

**TOWARDS MORE
EFFICIENT MECHANISMS
FOR THE PROTECTION
OF JOURNALISTS IN
SERBIA**

OLD NEW CHALLENGES



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Introduction

In September 2019, the Slavko Curuvija Foundation published the analysis **Critical Points in the System of Safety of Journalists**. This analysis mapped the points in the entire system of protection inhibiting the efficient and effective protection of journalists who suffered threats, pressures and attacks due to their reporting – starting from the police and judiciary, special protection mechanisms and the legal framework in the end.

In the meantime, the matter of the journalists' safety and their efficient criminal protection stands as another prevailing obstacle for press freedom in Serbia, as all relevant domestic and international sources have warned about. In addition to another two working groups for the protection of journalists being established – in parallel with the *Permanent Working Group for the Safety of Journalists* that was formed in 2016 – as well as the adoption of the General mandatory instruction for the procedural actions of public prosecutor's office in the cases of threats and attacks on journalists by the end of 2020, the perception of the effectiveness of the protection has not changed either in the media community or with the domestic and international observers.

This analysis represents a new perspective on 26 critical points in the system of journalists' protection identified in 2019, which was made based on the systematic monitoring of different attempts at system improvements. The goal of the analysis is to establish if there have been any positive developments.

Without doubt, in 2020 and 2021, there were attempts to improve instruments of protection of media workers, primarily by establishing new working groups and amendments to the existing legislative framework and relevant bylaws. Those attempts, although positively assessed by the international community, have encountered specific challenges in practice, which will be discussed in the analysis.

In the European Commission (EC) Report for Serbia from 2021¹ it was emphasised that regarding the freedom of expression, "limited progress was made by adopting and starting to implement a limited number of measures under the action plan related to the media strategy". However, it is added, verbal attacks against journalists by high-level officials continued, and cases of threats and violence remain a concern. "Most media associations withdrew from the group on the safety of journalists in March 2021, citing hate speech and smear campaigns against journalists and civil society representatives, including by the head of the ruling party caucus in Parliament. These verbal attacks in Parliament took place even after a code of conduct was adopted in December 2020. The overall environment for

¹ Source: https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_oktobar_21.PDF

exercising freedom of expression without hindrance still needs to be further strengthened in practice”, wrote the EC, adding that “overall, cases of threats, intimidation and violence against journalists remain a source of concern, especially at a local level”.

Activities of the state regarding the protection of journalists’ safety after her official visit to Serbia were praised by Teresa Ribeiro, the Representative on Freedom of the Media from the Organization for Security and Co-operation in Europe (OSCE), who said: “I would like to commend some initiatives by the government of Serbia undertaken to protect journalists’ physical safety, but also safety in the digital sphere. *I here refer to the Permanent Working Group for the Safety of Journalists, as well as the launching of the 24-hour SOS phone line. However, we need more concerted action and political commitment of all government authorities and stakeholders.*”²

Since 2020, the freedom of expression has faced many challenges due to the global pandemic of coronavirus. The attempts to centralise information of public interest, arrest of journalists, and mass protests with journalists being wounded and prevented from doing their job – are just some of the challenges in the domestic media scene. In the previous period, the number of SLAPP lawsuits has increased, which undoubtedly represents intimidation of journalists, exhausting them to give up on reporting on matters of public interest.

Although earlier identified critical points and proposals given in the framework of those points represent the baseline, the emphasis of this analysis has been placed, before all, on the points that went through some progress and development. This analysis is based on the continuous monitoring of the working groups’ activities, direct insight into the reports on their work and continuing participation of the Slavko Curuvija Foundation in the process of improving journalists’ safety, analyses of different reports and studies done in the previous years.

In addition to that, the analysis is based on the continuous monitoring of trials in the cases of journalists as injured parties suffering criminal offences, including the personal experience of journalists who have, as injured parties, experienced the process of reporting a criminal offence. For the purpose of this analysis, in-depth interviews with 10 journalists have been conducted. These journalists have reported criminal offences against them, and these interviews served for obtaining feedback on their perception of the protection system. The journalists whose cases were finally solved (by judgement or dismissal of criminal complaint) have been interviewed, as well as those whose cases are still ongoing (before prosecutor’s offices or courts). Half of the interviewed journalists come from the local environments, and another half of the sample are women. We are especially grateful to all interviewed journalists who shared their view of the system of protection and who,

² Source: <https://nuns.rs/pretnje-i-zastrasivanja-kao-sastavni-deo-zivota-novinara-u-srbiji/>

based on their personal examples, indicated the system's possible shortcomings and potential for change. Their perspective, although based on different types of experience, could be expressed in one sentence, which is a new critical point: an increased number of safety mechanisms does not lead to real protection and reduction of attacks on journalists.

Mechanisms for the protection of journalists and media workers

1. Working bodies for protection of journalists safety

a. Permanent Working Group for the Safety of Journalists

Permanent Working Group for the Safety of Journalists was established in December 2016, and by the end of 2020, it represented "the only instrument that systematically works on improving the safety of journalists in Serbia."³ This group has introduced certain changes that, primarily, refer to the improvement of the procedural actions of prosecutor's office, following the proposals of the previously identified critical points.

In the previous period, the public nature of the PWG work was identified as one of the critical points since, two years after, it was assessed that it had not been sufficiently visible. In this regard, we might say that in the previous period, certain progress has been made – primarily in the formal sense. By publishing and presenting the First Report on the work of PWG⁴, which was a recommendation from the previous analysis "Critical Points", a step forward has been made in this group's relationship towards the public, i.e. representing the results of its work. The report refers to the period of five years (2017-2021) and contains information on the cooperation agreement and contact points, statistical information from the prosecutor's office, specific cases of attacks on journalists and the PWG activities under the action plan. As an additional benefit, this report includes examples of good practice, similar international initiatives and international standards of protection of the safety of journalists. The report includes conclusions and recommendations, both general and those referring to contact points, records and application of international standards.

³ Critical Points in the System of Safety of Journalists, Slavko Curuvija Foundation, p. 14

⁴ <https://bezbedninovinari.rs/file/files/documents/izvestaj-o-radu-stalne-radne-grupe-2017-2021.pdf>

The established web platform Safe Journalists⁵ contributes to the public nature of the PWG work, and this report will be available on it, however – that is not enough. Under the Rules of Procedure of the Permanent Working Group from 2019, its work is public, which is ensured by organising press conferences, publishing joint press releases, publishing meeting minutes, compulsory public annual work reports available on the websites of all signatory parties and other ways under the law. Until June 2022, there has been no practice of holding press conferences, when the PWG representatives visited the OK Radio in Vranje that was threatened. The meeting minutes are kept regularly but are not made available to the broader public, which should be changed. In practice, press releases are not published on a large scale. The PWG issued a press release when new Mandatory Instruction for the Prosecutor's Office was adopted, and after the protests in June 2020, when the Government of the Republic of Serbia announced new measures against coronavirus, and many journalists were injured.

A positive step has been made toward the public nature of its work with the established practice of damaged journalists' participation in the sittings when their cases are deliberated. This is an important contribution to better informing the journalists on the status of their applications, understating procedures and the work of competent institutions on these cases.

However, the public nature of the PWG work should be discussed, first of all, from the perspective of the target group that was the reason behind establishing this protection mechanism – this is a group of journalists who have suffered criminal offences pertinent to their work in the area of public information. Within that meaning, those who have reported criminal offences and whose cases are found in the prosecutor's office records, in majority, are not familiar with the work of PWG. One interviewed women journalists said, "Ever since this happened, I often hear about that group, but I am still not sure what it does and who its members are."

The additional confusion was caused by the forming of the new Government working group for the safety and protection of journalists (GWG) in December 2020. Even the journalists who have gone through the procedures of reporting criminal offences and are familiar with the existence of the working groups for the protection and safety of journalists, have problems confusing the Permanent Working Group with the Government Working Group, in particular, due to the credibility of the individuals who participate in both groups.

The positive comments of those who know about the existence and the work of PWG primarily refer to the fact that the idea is good in essence and that existence of the special mechanisms of protection is important, although its range of work is limited by other factors

⁵ <https://bezbedninovinari.rs/>

– primarily the influence of politics on the work of courts and prosecutor’s offices. Based on personal experience, journalists recognise and positively assess the work of some members of PWG, mostly journalists and media associations, but the individuals they trust as well. Several interviewed journalists have stated that in the cases of threats and attacks, instead of to the authorities, associations or working groups, they report directly to Veran Matic. Because Matic is a member of both groups, some of those journalists did not know the difference between PWG and GWG. When asked if he trusted the institutions, one journalist said, “If Veran Matic is an institution, then I only have some trust in him, and that’s it.”

On the other hand, the journalists’ distrust in the work of the PWG is reflected in some negative comments. A journalist has said that PWG belongs to “NGO, project-based stuff, “ticking-the-box”, and draining both our and foreign budgets”. Another one has not been satisfied with the work of the PWG because, as he has said, “Just like everyone else, they do not pay too much attention to us without strong newsrooms or someone else holding our back”.

Regarding the composition of the Permanent Working Group, it has not been changed regarding the members participating in its work, except that some individual staff has been changed. The representatives of the court who could contribute by giving opinions or consultations regarding the existing court practice in the protection of journalists’ safety are still missing, which could definitely increase the quality of the group’s work.

b. Government Working Group for the Safety and Protection of Journalists

At the sitting held on 10 December 2020, the Government of the Republic of Serbia adopted a decision on establishing two working groups – one for the implementation of the Media Strategy Action Plan and another for the safety and protection of journalists.⁶ The Working Group for Safety and Protection of Journalists with the Government of RS (GWG) was founded with the aim to institutionalise the work on solving this problem, to react more efficiently in the cases of attacks on journalists and monitor all actions and activities taken to protect their safety. The initial idea for establishing this group originated from the obstacles that PWG faced as it exclusively dealt with criminal offences of attacks against journalists. As the pressure on journalists went beyond the scope of the Criminal Code, a wider framework for the protection of journalists had to be established to ensure the developing of the policy fighting violence against journalists on the highest level.

In addition to all representatives of the PWG, the composition of the Government working group included representatives of the Prime Minister cabinet, Ministry of

⁶ <https://www.srbija.gov.rs/vest/505043/vlada-donela-odluku-o-formiranju-radne-grupe-za-bezbednost-i-zastitu-novinara.php>

Culture and Information, Ministry of Interior, Ministry of Justice, Ministry of Foreign Affairs, Ministry of European Integration, deputy of the Republic Public Prosecutor's Office, Ombudsman, Association of Judges and Prosecutors of Serbia, and media associations and trade unions.⁷ Besides, the representatives of four international organisations in Serbia have participated as observers in the work of PWG (EU Delegation, Konrad Adenauer Stiftung Foundation, OSCE Mission to Serbia and Embassy of the Kingdom of Norway).

It has been envisaged that a complex working group as this one should meet once a month in the Government of the Republic of Serbia. For the purpose of exchanging information, the representatives of the prosecutor's office have introduced monthly reporting on criminal offences against journalists. After every sitting, the GWG issues press releases, so this group is getting more visible than PWG. In March 2021, GWG supported the ANEM project on establishing a single SOS phone line for journalists to report threats and attacks 24/7, and in April, the web platform *Bezbedninovinari.rs*⁸ was established. However, in the same period, there has been an increase in the intensity of the attacks, hate speech and discrediting and smear campaigns against independent media, journalists and representatives of civil society. The government representatives verbal attacks also happened in the Parliament, after the Code of Conduct was adopted in December 2020. Since GWG failed to react to those attacks, first the Slavko Curuvija Foundation, and then the majority of media associations left this group in March 2021. In May, these organisations formed the **Coalition for Media Freedom**⁹, whose goals are journalists' safety, freedom of information and independent and professional journalism. The Coalition started its work on the common indicators for monitoring the journalists' safety, as well as amendments to the Law on Public Information and Media. The joint press releases also raise awareness of the public on urgent media matters and journalists' safety.

c. Ombudsman's Platform

In May 2020, with seven media associations and three journalists' trade unions¹⁰, the Ombudsman signed an Agreement on establishing the platform for recording the cases of

⁷ JAS, IJAS, IJAV, ANEM, Media Association, Online Media Association, Local Press, Serbian Journalists' Trade Union (SINOS) and Association of Radio Stations (RAB).

⁸ <https://www.srbija.gov.rs/vest/539863/novi-portal-za-prijavljivanje-ugrozavanja-bezbednosti-novinara.php>

⁹ Online Media Association, Independent Journalists' Association of Serbia, Independent Journalists' Association of Vojvodina, Media Association, Local Press and the Slavko Curuvija Foundation

¹⁰ The Agreement was signed with the Journalists' Association of Serbia, Independent Journalists' Association of Serbia, Independent Journalists' Association of Vojvodina, Association of Independent Electronic Media, Media Association, Online Media

threats against safety and pressures on journalists and other media actors. The goal of forming the platform was to establish a single database of the attacks on journalists and a more efficient mechanism for protecting journalists' safety, which would be the basis for the Ombudsman to react in the framework of its legal competences and to initiate law amendments. In 2020, media associations and trade unions created the categorisation of threats and attacks on journalists for their unique database. According to the 2021 Report of the Ombudsman¹¹, the technical process of making a unique database on all pressures and attacks on journalists has been almost completed.

Although this platform is mentioned in international reports as a positive step, in practice, it failed to set in. After Ombudsman became a member of the newly formed GWG in December 2020, this working group has not met once.

According to the reports on the status of human rights in Serbia for 2021, it is estimated that the "proliferation of working groups and commissions whose competences intersect and that supposedly should protect journalists did not produce results. Moreover, the number of attacks and pressures on journalists constantly grows every year. The government benefited from these groups only since these formal elements, in fact, enabled the government to get a passing grade in the European Commission Progress Report."¹² In the report, it is mentioned that officials verbally attacking journalists has continued and that threats and violence against journalists are not diminishing.

The Coalition for Media Freedom has also assessed that "formal actions do not contribute to actual changes in the media scene."¹³ As said before, the existence of several working groups whose competences are not clearly separated, from the perspective of journalists, to put it mildly, is rather confusing.

Association, the Business Association of Local and Independent Media "Local Press", Serbian Journalists' Trade Union, Branch Trade Union for Culture, Art and Media – "Nezavisnost" ("Independence") and Autonomous Trade Union of Employees in Graphics, Publishing, News and Film Industry in Serbia.

¹¹ Regular Annual Report for 2021, available at <https://www.ombudsman.rs/index.php/izvestaji/godisnji-izvestaji>

¹² Source: [Ljudska-prava-u-Srbiji-2021.pdf](#)

¹³ Source: <https://www.slavkocuruvijafondacija.rs/ksm-izvestaj-ek-potvrdio-da-kljucni-problemi-medijske-zajednice-i-dalje-ostaju-nereseni/>

2. Laws and bylaws

a. Criminal Code

In 2019, a special subgroup for the analysis of the Criminal Code (CC) within the Permanent Working Group identified 35 criminal offences that could be considered offences against journalists. The Mandatory Instruction of the Prosecutor's Office was adopted by the end of 2020 and included in 34 of these criminal offences¹⁴. Since the adoption of the General mandatory instruction for the procedural actions of the public prosecutor's office, all criminal offences against journalists have been recorded. Introducing criminal offences qualified as such into the internal acts of the MoI and the RPPO was provided for under the Action Plan for Chapter 23 in the Accession of Serbia to the European Union.

By analysing criminal offences of the active cases in the prosecutor's offices,¹⁵ it has been concluded that in practice, the attacks on journalists mostly come down to several key criminal offences, primarily endangerment of safety from Article 138, para. 3 of CC (75.8%), and then, to a smaller extent (24.2%) to the following criminal offences: violent behaviour (Article 344 of CC and 344a of CC), stalking (138a of CC), serious bodily harm (Article 121 of CC), racial and other discrimination (Article 387 of CC); instigating national, racial and religious hatred and intolerance (Article 317 of CC); causing general danger (Article 278 of CC). The structure of criminal offences that ended with the adoption of final judgments is similar – out of 20 analysed judgments, in 13 cases (65%) it was the endangerment of safety, while the remaining concerned stalking, causing of general danger, violent behaviour and instigating national, racial and religious hatred and intolerance.

On the other hand, the practice showed that concerning the work they perform, journalists could be victims of other criminal offences that have not been included in the Mandatory Instruction. In such cases, those are not included in the official records of the cases against the journalists. Such offences include, for example, aggravated/compound larceny, blackmail or unauthorised photographing.

Another problem that has been identified in practice earlier was the existence of the different types of endangerment of the safety of persons carrying out tasks of public information when they are performing those tasks, but these types could not be covered by the existing incriminations in the Criminal Code, or it is related to serious difficulties in interpreting those incriminations in their application. This has brought

¹⁴ Only one criminal offence from the group of for crimes against humanity and other goods protected by international law has been left out.

¹⁵ <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Zaštita-slobode-govora-u-pravosudnom-sistemu-Srbije.pdf>

about improvements, in fact, the amendments of the Criminal Code within the PWG that have been initiated.

With the support of the OSCE, the professor of criminal law, Zoran Stojanovic has been engaged and taken on himself the assignment of formulating the amendments through a series of consultative meetings with the media and journalists associations.¹⁶ Professor Stojanovic did not accept the existing proposal of the association to make it a new criminal offence, modelled after the criminal offence of an attack on an attorney, which would put journalists and media workers in the same position regarding their rights with other professions of public interest.¹⁷ To support his opinion, he argued that such solutions existed in the criminal codes of the countries that could not be considered democratic. Instead of a new offence, in consultations, he proposed that the existing provisions of the criminal offences would be amended, and these amendments would achieve the goal – more efficient protection of journalists. At the end of March 2021, first to members of PWG, and then to a wider community, the proposal for amendments on three criminal offences was presented:

- Introducing new qualifications for the circumstances of the criminal offence of coercion from Article 135 of the CC, by sanctioning the coercion against journalists and other media workers (person carrying out tasks in the area of public information regarding those tasks) by forcing them to do or refrain from doing something, shall be sanctioned by punishment of imprisonment from 6 months to 5 years;
- Extending the legal definition of the criminal offence of endangerment of safety from Article 138 of CC, by adding threats against freedom or damage to assets of greater value, in addition to threats to life and body;
- Adding a new qualified type of criminal offence on prevention of printing and distribution of printed material and broadcasting from Article 149 of CC, which sanctions the unauthorised prevention or obstruction of publishing information of public importance through media, or when the tranquillity of a person who has shared information or published opinion has been significantly endangered by violent insults or abuse, rude or ruthless behaviour due to publishing of such information and opinion.

The proposal that was supported by members of the PWG was presented on the sitting of the GWG in May 2021. The Government adopted a decision that the Ministry

¹⁶ <https://www.cenzolovka.rs/drzava-i-mediji/bezbednost-novinara-sta-ocekivati-od-najavljenih-izmena-krivicnog-zakonika/>

¹⁷ Back in January 2021, the similar proposal came from the Association of Judges and Prosecutors that forwarded the proposal for amendments of Criminal Code for the purpose of introducing criminal offence of “attack against journalist carrying out tasks of public information”.

of Justice, which is responsible for proposals of the law amendments, should launch the adoption of the proposal under the urgent procedure. In October and November of the same year, Ministry of Justice organised a public discussion in a very short time, and after that, the amendments to the CC under the urgent procedure were abandoned.

In the course of public discussion, the expert public made a series of appropriate comments and indicated certain shortcomings and potential abuses of the suggested amendments, in particular regarding Article 149 of CC. Some legal experts assessed that suggested amendments took the course of introducing "delict of opinion", which was beneficial for misuse in the form of constraining free expression of criticism. Civil society organisations objected to this legislative solution, as well as a part of the journalistic community due to a risk that such formulated legislative solution could be directed precisely against journalists.

The Coalition for Media Freedom took a common position requesting the Government of Serbia to step out from adopting the law amendments under the urgent procedure in order to find effective solutions for improving the CC to protect journalists under the regular procedure and attain broader social consensus regarding solutions that would in a best possible way contribute to greater safety of journalists, without endangering rights and freedoms of both journalists and other citizens.

Due to detected inconsistencies in protection when it comes to threats and physical assaults resulting in light bodily injury, during the discussion, additional possibilities for protection of the physical integrity of media workers have been identified.

b. Criminal Procedure Code

Problems identified in 2019 remained – liberty of prosecutors in applying institute of deferred prosecution, absence of efficient legal remedy against decisions on dismissing the criminal complaints and lack of external judicial control in the event of deferred criminal prosecution.

As in the following period, amendments to the Criminal Procedure Code (CPC) are expected; attention should be paid to some other shortcomings that could be assessed to improve the position of the injured parties in the criminal proceedings, in line with international standards – primarily the 2012 EU Directive establishing minimum standards on the rights, support and protection of victims of crime.¹⁸

¹⁸ <https://cref.eakademija.com/images/pdf-regulativa/DIREKTIVA-2012-29-EU.pdf>

When it comes to the application of deferred prosecution (opportunity), it is undisputed that the persons suspected are imposed with certain obligations for criminal offences against journalists, even when it comes to conditional threats, but criminal complaints for such threats are usually dismissed without imposing any obligations. Such sanctioning of the accused persons is demonstrated to be efficient and could have a preventive character. The most common imposed obligation is the payment of a certain pecuniary amount for a humanitarian cause. The practice showed a great difference in imposed pecuniary obligations when it comes to, on the one hand, endangered media workers in tabloids that are close to the government and high government officials and, on the other hand, independent journalists and journalists at the local level so it is necessary to harmonise prosecution practice in the application of this institute.¹⁹

However, the legislative solution that completely eliminates the role and participation of the injured party in the application of this institute is even more problematic. In deferred prosecution, the law does not require consent from the injured party, does not allow the right of appeal, and the injured party has no right to inspect the files that refer to the obligation that the suspected person has undertaken and fulfilled. The injured parties are often not informed of the outcomes of such procedures. For such reasons, the amendments to the Criminal Procedure Code are suggested to enable the injured party to participate in the procedure based on the criminal complaint filed. The consent of the injured party should exist as the precondition for this institute application.²⁰

Applying the institute of plea agreements that are concluded between the prosecutor's office and the accused party, while the court accepts it with a judgment, also completely eliminates the injured party from participating in the proceedings. The law does not prescribe an obligation of the injured party to be summoned to the hearing regarding the plea agreement, nor the possibility of appealing to this agreement. The practice demonstrated that the journalists as injured parties were mostly not informed of the judgments based on the signed plea agreements, so the amendments of the legislative framework should include mandatory notifying of the injured parties of these proceedings.

The procedural position of the injured party is determined by his/her right to request compensation claims. However, the court has no obligation to make a decision on it in the criminal proceedings, so, to realise their rights, the injured parties are directed to civil litigation that the injured party has to undertake at their own cost. The condition of starting a civil litigation is to have a final judgment. Taking into consideration that criminal court

¹⁹ <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2022/02/Sloboda-izrazavanja-pred-sudom-drugi-redovni-izvestaj.pdf>

²⁰ <http://www.yucom.org.rs/wp-content/uploads/2017/04/YUCOM-Polozaj-zrtve-u-krivicnom-postupku-Srbije.pdf>

proceedings could take a very long time, followed by civil litigation proceedings for compensation for material damages, the injured parties are exposed to additional victimisation through the judicial system. In the event of journalist Milan Jovanovic's house being set on fire (December 2018), one of the accused parties, 12 days after the perpetration of the offence, signed the plea agreement. After this judgment became final, the injured party initiated civil litigation proceedings for compensation for material damage. In September 2022, the first instance court decision deciding on the compensation for damage has been adopted but is not yet final. As regards the other accused parties (in total four, while one is under trial in absence), the repeated first instance proceedings for the criminal offence of causing general danger (Article 278 of CC) started again only in September 2022. Unless the judge in criminal proceedings does not decide on the filed compensation claim, only after the judgment becomes final, the injured party will have an opportunity to initiate litigation at his/her own expense only if the accused are convicted as well.

As noted by the previous analysis, the objection is neither efficient nor effective as the only legal remedy that the injured party has at his/her disposal when the criminal complaint is dismissed. In the majority of the cases, when the review of the prosecutor's decision on the dismissal of a criminal complaint is requested, the lower instance prosecutor's office decision to dismiss the criminal complaint is upheld.²¹ In cases when the second instance prosecutor's office adopts the objection and issues the mandatory instruction to the public prosecutor in charge to undertake, i.e. to continue with criminal prosecution after the additional actions are implemented under the order of the higher public prosecutor's office, the criminal complaints are dismissed again.

c. Podzakonski akti - Opšte obavezno uputstvo Republičkog javnog tužilaštva

At the end of December 2020, the RPPO has adopted new General mandatory instruction for achieving legality, efficiency and uniformity in the procedural actions of the public prosecutor's office in the cases of criminal offences for endangering the safety of journalists and media workers.²² This document includes 34 criminal offences that primarily could be considered applicable to cases of endangerment of the safety of persons carrying out tasks of public importance in public information. Besides, the adopted instruction improves the public prosecutor's manner of keeping records, the urgency of procedural actions, constant availability of public prosecutors, mandatory feedback to journalists as

²¹ <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2022/02/Sloboda-izrazavanja-pred-sudom-drugi-redovni-izvestaj.pdf>

²² Republic of Serbia, Republic Public Prosecutor's Office, Decision No. 10/20 of 24 December 2020, available at: http://www.rjt.gov.rs/assets/Obavezno_uputstvo_-_O_6p.10-20.pdf

injured parties, the disciplinary liability of prosecutors for failing to respect instructions and the system of contact persons in the prosecutor's offices.

The Instruction envisages urgent procedure under the complaints of journalists, and public prosecutors are obliged, no later than 24 hours from the moment they receive a criminal complaint or notification on the committed criminal offence, to establish a case and assign it to the case manager in the prosecutor's office. The case manager is obliged, 48 hours after taking up the case, to undertake actions in accordance with the law, which includes a compulsory summoning of the injured party to come to the prosecutor's office to provide additional information regarding the event concerned.

It is necessary to inform the public prosecutor in the main public prosecutor's office, and the contact point in the superior public prosecutor's office on every decision by the public prosecutor's office and the court adopted for each case in this area.

The appellate, higher and basic public prosecutor's offices have been ordered under the Mandatory Instruction to designate the deputy public prosecutor as the contact point and primary case manager, but also to designate a secondary case manager due to the volume of the work. Under this solution, instead of the former four contact points with the Appellate public prosecutor's offices, the contact points have now been established with all APPOs, HPPOs and BPPOs in Serbia, which has significantly augmented the system of contact points – from four contact points within the prosecutor's office to 115 public prosecutors and their deputies.²³

By adopting Mandatory Instruction, the prosecutor's offices have significantly fulfilled the proposals from the Critical Points that referred to introducing internal deadlines to increase the efficiency of the procedural actions, implementation of internal control and disciplinary proceedings for failing to uphold and improved registering of cases. As mentioned before, for the purpose of monthly meetings of GWG, the prosecutor's office introduced monthly reports, and these reports are exchanged with other members of PWG, which enables improved monitoring of the case. In the previous period, the Mol updated its list of contact points.²⁴

When it comes to the application of this mechanism, i.e. activating the contact points, the members of PWG have assessed that at the national level, the communication has improved, including enhancement of information exchange and case registering. However, it has been estimated that the system of contact points never developed in the same way at the local level since the journalists' associations of the PWG members do not have persons designated as contact points in local environments (except members of PWG from Leskovac and Novi Sad). The police and

²³ The list of contact points is available at: <https://bezbedninovinari.rs/article/24/tuzilastvo>

²⁴ The list is available at: <https://bezbedninovinari.rs/article/23/mup>

prosecutor's office at the local level cooperate due to the nature of their job, but by designating journalists as contact points at the local level, they would be significantly distracted from their journalistic jobs.

One of the interviewed women journalists believed that the newsrooms and associations should get more involved in proceedings and that journalists should move away and only show up as witnesses or injured parties. "As a journalist, you do not have time for the rest since a new story is waiting for you tomorrow. This government is very creative in distracting journalists from their fundamental job, so they would not cover certain topics. Even if things are functioning, more or less, as usually everything here does, the journalists have to do everything by themselves, this means that those in the government have achieved their basic goal", she said.

Mid-July 2022, members of PWG started being introduced to local contact points set up by the police and prosecutor's office. The members of PWG then visited the employees of OK radio station in Vranje to learn in detail about the problems that journalists encounter. The meetings were held then with the higher and basic public prosecutors in Vranje and representatives of the local media, and the same day the meeting was held in Nis with the appellate, higher and basic public prosecutor in Nis. The topics of discussion at meetings included specific cases of endangering the safety of journalists in these cities, cases reported in the previous period, and whether such practice should be continued. In reported cases of attacks, there were indictments in both Vranje and Nis.

3. Services for journalists as injured parties

In the last couple of years, a lot has been done in informing journalists and the public on different manners of how journalists could report attacks. In March 2021, the SOS phone line 0800-100-115 was launched, and it is operated by legal experts in the field of media. Free phone line enables that for seven days a week, 24 hours a day, all situations producing a feeling of endangerment due to performing a journalistic job could be reported. Through this line, journalists could receive notifications on the legal treatment of offences and procedures to be launched so the endangerment of safety could be reported to competent institutions if those are cases prosecuted *ex officio*. Moreover, through this line, one could receive information on the contact points in the police and prosecutor's office that are in charge of the region where the endangered journalists do their job or where the offence has been committed.²⁵

²⁵ More at: <https://bezbedninovinari.rs/article/127/sigurna-linija-za-novinare-najvise-pretnji-stize-preko-interneta-i-drustvenih-mreza>

In parallel with the SOS phone line, in April 2021, the website *Safe journalists* (Serbian: “*Bezbedni novinari*”) ²⁶ was established. This website contains all relevant documents in relation to the topic of endangerment of the safety of journalists. It also included templates of reports to the police and prosecutor’s office, as well as templates of private criminal charges for criminal offences not prosecuted *ex officio* and a list of contact points. Both activities were initiated by ANEM and coordinated as well. The Government Working Group for the Safety of Journalists is credited for the introduction of the SOS phone line as one of the main results of its work. On the other hand, the report of the PWG mentions that this group has created a website and mobile app *Safe journalists*, to increase the visibility of its work and general knowledge of the importance of public information and safety risks that journalists are facing.

Apart from that, the Action plan of PWG provides for the production of video podcasts on the safety of journalists with the goal of raising awareness and information on the matters of importance for safety. Two podcasts – one on the topic of the safety of women journalists ²⁷ and the other explaining the proper interpretation of the threat, as defined in Article 138 of the Criminal Code ²⁸ – were completed and uploaded on the website *bezbedninovinari.rs* in July 2021.

Journalists and media associations (IJAS, JAS, IJAV; SCF) provide services such as legal counselling and representation in proceedings when members of journalists’ associations are being injured parties. Media associations have been working on informing journalists on the safety and potential for protection, but also civil society organisations, by drafting guidebooks and instructions. The protests in the previous period have inspired the publishing of guidebooks and instructions on how journalists should behave during massive protests ²⁹ and safety instructions for massive protests. ³⁰ Moreover, the civil society organisations offer journalists the Safety of Journalists Guidebook. ³¹

Since in the previous analysis it was established that journalists are not well familiar with the procedure and the manners of reporting endangerment of safety, we have interviewed the journalists who are injured parties themselves and asked them if

²⁶ <https://bezbedninovinari.rs/>

²⁷ See also - <http://bezbedninovinari.rs/article/63/epizoda-1-nasilje-prema-novinarkama>

²⁸ See also - <http://bezbedninovinari.rs/article/64/epizoda-2-bezbednost-novinara>

²⁹ <https://ndnv.org/wp-content/uploads/2020/07/vodic-IZVEŠTAVANJE-SA-NASILNIH-PROTESTA.pdf>

³⁰ <https://www.bezbedninovinari.rs/article/96/uputstvo-za-bezbednost-reporterki-i-reportera-na-masovnim-demonstracijama>

³¹ <https://safejournalists.net/wp-content/uploads/2021/09/Vodic-za-bezbednost-i-zastitu-novinara.pdf>

all mentioned established mechanisms for information and protection will suffice for the media workers to be informed on what they should do and whom to call, when it comes to criminal offences committed against them.

Understanding and familiarity with the proceeding

Regarding the previously identified critical point that journalists as injured parties do not know the procedure and manners of reporting the endangerment of safety, that their role as the injured party is not sufficiently clear to them, and the further steps in procedural actions of the competent institutions, it could be said that not much has changed, despite the described activities for overcoming these obstacles. Before all, one should have in mind that, as a rule, journalists are lay parties, so they do not have to know the legal procedures. The first step in their protection and launching of the procedures is to have information on the possibilities of protection publicly available, and in the last years, this was done. In addition, for the protection and the feeling of safety, it is important that the endangered journalists need to have outer support of legal aid, as mentioned in the European Directive on supporting crime victims.

All journalists we have interviewed have experience reporting attacks or endangerment of safety. Journalists have mostly learned about procedures and protection actions through personal experience, especially if they have reported attacks and endangerment of safety repeatedly. However, when reporting the criminal offence for the first time, the majority of interviewed journalists did not know where to start and what to expect in the future course of the proceedings.

Most journalists, who are members of the journalists' associations, decide to report the attacks to their associations, which they trust to guide them through proceedings. Apart from those, we have journalists who belong to big newsrooms, with teams of attorneys and legal professionals who take over all reporting of the offences and representing the interests of the endangered journalists.

However, there are some who feel endangered and seek support and protection from the public. They are aware of the significant role of the international public and international protection mechanisms (*Safe Journalists*). As said before, some journalists report attacks and threats to individuals from working groups that they can trust. The journalists who do not belong to any newsroom (freelance journalists) feel the least protected.

Almost all interviewed journalists completely agree that the least information on the procedures they receive from the competent authorities, although in specific cases,

they have recognised positive steps. “If here in the police you say that you are a journalist, they know everything and let know those who need it. This is functioning until the case reaches the prosecutor’s office, i.e. the court”, one of the interviewed woman journalists said.

Reporting attacks

In the previous analysis, the following motives were identified as the basic ones when it comes to not reporting the attacks: excessively long investigation, a huge number of dismissed complaints, impunity of pressures, lack of trust in the work of competent institutions and in general – the impunity problem.

We cannot claim with certainty what are all the reasons for not reporting the attacks, as we have interviewed the journalists who either reported the attacks or the competent institution did it on their behalf (in one case, the hospital reported the attack). One of the reasons might be avoiding troubling proceedings because, under in the words of those reporting the attacks, the proceeding is long and upsetting, without any safeguards or guaranteed outcome. It proved that when one has to go through that several times, the only ones who do not give up are those with significant support. Almost all interviewed journalists agreed that the motivation for reporting is less related to the faith in punishing offenders but rather the recording of the cases to prove the continuity of attacks for any potential future proceeding.

“Any form of attacks and pressure should be reported, regardless of the fact that you know in advance that nothing will happen. If nothing, it leaves a trace that attacks happened, so maybe some future generations will use that to improve journalists’ position”, believes the journalist whose case for physical assault has not been solved for years.

A woman journalist who has reported attacks and threats repeatedly emphasised that she did not trust institutions but that she reported cases because she believed that “maybe somewhere there will be someone to prosecute it under the law”. “It could be institutions, the state, someone who should deal with that, so maybe once they will do it”, she added.

“Journalists should report every attack or threat. If anything happens to them later, there will be a note on what someone has said, how they threatened, attacked or similar”, one journalist said. A woman journalist agreed with that, saying that each case she, “will be properly reporting, precisely to have it recorded”. “If something really happens tomorrow, it should be documented that I have reported everything and that they did not want or did not dare to react”, she said.

One female journalist has underlined that “sometimes the incidents that happened to her she did not report to the competent authorities, but only to the journalists’ associations to have them recorded in the databases.”

Those who do not report attacks or threats, mention their distrust of the institutions as the main reason. Pertaining to that, one journalist has said, “I would never report it because I do not trust them – they are all the same to me, on the same side. I am absolutely convinced that the police and prosecutor’s office can solve any case – they are fully competent and know how to do their job. Everything that police, prosecutor’s office and the entire legal system should have – they have it. They want and know, but turn it on and off as appropriate.”

To describe the competent authorities, journalists have more than once repeated the terms *ignoring*, *partiality* and *hypocrisy*.



Besides journalists not reporting, an even greater problem is the fact government institutions do not react when it comes to criminal offences prosecuted *ex officio*. The prosecutor's offices only launch their procedural actions after criminal charges have been officially filed. However, the mechanism of the contact points within the Permanent Working Group for the Safety of Journalists greatly facilitates the communication regarding the reporting of criminal offences against journalists, so the process of reporting offences is very much accelerated.

Threats on social media, threats in conditional verb form and „pressures“

Regarding the prosecution of attacks that occur on social media, there have been no major changes compared to the previous period. Among the active cases of the prosecutor's office regarding criminal offences against journalists, 59.6% of offences were committed online, as per research done by the SCF and CEPRI.³² The percentage of dismissed complaints is also high – 43% of those refer to death threats on social media.

These data indicate that journalists intensively face different types of attacks and threats in the online sphere, which they confirm themselves: "There are hundreds of such messages on Twitter daily. Those are the most imaginative and heinous Chetnik fantasies. All the threats are half meant for you, half for your loved ones, and they always do that to show you that they know who you are, your location, activities, and so on."

Almost all interviewed journalists have emphasised that, regarding the threats, they are more worried about their loved ones than for themselves, and that all of them had to find their own mechanisms to cope with that:

- "I do not report them to Twitter or the police. I am not fearless –if you are fearless, you are actually not normal. After all these years, I have learned to distinguish between real attacks and trolls. I can differentiate between semantics, grammar, and technology of threats."
- "If I were afraid, I do not think I would be able to do this job. There are measures of protection and precautions that we have incorporated into our

³² Protection of the freedom of speech in the judicial system of Serbia (2021): <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Zaštita-slobode-govora-u-pravosudnom-sistemu-Srbije.pdf>

lives. Our way of life is different – you are aware of some things and the surroundings.”

The danger of social media threats is when the attacks spill over to the real-life sphere. Due to the possibility that attacks will actually happen, the majority of journalists report online threats and attacks, and some have already experienced that type of escalation:

- “Before they attacked me in person, physically, we had dozens of complaints with information that something like this will happen, with names and surnames – from contractor to perpetrator. No one reacted.”
- “One moved to action but did not manage to complete what he meant. I really do not want to think if someone will get drunk, get angry or is a friend of someone... Drunk person can come to my house – and then what?”

The general problem with prosecuting attacks that happen online and on social media is to identify the suspects since servers’ seats or portals are located outside of Serbia. There are difficulties in obtaining data from the competent authorities from the country of their registration. The delays in investigation, first of all, happen because the answers to the requests for international legal aid take too much time.

The prosecution is additionally burdened by threats in a so-called conditional verb form since the established case law affects the prosecutor’s office procedural actions in cases when a journalist is directly threatened by “I will kill you”, compared to “you should be killed”.

Irrelevant if those are hidden threats (“I know where you live”), conditional verb form threats (“You should get a bullet to your head”) or direct threats (“I will kill you”, “I will cut your throat”) – all journalists are equally upset. For some, such threats are even more dangerous since they believe someone “can directly threaten on impulse”, but that more often “something more dangerous” is being hidden behind undercover threats.

“Case law is like this on purpose, so the journalists could be threatened in this way, in so-called conditional verb form, but that in general they could be threatened. What would happen if someone wrote, “President should be shot?”, asked one of the journalists participating in in-depth interviews. One journalist asked how prosecutors would react when “journalists would publish article ‘We know where you live’ or just a headline with prosecutor’s photo ”.

Answers to some of these journalists' questions could be found in the analysis "Freedom of expression before the court".³³ In this analysis, the SCF and CEPRIS researchers have concluded that, on the one hand, there is a huge difference in the prosecutor's offices procedural actions regarding insults or threats made in the conditional verb form against journalists, and, on the other hand, actions towards government officials protected under the same article of the law. The prosecutor's offices more easily decide to prosecute insults or threats in conditional verb form when those concern government officials compared to cases of media workers as injured parties. In addition, through the analysis of court decisions, it has been established that the President of Serbia and/or the Prime Minister of the Serbian Government, during the proceedings before the prosecutor's office and/or court, are not heard as injured parties, which is not the case with remaining protected persons, and this puts citizens into a disadvantaged position.

Interviewed journalists believe that attacks originating from the attackers belonging to "privileged position" are now different because they got "more skilled" than before: "Public discourse has changed. They are not threatening directly anymore, but disturb journalists in other ways – ignoring them or just 'warning them'."

Despite announced amendments to the Criminal Code, the impunity of pressures on journalists continues to be a problem for its primordial reasons – first, the atmosphere where, to put it nicely, "snapping at" journalists is normalised through actions of the highest government officials, but also pro-regime media.

Under the preliminary results of the SCF research, out of 68 public appearances, the politicians attacked critical media or journalists 84 times in the period of four months.

Preliminary results show that out of these attacks, 83.8% were made by the representatives of the ruling Serbian Progressive Party (SNS), the most by the President of Serbia and SNS, Aleksandar Vucic, high official Vladimir Djukanovic and Serbian Prime Minister Ana Brnabic.

Out of all analysed attacks made by politicians, 81% were directed towards United Group media outlets – newspapers, portal and TV Nova were attacked for 28, TV N1 at least 24, and newspapers Danas for at least 14 times.

As an extended hand of the government representatives, the pro-regime media get involved in the cases of attacks on journalists. Their attacks, in the same period,

³³ Freedom of expression before the court (2022): <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2022/02/Sloboda-izrazavanja-pred-sudom-drugi-redovni-izvestaj.pdf>

were more numerous – almost 132 articles were published in portals of tabloids *Alo*, *Kurir*, *Informer*, *Republika* (*Srpski telegraf* portal) and *Objektiv*.

In 132 articles, there were at least 197 negative mentions of critical media or journalists, usually targeting the United Group media outlets – Nova, N1 and Danas.

The intensity of attacks varies, as seen from the SCF monitoring; the media outlets are unrestrained, so they often insult journalists directly.³⁴

Based on everything that was said, the question is how big of an impact do the mechanism of protection, amendments in the work of competent institutions and continuing announcements from journalists' associations and media organisation really have in increasing safety if the unsafe atmosphere is created by the very top government with the help of their media outlets. The interviewed journalists are aware of such an atmosphere, so some of their statements are as follows:

- "I did not get rich from my work, and I only brought unrest to my family and me. I am committed to my work and I have never published a lie. So, why do I live in an atmosphere where someone can threaten me with 'I will kill you'?"
- "The atmosphere of the possibility of threats to journalists has been created for sure, and law application depends on who is being threatened and by whom."
- "I fear of the atmosphere, already created or to be made, where threats to journalists will become common. In such atmosphere realisation of threats could be observed as normal, and even– desirable."

Status of journalists as injured parties

Failure to emphasise that the injured party is a journalist when reporting criminal offence results in failure to launch mechanisms of protection established by the Agreement on Cooperation of GWG and Mandatory Instruction of RPPO. This primarily refers to urgent procedural actions of the prosecutor's office to contact the injured party no later than 48 hours and activation of contact points' mechanisms. Moreover, it refers to registering the offence and the injured party in the official records of RPPO that enable improved monitoring of the case within the PWG. Failure to underline that the injured party is a journalist entails potential omissions in estimating the level of endangerment and, finally, upsets the efficient procedural actions of the competent institutions.

³⁴ <https://www.slavkocuruvijafondacija.rs/izvestaj-o-monitoringu-izvestavanja-provladinih-tabloida-o-kritickim-medijima-i-novinarima/>

Urgent procedural actions of the prosecutor's office refer to three criminal offences that more severe punishment is provided for if those offences are committed against persons carrying out tasks of public importance in the area of public information, as well as 34 criminal offences, which may be carried out against journalists, and were included in the Mandatory General Instruction. In the end, it is relevant that the attack has been carried out pertinent to tasks that a journalist is carrying out.

When journalists report an offence, the majority of them underline that they are journalists. In specific cases, they were requested to prove their identity with a press ID card belonging to their association. However, those who do not do it (willingly), report attacks through contact points in media associations as they have more confidence in them.

"If I declare myself as a journalist, then nothing will be done for sure, so if I would report something, first I would let the association know because only after that some reaction could be expected."

However, one should bear in mind that when journalists association files criminal charges, they cannot have insight into the case even though they have reported the offence. Under the applicable regulations, this right is granted only to the injured party and his/her legal representative. This issue was discussed within the PWG for the purpose of adopting a uniform and efficient solution to introduce the right to request access to data for the representatives of the journalists and media associations (members of PWG) during the investigation. Although the solution has not been found, this did not heavily impede the exchange of information that could be available in accordance with the law. The representatives of the prosecutor's offices have responded to each request for information on the course of the case made by the members of journalists and media associations. The only exception is made regarding information on the cases of journalists hurt by the police offices during the July 2020 protests.

The status of "journalist" who is an injured party in the court proceedings is relevant only for three criminal offences. A more severe penalty is imposed for those offences if they are committed against "persons carrying out tasks of public importance in the area of public information". This definition will suit to include a broad spectrum of persons professionally involved in informing public irrelevant of whether they have been formally hired by some media outlet, are members of some of the journalists' associations, or in which media outlet they publish the information. In the court proceedings, the accused mostly base their defence on the fact that the injured parties are not journalists, and evidence is being produced for that fact, although any person,

regardless if he/she is a freelancer or member of a newsroom/association, should be protected when they report for the public interest.

“When I went to report it, they did not demand me to prove that I am a journalist. However, in the trial, the attorney of the defendant asked me to prove that I am a journalist, so I had to ask the newsroom to send my contract, which I provided for examination to the court”, one of the interviewed journalists said.

In the case of Milan Jovanovic, whose house was set on fire, the charges filed mentioned that the motivation of the accused to commit the criminal offence actually was influenced by the journalistic job of the injured party. The defendant Dragoljub Simonovic, former mayor of Grocka, in his case of defence, disputed the status of a journalist for Jovanovic, who was the injured party. Although this was one of the most important “media cases”, in this specific case, the court failed to take into consideration the job occupation of the injured party because this did not constitute important element of the criminal offence of causing general danger under Article 278 of CC.

In this case, the part of the reasoning of the judgment is as follows: “In this specific case, for the criminal offence concerned in its basic or serious form, the protected assets are the citizens’ property, property of a person, irrelevant of his/her occupation, i.e. the injured party’s job, so the court assessed that the allegations in the criminal charges concerned of the injured party Milan Jovanovic being a journalist in this specific case, do not constitute an important element of the criminal offence in its basic or serious form, so during the criminal proceedings concerned these circumstances — whether the injured party Milan Jovanovic was a journalist or not, were not requested to be included in evidence, so in the enacting terms of the judgment describing the statement of facts of the offence the provisions of criminal charges referring to the job occupation of the injured party Milan Jovanovic were left out. For the reasons abovementioned, the court did not further appraise the defence’s allegations that disputed the journalist’s status to Milan Jovanovic, the injured party.”

After several missed hearings since February 2022, the first hearing was finally held in September 2022 in repeated proceedings. Based on the proposed evidence, it is clear that the defence will try to prove again that Milan Jovanovic is not a journalist and Zig info is not a media outlet.

In addition, the suspects or accused in the court proceedings frequently base their defence on the fact that they did not know the injured party was a journalist. This is a very relevant question since premeditation of the offender is important for the committed criminal offence of endangerment of safety against a person carrying out tasks of public importance in the area of information.

The journalist who received online threats said that the accused “denied all the time” that the injured party was a journalist and that he “did not know that”. “However, it turned out the opposite. In the correspondence, you can see that all the time he, in fact, was aware that I was a journalist”, he underlined.

The accused for putting up the posters of offensive and threatening content in Vranje with the picture of the president of the Management board of the Association of Independent Media (ANEM) and a member of PWG had the same arguments. In the Basic Court in Vranje, by the end of August 2022, the trial started for the four defendants for putting up posters, who confessed it before the court. However, they said that they did not know who the man on the poster was, and that they believed “it was some singer”.³⁵ Only a couple of days later and after only one hearing had been held, they were acquitted.³⁶

Prosecution and communication with competent institutions

Under the Mandatory Instruction of the Prosecutor’s Office of December 2020, urgent procedural actions of the prosecutor’s office were ordered under the criminal charges for criminal offences against persons carrying out tasks of public importance in the area of public information pertaining to such tasks. This primarily referred to the urgent building of a case within the prosecutor’s office in charge (no later than 24 hours from the reporting of the criminal offence), contacting the injured party to gather additional information about the case (no later than 48 hours), as well as internal notification of the public prosecutor in the main public prosecutor’s office and the contact point in the superior public prosecutor’s office.

Such instruction had an indisputable impact on the faster reaction of the prosecutor’s office in the starting phase of the investigation, shortly after the criminal charges were filed, and both journalists’ associations and journalists as injured parties share that impression. All journalists we have contacted assessed such practice of the prosecutor’s office as positive, especially because it is not exceptionally needed for the injured parties to come to the prosecutor’s office to give a statement, but in specific

³⁵ <https://www.cenzolovka.rs/cenzolovka/veran-matic-citavo-vranje-je-zarobljenik-mafijaske-hobotnice/>

³⁶ <https://www.cenzolovka.rs/pritisci-i-napadi/veran-matic-skandaloza-odluka-suda-da-oslobodi-optuzene-za-lepljenje-plakata-po-vranju/>

cases, it has been enabled to give a statement over the phone. This is what they said about their experience:

- "It was a really positive experience, and reporting offence should look like that every time."
- „The prosecutor has told me that this man had no criminal offence in his life – legally, he was clean. Such a rash person was immediately prosecuted – it reached the prosecutor’s office only several days after the attack. From April to July, the situation has been wrapped up – rather clean and quickly done. Earlier cases have been going on for years, where I had to produce evidence that I am even a journalist: first, I had to explain what is portal, and then who and what I am, why I write and why I am bothering people...”

The hold-ups in investigation occur in later stages of the proceedings, and the obligatory instruction of the prosecutor’s office did not respond to challenges in further prosecution.

“The case is stalled because of the identity of the offenders, distributors, contractors and coordinators of the entire action”, said the female journalist whose case was before the prosecutor’s office for eight months.

In cases of a criminal offence, the challenges mostly refer to discovering the identity of the offenders. In almost half of the unresolved cases of attacks on journalists (2017-2020), offenders were not discovered yet.³⁷ However, by the latest data of the RPPO, in 2022, the offenders were not discovered in only three cases out of 49 established cases.³⁸

As time goes by, the chance of revealing offenders and resolving cases of attacks on journalists decreases significantly. This, in particular, refers to physical assaults and attacks during public gatherings and protests, when journalists are targeted by both protesters and official persons, as the practice showed the investigations regarding such cases were not efficient enough. One journalist has said that two incidents that happened to him when reporting from the public gatherings have not been prosecuted: “In 2017, for example, I and some other colleagues were surrounded by SNS ruffians. Charges were pressed, and the prosecutor’s office and police were given pictures and video clips – those people have not been discovered to this day. During another SNS rally, the thugs also attacked me, and six police officers just stood there and did nothing. They did not want to react and they did not

³⁷ Protection of the freedom of speech in the judicial system of Serbia (2021): <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Zaštita-slobode-govora-u-pravosudnom-sistemu-Srbije.pdf>

³⁸ Including the data available by the end of August 2022

make a report on that event. I filed a complaint to the prosecutor's office, but it got dismissed because the police said it was not true."

When it comes to the most serious offences against life and body, the investigation should be carried out immediately after some event, and there are some positive examples of that in practice. If this is not done, the statute of limitations for the cases of physical assaults on journalists will expire, and the offenders will remain unpunished.

It is noticeable that journalists have great distrust in the protection system, although formally, there has been progress in the manner of reporting, the urgency of the prosecution in the cases of attacks on journalists and communication between journalists and media associations and representatives of the prosecutor's office and police.³⁹

Many journalists believe that the partial approach is the main characteristic of the case resolution and that there are rules under which the competent authorities determine why some cases should be solved and some not. These rules are usually connected with political pressure, meaning that only cases of attackers who do not belong to the government or are not close to it get prosecuted.

When reported cases are efficiently resolved for the benefit of the journalists, they see it as an exception and believe that the reason behind it is the need to establish examples of good practice so the authorities would be applauded. Here are some of those statements:

- "They have used that case in their statements, but basically, they did not know what it was about."
- "The case was resolved because the attacker did not belong to SNS (or is not related to them), so that was a good opportunity for them to show off."
- "There were more explicit threats, but proceedings took years. My impression is that this judgment was used as a positive example of the protection of journalists and that such cases are resolved. This case was later abused in some reports and their campaigns."
- "Case by case, I think that almost nothing gets an epilogue. I consider my case of the "butcher" as finally solved but my intuition tells me that what happened was a plea agreement."

³⁹ <https://nuns.rs/tamara-filipovic-mapiranje-strategija-za-zastitu-branitelja-i-braniteljki-ljudskih-prava/>

Lack of trust is clearly detected in the journalists' perception that the outcome and speed of the proceedings depend on who the offender is.

- "I was not attacked by SNS officials, but some plain street Fascists. That served all top government to show their concern. It is obvious they could do that always, but only if they wanted it, which they don't."
- "This case is specific. This person was quickly found and heard, and I got notified of the case. However, he was outside of public life. Before, I was threatened by the people in government, but it was not like this – this was a very unique and specific experience."
- "It was not resolved because offenders were close to government. That is my opinion, and I believe that I am not wrong."
- "This case was efficiently solved, but competent authorities would not react if these threats were made by some SNS member. They reacted because the offender does not publicly support the SNS regime."
- "We are left with many possibilities of different interpretations since cases are solved like this when offenders are not from the ruling party and don't hold office. We had specific criminal offences reported, but the proceedings were never launched. This creates an opportunity for independent interpretations that some are protected while others are prosecuted under the law, however, the law does not apply to the first group."

On the other hand, journalists whose cases are not officially solved do not see any difference in proceedings before and after the RPPO mandatory instruction:

- "There is no difference as there is no interest in solving the cases."
- "Simply, there is no desire or willingness to discover the offenders."

The journalists emphasise that they do not receive information on the course of proceedings, which they see as serious shortcomings in the prosecutor's office procedural actions. After the initial statement, many are deprived of information about it, and some are even unaware of the conviction until they receive a call from PWG. Interviewed journalists said the following:

- "If I had not phoned the prosecutor then, I would not know that the suspect was found and that I would be invited to a hearing again. Since then, I have not received any information. I absolutely have no clue what is the status of the entire proceedings now."
- "Apart from taking my statement, the prosecutor's office had not taken any specific measures."
- "I have not heard from them yet. I have no feedback."

- "I have no information, nor ever have received it."
- "We have not been notified on the judgment. I heard about it from Veran Matic."

In turn, representatives of the prosecutor's office emphasise that journalists could show their interest, that they have the right of access to the case and that they can suggest evidence themselves. The issue of the right to request access to data for the journalists' associations that are members of PWG to have insight into cases they have reported has not been resolved to this day.

Another problem that is emphasised is the huge number of dismissed criminal complaints. From the records of the prosecutor's office on active and finally resolved cases that are registered on a monthly basis, the number of solved cases is gradually increasing. The analysis "Protection of the Freedom of Speech in the Judicial System of Serbia"⁴⁰ indicated that the majority of cases had not been finalised by the court decision, but the prosecutor's office decision – the decision on the dismissal of criminal complaint, official note that there is no basis for launching criminal proceedings or decision on application of the institute of deferred criminal prosecution (opportunity). Over 76% of the finally resolved cases were closed in such a way, while every tenth reported case is resolved by the court decision.

New data also reveal a huge number of dismissed criminal complaints. Under the records of the Republic Public Prosecutor's Office⁴¹, by the end of August 2022, 49 cases were established. Out of the total number, 14 cases were resolved, one with conviction (the appeal is ongoing) and 13 cases were closed by the prosecutor's office decision on the dismissal of criminal complaint. The statistics are similar for 2021 – out of 87 cases, 31 cases were resolved by the dismissal of criminal complaint (about 35% of all reported cases).

Apart from the fact that most cases are solved by the dismissal of the criminal complaint, the analysis "Freedom of expression before the court" indicated the uneven practice of the prosecutor's offices in the manner of ending the proceedings. This is reflected, on the one hand, in the similar actions and events that have ended by the official note of no basis for launching proceedings or, on the other hand, by the dismissal of criminal complaints. Based on that, the injured parties have the right to object to a higher prosecutor's office (if it is the dismissal of the criminal complaint) or do not have the right (if it is an official note).

⁴⁰ <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Zaštita-slobode-govora-u-pravosudnom-sistemu-Srbije.pdf>

⁴¹ The RPPO periodical communication (newsletter) that is distributed to members of PWG monthly

Even when they have the right to object to a higher instance, it proved that the objection is neither an efficient nor an effective legal remedy. In the majority of cases, when a review of the prosecutor's decision on the dismissal of the criminal complaint is requested, the decision of the lower prosecutor's office to dismiss the criminal complaint gets confirmed⁴². Even in those cases when the second instance prosecutor's office accepts and issues the mandatory instruction to the competent public prosecutors to undertake, meaning to pursue criminal prosecution, after additional actions have been taken by order of the higher public prosecutor's office, the criminal complaints get rejected again.

In this analysis, different practice in prosecution was noticed when it comes to journalists as injured parties compared to other persons protected under the same article of the law. When the injured parties are the highest state officials, the subjective feeling of endangerment and fear is not investigated in the cases of the endangerment of safety through threats, however with the media workers as injured parties, this is usually requested, but if this element of the criminal offence is missing, the prosecutor's offices do not even start the court proceedings, but criminal complaints get rejected as a rule.

Journalists who have reported several offences that are prosecuted before different prosecutor's offices indicate the difference in proceedings of some public prosecutor's offices. While some prosecutors are obviously trying to find any basis for prosecution and cooperate with the injured parties, in some other cases, journalists observe a "strong partial nature" of prosecution.

- "This happened in the First Basic Prosecutor's Office in Belgrade. The prosecutor in charge tried so hard, she looked for evidence and fought to try and establish the case. She called and notified me regularly. I was aware it was hard, but I was impressed with how they fought to do it. There is partiality among prosecutors as well – some care about doing their job and protecting journalists. As for the RPPO, we can tell they are diligent when it comes to some 'politically interesting things', but for the protection of journalists, they absolutely play dead."

Court proceedings taking too long

When it comes to the length of court proceedings, it should be mentioned that the length of the proceeding depends primarily on whether the prosecutor's office has

⁴² <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2022/02/Sloboda-izrazavanja-pred-sudom-drugi-redovni-izvestaj.pdf>

made a plea agreement with the suspect or there is an indictment. By analysing the course of the proceedings in 20 court cases there ended with final judgment (2017-2020)⁴³, it has been concluded that the efficiency in prosecution stems from the fact that nine cases in total have been resolved by accepting the plea agreement. In the fastest resolved case, only three days passed from the moment the offence was committed until the court decision. The longest case to be resolved took one year, seven months and four days. Also, three cases were resolved by the accused confessing the criminal offence, and it could be said that these cases have ended efficiently. However, examples from practice undeniably indicate that if the accused denies having committed a criminal offence, the (lack of) efficiency in protecting the injured parties' rights becomes even more pronounced.

In the case of Milan Jovanovic's house on fire, the court proceedings started three months after the criminal offence was committed. In this case, the investigation was efficient, however the first-instance acquittal was adopted after 29 scheduled hearings and 16 hearings held, two years after the charges were pressed (23 February 2021). In the appeal proceedings, the Appellate Court quashed (14 October 2021) the first-instance verdict and ordered a retrial. After several attempts to hold a retrial ever since February 2022, the first-instance proceedings started again in September 2022, and no one could tell how long it would take. In this case, one of the accused has concluded a plea agreement, so in her case, the court proceeding was efficient, however, when the defendants do not confess they are guilty, it is difficult to talk about the efficiency of court proceedings.

Another case that takes an unreasonable long time is the court proceedings for the murder of Slavko Curuvija, which took almost four years in the first instance – from 1 June 2015 until 5 April 2019. After overturning the verdict in the second instance proceedings, the retrial started in October 2020 and took more than a year. During the retrial, in total, 39 hearings were scheduled, while 19 were held for a maximum duration of three hours, so the retrial took maximum 47 hours. Without any new evidence produced, the identical first-instance verdict was adopted (2 December 2021). In September 2022, the Appellate Court has still not scheduled a session to decide on appeals.

Court proceedings could end in a short time, and we heard it from the journalists who talked to us about their experience in the system of criminal protection:

- "I cannot see any obstacles in that proceedings. Three hearings were held, and he was sentenced in four months, which is rather quickly for passing

⁴³ <https://www.slavkocuruvijafondacija.rs/wp-content/uploads/2021/02/Zastita-slobode-govorau-pravosudnom-sistemu-Srbije.pdf>

judgment. It would have ended sooner if the accused did not change lawyer at some moment because one hearing was postponed due to that.”

- “There were no obstacles, and the entire proceeding was decent. Only a few months passed from threat until judgment.”

The example of good practice mentioned in public refers to the conviction in the final judgment for the case of physical assault on a radio host in April 2021 that took a bit longer than a year⁴⁴. However, the journalist who as the injured party said: “They got a rather cheap and affordable example of good practice. It’s great it was like this, but it was like this because they wanted it.”

Only a few days and one hearing held (26 August 2022) set a record for the acquittal (2 September 2022), in the case of putting up posters with threatening and offensive content and picture of a journalist and a member of PWG in Vranje.⁴⁵

Lenient penalty policy

By comparing legal framework and pronounced sanctions in 20 cases resolved by final judgements before the court, the research “Protection of the Freedom of Speech in the Judiciary System of Serbia” demonstrated that milder criminal sanctions were pronounced in the analysed cases. Eight cases ended with a suspended conviction that is imposed on the offender for a lesser criminal offence only when it is expected that an admonition with the threat of punishment will have sufficient effect to deter him from further criminal offences.

The longest prison sentence pronounced is the one-year penalty, which the convicted will serve in the premises where he lives, without electronic surveillance, for three criminal offences of endangerment of safety in joinder.

Serving penalty in prison for the duration of six months was imposed in only one of the analysed cases for the criminal offence of violent behaviour.

When deciding on the severity of the criminal punishment, in each specific case, the court takes into consideration all extenuating and aggravating circumstances – degree of culpability, the motives for and circumstances of the offence; if the offender was convicted before; how he behaves in the proceedings, and primarily his relation towards the victim. However, in one of the appeals that the prosecutor’s office

⁴⁴ Source:<https://www.cenzolovka.rs/pritisci-i-napadi/potvrđjena-presuda-protiv-napadaca-nadaska-milinovica/>

⁴⁵ Source:<https://www.cenzolovka.rs/pritisci-i-napadi/veran-matic-skandalozna-odluka-suda-da-oslobodi-optuzene-za-lepljenje-plakata-po-vranju/>

submitted against the decision on the punishment, it was said that the court gave more importance to the extenuating circumstances without providing specific examples of why those were appraised in such a way.

In this analysis, it was noticed that the competent authorities, in the cases of attacks against journalists, adopt decisions on punishments automatically. It proved that in half of the suspended sentences, the duration of the imprisonment sentence and the probation period were identical: punishment is one year, and probation period is three years.

However, there are cases when in practice, the court adopted a more severe punishment than the prosecutor's office demanded. "Prosecutor's office demanded six months of house arrest and one year of a restraining order, however the judge made a verdict that both sanctions last longer", one of the interviewed journalists commented on his experience.

Consequences of attacks on journalists

Attacks and pressures on journalists leave serious consequences on their lives, health and professional engagement. Writing on some topics brings anticipation that attacks will follow, first on internet and then spill over in real life.

However, with the professional journalists we have interviewed, there is no option of self-censorship and dissuasion from writing and publishing, although they might hesitate. The journalists have mentioned least the health consequences that undoubtedly exist in the form of physical injuries, constant stress, nervousness, hypertension, headaches and others. "All that stress has to concentrate somewhere, and we carry it with us", one journalist said.

Since threats are often made against members of a family, almost all interviewed journalists emphasised that the worst consequence of the attack is their concern for their loved ones, and for that reason, they often stop telling them about the problems they are facing.

"I think that my family is having a really hard time coping with this. I often try to hide from them what happens to me out there", one female journalist talked about her experience, while for others, this situation is almost – a rule.

Attacks, threats and endangerment of safety have serious consequences on freedom of movement. The journalists assess risks themselves, so they become more cautious in the public space, in particular if the offender of the reported offence is not yet identified.

One female journalist from the local media said that she did not leave the house for a long time after the attack, because she was scared that “petty criminals” could ambush her somewhere. Because of that, she said that she stopped walking around the city.

Although his case of threats reached the first-instance verdict, one journalist said that when he would go somewhere in the evening, he would think “what if someone suddenly appears, comes to me, attacks me and starts calling me names”.

Self-censorship as the consequence of attacks appears in some cases, but only temporarily, and it could be only observed as a psychological reaction to attack, rather than a true hesitation from a journalist.

- “In general, I have somewhat stopped writing, so I would not provoke such a reaction again. I was thinking if I would stay in journalism at all or do something else just to escape from all of it. However, no one is fighting here anymore, no one is writing about things really going on, so I have decided to stay here and fight the windmills.”
- “I do not apply self-censorship, but I am on the verge of it. I imagine that if I even open my mouth that someone will slap me, which I will forever regret because of what I wrote and said. Somehow I still manage to pass over that barrier, but then I fear what will happen...”

While some fight not to succumb to self-censorship, one female journalist emphasised that “threats will not affect their work and how and why they should do it.”

For some journalists, the attacks cause greater resistance and perseverance to remain consistent in topics they write about or talk publicly. They mention that threats and attacks incite them to rebel and forcefully approach the topics.

The general situation is especially worrying, and witnessing journalists’ impression of normalisation of life and working conditions under constant threat, more has to be done in the prevention of violence against journalists. Some say that they consider this “the price of service”, while some are “numb”, and others say, “times are such that you have to learn to fight”.

To come to terms with such kind of work in everyday life, all journalists find their own mechanisms. One journalist has emphasised that all journalists “have their own internal procedures and a higher level of caution” in the cases of attacks, and the other said that in such situations, “they are forced to react in accordance with the professional ethics”.

Secondary victimisation

All of the previous examples tell more about the direct consequences of attacks that journalists are facing, however by experiencing the proceedings and court trials, the injured parties often get exposed to secondary victimisation. Harmonisation of national legislation with the European Directive establishing minimum standards on rights, support and protection of victims of crime has been announced in Serbia by the adoption of the National strategy on the rights of victims and witnesses of crime.⁴⁶ The Strategy provides for that victims and their family members should be protected from secondary and repeat victimisation, intimidation and retaliation, including protection against the risk of emotional or psychological harm, as well as against physical injury. General protection measures are taken to ensure:

- Avoidance of contact between the victim and the offender because victims often confront defendants during investigations, and they are almost always present at the same place as the defendants and their attorneys if they are testifying at the main hearing.
- Protection of victims during investigative actions (such as interviews and forensic examinations), which would mean interviews of victims being conducted without delay after filing of complaint; avoidance of unnecessarily repeated interviews; right to be accompanied by their legal representative or a person of their choice (persons of trust), and medical examinations that are kept to the minimum. The current situation in the criminal justice system of the Republic of Serbia is indicative of the problem of multiple interviews. Namely, in practice, victims are interviewed usually immediately after a complaint has been filed and then again before the prosecutor and the court.
- Protecting the privacy of victims could be important means of preventing secondary and repeat victimisation, intimidation and retaliation, and could be realised through an entire set of measures that include not revealing or limiting revealing of information regarding the victim's identity and location.

Secondary victimisation of the victims is additionally increased by the lack of information on the course of proceedings, inappropriate treatment of the injured parties during the proceedings, and excessive length of the proceedings so the victims cannot realise other rights safeguarded by the law (e.g. compensation for material damage), which in the end restricts their access to justice.

⁴⁶ National strategy on the rights of victims and witnesses of crime for period 2020-2025, adopted on the Government sitting of 30 July 2020.

In the previous period, there has been a series of proceedings where the injured parties, who are journalists, are additionally victimised or put at risk of additional victimisation during the investigation, but the court proceedings also contrary to the European Directive.

The most drastic example is the trial against the defendants who put Milan Jovanovic's house on fire. The injured party and his wife have more than once felt like defendants instead of victims during the trial, primarily due to the manner they were interrogated by the attorneys of the defendants. Because of their manner of asking questions to the witnesses, the judge called them out during the proceedings "that witnesses are not on trial". The prosecutor said that was "lashing out" and "inquisition", and judge said "they are insulting the intelligence".⁴⁷

Besides this treatment during the court proceedings, Jovanovic is experiencing secondary victimisation due to the excessive length of the criminal proceedings so his access to justice has been cut off, i.e. the possibility of compensation for material damage. Additional victimisation of Jovanovic and his entire newsroom continues due to a series of charges that the defendants are filing for the damage to honour and reputation in the civil litigation. Although no one should be denied the right of action, the majority of these charges were dropped, while the victims' resources are being additionally exhausted.

When it comes to the protection of privacy, the injured party gives statements and participates in the proceedings as a witness in accordance with the Criminal Procedure Code (CPC)⁴⁸ by providing personal data, including the address of residence. The injured party's private data are thus available to the suspects, and the injured parties are exposed to the risk of repeated criminal offence or retaliation. The only way for the injured parties to protect their personal data is to have a status of protected witness, that, in practice, is usually assigned in special criminal proceedings for war crimes and organised crime.

When it comes to the treatment of the injured parties in giving statements and testimonies, the journalists are often under the impression that representatives of institutions address them as if they are the attackers themselves and that they fail to protect them. On the contrary, they are in fact, sending verbal and nonverbal messages that demotivate the injured parties. One of the interviewed female journalists said, "When I gave testimony as the injured party, the prosecutor allowed for the defendant's attorney to literally brutalise me. For example, she would not even say 'hello' to me. She would not reply to my 'hello', but did to the defendant's attorney. Imagine how I felt."

⁴⁷ More at: <https://www.cenzolovka.rs/pritisci-i-napadi/sudjenje-dragoljubu-simonovicu-pretvoreno-u-izivljavanje-nad-zrtvama/>

⁴⁸ Article 95 para. 3 of the Criminal Procedure Code.

Moreover, journalists underline that they are exposed to multiple interviews, which contributes to the fact that they feel as if they are defendants, and feel awkward when they meet the defendants and their attorneys.

One of the female journalists emphasised that she felt the worst when testifying before the prosecutor and “the other party”. “The moment of facing is hard, but then multiple interviews continue – before police, prosecutor’s office, attorneys... In the end, it seems as if you have threatened the entire world, and also – yourself”. Trials are even worse. When an attorney notifies me that my presence is not required in court, I feel relieved. This became a trauma to me. You feel disgusted, and you only want it to be over”, she explained.

As national legislation alignment is expected, primarily for the CPC with the European Directive on victims’ protection, it is also expected that the majority of these problems identified in practice will be targeted to include provisions that would improve the position of victims of crimes to move through court proceedings as painlessly as possible and realise their rights. However, the individuals applying legal provisions are also accountable, while the education of all actors in this domain is necessary.