media (Facebook and Twitter), in certain cases victims do not keep evidences on the attacks from the period when the attack occurred to submitting of report or noticing by authorized organs (deleting of SMS, direct messages in social media, removing of comments by those who posted them, deleting of the account from which the attack was made and lack of screenshots or photographing of the evidence).

When it comes to material evidences that can be physically damaged, journalists, most often in ignorance, damage or remove them before submission of the reports (leaving of finger tips in received threatening letters, touching of locks or search of the apartment in a situation suspected for burglary). Such details can affect collecting of evidences and discovering of perpetrators.⁹⁵ In most of the cases journalists admit they lack knowledge related to proceeding after the incident and endangering safety, therefore we ascertain that manual for journalists is missing – what should be done related to further proceedings or evidences that point out to execution of the act.⁹⁶

95 · Case of burglary of the apartment of the journalists Dragana Pećo, threatening letter to journalists of N1, attack to editor of the portal Žig from Grocka - Mr Željko Matorčević;

96 · Over 80 percent of interviewed journalists for the purpose of this research, think that additional knowledge and information related to proceedings after the attack are necessary;

Proposal: *Potential solution should be preparation and drafting of the manual for journalists that would indicate to all stated problems. It is very important that the contact points of the journalists (in the case of pressure), MI and prosecution continuously work on introducing the journalists with special procedures and handling the evidences.*

CRITICAL POINT 17:

Secondary victimization of victim journalists

17

Consequence of subsequent harming, after suffering of the attack on journalists, are cases in which journalists remain without information on the course of the procedure and consequences that lack of information can produce, shock and pressure from repeated confrontation with evidences or suspects, ignorance about the work of the police and the court, criminal charges and litigation against attacked journalists as a special form of pressure, misunderstanding of authorized organs, environment and pressure to withdraw from reporting or to withdraw already submitted reports, excommunication from social relations and surroundings.

These forms we define as cases of **secondary victimization**⁹⁷. Secondary victimization represents continuation of previous harm through negative reaction of social surroundings and through inadequate or even wrong reaction of prosecution organs. For many victims mere presentation in the court and narrating, reliving of traumatic events, represents huge discomfort and stress, and well known criminal experts state that victims, when report criminal act to the police, most often don't know anything about the procedure that follows (discovering of perpetrators and initiating of its prosecution). They rely completely on the police and prosecution to receive the information, and, according to the research, they receive very few from them. Even when the perpetrator is identified, victim can remain uninformed as long as he/she is invited to testify. Also, when the victim is invited to testify, usually not much effort is invested to inform him/her on the procedure of testifying. On the other hand, lack of communication and inexistence of the obligation to contact with the victim, as long as there is no need for that, could lead to misunderstanding and the impression that the cases are not being properly treated.⁹⁸ Forms of victimization and consequences in reality, we also noticed in situations that we processed in critical point about the consequences of submitting of the reports, whereas victims, if unnecessary during the procedure of collecting the evidences (when the prosecutor collects all the necessary

97 · PhD Vesna Nikolić Ristanović, Protection of Victims and Witnesses, page 1;

98 · Example of endangering safety of journalist Marko Vidojković and Saša Kulačin, link from Cenzolovka: <https://www.cenzolovka.rs/pritisci-i-napadi/marko-vidojkovic-o-pretnji-smrcu-ov-aj-ko-nam-preti-je-proizvod-govora-mrznje-vucicevog-rezima/> ;

evidences), remain in confusion and with no information on further course of the procedure, which can create wrong and negative conclusions by the victims, thereby more of negative consequences.

Inadequate reaction of the representatives of the police, prosecution, courts or lawyers of the victim is even making situation of the victim worse.

One of the examples of the secondary victimization, that we noticed, are the situations that refer to processing of the attacks on journalists through social media.⁹⁹ Attack is made by publishing of the post followed by dozens or even hundreds of comments with severe insults or threats. In some cases, prosecution requests from the victim to choose from all the comments, those that are especially threatening, and afterwards to create a table with the data on the account, link and content of the comments. In this respect, MI and the prosecution should pay special attention to severe conditions victims are exposed to.

In certain number of cases we noticed pressure to victims to change their statements related to the attacks and submitted reports, and that is recorded as one of the forms of secondary victimization that didn't receive much attention in the previous period.

Proposal: *Potential solution in practice is proposing of the Law on Free Legal Aid, support to journalists by the associations, MI and public prosecutors. Proposal could refer to addressing of contact points of the MI, prosecution and journalist associations to the victims, with the goal to inform them on current status and intentions and to inform them of their further rights and obligations.*

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CRITICAL POINT 18:

Transparency of institutions, public appearances and untimely informing of the public on the course of the procedure

We noticed some specific situations in more significant cases with serious public attention, that refer most often to inadequate reaction of authorized organs. In several attempts, such cases were marked by **the decisions and statements of the representatives of authorized institutions that created certain ambiguities and lead to wrong conclusions on the course and status of the case, which additionally increased negative tension in public.**

Authorized organs should recognize the moment in which to step out and address the public with certain knowledge and data that is possible to announce in this stage of the procedure. Thereby, one has to be careful to

99 · Case of journalist Verica Marinčić from Indija;

precisely describe the situation to avoid wrong conclusions, which can additionally increase pressure in the procedures. Typical example is releasing of the defendant to defend from freedom. It is certainly necessary to explain to the public that that does not mean he/she won't be condemned or that automatically he/she will receive lover sentence if found guilty.

Proposal: *It is necessary to make an analysis of transparency that would represent precondition for organizing of additional training of the PRs of the MIs and prosecution, involving of persons in charge of PR activities within courts, establishing of better relation between contact points and PR services and exchange of experiences with journalists and their associations. As a result, we expect publishing of periodical releases and information, proactive role of the MI and prosecution.*

CRITICAL POINT 19:

Lack of internal and other controls of the work of authorized organs; audit of dismissed and rejected reports, controversial verdicts, internal control and verification of prosecutors and police work

19

Generally, there is lack of special forms of auditing and internal verifications of already implemented procedures of the prosecution and the MI, but also internal (disciplinary) and other processing and sentencing.

In the case of attack to journalist Zorica Gligorijević¹⁰⁰, Basic Prosecutor's Office in Jagodina dismissed criminal charges of the victim for criminal act of endangering safety from the article 138 para 3 related to line 1 of the CC, stating that there are no basis of doubt that the suspect did this or some other criminal act prosecuted by the official duty. Victim objected by stating in her elaboration that decision of the prosecutor does not include very important details to which she indicated in criminal charge and that activities she proposed were not implemented, that would undoubtedly determine whether the criminal act was executed or not, and not just that act qualified by the MI in Jagodina (for which it is not obliged to be tied) but also some other, and proposed criminal act of persecution as special form of endangering safety from the article 138a, having in mind that according to her claims police and acting prosecution could notice the elements of persecution. Having in mind that Supreme Prosecution determined that Basic Prosecution obviously hasn't verified all of these the statements, and hold on just to qualification of the MI that afterwards was not properly verified or issued a warrant for additional

100 · Journalist Zorica Gligorijević was addressed in the period of several weeks with continuous phone calls and SMSs by a person that threatened with constant pressure that she has to continue writing certain articles by his/hers instructions. Also, in Jagodina noticed and posted posters with lines of the same or similar content. Afterwards, Zorica reported attack to authorized police administration in Jagodina;

determining, issued obligatory instruction to the BPP in Jagodina to order deciding on the occasion of all reports from the cases and reports of Police Administration of Jagodina. This indicates to existence of certain oversights in the work of police and prosecution, and that it is especially important to revise internally procedures of dismissal of submitted criminal charges. If it is determined that dismissals were ungrounded, it is necessary to implement appropriate disciplinary procedure and determine accountability of authorized prosecutors for such proceedings (disciplinary accountability). In this specific case, the decision of the Basic Prosecution not to verify in details qualifications received from the MI, and to question conscious performing of duties and potential consequences to others, having in mind that consequences are significantly aggravated compared to other domains, could be reconsidered. In this respect, proposal can relate to special revising of the decisions that refer to dismissals of criminal charges or verification of proceedings by received reports and qualifications of the police.

In the case of proceeding of deputy prosecutor of Basic Prosecution in Niš for endangering safety and stated threats against journalists of *Južne vesti* from Niš¹⁰¹, primary contact points that are representatives of prosecution in Permanent Working Group asked for additional declaration of acting deputy prosecutors in this case because there are certain ambiguities in the proceedings. Irregularities were noticed, related to the proceedings in the case that is not under their jurisdiction; missing to invite victims for statement. Deputy prosecutors were not familiar with the decision of the Supreme Court of Cassation (precisely identified persons or with possibility to identify, e.g. persons with clear potential to be identified) that holds a stance that threat does not have to be addressed just to a certain person and certain number of people that can be rounded up by some characteristics (as in the case of the threat to newspaper editorial board in which certain persons, possible to identify, gather on a special task and work on the same job). It is upon Republic Public Prosecutor to analyze the case and decide on the approach related to procedures of lower ranking prosecution (issuing of obligatory instruction for prosecution in Niš or taking of the case management by the Special Prosecution for High-tech criminal (department of the RPP). In the case of attack to journalist Dalibor Bubnjević¹⁰² criminal charge against president of the Com-

101 · Case refers to endangering of safety of journalists of *Južne vesti* by Radoslav Milanović, that in December of 2017 send a message to the journalists to „watch when they are crossing the street“ not to experience „bang, bang, bum“ over the Facebook page of *Južne vesti*. In continuation of the case, Supreme Prosecution rejected objection because they determined that Milanović was not threatening but „expressed its critical stance“;

102 · Journalist Dalibor Bubnjević was in March 2019 intercepted in one restaurant in Zrenjanin and verbally, with threats, in drunken state, attacked by Mirko Krlić, president of the Committee for Culture and Media of the National Assembly of the RS. According to Bubnjević's statement, Krlić even attempted to reach the fire arms;

mittee for Culture and Information of the National Assembly Mirko Krlić for criminal act of endangering safety from the article 138 para 3 of the Criminal Code, was submitted. Basic Public Prosecution in Zrenjanin rejected criminal charge explaining that statement of Dalibor Bubnjević shows that Mirko Krlić „hasn't made any threat during any of the incidents“, but addressed him with „insulting words“. From the hearing of the witnesses, who participated in this incident, prosecution concluded that there are completely different stances on this specific event, therefore factual situation cannot be „undoubtedly determined“. Having in mind that it was clearly determined that there were elements that indicate to certain form of physical or verbal conflict or that there were some threats, after dismissal of criminal charge, Public Prosecution from Zrenjanin submitted request for initiating misdemeanor procedure for the activities that violate public law and order against Mirko Krlić, and can refer to argument, harassment of the citizens, inappropriate, rude or arrogant behavior and even violence (Law on Public Order). Although criminal charge was dismissed, it is very important that the prosecutors recognized existence of the elements that lead to proper verdict, which seems to us is not always the case (we especially emphasize situation in smaller environments). It is important for the safety of journalists and from the technical perspective to accomplish even weaker misdemeanor sentence for the safety of journalists. Most important reason is not to allow impunity. Each attack has to be considered, processed and, if there are conditions for it, sanctioned. It is noticed in the previous period that there are cases in which misdemeanor accountability of perpetrators should be investigated, if it exists.¹⁰³ Reason for that should not be quick dismissal from the criminal charge because sometimes the information and the evidences are hard to get, and on the other hand, obviously faster but at the same time weaker sentence as a result. Prosecution, police and the court have to undertake maximum efforts and exhaust all possibilities for criminal procedure, and just afterwards to redirect to misdemeanor procedure. That should become obligatory, if the conditions allow.

Proposal: *Having in mind existence of often ambiguities on making decision on whether to initiate criminal or misdemeanor procedures or withdrawing from them, we propose introducing of internal controls of implemented procedures by authorized public prosecution and the police. The goal of the control is increasing the level of correctness and quality of work of authorized organs through noticing and correcting of potential mistakes in work, but also consideration of accountability of persons from authorized organs, if conditions are met.*

Proposal: *Unsatisfied journalists should always use available legal remedies in regular procedures, to submit complaints to work of deputies or servants of the authorized organs in extraordinary procedures.*

103 · Law on Misdemeanor, Term of misdemeanor, article 2;

CRITICAL POINT 20:

Absence of reaction of authorities to the attacks on journalists, negative reaction and increasing the tensions and continuation of reaction towards victims, absence and not recognizing of accountability, lack of conscience and state of factual impunity

Recorded problems were noticed especially in cases occurring in smaller environments, cities and municipalities in Serbia or suburban environments of Belgrade and Novi Sad. We especially emphasize harsh negative reactions of authorities, but also of the environment to submitted report, increasing the pressure to endangered journalists. Condemnation of the attack and support to journalists by the authorities is missing, except in cases when journalist is related to support to political party in power. That is regular example, regardless of the level of authority.

There are far more acquaintances among the citizens in smaller environments, which can be a reason for absence of the support or greater pressure to the victims and authorized organs. Last reason is related to relations and acquaintances with representatives of the authority. These relations are based on different interests, in smaller environments there are far more options for interception of the interests, huge and noticeable influence of local business tycoons, politization of institutions and especially harsh answers and pressure to journalists if the attacker is related to political option in power. Political pressure carries special burden, especially if the victim is not voter of the ruling party in local environment.

Often example is missing to recognize the severity and importance of the situation in which victims are in, by the authority organs. That is contributed by a specific relation of the certain part of society towards journalists in smaller environments, where oftentimes fear can prevail and pressure not to increase tension, and thereby automatically decrease the significance and weight of undergone act. Smaller environments also have less influence of local media. These environments suffer from the lack of knowledge by authorized institutions (most pressure and most cases occur in the territory of Belgrade and Novi Sad, thereby far greater experience), direct pressure to the police and prosecution, effect of political influence to authorized institutions where people know each other. Conclusion leads to lack of integrity, accountability, consciousness about negative consequences of such behavior, intolerance and impression of factual impunity.

Proposal: *Representatives of the authority have to react each time journalist gets attacked, and to condemn such attacks and provide support and assistance to the victims. Proposal refers to including of representatives of the authorities and organizing of campaign that would condemn endangering of the safety of*

journalists. We propose regular allocation of assets in each municipality that would serve to support victims if necessary (inflicted physical and other injuries, damaging the property of journalists), holding of joint press conferences to condemn the behavior towards journalists.

CRITICAL POINT 21: „Large“ and „small“ cases

21

In cases of endangering safety of journalists generally the reaction is relatively fast compared to situations when victim does not have the journalist status. However, problem occurs with so called small cases, with no visibility in public, therefore no pressure to resolve them. Investigation in these cases often results with conclusion that there are no evidences or that perpetrators are unknown persons that are not possible to identify. On the other hand, attacks on journalists that fall under so called large cases, with pressure of public, investigations become incomparably faster and efficient.

If so called small cases did not have adequate reaction, it can lead to encouraging of the attackers in certain period, which due to absence of serious processing followed by the sense of factual impunity continue to practice various forms of endangering. Such procedures can culminate with serious attacks with severe consequences.¹⁰⁴ Having in mind that such cases are more often in practice, even the terminology „large“ and „small“ cases, we tried to determine which elements define mentioned cases of endangering safety.

„Large cases“ receive fast and urgent reaction, directing of maximum resources of the police and prosecution (time, personnel) in a level that is unequal to other cases, and even looks exaggerated, pressure of other authority organs that is a result of reaction to public pressure, certain political influence, importance of the victim and his/her social status, special weight and consequences of the attack. On the other hand, „small cases“ are missing all those positive effects of the „large“ cases (slow proceedings, lack of support of the police and prosecution, severe form of victimization, lack of social support, of the local authorities and authorized institutions, and by the edge of imperceptibility), while negative elements are exposed in a very negative context.

Proposal: *Speed of proceedings and consistent investigation must be adjusted to the severity of the case and consequences to the victim, and not the pressure of the public. In this respect, it is necessary to coordinate the speed and con-*

104 · In support to specific situations we introduce examples of the attacks to Milan Jovanović and Željko Matorčević. In both cases, impression is that in previous period there was no adequate reaction to submitted reports, even to information about serious endangering of safety, which lead to escalation of endangerment that culminated in serious attacks – burning the house of Milan Jovanović and severe physical assault with body injuries of Matorčević;

sistency of proceedings and equalization with so called large and small cases of endangering safety of journalists.

22

CRITICAL POINT 22:

Negative effects of judicial practice to withdrawal of prosecution in procedures

Having in mind forms and types of the attack to journalists, practice quickly singled out problems and loopholes in the system of safety of journalists. Criminal Code limits to only three acts that person engaged in a profession of public importance are protected from. Lack of criminal acts and misdemeanors that additionally strengthen safety of journalists (clear situation with absence of incrimination of certain acts with severe consequences to the safety of journalists) creates difficulties to the prosecutors in initiating indictments. Problems that stand out, when it comes to the work of courts, are especially emphasized in the cases when it comes to proving the deeds that endanger the safety of journalists, which is mainly prosecutor's obligation. Ignorance of the problems and severity of the acts journalists face with and problematic solutions in which judges don't recognize special forms of journalists' protection, are key issues that affect the withdrawal of prosecutors. One of the most common examples is making of threats in conditional, in the sense of conditions for execution of act, for which current practice has no appropriate solution.¹⁰⁵

On the other hand, negative chain effect, is that prosecution goes in the direction to terminate proceedings in similar cases, referring to court practice and low possibilities for accomplishing of wanted results. In the forthcoming period, there is a real concern that such form of proceedings becomes regular practice of the prosecution.

Also, form of psychological pressure to prosecutors should not to be neglected. It is certain that they are aware of that state and the impression of general impunity, fear and caution that they won't be able to accomplish their intentions in court procedure, and all of it due to uncertainty of the outcome of the procedure, therefore they undergo easy way out, where it is more easy to accept less sanctions and more certain convictions compared to real consequences that threaten or are suffered by the victim.

Proposal: *Proposal targets prosecution, for which we feel is necessary to remain persistent with indictments and finding out of solutions for current negative*

105 · This criminal act is defined by following elements: „sense of endangerment“ of the journalists and „real potential to accomplish the treat“ (that is the argument for rejecting of criminal charge in the case of threats in conditional);

court practice. In the meantime, certain influence to change of practice through implementation of obligatory instructions and finding out of solution for changing the CC if the court practice remains negative, is already in progress.

Active involvement of judges in consideration of this problem, increasing awareness and knowledge about problems of journalists' profession, requesting of the opinions and proposals is necessary.

CRITICAL POINT 23:

Long duration of court procedures is one of general problems that affect complete judiciary

23

Long duration of procedures affects negatively large number of cases and causes numerous consequences. One of the key reasons is influx of new procedures while old ones are still ongoing. According to data of the Supreme Court of Cassation, number of procedures couple of years ago was higher for as much as million in annual level than expected.¹⁰⁶ It should not be forgotten that there is 412 judges in Serbia less than prescribed by the Supreme Judiciary Council, with prohibition of electing new ones, adopted by the Constitutional Court. Special problem is that as much as 600 judges is older than 60 years of age and is at the doorstep to retirement.

Court procedures last long from subjective and objective reasons. Certain reasons lay in the mere setting of the procedure, loopholes that advocates often very skillfully use. After implemented reform of judiciary significant number of process laws was amended in the goal of accelerating procedures, so that the positive effects could be expected in the future. Attempts of introducing so called efficiency did not contribute to acceleration of procedures in the judiciary or to decreasing the overload of courts and judges, to enable them to resolve cases much faster.

On the other hand, Ministry of Justice introduced measures that haven't contribute to acceleration of court procedures, but it is used to show positive status in the statistical level, where less employees resolve large number of cases. Number of prosecutors, judges and employees is decreased to four thousand and is maintained artificially. Experts indicate to problem of uneven burden on the courts and judges. That ways, cases in some courts are accumulating and judge that has more cases schedules trials with more difficulty, that refers to courts of general and courts of special jurisdiction.

106 · According to available data of the Supreme Court of Cassation, first instance court procedure lasts in average 337 days in Serbia, but there is large number of cases that exceeds that period. In all the courts in the country, number of unresolved old cases on 30 June 2018 was, with executions, 804.525. Out of that number, more than 153.000 are cases older than ten years;

Regardless of the load and unequal division of cases, procedures that last unjustifiably long compared to those where it is justified, should be differentiated. In the procedures that last more than two years it is necessary to verify the status and potential reasons for long duration. Anyhow, one of the main goals is to work on the accelerating of procedures.

More specific process problems during the procedure are technical problems like **long period in-between court hearings, judges burdened with other procedures, problems with delivering of the summon, avoiding of defendants to appear before the court, lack of detailed verifications of the impossibility or missing to deliver the summon** (easy conclusions without additional verifications), ungrounded requests of lawyers and often delays, missing of advocates. Victims often answered that it was even better to finalize procedures to their own damage than to last that long. This shows high level of pressure and additional victimization of the victims.

One of the reasons for longer duration of the procedure, but generally speaking largest problems in conducting of investigations and other actions are:

- Interfering of other authority organs into the work of police and prosecution;
- Announcing of arrests and processing by other organs;
- Pressures to acting prosecutors by the victims, suspects and the public;
- Often threats, political influence, lack of assistance and support by other organs, misunderstandings in the work of MI and prosecution.

Special problem are verbal **pressures to judges** during the court process, in some cases even at the trials. According to the expert opinion, it is very important to identify who makes the pressure, from which side it is coming (whether from the position of power or by interested public?). On one hand we have pressures of public that are not necessarily appropriate, but are however directed to respecting of rights. They can appear as negative pressure that can be initiated by the parts of public that lobby in favor of victims or suspects. Furthermore, pressures by other authority organs also exist, most often in the form of political pressure to judiciary, institution, illicit influence, minister statements, representatives of the republic and advisors.

In the cases of endangering safety of journalists, we notice direct pressures in the courtrooms. Pressures are made by advocates with inappropriate statements, but also the defendants. Directly and to judges' account, defendants make insults and statements that are characterized by inappropriate language, and in some cases even the forms that have elements of verbal threats („warn“, „do you know who am I, why am I here?“, „just you try to judge me!“). Warnings and threats even go to the dimension of public promises in court hearings that judges won't ever perform that duty again. In this respect, although it

represents free and individual decision of the judges, the impression is that opportunities to punish those that disrespect the work of courts and judges have been missed. Specific procedures are lacking information that would confirm that judges sanctioned such behavior.

Holders of political posts in Serbia (members of the Government of the Republic of Serbia and Members of the Parliament) are marked as those that most often put pressure on the judiciary with their statements.¹⁰⁷ In support of this is the fact of the need to adopt two Codes that would regulate relation of the representatives of the government towards the work of judiciary organs – Code of Conduct of the members of the Government and Members of the Parliament about the allowed commenting of court procedures and decisions. The report on compliance with these two Codes, published by Committee of Lawyers for Human Rights (YUCOM) in May 2018, concludes that „their implementation is not complete and that despite of everything, politicians and public officers still put pressure on the courts, by publically suggesting or criticizing proceedings of the judges in certain cases“.

According to the research of the Judges' Association of Serbia,¹⁰⁸ around 44 percent of the judges felt pressure in their work, 45 percent stated that it was some form of general systemic pressure, 27 percent experienced pressure by authority organs, 18 percent encountered indirect pressure, nine percent with open, direct pressure and 22 percent experience pressure by the president of the court, and eight percent by other persons. To the question on how well are they familiar with mechanisms of protection against such pressures, 33 percent of judges answered that they are superficially familiarized with mechanisms of protection, 25 are well familiarized, and 18 are not familiarized at all. Six percent of judges don't know which mechanisms to use against pressure, and two percent of judges that participated in the survey reported the pressures.

Just some of the details, that caused the reaction of the victims and the public are absence of court reaction to continuation of illicit influence or pressure by the suspects, mild stances towards further victimization in the procedures (especially during court hearings and through pressures to victims during procedures), different stances related to opinions and procedures of the prosecution and MI in some cases.

In certain level, huge problem and influence to duration of the procedure are **cases of inappropriate commenting of court procedures**. It often occurs that unsatisfied participants of the procedure or their lawyers share details of the

107 · Kruna Savović, Analysis of limits for commenting of ongoing court procedures;

108 · Details from the research stated in introductory presentation of the advocate Kruna Savović in the meeting of OSCE, Limits in commenting of court practice;

procedure, action ordered by the judge or implemented during the course of the procedure. That way, further course of the procedure can be influenced directly. In favor of commenting and reconsideration of verdicts, question of concealing certain details by the judges, arises. If, for example, judge undertakes some illegal action, order implementation of the action that directly and illegally causes damage to one of the parties, it seems justified to indicate to irregularities to the public.

Analysis of limits of commenting court procedures concludes that „functioning of judiciary system represents the topic on which public, beyond any doubt, has justified interest to be informed“ and adds: „Likewise, public should be at least through media able to keep track of court procedures that are related to relevant social topics. Freedom of expression should move into the direction of stating of grounded opinions about functioning of judiciary system or ongoing procedures, stances that would initiate public debate, even when they are harsh and exaggerated. Freedom of speech certainly does not imply its abuse by stating of ungrounded stances directly targeting violation of someone’s right.“

Not commenting the ongoing procedures, we emphasize examples of solutions that caused huge interest and where victims, their advocates and experts most often draw attention. In one case we have example of acting court deciding on releasing from detention suspect because reasons for incarcerating ceased to exist. Complaint of authorized prosecution to specific solution of releasing the suspect to defend from the freedom is not accepted. Just few days after the release of the suspect, victim submitted request for estimation of safety in the goal of receiving protection due to justified fear and endangerment he/she suffers. Request was adopted quickly. Victim was awarded with 24 protection in indefinite period outside of the residence. This case, raises question of difference of estimation of the MI and authorized court. The fact that the MI and prosecution dispose with lot more information related to the evidences in the cases, therefore based on this specific case, there are reasons for concern in future by similar situations, having in mind that adopted decisions are completely different. In favor of estimation of the police and prosecution is the information that protection is provided after releasing the suspect, which can indicate to increasing of potential threats and danger to the victim. In specific case, shortly after releasing the defendant, he/she continued to put pressure in at least two situations.

Proposal: *Verification of proceedings of authorized judges in specific cases, potential complaints to the president of the court and Supreme Judiciary Council, and considering the results of the surveys, additional trainings of judges related to proceedings in the cases of pressure to journalists are necessary.*

Proposal: *More often and more quality internal audit in the goal of adjusting the court practice to real social needs, more often verification of the proceeding of*

judges and potential disciplinary procedures in the cases of determined irregularities are necessary (disciplinary accountability for severe misdemeanors).

Proposal: *Changes and amendments of the process regulations that would resolve specific problems related to obstructions, pressures, absence and abuse of rights by the participants in the process.*

CRITICAL POINT 24:

Lack of cooperation of court organs with journalists and involving into matter of protection of journalists, like already existing in-between prosecution and the MI with journalists and associations

24

Judges are not well aware of the problems journalists face with. The impression is that just now they start to seriously introduce themselves with matter of the safety of journalists. Lack of communication, expert opinions and judges' stances is visible. Judges that proceed in the cases involving journalists are lacking awareness of the real level of endangerment of the journalists. Judges do not recognize exposure of journalists to the dangers that threaten them, as well as severe forms of pressure they often times suffer. As a part of problem resolving, activities have been undertaken related to meetings of journalists and judges, but in this moment it doesn't seem enough. It is necessary that both sides participate in exchange of opinions, to organize consultation meetings related to endangering the safety of journalists, that judges participate and give their opinion related to possibilities to overcome the problems.

Additional problem is impossibility of including court organs into existing form of resolving the matter of protection of journalists (like it was done with prosecutors, police and journalist associations). Nature and basis for the idea on association (PWG) in the attempts to resolve problems, at that point didn't involve judges as main actors. Therefore it is not possible to involve judges into the work of group. On the other hand, judges are possible to include as informal spectators. Monitoring the work and the results with consultations, as well as active participation in resolving of specific problems related to safety of journalists should be one of the methods for accomplishing of that goal.

Proposal: *Based on three year cooperation of journalists, police and prosecution through Permanent Working Group, practice of the cases of attacks on journalists and progress accomplished, it is necessary to secure participation of judges in planned consultations in future.*

CRITICAL POINT 25:

Low penalties sentenced, low penalties requested

25

One of the findings of this analysis is that cases of the attack on journalists are usually ended with low penalties based on convictions. Compared to this

finding, large step forward is first instance conviction for murder of journalist Slavko Ćuruvija that sentenced the guilty to 30 and 20 years of prison.¹⁰⁹ It should be mentioned here that in the moment of making of this analysis judicial council still hasn't elaborated the verdicts. At the same time, in the moment of the analysis result of the potential complaint procedure is still known, that can be initiated just after the sentencing. Having in mind specific circumstances, huge burden and time distance, this procedure is not possible to leave aside because it represents summary and essence of all the problems that affect the journalists (long duration of proceedings, problems with collecting of evidences, rejection and returning of evidences, pressure by all authority organs, pressure of the public, pressure by victims and their advocates, abuse of rights, belittling and pressure to prosecutors, pressure to the police, belittling and threats to former and current members of the MI that participated in collecting of evidences and investigation, first instance verdict that confirms participation of the state in the murder).

One of the reasons for low sentencing are low punishments foreseen for such crime, special and specific forms of attack to journalists that often hardly fit into existing criminal acts by the Criminal Code. In practice, criticism goes to low requested punishment by the prosecution compared to the act and damaging consequences in reality, which than logically leads to lower sentence and court verdict. Prosecutors on the other side, estimate what is most appropriate for that act and individually estimate what should be most efficient and most effective to accomplish in several directions: to secure appropriate punishment, but in compliance with collected evidences, taking care that the goal of the procedure is not the punishment but re-socialization.¹¹⁰

Special public attention in monitored period in 2019, went to the case of endangering safety of journalist Tanja Vojtehovski,¹¹¹ where defendant was sentenced for severe threat with low penalty, and upon the complaint, the prosecutor in second instance Court of Appeal reacted by modifying the sen-

109 · <https://www.slavkocuruvijafondacija.rs/sto-godina-zatvora-za-ubistvo-slavka-curuvije/>;

110 · In the case of endangering safety of journalist Tanja Vojtehovski, sentenced Tomić (36) from Majdanpek was charged for two criminal acts of endangering safety, for one of which is foreseen lighter sentence of imprisonment for up to three years, and other from one to eight years of prison. Now already sentenced, was primarily served with detention, and Supreme Court in Belgrade prolonged detention due to existence of danger to repeat the act in short period. Although final decision is good, two things represent cause for concern: low sentence from the first instance, and general impression that sentence after second instance is still low in comparison to the act;

111 · In December 2018 journalist Tanja Vojtehovski received serious verbal threats in social media Twitter by Branko Tomić from Majdanpek. After journalist submitted a report to the MI, police brought in the suspect and determined detention of 48 hours, and prosecution sent a warrant to social media Twitter, to ask for data related to users of the account that was threatened from, for easier identification;

tence of the first instance, in the part of the decision on criminal sanctions, and condemned the defendant Branko Tomić for execution of criminal act of endangering safety from the article 138 para 3 of the CC and criminal act of endangering safety from the article 138 para 1 of the CC to unique punishment of home detention with electronic surveillance in duration of eight months. Elaboration, among other, claims that upon findings of the Court of Appeal, in the part of decision on criminal sanction, first instance court properly determined, as mitigating circumstance of the defendant, that he admitted execution of criminal act, and showed sincere remorse, as well as his previous life. However, according to the estimation of the Court of Appeal, first instance court gave too much significance to mitigating circumstances of the defendant, compared to the level of guilt, severity of endangerment and violation of protected good, as well as circumstances upon this act was made. Statements from the elaboration of the verdict of the first instance are justifiably in the focus of the complaint of the supreme prosecutor. Court of Appeal modified the first instance verdict in that part (mitigating circumstances related to the level of guilt) and sentenced the defendant to unique sentence of home detention with electronic surveillance in duration of eight months. The court stated in its elaboration that such punishment is adequate and necessary for achieving the purpose of punishment.¹¹²

Victims and their lawyers indicate to positive outcome of the efforts to make prosecution understand and accept that certain acts represent endangering of safety and not insults. However, in continuation of the procedure, upon submitting of criminal charges, it often occurs that the court rejects the indictment before the procedure starts. One of the reasons for such status is lack of understanding of specific risks related to journalist profession.

Proposal: *Involving of representatives of court organs in the work on the matters of safety of journalists, which can be done in couple of ways. One is to include them into work of Permanent Working Group for the safety of journalists, and other would be continuous familiarization with problems journalists face with, emphasizing the problems and real necessity for stronger protection and receiving opinions of court organs, with the goal to change recent practice.*

Proposal: *More active exchange between judges and journalists, with the goal of clarifying foreseen penalties for criminal acts, increasing the level of mutual understanding.*

Proposal: *According to available data, periodical reports of contact points to their territorial administrations have already been foreseen. One of the future*

112 · Verdict of the Court of Appeal in Belgrade from 13 May 2019 no. Kž1 Po3 6/19 <http://www.bg.ap.sud.rs/lt/archive/dk-donete-odluke/2019/5> ;

tasks of the members of the MI, but of public prosecutors as well, will be implementation of all acts that are identified as criminal acts against journalists, related to performing of their work. In this respect, proposal refers to defining of the content of these reports, further use of data from the reports, foreseeing and implementation of internal control with the goal to improve their work and reporting.

26

CRITICAL POINT 26:

Private criminal charge and problems with collecting of evidences, identification of perpetrators

One of the problems is continuation of prosecution by the victim, submitting of so called private criminal charges, which if followed by some difficulties like technical problems with identification of perpetrators considering narrowed possibilities and resources of the victim, narrowed potential for proving, difficult collection of evidences and data, factual absence of assistance of the MI, except by the warrant of authorized judge. According to current practice, potential of the court warrant to use the MI for collection of evidences is insecure and uncertain. It is mostly related to opinion of individual judge and how they perceive potential assistance of the Ministry of Interior to victims. Uncertainty of procedures regardless of the evidences in the favor of the victim, status of unconvinced person, additional high level of victimization, which is affected by additional pressures through new threats, fear of failure, mistrust in the system and authorized organs, initiating of litigation charges against victims, even submission of criminal charges, high expenses of the procedure affect the victims to resign from private criminal procedures. Having in mind negative results and narrowed number of instruments for collection of evidences, general conclusion is that journalists most often avoid such procedures.

Proposal: *The best way to induce the victims to prosecute criminal act perpetrators by private charge is to provide safe way channel for assisting of the MI, by warrants of acting court. Journalist associations, MI and public prosecution should provide assistance to the victims that are additionally victimized. Authorized organs have to gain trust by providing more information, assistance and support in conducting of procedure. One of the proposals refers to implementation and drafting of manual with most important recommendations and models of proceedings in problematic situations, to assist the victims in initiating and conducting procedures.*



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