

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

25 October 2023

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 52/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **reports of several Strategic Lawsuits Against Public Participation (SLAPPs) against media outlets and activists, as well as threats against and arrests of journalists in Serbia**. I would like to reiterate my concerns regarding the **hateful and divisive rhetoric in public discourse**, that has fuelled hatred and the vilification of independent media, journalists, human rights defenders, political opponents and others critical of the government in Serbia. I also share some observations about **two draft media laws** that were lately brought forward by the government. I take this opportunity to highlight these concerns following my official visit to Serbia in April 2023, in my capacity as the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Since my visit I have received the following information, on which I would welcome your comments and response:

SLAPPs against KRIK

Journalists and editors of Crime and Corruption Reporting Network (KRIK) are currently subject to 12 cases that have characteristics of SLAPPs. KRIK is a non-profit organization and investigative portal established to improve investigative journalism in Serbia. The organization was founded by a team of journalists who have been engaged in exposing crime and corruption and have received many awards for their work.

One such SLAPP case was initiated by a police commander, whose identity has been withheld from the present communication, and two of his colleagues from the Witness Protection Unit. The individuals sued KRIK on 18 May 2020, due to an investigation that the investigative portal conducted concerning the Witness Protection Unit. Individuals connected to the Witness Protection Unit spoke with KRIK, alleging that some witnesses are protected, while others are not. KRIK also allegedly had access to official complaint documents addressed to high-level officials in the Unit concerning such allegations. According to sources, it is believed that the prosecutors sued KRIK, in order to discover who KRIK's informants were.

On 23 January 2023, the High Court of Belgrade ruled in the first instance verdict that KRIK's investigation was of public interest. The verdict stated that the prosecutors and the competent services of the Ministry of Internal Affairs (MUP) knew that KRIK was investigating the police commander and his two colleagues. Furthermore, the High Court stated that "The defendants acted

with due journalistic care, in the text they wrote the information they transferred from official notes, no journalists' comments or personal views were written". The second instance verdict, which was delivered on 3 May 2023, confirmed the first instance verdict.

KRIK publicly stated in an article that the police commander and two of his colleagues from the Witness Protection Unit were suing them in connection with the aforementioned investigation and were faced with another SLAPP by the same individuals on 26 May 2022.

The presiding judge over this second case is reportedly known to the public for convictions several against independent media outlets. In a hearing on 3 May 2023 in the High Court of Belgrade, the judge found KRIK guilty, after only one hearing of the case, and ordered KRIK's journalists to pay damages and trial expenses of 374,200 RSD (approx. 3,200 EUR) to the complainants. The judge also ordered the removal of any mention of the individuals in KRIK's online articles. The judge reportedly denied the existence of SLAPPs, alleged information that was not contained within KRIK's article and refused to acknowledge the verdict of the judge in the previous case.

KRIK submitted an appeal of this verdict on 11 May 2023, though they are still awaiting the second instance verdict in the case.

In May 2023, KRIK was faced with its most recent SLAPP, launched by the godfather of the Serbian President. The lawsuit is reported to be in connection with an article KRIK published revealing that the godfather of the Serbian President allegedly had a business relationship with a well-known Serbian individual, who was at one point involved in international drug trafficking. The first hearing in this case is scheduled for 21 November 2023. This is the third lawsuit filed by the individual against KRIK.

Prior to publishing said article, KRIK reached out to the godfather of the Serbian President for comment and notified him of their investigation. Though the individual did not deny any information published by KRIK, the lawsuit is based on the threat to his reputation. He alleged that KRIK deliberately published that he was in a business relationship with an individual involved in international drug trafficking, though at the time of knowing him, he was not involved in such activities.

SLAPPs against Mr. Aladin Paučinac

Mr. **Aladin Paučinac** is an activist who led peaceful protests against the health authorities due to what he considered was a mismanagement of the COVID-19 pandemic in 2020 in Novi Pazar, the biggest COVID-19 hotspot in Europe at the time.

In response to the protests, the Director of the General Hospital in Novi Pazar filed 37 private criminal and civil lawsuits against people who took part in the 2020 protests and spoke publicly in favour of his dismissal, including activists, fellow doctors, and a patient who wrote about his experience in the hospital on Facebook/Meta.

Of the 37 private criminal and civil lawsuits, nine are defamation lawsuits against Mr. Aladin Paučinac, two of which were filed on the same day. The lawsuits are believed to be in retaliation to Mr. Aladin Paučinac's comments made on social media and at protests, all of which reportedly criticized the Director's handling of the health crisis in the city at the height of the pandemic in 2020.

The acting judge reportedly refused to consider any evidence proposed by the defense, including the fact that court practice has previously affirmed the right to criticize public officials.

Three constitutional complaints have been submitted by Mr. Aladin Paučinac's lawyer with the Serbian Constitutional Court, the latest of which was submitted on 7 June 2023, with a letter of urgency urging the Court to act on the complaints in a prompt manner. The complaints are against three judgments convicting Mr. Aladin Paučinac of the charge of "criminal insult" and associated fees of approximately 480,000 RSD (approx. 4,000 EUR). No responses to the appeals have been received to date.

According to reports of the judgments thus far, Mr. Aladin Paučinac is liable for more than 500,000 RSD (approx. 4,265 EUR) in fees, fines and damages. Should Mr. Aladin Paučinac be unable to pay the fees, fines and damages, there is a substantial threat that he may be subject to a prison sentence.

On 11 April 2023, the final hearing of the case was held in the Basic Court in Novi Pazar, where the judge convicted Mr. Aladin Paučinac of "criminal insult". Mr. Aladin Paučinac was ordered to pay a fine of 250,000 RSD (approx. 2,132 EUR), as well as court and attorney fees. Mr. Aladin Paučinac's lawyer stated that they will appeal the court decision. Mr. Aladin Paučinac's lawyer has requested to be present during the second-instance hearing.

Threats and harassment of the United Media group

Despite several complaints submitted to various authorities regarding physical attacks, threats and harassment of journalists working with N1, Nova S and Danas, to date, many have been dismissed or have not been responded to.

Nova S is part of United Media, the company within which N1 and Danas also operate. United Media consisted of 55 TV channels, 29 online portals, several radio stations, daily newspapers and advertising agencies.

On 30 May 2023, several individuals belonging to "Narodni štab" stormed the courtyard on the N1 premises for several hours, obstructing the work of N1 journalists and employees. The individuals claimed that N1 would face the wrath of the people and demanded that the journalists speak the "truth", urging them to come outside.

Assistance was requested of the local authorities in order to escort the individuals from the premises and to ensure the safety of N1 staff, though there was no response. On 6 June 2023, the Prosecutor's Office requested the police to collect the necessary information regarding the intrusion.

Such harassment and vilification human rights defenders, journalists and media outlets, including during protests, create a chilling effect for those seeking to carry out their legitimate work and exercising their right to freedom of expression.

Arrest of Mr. Boško Savković

Mr. **Boško Savković** is a journalist, activist, lawyer and the Co-chair of the EU-Serbia Joint Consultative Committee.

On 3 June 2023, Mr. Boško Savković participated in a peaceful protest in Belgrade, “Serbia Against Violence”, following the tragic mass shootings that killed 18 children and young people.

On 4 June 2023, Mr. Boško Savković was arrested at his home by 4 Serbian officials in plain clothes without a warrant. He is being accused of incitement to violent change of constitutional order. He was brought to the Criminal Police Administration Service for the Prevention of Crime (UKP SSK) in New Belgrade, where the officials contacted his lawyer. Mr. Boško Savković was not given permission to make any phone calls. When his lawyer arrived, the officials gave Mr. Boško Savković a 48-hour detention order.

On the same day, Mr. Boško Savković was taken to the police station on Novembra Street, where he spent the night in solitary confinement.

On 5 June 2023, Mr. Boško Savković presented his defense at a preliminary hearing at the High Court. Following the hearing, the Prosecutor’s Office proposed that the High Court judge order Mr. Boško Savković into custody, so that he would not influence the witnesses and repeat the crime. The decision was taken to hold him for 30 days in pre-trial detention and Mr. Boško Savković was taken to the Central Prison.

The prosecution alleged that Mr. Boško Savković sent a threatening message to the Serbian President, Mr. Aleksandar Vučić, by carrying a banner with an effigy of a hanged doll of the Serbian President. The prosecution alleged that this action aimed to threaten the constitutional order and security of Serbia, and called on and incited the citizens to resort to violence and use of force to overthrow the highest state authorities. Sources close to Mr. Boško Savković reported that the banner he carried did not include any effigy when it was made, that someone attached it without his knowledge, and that it was removed when noticed.

At the final hearing on 7 June 2023, Mr. Boško Savković pleaded guilty to the charge of “calling for a violent change in the constitutional order,” a decision that was approved by the Court. Mr. Boško Savković was sentenced to a 6 months’ suspended sentence and was subsequently released from detention.

Mr. Boško Savković is reportedly currently facing two ongoing SLAPPs, whereby contesting the charges against him could result in a protracted trial and potentially months or even years of detention.

Without prejudging the accuracy of the above information, I wish to express my deep concerns regarding the threats against journalists, media workers, media outlets and activists, including the use of SLAPPs against them. The recent and ongoing threats and intimidation of journalists and media outlets creates a chilling effect for those carrying out their legitimate work exercising their right to freedom of expression.

I am further concerned by reports of the use of legal action amounting to SLAPPs against journalists and activists, including in the context of the COVID-19 pandemic. Such measures have been used to silence voices expressing criticism of the responses of States to the pandemic, including public and private health authorities, or in some cases to prevent the sharing of information.

The use of SLAPPs against media outlets and journalists in Serbia sets a dangerous precedent, with the aim of distracting, demoralising, intimidating and silencing journalists and activists. Such lawsuits undermine media freedom and abuse the judicial system. Therefore, I urge your Excellency's Government to adopt appropriate measures to address this emerging threat, as also highlighted in my preliminary observations shared at the end of my visit to Serbia.

Draft media laws

I would also like to share some observations about concerns related to the two draft laws on Public Information and Media and on Electronic Media that were lately brought my attention. According to reports, these two draft media laws do not seem to reflect and built upon a number of observations and preliminary recommendations I shared at the end of my visit in April 2023. In particular, the proposed Law on Public Information and Media does not appear to provide for legal safeguards guaranteeing that the media will need to respect ethical standards before receiving public co-financing funding. As I stressed during my country visit from April 2023, the consequences of the toxic public discourse that exists in Serbia are harmful for democratic debate. I worry that failing to impose ethical standards criteria before obtaining public funding will only further encourage the dissemination of such violent hateful speech in public discourse.

At the end of my visit, I encouraged the relevant authorities to strengthen the independence and effectiveness of REM. In this context, I welcome that the draft law on Electronic Media reportedly prescribes for new criteria for the election of REM Council members. I encourage the authorities to consider foreseeing the election of new REM Council members after the adoption of the new law, especially considering the challenges related to the independence and accountability of REM I have highlighted at the end of my visit.

Finally, the draft law appears to allow the state to being the co-owner and founder of media outlets, which may notably lead to government control over Telekom Srbija. Independent, free and pluralistic news media is a pillar of democracy. I encourage the government to follow the Media Strategy adopted in 2020 which provides for strong protection for media freedom, free from political interference.

As the public debate on these two laws continues, I encourage the authorities to pursue its dialogue with the Working Groups that were established to advise on public information legislation. I also stand ready to provide the government with any

technical assistance it may require to ensure the final legislation with Serbia's obligations under international human rights law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the status of the aforementioned lawsuits filed against KRIK, Mr. Aladin Paučinac and Mr. Boško Savković. Please also provide the factual and legal basis for the arrest and detention of Mr. Boško Savković and explain how these measures were compatible with Serbia's obligations under the ICCPR.
3. Please provide information as to any steps taken by your Excellency's Government to protect journalists, human rights defenders and others from baseless lawsuits aimed at deterring public participation.
4. Please provide information about the measures taken to investigate the threats against journalists and the intrusion of the N1 premises in May 2023.
5. Please provide information about the amendments made to the laws on Public Information and Media and on Electronic Media, including how your Excellency's Government ensures the revised legislation is consistent with international human rights law and standards related to freedom of expression.
6. Please provide information as to what steps have been taken to ensure that journalists, media workers and media outlets in Serbia are able to carry out their legitimate work, exercising their right to freedom of opinion and expression, in a safe and enabling environment, free from any physical, judicial or other forms of harassment.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular, the facts alleged, if proved correct, appear to be in contravention with articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), succeeded to by Serbia on 12 March 2001.

I would like to remind your Excellency's Government that the right to freedom of expression protects the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. Any limitation to the right to freedom of expression must meet the criteria established by the Covenant, in particular under article 19(3). Any restrictions must be provided by law, they must be necessary and proportionate, and must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Further, the Human Rights Committee made clear that "It is not compatible with article 19 paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information". Article 19 requires the States to guarantee the right to freedom of expression (Id.). It is the States' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (paragraph 23). In my view such attacks also include the use of the legal and judicial system to instigate and prolong frivolous charges against those who discuss human rights, both online and offline.