YUCOM
Lawyers' Committee
for Human Rights

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Rule of Law Initiative

FREEDOM OF EXPRESSION

IN THE DIGITAL SPACE OF THE REPUBLIC OF SERBIA

FREEDOM OF EXPRESSION IN THE DIGITAL SPACE OF THE REPUBLIC OF SERBIA:

Assessment of prosecutorial and judicial practice

Lawyers' Committee for Human Rights (YUCOM)
August 2022

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FOREWORD

This study, Freedom of expression in the digital space: Assessment of prosecutorial and judicial practice, was developed with the support of the American Bar Association Rule of Law Initiative (ABA ROLI) as part of its project 'Protection of Freedom of Speech on the Internet'. This project aimed at helping to create an environment conducive to pluralism of information and diversity of opinion in Serbia's cyberspace by researching a variety of forms in which freedom of speech is criminalised, providing free legal aid to users of social media and activists, and delivering training to strengthen the resilience of civil society organisations against constraints to freedom of expression online.

I INTRODUCTION

A fundamental human and political right, freedom of expression plays an essential role in democratic societies. This right entails being free to have one's own opinion and receive and impart information and ideas without interference by public authority and regardless of frontiers.[1] In the political and social context, freedom of information serves as the guardian of a democratic society, since a polity deprived of free thought and ways to express it lacks the right to free elections or pluralism of ideas and opinions. And, as noted by the European Court of Human Rights (ECtHR) in all of its many judgments, no pluralism means no democracy either.

1 Article 10, Law Ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms as Amended by Protocol No. 11, Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, ***Official Gazette of Serbia and Montenegro – International Treaties*** No. 9/2003-16 (***Official Gazette of Serbia and Montenegro – International Treaties*** Nos. 9/2003, 5/2005, and 7/2005 – Correction, and ***Official Gazette of the Republic of Serbia – International Treaties*** Nos. 12/2010 and 10/2015).

The development of digital technology has created opportunities for the spread of ideas and thought at speeds that would have been unthinkable only decades ago. In addition to professional online outlets, which have slowly but surely been displacing traditional news organisations, any user of social media is now able to be their own news channel. The Covid-19 pandemic and attendant lockdowns have only heightened the importance of the freedom of expression in the digital space.

As freedom of expression is not an absolute right, but is rather subject to some limitations, its development has been accompanied by abuses, including spreading fake news, engaging in abuse online, and inciting ethnic, racial, and religious hatred and intolerance. Freedom of expression may also result in criminal liability, with some statements qualifying as criminal offences. Such statements can be directed at members of the general public, one's acquaintances or, less often, unknown individuals. However, they are frequently aimed against persons known to all, those whose actions affect the lives of the entire community, and in these cases public officials are often targeted by these offences. Holding public office requires being open to and able to endure criticism, so any judicial response to public censure should be less strict, if at all required, in the case of these officials. This review of criminal prosecutions and court practices over the past five years seeks to assess if the judicial system has created an effective mechanism able to appropriately protect individuals at the receiving end of politically motivated abuse online or whether it has been employed to put pressure on the more vocal critics of public officials.

II SCOPE AND AIMS OF THE ASSESSMENT

This assessment looks at criminal cases brought by the Special Cybercrime Division of the Higher Public Prosecutor's Office of Belgrade (SCD) and heard by the courts in connection with the freedom of expression in the digital space. The period covered by the review was from 1 January 2017 to 1 January 2022, and the objective of the assessment was to identify pressure against reporters, activists, and members of general public, as well as to understand the issues faced by individuals seeking to safeguard their rights in court. Particular emphasis was placed on the impact of cases brought for alleged threats made against public officials, whose position actually required them to be more tolerant of criticism. The underlying objective was to distinguish between real threats, such as hate speech and attacks on individuals and vulnerable groups, from restrictions on the freedom of expression imposed for dissenting views voiced on the internet,

which can promote self-censorship. The assessment focused on the most common criminal offences cited in public petitions made over the years with the Lawyers' Committee for Human Rights (YUCOM) that relate to the freedom of expression online. These offences are endangerment of safety, Article 138 of the Criminal Code (CC) of the Republic of Serbia;[2] causing panic and disorder, Article 343 CC; sedition, Article 309 CC; stalking, Article 138a CC; racial and other discrimination, Article 387 CC; and violation of equality, Article 128 CC.[3]

III NOTES ON THE METHODOLOGY

To collect data for this assessment, freedom of information requests were lodged[4] with the SCD, the Higher Court of Belgrade ('Higher Court') which has jurisdiction in these matters, and the Appellate Court of Belgrade ('Appellate Court'), which has jurisdiction to hear appeals in connection with these cases.

The SCD provided a wealth of information, including annual performance reports that are otherwise not publicly disclosed. Some data, however, were not made available, which hindered the assessment.

The Higher Court allowed access to 78 final rulings in cases heard by it, since the large caseload makes it impossible for this court to anonymise and publish all judgments.

The Appellate Court provided 41 judgments in appellate cases brought before this court by the SCD.

The review of the case files was supplemented by in-depth interviews with officers of non-governmental organisations (NGOs) and lawyers specialising in freedom of expression online who had represented the defendants and the plaintiffs.

2 Criminal Code of the Republic of Serbia (***Official Gazette of the Republic of Serbia*** Nos. 85/2005, 88/2005 – Correction, 107/2005 – Correction, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019).

3 The Special Cybercrime Division of the Higher Public Prosecutor's Office of Belgrade has jurisdiction for these offences where their perpetration involves the use of or targets computers, computer systems, computer networks, and computer data.

4 The freedom of information requests can be found in the Appendix.

IV STATISTICS OF CASES BROUGHT FOR POLITICALLY MOTIVATED CRITICISM

1. Statistics of complaints brought by the SCD

The SCD responded to the freedom of information request made by the assessment team and provided official records of criminal charges brought from 1 January 2017 to 1 January 2022 for the offences of endangerment of safety and stalking perpetrated online.

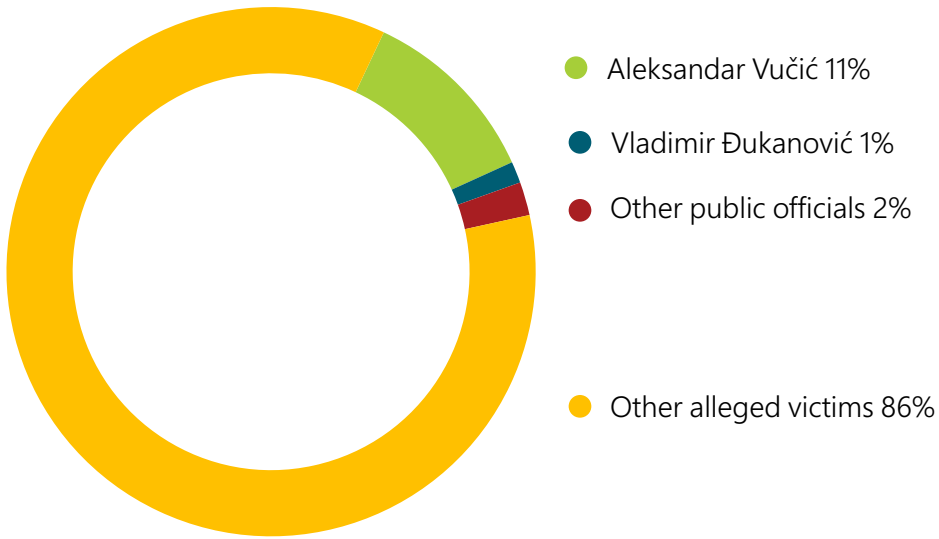
1.1 Endangerment of safety: number of criminal complaints and public officials allegedly targeted

A total of 687 criminal complaints were brought for the offence of endangerment of safety (Art. 138 CC).

All persons allegedly targeted by these offences were public officials.

A total of 77 charges were brought for actions allegedly threatening the safety of Serbian President Aleksandar Vučić, accounting for 11.2 percent of all criminal complaints brought for this offence. Nine charges involved alleged threats against Member of Parliament Vladimir Đukanović, whereas 14 cases alleged endangerment of safety of other public officials.[5]

Injured parties in criminal cases brought for endangerment of safety (Art. 138 CC)



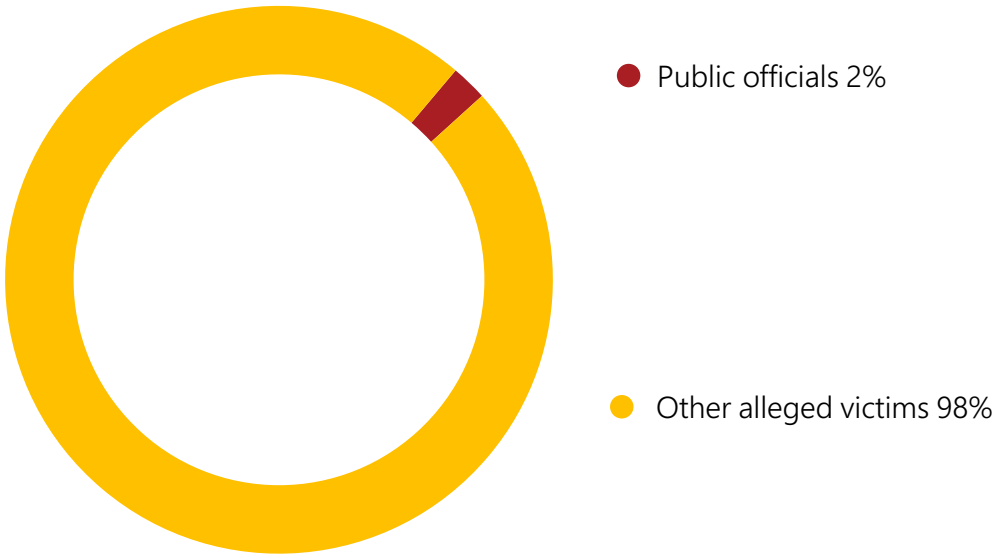
5 Since no specific records are kept of public officials allegedly threatened by these offences, the freedom of information request sought data on cases involving Aleksandar Vučić, President of Serbia; Ana Brnabić, Prime Minister; Vladimir Đukanović, MP; Aleksandar Vulin, Minister of Interior; Nebojša Stefanović, Minister of Defence; Siniša Mali, Minister of Finance; Branko Ružić, Minister of Education, Science, and Technological Development; Branislav Nedimović, Minister of Agriculture, Forestry, and Water Management; Zorana Mihajlović, Minister of Mining and Energy; Maja Gojković, Minister of Culture and Information; Maja Popović, Minister of Justice; Anđelka Atanasković, Minister of Economy; Irena Vujović, Minister of Environmental Protection; Tomislav Momirović, Minister of Construction, Transportation, and Infrastructure; Tatjana Matić, Minister of Trade, Tourism, and Telecommunications; Marija Obradović, Minister of Public Administration and Local Government; Gordana Čomić, Minister of Human and Minority Rights and Social Dialogue; Nikola Selaković, Minister of Foreign Affairs; Jadranka Joksimović, Minister for European Integration; Zlatibor Lončar, Minister of Health; Darija Kisić Tepavčević, Minister of Labour, Employment, Veterans' and Social Affairs; Ratko Dmitrović, Minister of Family and Population Policy; Vanja Udovičić, Minister for Youth and Sports; Milan Krkobabić, Minister of Rural Affairs; and Nenad Popović and Novica Tončev, Ministers without portfolio.

1.2 Stalking: number of criminal offences and public officials allegedly targeted

A total of 235 criminal complaints were brought for the offence of stalking (Art. 138a CC) over the five-year reporting period.

Public officials were named as the injured parties in stalking cases.

Injured parties in criminal cases brought for stalking (Art. 138a CC)



1.3 Causing panic and disorder, sedition, racial and other discrimination, and violation of equality: number of criminal cases and public officials allegedly targeted

Information for the offences of causing panic and disorder (Art. 343 CC), sedition (Art. 309 CC), racial and other discrimination (Art. 387 CC), and violation of equality (Art. 128 CC) was limited to data

contained in annual performance reports from 2017 to 2020 provided by the SCD in response to freedom of information requests.

A notable increase (of more than 4,000 percent) in charges for causing panic and disorder took place in 2020 in comparison with 2019. By contrast, few cases were brought for racial and other discrimination and violation of equality throughout the entire reporting period.

Table 1. Criminal complaints brought between 2017 and 2020

Criminal offence	Number of charges brought
Causing panic and disorder	58
Sedition	10
Racial and other discrimination	9
Violation of equality	8

The SCD's annual reports do not contain information about the alleged victims of these crimes, but their very nature makes it unlikely that the injured parties include public officials.

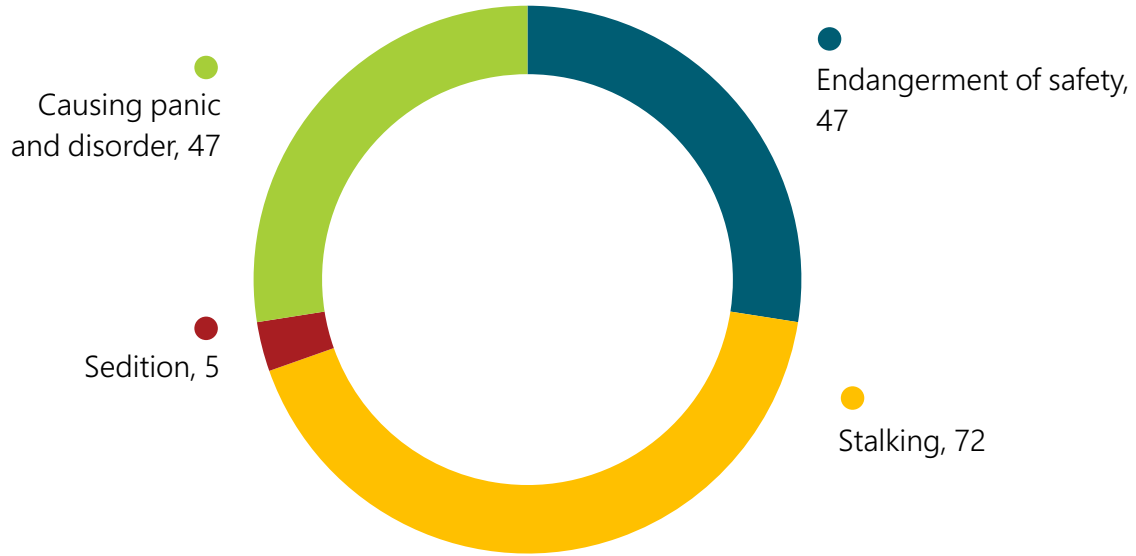
1.3.1 Dismissed criminal complaints

The SDC dismissed many criminal complaints as the alleged offences were not prosecutable motu proprio or because there were no reasonable grounds to believe that a criminal offence prosecutable motu proprio had been perpetrated (Art. 284, Code of Criminal Procedure).

These reasons were cited for dismissing 47 criminal complaints for endangerment of safety, of which 39 alleged threats to public officials (Serbian President, MPs, Prime Minister, cabinet ministers, Supreme Court judges, judges, prosecutors and deputy prosecutors, lawyers, police officers, and journalists).

A further 72 complaints for stalking were dismissed, as were 5 complaints alleging sedition and 47 complaints for causing panic and disorder.

Dismissed criminal complaints (under Art. 284 CPC)



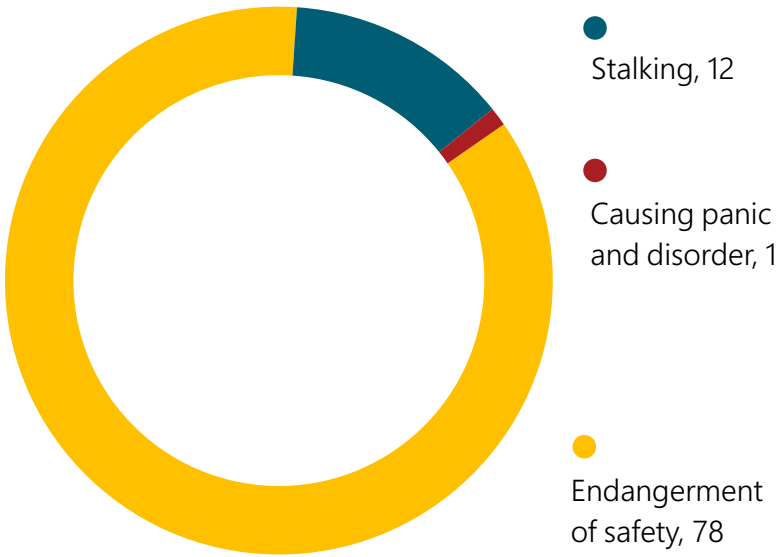
1.3.2 Criminal complaints dismissed due to application of principle of opportunity

The SCD deferred prosecution in a significant number cases where it applied the principle of opportunity (Art. 283 CPC). In these cases, the prosecution did not investigate whether the alleged perpetrator had actually committed an offence, but rather dismissed the complaint once the alleged perpetrator had met a particular requirement, most commonly making a charitable financial contribution.

A total of 78 complaints were dismissed using the principle of opportunity, of which 24 involved alleged threats to public officials (Serbian President, MPs, Prime Minister, cabinet ministers, Supreme Court judges, judges, prosecutors and deputy prosecutors, lawyers, police officers, and journalists).

Another 12 complaints for stalking were dismissed, as was one complaint for causing panic and disorder.

Dismissed criminal charges (under Art. 283 CPC, principle of opportunity)



2. Statistics of cases heard by the Higher Court

According to the court's response to the freedom of information request, from 1 January 2017 to 1 January 2022 the Higher Court issued the following judgments in criminal cases covered by this assessment:

- Endangerment of safety (Art. 138 CC): 100 final judgments issued in cases brought by the SCD, of which 48 following plea bargain agreements.
- Causing panic and disorder (Art. 343 CC): 10 final judgments issued in cases brought by the SCD, of which 5 following plea bargain agreements.
- Stalking (Art. 138a CC): 18 final judgments issued in cases brought by the SCD, of which 12 following plea bargain agreements.

- Racial and other discrimination (Art. 387 CC): 2 final judgments issued, both following plea bargain agreements.
- Sedition and violation of equality (Arts. 309 and 128 CC, respectively): no final convictions.

Table 2. Judgments between 2017 and 2022

Criminal offence	Total judgments	Of which plea bargains
Endangerment of safety	100	48
Causing panic and disorder	10	5
Stalking	18	12
Racial and other discrimination	2	2
Sedition	-	-
Violation of equality	-	-

3. Review of statistics: response by the judiciary

A major discrepancy was found between the total number of complaints (687) for endangerment of safety and the number of final judgments issued (100).[6] With another 125 complaints dismissed, as many as 462 cases remained unsolved. A total of 63 complaints were dismissed that alleged qualifying endangerment of safety offences, where the injured parties were public officials (Art. 138(3) CC), although the SCD failed to provide full details about the status of the individuals allegedly targeted.

Similar disparity was in evidence for complaints alleging stalking during the reporting period, with the start of this interval corresponding to the introduction of amendments creating that criminal offence. Of the 235 criminal complaints made, the SCD dismissed 60, whilst the Higher Court delivered 18 final judgments, resulting in 157 unsolved cases as of the time of writing.

V ASSESSMENT OF CASE LAW

Case law was reviewed through judgments issued by the High Court and the Appellate Court. The High Court allowed access to 76 final judgments, 72 for endangerment of safety and four for stalking. The Appellate Court provided 41 appellate judgments in cases brought by the SCD.

The cases were disaggregated by types of injured parties and then analysed for duration, penalties imposed on the defendants, and outcomes. To provide some context for the judges' rulings, the case summaries include the statements ruled as capable of causing a sense of being endangered.

6 President Vučić was the alleged victim in 77 complaints, 25 of which resulted in final judgments.

1. Case law for endangerment of safety (Art. 138 CC)

1.1 Cases with public officials as injured parties

Most (25) final judgments for the qualifying offence of endangerment of safety (Art. 138(3) CC)[7] were rendered in cases where the injured party was Aleksandar Vučić, either as President of Serbia or in his previous capacity of Prime Minister. Only two of these 25 were acquittals, both of which concerned the period when Mr Vučić had headed the government. Plea bargains were entered into in 18 of the cases.

Table 3. Judgments for endangerment of safety (Art. 138(3) CC) with Aleksandar Vučić as injured party

No. of	Acquittals	Convictions	Of which plea bargains
25	2	23	18

In 11 of these cases the defendants were held in pre-trial detention (the strictest option available under Art. 188 CPC) to secure their attendance in court, whilst three cases involved house arrest.

7 'Whoever commits the offence specified in Paragraph 1 of this Article against the President of the Republic, a Member of Parliament, Prime Minister, Cabinet Minister, Judge of the Constitutional Court, Judge, Public Prosecutor or Deputy Public Prosecutor, lawyer, police officer or person of importance to public information, shall be punished with imprisonment of six months to five years.'

Table 4. Measures to secure defendant attendance and trial duration in cases with Aleksandar Vučić as injured party

Securing defendant attendance			Trial duration		
	Detention	House arrest	1 to 3 months	4 to 8 months	1 year and above
11 cases	8	3	11 cases	9 cases	5 cases

Prison sentences were handed down to five defendants, with eight-month terms imposed in three cases, and a four-month term in one case; one defendant was sentenced to 11 months in prison for multiple offences. Home detention was ordered in three cases for terms of eight, six, and three months, respectively. Suspended sentences ranging from one to three years were handed down in nine cases.

A total of 11 proceedings took one to three months to complete, in nine cases four to eight months elapsed from perpetration to final judgment, and five cases lasted for one year or more.

None of these cases involved the formally injured party testifying to his subjective sense of being endangered, with members of his security detail taking the stand instead.

Table 5. Penalties in cases with Aleksandar Vučić as injured party

Prison term	11 months	8 months	4 months	Home detention	8 months	6 months	3 months	Suspended sentence 1–3 years
5	1	3	1	3	3 months	1	1	9

A total of 77 criminal complaints were brought from 1 July 2017 to 1 January 2022 for endangerment of safety of Aleksandar Vučić in his capacity as President of Serbia, with 25 final judgments issued, only two of which were acquittals. Responding to the freedom of information request, the SCD provided

only the count of dismissed complaints (63)[8] for the qualifying offence of endangerment of safety (Art. 138(3) CC), but the number of dismissed criminal complaints involving Mr Vučić and other public officials sought for this report was not disclosed.

It is pertinent, therefore, to inquire whether criminal charges over the alleged endangerment of the President's safety are used as a means of coercion against the public and to restrict the freedom of expression, in particular given the stance adopted by the Appellate Court. In none of the cases reviewed by YUCOM was testimony provided by Mr Vučić personally; rather, his security detachment testified instead. One notable instance was appellate ruling Kž1 Po3 35/20, where the defendant was acquitted in the second instance after having spent six months in detention during her trial.

Nine cases involving other public officials protected under Art. 138(3) CC resulted in final judgments, two of which were acquittals and four of which ended with plea bargain agreements. Three cases included measures to secure defendant attendance (detention in one and house arrest in another two). Two prison sentences were handed down, one of one year and one (for multiple offences) of 26 months. Suspended sentences ranging from one to four years were imposed in the remaining cases. Both acquittals involved police officers as injured parties.

Table 6. Judgments for endangerment of safety (Art. 138(3) CC) in cases with other public officials as injured parties

							Suspended sentence
No. of	Acquittals	Convictions	Of which plea bargains	Imprisonment	2 years 2 months	1 year	1–4 years
9	2	7	4	2	1	1	5

8 A total of 39 complaints were dismissed pursuant to Art. 284 CPC and a further 24 under Art. 283 CPC (principle of opportunity).

1.2 Journalists as injured parties

Journalists were the injured parties in ten final judgments reviewed for this assessment. All cases resulted in convictions, with defendants entering into plea bargain agreements in five of these. Attendance securing measures were imposed in four cases, two of which involved pre-trial detention and two house arrest. Two prison sentences were handed down for endangering the safety of journalists, one of six months and one of one year. One person was sentenced to home detention.

The National Public Prosecutor's Office adopted a set of binding instructions requiring separate records to be kept of offences against journalists only in December 2020. As such, this assessment did not have access to the total count of criminal complaints lodged with the SCD during the reporting period for endangerment of safety where journalists were the alleged victims.

According to bezbednovinari.rs,[9] in 2020 and 2021 alone 41 criminal complaints were filed with the SCD for endangerment of reporter safety. As noted in a survey published by BIRN[10] on 18 May 2022:

> *To illustrate the actions of this prosecutors' office, BIRN filed a freedom of information request seeking a count of all criminal complaints brought and those dismissed, indictments issued, plea bargains, and judgments.*
>
> *Instead of responding, the Special Cybercrime Division sent us annual performance reports that did not allow us to identify trends for these criminal offences.*
>
> *'The Special Cybercrime Division does not disaggregate data by offence, we lack an independent and sufficiently capable statistics service to do that. Our registry offices handle record-keeping', said cybercrime prosecutor Branko Stamenković.*

Similarly to BIRN's experience with the SCD, YUCOM also did not receive a count of criminal complaints for qualifying endangerment of safety offences (Art. 138(3)) or cases where journalists were the alleged victims. The data provided did not allow this assessment to even indirectly conclude how many cases remained outstanding in total and how many of those involved reporters. Publicly available information, which cover only part of the reporting period (2020 and 2021), suggests a sizeable disproportion

9 See bezbednovinari.rs (accessed on 10 August 2022).

10 'Ugrožavanje sigurnosti novinara: Retke presude i dugo čekanje na pravdu', Natalija Jovanović, BIRN, 18 May 2022, available at birn.rs/ugrozavanje-sigurnosti-novinara-retke-presude-i-dugo-cekanje-na-pravdu (accessed on 10 August 2022).

between the number of judgments (10) and the total number of complaints in cases where journalists appeared as the injured parties.

Assuming a steady number of complaints over the entire reporting period may imply there were over 100 criminal complaints, whilst no more than 10 judgments were made, significantly fewer than in cases where Mr Vučić was the injured party. Nevertheless, case duration, attendance securing measures, and penalties imposed do not point to glaring differences in handling between cases involving journalists and those where public officials were injured parties. What is notable, however, is the significantly greater proportion of plea bargains, 18 of the 23 convictions, in cases involving Mr Vučić, as opposed to 25 of 77 convictions in all other endangerment of safety trials.

In YUCOM's experience to date, the SCD has shown little regard for online endangerment of reporter safety. The journalist Snežana Čongradin filed a criminal complaint with the SCD in October 2021, which she accompanied by audio, video, and text messages received from an unknown person on Facebook.

The messages revealed a highly aggressive alleged perpetrator, with the video showing an individual filming himself touching the victim's head on a television screen playing a recording of the victim. All messages insisted the victim was now 'his concern', with as many as four of them claiming the victim had 'disturbed his piranhas out of water'. One note involved the sexual innuendo of 'asshole full of doors'. On the whole, the messages sent to the victim were objectively very disturbing, even for someone they were not addressed to, but in this case the SCD chose to dismiss the complaint with the explanation that no essential features of a criminal offence were present.

In its reply, the SCD noted the tone of the messages was unusual and insulting, but did not see a clear and present danger of the alleged perpetrator threatening the victim's life or limb. The prosecution did not take into account the possible symbolic meaning of 'piranha', an extremely predatory fish with sharp teeth, or the specific threat expressed by the placing of the alleged predator's hand on a screen showing a picture of the victim. A complaint was lodged with the Appellate Prosecutor's Office of Belgrade against the dismissal and the case remains outstanding as of the time of writing.

The messages were motivated by the reporter's statement that Republika Srpska was a 'genocidal creation'. The SCD also did not take into account or investigate the fact that the alleged perpetrator had continued publishing similar messages, directed specifically at the victim, on another social media site, and concluded this behaviour did not qualify as the criminal offence of stalking.

Table 7. Judgments for endangerment of safety (Art. 138(3) CC) with journalists as injured parties

No. of judgments	Acquittals	Convictions	Of which plea bargains	Imprisonment	1 year	6 months	Home detention
10	-	10	5	2	1	1	1

In three cases the trial took from one to three months to complete, in two cases trial duration was between four and eight months, and in a final two cases it took more than 12 months to arrive at a judgment. No duration data were available for three cases.

Table 8. Measures to secure defendant attendance and trial duration in cases with journalists as injured parties

Securing defendant attendance			Trial duration			
	Detention	House arrest	1 to 3 months	4 to 8 months	1 year or more	N/A
4 cases	2	2	3 cases	2 cases	2 cases	3 cases

1.3 Cases with women, activists, artists, and other individuals as injured parties

We reviewed 22 cases where the injured parties did not belong to any specifically protected category. Nine of them were women and eight were activists or artists; in four cases threats received by the injured parties were not motivated by any of their personal characteristics. The cases resulted in 20 convictions and two acquittals, one as prosecution had become time-barred, and one after the prosecutor withdrew the indictment. Five plea bargains were entered into.

Table 9. Judgments for endangerment of safety (Art. 138(1) CC)

No. of judgments	Acquittals	Lapsed due to statute of limitations	Charges withdrawn	Convictions	Of which plea bargains	Alleged victims		
						Women	Activists or artists	Others
22	2	1	1	20	5	9	8	4

1.4 Endangerment of safety: women

The nature of the threats involved in cases involving women meant they could be characterised as gender-based violence. Attendance securing measures were imposed only once, in a trial where the

victim was a girl under 18; this was also the sole case resulting in a prison sentence. One perpetrator was fined, and six were given suspended sentences ranging from one to three years.

Only one trial took less than three months to complete whilst seven lasted for more than one year: two took as long as 2.5 years, two took three years, and one went on for 4.5 years, ultimately lapsing due to statute of limitations. In all cases that lasted for more than one year the responsibility for the delay lay primarily with the prosecution, as it could take more than two years from perpetration to indictment.

Although it is understood that the qualifying offence of endangerment of safety (Art. 138(3) CC) must be prosecuted with particular urgency due to the significance of the public offices involved, the length of trials for gender-based violence has a major impact on the injured parties, as they are subjected to victimisation and may feel afraid for their safety for an extended period. Experience with providing legal aid to victims of gender-based violence has demonstrated that lengthy trials greatly discourage them from reporting crimes, and they generally do so only after threats have become so serious they can no longer be ignored.

Table 10. Judgments for endangerment of safety with women as injured parties

Penalty				Trial duration			
Securing defendant attendance	Imprisonment	Fine	Suspended sentence	< 3 months	2.5 years	3 years	4.5 years
1	1	1	6	1 cases	2 cases	2 cases	1 cases

1.5 Endangerment of safety: activists and artists

Trials involving activists and artists resulted in one four-month prison sentence and four suspended sentences of two and three years, respectively. Home detention was the penalty in two cases. One perpetrator was held in detention before the trial, and another was placed under house arrest.

Most of these trials lasted from three to six months, with two cases lasting 3.5 years, primarily as in both the SCD took three years to issue formal indictments.

Table 11. Judgments for endangerment of safety in cases with activists or artists as injured parties

				Penalty		Trial duration	
Securing defendant attendance	Detention	Home detention	Imprisonment	House arrest	Suspended sentence	3 to 6 months	3.5 years
2	1	1	1	2	4	6	2

In other cases, where threats to injured parties were not motivated by any personal characteristics, resulted in three suspended sentences and one prison sentence. One trial lasted for seven months, and two took longer than one year to complete.

In one case in which YUCOM was involved, the Higher Court acquitted a suspect of the endangerment of safety (Art. 138(1) CC) of several members of Žene u crnom ['Women in Black', an anti-war activist group]. The acquittal was later upheld by the Appellate Court.

The suspect in this case was a public figure as the presenter of an evening news broadcast on a television channel with national coverage and subsequently spokesman of a special police unit, with a large number of Facebook followers. In the run-up to a Women in Black event to mark the 15th anniversary of crimes against Albanian civilians in Kosovo, the suspect posted: 'I think this shouldn't go ahead. Gentlemen football hooligans, Delije [Red Star supporters], Grobari [Partizan supporters], Radovci [Rad supporters], Firmaši [Vojvodina supporters], instead of wasting your fists on fighting amongst yourselves, you, as true patriots, should join forces and kick the cunts of those whose cunts ought to be kicked...'

In its first-instance ruling, the Higher Court found the word 'think' as used in the post meant the suspect was only engaging in contemplation about the upcoming event and that the post contained a patriotic message. The SCD appealed the ruling, correctly holding that the first part of the post may have been contemplation whilst the second sentence contained a direct call to violence. The Appellate Court dismissed the appeal and upheld the acquittal, re-affirming the Higher Court's view that 'the post did not contain a clear and unambiguous threat that the persons mentioned, not individually but collectively as members of supporters' groups, would endanger the life and limb of the injured parties.'

In making this decision the court did not take into account the fact that Women in Black activists had been subjected to several threatening actions (including a protest by football fans outside their offices and a petition by neighbours to move the activists' base elsewhere) nor felt this was relevant, since the injured parties had testified that they faced threats and pressure regularly.

Table 12. Judgments for endangerment of safety with other individuals as injured parties

Penalty		Trial duration	
Imprisonment	Suspended sentence	7 months	> 1 year
1	3	1	2

Eight judgments were reviewed for qualifying offences of endangerment of safety under Art. 138(2) CC, meaning where the offences were perpetrated against multiple individuals or has caused public distress or other harmful consequences. Seven of these were convictions and one was an acquittal. Four cases each involved women or artists and activists as the injured parties. Pre-trial detention was not imposed in any of these proceedings, whilst home detention was the penalty in two cases and another four resulted in suspended sentences ranging from two to four years.

Table 13. Judgments for endangerment of safety (Art. 138(2) CC)

						Injured parties	
No. of judgments	Acquittals	Convictions	Home detention	Suspended sentence	Detention	Women	Activists or artists
8	1	7	2	5	-	4 cases	4 cases

1.6 Online means of making threats

Facebook was the most frequent social media site for threatening statements, accounting for 43 cases. In ten cases each, threats were also made on Twitter and Instagram. Other avenues for threatening behaviour included comments on news websites, blogs, e-mail, the Viber messaging app, text messages, and pornographic websites.

1.7 Substance of threats resulting in imprisonment

Eighteen of the 66 convictions resulted in prison sentences, including home detention. The following section will look more closely at the actions that constituted offences punished by imprisonment.

- In one case of endangerment of safety (Art. 138(3) CC) that resulted in six-month home detention with electronic monitoring following a plea bargain, the offender had tweeted at Aleksandar Vučić: 'Relax, fam! The guerrilla will solve the problem once they take power. We'll shoot traitors!!! Would you like a blindfold or not???'
- After spending 24 days in pre-trial detention, a Facebook user was sentenced to three months of home detention after entering into a plea bargain for endangerment of safety (Art. 138(3) CC). The offender had published the following post: 'Everybody's talking about the Italian scenario. I'd go for the Romanian one, you know, when the common people rise up and the population topples the communist dictatorship and finally the army shoots the president. Imagine Vučić facing a firing squad and the moment when bullets tear the flesh from his breast and he falls down in his last agony, an officer walks up and fires a bullet into his head, Vulin, Neša slina ['Slimy Neša', a nickname for Nebojša Stefanović], and the porker Dačić all hanging from the gallows in Terazije [a principal Belgrade street], together with many communists that have devastated Serbia.'
- A two-year prison term was handed down to a multiple offender found guilty of showing, procuring, and possessing pornographic material and child pornography (Art. 185(1) CC), coercion (Art. 135(3) CC), and endangerment of safety (Art. 138(1) CC). This man was convicted after blackmailing a girl into sending her naked photographs on Instagram and sending messages to her brother, also aged under 18, including one that read: 'Have your sister go on Instagram or you'll get fucked, have her go on Instagram, have her approve the request and you, you monkey, approve it too or you'll be done for. We'll fuck your sister, we'll fuck her right in front of you.'
- A Twitter user was given a one-year prison term for endangerment of safety (Art. 138(3) CC) after sending threatening messages to the injured parties, at the time members of the Vojvodina Provincial Parliament, including: 'Death to the fascism of the remnants of DS [Democratic Party] in collusion with the well-known fascist thieving Balašević family [a reference to relations of **Đorđe** Balašević, a well-known singer-songwriter]; 'Death to

Pajtić [Democratic Party politician] – freedom to the people'; 'I'll stand in line to see them hang you'. The offender was placed under house arrest for one year during the trial.

- An eight-month home detention sentence for endangerment of safety (Art. 138(3) CC) was handed down to a Facebook user who made a plea bargain. The man had left a comment on the Radio Free Europe page that read 'Death to Milica Vučić, Death to Danilo Vučić' [references to the daughter and son, respectively, of President Vučić]. The offender was placed in detention for the duration of the trial.
- A Facebook user was given six-month home detention for endangerment of safety (Art. 138(2) CC) for threatening two brothers in a comment posted to the 'Serbia – Our Country' Facebook group that read: 'You (brothers' last name) should be wiped out and butchered'.
- A Facebook user was imprisoned for six-months for endangerment of safety (Art. 138(1) CC) after leaving the following comment on the page of an opposition politician: '…feel free to call me to face off in the street at any time… now you can't call anyone and I'll kill you like a dog as soon as I see you anywhere… you and the traitorous vermin that follow you….' The offender was placed under house arrest for three months during the trial.
- A six-month prison sentence was handed down for endangerment of safety (Art. 138(3) CC) to a Twitter user who had used the social media site to threaten multiple individuals, activists, and reporters. The treats included 'We'll fuck you', 'We'll set your house on fire', and 'We'll fuck your wife, daughters, long live SNS [Serbian Progressive Party]'. The offender was placed in detention during the trial.
- An offender was sentenced to one year of home detention for endangerment of safety (Art. 138(1)(2)(3) CC) after tweeting at two journalists and one political activist that they would be 'eliminated'.
- A combined 26-month prison sentence was given to an offender for stalking (Art. 138a(2)(4) CC) and sexual harassment (Art. 182a CC) of two girls. The man had been sending them threats and messages of a sexual nature on Instagram and via mobile telephone. The offender had impersonated one of the victims on Instagram and had messaged other users of the social media app. He sought to have sexual intercourse with the victims, sending messages including 'Tell your sister I'll fuck her mother, I'm going to suck the last drop of blood from her' and 'I want to fuck you, name your price'. The offender was placed in detention during the trial.

- A Twitter user was given a four-month prison sentence for endangering the safety (Art. 138(1) CC) of an artist by posting: 'I'd blow (the injured party's) brains out. If I could only sneak up to him and whack him in the noggin with a hammer.' The offender was placed in detention during the trial.
- An individual received a four-month prison sentence for endangerment of safety (Art. 138(3) CC) after having sent an e-mail to the official address of the Prime Minister that read: 'Vučić should be killed for being a traitor to the Serbian people, because he's stopping the tsar from coming and hiding this from the people so that the 1997 prophecy doesn't come to pass because he's a Freemason and is taking Serbia into the EU and NATO.' The offender was placed in detention during the trial.
- One Twitter user was given a combined 11-month sentence for endangerment of safety (Art. 138(3) CC) and illegal production, possession, carrying, and sale of weapons and explosives (Art. 348(1) CC). The man had tweeted: 'He shouldn't be killed, he should be tortured', 'The Radical Party piece of shit should be killed', and 'Kill Vučić, beat up the piece of shit'. Ammunition was found during a search of the offender's home and he was placed in detention for 5.5 months during the trial.
- An eight-month prison sentence was handed down to a Facebook user for endangerment of safety (Art. 138(3) CC) after he made a plea bargain. The individual had published a photograph of a bridge in Sarajevo accompanied by the message 'Vučić, watch out for the sniper', 'Downtown Sarajevo was plastered with these warnings from 1992 to 1995… only they didn't mention Vučić because he was the threat they were warning against'. Later that same day, the same individual posted a photograph of two people holding up a sheet of fabric painted with a sniper scope reticle and the message 'Vučič, what's the view like from the Jewish cemetery?' The offender was placed in detention during the trial.
- An eight-month prison sentence was given for endangerment of safety (Art. 138(3) CC) to a Facebook user who posted 'Vučić, I'll fuck your (injured party's daughter) when she's dead' to the Facebook page of the *Kurir* newspaper. The offender was initially placed in detention for 2.5 months, which was later replaced by house arrest.
- An eight-month prison sentence was handed down to a Facebook user for endangerment of safety (Art. 138(3) CC). The man wrote 'Vučić, I'll kill you' on his Facebook page, and was placed under house arrest for six months during the trial.

- A one-year prison sentence for endangering the safety of a reporter (Art. 138(3) CC) was given to an Instagram user who had messaged the victim to say 'Open your eyes on your back, you'll need them, and I've got nothing else to say' and 'Glances in the darkness when we meet and encounter one another, half an hour later we'll tell you what all that is for'. The offender was placed under house arrest for six months during the trial.
- A combined 26-month sentence was given to a Facebook user for endangerment of safety (Art. 138(3) CC) and assaulting an official in the performance of duty (Art. 323 CC). The person had posted: 'Suck my cock, (injured party's first and last name), you stinking piece of shit, former judge of the Subotica Higher Court, you corrupt bastard, we'll run you out, where are your false witnesses and your false evidence now you massive cunt!!!', 'arrest all scumbags and put them in prison (names of injured parties), also kill the gypsy (name of injured party) he's also lying and his wife ran away from home to whore hahahhah gypsy shenanigans.' The offender had posted on his Facebook page a photograph of a female victim, who was an employee of the prosecutor's office, together with numerous insults and the line 'All these yellow democrats in Serbia, they should all be shot'. The offender was placed under house arrest for 16 months during the trial.

2. Case law for the offence of stalking (Art. 138a CC)

Although this assessment reviewed only four of the 18 final stalking convictions, all four involved women as victims and involved gender-based violence coupled with sexual harassment. One was a case of revenge porn, not criminalised in Serbia as a specific offence. Since the crimes affected both the victims and their family members and friends (who also received threatening messages), as well given to the extended length of the stalking and its significant impact on the lives of the victims, the suspended sentences handed down in these cases can be considered exceptionally lenient. A sentence of imprisonment was the outcome in only one trial where multiple girls had been stalked.

None of the judgments for either endangerment of safety or stalking awarded damages, with the injured parties instead instructed to bring civil damage lawsuits against the offenders.

3. Case law for the offence of causing panic and disorder (Art. 343 CC)

This assessment looked at three cases of causing panic and disorder. Two of the trials resulted in acquittals, whilst one ended in a conviction after a plea bargain. Interestingly, all cases involved individuals sharing the same piece of fake news that appeared on social media in 2018, namely that municipal drinking water in Belgrade contained the carcinogen methane and that it was not fit for consumption. These rumours spread quickly and were disseminated by large numbers of people on social media and in Viber groups. The two defendants who were acquitted had shared the news on Viber, and the one who was convicted had done so on Facebook. The two acquittals were made as the court found no premeditation or awareness that the news was fake, and that no panic or disorder had been caused, as upheld by the Appellate Court.

These trials raise a major issue, namely, if the court found no offence in two of the cases, why did it accept the plea bargain in the third case? Pursuant to Arts. 318(1)1) and 338(1) CC, the court must reject a plea bargain if an indicted offence is not a criminal offence and there are no grounds to institute a security measure. Although defendants whose plea bargains are accepted are notified of their waiver of the right to trial, YUCOM believes it would promote legal predictability if the courts paid more attention to the offences for which defendants are indicted before entering into plea bargains with them. *The person convicted of this offence was initially placed in detention, which was subsequently replaced by house arrest. This individual was deprived of liberty for a total of four months. In this case YUCOM appealed with the Constitutional Court of Serbia over the violation of the right to the shortest possible period of detention. In its ruling UŽ11708/2018, the Constitutional Court upheld this appeal and found a violation of this right.*

4. Positions of the Appellate Court

4.1 Endangerment of safety (Art. 138(3) CC)

Judgment Kž1 Po3 21/19 of 11 February 2020

The Appellate Court rejected the appeal lodged by the Higher Prosecutor's Office of Belgrade and upheld the judgment of the Higher Court acquitting the defendant of the offence of endangerment of safety under Art. 138(3) read in conjunction with Art. 138(1) CC. The defendant had been accused of endangering the safety of the President of the Republic by making a post on Facebook that read 'Death to the traitor Vučić and the fifth columnists'. The Higher Court ruled to acquit the defendant and the Appellate Court upheld this judgment. In its explanation, the first-instance court noted that a key feature of the offence was missing, namely a threat by the defendant to the life and limb of the injured party, as a detailed analysis of the defendant's alleged post found no grounds to conclude it included a threat to the life and limb of the injured party or endangered the safety of the injured party by threatening their life and limb. The court's view was that any such threat would have to be serious, as only a serious threat was relevant from the perspective of criminal law, that it would have to threaten the life and limb of the injured party, and that it would have to be clear and indisputable, which the court did not find to be the case in this situation.

The first-instance court ruled that the post 'Death to the traitor Vučić and the fifth columnists' published on Facebook could not constitute a threat within the meaning of the Criminal Code, but could rather only be construed as an adverse opinion and a belief that the injured party and other residents of Niš, referred to in the post as 'fifth columnists', should meet death, which need not necessarily occur by violent means. As such, the court found the post as quoted in the indictment did not contain a clear and indisputable threat that the defendant would actually threaten the life and limb of the injured party **or** other residents of Niš.

According to the Appellate Court, the sentence 'Death to the traitor Vučić and the fifth columnists' were objectively certain to cause fear and a sense of danger in any injured party due to the likelihood of a threat to life and limb they implied. However, the panel of the Appellate Court found no evidence had been presented in this trial proving that Aleksandar Vučić, at the time the Prime Minister of Serbia, had felt any specific danger that caused him to fear for his life, in other words that the actions perpetrated by the defendant as described in the indictment caused the injured party to feel insecurity or fear of death or bodily injury.

Based on the deposition of Zlatko **Čotrić**, an officer of the Military Police Department at the Ministry of Defence, the court determined that Mr **Čotrić's** department had learnt of the threats made on Facebook against the then Prime Minister of Serbia Aleksandar Vučić on 5 July 2016. The commander of the Prime Minister's security detail was subsequently made aware of the threats, which led him to tighten security for a number of individuals. The Appellate Court found these facts were immaterial to whether the injured party had felt threatened, since Art. 138 CC provided criminal protection to the personal safety of members of the public, which in this specific case meant the 'passive subject', or potentially injured party, under the law (the Prime Minister). The existence of this offence required there being consequences – the injured party's feeling of insecurity – rather than any action on the part of law enforcement bodies. In other words, if the potentially injured party did not take the threat seriously or the threat did not cause feelings of fear or insecurity in them, there was no evidence that the offence had been committed.

Judgment Kž1 Po3 26/21 of 18 October 2021

In a case similar to the foregoing, the Appellate Court adopted a similar judgment, rejecting as lacking merit the appeal of the Higher Prosecutor's Office against a judgment of the Higher Court convicting the defendant of the offence of endangerment of safety under Art. 138(3) read in conjunction with Art. 138(1) CC. The defendant was alleged to have endangered the safety of the President of the Republic by posting a comment to the Facebook page *Ujedinjeni Narod Srbije* ['United People of Serbia'] on a recording of the appearance of President Vučić on the TV show Upitnik, which read: 'Fck who riled you up, you'll get it worse than BB. A Black Arrow [possibly a reference to the Zastava M93 sniper rifle] has a range of seven kilometres, at five it'll put one right in your eye, now I don't know what exactly, I'm dumb and unemployed, probably a plough, because us peasants only fuck those and you over taxes and that lesbian whose nut itched when she got the vaccine'. In its explanation of the ruling, the Appellate Court stated:

> *The criminal offence of endangerment of safety under Art. 138 CC is an offence against human and civic rights and liberties because it safeguards rights associated with the person, and the consequence of the offence is the endangerment of the safety of the passive subject as reflected in the passive subject's feeling of insecurity and being threatened, which the passive subject must have taken seriously, which means that the consequences are determined by means of reference to objective circumstances.*

The public prosecutor failed to present any evidence that would incontrovertibly prove the defendant's post had caused the injured party, Aleksandar Vučić, President of the Republic of Serbia, to feel

threatened. Moreover, no such conclusion could be drawn either from the order of Special Military Police Detachment Cobra issued electronically on 23 February 2021, which explicitly stated that any actions, measures, and procedures taken in response to any similar threat should be put into effect immediately and remain in effect until the detachment learnt or was advised that the threat was no longer active, meaning that the unit's actions did not depend on any subjective views of the individuals placed under its protection. As such, the Appellate Court found the first-instance court had rightly acquitted the defendant by applying the principle of *in dubio pro reo*, pursuant to Article 16(5) of the CPC, due to the lack of any other evidence suggesting that the injured party's safety had been endangered.

Judgment Kž1 Po3 35/20 of 16 July 2021

This judgment was diametrically opposite. Here, the Appellate Court found the first-instance court had rightly judged the posts, 'He shouldn't be killed. He should be tortured', posted at 2.54 pm, 'The Radical Party piece of shit should be killed', posted at 4.28 pm, 'Kill VUČIĆ', posted at 4.43 pm, 'Kill all the SHITS!', posted at 4.55 pm, 'Kill the fucker', posted at 4.55 pm, and 'Kill the shit!!!', posted at 4.58 pm, all published within a short span of time on the same day, as serious threats, ones that were capable of causing a feeling of fear and insecurity in the person they were directed against, since they were clearly and indisputably aimed against the life of the injured party (calling for violent deprivation of life by murder), with one also calling for bodily harm ('He shouldn't be killed. He should be tortured', posted at 2.54 pm). The Appellate Court found the defence was unjustified in claiming the first-instance court had not determined whether the posts had caused feelings of fear or being threatened in the injured party by refusing to cross-examine Mr Vučić, as the court had based this determination on the testimony of SS1, [member] of the presidential security detail, which made it clear that the security personnel had been advised of the defendant's posts by the Armed Forces Security Agency, whereupon the security detail took action as required by the Security Assessment for the President of the Republic until the specific threats were no longer active. The commander of the security detail was required to advise the President of the Republic of all such posts, which were also, according to the testimony of the defendant himself, also published on a national television channel on the day in question. In addition, Armed Forces Security Agency Report I/764-57 of 15 June 2020 claimed that these and similar threats had caused presidential security to be heightened. The Appellate Court felt these actions of the first-instance court had been sufficient to allow all the relevant circumstances of the case to be assessed for the appropriate application of facts to the law governing the offence of endangerment of safety as set out in Article 138 CC, and that the first-instance court had rightly denied the motion to cross-examine Mr Vučić and review the Security Assessment for the President of the Republic.

Judgment Kž1 Po3 4/21 of 16 March 2021

The Appellate Court upheld the appeal of defence attorneys Aleksandar Olenik and Ivana Soković, reversing the initial ruling of the Higher Court which had found the defendant guilty of the offence of endangerment of safety under Art. 138(3) CC and handing down a sentence of six months' imprisonment suspended for two years, ordering mandatory psychiatric treatment with no deprivation of liberty, and confiscating her telephone. According to the court, in a state of diminished accountability, the defendant had endangered the safety of the President of the Republic Aleksandar Vučić by tweeting: 'How long are you going to keep at it, Drooly, fuck your (name of injured party's son) when he's dead, I'll stick your cripple (name of injured party's daughter) on my cock, you twerp.' The defendant had been placed in detention for six months during the trial. The Appellate Court upheld the defence's appeal and amended the initial judgment, acquitting the defendant with the explanation that the offence she had been indicted of was not a criminal offence and there were no grounds to institute security measures. According to the Appellate Court, actions the defendant had been indicted of did not constitute endangerment of safety as defined in Art. 138(3) read in conjunction with Art. 138(1) of the Criminal Code. In its judgment, the Appellate Court noted:

> *Actions that constitute a non-qualifying offence (Para. 1) involve the making of a threat against the life or limb of a person or one close to that person, thus endangering their safety, which means that the threat is a qualifying one, in other words one that makes it likely that a particular harmful act will be committed in the form of an assault against the life or limb of the potential injured party or a person close to them. The threat here must be serious and specific, whereas the consequences are determined with reference to subjective considerations and need not involve an objective endangerment of safety.*

Unlike the first-instance court, the Appellate Court did not find that the factual description of the defendant's action suggested she had made a serious and specific threat to assault or seriously harm the life or limb of a person close to the injured party, and that as such the content and context of the statement could not have engendered a sense of insecurity in the injured party, since the statement allegedly made by the defendant did not make it apparent that she was intending to make good on her threats. Rather, the statement was an indisputably vulgar, morbid, and offensive expression of hatred towards the injured party that did not constitute the criminal offence of endangerment of safety under Art. 138 CC but may be construed as the offence of insult under Art. 170 CC, which can be the subject of a civil suit.

4.2 Stalking (Art. 138a(1)2) CC)

The defendant in one first-instance case of stalking (Art. 138a(1)2) CC) and sexual harassment (Art. 182a CC) involving two girls received a combined 14-month prison sentence (8 months for sexual harassment and 7 months for stalking). The judgment was appealed by both the defendant and the Higher Public Prosecutor's Office of Belgrade. The prosecution alleged the defendant's admission in the first-instance case did not materially contribute to resolving the matter and that the court did not take sufficient account of the circumstances of the case and the danger the defendant posed to society and his personality. The prosecution also claimed any society had to penalise sexual exploitation of children for the satisfaction of any urges in the strictest possible manner and that the penalty in this particular case was poorly set.

The Appellate Court rejected the Higher Public Prosecution Office's appeal as lacking merit and upheld the defence's appeal, reducing the defendant's penalty to one year combined. Below is an extract from the appellate ruling.

> *Having examined the impugned criminal sanction imposed on the defendant by the first-instance judgment, the Appellate Court found the first-instance court did appropriately take into account all attenuating or aggravating circumstances with regard to the defendant as set out in Article 54 CC. The court rightly determined no prior convictions and an admission of guilt regarding these particular offences constituted attenuating circumstances, and found no aggravating factors. However, the Appellate Court believes that the court did not accord the appropriate weight to the circumstances favouring the defendant, as rightly claimed in the defence's appeal, due to which the Appellate Court has, in view of the circumstances as described above, the seriousness of the offences, the degree of guilt of the defendant, and the motives for perpetrating the offence, amended the criminal penalty imposed by the first-instance ruling insofar as it has retained the term of imprisonment of seven (7) months as appropriate for the criminal offence of stalking as set out in Article 138(1)2)4) CC and the term of imprisonment of eight (8) months for the criminal offence of sexual harassment as set out in Article 182(2) in conjunction with Article 182(1) CC, applying Article 60 CC, and has sentenced the defendant to a combined term of imprisonment of one (1) year.*

The Appellate Court did not explain which motives it believed were the attenuating circumstances in this particular case.

4.3 Confiscation of items used to perpetrate offences

A first-instance ruling of the Higher Court found that one AA, in a state of diminished accountability, had committed the offence of stalking as set out in Article 138a(1)2) CC and sentenced him to mandatory psychiatric treatment with no deprivation of liberty pursuant to Article 78 CC in conjunction with Article 82 CC and Article 526 CPC for as long as such treatment was required but not more than three years. The first-instance ruling also ordered the defendant's mobile telephone to be confiscated. The defence attorney appealed the confiscation.

The appeal sought to overturn the confiscation of the Lenovo mobile telephone, ordered pursuant to Article 87, alleging there were no grounds for that measure. Confiscation is a safeguard intended to ensure an offender does not use an item to repeat an offence. The defence alleged it made no difference whether that particular mobile telephone was confiscated as the offender could use any mobile telephone to re-offend whilst recognising the offender's mental condition as a major concern for the court.

The Appellate Court did not uphold the appeal, claiming that 'it was appropriate to confiscate the Lenovo mobile telephone, IMEI number (...) together with an MTS SIM card bearing the numbers (...) and (...), these being the means by which the offender perpetrated the offence of stalking under Article 138a(1)2) CC to the injury of DA as incontrovertibly proven by the evidence presented during the trial. As such, the first-instance court was right to conclude that all legal prerequisites had been met for such confiscation, of which fact it provided clear and well-argued reasons in the impugned ruling. The Appellate Court, the second-instance court in this case, has also accepted that line of reasoning and hereby rules not to uphold the appeal of the defence in this criminal matter.'

4.4 Causing panic and disorder (Art. 343(2) in conjunction with Art. 343(1) CC)

A ruling of the Higher Court acquitted a defendant indicted for causing panic and disorder as the action she had allegedly committed was not deemed to be a criminal offence. The Higher Public Prosecutor's Office of Belgrade appealed this decision. The defendant had allegedly used a messaging app to post the following: 'It's not accounting, but it's important! Residents of Belgrade!!! Don't drink tap water for the next two days. There's been an accidental leak of methane which is full of carcinogenic particles. I've just heard from a friend whose husband works for the water company', which was deemed to be a piece of fake news that caused panic at the city's local water and sewerage utility. This was considered the criminal offence of causing panic and disorder as set out in Article 342(2) in conjunction with Article 342(1) CC. The following is an extract from the appellate ruling.

The witness VV claimed that the dissemination of fake news had caused panic at Belgrade's local water company and amongst the population at large, with both individual members of the public and institutions seeking information amid concerns for their health and safety, a fact also highlighted in the prosecution's appeal. Notwithstanding the above, the Appellate Court is of the opinion that the first-instance court rightly found no evidence presented during the trial confirmed the allegations had caused panic at the water company, given that in his deposition the officer of the water company stated the company's operations were not appreciably affected, hindered, or interfered with. Furthermore, no evidence contained in the case files corroborates the alleged panic, or the sudden appearance of significant alarm amongst the population, the allegations are claimed to have caused. As such, the first-instance court rightly found that the trial did not prove the existence of all features required for the offence of which the defendant was indicted.

The Appellate Court underlined the need for there to have been premeditation in choosing to disseminate the fake news for this action to be considered a criminal offence:

> *In view of the statutory provision cited, the first-instance court rightly found that the criminal offence could be perpetrated only with premeditation, meaning that it ought to include awareness of what is being said or relayed constituted fake news or false claims that are able to cause panic and disorder. In this particular case the trial did not prove the defendant had been aware that the rumours she had disseminated were fake news or that she had intended to cause panic by disseminating such rumours, since no such intent was proven by any of the evidence presented.*

VI CASE DATA ANALYSIS

The data suggest that, during the reporting period, members of the public filed very few criminal complaints for the offences examined in this assessment. On average, only 2 to 3 criminal complaints were lodged annually for racial and other discrimination (Art. 387 CC), violation of equality (Art. 128 CC), and sedition (Art. 309 CC). Such low numbers do come as a surprise even though the SCD is responsible only for cases committed online ('involving computers, computer networks, and data'). Nevertheless, a comparison between data provided by the SCD and those made available by the Statistical Office[11] for the period from 2017 to 2020 suggests the SCD was responsible for all cases under Art. 309 (10 of 10), most cases under Art. 387 (9 of 12), and slightly under one-third of cases under Art. 128 (8 of 34).

The Statistical Office's data on adult criminal offenders indicate very few criminal indictments result in indictments (10 percent for Art. 309 cases, 25 percent for those under Art. 387, and 12 percent for cases under Art. 128). In addition to many complaints being dismissed, these offences have a large share of outstanding cases. On multiple occasions YUCOM has filed criminal complaints for racial and other discrimination under Art. 387(2), which criminalises persecution of human rights defender organisations, but none met with success. The Incident Map[12] used by YUCOM to track assaults on activists, informal groups, and civil rights organisations since 2020 has to date recorded at least 200 instances of assault or pressure. Even though the prosecution service is required to press charges motu proprio based on any publicly available information, it has done so only rarely. This state of affairs is an issue for society as racial and other discrimination and violation of equality go beyond efforts to protect activists and include a variety of hate speech offences, which have sadly become commonplace both on social media and in mainstream news organisations.

Endangerment of security (Art. 138 CC) and stalking (Art. 138a CC) were the most common offences identified from data obtained through freedom of information requests and case law. The assessment found the prosecution service and the courts did not act consistently in prosecuting these cases, which jeopardised legal predictability, as well as that the judiciary was insufficiently sensitised to crimes involving gender-based violence and ineffective in dealing with them.

11 Bilten: punoletni izvršioci krivičnih dela u Republici Srbiji, 2017, Zavod za statistiku, available at publikacije.stat.gov.rs/G2018/Pdf/G20185643.pdf; Bilten: punoletni izvršioci krivičnih dela u Republici Srbiji, 2018, Zavod za statistiku, available at publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf; Bilten: punoletni izvršioci krivičnih dela u Republici Srbiji, 2019, Zavod za statistiku, available at publikacije.stat.gov.rs/G2020/Pdf/G20205665.pdf; Bilten: punoletni izvršioci krivičnih dela u Republici Srbiji, 2020, Zavod za statistiku, available at publikacije.stat.gov.rs/G2021/Pdf/G20211195.pdf (accessed on 10 August 2022).

12 See https://en.yucom.org.rs/inmap/ (accessed on 10 August 2022).

1. Stalking (Art. 138a CC)

Particular problems were identified with how the prosecution service and the courts addressed crimes involving gender-based violence, such as stalking (Art. 138a CC) and endangerment of safety (Art. 138 CC), as well as distribution of explicit pornographic material (so-called revenge porn), which is not prosecuted motu proprio but may contain features of multiple criminal offences that may generally be subject to civil lawsuits.

The judiciary seems to remain insufficiently sensitive to women victims, as evidenced by the length of trials, disproportionately low number of stalking complaints where the victims are mostly women[13] in comparison to the count of final judgments,[14] an Appellate Court ruling that reduced an offender's sentence taking his motive as an attenuating circumstance, and numerous reports received by NGOs on a daily basis. The issues have persisted in spite of Serbia adopting national strategies to improve the position of victims of crime[15] and ratifying the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence,[16] both of which require the country to protect women against all types of violence and prevent, prosecute, and eliminate violence against women.

1.1 Distribution of explicit pornographic material (revenge porn)

Distribution of explicit pornographic material is not specifically criminalised, although this practice has become widespread in the digital age and constitutes particularly aggravated gender-based violence. Revenge porn is not attested in statistics of either the prosecution service or the courts even though it may contain features of at least two criminal offences, namely unauthorised publication and presentation of another's texts, portraits and recordings (Art. 145 CC) and unauthorised photographing (Art. 144 CC). The issue here is that both of these offences are subject to civil lawsuits (or motions by the injured parties

13 'Digitalno nasilje prema ženama', Anita Dragosavac, Mašina.rs, 23 December 2021, available at masina.rs/digitalno-nasilje-prema-zenama (accessed on 10 August 2022).

14 A total of 285 criminal complaints resulted in 18 final judgments.

15 National Strategy on the Rights of Victims and Witnesses of Crime, Ministry of Justice, 2020, available at mpravde.gov.rs/sr/tekst/30567/nacionalna-strategija-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-u-republici-srbiji-za-period-2020-2025-godine-19082020.php (accessed on 10 August 2022).

16 Law Ratifying the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, *Official Gazette of the Republic of Serbia – International Treaties* No. 12/2013-15.

where the alleged perpetrators are public officials and the alleged offence is perpetrated in the exercise of their official duty).

No records of cases involving revenge porn are maintained, and as such the available criminal complaint statistics do not include this information. The only exception is provided by the offence of showing, procuring, and possessing pornographic material and child pornography (Art. 185 CC), which is prosecuted motu proprio. In the experience of YUCOM, as well as that of other legal practitioners and victim protection NGOs, the lack of appropriate regulations, coupled with the fact that prosecution in most cases requires a civil action, generally deter victims from pressing charges for this offence.

In a large proportion of cases, victims withdraw once they are told they need to bring a civil complaint. Their reasons for inaction are partly financial, as not many are able to afford legal fees, partly social, with victims lacking support from their immediate social circle, and partly psychological, as they may lack the appetite for repeated victimisation during the trial. These findings suggest Serbian law ought to be amended to specifically introduce revenge porn as a criminal offence. In Croatia, the offence is termed 'abuse of sexually explicit recordings'; it is prosecuted at the motion of the injured party and carries a prison term of up to three years.[17]

17 Article 44a of the Criminal Code of the Republic of Croatia, *Narodne Novine* 125/11, 144/12, 56/15, 61/15, 101/17, 118/18

2. Endangerment of safety (Art. 138 CC)

Endangerment of safety

Article 138

(1) Whoever endangers the safety of another by threat of attack against the life or body of such person or a person close to him,

shall be punished with fine or imprisonment up to one years.

(2) Whoever commits the offence specified in Paragraph 1 of this Article against several persons or if the offence causes anxiety of citizens or other serious consequences,

shall be punished with imprisonment of three months to three years.

(3) Whoever commits the offence specified in Paragraph 1 of this Article against the President of the Republic, a Member of Parliament, Prime Minister, Cabinet Minister, Judge of the Constitutional Court, Judge, Public Prosecutor or Deputy Public Prosecutor, lawyer, police officer or person of importance to public information, shall be punished with imprisonment of six months to five years.

Case law sets out the criteria for what constitutes a threat.

Threats must contain both objective and subjective features. Its objective features are that a threat must be specific and objectively capable of being put into effect. For a threat to be considered an endangerment of safety, it must make a specific malicious action likely against an injured party or a person or persons close to them.

The subjective feature of a threat is that the injured party must actually have felt fear for their own life or limb or the life or limb of a person close to them.

Endangerment of safety (Art. 138(3) CC) is a qualifying offence when perpetrated against a range of persons whose public duties warrant a higher degree of criminal protection than provided by the general offence. Although it carries more stringent penalties, the qualifying offence does not require different criteria to be met. By contrast, in cases involving President Vučić, the Higher Court has often disregar-

ded the alleged victim's subjective feeling of being endangered, a view that cannot be supported from the perspective of legal predictability and equality. Inconsistent rulings by the Appellate Court have heightened the impression of inadequate predictability. Case law for the qualifying offence ought to be aligned with that for its general form to ensure the concept of 'threat' is properly taken into consideration, as its various features have already been well developed in numerous court judgments.

The case law reviewed for this assessment shows clear differences in how the courts have been defining the difference between 'threat' and 'opinion', depending on whether the injured party is a public official or a reporter.

For instance, in a case involving a journalist as the victim,[18] the Supreme Court of Cassation found that the sentences 'I'd like someone to close this eye-opener's eye or eyes for a couple of days' and 'What scum. I get the urge for iron bars to be used to explain some things to his pimply face' did not contain a clear and unambiguous threat that the persons would endanger the life or limb of the injured party, but were rather 'opinions', suggesting what the defendants would like or desired to happen to the injured party, and as such did not constitute endangerment of safety.

By contrast, in a case where then-PM Vučić was the injured party the High Court ruled that the sentences 'Vučić should be killed for being a traitor to the Serbian people, because he's stopping the tsar from coming and hiding this from the people so that the 1997 prophecy doesn't come to pass because he's a Freemason and is taking Serbia into the EU and NATO' were threats and constituted endangerment of safety, sentencing the defendant to four months' imprisonment.

These conclusions are supported by the section on the substance of threats resulting in imprisonment above, which reviews behaviours the courts saw as constituting threats to safety but that in the authors' view may be opinions.

Differences in interpreting threats are also visible in the SCD's practice, with the prosecution service rejecting numerous criminal complaints for endangerment of safety where journalists were the victims after assessing the comments made as opinions, not threats. One such example is provided by the case of the reporter Snežana **Čongradin**, as described above.[19]

In judicial practice and case law, threat criteria differ not only by the varying degrees to which safety may be endangered, but also, for the qualifying offence (Art. 138(3) CC) by the category of victim.

18 Judgment Kzz 1203/2015 of 20 January 2016, available at vk.sud.rs/sr-lat/kzz-12032015 (accessed on 10 August 2022).

19 'Odbačena krivična prijava novinarke Danasa protiv menadžera FSS zbog pretnji', ***Danas***, 5 August 2022, available at rs.n1info.com/vesti/odbacena-krivicna-prijava-novinarke-danasa-protiv-menadzera-fss-zbog-pretnji (accessed on 10 August 2022).

This conclusion is borne out by the much fewer final judgments (ten) in cases where the injured parties were journalists, who have been filing criminal charges for endangerment of safety year after year, than in favour of the President (25).

In this context, when interpreting the allowability of restricting freedom of expression, the European Court of Human Rights (ECtHR) has on multiple occasions voiced the following view:

> *The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.*[20]

Nevertheless, the ECtHR does not find incitement to violence was protected under Article 10 of the ECHR in cases where words calling for violence were directly used and there was a real threat of the violence occurring.[21] It is therefore necessary, when making decisions as to which sanctions to impose, to assess the real possibility of any violence taking place.

In the Serbian case, the President of the Republic, protected by a highly responsive security service that is placed in the highest state of alert at any indication of a threat made by any politically disaffected member of the public on social media, ought to be distinguished from a reporter who has no such security and is actually exposed on a daily basis not only to verbal assault but to actual physical violence.

The ECtHR has also introduced the now familiar three-part test, which states that interference with freedom of expression is only legitimate if it is provided by law, it pursues a legitimate aim (as set out in Art. 10(2) of the ECHR as being 'in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'), and if it is necessary in a democratic society. The ECtHR also mandates that the means used must be proportionate to the desired objective. The ECtHR has applied this principle of proportionality to multiple cases where individuals were sentenced to terms of

20 Castells v. Spain, application no. 11798/85, available at hudoc.echr.coe.int/eng#{„appno“:[„11798/85“]}.

21 Sürek v. Turkey (No. 3), App No 24735/94, available at hudoc.echr.coe.int/eng#{%22fulltext%22:[%2224735/94%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-58281%22]}.

imprisonment, the strictest sanctions available that restrict the freedom of expression. For instance, in the case of Perinçek v. Switzerland,[22] the ECtHR found the prison sentence constituted disproportionate interference with the applicant's freedom of expression.

Another significant legal milestone was the case of Stern Taulats and Roura Capellera v. Spain,[23] where the applicants had been convicted for burning photographs of the Spanish royal couple during a public demonstration. The ECtHR found a violation of Art. 10 of the ECHR, noting that the applicant's intention had not been to incite anyone to commit acts of violence against the King, and that an act of this type should be interpreted as the symbolic expression of dissatisfaction and protest. Even though the 'staged event' had involved burning an image, it was a means of expressing an opinion in a debate on a public-interest issue, namely the institution of the monarchy. The ECtHR reiterated that freedom of expression extended to 'information' and 'ideas' that offend, shock or disturb: such are the demands of pluralism, tolerance and broad-mindedness, without which there would be no 'democratic society'.

The arbitrarily broad interpretation of what constitutes a threat to the President of the Republic, the persecution the defendants in these cases were subjected to in the media, and the failure to respect their presumed innocence until proven guilty all suggest prosecution for this offence is abused to intimidate the public. Additionally, news outlets fail to report many similar cases where criminal charges are dismissed or withdrawn. Regardless of the outcome of the trial, both the defendants and the general public face the persistent adverse consequences of these cases. One example is a cases cited above, where the defendant was acquitted on appeal of having threatened the President's children. Several articles were published in the media about the woman in question that not only failed to presume her innocence but disclosed unacceptable details about her private life and family. For instance, telegraf.rs provided detailed commentary about all alleged threats made against the President, including those where criminal charges were later dropped,[24] in an article titled 'New threats made against Vučić: death notice posted on Facebook, police looking for another Twitter user'. News organisations subsequently failed to publish the fact that the Appellate Court found the posts did not constitute a criminal offence and acquitted the defendant.

22 Perinçek v. Switzerland, App. no. 27510/08, available at hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-158235&filename=.

23 Stern Taulats and Roura Capellera v. Spain, Application no. 4184/15, available at hudoc.echr.coe.int/fre#{%22respondent%22:[%22ESP%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-187510%22]}.

24 'Stižu nove pretnje Vučiću: Na Fejsbuku objavili umrlicu, policija traga za još jednim tviterašem', ***Telegraf***, 26 July 2019, available at telegraf.rs/vesti/politika/3086225-stizu-nove-pretnje-vucicu-policija-traga-za-jos-jednim-tvierasem-foto (accessed on 10 August 2022).

Not only do these practices stigmatise individuals, but they also intimidate the public as a whole, sending the message that any words used to criticise the President of the Republic must be chosen carefully, more so than in any other instance, such as the unresolved cases of assaults on reporters that journalists' associations have continuously been highlighting.[25,26] In contrast to the case law of the ECtHR, the Serbian judiciary has in many cases not felt it proper to call for the President to be more tolerant to criticism or endure views that may insult, shock, or disturb him.

This conclusion is additionally illustrated by the vocabulary employed by other Serbian cabinet ministers. For instance, an official statement on alleged threats against the President released by Aleksandar Vulin, Minister of Interior, read:

> *You find the idiot, the scum, we get it sorted, but the greater danger comes from these idiots getting their ideas from political circles. This thought didn't just pop into his head, it's from the opposition saying they'd talk to Vučić only if he wanted to leave power, they say he's a criminal, his four-year-old son Vukan should be arrested if he tries to leave the country. This muck and this filth come from our public life. In our public life it's completely allowable to hate Aleksandar Vučić, that's acceptable, you mustn't hate anyone else other than him. In today's world you can hate Aleksandra Vučić and go unpunished and you can hate the Russians and go unpunished, everything else is banned. You've got to explain yourself for everything else, and for these two things you can do whatever you like any way you like it.*

The immense strain placed on defendants has also meant most convictions (18 of 23) in cases involving Aleksandar Vučić as the alleged victim were based on plea bargains. Even though current case law is inconsistent, it nevertheless does leave room for acquittals. However, the lack of funds to hire defence lawyers, pressure from the media, and statements by public officials prejudicing the outcomes of trials have all combined to sway defendants to accept plea bargain agreements.

Given the above, it may be argued that defendants' right to a fair trial has been violated in at least two respects, with the government failing to respect the presumption of innocence and the right to trial by an impartial and unbiased judge. The judiciary's shortcomings here do not refer only to pressure put by on judges by the media, but also to the active role they ought to play in the adoption of plea bargain agreements, since judges are required to refuse a plea bargain if the indictment does not concern

25 'NUNS pozvao nadležne da reše sve slučajeve pretnji Isidori Kovačević', N1 Beograd, 30 April 2022, available at rs.n1info.com/vesti/nuns-pozvao-nadlezne-da-rese-sve-slucajeve-pretnji-isidori-kovacevic (accessed on 10 August 2022).

26 'Pretnje Sejdinoviću – znak da režim neće prezati od represije nad građanima', Beta, 10 February 2019, available at danas.rs/vesti/drustvo/pretnje-sejdinovicu-znak-da-rezim-nece-prezati-od-represije-nad-gradjanima (accessed on 10 August 2022).

a criminal offence, or where it is not proven beyond reasonable doubt that the defendant has perpetrated the indicted offence.[27] Nevertheless, in many convictions based on plea bargain agreements reference defendants' actions that lack the objective features of threats, not making a specific malicious action likely against an injured party and/or being specific and capable of being put into effect. To be sure, many of the social media posts are highly offensive and do express hatred against the President and include wishes that something bad should happen to him, but do not constitute threats as defined in statute to meet the requirements of this criminal offence. The posts also do not contain the necessary subjective features as the alleged victim has never testified that he had actually felt fear.

This assessment has also found major issues with prosecuting the general offence of endangerment of safety (Art. 138(1) CC) on a sample of 22 Higher Court judgments where the victims were activists, artists, women, and other members of the general public. Notably, these trials took much longer to complete, with prosecution even becoming time-barred in one case. The data suggest the prosecution service was responsible for these delays as nearly two years elapsed in one case from complaint to indictment. Here, as with the qualifying form of the offence (Art. 138(3) CC), most trials resulted in convictions (20 of 22), but fewer than one-quarter of these were based on plea bargain agreements. This also seems to be a missed chance if plea bargains are seen not only as an opportunity to reduce judicial and prosecutorial caseload but also as an option to minimise secondary victimisation of those who had experienced gender-based violence.

In the 462 outstanding cases of endangerment of safety criminal complaints and judgments were not disaggregated by general and qualifying offences, but there are reasons to assume most of these are of the general type. The sample of judgments reviewed rarely involved measures to secure defendant attendance (only 1 of 22) and resulted in prison sentences (1 of 22). This lack of closure is particularly difficult for women, who are vulnerable to and affected by gender-based violence, as they remain victimised and in fear of their own safety, which disincentivises them from reporting these crimes.

27 Art. 318 CPC.

VII CONCLUSION

This assessment of publicly available information and case law has found inconsistencies in prosecuting the offence of endangerment of safety depending on the category of injured party, leading to varying trial outcomes that hinder the criminal protection of members of the public, reporters, and activists and impede legal predictability. Real and tangible threats against journalists go unprosecuted, which reduces deterrence, stifles free expression, and promotes self-censorship. In a trend that runs counter to previous Serbian practice and ECtHR, prosecution of alleged threats against public officials misuses the scant resources of the judiciary by targeting members of the public who make insulting, shocking, and disturbing comments that should still not merit criminal liability. This contributes to creating an environment conducive to self-censorship not only amongst professional journalists but also social media reporters, private citizens who share information on social media that have become news outlets in their own right. As in many other cases in Serbia, the issue is not the laws but the way they are put into effect.

This problem ought to be addressed comprehensively, ensuring that any amendments to the Criminal Code aimed at strengthening criminal safeguards for journalists do not remain a dead letter or, worse, a way of stifling free speech. Although a review of the resources available to the SCD was beyond the scope of this assessment, it is telling – and dispiriting – that their website has been 'under construction' for more than a decade, with even communication by e-mail hindered by an ineffective anti-spam tool. This state of affairs could go some way towards explaining the dearth of complaints for some offences. By contrast, the Higher Court lacks a separate cybercrime division, which may mean such cases being assigned to judges unaware of how social media work (in one such instance YUCOM encountered a judge who did not know how Facebook operated or was used). As such, and based on the data reviewed here, continued training may be pertinent, especially for cases where the victims are reporters or women, a population particularly vulnerable to digital violence that suffers the most from it. Another issue identified by the assessment has been the lack of efficiency in trying stalking cases and the need to amend the Criminal Code in response to evolving crimes, such as revenge porn.

Draft amendments to the Criminal Code,[28] published by the Ministry of Justice in 2021 and intended to enhance criminal protection of journalists, faced criticism from the community of experts[29] who argued the new rules actually restricted freedom of expression; the proposed legislation was ultimately not

28 Draft amendments to the Criminal Code, Ministry of Justice, available at mpravde.gov.rs/files/Nacrt%20zakona%20o%20izmenama%20i%20dopunama%20KZ%20sa%20obrazenjem%20i%20pregledom%20odredaba....docx (accessed on 10 August 2022).

29 'Da li je više represije manje represije?', Milena Vasić, Otvorena vrata pravosuđa, 1 November 2021, available at otvorenavratapravosudja.rs/teme/krivicno-pravo/da-li-je-vise-represije-manje-represije (accessed on 10 August 2022).

sent to the Serbian Government for endorsement. This example best illustrates the long-standing trend where changes to laws alone are portrayed as successes in European integration. It is far easier to enact rules that remain moribund than to invest meaningful effort into making real changes for the better.

The legislator was justified in providing for a qualifying offence of endangerment of safety, given the importance of safeguarding the range of persons, including reporters, covered by this protection. The need for keeping public officials safe from physical injury od distress, however, should not mean prosecuting any criticism of their performance, even if such criticism goes beyond the bounds of polite speech. Public officials should not be shielded from censure, but should rightly fear it. Conversely, journalists who report critically on public officials and voice views contrary to what the majority may think should enjoy effective judicial protection from online threats. The recommendations below are aimed at public authorities and should help address the issues identified.

Recommendations

1. Strive to enhance legal predictability by ensuring the consistency of prosecutorial and judicial practice in cases involving the offence of endangerment of safety and aligning case law with that of the ECtHR, pursuant to Article 18 of the Serbian Constitution.
2. Ensure prosecutors and judges have access to continuous training for handling cases in which the injured parties are reporters and women victims of gender-based violence.
3. Provide the SCD with appropriate resources, including a functional website and tools for communicating with victims of crime.
4. Consider requiring cases of gender-based violence against women, including endangerment of safety and stalking, to be prosecuted as a matter of urgency.
5. Amend the Criminal Code to introduce the criminal offence of revenge porn to be prosecuted at the motion of the victim.

VIII APPENDIX

Freedom of information requests

To: Higher Public Prosecutor's Office of Belgrade
Special Cybercrime Division
Savska 17a
11000 Belgrade

Freedom of Information Request

Pursuant to Article 15(1) of the Freedom of Information Law (*Official Gazette of the Republic of Serbia*, Nos. 120/04, 54/07, 104/09, and 36/10), please provide the following information from the remit of your agency for purposes of research:

1. Number of criminal complaints filed from 1 January 2017 to 1 January 2022 for the following offences:

   a) Endangerment of safety, Art. 138 of the Criminal Code (CC), with cases under Art. 138(3) CC listed separately;

   b) Causing panic and disorder, Art. 343 CC;

   c) Sedition, Art. 309 CC;

   d) Racial and other discrimination, Art. 387 CC, with cases under Art. 387(2) CC listed separately;

   e) Violation of equality, Art. 128 CC; and

   f) Stalking, Art. 138a CC.

2. Please list separately the number of criminal complaints handled by your agency where the injured parties were Aleksandar Vučić, President of Serbia; Ana Brnabić, Prime Minister; Vladimir **Đukanović**, Member of Parliament; Aleksandar Vulin, Minister of Interior; Nebojša Stefanović, Minister of Defence; Siniša Mali, Minister of Finance; Branko Ružić, Minister of Education, Science, and Technological Development; Branislav Nedimović, Minister of Agriculture, Forestry, and Water Management; Zorana Mihajlović, Minister of Mining and Energy; Maja Gojković, Minister of Culture and Information; Maja Popović, Minister of Justice; Anđelka Atanasković, Minister of Economy; Irena Vujović, Minister of Environmental Protection; Tomislav Momirović, Minister of Construction, Transportation, and Infrastructure; Tatjana Matić, Minister of Trade, Tourism, and Telecommunications; Marija Obradović, Minister of Public Administration and Local Government; Gordana **Čomić**, Minister of Human and Minority Rights and Social Dialogue; Nikola Selaković, Minister of Foreign Affairs; Jadranka Joksimović, Minister for European Integration; Zlatibor Lončar, Minister of Health; Darija Kisić Tepavčević, Minister of Labour, Employment, Veterans' and Social Affairs; Ratko Dmitrović, Minister of Family and Population Policy; Vanja Udovičić, Minister for Youth and Sports; Milan Krkobabić, Minister of Rural Affairs; and Nenad Popović and Novica Tončev, Ministers without portfolio. Please indicate which criminal offences were involved.

3. Number of pre-trial detention motions for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency. Please provide the number of motions approved and those dismissed.

4. Number of convictions for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

5. Number of convictions pursuant to Article 313 of the Criminal Procedure Code (CPC) for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

6. Number of suspended sentences for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

7. Number of court admonishments for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

8. Number of prison sentences for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

9. Number of convictions involving security measures under Article 79 CC and types of such security measures for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

10. Number of cases involving measures under Article 179 CPC for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

11. Number of acquittals for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

12. Number of trials ending in dismissal of criminal complaints for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

13. Number of trials ending in dismissal of criminal complaints due to fulfilment of requirements of Article 283 CPC for the criminal offences listed at 1) for the period from 1 January 2017 to 1 January 2022 in cases from the remit of your agency.

Please provide this information by e-mail at office@yucom.org.rs or by regular mail to the Lawyers' Committee of Human Rights at Kneza Miloša 4, Belgrade.

To: Higher Court of Belgrade
Savska 17a
11000 Belgrade

Freedom of Information Request

Pursuant to Article 15(1) of the Freedom of Information Law (Official Gazette of the Republic of Serbia, Nos. 120/04, 54/07, 104/09, and 36/10), please provide the following information from the remit of your agency for purposes of research:

Copies of final judgments delivered from 1 January 2017 to 1 January 2022 in cases brought by the Special Cybercrime Division of the Higher Public Prosecutor's Office of Belgrade for the offences of:

1. Endangerment of safety, Art. 138 of the Criminal Code (CC);
2. Causing panic and disorder, Art. 343 CC;
3. Sedition, Art. 309 CC;
4. Racial and other discrimination, Art. 387 CC;
5. Violation of equality, Art. 128 CC; and
6. Stalking, Art. 138a CC.

If the extent of the documentation prevents you from providing the judgments sought, we would appreciate it if we could schedule a time to review the judgments at the premises of the court.

Please provide this information by e-mail at office@yucom.org.rs or by regular mail to the Lawyers' Committee of Human Rights at Kneza Miloša 4, Belgrade.

To: Appellate Court of Belgrade
Nemanjina 9
11000 Belgrade

Freedom of Information Request

Pursuant to Article 15(1) of the Freedom of Information Law (*Official Gazette of the Republic of Serbia*, Nos. 120/04, 54/07, 104/09, and 36/10), please provide the following information from the remit of your agency for purposes of research:

Copies of final judgments delivered from 1 January 2017 to 1 January 2022 in cases brought by the Special Cybercrime Division of the Higher Public Prosecutor's Office of Belgrade for the offences of:

1. Endangerment of safety, Art. 138 of the Criminal Code (CC);
2. Causing panic and disorder, Art. 343 CC;
3. Sedition, Art. 309 CC;
4. Racial and other discrimination, Art. 387 CC;
5. Violation of equality, Art. 128 CC; and
6. Stalking, Art. 138a CC.

If the extent of the documentation prevents you from providing the judgments sought, we would appreciate it if we could schedule a time to review the judgments at the premises of the court.

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