



State of SLAPPs in Serbia

Country Report

December 2021

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Executive summary

In this report, ARTICLE 19, the American Bar Association (ABA) Center for Human Rights, and the Independent Journalists' Association of Serbia (NUNS) examine the state of strategic litigation against public participation (SLAPPs) in Serbia. SLAPPs are a form of legal harassment against critical voices, pursued by powerful individuals and organisations who seek to avoid public scrutiny. Their aim is to drain the target's financial and psychological resources and chill critical voices to the detriment of public participation.

Since SLAPPs are often enabled by problematic defamation laws, the report reviews in detail how the Serbian law and judicial practice on protection of reputation complies with international standards on freedom of expression. It also examines how these standards are applied in practice against those who report on and criticise those in power in Serbia.

On a positive side, the report finds that the Serbian legislation provides some specific safeguards against violations of the right to freedom of expression in reputation cases brought against the media. For instance, the Media Law sets a shorter statute of limitation in cases against the media (six months from the date of the publication) compared to other civil law cases (three years from the time of an alleged harm). The Media Law also puts the burden of proof on plaintiffs who have to prove that defendants caused harm to their reputation and that this has resulted in material or non-material damage. Serbian courts also generally apply the defences of reasonable publication, in line with international human rights law, and often refer to relevant European Court case law in defamation cases.

At the same time, the report found several problems in the legal framework and the judicial interpretation. In particular:

- Serbian courts do not consistently rely on the 'functional' definition of journalism. They interpret the concept narrowly and afford journalistic protection only to professional journalists – that is, to those media outlets and journalists registered in the Media Registry.
- Key defamation legislation – the Media Law and the Law on Contracts and Torts – provides protection to 'honour', 'authenticity', or 'piousness'. These terms have an

ambiguous meaning and can be interpreted flexibly to suit the authorities' needs, including in order to prevent criticism. In their interpretation, Serbian courts allow to seek reputational damage, on the basis of mere offensive speech or opinions, that does not amount to actual harm to reputation.

- The Media Law and the Law on Contracts and Torts include a number of defences that can be used in defamation cases (such as the defence of innocent publication or defence of an opinion) and require public officials and public figures to tolerate a higher level of intrusion (Media Law Articles 79 & 8 and Law on Contracts and Torts Article 198(2)). However, Serbian courts fail to adequately consider these defences in practice. In particular, in cases of public officials and figures, the courts give decisive weight to alleged mental anguish caused to the plaintiff even if the actual harm to their reputation is unsubstantiated. Also, while Serbian courts often make a clear distinction between facts and value judgments, they have granted protection to opinion only if those have 'substantial basis'. They fail to provide clear assessment as to whether they consider the context, the circumstances in which the statements were made, or the form of the expression.
- In cases where the legal framework provides protection to reputation that goes beyond the protection from false statements of fact that cause actual harm to reputation and honour, Serbian judges often fail to apply international and regional standards concerning the broad protection of freedom of expression.
- When assessing reputational harm, Serbian courts often fail to require plaintiffs to demonstrate both the falsity of the impugned statement and that it caused harm to their reputation. Often, the courts are satisfied that the statement simply caused mental distress to the plaintiff.
- While judges are required to consider the adverse effects resulting from awarding high damages in civil lawsuits, the Serbian legal framework lacks procedural safeguards to prevent or discourage SLAPP lawsuits, such as early dismissals or procedural expediency.
- Journalists and human right defenders are ill-equipped to defend themselves in SLAPP cases and do not have access to free legal aid. The danger of being confronted with

damages and liability for defamation creates a chilling effect on them and prevents them reporting on matters of public concern.

The report also analyses 26 SLAPP-type cases that were brought against journalists, media outlets, and human rights defenders over the last 10 years (in the period of 2010–2020). These cases show how public officials, public figures, and other powerful entities in Serbia bring SLAPP-type cases to respond to criticism of their activities. These include defamation cases against publications, articles, or social media posts that exposed or criticised the apparent misuse of public funds, the performance of public duties, and other matters.

Recommendations

ARTICLE 19, ABA Center for Human Rights, and NUNS urge the Serbian Government to undertake all necessary measures, including legislative, judicial, or special procedural measures, to eliminate SLAPP cases in Serbia. At minimum:

- The provisions on defamation in the Media Law and the Law on Contracts and Torts should be reviewed to ensure protection is provided only for false statements of fact which cause substantial damage to the plaintiff's reputation. Protection of vague concepts, such as piousness or authenticity, should be eliminated.
- Provisions on remedies in defamation cases in the Law on Contracts and Torts should include some basic criteria for determining the amount of pecuniary compensations. Pecuniary awards that go beyond compensating for harm to reputation should be highly exceptional measures, to be applied only where the plaintiff or claimant has proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff or claimant. Pecuniary awards should never be disproportionate to the harm done and should consider any non-pecuniary remedies such as the publication of an apology or the exercise of a right of reply, and the level of compensation awarded for other civil wrongs. Pecuniary awards also should take into account the actual financial capacity of the defendant.

- The Law on Contracts and Torts should set a fixed ceiling of the level of compensation which may be awarded for non-material harm to reputation – that is, harm that cannot be quantified in monetary terms, but there should be no statutory minimum level of compensation. The maximum should be applied only in the most serious cases.
- Efforts should be made to improve the capacity of the Serbian judiciary to apply international and regional standards on freedom of expression in defamation and SLAPP cases. Regular trainings should be provided and should reflect the evolving standards under the European Court case law.
- Recognition of the functional nature of journalism should be strengthened. In particular, provisions of Article 29 of the Media Law should be interpreted broadly and should cover not only registered journalists but all others that regularly or professionally engage in the collection and dissemination of information to the public via any means of mass communication.
- The practice where pecuniary damages in defamation cases are awarded on the basis of mere claims that the plaintiff suffered mental distress (under Article 200 of the Law on Contracts and Torts) should be eliminated. The harm to a person's reputation must reach a certain threshold of significance before it can justify restricting freedom of expression; specifically, it must cause 'serious harm'.
- In their assessments of cases brought by public officials, politicians, and public figures, the courts should recognise that these individuals must have wider tolerance to criticism than ordinary citizens, since they are directly involved in matters of public concern.
- In their assessment of cases, the courts should ensure that no one is liable under defamation law for the expression of an opinion. Courts should take into account all the circumstances of a statement, including the language and genre used, when assessing whether a statement is an opinion. Where it is obvious that the statement is understood by the audience to be made in a humorous, provocative, or satirical tone, it should be deemed to be an opinion.

Introduction

Various intimidation tactics and attacks against the media and other public watchdogs are a growing threat to media freedom and public participation in Serbia. Journalists and human rights defenders are increasingly facing physical attacks, harassment, and threats from state and non-state actors as a result of their reporting activities, in particular when reporting on human rights abuses, public wrongdoing and corruption.¹ These are often followed by coordinated smear campaigns and online harassment.²

In recent years, there have also been a number of high-profile legal actions initiated by public officials, public figures, and other powerful individuals against journalists, media outlets, and grass-roots and community-based organisations who demand democratic governance and accountability. Typically, these legal actions – so-called strategic lawsuits against public participation (SLAPPs) – are brought solely to harass or subdue an adversary and prevent an exercise of fundamental rights. Those targeted by costly civil lawsuits are often ill-equipped to defend themselves.

In this report, ARTICLE 19, the ABA Center for Human Rights, and NUNS look at these types of legal attacks in greater detail and outline how the law and judicial practices in Serbia can better comply with international and regional freedom of expressions standards.

Although there is no uniform definition of SLAPPs and different elements are used in laws and advocacy against them in different legal contexts, some of the problems identified in this report fit the generally accepted definition of SLAPPs. Most commonly, SLAPP cases in Serbia are brought on the basis of defamation/protection of reputation; hence the report focuses on the analysis of the defamation legislation and the review of its implementation in practice.

The structure of the report is as follows:

- First, the report outlines the applicable international freedom of expression standards that should provide the basis for any restrictions on freedom of expression in Serbia.

- Second, the report analyses the defamation legislation that is most frequently used to bring SLAPP-type cases in Serbia.
- Third, the report outlines key problems identified in these cases from the perspective of international freedom of expression standards and illustrates these trends on the most emblematic cases.
- Finally, the report offers specific recommendations on how the legislation and practice should be improved to protect the media, journalists, and activists from SLAPPs and to fully comply with relevant international and regional standards.

Applicable international human rights standards

The European Convention on Human Rights (European Convention) and the International Covenant on Civil and Political Rights (ICCPR) are part of the Serbian legal system. Article 194 of the Constitution of Serbia stipulates that they have primacy over domestic laws. They form the basis of the assessment of the Serbia law and practice in this report.

The protection of the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights³ and given legal force through Article 19 of the ICCPR.⁴ At the European level, Article 10 of the European Convention protects the right to freedom of expression in similar terms to Article 19 of the ICCPR.⁵ Within the EU, the right to freedom of expression and information is guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union.⁶

The scope of the right to freedom of expression is broad. Article 19 of the ICCPR and Article 10 of the European Convention require States to guarantee to all people the freedom to seek, receive, or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice; this also includes the Internet and digital media.⁷ General Comment No. 34 of the UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States' compliance with the ICCPR, explicitly recognises that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.⁸

International and regional human rights recognised the role that journalists, media, and human rights organisations play in a democratic society and the functions they serve for the exercise of freedom of expression. For instance:

- The HR Committee recognises that the ICCPR places particularly high value upon uninhibited expression whose content involves political discourse, particularly in circumstances of public debate concerning public figures in the political domain and public institutions.⁹

- Similarly, the European Court of Human Rights (European Court) has stressed the ‘public watchdog’ function of the media¹⁰ as well as that of non-governmental organisations. They both play an important role in holding governments to account in a variety of issues – from environmental causes to protection of human rights and the rule of law.¹¹ Further, the European Court has consistently held that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed.¹²

Moreover, international and regional bodies have recognised that journalism encompasses different forms, practices, and activities that can be performed by a wide range of actors, including bloggers and others who engage in forms of self-publication in print, on the Internet, or elsewhere¹³ (so-called ‘functional definition of journalism’). Accordingly, States should not create systems of registration or licensing aimed at limiting the scope of protection or recognition of their role under domestic law.¹⁴

Limitations on the right to freedom of expression

Under international and European human rights law, the right to freedom of expression is not an absolute right. It can, however, be limited only under exceptional circumstances. Under the so-called three-part test, any restriction on freedom of expression must be:

- **Provided by law:** Restrictions must have a basis in law, which must be publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly.¹⁵
- **The restriction must pursue a legitimate aim,** which are those exhaustively enumerated in Article 10 para 2 of the European Convention and Article 19 para 3 of the ICCPR: respect of the rights or reputations of others, or the protection of national security or of public order (*ordre public*), or of public health or morals.
- **The restriction must be necessary in a democratic society:** The restriction must respond to a ‘pressing social need’¹⁶ and must be the least restrictive to achieve the legitimate aim. States must demonstrate in a specific and individualised fashion the precise nature of the threat and a direct and immediate connection between the expression and the threat.¹⁷

Freedom of expression and protection of the reputation

As noted above, protection of reputation and protection of the rights of others are legitimate grounds for restrictions under Article 19 para 3 of the ICCPR¹⁸ and Article 10 para 2 of the European Convention.¹⁹ However, restrictions on the right to freedom of expression to respect the rights or reputation of others may not put in jeopardy the right itself.²⁰

Protection of reputation is guaranteed in Article 17 of the ICCPR; however, States must ensure that individuals are free from 'attacks' on their honour and reputation and not that they enjoy a positive reputation. Restrictions to freedom of expression cannot be justified when its purpose or effect is to protect against harm to a reputation that persons do not have or do not merit.²¹

The European Convention also does not recognise protection of reputation as a self-standing right: the respective claims are considered under Article 8 which guarantees protection to private and family life. At the same time, the European Court has stipulated that 'attacks on a person's reputation must attain a certain *level of seriousness* and in a manner causing prejudice to personal enjoyment of the right to respect for private life';²² and that 'Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions.'²³

States do have an obligation to provide adequate legislation and provision for everyone to be able to protect themselves effectively against any unlawful attacks on their reputation, and to have an effective remedy against those responsible.²⁴ However, the purposes of such laws and provisions must be limited to that end and must ensure freedom of expression safeguards and defences – particularly in relation to the press, journalistic freedom, and public interest. There is also a growing recognition that they should not be of criminal nature.²⁵

International and regional human rights bodies further specified the extent to which States can restrict freedom of expression on the basis of protecting reputation. In particular:

- **Purpose of defamation laws** should be to protect a person from *false* statements of *facts* that cause serious damage to a person's reputation.²⁶ They should not provide protection from opinions, criticism, or other value judgments unrelated to factual statements.
- **Politicians and public officials** must tolerate a higher level of criticism than ordinary citizens due to their public function.²⁷ The European Court expanded the application of this rule to 'anyone who is part of the public sphere, either because of their action or by their position. In other words, one must distinguish between private individuals and individuals acting in a public context.'²⁸ These include actors, members of royal families, celebrities, and other public figures as well as individuals whose financial, business, and commercial activities influence and impact public affairs.²⁹ The intrusion can be in 'a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate'.³⁰ In this respect, the European Court has put a higher value on information which would contribute to public debate rather than a lesser interest in merely providing to the public curiosity.³¹
- **Value judgments and statements of fact:** In defamation cases, distinction should be made between value judgments and facts that may require supporting evidence when reputational interests are claimed. The European Court has consistently sustained that the truthfulness of value judgments is not susceptible of proof and that any requirement to prove them, either by law or in court proceedings, infringes freedom of opinion.³²

Analysis of the laws used to bring SLAPPs in Serbia

The majority of the SLAPP cases in Serbia are initiated under the Law on Public Information and Media (Media Law) and the Law on Contracts and Torts. However, claims against public watchdogs are not limited to civil litigation. Under Serbian law, individual plaintiffs can bring criminal cases against journalists under a range of criminal offences, from attempted blackmail to criminal insult. This section focuses on the analysis of the civil law provisions.

Scope of the protection of journalists

The Media Law is used in cases of defamation against the media and journalists – as defined in its Article 29;³³ the Law on Contracts and Torts is used in defamation cases against other individuals. The Serbian courts have not adopted a functional definition of journalism: the Appellate Court in Belgrade has ruled that the Media Law only covers those entities that are registered in the Media Registry.³⁴

The lack of recognition of a functional definition of journalism limits the application of special procedural protections that is afforded to the media under the Media Law. This includes the reversal of burden of proof to the plaintiffs (while the Law on Contracts and Torts requires defendants prove their statements were correct and/or did not cause any harm) and a substantially shorter statute of limitations for bringing legal action (six months as opposed to three years under the Law on Contracts and Torts).

All lawsuits brought under the Media Law are adjudicated in the Higher Court of Belgrade, regardless of the locality of the dispute or domicile of the parties³⁵ in order to ensure standard judicial practice in media law.³⁶

Protection of reputation under the Media Law

Scope of the protection

Protection of reputation is provided in Article 79 of the Media Law that states:

Personal dignity (honour, reputation or piousness) of the persons that the information refers to shall be legally protected.

It is not allowed to publish information that violates a person's honour, reputation or piousness, or portrays a person untruly by assigning him/her features or characteristics that he/she does not have or denying him/her features or characteristics that he/she does have, unless the interest for publishing information prevails over the interest of the protection of dignity and right to authenticity, and particularly if it does not contribute to the public debate on an occurrence, an event or a person that the information refers to.

...

Depicting a person in caricature, satire, collage or other similar form shall not be deemed a violation of dignity or the right to authenticity.

As noted in the previous section, good defamation law – which strikes a proper balance between the protection of individuals' reputation and freedom of expression – should aim to protect people against false statements of fact which cause damage to their reputation. However, Article 79 provides protection also to attacks on 'piousness' or 'authenticity' without defining these concepts. This allows for the provisions to be abused for the protection of feelings rather than reputations. Since feelings do not lend themselves to definition but are, rather, subjective emotions, these terms can be interpreted flexibly to suit the authorities' needs, including in order to prevent criticism.

Burden of proof

Article 113 of the Media Law puts the burden of proof on the plaintiff to demonstrate that a statement was defamatory or otherwise harmful to the plaintiff's reputation and, as a result, caused mental anguish.

It is fairest, and certainly least harmful to freedom of expression, for the plaintiff to bear the burden of proving the falsity of the statement. The plaintiff, having raised the claim, often has best access to the evidence required to prove falsity. Also, a risk of being taken to court and having to prove the truth of every single statement published would discourage journalists from writing about controversial topics.³⁷ Reversal of burden of proof can be regarded as a procedural protection against abusive claimants that bring meritless claims against statements on matters of public concern.

However, Article 308 of Serbia's Civil Procedure Code requires all parties to file any evidence they plan to use, either to prove or defend against a claim, at the outset of the case. As a result, journalists are required to submit supporting evidence at the outset of the case if they are to rely on it in defence. Serbian lawyers suggest that 'this is problematic because they can render reversal of burden meaningless'.³⁸ Even in cases that are frivolous on their face, or are eventually dismissed, the mere filing of the case without much effort on the part of the plaintiff costs defendants substantial time and resources to prepare a full defence.

Defences in defamation cases

On a positive side, the Media Law provides journalists with the defence of reasonable publication or due diligence.

Article 9 of the Media Law requires that prior to publishing the information that 'contains data on a certain phenomenon, event or person', editors and journalists 'check its origin, truthfulness and completeness with due diligence appropriate to the circumstances'. Following from these provisions, under the existing jurisprudence, '[w]hen a journalist acts with a legitimate aim, in a matter of public interest, and a reasonable effort is made to establish the facts, the journalist is not responsible, even if it subsequently turns out that what he had reason to believe was true is actually incorrect.'³⁹

The Media Law provides further defences, namely defence of opinion, the defence of words of others, and defence of innocent publication. However, in at least one case, the court required that the statement of opinion include the factual basis for the opinion, regardless of whether the facts were widely known or previously published.⁴⁰

Protection of reputation under the Law on Contracts and Torts

Scope of the protection

Most lawsuits against non-media public watchdogs, such as activists and civil society organisations, are brought under Article 198 of the Law on Contracts and Torts,⁴¹ which states that:

(1) Whoever harms the honour of another as well as whoever makes or transmits untrue allegations about the past, knowledge, or ability of another person, or

anything else, and knows or should have known that these allegations are untrue, and thus causes material damage, is obliged to compensate it.

(2) However, whoever makes a false statement about another without knowing that it is untrue, if he or the person to whom he made the statement had a serious interest in it, is not liable for the caused damage.

From the perspective of legality requirement, the concept of ‘honour’ has an ambiguous meaning. In 2018, the Serbian Supreme Court of Cassation defined ‘harm to honour’ under the Law on Contracts and Torts as ‘an attack on human honour that expresses contempt, disrespect, and belittling’.⁴² This interpretation has also been applied in cases against journalists where public officials have claimed damages for opinions that included offensive expression criticising their performance. The plaintiff claimed that the statements caused mental anguish and the courts have found journalists liable for harming a plaintiff’s honour.⁴³

Based on this interpretation of the term ‘honour’, under Article 198 of the Law on Contracts and Torts, a plaintiff can claim damages for a broad category of opinions, offensive and provocative expressions where the damage claimed is limited to an alleged mental distress. This approach disregards the importance of distinguishing between value judgments and statements of fact, and that protection of reputation should not go beyond the protection of false statements of fact that cause harm to reputation.

Burden of proof

Unlike the Media Law, Article 154 of the Law on Contracts and Torts requires that the defendant must compensate the damage caused by tort unless he/she proves ‘that the damage occurred without his fault’.⁴⁴ Article 154 puts the burden of proof upon the defendant to prove that the statements were not offensive or defamatory.

In connection to the interpretation of Article 198 by the Serbian courts, public watchdogs who are sued under this law, including a journalist who did not qualify as ‘media’ under the Media Law, environmental activists, and civil society organisations may be put in the position of proving not only the veracity of factual statements, but also the validity of their opinions.⁴⁵

Remedies in defamation cases

Provision of remedies in defamation cases against journalists and the media and against other individuals is governed under the Law on Contracts and Torts.⁴⁶ The remedies include:

- Publication of a judgment or correction at the expense of the defendant, order to withdraw the statement, or anything else that can achieve the purpose achieved by compensation.⁴⁷
- Compensation of pecuniary damages.⁴⁸
- Compensation of non-pecuniary damages: Article 200 of the Law on Contracts and Torts also provides for compensation of 'damages for mental anguish' if the courts find that 'the circumstances of the case, especially the severity of pain and fear and their duration, justifies it'. The Constitutional Court further confirmed that the compensation is actually provided not for the violation of honour or reputation but because the violation caused harm/mental pain.⁴⁹ Article 200 specifies that when deciding the amount of damages for non-material loss, courts should evaluate the 'significance of the value violated and the purpose to be achieved by such redress, but also that it does not favour ends otherwise incompatible with its nature and social purpose'.⁵⁰

There are several problems with these provisions and their application:

- The Law on Contracts and Torts does not specify that compensation should be imposed only if other measures (such as apology or correction and other measures outlined in Article 199) are not sufficient to redress any harm to reputation.
- Under the provisions of Article 200, Serbian courts focus primarily on determining the mental distress and its severity rather than determining whether there has been any actual and substantial damage to reputation. Although some courts have enumerated additional factors used in determining the amount of damages,⁵¹ courts did not routinely analyse how those factors are weighed in the determination of damages in the cases reviewed.
- On the face of the law, it appears judges have discretion to examine whether the request for damages is appropriate at all, as well as to consider other potential

remedies *sua sponte*.⁵² The provisions of Article 200 are interpreted narrowly by courts, and courts try to ensure that the plaintiffs do not use a lawsuit for personal enrichment and that the damages are not excessive.⁵³ At the same time, there is no cap on damages provided in the legislation. This is a serious shortcoming because where monetary awards are truly necessary, the law should specify clear criteria for determining the size of the award, which should take into account actual damages proven by the plaintiff, as well as any redress already provided through non-pecuniary remedies. A ceiling should be set for the level of compensation that may be awarded for non-financial harm to someone's reputation – that is, harm which cannot be quantified in monetary terms.

Safeguards against SLAPPs

Serbia does not have a dedicated anti-SLAPP regulation aimed at refraining potential plaintiffs from filing vexatious lawsuits, such as a possibility of an **early dismissal of such suits**, or provisions of **some measures to penalise abuse of the judicial process**, such as a fine on the plaintiff.

Possibility of early dismissal of claims is provided in Article 294 of the Civil Procedure Code⁵⁴ but these do not provide for dismissing frivolous or meritless claims. At the same time, the reasons provided in Article 294 are non-exhaustive. The Serbian Judicial Functional Review – an assessment requested by the European Commission and Serbian authorities ahead of the negotiations for Chapter 23 of the Accession Action Plan to update the existing Action Plan for the implementation of the National Judicial Reform Strategy 2013–2018⁵⁵ – implies that judges have authority to address frivolous claims. It, however, recognises that they are reluctant to do so for different reasons:

*Procedural abuses by litigants often go unmanaged, as do frivolous claims and appeals. Trial judges fail to exercise their powers to curtail abuses due to a range of factors, including fear that their decisions may be overturned by appellate courts, their close relationships with attorneys, as well as a general dynamic of torpor within courts.*⁵⁶

In addition, access to legal aid is not regulated or provided for SLAPP-type cases where defendants are ill-equipped to defend themselves and in a disadvantageous position

compared to plaintiffs. The cost of legal defence can contribute to the chilling effect of legal action. In order to guarantee procedural fairness and that access to justice becomes effective for all, legal aid should be provided to those cases where necessary for a fair hearing and is indispensable for effective access to court.⁵⁷

Key trends in cases against public watchdogs

Between 2010 and 2020, at least 26 civil lawsuits were brought against journalists, media outlets, civil society organisations, and activists due to their watchdog activities.⁵⁸ More than half of these cases were brought between 2018 and 2020.

The majority of lawsuits (22) were brought against journalists and media organisations; four cases were brought against environmental activists and organisations; and one case was brought against a non-governmental organisation, which had published apparent connections between a public official and war crimes, advocating for accountability for alleged war crimes.

In this section we outline key problems identified in these cases from the perspective of international freedom of expression standards and illustrate these trends on the most emblematic cases.

Public official and politicians initiate most cases

The research shows that the majority of cases were initiated by a small number of politicians and high-level public officials in their individual capacity. These individuals also brought multiple cases against different journalists and activists.

At the same time, the Serbian courts failed to apply international and regional standards that required that public officials must tolerate a greater level of criticism and intrusion into their rights due to the nature of their official function. This is despite the incorporation of the European Court's ruling in *Lepojić v. Serbia* into its case law, aiming to expand the scope for criticism of public figures under Serbian law.⁵⁹ The following cases demonstrate this problem.

In *Nebojša Stefanović v. NIN, Sandra Petrušić and Milan Ćulibrk*, Nebojša Stefanović, the Minister of Defence and a former Minister of Internal Affairs, filed a defamation case against the author, editor, and media outlet for publication of the article 'The Main Phantom of Savamala'. The article alleged that the Minister had a role in illegal night-time demolitions by masked men along the Belgrade waterfront. It is widely believed that the demolition was conducted to enable the controversial Belgrade Waterfront Development project carried out by the United Arab Emirates-based company Eagle Hills.⁶⁰

The defendants argued that the then-chief of police, Minister Stefanović, was responsible for the lack of police response during that night, and they pointed out an apparent failure to investigate and prosecute anyone involved in the incident. The Higher Court of Belgrade ruled in favour of the plaintiff; however, the Appellate Court in Belgrade reversed the decision on the grounds that the lower court failed to consider the requirement that public officials must have greater tolerance towards criticism. The Appellate Court in Belgrade explicitly referred to the European Court case law and argued that the plaintiff must:

‘show greater tolerance for media criticism of his work, since freedom of political debate is at the very core of a democratic society... and even more so, as the limits of permissible criticism in this case are even wider, given that the plaintiff is a minister in the Government, and in a democratic society the actions or omissions of the Government must be subject to detailed scrutiny not only by the legislature and the judiciary, but also by the press and general public.’

In contrast, in another defamation case, *Nebojša Stefanović v. Peščanik, et al.*, Minister Stefanović sued the author, editor, and media outlet over an article where the author analysed Stefanović’s response to the lack of police action during the same illegal demolitions. The article cited the Minister who said that the police had not been allowed to respond to the demolitions due to danger to their lives. The article stated that ‘Minister Stefanović’s stupidity [was] unsurpassed’ and ‘so far we have not learned why he was assigned the role of turning out to be the dumbest’.⁶¹

The Higher Court of Belgrade ordered the author and the media outlet to pay RSD 200,000 (about EUR 1,700 or USD 2,000) to the Minister to compensate his mental anguish caused to the damage of his reputation.⁶² The original case was filed under the Media Law, but the Higher Court determined that since the author was not a journalist, it should be pursued under the Law on Contracts and Torts. Although this did not appear to be determinative in its judgment, it has created additional confusion about how and when Serbian courts will apply the Media Law and when the authors can benefit from the protection provided to the media.

The Court of Appeals confirmed the ruling but reduced the damages to RSD 150,000 (about EUR 1,270 or USD 1,500) based on the public official position of the Minister. It stated that although the Minister, as a public official, must tolerate criticism, ‘he is not

deprived of personal dignity. In this particular case, personal characteristics were attributed to the plaintiff, which led to a direct injury to the plaintiff's honour and reputation.' It found that the text in question (calling the Minister 'stupid') was insulting and belittling to the Minister.⁶³ In determining damages, the Court did not require any evidence of actual harm to reputation and instead awarded damages based upon the plaintiff's mere assertion of 'mental anguish'.

Multiple cases are initiated for the same publication

The research shows that in several cases, plaintiffs had filed multiple suits against the same defendants over several stories on the same topic, requiring the activists to engage in lengthy, extensive, and costly litigation related to one issue.

For instance, in 2018, Nenad Popović, then Minister for Innovation and Technology, filed four defamation lawsuits, under the Media Law against the Crime and Corruption Reporting Network (known by its Serbian acronym KRIK) in response to the 2018 publication entitled 'Serbian Citizens in Paradise Papers'. The article published names of Serbian citizens featured in the Paradise Papers, a set of over 14 million confidential papers related to offshore investments that were leaked to German reporters in 2017. Minister Popović was one of those named. The article stated that, according to the Paradise Papers, Popović's assets were worth at least USD 75 million (EUR 65 million), which made him the richest politician in the country at that time. Minister Popović accused KRIK of publishing politically motivated, unsubstantiated articles. KRIK published three further articles with the additional factual information contained in the Paradise Papers, such as Minister Popović's business dealings, offshore assets, and partnerships. Minister Popović filed four lawsuits, one per article, asking for RSD 1 million (about EUR 8,500 or USD 10,000) for reputational damages caused by each of them.

Although all four lawsuits were filed in the same court, arose from the same set of facts, and involved the same legal issues, the proceedings were not consolidated. As a result, each required its own schedule. Under Article 308 of the Civil Procedure Code, KRIK had to file its substantial evidentiary basis for its publications at the onset of proceedings to be able to rely on them at trial. Importantly, the plaintiff had failed to appear for any hearings in the case, notwithstanding the court rescheduling the hearings six separate times to allow for his appearance. Although all four cases were ultimately dismissed and the

Minister did not appeal the first instance decision, KRIK had to invest considerable resources in legal defence and preparation for the trial over 18 months.

Proceedings are very lengthy

Even where defamation cases are ultimately dismissed – either in the first instance or on appeal – journalists, the media, and activists have to invest time and resources into their legal defence. This is also an issue if they have limited financial resources and are already struggling to do their work. They also have to sustain negative attention and stress. The proceedings typically stretch over a long period of time. For instance, at least five completed cases were in the courts for five or more years. According to lawyers who have defended these cases, a common cause of delay in the First Instance Court is the repeat absence of the plaintiff or their lawyer from the proceedings.

For example, the proceedings in one case have been ongoing since 2011. The case was initiated in 2011 by Slavoljub Nikolić, secretary of the Red Cross in Aleksandrovac, who filed a defamation lawsuit against Gvozden Zdravić, a journalist with Rasina Press, for an article related to a reconstruction project in the city and funds invested in it. The first and second instance courts ruled in favour of the plaintiff, but these were overturned by the Constitutional Court that, in 2017, found the violation of Zdravić's right to freedom of expression and ordered a retrial, finding that the courts superficially concluded their assertions.⁶⁴ The case is still ongoing.⁶⁵

Awarded damages are taking toll on journalists and activists

In reviewed cases, journalists and human rights defenders have been required to pay between RSD 100,000 and 550,000 (between EUR 850 and 4,657, or USD 1,000 and 5,500). Additionally, if they lose, they are also responsible for attorney fees of the plaintiff, which are an average of USD 237–592 (EUR 204–510). These are considerable amounts because an average monthly salary in Serbia is about USD 592 (EUR 510).⁶⁶

The amount of damages might not be a prohibitive amount for large media organisations, but it represents a substantial cost to small independent media organisations, and it is even more burdensome for activists and freelance journalists. Many defendants are often unable to continue to carry out their work at the same rate due to the time and resources that they have to devote to the proceedings.

Recommendations

Based on the findings in this report, ARTICLE 19, ABA Center for Human Rights, and NUNS make the following recommendations to the Serbian Government to ensure that domestic legislation complies with international and regional freedom of expression standards and that legislation is not misused to stifle the work of journalists and human rights defenders:

- The provisions on defamation in the Media Law and the Law on Contracts and Torts should be reviewed to ensure protection is provided only for false statements of fact which cause substantial damage to plaintiff's reputation. Protection of vague concepts, such as piousness or authenticity should be eliminated.
- Provisions on remedies in defamation cases in the Law on Contracts and Torts should include some basic criteria for determining the amount of pecuniary compensations. Pecuniary awards that go beyond compensating for harm to reputation should be highly exceptional measures, to be applied only where the plaintiff or claimant has proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff or claimant. Pecuniary awards should never be disproportionate to the harm done and should take into account any non-pecuniary remedies such as the publication of an apology or the exercise of a right of reply, and the level of compensation awarded for other civil wrongs. Pecuniary awards also should take into account the actual financial capacity of the defendant.
- The Law on Contracts and Torts should set a fixed ceiling of the level of compensation which may be awarded for non-material harm to reputation – that is, harm that cannot be quantified in monetary terms – but there should be no statutory minimum level of compensation. The maximum should be applied only in the most serious cases.
- Efforts should be made to improve the capacity of the Serbian judiciary to apply international and regional standards on freedom of expression in defamation and SLAPP cases. Regular trainings should be provided and should reflect the evolving standards under the European Court case law.

- Recognition of the functional nature of journalism should be strengthened. In particular, provisions of Article 29 of the Media Law should be interpreted broadly and should cover not only registered journalists but all others that regularly or professionally engage in the collection and dissemination of information to the public via any means of mass communication.
- The practice where pecuniary damages in defamation cases are awarded on the basis of mere claims that the plaintiff suffered mental distress (under Article 200 of the Law on Contracts and Torts) should be eliminated. The harm to a person's reputation must reach a certain threshold of significance before it can justify restricting freedom of expression; specifically, it must cause 'serious harm'.
- In their assessments of cases brought by public officials, politicians, and public figures, the courts should recognise that these individuals must have wider tolerance to criticism than ordinary citizens, since they are directly involved in matters of public concern.
- In their assessment of cases, the courts should ensure that no one is liable under defamation law for the expression of an opinion. Courts should take into account all the circumstances of a statement, including the language and genre used, when assessing whether a statement is an opinion. Where it is obvious that the statement is understood by the audience to be made in a humorous, provocative, or satirical tone, it should be deemed to be an opinion.

Appendix

Case 1: *Nebojša Simonović v. ŽIG Info*, editor-in-chief and owner Zeljko Matorcević and journalists Srečko Vasić and Milan Jovanović, 15 cases, active lawsuits, started in 2017 (1 lawsuit), 2019 (1 lawsuit), 2019 (13 lawsuits)

Law that was used for the claims: Reputational harm under Law on Public Information and Media, and Law of Contracts and Torts

Statements/actions that triggered it: On 24 April 2017, Dragoljub Simonović, former director of Serbian railways and, at that moment, mayor of the municipality of Grocka (Belgrade), filed a lawsuit against ŽIG Info portal after the publication of articles regarding his alleged corruption in the execution of a lawsuit in separate proceedings and alleged political protection received from national government about his acts. The titles of the articles are 'ULTIMATUM FOR SIMONOVIĆ? Will President Grocka change?', 'RACKET President Grocka wanted to bribe the executor', and 'EXCLUSIVE – DOES VUCIC PROTECT SIMONOVIĆ?! Citizen sends letter to Prime Minister about embezzlement in Grocka'. Simonović was accusing ŽIG Info's journalists of being arrogant as well as presenting false statements about his conduct and work according to Article 79 and Article 9 of the Law on Public Information and Media. The case is still ongoing before the Higher Court of Belgrade.

In 2018, Simonović filed a lawsuit against the three ŽIG Info journalists under Article 79 of the Law on Public Information and Media, claiming that he was offended by the content of a complaint filed by 50 individuals from Grocka, including journalists Milan Jovanović, Srečko Vasić, and Zeljko Matorcević, and sent to the attorney general of Grocka, which contained a list of alleged misconducts by Simonović. The case is still ongoing before the Higher Court of Belgrade.

In 2019, Simonović filed 13 lawsuits before the Second Basic Court of Belgrade against journalist Zeljko Matorcević, editor-in-chief of ŽIG Info portal, claiming that he was offended by 'some texts published on the Internet', in particular on Matorcević's Facebook account and on ŽIG Info's website and stating that these are not media articles. The lawsuit was filed under Article 198 of the Law on Contracts and Torts. The cases are still

ongoing; the proceedings have been prolonged as the claimant is failing to appear before the court during the hearings.

Damages sought: Total amount for all of the lawsuits requesting damages for non-material damages is RSD 4.8 million, equivalent to about EUR 40,650 or USD 48,000.

In a separate legal proceeding, in 2021 Simonović was sentenced by the First Instance Court of mandating the burning of the house of journalist Milan Jovanović in 2018. The case is currently before the Appellate Court of Belgrade.

Case 2: Jugoslav Stajkovic v. Gvozden Zdravić, 2013–2018

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2011, *Rasina Press* journalist Gvozden Zdravić wrote an article on the reconstruction of an old mill in the city of Aleksandrovac, which was being renovated to become a tourist attraction. Zdravić filed an access to information request to obtain more insights on the public funds invested in the project, including the full amount of the expenditures and details of the bidders. After receiving no response, in 2011 Zdravić wrote at least two articles expressing concerns on the regularity of the use of the public funds for the reconstruction project and how these were spent and accounted for by the municipality, asking police to start an investigation on potential money-laundering.

In 2013, Zdravić was sued for failure to conduct required due diligence under Article 8 of the Law on Public Information and Media (currently Article 9 of the 2015 Law on Public Information and Media) by the mayor of municipality Aleksandrovac, Jugoslav Stajkovic, who claimed that he was offended by the false statements contained in the articles, given that the financial responsibility of public works lies with the mayor.

Damages sought: RSD 200,000 (about EUR 1,700 or USD 2,000)

Court's decision/status: The Higher and Appellate Courts ruled in favour of the plaintiff awarding the damages in the amount of RSD 200,000 (about EUR 1,700 or USD 2,000). In 2014, Zdravić lodged a complaint before the Constitutional Court, which recognised a violation of his right to freedom of expression and filed a request to the Appellate Court to repeat the proceedings.

Case 3: Slavoljub Nikolić v. Gvozden Zdravić, 2011–ongoing

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: Similarly, *Rasina Press* journalist Gvozden Zdravić wrote an article about the reconstruction of an old mill in the city of Aleksandrovac. Zdravić made an access to information request in order to obtain some information about the reconstruction project and related public funds invested. He failed to receive adequate responses to his request and in 2011 he wrote several articles where he expressed his doubts on the project. In 2011, Slavoljub Nikolić, secretary of the city organisation of the Red Cross Aleksandrovac, filed a lawsuit against Zdravić for violation of his reputation claiming that the articles contained ‘false and offensive’ information.

Damages sought: RSD 200,000 (about EUR 1,700 or USD 2,000)

Court’s decision/status: Both the Higher (in 2013) and Appellate Courts (in 2014) ruled in favour of the plaintiff. The Higher Court in Kruševac granted a compensation of RSD 150,000 (about EUR 1,300 or USD 1,500) to the plaintiff, which was reduced by the Appellate Court in Kragujevac to RSD 50,000 (about EUR 420 or USD 500). Zdravić lodged a complaint before the Constitutional Court which, in 2017, found a violation of the defendant’s right to freedom of expression and stated in its judgment that the civil courts superficially concluded their assertions. The Constitutional Court ordered a retrial before the Higher Court in Kruševac. The case is still ongoing.

Case 4: Nebojša Stefanović v. NIN et al., 2016–2020

Law that was used for the claims: Reputational harm under Law on Public Information and Media

Statements/actions that triggered it: The 2016 article ‘The Main Phantom of Savamala’ published by the weekly magazine *NIN* stated that the then Minister of Internal Affairs and current Minister of Defence, Nebojša Stefanović, was responsible for officially starting an investigation in the illegal and violent demolition of private buildings carried out in 2016 in the Savamala district in Belgrade. During the night of 24–25 April 2016, a group of masked men destroyed a few buildings hosting small enterprises and business in Savamala that were interested by the city’s waterfront project. In 2016, Stefanović filed a lawsuit against

NIN for reputational harm under the Law on Public Information and Media, requesting RSD 300,000 (about EUR 2,500 or USD 3,000) and claiming that the article's headline implied that he was responsible for the demolition.

Damages sought: RSD 300,000 (about EUR 2,500 or USD 3,000)

Court's decision/status: In 2017, the first instance judgment was in favour of the plaintiff, but in 2018 the sentence was overturned by the Court of Appeal of Belgrade, stating that value judgments are protected under freedom of expression and do not require the establishment of truthfulness. The court remarked that the issue published by *NIN* in their article is an information of public interest and is important for public debate. Furthermore, the court affirmed that the plaintiff, being a public figure, must show greater tolerance to public criticism. After a request by the plaintiff for a revision of the sentence, in 2020 the Court of Cassation upheld the decision of the Court of Appeal.

Case 5: Nebojša Stefanović v. Peščanik and journalist Vesna Pesić, 2016–2018

Law that was used for the claims: Article 79 of the Law on Public Information and Media

Statements/actions that triggered it: In 2016, the former Minister of Internal Affairs, Nebojša Stefanović, made a statement on the lack of police reaction in the case of illegal demolition of buildings in Savamala, affirming that their reaction would have endangered the lives of police officers. Based on this statement, in 2016 journalist Vesna Pesić wrote the article 'Salting' on the human rights portal Peščanik, negatively commenting on the words of Minister Stefanović. In the same year, Stefanović sued Pesić under Article 79 of the Law on Public Information and Media, claiming a disclosure of information and a violation of his dignity, honour, and reputation, which caused him mental pain. The plaintiff asked for a compensation of RSD 200,000 (about EUR 1,700 or USD 2,000) in damages.

Court's decision/status: In 2016, the First Instance Court convicted the defendants, granted a compensation of RSD 150,000 (about EUR 1,300 or USD 1,500) to the plaintiff, and obliged Peščanik to publish the text of the conviction. The sentence was upheld in an appeal in 2018.

Case 6: Istvan Kaić v. Miloš Vasić, NUNS and Peščanik, 2014–ongoing

Law that was used for the claims: Reputational harm under the Law on Public Information and Media

Statements/actions that triggered it: In 2014, Istvan Kaić, a pro-government media analyst from Novi Sad connected with national and regional establishments, filed a lawsuit for reputational harm against journalist Miloš Vasić, the online news portal Autonomija.info, the Independent Journalists' Association of Serbia (NUNS), and the human rights portal Peščanik. The lawsuit referred to Vasić's article '[Istvan Kaić's publication](#)', which was a commentary on Kaić's article '[The Third Bullet of Branka Prpa](#)', published in *Politika*. In his article, Vasić criticised Kaić's article for negatively portraying the commission created to resolve the killings of three journalists in Serbia (Óruvija, Pantić, and Vujasinović), and for defining the three journalists as "State enemies". Vasić's article was first published on the website Autonomija.info (NDNV), and then reposted on the websites of NUNS and Peščanik.

Damages sought: RSD 2.5 million (about EUR 21,170 or USD 25,000)

Court's decision/status: In 2016, the First Instance Court rendered a decision in favour of the plaintiff, finding a violation of his honour and reputation under the Media Law and granting a compensation of RSD 100,000 (about EUR 850 or USD 1,000). Both sides appealed the decision, and the case is still ongoing before the Court of Appeal of Belgrade; Kaić suggested a mediation that each party would pay for its legal costs, which has not been accepted by the defendants. In March 2021, the Appellate Court abolished the first instance decision and ordered a restart of the proceedings. In the mean time, the defendant, Milos Vasić died. The first hearing was held on 26 October 2021. In the new process, the plaintiff reduced the damage request to RSD 700,000 (about EUR 5,900 or USD 7,000) for both articles. A subsequent hearing took place on 9 December 2021, during which the judge heard the plaintiff's motion. According to available information, the lawsuit is waiting for a final decision by the judge.

Case 7: Istvan Kaić v. Miloš Vasić, Nedim Sejdinović (NDNV), Vukasin Obradović (NUNS), Perica Gunjić (Cenzolovka) and Peščanik, two lawsuits, 2014–2016

Law that was used for the claims: Law on Contracts and Torts in the first dispute, Law on Public Information and Media in the second dispute

Statements/actions that triggered it: In 2016, Istvan Kaić filed a lawsuit for violation of his honour and reputation under the Media Law following Miloš Vasić's article 'Drone J. Vučićević, Unmanned Aerial Vehicle, Case Study: Remote Control and Political Fauna', which is a response to the plaintiff's text 'Why is an insider silent about fake journalists?'. Vasić's article was first published in 2016 by Autonomija.info, and then reposted by NDNV, NUNS, Cenzolovka, and Peščanik.

Damages sought: RSD 200,000 (about EUR 1,700 or USD 2,000)

Court's decision/status: Case suspended. All parties in the case – plaintiff and defendants – agreed that the plaintiff withdraw the lawsuit and each party in the process will cover their procedural costs.

Case 8: Ljubiša Diković v. Nataša Kandić, 2012–2016

Law that was used for the claims: Law on Contracts and Torts

Statements/actions that triggered it: Nataša Kandić, human rights lawyer and director of the Humanitarian Law Centre (HLC), published the 'Ljubiša Diković' file on 23 January 2012 to draw public attention to the evidence concerning the crimes committed by the brigade commanded by the General of the then Yugoslav army, Ljubiša Diković, during the 1999 Kosovo War against Albanian civilians. In 2012, Diković filed a private criminal complaint against Kandić for libel under the Law on Contracts and Torts and requested a compensation of RSD 1 million (about EUR 8,500 or USD 10,000).

Damages sought: RSD 1 million (about EUR 8,500 or USD 10,000)

Court's decision/status: The First Basic Court ruled that the HLC had to pay General Diković RSD 550,000 (about EUR 4,650 or USD 5,500) for damaging his honour and reputation, and for inflicting him psychological pain. The Court of Appeal in Belgrade upheld the first instance ruling on 18 August 2016, and the sentence was delivered to HLC on 14 October 2016.

Case 9: *Nenad Popović v. KRIK*, four lawsuits, 2018–2019

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2018, the investigative portal KRIK published the article ‘Serbian Citizens in Paradise Papers’ regarding a set of confidential electronic documents relating to offshore investments by Serbian individuals, as part of the Paradise Papers revelations. Further, in the subsequent articles ‘It is incorrect that Popović does not have an offshore company’, “Paradise Papers” are not an attack on Popović, but an international project’, and ‘Popović “high risk” for an offshore agency’, KRIK mentioned well-known businessmen and politicians in Serbia that were involved in the Paradise Papers investigations, including Nenad Popović, Minister without Portfolio. As a result, Popović filed a total of four lawsuits against KRIK (one per article) for violation of his honour, reputation, and dignity, and for mental pain caused by the articles, and requested damages for RSD 1 million (about EUR 8,500 or USD 10,000) for each lawsuit.

Court’s decision/status: All four proceedings ended in KRIK’s favour. In the first judgment rendered by the court, the judges recognised KRIK’s right to freedom of expression, affirming that the articles published by KRIK were not offensive and were protected by free speech guarantees. Popović waived the claim in three cases and the lawsuit was dismissed in one of them.

Case 10: *Vladimir Šekrevski v. KRIK*, 2017–2020

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In the article ‘Serbian Citizens in Paradise Papers’, KRIK journalists revealed leaked documents as part of the Paradise Papers investigations, which demonstrated the background of the collapse of the privatised company Energetika, based in the city of Loznica in Serbia and owned by businessman Vladimir Šekrevski. Energetika faced financial problems and in 2010 was taken over by a company from Malta owned by Šekrevski’s son-in-law. In their article, KRIK pointed out that Šekrevski started two privatisation processes which led to the collapse of these companies (one of them being Energetika).

Damages sought: In 2017, Šekrevski filed a lawsuit against KRIK requesting damages for RSD 500,000 (about EUR 4,200 or USD 5,000) for alleged mental pain and violation to honour and reputation caused by the article.

Court's decision/status: In 2020, the First Instance Court dismissed the lawsuit as unfounded. The court stated that KRIK published the information contained in the article in the public interest and that they acted with due journalistic care in the process of checking the information.

Case 11: Đorđe Vukadinović v. Danas, 2010–2014

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2010, the daily publication *Danas* published a critical column written by writer Svetislav Basara, 'Two Year Anniversary', where the writer reflected on the future perspectives in Kosovo on the occasion of the second anniversary of Kosovo's independence. The article also mentioned Đorđe Vukadinović, former pro-government media analyst and ex-member of the Serbian Parliament, as one of the supporters of President Kostunica's organised demolition protests in Belgrade. In 2010, Vukadinović filed a lawsuit against *Danas* for violation to his honour and reputation and requested RSD 750,000 (about EUR 6,350 or USD 7,500) in damages.

Court's decision/status: In 2013, a verdict was rendered by the Higher Court of Belgrade which sentenced Svetislav Basara to pay the amount of RSD 150,000 (about EUR 1,270 or USD 1,500) to the plaintiff and ordered *Danas* to publish the judgment. In 2015, the Appellate Court reversed the first instance verdict and rejected the claim in its entirety as unfounded.

Case 12: Đorđe Vukadinović v. Milica Jovanović, Zoran Panović, and Dan Graaf, 2010–2017

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: Journalist Milica Jovanović, author of the article 'My clash with them' published in 2010 in the supplement *Beton* of the daily newspaper *Danas*, defined media analyst and ex-politician Đorđe Vukadinović as a "crypto-fascist

analyst”, while commenting on Vukadinović’s column ‘Imposition of Genocide’ published in the magazine *New Serbian Political Thought*. In 2010, Vukadinović filed a lawsuit claiming that Jovanović’s article violated his reputation, honour, and personal rights and resulted in intense mental pain.

Damages sought: RSD 400,000 (about EUR 3,400 or USD 4,000)

Court’s decision/status: In May 2016, the Higher Court in Belgrade rejected Vukadinović’s lawsuit, arguing that the information presented in the disputed text represents value judgment and that the term “crypto-fascist” is a value and not a factual statement. In 2017, the Appellate Court declared Vukadinović’s appeal to be unfounded and closed the case.

Case 13: Vjekoslav Radović v. NUNS, 2009–2016

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2009, Vjekoslav Radović, former Reuters correspondent in Serbia, filed a lawsuit against NUNS for having published in its internal *Dossier on Media* publication the article ‘Warriors of the Second Echelon’, written by journalist Ivana Jovanović. Jovanović claimed that Radović was the author of a false story regarding the murder of 41 babies in the Vukovar conflict; the article also claimed that this false account was the reason why he was fired from Reuters.

Radović filed a lawsuit against NUNS for violation of his honour and reputation, claiming that the article contained false information about himself and requested damages for RSD 800,000 (about EUR 6,700 or USD 8,000).

Damages sought: RSD 800,000 (about EUR 6,700 or USD 8,000)

Court’s decision/status: In 2015, the Higher Court in Belgrade partially accepted Radović’s claim, by obliging journalist Ivana Jovanović, NUNS, NUNS’s president Nadežda Gaće, and the editor-in-chief of NUNS’s *Dossier on Media*, Jelka Jovanović, to compensate Vjekoslav Radović for non-material damages for the amount of around RSD 300,000 (about EUR 2,500 or USD 3,000). In 2016, NUNS appealed the sentence before the Appellate Court in Belgrade, which amended the Higher Court’s judgment and ordered

the defendants to pay RSD 100,000 (about EUR 850 or USD 1,000) in damages to the plaintiff.

Case 14: Emir Kusturica v. Zoran Janić, Miroslav Bojčić, Peščanik and B92, 2011–2018

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2011, journalists Zoran Janić and Miroslav Bojčić wrote the article '[A New Year's fairytale for murderers](#)' on the portal Peščanik. The article argued that film director Emir Kusturica was a friend of General Stanišić (Serbian State's Security Services director) and was acting as a courier between him and Veselin Vukotić (a mobster who was for a long time on the run) passing messages and often money from Stanišić to Vukotić. In 2011, Kusturica filed a lawsuit against Janić, Bojčić, Peščanik, and B92 (this latter was the owner of the Internet page hosting Peščanik) claiming that the article contained untrue and insulting information, which violated his reputation and honour, and requesting a compensation of RSD 2 million (about EUR 17,000 or USD 20,000).

Damages sought: RSD 2 million (about EUR 17,000 or USD 20,000)

Court's decision/status: In 2016, the District Court in Belgrade decided in favour of Kusturica and ordered the defendants to pay RSD 20,000 (about EUR 170 or USD 200).

Kusturica appealed the decision on the amount granted by the District Court. In 2017, the Appellate Court in Belgrade obliged the authors of the article to pay the amount of RSD 150,000 (about EUR 1,250 or USD 1,500) to the plaintiff for writing untrue and insulting allegations about Kusturica's alleged illegal actions. In 2018, the Appellate Court ordered B92 to pay to the plaintiff the amount of RSD 400,000 (about EUR 3,400 or USD 4,000) for non-pecuniary damages and to cover the costs of the proceedings.

Case 15: Jorgovanka Tabaković v. Blic, 2014–2018

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: *Blic*'s 2014 article '[SCANDALOUS ORDER OF THE GOVERNOR Hire them, even though they are unqualified!](#)' described a practice of

recruitment in the Serbia State Bank since Governor Jorgovanka Tabaković assumed office. The article states that Tabaković was issuing orders and pressuring the human resources department to hire specific candidates, even if these were unqualified. In 2014, Tabaković filed a lawsuit for insult against the daily *Blic*, claiming RSD 1 million (about EUR 8,500 or USD 10,000) in damages.

Damages sought: RSD 1 million (about EUR 8.500 or USD 10,000)

Court's decision/status: The Court's decision was delivered to the plaintiff and the defendant, but with no further public information from each side. According to available information, the court decision was in favour of the plaintiff. Governor Tabaković continued to give statements and interviews to *Blic*.

Case 16: Srđan Ilić v. Peščanik, Svetlana Lukić, Svetlana Vuković, and Slobodan Tomić, 2015–2020

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In Slobodan Tomić's article '[Matchmaker's tricks](#)', published on Peščanik in 2015, the journalist reported on a helicopter accident that took place in Belgrade on 13 March 2015 in which seven people died. Tomić also reported the orders given by then Minister of Defence Bratislav Gašić (currently Chief of Security Services in Serbia) immediately before and after the helicopter's emergency crash landing. In his article, Tomić also mentioned two pictures taken by the plaintiff Srđan Ilić, published by the tabloid *Tanjug*, and pointed at some differences between the two photos which suggested that these had been modified to show that the pilot was responsible for the helicopter crash. Ilić filed a lawsuit against Peščanik for publication of untrue and incomplete information, requesting a compensation of RSD 700,000 (about EUR 5,900 or USD 7,000).

Damages sought: RSD 700,000 (about EUR 5,900 or USD 7,000)

Court's decision/status: The 2015 dismissal by the Higher Court in Belgrade was overturned by the Court of Appeal, which ordered a retrial in 2017. During the retrial, the Higher Court reconfirmed its initial judgment, finding the claim to be groundless: the court stated that the right to freedom of information prevails over the right to personal dignity and

that the information contained in the article contributed to a debate in the public interest. In 2020, the Court of Appeals revoked the first instance judgment and granted a compensation of RSD 50,000 (about EUR 425 or USD 500) for damages to the plaintiff.

Case 17: Nikola Sandulović v. Danas, 2010–2016

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2010, journalist Ivana Pejčić wrote the article ‘Search for the car of the assassin’, which was published by daily newspaper *Danas*. In her article, the journalist covered the 2010 attempted murder of Nikola Sandulović (bodyguard of former Prime Minister Zoran Djindjic who was assassinated in 2003), mentioning that “the reason of Sandulović’s assassination attempt was found to be his affairs, that well-informed sources of *Danas* claimed that he was well acquainted with the activities of the Serbian underground and participated in construction investments in Belgrade”.

Damages sought: In 2010, the plaintiff filed a lawsuit for violation of his honour and reputation.

Court’s decision/status: In its 2012 judgment, the Higher Court in Belgrade partially accepted Sandulović’s claim as, according to the court, the journalist did not prove the allegations made in the article and ordered the payment of RSD 100,000 (about EUR 850 or USD 1,000) in damages. In 2013, the Court of Appeals in Belgrade revoked the Higher Court’s judgment and ordered a retrial separating value judgment and facts and taking into account all the information provided in the text. In 2015, the Higher Court in Belgrade decided in favour of *Danas* because the plaintiff did not appear in court without justification. Later, the plaintiff’s lawyers appealed this decision before the Court of Appeals in Belgrade, which in 2017 confirmed the decision of the Higher Court in Belgrade and rejected the plaintiff’s motion to restore the previous status, declaring this unfounded.

Case 18: Goran Belić v. Milica Cubrilo and Vreme, 2019–ongoing

Law that was used for the claims: Law on Public Information and Media

Statements/actions that triggered it: In 2019, journalist Milica Cubrilo wrote an article '[Life in guarding the river rhythm](#)' published in the magazine *Vreme*. The article reported an environmental case in the village of Rakita, in the east of Serbia. In the same year, businessman Goran Belić, investor of the company mentioned in the article, filed a lawsuit against journalist Cubrilo and *Vreme* claiming that the article presented a series of inaccurate information and qualifications that damaged his honour and reputation.

Damages sought: RSD 500,000 (about EUR 4,200 or USD 5,000)

Court's decision/status: Ongoing proceedings

Case 19: Nebojša Stefanović v. Nova.rs, 2020–ongoing

Law that was used for the claims: Law on Public Information and Media, Law on Contracts and Torts

Statements/actions that triggered it: In 2020, Minister Nebojša Stefanović filed a lawsuit against Nova.rs following the article '[We will remember Branko Stefanović after the Krušik affair and the money bag](#)', which referred to the participation of the plaintiff's father, Branko Stefanović, in scandals related to arms trade, the state arms factory Krušik, and the purchase of the Belgrade hotel Sumadija.

The plaintiff mentioned that the article damaged the memory of his dead father. He claimed that the information in the article is untrue, unverified, and [collected contrary to the procedures of the Law on Public Information and Media](#). He requested from the defendants a compensation of RSD 400,000 (about EUR 3,400 or USD 4,000) for violation of honour and reputation.

Court's decision/status: Ongoing

Case 20: Nebojša Stefanović v. Danas, 2020–ongoing

Law that was used for the claims: Law on Public Information and Media, Law on Contracts and Torts

Statements/actions that triggered it: Minister Stefanović filed a lawsuit against the daily *Danas* following the publication of journalist Katarina Zivanović's article '[Who are the right-](#)

[wingers who fought with the police](#)'. The article covered the 2020 Belgrade protests, which resulted in brutal police violence against protesters, and consisted of various statements by some demonstrators claiming that the protests were infiltrated by special police forces and hooligans controlled by the government who started the violence against the police. Minister Stefanović was mentioned in a statement as one of the organisers of the violent protesters.

Stefanović filed a lawsuit stating that the manner of reporting the information in the article was far from objective and it destroyed citizens' trust in him as a person and his work as Minister. The plaintiff claimed damages for [violation to his honour and reputation and for irreparable damage to his mental health](#).

Damages sought: RSD 1 million (about EUR 8,500 or USD 10,000)

Court's decision/status: Ongoing

Case 21: Dragan Josić v. Bozidar Todorović, 2020–ongoing

Law that was used for the claims: Law on Contracts and Torts

Statements/actions that triggered it: Dragan Josić, one of the prominent investors in small hydropower plants in Serbia, sued defendant Todorović for stating on Facebook that "Josić is a well-known president of the bandit association for the destruction of rivers" and that the plaintiff is "part of a bandit association that is destroying our rivers by building mini-hydropower plants". Todorović's Facebook posts related to the plaintiff's statements in the media that claimed positive effects of mini-hydropower plants.

Damages sought: Non-material damages for violation of honour and reputation via Facebook posts for the amount of RSD 100,000 (about EUR 850 or USD 1,000).

Court's decision/status: The First Instance Court partially accepted the plaintiff's request and awarded the plaintiff damages for the amount of RSD 10,000 (about EUR 85 or USD 100). Both sides appealed the decision. The plaintiff appealed the amount of damages, while the defendant appealed the ruling. The case is still ongoing.

Case 22: Goran Belić v. Nensila Radojković, 2020–ongoing

Law that was used for the claims: Law on Contracts and Torts

Statements/actions that triggered it: Goran Belić, an attorney and a prominent investor in hydropower plants in Serbia, sued Nensila Radojković for her post in the open Facebook group 'Odbranimo reke Stare Planine'. The defendant posted a photo of the plaintiff taken while he tried to take her phone during a protest, with the comment "the plaintiff was involved in the business of taking the phone from anyone who photographs him". A different member of the Facebook group used the photo the defendant had taken and edited it to look like the plaintiff was in front of the entrance of Auschwitz concentration camp; in response to the edited photo the defendant commented "my photo in the annals" and "no passaran".

Damages sought: Non-material damages for violation of honour and reputation and for suffering emotional pain in the amount of RSD 100,000 (about EUR 850 or USD 1,000).

Court's decision/status: The First Instance Court rejected the plaintiff's claim as unfounded, but the plaintiff appealed the decision. The case is still ongoing.

Case 23: Dragan Josić v. Ratko Ristić, 2020–ongoing

Law that was used for the claims: Law on Contracts and Torts

Statements/actions that triggered it: Investor and engineer Dragan Josić filed a lawsuit against Ratko Ristić, Dean of Forestry Faculty at the local university, for his comments included in the articles '[Inexhaustible reserves of arrogance](#)' and '[What Dragan Josić doesn't know](#)' published in the weekly magazine NIN. The comments disputed Josić's statements on the lack of impact of hydropower plants on the ecosystem and contested the company's efforts to consult impacted people. Among others, the comments included the following: "The persistence of engineer Dragan Josić in ignoring the worldwide and Serbian scientific and professional public when presenting facts about ecosystem degradation is fascinating."

Damages sought: Non-pecuniary damages for violation of honour and reputation for the amount of RSD 100,000 (about EUR 850 or USD 1,000).

Court's decision/status: The case is still ongoing.

Case 24: Goran Belić v. Aleksandar Jovanović, 2020-ongoing

Law that was used for the claims: Law on Contracts and Torts

Statements/actions that triggered it: In 2020, Aleksandar Jovanović participated in the TV show *Dan* on N1 television and stated that Goran Belić “committed a crime against the people who live by the river” because he “razed to the ground the river in the middle of the village, killed everything alive in it and destroyed the road during the construction of the pipeline leading to their fields” – and all that in order “to get good money”. In the same year, Belić filed a lawsuit for violation of his honour and reputation and requested compensation for the amount of RSD 100,000 (about EUR 850 or USD 1,000).

Damages sought: Non-pecuniary damages for violation of honour and reputation for the amount of RSD 100,000 (about EUR 850 or USD 1,000).

Court’s decision/status: In 2020, the First Instance Court found the case to be groundless and ruled in favour of the defendant. Belić was ordered to pay the costs of the proceedings, which amounted to RSD 21,000 (about EUR 180 or USD 210). The court said that value judgment is not a factual claim and that such claims should be allowed because opinions are protected under the right to freedom of expression, as defined by Article 10 of the European Convention on Human Rights. The plaintiff appealed the decision, and the case is still ongoing before the Court of Appeals.

Case 25: Vojislav Miljković v. Milena Kitanovski, 2020–ongoing

Law that was used for the claims: Law on Contracts and Torts

Statements/actions that triggered it: The environmental activist Milena Kitanovski published a series of Facebook posts using negative and offensive language against businessman Vojislav Miljković, owner of a power plant, and his family. In 2020, Miljković filed a lawsuit against Kitanovski for violation of honour and reputation, claiming that her posts were vulgar and contained false claims.

Damages sought: Non-material damages for violation of honour and reputation in the amount of RSD 200,000 (about EUR 1,700 or USD 2,000).

Court’s decision/status: Ongoing

Case 26: Miloš Dangubić v. Milena Kitanovski, 2020–ongoing

Law that was used for the claims: Criminal Code

Statements/actions that triggered it: Between April and May 2020, a private citizen, Milena Kitanovski, published a number of Facebook posts on grain tanks operation and their effect on the community around Surčin, and the pollution they were causing. Reportedly, the inspection by the city had concluded that the grain tanks were not operating. In the posts, Kitanovski directly asked Miloš Dangubić (president of local Serbian ruling party from Surčin) and other officials about reasons for such conclusion when the grain tanks were working non-stop, alleging corruption (the posts included some expletive language). In April 2020, Dangubić filed a criminal complaint for insult against Kitanovski.

Damages sought: Criminal complaint

Court's decision/status: Ongoing

Endnotes

- ¹ See e.g. Council of Europe, [Hands Off Press Freedom](#), 2020; or ARTICLE 19 and NUNS, [Media Freedom and Safety of Journalists in Serbia](#), March 2021.
- ² Council of Europe, Hands Off; and ARTICLE 19 and NUNS, Media Freedom.
- ³ Although as a UN General Assembly resolution, the Universal Declaration of Human Rights is not strictly binding on States, many of its provisions are regarded as having acquired legal force as customary international law; see *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).
- ⁴ ICCPR, 16 December 1966, [UN Doc. A/6316](#), Serbia ratified the ICCPR on 12 March 2001.
- ⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 September 1950.
- ⁶ European Commission, [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02.
- ⁷ Human Rights Committee (HR Committee), [General Comment No. 34](#) on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011. See also Human Rights Council, Resolution: [The promotion, protection and enjoyment of human rights on the Internet](#), A/HRC/20/L.13, 29 June 2012.
- ⁸ HR Committee, General Comment 34, *ibid* para 12.
- ⁹ *ibid*, para 38.
- ¹⁰ See e.g. European Court, *Lingens v. Austria*, App. No. 9815/82, 8 July 1986, para 41.
- ¹¹ See e.g. European Court, *Steel Morris v. the UK*, App. No. 68416/01, 15 May 2005, para 95; *Társaság a Szabadságjogokért v. Hungary*, App. No. 37374/05, 14 April 2009, para 27; *Vides Aizsardzības Klubs v. Latvia*, App. No. 57829/00, 27 May 2004, para 42; *Youth Justice Initiative for Human Rights v. Serbia*, App. No. 48135/06, 25 June 2013.
- ¹² See e.g. European Court, *Thoma v. Luxemburgo*, App. No. 38432/97, 26 June 2001, paras 45 & 46; or *Lingens v. Austria*, para 42.
- ¹³ General Comment No. 34, para 44. See also Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information, adopted 8 March 2000.
- ¹⁴ General Comment No. 34.
- ¹⁵ See e.g. European Court, *The Sunday Times v. UK*, App. No. 6538/74, 26 April 1979, para 49.
- ¹⁶ See e.g. European Court, *The Observer & Guardian v. the UK*, App. No. 13585/88, 26 November 1991, para 59.
- ¹⁷ *ibid*, para 22.
- ¹⁸ See also HR Committee, [General Comment No. 16: Article 17 \(Right to Privacy\) ICCPR](#), 8 April 1998, para 1.
- ¹⁹ See also European Court, *Axel Springer AG v. Germany*, App. No. 39954/08 (GC), 7 February 2012, para 83.

²⁰ General Comment No. 34, para 21.

²¹ ARTICLE 19, [Defining Defamation: Principles on Freedom of Expression and Protection of Reputation](#), Principle 2, revised version, 2017.

²² See e.g. European Court, *Axel Springer AG v. Germany*, paras 83–84.

²³ *ibid.*

²⁴ See e.g. HR Committee, *Khidirnazar Allakulov v. Uzbekistan*, Comm. No. 2430, CCPR/C/120/D/2430/2014, 22 August 2017.

²⁵ General Comment No. 34, para 47; The Council of Europe Parliamentary Assembly's Resolution 1577 (2007) [Towards Decriminalization of Defamation](#); the Response of the Committee of Ministers, adopted at the 1029th meeting of the Ministers' Deputies, 11 June 2008; Joint Declaration: [Challenges To Freedom of Expression in the Next Decade](#), 2 February 2010. See also Organization for Security and Co-operation in Europe (OSCE), [Ending the Chilling Effect – Working to Repeal Criminal Libel and Insult Law](#), November 2004; UN Economic and Social Council, *Civil and Political Rights including the Question of Freedom of Expression*, [UN Doc. E/CN.4/2000/63](#), 18 January 2000, para 52; and [UN Doc. E/CN.4/2001/64](#), 26 January 2001.

²⁶ *ibid.* See also European Court, *Bladet Tromsø v. Norway*, App. No. 21980/93, 28 October 1999 (in which the Court stated that reputation claims should be accounted from two key elements: privacy and truth).

²⁷ See e.g. Council of Europe, [Declaration on political debate in the media](#) (adopted at the 872nd meeting of the Ministers' Deputies), 12 February 2004; or European Court, *Thoma v. Luxemburgo*, para 47; *Colombani v. France*, App. No. 51279/99, 25 September 2002, para 56; *OOO Izdatelskiy Tsentri Kvartirnyy Ryad v. Russia*, App. No. 38748/05, 18 September 2017, para 38; or *Colombani v. France*.

²⁸ See e.g. European Court, *Morar v. Romania*, App. No. 25217/06, 7 July 2015, para 55; or *Verlagsgruppe News GmbH v. Austria (No. 2)*, App. No. 10520/02, 14 December 2006, para 36.

²⁹ See European Court, *Verlagsgruppe News GmbH v. Austria (No. 2)*. According to the Court, the relevant factors for striking the right balance between the rights to respect for private life and freedom of expression in this type of cases include: contribution to a debate of general or public interest; the degree of notoriety of the person affected; the subject of the report and the nature of the information; prior conduct of the person concerned; method of obtaining the information; content, form, and consequences of the impugned publication; and the severity of the sanction imposed. See European Court, *Couderc and Hachette Filipacchi Associes v. France*, App. No. 40454/07, 10 November 2015, para 93; *Ólafsson v. Iceland*, App. No. 58493/13, 16 March 2017, para 48.

³⁰ *Eon v. France*, App. No. 26118/10, 14 March 2013, para 60; or *Bodrozic v. Serbia*, App. No. 32550/05, 2 June 2009, para 51.

³¹ *Von Hannover no. 2 v. Germany*, para 110.

³² *Bodrozic v. Serbia*, *OOO Izdatelskiy Tsentri v. Russia*, para 42; or *Lingens v. Austria*.

³³ The Law on Public Information and Media (*Zakon o javnom informisanju i medijima*), 83/2014, 58/2015, and 12/2016. Article 29 states: 'Media are means of public information using words, images and/or sounds to convey editorially shaped information, ideas and opinions and other content intended for public distribution and for an indefinite number of recipients. For the purposes of this Law, media are, in particular, dailies and periodicals, news agency services, radio and television programs and the electronic editions thereof as well as independent electronic editions (editorially shaped websites or Internet portals), entered in the Media Register in accordance with this Law. Media do not have the status of legal persons.'

³⁴ The Court of Appeal in Belgrade (*Apelacioni sud u Beogradu*), Gž3 216/18, 21 December 2018, pp. 5–7.

- ³⁵ See Article 4 of the Law on Jurisdiction and Territories of the Courts and Public Prosecutors' Offices (*Zakon o sedištima i područjima sudova i javnih tužilaštva*), Sl. glasnik RS', br. 101/2013, Article 4.
- ³⁶ Supreme Court of Cassation (*Vrhovni kasacioni sud*), R1 627/2016 of, 21 December 2016.
- ³⁷ ARTICLE 19, Defining Defamation.
- ³⁸ Comments from the Serbian media law expert (on file).
- ³⁹ The Court of Appeal in Belgrade (*Apelacioni sud u Beogradu*), Judgment No. 3 96/18, 14 June 2018.
- ⁴⁰ See e.g. the Court of Appeal in Belgrade, Judgment No. 5479/16, 18 August 2016, p. 6.
- ⁴¹ Law on Contracts and Torts (*Zakon o obligacionim odnosima*), 'Sl. list SFRJ', Br. 29/78, 39/85, 45/89 – USJ decree and 57/89, 'Sl. list SRJ', Br. 31/93, 'Sl. list SCG', Br. 1/2003 – Constitutional commands and 'Sl. glasnik RS', Br. 18/2020).
- ⁴² Supreme Court of Cassation (*Vrhovni kasacioni sud*), Judgment No. 1609/17, 31 January 2018.
- ⁴³ See e.g. *Nebojša Stefanović v. Peščanik*, 2016 (on file); or the Higher Court in Belgrade (*Viši sud u Beogradu*), P3 313/2016, 10 July 2018.
- ⁴⁴ Law on Contracts and Torts, Article 154.
- ⁴⁵ See e.g. *Nebojša Stefanović v. Peščanik*, 2016.
- ⁴⁶ Media Law, Article 112.
- ⁴⁷ Law on Contracts and Torts, Article 199.
- ⁴⁸ Law on Contracts and Torts, Article 198, para 1.
- ⁴⁹ Constitutional Court (Ustavni sud), Judgment No. 1235/16, 18 October 2018.
- ⁵⁰ Law on Contracts and Torts, Article 200.
- ⁵¹ As an example, see *Dikovic v. Kandic*, Decision of the Court of Appeals, which enumerated the following factors: the status of the plaintiff in society, his or her function, the seriousness of the accusations published, the nature of the words stated, the general social and political situation in which these words have been stated and the manner in which the defendant committed the violation, the size of the population that could access the published document, and the intent. In enumerating these factors, the court did not analyse how each of these factors weighed.
- ⁵² Currently, Article 3 of the Civil Procedure Code, which limits judges to considering only those claims that have been presented by the parties, has been interpreted to also limit judges to consider those remedies requested by the plaintiff.
- ⁵³ Appellate Court in Niš (*Apelacioni sud u Nišu*), Judgment No. 351/19, 20 February 2019.
- ⁵⁴ The Civil Procedure Law (*Zakon o parničnom postupku*), Article 294, as amended 2020.
- ⁵⁵ Multi-Donor Trust Fund for Justice Sector Support in Serbia, [Serbia Judicial Functional Review](#), Report No. 94014-YF, 2014.
- ⁵⁶ Multi-Donor Trust Fund, *Serbia Judicial Functional Review*, p 12.
- ⁵⁷ See *Steel and Morris v. the UK*, paras 59–61; or the Special Rapporteur on independence of judges and lawyers, 2013, [A/HRC/23/43](#), para 20.

⁵⁸ There were more cases filed in this period; however, for this research, only 26 of them could be analysed. It was not possible to review more cases due to the lack of access to final decisions of the courts and case files. Although the Law on Access to Information of Public Importance and Personal Data Protection provides the right to access to final courts decisions (in Article 2), the decisions are not generally published, and they can only be accessed through the right to information requests. The organisations filed the right to information requests in the course of this research and many courts responded positively. However, the procedures are very lengthy, and some requests are still pending. Delays may also be due to the current pandemic situation and the resulting slower activity of courts. Finally, access to information about ongoing cases is restricted. It is noted that 16 cases, filed by Dragoljub Simonović against Žig.info, were counted as one in this report.

⁵⁹ See also the Council of Europe, [Justice for man made to pay huge fine for publishing criticism of a public official](#).

⁶⁰ See e.g. W. Shepard, [A Look At Abu Dhabi's 'Bad Joke': The Belgrade Waterfront Project](#), *Forbes*, 6 December 2016. See also Ne Davi(mo) Beograd, [The Fifth Anniversary of Savamala Demolition; Justice is Slow but Inevitable](#); 11 June 2021. The incident has facilitated formation of a citizen's movement 'Don't Down Belgrade' (later registered as a party) which seeks accountability for the illegal demolition and the lack of police response.

⁶¹ See Vesna Pešič, [Addition](#), *Peščanik*, 13 May 2016.

⁶² The Higher Court in Belgrade (*Viši sud u Beogradu*), P3 313/2016, 10 July 2018.

⁶³ The Appellate Court in Belgrade (*Apelacioni sud u Beogradu*), Gž3 217/2018, 17 October 2018, p. 4–5.

⁶⁴ See Moma Ilić, [The Constitutional Court Overturned a Ruling for Violating a Journalist's Right of Freedom of Expression](#), Association of Journalists of Serbia (UNS), 5 January 2017.

⁶⁵ Slavoljub Nikolić v. Gvozden Zdravić (on file).

⁶⁶ Government Statistics Office, [Monthly Earnings Report](#), March 2021.

ARTICLE 19



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