

**IMPUNITY FOR ATTACKS ON JOURNALISTS: COMPARATIVE STUDY OF
SERBIA, EUROPEAN COURT OF HUMAN RIGHTS AND INTER-AMERICAN
SYSTEM OF HUMAN RIGHTS**

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EXECUTIVE SUMMARY

This thesis discusses impunity for attacks on journalists as a violation of freedom of expression and right to life. It compares the problem of impunity in the Serbian context with the leading cases in European and American context in order to provide for solutions to the problem of impunity in cases of murdered journalists in Serbia. Four cases from the European Court of Human Rights and three cases from the Inter-American system of Human Rights are used in order to draw rules to be applied in cases of three murdered journalists in Serbia. The principal finding is that, if Serbian cases were brought before either of the two regional human rights systems, the State would presumably be found in violation of human rights. This puts Serbia under the obligation to take appropriate steps to remedy the violations. This thesis also provides for recommendations for the State on how to tackle impunity for attacks on journalists.

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INTRODUCTION

In 2012 alone, 73 people were killed because of their reporting¹, and every year journalists around the world are targeted because of their reporting. The perpetrators of the attacks often go unpunished which creates a vicious circle of violence. In this thesis, I look at how impunity for attacks on journalists is a way of silencing public discourse by creating a "chilling effect" on media and citizens in general. Furthermore, impunity for attacks on journalists gives rise to human rights violations under international law. It is being addressed by various human rights actors as a growing trend that has to end.

The aim of this paper is to compare the problem of impunity in the Serbian context with leading cases in European and American context in order to provide for solutions to the problem of impunity in cases of murdered journalists in Serbia.

My methodological approach includes a comparison of three jurisdictions. I look at the jurisprudence of the two leading regional human rights systems (European Court of Human Rights and Inter-American system of human rights) concerning attacks on journalists. In doing so, I examine and compare the leading cases of these two systems which clearly set relevant standards for the regional human rights systems of the Americas and Europe. In addition, I examine Serbia as my third jurisdiction. In particular, I focus on the response of Serbian authorities towards the murders of three Serbian journalists since 1994 until 2001. No one has been prosecuted or convicted for these murders. This thesis investigates what can be learnt by the Serbian authorities by looking at the jurisprudence of the European and Inter-American human rights systems. I will draw upon conclusions from the comparison of the three jurisdictions in

¹ Committee to Protect Journalists, last accessed 28 November 2013, <http://www.cpj.org/killed/2012/>

order to develop policy recommendations for Serbian authorities and actors. Thus, besides providing a comparative approach to three jurisdictions, this thesis suggests policy recommendations for fighting impunity for attacks on journalists.

The rationale for Serbia as the focus is because the country experienced substantial challenges recently. It has gone through a long period of transition after the fall of communism and has been involved in wars for almost a decade. After the fall of Milošević's dictatorship in 2000, it began the process of EU accession but with many disruptions. It has finally become a candidate for EU accession in March 2012. The long-awaited candidacy imposed an obligation to meet European standards of, *inter alia*, the rule of law and respect of human rights. To meet these, Serbia has to take appropriate measures in remedying current violations. Impunity for attacks on journalists is one of them. I argue that Serbia is in violation of human rights because it allows for impunity and that certain measures have to be taken to avoid that. An efficient way to establish which measures are the best is to look at the standard-setting institutions that have previously examined impunity. Primarily, that is the European Court of Human Rights, a dominant human rights institution in the region, especially since Serbia falls under its jurisdiction. The Inter-American system of human rights has the same authority in the Americas. Both of these human rights systems have case law on impunity for attacks on journalists with clear rules and recommendations. That is what makes the two regional systems the legitimate human rights institutions to draw recommendations from for Serbia.

This topic has yet to be covered in Serbia. In addition to newspaper articles and speculations about facts of cases discussed here, there is no substantive research on Serbia's responsibility under international human rights law for impunity for attacks on journalists. Therefore this thesis shows a responsibility of the State that has not been proved in academia

before and it will give recommendations on how impunity should be efficiently addressed by the authorities.

My research consists of four chapters. The first chapter introduces the topic of impunity by situating it in a specific context, defining it and explaining the three jurisdictions where it occurs. The purpose of situating impunity in international context is to show its relevance and impact on free speech around the world whereas the explanation of the Serbian context introduces the problematic situation the country is in. The definition of impunity is drawn from the existing literature and explains the main problem. Finally, introducing jurisdictions and the case-law used in this thesis sets the grounds for the comparison. The second chapter acknowledges international law and international (notably UN) standards on impunity with special focus on freedom of expression and right to life. The third chapter compares three jurisdictions by analyzing how the two regional human rights systems decide on impunity, and then applying those rules to the Serbian cases. Finally, the fourth chapter sets out the recommendations for Serbian authorities on how to tackle impunity.

The principal finding of this thesis is that, if Serbian cases were brought before either of the two regional human rights systems, Serbia would presumably be found in violation of human rights. This puts Serbia under the obligation to take appropriate steps, listed in the last chapter, in order to remedy the violations.

This research reflects on impunity for attacks on journalists as an ongoing challenge for Serbia. In order to remedy the situation, authorities should look at international human rights law, the case-law of international human rights systems and recommendations given by international human rights bodies and NGOs. Strong political will to end impunity has to be paired with human rights standards that Serbia is subjected to.

CHAPTER I

Impunity for attacks on journalists: context, definition and jurisdictions

The first chapter of this thesis introduces the topic of impunity for attacks on journalists. In order to compare three jurisdictions in a following chapter, it is useful to first explain the phenomena and put it in context, more specifically in the international and Serbian context. This is necessary in order to understand the importance of the topic in contemporary society. The following section explains the definition of impunity. It is important to explain the meaning of impunity in international human rights law and furthermore, understand which human rights are potentially violated when it occurs. Finally, this chapter introduces the jurisdictions that are used for the purposes of comparison in the third chapter. Therefore, this chapter is divided in three sections: impunity for attacks of journalists in international and Serbian context, definition of impunity and jurisdictions used for comparison.

1.1. Impunity for attacks on journalists in context

To understand the relevance of impunity for attacks on journalists examined in the jurisdictions in this thesis, it is important to explain the wider context in which it occurs. Since only three jurisdictions (two regional human rights systems and Serbia) will be used for comparison in the third chapter, it is crucial to understand that impunity for attacks on journalists is a phenomena encountered in many parts of the world. Because it has become increasingly worrisome, it attracted attention of human rights defenders and international community in general. However, Serbia is not among the most troublesome countries in this matter. It is

however struggling with impunity for attacks on journalists and that is why it is important to understand how it deals with this phenomena.

1.1.1. International context

The 2012 Annual Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, states that journalism is an essential service of every society since it provides individuals and society with information needed to form their own opinion and effectively take part in a democratic society. The same report defines a journalist as: “individuals who observe and describe events, document and analyze events, statements, policies, and any propositions that can affect society, with the purpose of systematizing such information and gathering of facts and analyses to inform sectors of society or society as a whole [...]”.² Journalists are seen as specific category of human rights defenders.

The press occupies a very important place in every democratic society since it is intended to also inform about politics and controversial issues in a society. For example, in a case of corruption one of the two essential institutional mechanisms in deterring corruption in emerging democracies, aside from civil society is “a robust, aggressive, independent news media.”³

The Committee to Protect Journalists reports that 196 journalists were killed in crossfire or combat since 1992.⁴ Furthermore, 131 were killed on dangerous assignments in the same period.⁵ This data suggest that a significant number of journalists were killed during war or

² A/HRC/20/17, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 4 June 2012, last accessed November 2, 2013. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/137/87/PDF/G1213787.pdf?OpenElement>

³ *Corruption & democracy: political institutions, processes and corruption in transition states in East-Central Europe and in the former Soviet Union*, Institute for Constitutional and Legislative Policy, 1994

⁴ Committee to Protect Journalist, last accessed November 2, 2013. <http://www.cpj.org/killed/in-combat.php>

⁵ Ibid, last accessed November 2, 2013. <http://www.cpj.org/killed/dangerous-assignment.php>

performing dangerous assignments. However the majority of murders happened in countries that were not affected by a war at the moment of the murder but are struggling with human rights violations. Out of a total of 679 journalists murdered since 1992⁶, 596 journalists were killed with impunity.⁷ This means that a vast majority of murders are still waiting for justice to be fulfilled. This triggered many actions for fighting impunity for attacks on journalists both on behalf of NGOs and international organizations. This thesis will focus on cases of murder that did not occur in crossfire. Impunity will be discussed in cases of murders of journalists outside of the battlefield.

"Impunity is the oxygen for attacks against the press and the engine of those who seek to silence the media. These attacks made it clear to us that we can't trust the authorities for protection." said Javier Garza, deputy editor of the Mexican daily *El Siglo de Torreón*.⁸ Mexico is listed as eighth country in the world according to the CPJ's impunity index. Among other, this list also included Iraq, Somalia, Philippines, Sri Lanka, Colombia, Nepal and others.⁹

Impunity for attacks on journalists is addressed by various stakeholders. Aside from NGOs and eminent representatives of international organizations, research centers and journals within well-known universities alarmed the public on the issue. In an article issued in the *Harvard International Review* in 2010, Frank Smyth stressed that:

In no less than 89 percent of journalist murders worldwide, there has been little or no prosecution whatsoever. Moreover, only in four percent of journalist murder cases has

⁶ Ibid, last accessed November 2, 2013. <http://www.cpj.org/killed/murdered.php>

⁷ Ibid, last accessed November 2, 2013. <http://www.cpj.org/killed/impunity.php>

⁸ Ibid, last accessed November 2, 2013. <http://www.cpj.org/reports/2012/04/impunity-index-2012.php#more>

⁹ Ibid.

full prosecution occurred, which in most cases means that both assassins and the masterminds who ordered or hired them, have been brought to justice.¹⁰

These claims are in line with wide concerns about murders of journalists becoming more and more common. Similarly, the University of Cambridge published “Safety of Journalists Research Pack” in 2012 which gave a review of existing framework on protecting safety of journalists as well as different contexts in which journalists are attacked.¹¹

The Commissioner for Human Rights, Thomas Hammarberg, issued a study “Human Rights and a changing media landscape” in which the first chapter is devoted to protection of journalists from violence. His message is that “the impunity of the perpetrators and the responsible authorities’ passivity in investigating and failing to publicly condemn these murders breeds further violence.”¹² This study also gives recommendations on how to address this issue.

1.1.2. Serbian context

Impunity for attacks on journalists creates the same “chilling effect” in Serbia as it does in other countries in the world. Serbia is fighting with impunity in the cases of three murders of journalists in the last 19 years, namely cases of Dada Vujasinović, Slavko Ćuruvija and Milan Pantić, all killed because of their journalistic activities. These three cases will be used for the purpose of comparison in the third chapter.

Serbia became a candidate for EU accession in March 2012. This candidacy requires the state to reach democratic standards already established at the EU level and therefore gives an important assignment to candidate states. For Serbia to become an EU state in the future, it has to

¹⁰ Frank Smyth, “Murdering with Impunity: The Rise in Terror Tactics Against New Reporters”, *Harvard International Review*, Fall 2010

¹¹ *Safety of Journalists Research Pack*, University of Cambridge

¹² Thomas Hammarberg, *Human Rights and a changing media landscape*, Council of Europe, 2011

satisfy, *inter alia*, human rights and rule of law requirements. These demand respect for human rights and a strong state that enforces its laws. Furthermore, laws need to be in compliance with the EU laws that set standards much higher than they are currently in Serbia. The rule of law and respect for human rights requires an effective and swift legal system that solves crimes. It also requires a strong democratic climate in which criticism of the authorities is not only allowed but also encouraged. That is, unfortunately, still not the case in Serbia. The impunity for murders of three aforementioned journalists does not satisfy the rule of law requirement and it further violates human rights under international human rights law. Impunity also creates a “chilling effect” for others who criticize the state. Some examples of attacks on journalists are given below.

Attacks on journalists are a common practice in Serbia. The Independent Journalists’ Association of Serbia (IJAS) stated in its report that on average one physical attack occurred per month in 2011.¹³ The South East Europe Media Organization (SEEMO), an affiliate of the International Press Institute, urged Serbian authorities to fight attacks on journalists after three attacks occurred in less than two weeks in October 2012.¹⁴ The perpetrators of these attacks used an explosive device in one case and a Molotov cocktail in two other cases in the family homes of journalists.

Many cases of physical attack on journalists go unpunished. One of the most important cases of attacks with impunity is the attack on Dejan Anastasijević, a journalist who wrote about

¹³ The Independent Journalists’ Association of Serbia (IJAS), *Protection of Journalists’ Safety* (Zastita bezbednosti novinara), last accessed July 11, 2013, <http://www.nuns.rs/codex/Mediji-u-demokratiji/Zastita-bezbednosti-novinara.html?view=comment&topicId=508&type=item&kind=&backUrl=/codex/Mediji-u-demokratiji/Zastita-bezbednosti-novinara.html>

¹⁴ The South East Europe Media Organization (SEEMO), "SEEMO urges Serbian authorities to investigate attacks against journalists", 2 November 2012, last accessed July 11, 2013, <http://seemo.org/activities/pressfreedom/12/press1282.html>

crimes in ex-Yugoslavia and organized crime in Serbia.¹⁵ A bomb exploded in the window of the journalist's apartment in April 2007 but no one was injured. The perpetrators of this attack were never brought to justice. Similarly, many attacks on local journalists were never resolved. The European Parliament issued a statement in which it encouraged the Serbian government to prevent attacks on journalists and emphasized the importance of proper prosecution of the perpetrators by the judiciary in those cases.¹⁶

Some improvement in terms of protection of journalists has been established in recent years. There are cases in which the safety of journalists was threatened to a level that they were provided police protection. Brankica Stanković, a journalist who reported on connections between crime and politics in Serbia, was provided with police protection for few years. She was publicly threatened by soccer hooligans that she will end up like Ćuruvija, murdered in 1999. Vladimir Mitrić, another journalist who reported on crime related issues in Serbia was under police protection for six years.¹⁷

Some of the crimes of threatening journalists have been resolved. The abovementioned case of Brankica Stanković was resolved by sentencing those who threatened her at the soccer game to prison. However, those who order threats and attacks on journalists still often go unpunished.

Attacks on journalists in Serbia receive attention from both public and the state but are not punished in most cases. Impunity for the aforementioned cases of murders of three

¹⁵ Association of Independent Electronic Media (ANEM), "ANEM condemns bomb attack on Dejan Anastasijevic" (ANEM osudjuje bombaski napad na Dejana Anastasijevica), 14 April 2007, last accessed July 11, 2013, <http://www.anem.rs/sr/aktivnosti/Anema/saopstenja/story/8357/ANEM+OSU%C4%90UJE+BOMBA%C5%A0KI+NAPAD+NA+DEJANA+ANASTASIJEVI%C4%86A.html>

¹⁶ *Joint statement of the European Parliament and the National Assembly of the Republic of Serbia*, 4th Interparliamentary Meeting, Belgrade, October 2010, last accessed July 11, 2013, <http://www.europarl.europa.eu/document/activities/cont/201010/20101007ATT85788/20101007ATT85788EN.pdf>

¹⁷ Slobodan Kremenjak, *Attacks on Journalists and Self-censorship*, Third ANEM publication Legal Monitoring of Serbian Media Scene, p. 29

journalists that happened in 1994, 1999 and 2001 contribute to the “chilling effect” on investigative journalism in the country. The Serbian government formed the Commission on unresolved murder of journalists in January 2013 with the primary aim to investigate the cases of the three murdered journalists.¹⁸ The Commission is headed by Veran Matić, a journalist who was provided with police protection himself because of threats received for his reporting. The Commission has not given any results in the first few months of its work.

In conclusion, the hostile climate towards investigative journalism in Serbia discourages critiques of problematic topics in Serbian society. Although some efforts have been made to tackle the problem, there is not enough political will to solve cases of attacks on journalists. This produces a society in which investigative reporting is dangerous, unwanted and therefore silenced. This contributes to the failure of Serbia to meet the rule of law requirement for EU accession. Impunity gives rise to human rights violations and proves that the State is not capable or willing to enforce its own laws. That is why this thesis uses regional human rights standards in cases of murdered journalists in Serbia in order to show that although some progress in protecting journalists has been made, it is not enough.

1.2. The concept definition of impunity

Black's Law Dictionary defines impunity as “exemption from punishment; immunity from detrimental effects from one’s action.”¹⁹ Transitions from authoritarian to democratic

¹⁸ B92, "OSCE welcomes commission on unresolved murders of journalists", 30 January 2013, last accessed July 11, 2013, http://www.b92.net/eng/news/society.php?yyyy=2013&mm=01&dd=30&nav_id=84425

¹⁹ Black's Law Dictionary, 9th edition, 2009

regimes always require establishing rule of law and societies in which human rights violations happen with impunity are perceived as “lawless societies.”²⁰

The definition of impunity in academic articles is most often related to impunity in regard to crimes committed on international level such as crimes against humanity or war crimes. However, the definitions given can easily be used for this research in order to clarify the concept this paper deals with.

When discussing doctrines of impunity, Jesus-Maria Silva Sanchez starts by stressing that etymologically impunity means “lack of punishment” and therefore carries no negative connotation.²¹ However, international courts define impunity giving it negative meaning as “general lack of investigation, persecution, detainment, prosecution and sentencing of those who are liable for violating protected rights.”²² Impunity refers to three circumstances:

1. Factual impunity - the lack of any kind of legal intervention by the State
2. Active legal impunity – the explicit limitation of prosecution and punishment for those facts owing to exemption laws stemming from democratic parliaments
3. Legal impunity by omission - non-annulment of said laws.²³

When addressing the purpose of the doctrine against impunity, the author uses findings of the Inter-American Court of Human Rights. The Court referred to “victim’s right to justice”, which is closely related to “the investigation, identification and trial of those responsible individuals.” The Court also referred to a “right to the truth” which is a part of the “right of the

²⁰ Naomi Roht-Arriaza, *Impunity and human rights in international law and practice*, Oxford University Press, New York, 1995, page 4

²¹ Jesus Maria Silva Sanchez, "Doctrines Regarding 'The Fight Against Impunity' and 'The Victim's Right for the Perpetrator to be Punished'", *Pace Law Review*, Pace University School of Law, 2008, p. 2

²² Almonacid Arellano et al. v. Chile Case, Inter-American Court of Human Rights (ser. C) No. 154 (September 26, 2006), marg. No. 111

²³ Jesus Maria Silva Sanchez, , "Doctrines Regarding 'The Fight Against Impunity' and 'The Victim's Right for the Perpetrator to be Punished'", *Pace Law Review*, Pace University School of Law, 2008, p. 2

victim and his/her relatives to be given clarification from the competent bodies of the State as to the wrongful acts committed and liable individuals by means of the investigation and trial...”²⁴

In her further examination of impunity, the author turns to the perspective of a victim. She acknowledged that the essential element of all doctrines against impunity in criminal law is “delivering justice to the victims by prosecuting and punishing perpetrators.”²⁵ Following this argument, she states that both “victims and society have a right to reinstatement of dignity and the social bonds put at stake by the crime.”²⁶

In proposing a new framework for measuring impunity, Jorge E. Vinuales also examined impunity itself.²⁷ He referred to the definition of impunity given by the UN Special Rapporteur on the question of impunity of perpetrators of violations of human rights, Louis Joinet. Joinet gives the following definition: “Impunity means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to them being accused, arrested, tried and, if found guilty, convicted.”²⁸ The same report later acknowledges that impunity is not addressed if victims are left without adequate reparations. This definition was incorporated in the document issued by the UN Economic and Social Council, namely *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*.²⁹

²⁴ Almonacid case, Inter-American Court of Human Rights, (ser. C), No. 154 at 150

²⁵ Jesus Maria Silva Sanchez, , "Doctrines Regarding 'The Fight Against Impunity' and 'The Victim's Right for the Perpetrator to be Punished'", Pace Law Review, Pace University School of Law, 2008, p. 6

²⁶ Ibid, p. 7

²⁷ Jorge E. Vinuales, "Impunity: Elements for an Empirical Concept", *Law and Inequality*, 2007

²⁸ Economic and Social Council of the UN, *The administration of justice and the human rights of detainees: Question of the impunity of human rights violations (civil and political)*, E/CN.4/Sub.2/1997/20/Rev.1, 1997

²⁹ Economic and Social Council of the UN, *Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity*, E/CN.4/2005/102/Add.1, 8 February 2005

The Council of Europe addressed the issue of impunity in 2009 and more importantly in 2011. Impunity is addressed directly for the first time in 2009 in Resolution 1675 (2009) and Recommendation 1876 (2009).³⁰ The documents *inter alia* addressed the importance of combating impunity, recognized fields in which its occurrence is the most dramatic and invited member states to take appropriate measures to fight it. However, the most comprehensive document in the Council of Europe is issued by the Committee of Ministers in the form of guidelines for eradicating impunity in 2011.³¹ This document states that impunity “arises where those responsible for acts that amount to serious human rights violations are not brought to account.”³² It is said to be caused by a lack of response by state authorities. Furthermore, the need to eradicate impunity is a matter of delivering justice for victims, deterring future violations and feeding public trust in the criminal justice system.³³

It can be concluded that impunity receives a lot of attention from academia and international actors. It is a widespread phenomena that needs to be addressed with specific measures. In these cases the perpetrators of a crime have not been tried and convicted for their acts and the victims and their relatives have not received adequate reparations for their sufferings. When impunity happens in the context of murders of journalists, it triggers a serious violation under international human rights law. For the purposes of this thesis, priority will be given to murders of journalists that have not been addressed in given states. In the given cases, a journalist was murdered after reporting on sensitive issues and the perpetrators have never been

³⁰ The United Nations Parliamentary Assembly, Resolution 1675 (2009) *State of human rights in Europe: the need to eradicate impunity* and Recommendation 1876 (2009) *State of human rights in Europe: the need to eradicate impunity*

³¹ The Committee of Ministers of Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations*, adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers' Deputies

³² Ibid. para. I.1.

³³ Ibid. paras. I.2, I.3.

brought to justice. As pointed out by Mr. Sancinetti, “a lack of punishment for a breach of human rights is in itself an abuse of human rights.”³⁴

1.3. Jurisdictions

This thesis will use three jurisdictions for comparison: Serbia, the European Court of Human Rights and the Inter-American system of human rights. Cases of impunity for attacks on journalists from these jurisdictions will be used in order to establish rules of the two human rights systems and then apply them to Serbian cases.

Better understanding of the two systems necessitates an explanation of their organizational structure. The European system of human rights, made of the European Court of Human Rights, is part of the Council of Europe. It is based on the European Convention of Human Rights (ECHR), an instrument that entered into force on 3 September 1953. The initial structure of the European system envisioned existence of both a Court and a Commission where the Commission played a major role in reviewing cases. Individual applications to the Court were not possible and the Commission was the only means of accessing the Court.³⁵ However, the Commission was abolished in 1998 by Protocol 11 which allowed the Court to deal with cases entirely and now individuals are able to bring petitions directly to the Court.³⁶ Similarly, the Inter-American system of human rights also consists of both the Court and the Commission. It is formed by the American Convention of Human Rights (ACHR), a legal instrument which entered into force on 18 July 1978. It is relevant that, unlike the European system, the

³⁴ Jesus Maria Silva Sanchez, "Doctrines Regarding 'The Fight Against Impunity' and 'The Victim's Right for the Perpetrator to be Punished'", *Pace Law Review*, Pace University School of Law, 2008, p. 7

³⁵ European Convention of Human Rights

³⁶ Protocol No. 11 to the ECHR

Commission in the Inter-American system still plays significant role and has the power to find violations in the form of reports and give recommendations to State parties.³⁷ The Commission in one of the cases uses the expression “the jurisdiction of the Inter-American system of human rights” which indicates that the jurisprudence is produced by both the Court and the Commission.³⁸ Because those filing the application before the Court in the European jurisdiction are called applicants, whereas those filing the petition in the Inter-American system are referred to as petitioners (the Commission) or representatives (the Court), these terms will be used in appropriate context.

It is particularly important to explain the organizational structure of the two systems in order to understand which case is handled by which institution. In the European system, all the cases discussed in this thesis are examined by the Court. Some were initially considered by the European Commission but since it was abolished in 1998, the Court is only taking the Commission’s work into consideration when deciding on merits. On the other hand, since the Commission in the Inter-American system continues to play significant role in creating jurisprudence, some of the cases discussed in this thesis are examined by the Commission. Cases coming from Mexico and Brazil are presented in form of a report issued by the Commission whereas the case against Dominican Republic is examined by the Court.

The European Court of Human Rights cases used for this thesis are: *Kilic v. Turkey*³⁹, *Adali v. Turkey*⁴⁰, *Gongadze v. Ukraine*⁴¹ and *Dink v. Turkey*⁴². These four cases involve murders

³⁷ Mandate and Functions of the Commission, Organization of American States website, last accessed 26 November, 2013, <http://www.oas.org/en/iachr/mandate/functions.asp>

³⁸ Inter-American Commission on Human Rights, Report No. 130/99 Case Victor Manuel Oropeza v. Mexico, 19 November 1999, para. 33

³⁹ *Kilic v. Turkey*, Application no 22492/93, judgment of 28 March 2000, European Court of Human Rights

⁴⁰ *Adali v. Turkey*, Application no 38187/97, judgment of 31 March 2005, European Court of Human Rights

⁴¹ *Gongadze v. Ukraine*, Application no 34056/02, judgment of 8 November 2005, European Court of Human Rights

⁴² *Dink v. Turkey*, Application nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2010, European Court of Human Rights

of journalists that were never punished in the state where they were committed. All four journalists wrote about topics that were controversial at the time and all of the applicants claimed that the reason for the murder was victim's journalistic activity.

The Inter-American system cases used here also involve attacks on journalists, more specifically two murders and one forced disappearance. The cases of Victor Manuel Oropeza from Mexico⁴³ and Manoel Leal de Oliveira from Brazil⁴⁴ are cases in which journalist were killed, as claimed by the petitioners, because of their journalistic activity including harsh criticism of government authorities. The case of *Gonzales Medina and family v. Dominican Republic*⁴⁵ is examined by the Court and involves a prominent columnist who wrote about electoral fraud and disappeared soon after.

The three cases from Serbia involve similar circumstances. All three journalists were killed and not only were the perpetrators never brought to justice, no trial has ever started on either of the cases. All three criticized the authorities in their work and wrote about crime and corruption in Serbia. Dada Vujasinović was killed in 1994 with a shotgun in her apartment in Belgrade, Slavko Ćuruvija was shot in front of his building in 1999 and Milan Pantić was beaten to death in 2001 in front of the building where he lived. It is believed both by families of murdered journalists and public that they were killed because of their journalistic activities, strong criticism of the authorities and their links with criminal groups in Serbia. However, the investigations into these cases never produced any results. They are still closed to the public so the facts cannot be provided with certainty.

⁴³ Report No. 130/99, Case 11.470 Victor Manuel Oropeza v. Mexico, 19 November 1999, Inter-American Commission on Human Rights

⁴⁴ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights

⁴⁵ Case of Gonzales Media and family v. Dominican Republic, judgment of 27 February 2012, Inter-American Court of Human Rights

1.4. Conclusion

This chapter provided an insight into impunity for attacks on journalists. It can be established that impunity is an alarming trend in various parts of the world, both in war but also outside of the battlefield. The issue has been addressed by academia as well as various international actors and efforts are being made in order to minimize effects of impunity.

A lack of political will to solve cases of attacks on journalists is present in many countries and it triggers responsibility under international human rights law. Serious violations of human rights occur in cases of impunity but the specificities of attacks on journalists give rise to violations of a different set of rights. The second chapter will examine the legal framework in order to establish which rights are violated and how these violations are dealt with on an international level.

CHAPTER II

International legal framework

This chapter analyzes the international legal framework. After determining what impunity is and how relevant it is in cases of attacks on journalists, I show that it has been addressed in international human rights law as well. In addition to efforts made by non-governmental and international organizations, intergovernmental systems have also condemned impunity for attacks on journalists. For the unresolved Serbian cases, this is an important step in proving that the responsibility under international human rights law exists even though it might not have been established for those particular cases.

The scope of human rights violations in cases of impunity for murders of journalists encompasses four rights: freedom of expression, right to life, right to an effective remedy, and prohibition of torture, inhuman and degrading treatment. Although all of the rights listed carry same value, special emphasis will be given to freedom of expression and right to life in relation to jurisdictions examined.

To give a structured analysis of the international legal framework concerning impunity for murders of journalists and two abovementioned rights infringed, I focus first on the human rights system of the United Nations on this matter and then examine more specific, regional legal instruments attesting protection of two rights.

2.1.The United Nations legal framework

The Universal Declaration of Human Rights (UDHR) as a foundation of international human rights legal system deals with two rights in question. The UDHR, adopted in 1948, establishes protection of both freedom of expression and right to life. Article 19 states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."⁴⁶ Similarly, right to life is stipulated in Article 3 by stating "Everyone has the right to life, liberty and security of person."⁴⁷ The establishment of protection of these two rights in the UDHR gave grounds for their further development.

The analysis of the UN human rights bodies necessitates that this section be divided in two: the first part explains the approach taken by treaty-based bodies whereas the second presents the approach taken by the charter-based bodies. Treaty-based bodies are established in order to monitor the implementation of specific treaty provisions and are quite specialized – they rely on the treaty they are established for and deal only with the issues addressed in the treaty. On the other hand, charter-based bodies are established in relation to the Charter of the UN and therefore have a much broader scope.

2.1.1. Treaty-based bodies

The treaty-based body examined in relation to impunity for attacks on journalists is the Human Rights Committee. It has been established for the purpose of overseeing the

⁴⁶ Universal Declaration of Human Rights, Article 19

⁴⁷ Universal Declaration of Human Rights, Article 3

implementation of the International Covenant on Civil and Political Rights (ICCPR). This part first presents the way ICCPR as a treaty deals with freedom of expression and right to life, and then analyze General Comments 34 and 6 produced by the Human Rights Committee on the same rights.

Article 19(2) of the ICCPR stipulates that:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.⁴⁸

The third paragraph of the same article states that this freedom carries duties and responsibilities with it and provides for circumstances in which its limitation is permitted. Similarly, Article 6 of the ICCPR provides for protection of right to life stating that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁴⁹

General Comments (GC) No. 34 and 6 address freedom of expression and right to life as granted in the ICCPR, respectively. GC No. 34 addresses freedom of opinion and expression as stipulated in Article 19 in an extensive manner. For the purposes of this research it is relevant that the Human Rights Committee clearly recognized the danger of attacks on journalists. Paragraph 23 of the GC states that journalists are often subjected to attacks and intimidation which is not in compliance with Article 19 of the ICCPR. Furthermore, it is stipulated that perpetrators should be prosecuted and victims redressed in those cases. This allows for the conclusion that the Human Rights Committee vigorously condemns impunity for attacks on

⁴⁸ International Covenant on Civil and Political Rights, Article 19(2)

⁴⁹ International Covenant on Civil and Political Rights, Article 6

journalists in GC No. 34. GC No. 6 deals with right to life generally and very briefly. Published in 1982, this document expresses that right to life is a supreme right from which no derogation is allowed, as stated in various human rights documents. Particularly relevant is that the GC states that “the deprivation of life by the authorities of the State is a matter of utmost gravity.” The relevance of this statement is that it involves killing by security forces which is the case in some of the judgments that will be discussed later. In addition to this, the GC No. 6 also encourages states to establish procedures to investigate disappearances that involve violation of right to life.

2.1.2. Charter-based bodies

Special attention is given to the Human Rights Council as well as Special Rapporteurs as part of the Special Procedures mechanism of the UN. In addition to this, a brief overview of relevant UN Security Council's documents is given. These charter-based bodies are singled out because they address impunity in an extensive manner and specifically focus on impunity for attacks on journalists.

The most relevant document on impunity for attacks on journalists is issued by the Human Rights Council. Resolution A/HRC/21/L.6 published in September 2012 addresses the safety of journalists.⁵⁰ The resolution begins by acknowledging the role of journalists for matters of public interest and goes on to express concerns about violence and attacks directed against them as well as the growing threats coming from non-state actors. The concern for impunity for attacks against journalists is clearly stipulated in the resolution with a clear call for states to conduct speedy and effective investigations, bring to justice perpetrators of these crimes and provide redress for victims. It goes further to provide recommendations for states but it also

⁵⁰ A/HRC/21/L.6, Human Rights Council, September 21, 2012, General Assembly of the United Nations

invites the international community to address the issue. In addition to the abovementioned resolution, the Human Rights Council briefly addressed the issue in its previous resolution 12/16 on freedom of expression from 2009. In this resolution, it expressed its concern for ongoing violence against journalists, particularly in armed conflicts and impunity for such violence,⁵¹ and invited states to end it. Furthermore, the Human Rights Council's predecessor until 2006, the UN Commission on Human Rights issued a resolution on impunity in 2005. Although Resolution 2005/81 addresses the issue of impunity mostly in relation to humanitarian law, it also speaks generally about human rights and impunity.⁵² On that line, the resolution urges states to end it, prosecute perpetrators of crimes and reform the system to that end.

Special Rapporteurs are part of the Special Procedures mechanism of the UN. A position of Special Rapporteur is held by an independent expert working on voluntary basis, reporting to Human Rights Council on a certain human rights theme or country situation. For the purposes of this paper, two thematic Special Rapporteurs' reports are used for this research: Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

Even though the Special Rapporteur (SP) dealing with freedom of expression dealt with protection of media workers on several occasions prior to 2008, the current SP Frank La Rue has given it particular attention. The report submitted in 2009 deals primarily with safety and protection of media professionals and journalists in conflict zones and gives recommendations on how the problem should be solved.⁵³ The subsequent report expands further upon the topic of

⁵¹ A/HRC/RES/12/16, Human Rights Council, October 12, 2009, General Assembly of the United Nations

⁵² E/CN.4/RES/2005/81, UN Commission on Human Rights, Human Rights Resolution 2005/81: Impunity, 21 April 2005, last accessed October 31, 2013, <http://www.refworld.org/docid/45377c930.html> []

⁵³ A/HRC/11/4, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 30 April 2009, last accessed November 2, 2013. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/130/32/PDF/G0913032.pdf?OpenElement>

protection of journalists and gives an insight into the situation in both armed and non-armed situations. The SP expresses concern about journalists murdered because of their journalistic activity and urges states to end impunity.⁵⁴ The last report issued by Mr. La Rue in June 2012 is devoted completely to the protection of journalists, particularly in situations outside of armed conflicts.⁵⁵ The report starts addressing the issue of protecting journalists by recognizing that it is a growing threat to democracy. The SP recognizes potential actors involved in these crimes and emphasizes the topics usually covered by journalists who were attacked (among others corruption, organized crime and human rights violations). He goes on to state that States are responsible for bringing perpetrators to justice and to condemn impunity by stressing that it exists not because of lack of legal norms but because of lack of their enforcement on national level.⁵⁶ The report also addresses existing initiatives for combating impunity and the criminalization of expression as a factor creating the chilling effect.

Among reports submitted to the Human Rights Council by Special Rapporteur on extrajudicial, summary or arbitrary executions, special attention is given to those issued in 2004 and 2010. The 2004 report briefly addressed the issue of violation of right to life by non-state actors, relevant to this thesis.⁵⁷ The SP recognized four categories of non-State actors and stressed that in cases where crimes become a pattern and Government does not respond adequately to those violations, it has a certain responsibility under international human rights

⁵⁴ A/HRC/14/23, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 20 April 2010, last accessed November 2, 2013. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf>

⁵⁵ A/HRC/20/17, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 4 June 2012, last accessed November 2, 2013. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/137/87/PDF/G1213787.pdf?OpenElement>

⁵⁶ Ibid, paragraphs 56-57

⁵⁷ E/CN.4/2005/7, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston to the Commission on Human Rights, 22 December 2004, last accessed November 2, 2013. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/101/34/PDF/G0510134.pdf?OpenElement>

law. The SP further elaborated on “due diligence”, State’s obligation to protect.⁵⁸ The report submitted in 2010 deals, *inter alia*, with killings by law enforcement officials or other security forces as well as killings by non-State actors and discusses the State’s responsibility in dealing with such cases.⁵⁹ Furthermore, the report addresses the issue of impunity and more specifically investigation, prosecution and conviction in situations of killings and gives clear recommendations to how States should address this problem.

In addition to the Human Rights Council and Special Rapporteurs, the Security Council has also addressed the issue of impunity. Resolution 1738 from 2006 dealing with protection of civilians in armed conflict is of great importance. This document relied on article 79 of the Additional Protocol I of the Geneva Conventions in relation to protection of journalists in situations of armed conflict.⁶⁰ The resolution condemns violence against journalists in armed conflict and recalls that journalists are considered as civilians. The Security Council also invites states to end impunity and prosecute perpetrators of serious violations of international law.

More and more attention has been given to impunity for attacks on journalists by both treaty-based and charter-based bodies. This proves that the trend of attacking journalists without punishing the perpetrators has become so worrisome that the international community condemned it publicly and provided for legal documents that clearly prohibit impunity. There is a global effort to end impunity and to build an environment where investigative journalism is valued, not punished.

⁵⁸ Ibid, para 69-76

⁵⁹ A/HRC/14/24, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston to the Human Rights Council, 20 May 2010, last accessed November 2, 2013. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/135/03/PDF/G1013503.pdf?OpenElement>

⁶⁰ Additional Protocol I to the Geneva Conventions, article 79

2.1.3. Other UN bodies

Other relevant UN bodies that address the issue of impunity for attacks on journalists are UNESCO and IPDC. The United Nations Educational, Scientific and Cultural Organization (UNESCO) devotes a significant part of its activities to Fostering Freedom of Expression and Safety of Journalists as its subcomponent.⁶¹ Some of the relevant UNESCO documents are Resolution 29 on the Condemnation of Violence against Journalists⁶², Belgrade Declaration on Media in Conflicts Areas in Countries in Transition⁶³, Medellin Declaration Securing the Safety of Journalists and Combatting Impunity⁶⁴ and the Carthage Declaration on press freedom and the Safety of Journalists.⁶⁵ Furthermore, UNESCO's special forum International Programme for the Development of Communication (IPDC) deals with safety of journalists as one of its Special Initiatives.⁶⁶ Relevant documents issued by the IPDC are Decisions on the Safety of Journalists and the Issue of Impunity published in 2008,⁶⁷ 2010⁶⁸ and 2012.⁶⁹

⁶¹ UNESCO, Fostering Freedom of Expression, last accessed November 2, 2013.

<http://en.unesco.org/themes/fostering-freedom-expression>

⁶² UNESCO *Resolution 29 on the Condemnation of Violence against Journalists*, 1997, last accessed November 2, 2013. http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc_resolution_29.pdf

⁶³ UNESCO *Belgrade Declaration on Media in Conflicts Areas in Countries in Transition*, 2004, last accessed November 2, 2013. <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday2009000000/belgrade-declaration/>

⁶⁴ UNESCO *Medellin Declaration Securing the Safety of Journalists and Combatting Impunity*, 2007, last accessed November 2, 2013. <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday20090000/medellin-declaration/>

⁶⁵ UNESCO *Carthage Declaration on press freedom and the Safety of Journalists*, 2012, last accessed November 2, 2013,

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/WPFD/carthage_declaration_2012_en.pdf

⁶⁶ IPDC website, Safety of Journalists, last accessed November 2, 2013.

<http://www.unesco.org/new/en/communication-and-information/intergovernmental-programmes/ipdc/special-initiatives/safety-of-journalists/>

⁶⁷ IPDC *Decision on the Safety of Journalists and the Issue of Impunity 2008*, last accessed November 2, 2013.

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2008_decision_safety_of_journalists.pdf

⁶⁸ IPDC *Decision on the Safety of Journalists and the Issue of Impunity 2010*, last accessed November 2, 2013.

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2010_safety_decision_final.pdf

⁶⁹ IPDC *Decision on the Safety of Journalists and the Issue of Impunity 2010*, last accessed November 2, 2013.

http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc28_safety_decision_final.pdf

2.2.Regional legal framework

In addition to the UN human rights system, it useful to note that the two rights infringed in cases of impunity for attacks on journalists are protected in regional human rights instruments as well. This proves that rights infringed by impunity are not only protected at the international level but also under more specific, regional systems as well. The value of regional human rights systems is that they usually allow for stronger enforcement machinery that is not possible on a global level. In this section, I show of how the following regional instruments treat freedom of expression and right to life: Charter of Fundamental Rights of the European Union, African Charter on Human and People's Rights, and Arab Charter on Human Rights. This section will intentionally not deal with the European Convention on Human Rights and American Convention of Human Rights since they will be discussed separately in Chapter III.

With regard to the protection of freedom of expression, Article 11 of the Charter of Fundamental Rights of the European Union provides that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."⁷⁰ Article 9 of the African Charter on Human and People's Rights also provides that "Every individual shall have the right to receive information" and that "Every individual shall have the right to express and disseminate his opinions within the law."⁷¹ Finally, Article 32 of the Arab Charter on Human Rights states that "The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information

⁷⁰ Charter of Fundamental Rights of the European Union, Article 11

⁷¹ African Charter on Human and People's Rights, Article 9

and ideas through any medium, regardless of geographical boundaries.”⁷² The second paragraph of the same article provides for limitations of freedom of expression.

The abovementioned documents provide for the protection of right to life as well. Article 2 of the Charter of Fundamental Rights of the European Union states that “Everyone has the right to life.”⁷³ The second paragraph prohibits death penalty. Article 4 of the African Charter on Human and People’s Rights stipulates that “Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”⁷⁴ Article 5 of the Arab Charter on Human Rights briefly states that “Everyone has the right to life, liberty, and security of person; these rights are protected by law.”⁷⁵

2.3.Conclusion

This chapter analyzed the existing legal framework on freedom of expression, right to life and impunity in relation to attacks on journalists in general. Although considerable attention have been given to these, the most extensive legal opus unfortunately lies within the United Nations mechanisms which are not binding. The work of the Human Rights Council and its Special Rapporteurs carry considerable weight in soft law when it comes to impunity for attacks on journalists but there are no enforcement mechanisms to support it. On the other hand, the regional instruments are enforceable and binding through their own judicial systems but because they are regional they are diverse and incoherent. One of the reasons why the problem of

⁷² Arab Charter on Human Rights, Article 32

⁷³ Charter of Fundamental Rights of the European Union, Article 2

⁷⁴ African Charter on Human and People’s Rights, Article 4

⁷⁵ Arab Charter on Human Rights, Article 5

impunity still prevails, one might claim, is because of the lack of coherent, unified action with binding effect on a global level to address the problem. Because there is no uniform action on a global level to pressure states to end impunity, the trend is growing. States need to take measures to end impunity but there needs to be a strong international human rights law, enforceable and clear, that will not tolerate impunity in any context. Only after states are pressured to stop human rights violations by international and intergovernmental organizations, these continued results can be expected. Waiting for states to reform their systems and implement non-binding recommendations on their own initiative might take too long and cost the world many more journalists.

Serbia is pressured into meeting the rule of law requirement in order to access the EU. However, impunity for three murdered journalists and many others physically attacked is only one of many areas of law that deserve attention. It is clear from an insight into the international legal framework given in this chapter that Serbia is responsible for impunity for attacks on journalists. In an effort to show this, next chapter engages in a comparison of two regional human rights systems, European and Inter-American, to establish rules governing cases for impunity for attacks on journalists and apply those to three Serbian murders. The third chapter examines Serbia's responsibility under international human rights law.

CHAPTER III

Comparison of the three jurisdictions

This chapter compares three jurisdictions: the European Court of Human Rights, the Inter-American system of human rights and Serbia. I use previous cases from these jurisdictions as means of comparison. The chapter is divided into two sections: first, a comparison between the European Court of Human Rights and the Inter-American system of human rights, and second, a comparison between the two regional systems and Serbia.

The first comparison establishes how the two systems address impunity for murders of journalists under its jurisdictions. This research shows that they both deal with those cases but use different approaches. The purpose of the second comparison is analyzing whether Serbia would likely be held responsible for human rights violations if examined by any of two regional systems. Because of lack of information and closed nature of investigations into the three murders in question, it is not possible to establish with certainty what the outcome would be. However the purpose of this chapter however is to examine whether Serbia is violating human rights and whether that requires it to put more effort in satisfying the rule of law requirement imposed by the EU.

3.1. Comparison between European Court of Human Rights and Inter-American System of Human Rights

Close examination of cases before the European Court of Human Rights and the Inter-American system of human rights involve five main themes:

1. The admissibility criteria in both jurisdictions
2. The approaches towards impunity for attacks on journalists taken by two human rights systems
3. Right to life considerations examined in relation to the attacks on journalists in two jurisdictions
4. Freedom of expression considerations examined in the same way
5. Other rights involved

Each theme is analyzed in a separate section in order to understand approaches taken by two systems. The subsequent conclusions are used in the second section of this chapter.

3.1.1. Admissibility

Admissibility considerations are essential for submitting an application both systems. The rules for admissibility are laid down in the two Conventions and present the first step in accessing the courts.

The ECHR and the ACHR stipulate the admissibility rules in a similar manner. They both address the issue in separate provisions, namely Articles 46 and 47 of the ACHR and Article 35 of the ECHR. Both Conventions provide for the rule of exhaustion of domestic remedies which requires that all legal “remedies under domestic law have been pursued and exhausted.”⁷⁶ Furthermore, both documents ask that an application is filed “within a period of six months from the date on which the final decision was taken.”⁷⁷ Conventions also stipulate, *inter alia*, that the

⁷⁶ Article 46 (1) of the ACHR

⁷⁷ Article 35 (1) of the ECHR

case cannot be pending in front of any other international court, that it may not be anonymous and that it cannot be examined if found to be groundless.

In spite of similarities in ruling on admissibility envisioned in the two Conventions, there are significant differences. The ACHR gives additional attention to situations in which the rule that requires exhaustion of domestic remedies as well as the six months rule do not apply. Article 46 (2) of the American Convention lists those exceptions:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.⁷⁸

The additional section pertaining to the exceptions to the main rule is of utmost significance in cases of impunity for crimes. In cases in which perpetrators of crimes were never punished, these exceptions allow for a petition to be lodged even though six months after the last decision have passed. This is obviously the case in situations where the judgment was never rendered or when domestic remedies have not been exhausted because they were not available. The European system of human rights, as shown earlier, does not envision these possibilities and therefore limits access to the Court more so than the Inter-American Commission does.

The admissibility analysis was performed in all three cases in the Inter-American system of human rights examined for this thesis. In case of Mr. Oropeza, the Commission found that the exception to the exhaustion of domestic remedies rule under Article 46 (2) (c) applies in a case in which material or intellectual perpetrators to the crime have not been tried or convicted eight

⁷⁸ Article 46 (2) of the ACHR

years after and the investigation, even though it is still open, it is futile.⁷⁹ The exception of unwarranted delay was also applied in the case of Mr. Oliveira where similar considerations were in place. In that case the Commission also found that the petition was lodged within a reasonable period of time because of the specific situation in this case.⁸⁰ Two preliminary objections submitted by the Dominican Republic in the case of Mr. Medina concerning the two aforementioned rules were also rejected.⁸¹

Conversely, the European Court of Human Rights does not apply these exceptions in its ruling. Some exception was given in the case of *Gongadze v. Ukraine* in which the six-month rule was not strictly applied due to exceptional circumstances. Specifically the applicant, Mr. Gongadze's wife, lodged an application while the criminal investigation was still in process. Since Mr. Gongadze's body was found decapitated, the authorities spent years identifying the body (the last identification occurred in 2005 whereas the application before the Court was lodged in 2002). Due to these exceptional circumstances, the six months rule was not applied by the Court.⁸² However, this case was rather an exception than the rule. The European Court of Human Rights is more inclined to strictly follow the wording of the Convention and look at the date when the last decision was made by the authorities.

Thus, the Inter-American system lays down provisions that specifically envision cases of impunity and allows for the Commission and the Court to examine those. On the other hand, the

⁷⁹ Report No. 130/99, Case 11.470 Victor Manuel Oropeza v. Mexico, 19 November 1999, Inter-American Commission on Human Rights, paras. 20-21

⁸⁰ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, para. 40

⁸¹ Case of Gonzales Media and family v. Dominican Republic, judgment of 27 February 2012, Inter-American Court of Human Rights, paras. 28-34

⁸² *Gongadze v. Ukraine*, Application no 34056/02, judgment of 8 November 2005, European Court of Human Rights, paras. 157-158

European Court of Human Rights is stricter in its application of the admissibility rules and does not allow exceptions in cases of impunity under its jurisdiction.

3.1.2. Approaches towards impunity

One of the essential comparative themes for this thesis is how the two human rights systems treat impunity for attacks on journalists. Depending on the rights protected by the Conventions, their wording and interpretation produce different approaches. In order to show these differences, this subsection looks at which rights are invoked in cases of impunity.

The four cases on impunity for murders of journalists before the European Court of Human Rights primarily deal with alleged violations of right to life (Article 2), freedom of expression (Article 10) and right to an effective remedy (Article 13). Depending on the particular circumstances of each case, additional alleged violations of prohibition of torture, right to respect for private and family life and right to a fair trial were encountered but those arose in exceptional circumstances irrelevant to this thesis.

The cases examined in the Inter-American system of human rights differ because of the different outcomes. In cases of killings of journalists before the Commission, alleged violations involved right to life (Article 4), freedom of thought and expression (Article 13), right to a fair trial (Article 8) and right to judicial protection (Article 25). The case dealing with forced disappearance of a journalist before the Inter-American Court of Human Rights examined whether there were violations of right to life, freedom of expression, right to juridical personality, right to personal liberty and right to humane treatment to the detriment of Mr. Medina. The Court also examined, *inter alia*, whether there were violations of Articles 8 and 25 to the detriment of Mr. Medina and his family.

From simply the listing of articles examined in the two jurisdictions, certain similarities as well as differences can be spotted. Both systems deal with right to life violations in cases of murders and forced disappearance of journalists. On the other hand, Inter-American Commission of Human Rights examines alleged violations of freedom of expression whereas the European Court refused to do so. This is the biggest difference relevant for this thesis. Right to life and freedom of expression considerations by the two systems are examined separately below. In the jurisprudence of the Inter-American system the right to judicial protection in conjunction with right to a fair trial is always examined to the detriment of the petitioners/representatives, not to the victim himself. On the other hand, right to a fair trial is not examined in the European Court of Human Rights in cases of impunity for murders of journalists. Right to judicial protection envisioned in Article 25 of the ACHR is not singled out as a separate right in the ECHR.

The similarities and differences between the two jurisdictions allow for a clear distinction between approaches towards impunity. Similarities, such as the examination of right to life violation are discussed separately here in order to show whether the two systems have the same approach to this particular right. Furthermore the differences, such as the freedom of expression examinations, will also be discussed in a separate section. Here the approaches in the two systems are shown and explained as to why they access it in a different manner. Other rights typical for each jurisdiction and relevant to this research will also be discussed separately.

3.1.3. Right to life

As mentioned before in section 3.1.2, the European Court of Human Rights and the Inter-American system of human rights have different approaches to impunity. Key difference is the

approach they take towards the examination of right to life violation in cases of attacks on journalists.

Both the ECHR and the ACHR entail legal provisions providing for protection of right to life. Article 2 of the ECHR states that “Everyone’s right to life shall be protected by law.”⁸³ In addition to this, the article gives exceptions to the general rule that no one can be deprived of their life intentionally and goes further to list exceptions to right to life in Article 2 (2). Similarly, Article 4 of the ACHR stipulates: “Every person has the right to have his life respected. This right shall be protected by law [...]. No one shall be arbitrarily deprived of his life.”⁸⁴ Both jurisdictions examine right to life. However, the main difference is how much in detail they go into its examination. This section provides for thorough analysis on how both systems address alleged violations of right to life in cases dealing with attacks on journalists.

The European Court of Human Rights gives considerable weight to the right to life examination in its cases. However, the approach changed from the first case examined (judgment on murder of Mr. Kilic from 2000) to the case from 2010. This development is shown through the analysis of four cases examining right to life.

The European Court of Human Rights divides the examination of right to life violations in two: the substantive and the procedural elements of right to life. However, these concepts were not used in the beginning, although they were in place. In *Kilic v. Turkey*, the Court examines two main elements in the murder of Mr. Kilic, a journalist who worked for a controversial newspaper that reflected Turkish Kurdish opinion and was eventually closed because of numerous attacks on its personnel and offices. The Court first examines the alleged failure to protect Mr. Kilic’s life and then proceeds to examine the second element, the alleged

⁸³ Article 2 of the ECHR

⁸⁴ Article 4 of the ACHR

inadequacy of the investigation.⁸⁵ In *Adali v. Turkey* the applicant, Mr. Adali's wife claimed that her husband was killed either by or with the connivance of State authorities which is the first element that the Court examined. The second part of right to life examination includes analysis of the alleged inadequacy of the investigation.⁸⁶ In the 2006 case of forced disappearance and death of Mr. Gongadze in Ukraine, the Court divides the examination in two parts: the substantive part that analyzes State's alleged failure to protect journalist's life and the procedural part that analyzes the failure to investigate the case.⁸⁷ The same wording is used in the 2010 case *Dink v. Turkey*.⁸⁸

Both elements of right to life examined in the European Court of Human Rights contain a test, certain criteria that has to be fulfilled for the Court to establish a violation. Starting from 2000 when the Kilic judgment was issued, to the Dink judgment in 2010, the Court uses the same test for the substantive element of right to life. The procedural element did not contain a test in 2000 whereas it is used in the 2005 case to analyze the adequacy of investigation.

Starting from the 2000 Kilic case, the Court uses the same test to establish whether there has been a violation of the substantive part of right to life. The Court starts with general principles established in the Osman judgment that require the State to take appropriate steps to safeguard the lives of persons under its jurisdiction by taking several steps. These steps involve

[...] putting in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law-enforcement machinery for the prevention, suppression and punishment [...] It also extends in appropriate circumstances to a

⁸⁵ *Kilic v. Turkey*, Application no 22492/93, judgment of 28 March 2000, European Court of Human Rights, paras. 62-83

⁸⁶ *Adali v. Turkey*, Application no 38187/97, judgment of 31 March 2005, European Court of Human Rights, paras. 211-233

⁸⁷ *Gongadze v. Ukraine*, Application no 34056/02, judgment of 8 November 2005, European Court of Human Rights, paras. 159-180

⁸⁸ *Dink v. Turkey*, Application nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2010, European Court of Human Rights

positive obligation on the authorities to take preventive operational measures to protect an individual [...] whose life is at risk [...]⁸⁹

This positive obligation on the State however should not be interpreted in such a way as to impose disproportionate burden on the authorities. The Court finally provides criteria needed to be fulfilled in order for a positive obligation to be imposed on the State:

For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers, judged reasonably, might have been expected to avoid that risk.⁹⁰

In judgments analyzed in this thesis, the Court separately examines whether real and immediate risk to a person existed and whether authorities were aware of it and then proceeds to examine whether appropriate measures were undertaken to protect the person at risk. If this test fails, the Court will establish a violation of the substantive aspect of right to life.

In an effort to determine the risk and whether the authorities were aware of it, the Court typically looks at whether the journalist reported to the authorities that he/she was threatened. In addition, reports or any type of reliable data that would confirm that the situation under which the journalist worked put him at risk is considered. Mr. Kilic, Mr. Gongadze and Mr. Dink asked for protective measures from the authorities before they were killed. In Mr. Kilic's case it was obvious that the authorities knew that there was a risk because of the existence of a report which explained the situation of the region where Mr. Kilic worked.⁹¹ The similar approach was taken in the case of Mr. Gongadze, where the Court took into consideration 18 journalists that were

⁸⁹ *Osman v. the UK*, judgment of 28 October 1998, European Court of Human Rights, p. 3159, para. 115

⁹⁰ *Ibid*, p. 3159-3160, para 116

⁹¹ *Kilic v. Turkey*, Application no 22492/93, judgment of 28 March 2000, European Court of Human Rights, paras. 67-68

murdered in Ukraine since 1991⁹² and in the case of Mr. Dink, who was under the attack of extreme nationalist groups.⁹³

If the State authorities were aware of the risk, to determine whether they took appropriate measures to protect the journalist the Court looks at the behavior of the authorities that had the information and whether they were independent. The independence requirement is particularly important in cases where it is suspected the state officials are involved. In all three cases mentioned, the Court found a violation of the substantive part of right to life. The case of murder of Mr. Adali was different because the applicant claimed that he was killed by or with connivance of state authorities. The Court applied careful scrutiny to examine whether it could establish “beyond reasonable doubt” State involvement. Since the applicant could not substantiate her claims, the Court found no violation.⁹⁴

The procedural element of right to life examination refers to the adequacy of the investigation carried out. The Court did not use any particular criteria in *Kilic v. Turkey* but five years later, in *Adali v. Turkey*, it used certain criteria to establish whether the investigation was adequate. The Court starts out with general principles stating that the obligation to protect under Article 2 read in conjunction with Article 1 requires a certain form of effective official investigation. The form is not relevant as long as the purpose of investigation is fulfilled – to implement domestic laws and to ensure accountability.⁹⁵

The Court lists three requirements that need to be fulfilled for an investigation to be considered effective. As a prerequisite, the State must act on its own motion once it becomes

⁹² *Gongadze v. Ukraine*, Application no 34056/02, judgment of 8 November 2005, European Court of Human Rights, para. 168

⁹³ *Dink v. Turkey*, Application nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment of 14 September 2010, European Court of Human Rights

⁹⁴ *Adali v. Turkey*, Application no 38187/97, judgment of 31 March 2005, European Court of Human Rights, para. 219

⁹⁵ *Ibid*, para. 221

aware of the matter and not leave the initiative of the investigation to the next of kin. Furthermore, the next of kin must be involved in the investigation. The first requirement for an effective investigation is that those responsible for and involved in carrying out the investigation are independent from those implicated in the crime. This requires not only institutional, but also practical independence. Second, the investigation must be capable of leading to a determination whether the use of force was justified and to the identification and punishment of those involved. This is the obligation of means, not of results and it therefore puts a burden on a State to take reasonable steps to investigate. Third, investigation must be prompt and satisfying the requirement of reasonable expedition.⁹⁶

Depending on the circumstances of the cases, the Court applies these criteria to the facts provided in order to determine whether the investigation is effective. In addition to the main requirements, it is important to note that the Court considered the fact that authorities did not examine whether the journalist was killed due to his journalistic activity as one of the failures in the investigation (this was used in the *Kilic*⁹⁷ and *Adali*⁹⁸ judgments). In all four cases examined in this jurisdiction, the Court found that the investigations carried out did not satisfy the requirements of the procedural component of the right to life.

As shown, the European Court of Human Rights examines right to life violations in great detail. Using strict criteria in order to determine whether the violation occurred allows for the Court to be very precise in its judgments. On the other hand, as will be shown below, the Inter-American system of human rights consisting, of the Court and the Commission, does not examine right to life violations in such detailed manner.

⁹⁶ Ibid, paras. 221-224

⁹⁷ *Kilic v. Turkey*, Application no 22492/93, judgment of 28 March 2000, European Court of Human Rights, para. 82

⁹⁸ *Adali v. Turkey*, Application no 38187/97, judgment of 31 March 2005, European Court of Human Rights, para.

In the first case analyzed in the Inter-American system, the case of Mr. Oropeza who was killed with 14 stabs to the torso in the office where he practiced medicine, the Commission did not elaborate on right to life examination. It found no violation because the authorities cannot be held responsible for protecting Mr. Oropeza's life since he never reported to the authorities that he was threatened.⁹⁹ However, the Court deals more in detail with right to life violation in the chronologically next case analyzed for this thesis, the case of Mr. Oliveira from 2010.

In this case the Commission looked at two elements of right to life: whether the State failed in its obligation to respect journalist's life and whether the State failed in its obligation to guarantee the right to life of the journalist. The right to life analysis starts with the general principles, which establish that there is a duty on the states to prevent, investigate, punish and restore any human rights violations. In the first part, the Commission looks at whether the Brazilian authorities participated in the homicide of the journalist. The second part aims at establishing whether the state violated its duty to investigate the murder, punish the perpetrators and redress journalist's next of kin. To do so, the Commission states that the investigation will be considered effective if it is "rapid, impartial and conducted with all due diligence."¹⁰⁰ In determining whether this requirement was satisfied, the Commission looks at, *inter alia*, the fact that the material and intellectual perpetrators of the crime were never identified and sanctioned. Finally, when both involvement of the State in the murder and its failure to conduct an effective investigation are established, the Commission finds violation of both elements of the right to life.¹⁰¹

⁹⁹ Report No. 130/99, Case 11.470 Victor Manuel Oropeza v. Mexico, 19 November 1999, Inter-American Commission on Human Rights, para. 26

¹⁰⁰ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, para. 87

¹⁰¹ Ibid, paras. 85 and 90

In the case of *Gonzales Medina and family v. Dominican Republic* decided by the Court in 2012, the examination of whether there was a breach of Mr. Medina's right to life because of his forced disappearance is linked to other rights and very short.¹⁰² In this case, the Court only reiterates that the right to life is violated in cases of forced disappearances where after the person is killed, the corpse is concealed in order to erase material traces of the crime and provide impunity to the perpetrators. No specific examination is carried out in this part. Different analysis of right to life violation is carried out in a second part of the judgment that looks at right to life in conjunction with Article 8 and 25, which will be discussed later in this chapter.

Finally, it can be concluded that same weight is not given to right to life examination in cases of murders of journalists in the two jurisdictions. These differences are particularly relevant when applied to cases in Serbia to determine its responsibility under international human rights law. The European Court of Human Rights first clearly distinguishes substantive and procedural element of the right and then develops a precise test in order to determine whether a violation of occurred. On the other hand, although the Inter-American Commission uses similar division in two parts as seen in the European Court, there are no precisely defined tests for establishing whether the State violated right to life. From this it can be inferred that the two human rights systems do not give the same attention and work on right to life considerations. One possible explanation for this difference might come out from the analysis of how freedom of expression is being examined in two jurisdictions, explained in the following subsection.

¹⁰² Case of *Gonzales Medina and family v. Dominican Republic*, judgment of 27 February 2012, Inter-American Court of Human Rights, paras. 185-186

3.1.4. Freedom of expression

The two human rights systems address the right to life violations for impunity for attacks involving journalists differently. Similarly, they also take a different stance on freedom of expression.

Freedom of expression is protected under the ECHR in Article 10. This article states:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.¹⁰³

However, freedom of expression is a qualified right and the ECHR provides for a limitation clause in the second paragraph.¹⁰⁴ Article 13 of the ACHR states that “everyone has the right to freedom of thought and expression.”¹⁰⁵ It further states:

This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.¹⁰⁶

Aside from limitation clause similar to the one seen in other international documents, this article also pays particular attention to the possibility of abuse of government power in controlling media.

Although the wording of two legal instruments in question is similar, there are significant differences in the interpretation. It is claimed by applicants/petitioners in both human rights systems that because journalists in question were killed due to their journalistic activity, this

¹⁰³ Article 10 of the ECHR

¹⁰⁴ Ibid.

¹⁰⁵ Article 13 of the ACHR

¹⁰⁶ Ibid.

amounts to violation of freedom of expression. This claim is assessed differently in the two human rights systems.

In two out of four cases before the European Court of Human Rights, the applicants claimed that murders of the journalist (Mr. Kilic and Mr. Adali) amount to a violation of freedom of expression. In *Gongadze v. Ukraine* the applicant did not claim a violation of Article 10, and in *Dink vs. Turkey* the Article 10 claim refers to the fact that Mr. Dink was found guilty of offending Turkey and not because he was killed due to his journalistic activity.

In the two cases where the applicants claimed violation, the Court found no need to examine the claim. In both *Kilic v. Turkey*¹⁰⁷ and *Adali v. Turkey*¹⁰⁸, the Court found violations of right to life. Therefore, the Court stated that, because the same facts were already analyzed under Article 2 claim, there is no need to examine the Article 10 claim separately. By taking this approach, the European Court of Human Rights chooses not to address murders of journalists as a violation of freedom of expression.

On the other hand, in the Inter-American system of human rights, considerable weight is given to freedom of expression claims. In both cases of murder, of Mr. Oropeza and Mr. Oliveira, the Commission examined the alleged violation of Article 13 in depth. The case before the Court was not examined due to *ratione temporis* limitations.¹⁰⁹

The Court states that right to freedom of expression envisioned in Article 13 of the ACHR has a double dimension: individual and collective.¹¹⁰ The Commission has upheld this concept by holding that the individual dimension of freedom of expression encompasses right of

¹⁰⁷ *Kilic v. Turkey*, Application no 22492/93, judgment of 28 March 2000, European Court of Human Rights, para. 87

¹⁰⁸ *Adali v. Turkey*, Application no 38187/97, judgment of 31 March 2005, European Court of Human Rights, para. 260

¹⁰⁹ *Case of Gonzales Media and family v. Dominican Republic*, judgment of 27 February 2012, Inter-American Court of Human Rights, paras. 192-193

¹¹⁰ Report No. 130/99, Case 11.470 Victor Manuel Oropeza v. Mexico, 19 November 1999, Inter-American Commission on Human Rights, para. 51

individuals to “express, transmit and disseminate their thoughts” whereas the collective dimension entails “right of persons to receive such information as other may impart to them without any interferences that may distort it.”¹¹¹ In a case dealing with murder of journalist, the Commission found that the lack of an exhaustive investigation also constitutes a breach of freedom of expression. It states that:

[...] the murder of a journalist clearly has a "chilling effect", most notably on other journalists but also on ordinary citizens, as it instills the fear of denouncing any and all kinds of offenses, abuses or illegal acts.¹¹²

The Commission therefore examines impunity as a failure of the State to investigate attack on a journalist in each case in order to establish whether a violation of freedom of expression occurs.

In the case of the murder of Mr. Oropeza, the Commission accepted information provided by the petitioners that he was threatened and murdered because of his criticism of authorities. It further established that Mr. Oropeza was threatened because of his journalistic activities. The Mexican state on the other hand never tried or punished the perpetrators of this crime, which has a big impact on society as a whole. Therefore the Commission found that the failure of the State to investigate and punish the material and intellectual perpetrators of the murder of Mr. Oropeza amounts to a breach of his right to freedom of expression, while at the same time it amounts to a violation of freedom of expression of all citizens in general to receive this information.¹¹³

The same approach is taken by the Commission in the case of murder of Mr. Oliveira. It found that both individual and social dimensions of freedom of expression were violated. In finding that the individual dimension was in breach, the Commission found that the journalist

¹¹¹ Ibid, para. 52

¹¹² Report No. 5/99, Case 11.739 Hector Felix Miranda, 23 February 1999, Inter-American Commission on Human Rights, para. 52

¹¹³ Report No. 130/99, Case 11.470 Victor Manuel Oropeza v. Mexico, 19 November 1999, Inter-American Commission on Human Rights, paras. 56-61

was killed in order to silence him because his articles denounced irregularities of certain public officials. When examining the social dimension of the right, the Commission again stressed the “chilling effect” the lack of investigation has on all citizens and stressed that impunity especially inhibits the exercise of the right when it is aimed at criticizing civil servants. In finding a breach of right to freedom of expression, the Commission looked at the facts of the case and all the irregularities that occurred in the investigation.¹¹⁴

From the cases examined by the Commission, it can be concluded that not only is the right to freedom of expression examined in the Inter-American system of human rights, it is examined in great detail. The right itself is given two dimensions, which is not the case in the European system and the Commission finds that impunity for murders of journalists without any doubt amounts to violations of both dimensions.

Therefore, the difference between the two jurisdictions in examining freedom of expression violations in cases of impunity for attacks on journalists is clear. Whereas the Inter-American system has a developed approach to these situations and examines in depth two dimensions of the right, the European system decides not to examine the matter since the facts are the same as those examined under right to life claim. It is clear that both the Court and the Commission in the Inter-American system use the facts of the case where the lack of effective investigation was established but they use it to further elaborate on effects that impunity has on freedom of expression. It is therefore easy to conclude that the European Court of Human Rights chooses not to address freedom of expression claims although it is clear from the jurisprudence of the Inter-American system of human rights that it is possible and being done. The

¹¹⁴ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, paras. 91-103

consequence of different approaches will be visible in application of rules to Serbian cases below.

3.1.5. Other rights

In section 3.1.2, which examined approaches to impunity taken in the two jurisdictions in question, it was stressed that in the jurisprudence of the Inter-American system impunity is always addressed under Articles 8 and 25 in relation to Article 1.1 of the American Convention. This involves consideration of right to a fair trial and right to judicial protection in relation to the general obligation of the State to respect and protect rights of persons under its jurisdiction. This subsection therefore analyzes how the Court and the Commission examine impunity for attacks on journalists under the abovementioned articles.

Article 8 of the ACHR provides for protection of right to a fair trial. This provision states:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations [...]¹¹⁵

Furthermore, Article 25 of the ACHR that provides for the right to judicial protection stipulates:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court of tribunal for protection against acts that violate his fundamental

¹¹⁵ Article 8 of the ACHR

rights recognized by the constitution or laws of the state concerned or by this convention

[...] ¹¹⁶

In examining Articles 8 and 25 violations in relation to Article 1 of the ACHR, the Commission analyzes the investigative process conducted by the State. In the 1999 case of the murder of Mr. Oropeza, the Commission looks at two main aspects: reasonable period of time and effectiveness of the investigation.¹¹⁷ When analyzing whether the time taken to investigate the crime was reasonable it uses the following criteria: complexity of the matter; the procedural steps taken by the interested parties; and the conduct of judicial authorities. In examining the effectiveness of the investigation, the Commission reiterates that the obligation to investigate is “the obligation of means or behavior”¹¹⁸, it must taken in a serious manner not as a formality, and must be taken by the state instead of waiting on the initiative of victim or his relatives. The Court established “that States must prevent, investigate and punish any violation of the rights recognized in the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted.”¹¹⁹ In examining the two elements, the Commission used the criteria given and facts of the case to establish that the Mexican state violated Articles 8 and 25 in relation to Article 1.1 of the ACHR.

The Commission further develops Articles 8 and 25 considerations in its 2010 Oliveira case.¹²⁰ In addition to the above listed general principles, the Commission analyzed three elements: whether the investigation was conducted with due diligence, whether criminal proceeding was concluded within a reasonable time period, and whether the crime remains

¹¹⁶ Article 25 of the ACHR

¹¹⁷ Report No. 130/99, Case 11.470 Victor Manuel Oropeza v. Mexico, 19 November 1999, Inter-American Commission on Human Rights, paras. 29-44

¹¹⁸ Ibid, para. 33

¹¹⁹ Ibid, para. 36

¹²⁰ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, paras. 112-141

unpunished. In analyzing the first question, the Commission stated that in order for investigation to be effective, all investigative actions must be carried out.¹²¹ After establishing the shortcomings of the investigation into the murder of Mr. Oliveira, the Commission found that the State violated Article 8 (1) by failing to investigate with due diligence. When examining the period of time question, the Commission used the same criteria as in the case of murder of Mr. Oropeza and found that Article 8 (1) in terms of reasonableness of the length of proceedings was not satisfied.¹²² Finally, in analyzing the last question, the Commission found that the fact that perpetrators of the murder were never identified and sanctioned amounts to a violation of Article 25, namely right to an effective recourse to punish the perpetrators, in conjunction with Article 1 (1).¹²³

In the case of Mr. Medina, examined by the Inter-American Court of Human Rights, Articles 8 and 25 are examined in relation to six other articles.¹²⁴ The Court reiterated previously established general principles and proceeded to examine the effectiveness of the investigation and whether its length satisfied the reasonable time period requirement. The reason why this case involved examination so many rights at once is that it involved forced disappearance and the body of Mr. Medina was never found. Using the same criteria established before, the Court found that the investigation into this case was not carried out with due diligence. Furthermore, an investigation that lasts for 13 years without giving any results does not satisfy the criteria for establishing that it lasted for a reasonable period. Therefore, the Court found violations to all the

¹²¹ Ibid, para. 118

¹²² Ibid, para. 137

¹²³ Ibid, para. 140

¹²⁴ Case of Gonzales Media and family v. Dominican Republic, judgment of 27 February 2012, Inter-American Court of Human Rights, paras. 196-266

rights listed in conjunction with Articles 8 and 25 except for freedom of expression due to *ratione temporis* limitation.¹²⁵

The examination by the Inter-American system of human rights regarding the right to a fair trial and right to judicial protection are unparalleled compared to the European system. The European Court of Human Rights never addresses impunity for attacks on journalists under right to a fair trial. Furthermore, right to judicial protection is not separately established in the ECHR. This is one of the most relevant differences between two jurisdictions.

3.1.6. Outcomes of the comparison of the two regional human rights systems

Based on the outcomes from each section of comparison between the European Court of Human Rights and the Inter-American system of human rights, it can be concluded that impunity for attacks on journalists amounts to human rights violations in both although in different ways. Five comparative themes were analyzed: admissibility criteria, general approach to impunity, right to life, freedom of expression, and other rights involved, in particular rights to a fair trial and judicial protection under ACHR. It has been established that the admissibility criteria in the ACHR allow for cases of impunity to have easier access to the Commission and the Court. Furthermore, although both jurisdictions examine right to life violations, the differences are significant. Right to life examination is more detailed in the European than the Inter-American system. Whereas the Inter-American system analyzes freedom of expression claims in great detail, the European Court of Human Rights does not do so. While the main analysis of investigation process is done under right to life in the European system, it is thoroughly examined under rights to a fair trial and judicial protection in the Inter-American system. These

¹²⁵ Ibid, paras. 264-266

conclusions together allow for a final conclusion of this section, that the examinations on impunity for attacks on journalists, although carried out in a similar manner, are substantially different in the two jurisdictions. These differences are relevant because they show that even though impunity for attacks on journalists is viewed differently in two regional systems, it still evokes violation of basic human rights enshrined in the ECHR and the ACHR. These considerations are applied to Serbian cases in the following section.

3.2. Comparison between two regional human rights systems and Serbia

The comparison between the European and Inter-American system of human rights on the five themes analyzed shows that impunity is examined, but in different ways. This section uses these conclusions in order to examine Serbian cases of murders of journalists. The purpose of this section is to apply rules established in the two regional jurisdictions separately to Serbian cases in order to determine whether the Serbian state is violating international human rights law by allowing impunity for murders of three of its journalists.

Serbian cases used in this thesis involve murders of three journalists between 1994 and 2001, namely Dada Vujasinović, Slavko Ćuruvija and Milan Pantić. Since none of these cases are resolved, facts on these murders are under speculation and therefore cannot be used with certainty. However, there are some very general facts available to the public that will be presented here.

Dada Vujasinović was a 30-year-old journalist and editor of a newspaper called “Duga” at the time of her death. She wrote about the horrors of the Yugoslav civil war until 1992 and about politicians and criminals in Serbia under Milošević’s regime the next two years. She was

found dead in her apartment in April 1994. The regime at the time stated that she committed suicide with a shotgun. In January 2009 the prosecution announced that Vujasinović was killed since the wounds on her body could not have been self-inflicted. A murderer was never found nor who ordered her death and the case is still in the investigation phase with the Public Prosecutor's Office.¹²⁶

Slavko Ćuruvija was a 49-year-old journalist, publisher and founder of several newspapers in Serbia at the time of his death. He wrote critically about President Milošević's regime and was publicly threatened by President's wife, Mirjana Marković. Just few days before the murder, she was branded him "the state enemy Number One". He was shot during the NATO bombing of Serbia in April 1999 in front of his home. It is speculated that Ćuruvija was constantly followed by officers of the Serbian state security service until the day of his murder and officers belonging to this service were assumed to be linked with murder itself. It is speculated in public that he was killed on order by two officers of state security service. Ćuruvija's murderers were never found and the case is still being investigated by the Public prosecution office in Belgrade. A trial was never instigated.¹²⁷

Milan Pantić was a 47-year-old journalist from Jagodina at the time of his murder. He wrote about links between criminals and politics in that part of Serbia. He was beaten to death in front of his building in June 2001. The perpetrators of this murder were never found nor those who ordered it. In 2005, the Minister of Police at that time Dragan Jočić said that he was murdered by mistake since those who were sent were only suppose to scare him, not to kill him. This is a very indicative statement made by a public official in charge of the investigation before

¹²⁶ International Press Institute, Serbia: 19 years of collecting, hiding and losing evidence, last accessed 27 November 2013, <http://www.freemedia.at/home/singleview/article/serbia-19-years-of-collecting-hiding-and-losing-evidence.html>

¹²⁷ Ibid.

the trial even started. The case is still under investigation and the trial for murder of Milan Pantić was never instigated.¹²⁸

In order to examine these murders it is only possible to assume that if the two human rights systems were to find that certain actions were attributable to the State, they would find a violation of a right in question. This is why Serbian cases will be examined in form of hypothetical cases. In this section, the same five comparative themes will be applied to Serbian cases.

3.2.1. Admissibility

Serbia is under the jurisdiction of the European Court of Human Rights and it is possible to bring cases only before this regional venue. However, for the purposes of this thesis I will apply rules of both regional systems analyzed.

As mentioned section 3.1.1 dealing with admissibility rules in two regional human rights systems, the Inter-American system allows for exceptions not envisioned under the ECHR. Because of strict rules under the ECHR, none of the cases can be examined by the European Court of Human Rights because the six months period after the last decision expired. In case of Dada Vujasinović, the decision to change the type of cases from suicide to murder might have been used but since it was made in 2009, it is not possible to do so now.

Conversely, the exceptions stated in Article 46 of the ACHR might be applicable to Serbian cases. Because investigations are still open but never brought any results for 19 years in case of Vujasinović, 14 years in case of Ćuruvija and 12 years in case of Pantić, it is reasonable

¹²⁸ Ibid.

to assume that the Commission might use the exception of unwarranted delay in these cases.¹²⁹ If this would be the case, all three cases would be heard before the Commission.

The result of applications lodged before the two venues would therefore differ. Whereas under the ECHR none of the cases would be heard before the Court, it is reasonable to expect that under the ACHR they would under the exception stated in Article 46 (2) (c).

3.2.2. Approaches towards impunity

In analyzing cases of impunity for attacks on journalists, some patterns were recognized in both jurisdictions. Since the cases of three murdered journalists in Serbia are similar to cases examined before the two regional human rights systems, it is reasonable to expect that same rules and same manner of examination would apply.

Under the ECHR, three Serbian cases would be examined under right to life whereas freedom of expression claim would not be examined. On the other hand, based on cases analyzed under the ACHR, three murders would be examined under right to life, freedom of thought and expression, and right to a fair trial and judicial protection in relation to Article 1 (1) of the Convention. These rights will be analyzed separately in the following sections.

It is clear that different approaches to impunity established in the first section of this chapter would be applied on Serbian cases if brought before these venues. However, what is relevant for this thesis is whether the European Court of Human Rights and Inter-American Court/Commission would find Serbia to be in breach of these particular rights, if applications were lodged. The following three sections address this question under right to life, freedom of expression and rights to a fair trial and judicial protection of the ACHR.

¹²⁹ Article 46 (2) (c) of the ACHR

3.2.3. Right to life

Despite the fact that the investigations to the murders of three Serbian journalists are closed for public and there is limited knowledge of facts of cases, examination of right to life violation can be performed. Rules governing the European Court of Human Rights and the Inter-American system of human rights established in section 3.1.3 of this chapter will be applied to the three Serbian cases in question.

The European Court of Human Rights examines right to life violations by analyzing both its substantive and procedural element. Breach of each of the elements was established by using tests presented by the Court in the form of general principles. As established in section 3.1.3, in order to satisfy the substantive requirements of right to life, the State has to put in place a criminal law prohibiting crime and law-enforcement machinery to support it. In the period when three journalists were murdered, namely between 1994 and 2001, Serbia had an enforceable criminal law that prohibited violations of right to life.¹³⁰ Furthermore, law enforcement machinery was also in place to support it. Although this is the dictatorship period of Slobodan Milošević, president of Serbia, who was tried and died in the International Criminal Tribunal for the former Yugoslavia (ICTY) and was known for his cruel regime, it is likely that the requirement of legal enforcement mechanism would be fulfilled.

In addition to this requirement, it was established that the State has a positive obligation to protect life in cases in which it was found that the victim was at real and immediate risk and the authorities were of it. Furthermore, the State needs to take appropriate measures to protect the life of the person at risk. Unfortunately, this is hard to analyze in the case of Serbia. Since all

¹³⁰ Articles 47, 48 and 49 of the 7th chapter of the Criminal code of the Republic of Serbia; Krivicni zakon Republike Srbije Sluzbeni glasnik 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 57/87, 6/89, 42/89, 27/90, 96/90, 49/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/2002, 11/2002, 39/2003, 67/2003

three journalists wrote about sensitive topics, criticizing the government and revealing connections with criminal groups, it can be assumed that they may be targets of an attack. Although the Milošević regime was known for its cruelty, it is not certain whether this would be enough to prove that real and immediate risk for journalists in question existed but it can be reasonably expected. Mr. Pantić who was murdered in 2001, after Milošević was overthrown in October 2000, wrote about criminal activities that were still very active at that time. Furthermore, the authorities are in possession of information whether the journalists ever reported that they were threatened. From the jurisprudence of the Court, it can be assumed that this is the main element to be examined in order to determine that authorities were aware of the risk. Ćuruvija claimed that he was followed right before the murder and he was publicly threatened by the President's wife which would be enough to assume that the authorities were aware his life was at risk.

If the Court is to establish that the State authorities were aware of the risk, it would proceed to whether they took any appropriate measure to protect the journalist. The burden of proof in this situation falls on the State to prove that it did everything possible so without the real trial, it is hard to even assume what the outcome would be. Therefore, the only conclusion coming from the examination of the substantive element of right to life is that, if the State managed to prove that it was not aware of the risk journalists were in, there would be no violation. It is under speculation whether Ćuruvija was followed by the State security forces. If this was the case, the State would have to justify these actions and if failed to do so, prove that it was not for the purpose of murdering him.

The procedural element of right to life, other than requiring the State to take initiative to resolve the crime and include next of kin, deals with the adequacy of the investigation. Three

requirements need to be satisfied: the independence of authorities, punishment of the perpetrators and the reasonable expedition of the investigation. In addition to these, the Court also looks at whether the State authorities investigated if the murders were due to journalistic activities of the victim which is on Serbia to prove in its cases.

Satisfying the first requirement asks for independent authorities to perform the investigation. If any involvement by the State authorities also involved in investigation stage can be proven, the independence requirement will not be satisfied. Furthermore, having in mind strong connections between Milošević's regime (including police) and criminal groups, the independence requirement is in question. The second requirement, asking for an investigation that leads to punishment of its perpetrators is an obligation of means, not of result, as mentioned before in section 3.1.3. However it is interesting that the only three murders of journalists who heavily criticized the government between 1994 and 2001 are not resolved. Although results are not required, it can be assumed, if proven, that the State did not take all the necessary measures to find and punish those responsible. It is not clear why it took 15 years for authorities to establish that Vujasinović could not have committed suicide with a shotgun. Furthermore, it is not clear whether the statement given by the Minister of Police at the time who said that Pantić's murder was a mistake was ever examined since the Minister never suffered consequences from it. It is unreasonable to suppose that the Court would find investigations into these three murders to fail the second requirement.

The third requirement, asking for investigation to be prompt and satisfy the reasonable expedition demand, is obviously not satisfied in any of the cases. Investigations that take 19 years in case of Vujasinović, 14 years in case of Ćuruvija and 12 years in case of Pantić to be completed cannot satisfy the requirement of promptness and reasonable expedition. Furthermore,

the investigations are still open and there is no reason to assume that they would lead to a result any time soon. Therefore, it is reasonable to expect that the Court would not find the investigations to satisfy the third requirement.

In conclusion, it is not possible to determine whether the Court would be likely to find violation of the substantive element of right to life because of lack of information to determine so, except possibly for the murder of Ćuruvija. However, it is quite likely that the Court would find a violation of the procedural element of right to life simply based on the information on the effectiveness of the investigation.

Similar outcomes can be expected if cases were examined by the Inter-American system of human rights. The first question the Commission asked in the case of Oropeza's murder is whether the State failed to respect the life of the journalist and examined the State's involvement. Although it is speculated that State authorities are involved as perpetrators of Ćuruvija's murder, involvement of the State cannot be assumed at this point. It is therefore not reasonable to expect that the Inter-American Court or Commission would find that Serbia was in violation of the first part of right to life. The second question posed is whether the State violated its duty to investigate, punish the perpetrators and redress the next of kin. In order to do so, the Commission asked if the investigation is "rapid, impartial and conducted with due diligence."¹³¹ From the information on Serbian cases presented under the analysis of the European Court of Human Rights, it can be assumed that the Inter-American Court of Commission would not find the investigation to be effective and therefore the State in violation of right to life.

Based on the scant information given in the three murders in Serbia, it can be assumed that violations to right to life would be found in both jurisdictions. It is almost certain that the

¹³¹ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, para. 87

investigations effectiveness would be found to be in breach whereas the involvement of the State or failure to protect the life of a journalist is not possible to determine without applications actually be lodged. Nevertheless, breach of only one element of right to life is enough to hold the State responsible under international human rights law for violating human rights.

3.2.4. Freedom of expression

To examine whether Serbia violated freedom of expression as stipulated in the ECHR and the ACHR, the general approach to this right as established in section 3.1.4 will be used. That section presented how freedom of expression is dealt with in cases of murders of journalists in two jurisdictions and these considerations will be applied to murders of the three Serbian journalists.

The European Court of Human Rights does not find the need to examine alleged violations of freedom of expression in cases of murders of journalists because it involves same facts as those examined under right to life allegations. It is therefore reasonable to assume that the Court would not examine freedom of expression allegations in any of the three murders in Serbia.

On the other hand, in the Inter-American system of human rights alleged violation of right to freedom of thought and expression is given more attention. Not only that it is examined in cases of murders of journalists, it is examined in depth by recognizing its two dimensions. It involves the individual dimension that allows for individuals to impart information but also the social dimension that allows for others to receive such information without interference.

Based on the Miranda case from 1999, the lack of an exhaustive investigation presents a breach of freedom of expression because it creates “chilling effect” on other journalists and

society in general.¹³² In examining freedom of expression allegations, the Inter-American Commission on Human Rights uses the same facts the European Court of Human Rights uses in its right to life considerations. Since it is not possible to determine whether the State violated the substantive element because of lack of information, it is hard to say whether Vujasinović and Pantić were killed due to their journalistic activity. However that is not the case with Ćuruvija. He was publicly threatened because of the content of his articles which amounts to a clear violation of the individual dimension of freedom of expression in the Inter-American system of human rights.

Nonetheless, the Commission also uses the effectiveness of the investigation to determine whether violation exists. It is already established that the investigations into the three Serbian murders would have been deemed ineffective. This would be enough to find a violation of freedom of expression in the Inter-American system. The impunity itself creates chilling effect on the society as a whole which therefore amounts to a violation of the social dimension of freedom of expression. This is even more the case when the journalist murdered was criticizing civil servants or government for irregularities, as established in the case of murder of Mr. Oliveira.¹³³ This was the situation with Serbian journalists as well.

To conclude, because approaches in two jurisdictions differ, the outcome of freedom of expression considerations would differ as well. The European Court of Human Rights would not find the need to examine freedom of expression allegations and therefore would not find the the Serbian State responsible under the ECHR. On the other hand, if these cases were brought in the

¹³² Report No. 5/99, Case 11.739 Hector Felix Miranda, 23 February 1999, Inter-American Commission on Human Rights, para. 52

¹³³ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, para. 105

Inter-American system, breach of freedom of expression would be found. The Serbian State would therefore be held responsible for human rights violations in this jurisdiction.

3.2.5. Other rights

Section 3.1.5 analyzed a dimension of impunity for attacks on journalists that is only examined in the Inter-American system, namely rights to a fair trial and judicial protection as stipulated in Article 8 and 25 of the ACHR in relation to the general obligation to protect rights in Article 1 (1) of the ACHR.

Analysis of Article 8 and 25 requires inquiry into the same facts as those examined under right to life examination under the ECHR. These articles require evaluation of effectiveness of the investigation and examination of three questions: whether the investigation was conducted with due diligence, whether criminal proceeding was concluded within a reasonable time period, and whether the crime remains unpunished.¹³⁴ As established in section 3.2.3, there were serious shortcomings with investigations of murders of three journalists in Serbia. Although it is not possible to examine the investigations at this point since there is no insight into their course, it is reasonable to assume that certain shortcomings in a procedural sense would be established. Even though the first question does not have a clear answer, the other two questions do. Investigations that last for 19, 14 and 12 years do not satisfy the requirement of reasonable time period. Furthermore, the material and intellectual perpetrators of the murders were not only never identified and punished, no one has ever been brought to trial under the suspicion to be involved in murders.

¹³⁴ Report No. 37/10, Case 12.308 Manoel Leal de Oliveira v. Brazil, 17 March 2010, Inter-American Commission on Human Rights, paras. 112-141

Based on the jurisprudence of the Inter-American system of human rights, it is very likely that violations of rights to a fair trial and judicial protection in relation to Article 1 (1) would be found in all three Serbian cases. Therefore, Serbian State would be held responsible for breach of these two rights read in conjunction under the ACHR.

3.2.6. Outcomes of the comparison between two regional systems and Serbia

The section dedicated to comparison of two regional human rights systems on one side with cases of three murdered journalists on the other aimed at establishing whether Serbia would be in violation of human rights if brought by institutions in two regional jurisdictions. The analysis found it would.

It has been established that Serbia would not be able to pass the admissibility stage under the ECHR but would be able to do so under the ACHR. It is further established that the European Court of Human Rights would primarily examine the three cases of murdered Serbian journalists under right to life. On the other hand, cases would be examined under right to life, freedom of expression and both right to a fair trial and right to judicial protection read in conjunction under the ACHR.

The European Court of Human Rights would most likely find a violation of procedural element of right to life whereas it is not possible to establish whether the same would be found for the substantive element. The exception is the case of Ćuruvija where a breach of substantive element of right to life would feasibly be established if it can be proved that he was threatened and followed before the murder. The Court would not engage in examination of allegations of freedom of expression breach because the facts arising would be the same as those examined under the right to life considerations.

Alternatively, under the ACHR, violations of right to life, freedom of expression and rights to a fair trial and judicial protection would most likely be found. The Inter-American Court/Commission would find the investigations to be ineffective in violation of right to life, and rights to a fair trial and judicial protection. This finding would give rise to a violation of freedom of expression, both its individual and social dimensions.

Finally, based on limited information on murders of Dada Vujasinović, Slavko Ćuruvija and Milan Pantić, it is reasonable to expect that Serbia would be found in breach of human rights violations.

3.3. Conclusion

This chapter compared three jurisdictions: the European Court of Human Rights, the Inter-American system of human rights and Serbia. Analysis of the approaches taken by two regional human rights systems and application of those to Serbia make it reasonable to conclude that Serbia is in violation of human rights under international human rights law for impunity for attacks on journalists. The State would likely bare legal consequences for these violations if found before these regional human rights systems. This puts Serbia in a position of difficulty for achieving the rule of law requirement set by the European Union and Council of Europe. In order to improve the situation, Serbia can take into consideration recommendations given by the international community and non-governmental organizations. These will be discussed in the next chapter.

CHAPTER IV

Recommendations

The previous three chapters gave an insight into the situation in Serbia. Contextualizing impunity as part of the first chapter indicated that Serbia needs to satisfy certain rule of law requirements in order to become an EU Member State. In addition, the third chapter analyzed in depth Serbia's responsibility under international human rights law and found it would most likely be found in violation of human rights. This necessitates prompt and efficient action by Serbian authorities in order to fulfill its obligations under international human rights law and satisfy requirements put forward by the EU.

This chapter presents recommendations to Serbia. These will involve steps that need to be taken to remedy the situation of impunity for attacks of journalists. Proposals for future actions are found with various stakeholders: non-governmental organization, UN bodies and jurisprudence, mostly case-law of the two human rights systems previously examined. Suggestions to Serbia listed in this chapter encompass immediate and near future steps that can impede impunity.

Leading NGOs in freedom of expression issues, such as, *inter alia*, ARTICLE 19, IFEX and Committee to Protect Journalists keep strong records on impunity for attacks on journalists worldwide. In addition to giving essential data for analyzing impunity, these NGOs engage in raising awareness and sensitization of others to the problem. To that effect, the International Day to End Impunity is set on November 23rd each year in order to commemorate the day on which 32 journalists were murdered in Philippines. IFEX, an international network comprising of

88 civil society groups organizes a campaign to demand justice and condemn ongoing impunity.¹³⁵

It is essential for Serbia to enforce the existing laws in order to protect journalists. The country has legislation under which attacks on anyone, including journalists, are punishable. Report on safety of journalist from 2102 emphasizes that "unless actual and potential perpetrators know that there will be legal consequences for any threat or attack against a journalist [...], the protection of journalists will remain a serious issue."¹³⁶ It is therefore crucial that law enforcement machinery is in place not only to resolve crimes that already took place but also to deter future attacks. Not enforcing existing laws that are in compliance with international human rights law standards violates human rights of those affected.

Serbia has to not only ensure that law enforcement machinery is effective, there needs to be strong political commitment to bring those accountable to justice and prevent future attacks. This also includes giving public statements that condemn attacks¹³⁷ and recognize that attacks on journalists are in violation of human rights under international and criminal law.¹³⁸ These statements support free and independent media. This has not been seen in Serbia so far. Although almost every government since 2001 made promises that murders of Vujasinović, Ćuruvija and Pantić will be resolved, this has not happened. In addition to promises, State authorities have to take a clear stand that attacks on journalists are impermissible. These statements however ought to be supported by effective implementation of existing laws.

¹³⁵ IFEX, International Day to End Impunity, last accessed November 27, 2013, <http://daytoendimpunity.org/about/>

¹³⁶ A/HRC/24/23, Report of the Office of the UN High Commissioner for Human Rights to the Human Rights Council, 1 July 2013, para. 72

¹³⁷ A/HRC/20/17, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 4 June 2012, para. 103

¹³⁸ UNESCO, *Journalists' Safety Indicators: National Level*, July 2013, p. 17

Investigations into attacks against media workers must be "conducted effectively, promptly, thoroughly, independently and impartially."¹³⁹ Criteria for an effective investigation has been discussed in depth when analyzing how the European and Inter-American systems of human rights engage in the examination of right to life violation and rights to a fair trial and judicial protection violations, respectively. In its latest decision on impunity for attacks on journalists, the Inter-American Court of Human Rights highlighted the underlying aims an investigation must have: identification of those responsible, imposition of appropriate punishment and providing adequate remedies for the victim.¹⁴⁰ An effective investigation must bring to justice "the full chain of actors in attack", including both material and intellectual perpetrators.¹⁴¹ In addition to the main criteria established in the case-law of the two human rights system that was discussed in the third chapter, investigation must determine whether the attack occurred because of the victim's journalistic activity.¹⁴² For this to happen, all those involved in the investigative process must be aware of the dangers journalists are exposed to.

For the authorities to be fully aware of the dangers to safety of journalists, State must take appropriate steps to raise awareness among judiciary, civil society and journalists themselves.¹⁴³ Awareness raising may take form of trainings for police, prosecution, lawyers and judges.¹⁴⁴ Protection measures and educational programs should be implemented for journalists

¹³⁹ A/HRC/24/23, Report of the Office of the UN High Commissioner for Human Rights to the Human Rights Council, 1 July 2013, para. 72

¹⁴⁰ ARTICLE 19, "Inter-American Court: Regional governments must follow the Court's recommendations to end impunity", last accessed 27 November 2013, <http://www.article19.org/resources.php/resource/3502/en/inter-american-court:-regional-governments-must-follow-the-court%E2%80%99s-recommendations-to-end-impunity>

¹⁴¹ UNESCO, *Journalists' Safety Indicators: National Level*, July 2013, p. 18

¹⁴² Ibid.

¹⁴³ A/HRC/20/17, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 4 June 2012, para. 101

¹⁴⁴ UNESCO, *Journalists' Safety Indicators: National Level*, July 2013, p. 18

who are likely to be targeted because of their work.¹⁴⁵ Role of civil society organizations in achieving this is also important. Serbian authorities should not only allow those organizations to carry out projects addressing safety of journalists, but it should also give full support and assistance where possible.

Considerable attention has been given to the establishment of separate bodies dealing solely with attacks on journalists.¹⁴⁶ In January 2013 Serbian government established the Commission for Investigating the Killings of Journalists¹⁴⁷, a body designed specifically to investigate murders of three Serbian journalists discussed in this thesis. Since its establishment, the Commission has made significant efforts to resolve the crimes. However, without the assistance of State authorities, this will not be possible. The Commission is comprised of several experts and headed by a prominent Serbian journalist Veran Matić. It is crucial that the authorities in Serbia allow full access to files of murdered journalists and provide assistance to the Commission's work. Since it is very difficult to investigate cases that are between 12 and 19 years old, full support by the authorities is a must for the Commission's work to be effective.

The head of the Commission stressed that Serbia's judicial system is not independent, but very much dependent on politicians.¹⁴⁸ It is of utmost importance that all State bodies involved in ending impunity for attacks on journalists work independently. Police and judiciary must be relieved from any influence in their work in order to produce results. This is especially the case in situations where journalists are attacked because of harsh criticism of the authorities. If those

¹⁴⁵ ARTICLE 19, "Inter-American Court: Regional governments must follow the Court's recommendations to end impunity"

¹⁴⁶ A/HRC/20/17, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue to the Human Rights Council, 4 June 2012, para. 109

¹⁴⁷ OSCE Representative on Freedom of Media, "OSCE media freedom representative welcomes commission on unsolved murders of Serbian journalists, stresses responsibility of government", last accessed 27 November 2013, <http://www.osce.org/fom/99008>

¹⁴⁸ International Press Institute, "Serbia: 19 years of collecting, hiding and losing evidence", last accessed 27 November 2013, <http://www.freemedia.at/home/singleview/article/serbia-19-years-of-collecting-hiding-and-losing-evidence.html>

involved in the attack are state officials, investigating bodies must maintain independence in order to bring justice and punish the perpetrators.

Finally, transparency in reporting on attacks on journalists is important. Serbia should keep record of journalists attacked and take measures to prevent future attacks. Cooperation with NGOs dealing with freedom of expression can be invaluable in this respect.

In conclusion, although Serbia has taken steps to end impunity for attacks on journalists, what is being done is still not enough. Murders of three journalists were never resolved, attacks still occur every year and in most cases perpetrators are not brought to justice. This chapter therefore provided recommendations based on both international standards and the specific situation in Serbia in order to end impunity and ensure safety of journalists in this country. For Serbia to be a country with strong rule of law and respect for human rights, these efforts must be in place.

CONCLUSION

In this thesis I looked at impunity for attacks on journalists as a human rights violation. The case-law from the two human rights systems clearly sets out the effect that silencing journalists has on freedom of expression in general. Cases of impunity for attacks on journalists who write on sensitive topics send a clear message that criticism is not allowed. Not only that these persons were somehow punished because of their investigative reporting, other journalists and citizens are discouraged from raising their voice against government abuses and human rights violations. Not only that impunity for attacks on journalists gives rise to violations of right to life and freedom of expression, among others, it also impedes on the free speech of other citizens. That is why it is important to show what consequences impunity for murders of three Serbian journalists has on media and free speech in Serbia in general.

The two regional human rights systems examined in this thesis are a benchmark for cases of impunity. Even though approaches to impunity differ, both send a clear message that it is a violation of basic human rights established in international law. In addition to this, an extensive international legal framework condemning and prohibiting impunity was presented showing not only that it violates human rights but that it also has a long lasting impact on societies where it occurs. A constructive public debate is essential for building a democratic society. Attacks on journalists result in the production of a “chilling effect” on freedom of expression, principally freedom of the press, and this consequence is frequently the intention of powerful elites who use impunity as a political tool to secure their power. Impunity, therefore, directly affects the democratic potential of any society.

On the path of EU Serbia accession struggles with human rights violations, one of them being impunity for attacks on journalists. It is therefore crucial to assess impunity from this aspect and work on ways of ending it, not only in cases of the three murders discussed in this thesis but also any previous or future attacks on journalists due to their investigative reporting. If Serbia is to join other EU countries in the future, remedying the situation is necessary.

This thesis compared three jurisdictions with the main purpose of proving that Serbia is violating human rights, based on previous case law of the two human rights system. I found that, depending on the jurisdiction, different human rights violation would likely be established. Regardless of these differences, this research suggests that responsibility under international law exists. The next step is to take concrete measures to remedy these violations. Although certain efforts have been made by Serbian authorities to achieve that, substantial changes need to be made. No matter how effective their work, unfortunately it is not enough to establish one Commission to tackle impunity. Systemic changes need to occur together with specific steps that will empower the authorities to deal with impunity efficiently and independently. Those investigating the attacks have to be aware of the consequences that these attacks have on the society. Prosecutor and judges have to bear in mind that protecting journalists in their work means protecting freedom of expression of society.

Approaches taken from murders in Turkey, Mexico or Brazil from the case-law of the two human rights systems set standards that Serbia needs to obey. Violations of basic human rights found in these cases give a clear example of the importance of protecting investigative journalism everywhere, not only in Serbia. In order to have a democratic society in which abuses and irregularities are exposed, free speech needs to be protected by the State. No one, including State authorities, is allowed to commit crimes against freedom of expression and go unpunished.

For a society to be built on values of participation and free expression, impunity for any type of attacks against those who raise their voice must end.

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