**Preliminary observations by the UN Special Rapporteur on freedom of opinion and expression, Ms Irene Khan, at the end of her visit to Serbia/Kosovo[[1]](#footnote-1),**

**28 March – 6 April 2023**

From 28 to 31 March 2023, I visited Belgrade at the invitation of the Government of Serbia to examine the state of freedom of opinion and expression in the country. I had the privilege of meeting the Minister for Foreign Affairs, the Minister for Justice, the Minister for Information and Telecommunications, the Minister for Human and Minority Rights and Social Dialogue, and representatives from the Ministry of Interior. I also met the Speaker of the National Assembly, the President of the Constitutional Court, judges of the Supreme Court of Cassation, and officials from the Prosecutor’s office, as well as the head of the Regulatory Authority for Electronic Media (REM), the Protector of Citizens of the Republic of Serbia, the Deputy Commissioners for the Protection of Equality and the Commissioner for Information of Public Importance and Personal Data Protection.

In addition, I reached out to hear from a wide range of interlocutors across the political spectrum, and met with civil society organisations, media associations, media outlets, journalists, legal experts and human rights defenders, as well as representatives from international and regional organisations.

On 3 and 4 April, I was in Kosovo where I met with the Deputy Prime Minister for Minority Issues and Human Rights, representatives of the Office for Good Governance, the Legal Office, the Office for Public Communication as well as the Commissioner for Information and Privacy and the Language Commissioner, Members of the Assembly from the Committee on Public Administration, Local Governance, Media and Rural Development and the Committee on Human Rights, Gender Equality, Victims of Sexual Violence During the War, Missing Persons and Petitions, the Ombudsperson and the Independent Media Commission, and a Board member and General Director (Director General) of Radio-Television Kosovo (RTK).

I held several meetings with journalists, human rights defenders and representatives of media associations and civil society organizations from different parts of Kosovo and from different communities. I also met representatives of international and regional organizations.

I am very grateful to everyone who took the time to meet with me and share their insights and information. In particular, I would like to thank the officials of the Ministry of Foreign Affairs in Serbia and UNMIK and other authorities in Kosovo for assisting with the various appointments.

Last but not the least, I would also like to thank the United Nations Resident Coordinator and her team in Serbia and the Special Representative of the Secretary General and United Nations Mission in Kosovo for their support in organizing my visit.

In line with the working methods of the Special Procedures of the United Nations Human Rights Council, I am sharing some preliminary observations with you today. I will submit a more substantive report with detailed recommendations to the Human Rights Council, in June 2024. In line with our usual protocol, I will share the draft report with the authorities well ahead of the submission to the Council, and will request that all interested parties provide me with updated information on developments and actions taken between my visit and the finalization of my report next year.

Serbia:

The right to freedom of opinion and expression, including free, independent, plural and diverse media, constitutes one of the essential pillars of a democratic society. It is therefore critical for States to adopt and implement laws, policies and practices consistent with their international human rights obligations, and to create the conditions for a safe and enabling environment for journalists, human rights defenders, civil society and others with diverse identities and views to exercise their right to freedom of opinion and expression.

**Freedom of expression and media freedom enjoy strong constitutional and legal protection in Serbia**. I have noted the plans of the government to implement its Media Strategy and amend the Public Information and Media Act, the Electronic Media Act and the Public Media Services Act to bring them fully in line with international human rights and European Union standards. I look forward to receiving further information on these initiatives and remain available to engage with the authorities and share my comments on the draft laws before they are adopted.

I commend Serbia for decriminalizing libel and encourage the government to also abolish the offence of insult. I have noted there are proposals by the Ministry of Justice to amend the criminal code to protect against incitement to discrimination and violence.

While acknowledging the importance of the proposed legal reforms and the commitment of the government to ensure that they are aligned with international and European legal standards, I encourage the government to also give equal attention to effective and full implementation of the laws. The gap between what is promised on paper and what is being done in terms of policies and practices - or simply not done at all – needs to be closed if the reforms are to have an impact.

Closing that gap will be particularly important in relation to **three major concerns** to which I would like to draw the government’s attention.

**First and foremost, is the toxic public discourse in Serbia**, described by a wide range of interlocutors, from independent institutions to journalists, scholars and human rights defenders, as “polluted”, “divisive”, “intolerant” and “aggressive”.

Freedom of expression is being weaponized to denigrate and suppress political dissent and feed ethnic and identity-based bias and hatred. Some political leaders and media outlets appear to interpret freedom of expression as the right of the majority to vilify the minority. Such practice feeds into an “us and them” narrative which is dangerous politically given the recent history of this region.

Political opponents, civil society representatives, human rights defenders, environmental activists and journalists are among those who are disparaged, denigrated and discredited publicly, including in Parliament, on popular media channels, through coordinated smear campaigns, despite the government’s zero tolerance policy on hate speech. I have received credible testimony that indicates a pattern of negative narratives starting with statements from high-ranking government officials, amplified by tabloids, and then leading to threats from unknown persons, especially on social media.

The consequences are harmful, firstly for the individuals themselves but also more broadly for democratic debate. When journalists are labelled as foreign agents, traitors or enemies of the State by prominent public figures, it undermines public trust in the media, increases the likelihood of attacks against journalists and leads journalists to self-censor. That in turn reduces diversity of information and ideas in society.

**My second concern relates to ineffective institutions**. The Government of Serbia has itself recognised in its report to the Universal Periodic Review of the Human Rights Council this year, that its policy of zero tolerance to hate speech “has not been achieved”.[[2]](#footnote-2) Serbia must ensure that all institutions and organs of the State implement the constitutional and legal framework on freedom of expression effectively and accurately and follow international guidelines of the United Nations on combatting hate speech.

The justice system has an important role to play. The prosecutors often do not recognize hate speech and so do not bring the corresponding charges. Court practice is also problematic in that in some cases, the judges did not recognize hate speech. More training and guidance are needed.

Populist media outlets, or tabloid media, appear to be a major producer and amplifier of such harmful speech. The electronic media regulatory body or REM has a critical role to play in prohibiting harmful content. The Commissioner for the Protection of Equality has noted that REM “seems not to use all available means to combat hate speech and aggressive speech.”[[3]](#footnote-3)

I am concerned that REM’s sanctions are mild and inappropriate. Some recent decisions of REM have gone in the opposite direction, failing to promote pluralism in media content, and allowing smear campaigns and harassment to continue. When laws are not implemented rigorously, this not only allows poisonous practice to persist but also undermines media pluralism, diversity and independence, with serious risks to human rights, democracy, public participation and community relations.

By awarding licences to four media outlets that have consistently violated media regulations as well as international standards and ethical and professional standards, REM appears to have sent a dangerous message, undermining the zero-tolerance policy of the government, and instead promoting the notion that the State condones pernicious public discourse in the media. During last year’s election period, REM appeared unable to effectively respond to instances of toxic speech against opponents and to ensure equal time by media for candidates of the ruling party and its political opponents. Instead, REM seems to be in open conflict with media outlets that are critical of the government. All this leads me to conclude that REM is unable to fulfil its mandate independently or effectively.

I strongly encourage the relevant authorities to review the independence and effectiveness of REM and to take appropriate action to strengthen independence and accountability of the regulatory body, provide it with adequate human and financial resources, and guarantee that its work is protected from political or economic interference.

My third point is about the **safety of journalists**. The constitution and the legal system in Serbia recognize the importance of protecting journalists. I have noted the various mechanisms that the government has put into place, including the multi-stakeholder Standing Working Group on Safety of Journalists, which comprises representatives of media associations, prosecutors and the police. However, continued attacks, including recent incidents, indicate that more action is needed.

Measures should be taken to speed up the investigations and legal proceedings. There appears to be a gap in the law between the criminal offence of endangerment and the acts of intimidation or veiled threats which are frequently made against journalists. I would like to encourage the authorities to consider including ‘intimidation against journalists’ as an offense in the legislation related to the protection of journalists.

Very importantly, impunity should not be allowed to prevail when journalists are killed. I would urge the government to complete the investigations, prosecute and ensure justice in the long-standing cases of killings of journalists. In effect, not a single murder of a journalist in almost a quarter century has been solved until today.

Frivolous or vexatious libel lawsuits by powerful public figures demanding exorbitant damages (Strategic Legal Action Against Public Participation or SLAPP) have emerged as another threat to journalists and activists. The purpose is not necessarily to win the cases but to distract, demoralize, intimidate and silence the journalists and activists. For instance, I was informed that the investigate portal KRIK is currently subject to no less than 11 active lawsuits that have elements of SLAPP. These lawsuits undermine media freedom and abuse the judicial system. I encourage the government to adopt appropriate measures to address this emerging threat.

Finally, I would like to underline that adoption of laws alone will not be sufficient to protect freedom of opinion and expression. What is needed is strong, unequivocal political leadership and commitment to ensure the effective implementation of the laws and overcome the negative discourse, incitement and hate speech. The legal commitments of the government must be translated into action.

Kosovo:

Diverse, independent, and pluralist media is essential for building public trust and for holding institutions to account. This is especially important against a background of recent conflict and societal tensions. I was encouraged by the vibrant and pluralistic media landscape in Kosovo, backed by a strong legal framework in line with international human rights standards. I commend Kosovo for having decriminalized defamation and insult, and for introducing measures to prioritize the investigation and prosecution of attacks against journalists. I received positive feedback from journalists also about improvements made in access to information, thanks to the proactive work of the Commissioner for information, privacy and training of institutions.

There is need for improvement in some areas, especially on the availability of interpretation and translation of official documents into Serbian which is important for the effective participation of the non-majority community. I urge the authorities to fully implement the law on languages and call on the international community to provide adequate support to independent Serbian language media outlets.

I urge the Kosovo Assembly to adopt without delay the legislation to strengthen the Independent Media Commission (IMC) and to ensure a sustainable funding structure for RTK, the public service media. I urge all those in prominent public roles in Kosovo to create a safe and enabling environment for freedom of expression and to foster a culture of tolerance and diversity.

Finally, it is of utmost importance that the authorities complete the investigations and bring to justice those involved in the killing of 17 journalists in the period between 1998 to 2005.

1. The reference to Kosovo shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo. [↑](#footnote-ref-1)
2. <https://www.minljmpdd.gov.rs/medjunarodni-ugovori-upr.php> [↑](#footnote-ref-2)
3. <https://rm.coe.int/hf25-hate-speech-serbian-media-eng/1680a2278e> [↑](#footnote-ref-3)