

STALKING AS A FORM OF GENDER-BASED VIOLENCE IN JUDICIAL PRACTICE IN SERBIA

Abstract: The author analyses conformity of the legal description of one relatively new in-crimination – Stalking (Article 138a of the Criminal Code of the Republic of Serbia) with the requirements of the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence - ten years after the Republic of Serbia ratified it. The focus is on its implementation in judicial practice (considering the official statistical data as well as those from the case records of two basic courts in Belgrade in five-year period: 2017-2022). The goal is to map the possible deficiencies in normative as well as in practical sphere, and to make some recommendations related to their overcoming (that would be in accordance with the requirements of the Istanbul Convention) in order to provide better response to this specific form of violence against women in Serbia. Special focus is directed to some criminological aspects of the phenomenon (profile of perpetrators and victims, stalking context, and the imposed sanctions).

Keywords: stalking, criminal offence, gender-based violence, Istanbul Convention

1. INTRODUCTION

The problem of stalking (as systematic harassment of another person causing fear, discomfort and/or endangering the safety, tranquility and privacy of the victim) began to attract attention in the 1990s when it received its first formal conceptual definitions.¹ Otherwise, the term stalking is used to define the actions undertaken in hunting, so it means lurking, tracking an animal in order to create the best opportunity to attack. It is precisely the best illustration of the relationship between the stalker (as hunter) and the stalked person (as prey), who flees, tries to escape the stalker or otherwise strive to find shelter (e.g. protection from the police, the judiciary...).

Stalking is characterized by the duration of activities, their repetition and complexity, and often their hiddenness, perfidy that is manifested in forms that are not punishable or carry negative social connotation. They could be even undertaken for love, sympathy, and courtship (from the aspect of the stalker), but, in fact, more often they are undertaken with evil intent, in order to intimidate the victim or they have harassment and intimidation as their results, thus making stalking phenomenon difficult to define, especially within criminal law context which insists on clear and precise definitions (Jovanović, 2015: 207). As Spitzberg and Cupach put it - somewhere at the nebulous nexus of privacy and possessiveness, courtship and criminality, intrusion and intimacy, lies the phenomenon of stalking (Spitzberg, Cupach, 2003: 345).

The notion of stalking, or more precisely stalker, first appeared in the media, in the United States of America, in connection with cases of stalking of celebrities by unknown obsessive

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¹ The Oxford English Dictionary defined the term stalker in 1997, stating that „it is a person who follows or harasses another person (often a public figure) whom he has become obsessed with“ (Nicol, 2006: 15).

fans (U.S. National Institute of Justice, 1996: 4), but it was soon extended to other forms of persistent, unwanted, disturbing, even frightening behavior (from the victim's point of view), especially in the context of partner and domestic violence.

In Europe, the process of recognizing this phenomenon, its dangerousness, and thus criminalization, has gone much slower. Many European states did not feel the need to pass specific legislation, because stalking was not considered a serious social problem and had not given rise to public debate. A second reason to abstain from adopting anti-stalking legislation was the conviction that generic criminal provisions — such as assault, threat or coercion — in combination with protection order schemes would provide adequate protection against the stalking (Van der Aa, 2018: 316). The Republic of Serbia was on the same track (Jovanović, 2015: 212-214).¹

However, the Convention on Prevention and Combating Violence against Women and Domestic Violence² (hereinafter: Istanbul Convention) made an impetus in the process of criminalization of stalking in Europe, with the primary goal of improving the protection of women from gender-based violence (Ibid.).

2. STALKING – A NEW OFFENCE IN THE CRIMINAL CODE OF THE REPUBLIC OF SERBIA

The Republic of Serbia signed the Istanbul Convention on April 4, 2012,³ ratified it on November 21, 2013,⁴ while amendments to the Criminal Code⁵ (hereinafter: CC), explained by the necessity of harmonization with the Convention, followed in 2016, but relevant provisions came into force on June 1, 2017.

Stalking (Article 138a of the CC) was one among other newly introduced criminal offences (alongside forced marriage, sexual harassment, female genital mutilation),⁶ situated in the Chapter XIV – Criminal Offences against Freedoms and Rights of Man and Citizen. It was waited for a long time, judging by the experience of non-governmental organizations engaged in protection of women from gender-based violence, as they faced specific cases which could not have been classified as existing criminal offences or misdemeanours, because the essence of stalking is in repeating of activities which disturb and threaten other people, but do not individually (or altogether) present a criminal offence (Jovanović, 2015: 208-209). The recommendations to introduce such an offence stayed fruitless despite pointing out the problem in practice and the dangerousness of such behaviour, which often preceded the murder of a woman, and was not given attention even as an aggravating circumstance (Simeunović-Patić, Jovanović, 2013: 164). However, the ratification of the Istanbul Convention made a significant pressure and brought so long wanted changes, so the Government of the Republic of Serbia (in its explanation of the proposed amendments) also pointed out the existence of serious criminal-political arguments which justify introducing of new incrimination (Government of the Republic of Serbia, 2016: 25).

² CETS No. 210, [Full list - Treaty Office \(coe.int\)](#).

³ Chart of signatures and ratifications of the Treaty 210, [Full list - Treaty Office \(coe.int\) \(accessed on April 25, 2024\)](#).

⁴ Official Gazette of the RS - International Treaties, No. 12/2013.

⁵ Official Gazette of the RS, Nos. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/ 2013, 108/2014, 94/2016, 35/2019.

⁶ More about new incriminations in: Jovanović, Vujičić, 2022: 213-238.

The Istanbul Convention defines stalking as: *the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety* (Article 34). The Explanatory Report to the Convention explains that stalking comprises any repeated behaviour of a threatening nature against an identified person which has the consequence of instilling in this person a sense of fear. The threatening behaviour may consist of repeatedly following another person, engaging in unwanted communication with another person or letting another person know that he or she is being observed. This includes physically going after the victim, appearing at her or his place of work, sports or education facilities, as well as following the victim in the virtual world (chat rooms, social networking sites, etc.). Engaging in unwanted communication entails the pursuit of any active contact with the victim through any available means of communication, including modern communication tools and ICTs. Furthermore, threatening behaviour may include behaviour as diverse as vandalising the property of another person, leaving subtle traces of contact with a person's personal items, targeting a person's pet, or setting up false identities or spreading untruthful information online.⁷

Serbian incrimination of stalking is based on a non-exhaustive list of stalking tactics, thus leaving room for some imaginative stalkers and their actions („similar actions in the manner that may perceptibly jeopardise personal life of the person vis-à-vis whom such activities are undertaken”).

The basic form of the offence is as follows: *Whoever over a certain period of time persistently: 1) follows another person without permission, or undertakes other activities with the aim of getting physically closer to such a person contrary to his/her will; 2) contrary to the will of another person attempts to establish contact with him/her directly, through a third person, or through means of communication; 3) abuses personal data of another person, or of a person close to him/her for goods or service in purpose of ordering; 4) threatens to assault life, body, or freedom of another person, or a person close to him/her; 5) undertakes other similar actions in the manner that may perceptibly jeopardise personal life of the person vis-à-vis whom such activities are undertaken, shall be punished with a fine or imprisonment of up to three years.*

Description of the offence contains some vague constituent elements, which could lead to unequal implementation of the incrimination in practice and thus legal insecurity (Jovanović, Vujičić, 2022: 217-218), but it is due to elusive nature of the stalking as phenomenon. In fact, „a certain period of time” is not thoroughly precise constituent element, concerning duration of the activity, i.e. repetitiveness of the activity or activities in time (but what period of time is the question for which practice must provide the answer). „Other actions with the aim of getting physically closer to such a person contrary to his/her will” could also be disputable (as it appears as one new non-exhaustive list within a main, broader list of stalking tactics). The noted problems at the very beginning of the implementation of the incrimination, led to amendments in 2019⁸ introducing the element „persistently“, in order to emphasize the subjective dimension existing on the side of the perpetrator which makes him/her dangerous. Additionally, it confirms the necessity for duration and repetitiveness of the actions. That same year, definition from paragraph 1, item 3 was altered: instead of the term „offering”, now there is „ordering”, because it is an open issue whether it implies delivering of advertisements

⁷ Explanatory Report to the Istanbul Convention, p. 32, [CETS 210 - Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence \(istat.it\)](#), accessed on April 1, 2024.

⁸ Official Gazette of the RS, No. 35/2019.

to someone's postal or e-mail address (which are relatively easy to obtain today) and generally obtrusive and persistent advertising of goods and services which could disturb some people. This activity, although not acceptable from the aspect of correct business dealings, is not rare in practice, but does not deserve to be a criminal offence (Stojanović, 2017: 2).

It is disputable also if the consequence of new offence is a „perceptible jeopardising of the personal life of the person vis-à-vis whom such actions are taken”, more precisely, if all listed stalking tactics and other similar ones must be done „in the manner that may perceptibly jeopardise the personal life of the person vis-à-vis whom such actions are taken” or this consequence is required only for „other similar activities” (from paragraph 5) (Stojanović, 2017: 5-6). However, if we take into consideration Article 34 of the Istanbul Convention, we'll conclude that stalking activities must affect other people so that they fear for their safety.⁹ It would be most appropriate to consider the whole context, not only individual activities, separately from each other/s, but also in total, and their result from the aspect of the victim (but not relying solely on the subjective feeling in particular case). As the consequence of stalking in the CC is the possibility of jeopardising victim's personal life (which corresponds to the abstract dangerousness, and not immediate one as in the case of the most similar offence, Endangerment of Safety referred to in the Article 138 of the CC) it would be enough to assess comprehensively the stalking actions in the given context (i.e. stalking actions taken by the perpetrator are dangerous in themselves, and as a whole, for the victim in given case/context). Most often, they would cause fear in victims, but it is not necessary for the existence of the stalking as criminal offence in Serbian legislation.

As the Istanbul Convention itself requires certain consequences in the form of endangerment/fear for victim's safety, it could be concluded that the Serbian legislator went a step further by envisaging a consequence that is not of such quality (i.e. more serious one). However, within the acts of stalking, there is an action that could be recognized in the description of the most similar criminal offence – Endangerment of Safety (Article 138 of the CC) which corresponds to the concept of consequence envisaged by the Istanbul Convention. In this regard, the relationship between these two offences could also be disputable (i.e. the joinder of the offences). It seems that it is better to apply the incrimination referred to in Article 138a of the CC, because it is a more serious offence for which a more severe prison punishment is prescribed (imprisonment of up to three years) than for the basic form of the offence referred to in the Article 138 of the CC (fine or imprisonment of up to one year), and that it is not necessary to apply the institute of joinder of the offences (in case of one victim as the stalker's target), unless the elements of the more serious form of the offence referred to in Article 138, paragraph 2 of the CC¹⁰ exist in given case.

Compared to other European anti-stalking laws, it could be concluded that Serbia is among those that pay more attention to the victim, without insisting on the more serious consequences foreseen by the Istanbul Convention itself. Also, the CC provisions could be assessed as better from the victim's point of view, because they don't close the list of possible stalking actions, thus leaving the room for sensitive assessment of the stalking context by state agencies, in order to protect victim of this form of gender-based violence. The offence is

⁹ Parties shall take necessary legislative or other measures to ensure that intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her/him to fear for her/his safety, is criminalized.

¹⁰ (2) Whoever commits the offence specified in paragraph 1 of this Article against several persons or if the offence causes anxiety of citizens or other serious consequences, shall be punished with imprisonment of three months to three years.

prosecuted *ex officio*, which is also much better solution from the victim's perspective. Namely, some anti-stalking laws require victim's motion to prosecute.¹¹

The offence of stalking has two more (aggravated) forms¹²: the first one exists if a danger to life, health or body of the person vis-à-vis whom the act was committed or a person close to him/her has been caused by an act specified in paragraph 1 of this Article (it is the same consequence as stipulated in the Istanbul Convention). The other form exists if a death of victim or of a person close to him/her occurred (due to an act specified in paragraph 1). The closeness in the relation of the stalker and a victim is not an element of aggravated forms of the offence, which has to be considered in the process of determination of sentence (in order to comply with the requirements of the Istanbul Convention).

In spite of ambiguities and criticism of legal description of the stalking, its introduction is undoubtedly a step forward, bearing in mind the already mentioned needs of the practice, especially in relation to better protection of victims from gender-based violence. Difficulties concerning precise and comprehensive description of this offence exist also in the comparative law. Namely, the elusive nature of stalking appears in the fact that there are large differences in the manner in which different states have interpreted the crime,¹³ but nevertheless this incrimination should be welcomed as a better response to one specific form of gender-based violence than is the case of implementation of other, generic incriminations.

Results of the research on femicide in our judicial practice indicate that stalking was not assessed as an aggravating circumstance when deciding a punishment, which indicates insufficient recognition of such behavior, i.e., its dangerousness (Simeunović-Patić, Jovanović, 2013: 164), so the new incrimination is surely welcome in this sense as well.

3. OFFICIAL STATISTICS ON STALKING IN JUDICIAL PRACTICE IN THE REPUBLIC OF SERBIA

According to the data of the Statistical Office of the Republic of Serbia (hereinafter: SORS) (for the period 2017-2022), there is a noticeable increase in the number of criminal complaints for stalking, with relative uniformity in 2019 – 2021 (380 approximately). In 2022 there were 422 reports. However, it should be borne in mind that each year, on average 55% of criminal complaints was dismissed (in 2018, as many as 64%, and the least in 2022 – 53.6 %). In the first place, when it comes to the reasons for dismissal of criminal complaints, there are no grounds of suspicion or it is due to inexpediency of criminal prosecution. From the total number of dismissed criminal complaints, approximately 1/4 is due to the deferring criminal prosecution (Article 283 of the Criminal Procedure Code¹⁴ (hereinafter: CPC)) as well as assessment that the given action

¹¹ In Belgium, Spain and Italy, where stalking is usually only prosecuted upon the complaint of the victim (motion to prosecute), some vulnerable victims are exempted from this requirement. In their case, criminal prosecution can be initiated by the public prosecution service *ex officio* (Van der Aa, 2018: 323).

¹² (2) If a danger to life, health or body of the person vis-à-vis whom the act was committed, or a person close to him/her has been caused by an act specified in paragraph 1 of this Article, the perpetrator shall be punished with imprisonment of three months to five years. (3) If, due to an act specified in paragraph 1 of this Article, death of another person, or of a person close to him/her occurred, the perpetrator shall be punished with imprisonment of one to ten years.

¹³ More about different concepts in the EU states: Van der Aa, 2018.

¹⁴ Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Decision of the Constitutional Court and 62/2021 – Decision of the Constitutional Court.

is not a criminal offence that's being prosecuted *ex officio*. Women as (reported) perpetrators are present in about 16% of cases in average (maximum was achieved in 2022: 20.7%), but they are the most common victims (between 85% and 89%). The most common victims are adults, while minor victims are rare (those over 14 - 3.6% in 2022 as the highest percentage in the observed period, and just one child (under the age of 14)). In other years, the number of minor victims was between two and four. The most common perpetrators are men, which is not unexpected and is confirmed by other recently conducted surveys (Acquadro Maran et. al., 2022; SORS, 2022: 54).

When it comes to the imposed criminal sanctions, the suspended sentence is the most often one (above 50% in average) with a noticeable decline from 2020 (77.3%) onwards: 2021: 56%, 2022: 52%. That should be related to the tightening of the legislative penal policy (which tackled the provisions on suspended sentence in 2019). Imprisonment, as the most severe criminal sanction, was imposed in the range from 8.2% in 2018 to 22.8% in 2022, and the number of longer-term prison sentences is also increasing (there are more sentences lasting from 6 to 12 months, while in 2022 one third of prison sentences was in duration from one to two years of imprisonment). The percentage of the fine was increasing in the last three years: 2020: 15.5%, 2021: 18.8%, and 2022: 19.5% (most often in the amount of over 10,000 to 100,000 dinars).

The percentage of the security measures imposed on mentally incompetent perpetrators is between 9% and 13% in total of imposed sanctions (in 2018 – 9%, 2019: 13%, 2020: 13%, 2021: 12% and 2022: 9%). The so-called „home incarceration“ was rarely pronounced - in 2018 and 2019 (5%), but the number was increasing: in 2020: 8%, 2021: 10%, while in 2022 it fell to 5%. The community service was pronounced just in two cases (in 2019).

It could be concluded that the judicial criminal policy has been tightening (which is linked to the general tightening of the legislative penal policy), as well as that incrimination has proven itself quite well in practice. The cases of so-called „conditional opportunity“ of the public prosecutor office could be interesting for future research, since they are quite present in spite that offence of stalking contains elements of (gender-based) violence, for which the application of opportunity is not recommended, as well as cases of dismissed criminal complaints with the explanation that there are no grounds for suspicion or due to prosecution inexpediency, which indicates the possible application of „unconditional opportunity“ referred to in Article 284, paragraph 3 (as from the available statistics it is not possible to conclude what exactly is the most prevalent reason for dismissing of the criminal complaints).

4. STALKING IN THE PRACTICE OF BASIC COURTS IN BELGRADE

In two Belgrade basic courts (the First Basic Court and the Second Basic Court) an insight into the court records (final judgements) for a five-year period (from the beginning of the application of incrimination until June 2022) was obtained. A total of 81 cases were reviewed (44 from the jurisdiction of the First Basic Court and 37 from the jurisdiction of the Second Basic Court in Belgrade). The aim of the research is to determine how the judiciary reacts to this new form of gender-based violence, i.e. how incrimination is applied in practice, bearing in mind the findings of the GREVIO (that this offence is underestimated and trivialized in media and that there is no adequate understanding of its dangerousness even when it comes to professionals). The GREVIO was made aware of a number of high-profile cases of stalking involving members of local municipalities which have not been dealt with according to the law, and that there is a problem in relation to the delimitation of the new incrimination with an less serious, similar offence, such as Endangerment of Safety (Article 138, paragraph 1 of the CC) (GREVIO, 2020: 44).

It was also important to determine the characteristics of the perpetrators and victims (bearing in mind the official statistics contain scarce data on that issue, and only those related to the sex and age of the perpetrators and victims are available (uncompleted also), although the Istanbul Convention insists on conducting research and systematic and detailed data collection, including data on the relationship between the victim and the perpetrator (in this regard, the GREVIO also made some remarks to Serbia) (GREVIO, 2020: 66).

4.1. Results

4.1.1. *Profile of the perpetrator and victim: the context in which the stalking occurred*

When it comes to typology of the stalkers with respect to the relationship between a perpetrator and a victim, one of the simpler typologies is that given by Mohandie et al., (Mohandie et al., 2006: 147-155): stalkers known to the victims (in the first place, current or former spouse/partner, followed by friends, relatives, acquaintances, and strangers. The most common stalkers are persons very close to the victim (the most often male intimate (former) partner), which is in accordance with the research done on large samples (FRA, 2014: 85). Belgrade survey shows the same results: complete strangers were noticed just in two cases (while in the official statistics there is category „known perpetrators“, so the number of unknown ones could be easily calculated). For example, in 2022 there were 64 (15%) unknown (reported) perpetrators of stalking (SORS, 2023: 14).

However, somewhat more complex typology of the stalkers is more interesting, as it refers to the characteristics of the stalkers and their motivation, and to the context in which the stalking occurred, thus providing more data necessary for professionals dealing with this issue (in terms of better understanding of the behaviour for the purpose of treatment, but also sanctioning, as well as for assessing the risks to the safety of the victim). Mullen and associates describe five types of stalkers: rejected stalker, resentful stalker, intimacy seeking stalker, incompetent suitor, and predatory stalker (Mullen, Pathé, Purcell, 2009: 17-21). In this regard, the categorization of the perpetrators from the Belgrade sample was carried out.

The most often type is stalking of the former intimate/romantic partner (65%). Victims are predominantly women who have ended the relationship, often already burdened with violence, which generally proves to be a serious risk for victimization by more serious crime, such as murder/femicide (Simeunović-Patić, Jovanović, 2017: 39). The „rejected stalkers“ are the most common and dangerous species, often characterized by some personality disorder.¹⁵ It is believed that it is not possible to effectively deter them by punishment or threat of punishment. The supervision by a professional person is important for „abstinence“, i.e. supportive and directing therapy (by a psychologist, psychiatrist). It is almost impossible to dissuade those involved in a child custody dispute or are pathologically jealous (Mullen et. al., 1999: 1248).

Most often, male partners were rejected, and only in two cases women were stalkers (in one case the woman was a stalker, and together with her husband she stalked the former lover (which is the only case of stalking in co-perpetration)¹⁶, while in the other case the (married) woman was also convicted of stalking her ex-lover.¹⁷ Rejected male partners are far more aggressive and dangerous when it comes to performing acts of stalking, and they often send

¹⁵ About „rejected obsessive lovers“ as perpetrators of murder (after stalking activities): Simeunović-Patić, Jovanović, 2013: 30-31 and 53-63.

¹⁶ K 449/18, II Basic Court in Belgrade.

¹⁷ K 394/19, II Basic Court in Belgrade.

sms or other (written or verbal) messages based on famous phrase: „you will be mine or God’s (or no one’s)“¹⁸. In addition to declarations of love and threats in the above mentioned sense, the stalking repertoire includes regular and misogynistic insults (whore, slut, scumbag...) and jealous outbursts. Surveys comparing male and female stalkers have the same results. Meloy and Boyd (2003) argue that women stalkers were predominantly single, heterosexual, educated individuals, in their mid 30s, often with borderline personality disorder. Female stalker tactics rarely culminate in violence, but the percentage of violence increases by up to 50% in cases of a previous intimate partner relation with the victim (the use of weapons, and injuries are rare). Unlike male stalkers who often pursue their victims to restore intimacy, female stalkers often pursued their victims to establish intimacy. There are differences also related to duration of the period prior to reporting incidents to police (men wait for longer time to report as they are less inclined to see themselves as victims or for fear (or shame) they are not being believe or taken seriously) (Acquadro Maran et al., 2020).

Minors were less often targeted by the rejected stalkers (in two cases), but persons, usually close to the victims (children, parents, colleagues, friends and especially current partners (real or fictional) were also part of the stalking scenery. The case of a minor girl (whom the perpetrator met through Facebook) is a good illustration for the type of stalker we discuss about: after the breakup she initiated, the stalking intensified (because, according to victim, he was jealous and stalked her during the relationship that lasted 2,5 months; he even put a bug in her phone to control her, waited for her outside the school due to suspicion she has cheated on him, did not allow her to see her friends...so, she broke up with him). He continues to follow her, threatening to make hell for her and her parents if she doesn’t come back to him. He began to write messages to her mother (what a scumbag and whore her daughter is), and then start to send photos of victim to her mother and even to her teachers and friends (some of which he took without her knowledge) with insulting text about her: whore, scumbag, etc.¹⁸

It is noticeable that stalkers from this category more often come from (rural) areas where patriarchal patterns are more intense. One rejected stalker, a Turkish citizen, came after his victim all the way from Türkiye (where they met and had a „summer romance”) and was publishing her photos in tabloids. He invested a lot of money in stalking activities, as he used to pay other people to follow her and take pictures, and he also paid for his stay of several months in an expensive Belgrade hotel. He threatened the manager of the store where she worked (and with whom, according to her and his statement, she had nothing), and offered 100 Euros on social media for information about her and him.¹⁹

Very often, rejected stalkers are subjected to some of the measures that imply a ban on contact with the victim (urgent measures from the Law on Prevention of Domestic Violence²⁰ prevail, even extended ones) or similar measures from the Criminal Procedure Code (even detention or/and keeping in custody by the police), but as a rule, lighter measures (when the suspect remains at large) do not prove effective in terms of deterrence. Either they don’t stop them at all, or stalkers wait for the measure to end, so they go on with stalking as usual.

The following category includes stalking based on efforts to establish a connection, a closeness to the victim (which was not existed previously), and which the stalker wants or believes that it already exists (but it is a delusion). In this type of stalking, various forms of expression

¹⁸ K 606/20, I Basic Court in Belgrade.

¹⁹ Plea Agreement, 824/17, I Basic Court in Belgrade.

²⁰ Official Gazette of the RS, No. 94/2016, 10/2023.

of admiration and intrusive search for love and establishing a connection with celebrities are recognized, but the same type of stalking exists in any other case of obsessive striving for love/attention from person who does not want the relationship and who does not even know the stalker (or does not know him/her well), and there has never been a connection between them that the stalker insists on. These stalkers are more likely to experience mental disorders, the most dangerous of which is erotomania, because persons with this disorder deeply believe that their love is requited, that they are in a close, loving relationship with the victim and it is difficult to break their delusions. Such stalking is long and painful, and therapies do not have much success (Nicol, 2006: 27). Stalkers in this category are „seekers of love“ or „intimacy seeking stalkers“ (who need psychiatric treatment, while they view punishment as the price of true love) and „incompetent suitors“ (intellectually limited, with rudimentary courtship abilities that need to improve interpersonal sensitivity and communication skills, which proves to be a difficult task, because after being sanctioned and distracted from one victim, they find another) (Mullen et al., 1999: 1248). They do not represent, in general, a great danger, except those with erotomania and pathological infatuation with the victim, who are capable of extreme forms of violence.

There is 23% (therefore, almost a quarter) of the perpetrators of this category in the sample. Just in one case, it was a woman who, through Facebook, harassed the son of the owner of a famous Belgrade restaurant (where she often waited for him, trying to get in closer contact). She was sanctioned by a security measure that includes psychiatric treatment at liberty.²¹ Surveys show that women who engage in stalking as intimacy seekers are most often socially isolated with high levels of mental illness and personality disorders (Mullen, Pathé, Purcell, 2009: 140).

In two cases, the famous person was targeted by intimacy seekers (fans) – one radio host and one TV host (in the latter case, the perpetrator took taxi several times to come from another city to the studio where she worked, bringing her gifts, waiting, trying to enter the studio, sending her love messages).²² In both cases, paranoid psychosis of the erotomaniac type was noted, and the sanction was a security measure that involves psychiatric treatment in a medical institution. Just in one case, the victim was a minor, and there was the joinder of offences (Stalking and Sexual Harassment), and one of the most severe punishments – six months of imprisonment and security measure - prohibiting convergence and communication with victim were pronounced,²³ while in just one case the victim was male (stalker met him on Facebook).

In this category of stalkers, those with high(er) education (and mental disorders) are common. When it comes to other relations, the perpetrator meets the victim (but very superficially) in a shop, restaurant, hospital, on the promenade or it is about acquaintances in the sense that the perpetrator performed some work in the victim's house or it was a superficial neighbourly relationship or relations at the level of somewhat better acquaintances. In one case, it all started with the publication of an advertisement for renting a garage,²⁴ and in one case with the chit-chat in the theatres during the break (both of them were highly educated, theatre-lovers, and the stalker especially skilfully used cyberspace and his IT skills to stalk and harass the victim who did not want a relationship with him).²⁵ These stalkers often send love messages, gifts, write poems and shower their victims with unwanted attention and courtship. A very common diagnosis among them is unspecified non-organic psychosis.

²¹ K 529/21, I Basic Court in Belgrade.

²² K 1607/17, II Basic Court in Belgrade.

²³ Plea Agreement, 882/17, I Basic Court in Belgrade.

²⁴ Plea Agreement, 2/20, I Basic Court in Belgrade.

²⁵ K 2030/19, I Basic Court in Belgrade.

The next category is „resentful stalker“, eager to punish the victim for (real or fictional) harm/evil. The stalker seeks vengeance and satisfaction for the injustice done (Ibid: 1249). This type of stalker more often threatens the victim with violence or hurts her/his property, and sanctioning inflames passions and establishes him in revengful intentions. Usually the stalker and the victim know each other, but this does not have to be the case.²⁶ There is 12% of this kind of stalkers in the sample. Interestingly, several cases are colored by the current political situation in the country. In one case, the stalker - an unknown person stalked the TV presenter because he works on the television advocating ideas of political opposition. In addition to being insulted in a public place, the victim was threatened with murder, often in front of his child, and stalker yelled: „Are you Serb? Who is paying you? Why are you working on that TV? You are a fascist/traitor/foreign mercenary...“. The stalker was mentally incompetent (and highly educated).²⁷ In the other case, a workshop visitor in a NGO began to stalk one of the employees, insulted her, called her also names („a foreign mercenary“, etc), and threatened her.²⁸

In two cases, the resentful stalkers were focused on their „bad“ former bosses, and in other cases they were relatives, neighbours, and the reasons for stalking were mostly money issues (or other often fictional injustice). In perpetrators from this category, there is often some form of mental disorder, and on the victim's side (when it comes to closer relations – neighbours or relatives) could be several persons. In one case, a woman was on the side of the perpetrator – the resentful former tenant who wrote insulting and threatening messages to former landlords (a married couple).²⁹

There are other typologies of stalkers, such as: psychotic and nonpsychotic; those who stalk known or unknown persons; political stalkers, stalkers in the role of a professional, contract killer, cyber stalkers, etc.³⁰ Recognizing the form of stalking, i.e. the type of stalker, is extremely important for creating the most adequate response of society and the victim. It is particularly important for assessing the risk for victim's safety, i.e. the risk of injury and even murder, in order to ensure protection in time. The GREVIO strongly encourages the Serbian authorities to work towards a better understanding of the concept and dangers of stalking among the professionals in the criminal justice system in order to establish better practice in the implementation of Article 138a of the Criminal Code (GREVIO, 2020: 44).

4.1.2. *Sanctions imposed*

Out of the total number of cases in the sample, two ended in acquittal (in one case due to the amendment to the CC and the introduction of the new constituent element „persistently“ to the description of the offence, which was judged to be more favourable to the perpetrator, and in the other case there was no evidence that former partner was the person in disguise, who banged on doors, windows, etc., while in one case the court pronounced rejecting judgement (because the public prosecutor has dropped the charges).

At the first glance, the high percentage of the plea agreements was noticed – even more than one third (37% when it comes to the First Basic Court and 32% when it comes to the

²⁶ In „predatory stalkers“ category (sociopaths, serial rapists or murderers), stalking leads to the realization of sexual fantasies and the satisfaction of sadistic needs (Nicol, 2006: 28).

²⁷ K 1045/20, I Basic Court in Belgrade.

²⁸ K 830/20, I Basic Court in Belgrade.

²⁹ Plea Agreement, 136/21, I Basic Court in Belgrade.

³⁰ See: Nikolić-Ristanović, Kovačević-Lepojević, 2007:7-8.

Second Basic Court), which implies faster completion of the proceedings, but also the privilege for the perpetrators in terms of (milder) sanctioning. The predominant sanction is the conditional sentence (63%) which is always accompanied by a security measure – prohibiting convergence and communication with victim. In 23% of cases, there were mentally incompetent perpetrators (twice as often the sanction was a security measure of compulsory psychiatric treatment at liberty compared to the safety measures of compulsory psychiatric treatment and confinement in a medical institution). The sentence of imprisonment was imposed in three cases, and the „home incarceration” in four ones. The fine and community service were imposed in two cases each. The security measures pronounced alongside suspended sentence are the expulsion of a foreigner from the country (one case), the compulsory alcohol addiction treatment (one case) and confiscation of object (one case).

The pronouncement of a security measure - prohibiting convergence and communication with victim was very common and in stalking cases undoubtedly appropriate. The courts ordered these measures very diligently (always alongside suspended sentence), even in cases of sanctions with which this measure could not be ordered (imprisonment or a security measure of compulsory psychiatric treatment (in medical institution or at liberty) that is imposed on a mentally incompetent offender as an individual sanction)). In this regard, the legislator should be urged to correct the controversies made in regulating this security measure, bearing in mind the Article 80, paragraph 6 and the Article 89a, paragraph 2 of the CC, which are colliding. One could welcome the court's handling of security measure – prohibiting convergence and communication with victim, but this problem should be solved on the basis of the legal intervention. Undoubtedly, it would be interesting to find out what have happened after the sanctioning of the offender, i.e. whether there has been a repeat offence, bearing in mind the previously mentioned about the need for appropriate treatment and supervision of offenders from certain categories (e.g. rejected stalkers).

The suspended sentence with protective supervision was not pronounced in any case, though it seems to be much better solution. In this state of play, only security measure from the Article 89a of the CC should ensure the separation of the stalker and the victim, which is disputable, given stalkers' actions when it comes to the CPC measures and urgent measures from the Law on the Prevention of Domestic Violence that often were not effective.

When it comes to sanctioning, the reasons for decisions on sanctions were rare, and where they were present, there were: the correct conduct before the court, previous non-conviction and confession to the offence, while the aggravating circumstances were extremely rare – prior conviction, and in one case - the punishment (with longest duration of imprisonment in the sample) was determined according to the provisions on repeated offence (Article 55a of the CC). Also, since Serbian incrimination does not know the close relationship between the stalker and the victim as a constituent element of the offence, it should be considered (bearing in mind the previously mentioned about rejected partners and their dangerousness) or the judges must take this (aggravating) circumstance into account in determination of the sentence, thus making stalking against certain groups of „qualified” victims subjected to aggravated penalties (which would be in compliance with the requirements of the Istanbul Convention, Article 46).³¹ The Victim Directive 2012/29/EU also stipulates that EU Member

³¹ For example, this circumstance is a constituent element of the aggravated form of the offence in Croatia. See: Criminal Code of the Republic of Croatia (Article 140, paragraph 2), NN (Official Gazette of the Republic of Croatia), Nos. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.

States have to develop extra protection measures for vulnerable victims.³² In some countries, stalking a(n) (ex)spouse or other (former) romantic partner, family members, or persons under their care or authority leads to elevated sentences.³³

5. CONCLUDING REMARKS

Serbia has undoubtedly invested a lot of effort in the field of protection of women from violence, which was commended by the first GREVIO's baseline report on Serbia (GREVIO, 2020: 63), but there are a lot of improvements to be made in order to avoid criticism that many provisions are more of a declarative nature, introduced under pressure of international obligations and the EU integration processes, without genuine interest in the problem, and even its comprehensive recognition.

Namely, it is not sufficient to create an image of fulfilment of requirements for joining the EU, designed without real understanding of the problem and the compliance with the existing national and international requirements (such as requirements of the Istanbul Convention). Among the reasons for persisting difficulties in practices are lack of understanding of the seriousness and dangerousness of some forms of gender-based violence, such as stalking, their trivialization in the media and in public discourse.

Stalking as a relatively new crime is regulated quite well in terms of compliance with the requirements of the Istanbul Convention, even some provisions make a step forward in relation to the requirements of the Convention, as well as in relation to the anti-stalking laws of some other European states (no serious consequences are sought in terms of endangering the safety and instilling fear in victim (for the basic form of the offence), the offence is prosecuted *ex officio*, without requesting the motion to prosecute from the victim, the list of stalking tactics is non-exhaustive, there is room left for other similar stalking actions). However, the provisions don't pay attention to the connection between the perpetrator and the victim, and the vulnerability of the victim (that some countries have entered into the description of the incrimination of stalking itself), and the Istanbul Convention requires that circumstances to be assessed as aggravated in determination of the sentence (which has not been done in cases from Belgrade sample).

The incrimination, nevertheless, functions quite well in practice, (we could say that it „works“) but it should be researched what is the reason for such a high proportion of dismissed criminal complaints, whether professionals understand well dangerousness of certain forms of stalking (especially when it comes to stalking as a form of gender-based violence and the most common form of stalking by former partner that can also be a prelude to victimization by murder), because as it was previously said – the percentage of the plea agreements is quite high; the percentage of „classical“ conditional sentences is high (much better choice would be a conditional sentence with protective supervision with well-chosen obligations that include supervision and some kind of treatment); the relationship between the perpetrator and the victim, i.e. vulnerability of the victim, is not sufficiently taken into account (in terms of assessing this circumstance as aggravating in determination of sentence); the existing measures of

³² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, *Official Journal of the EU*, L 315/57, 14.11.2012, p. 57–73.

³³ More details in: Van der Aa, 2018: 322-323.

protection of the victim from secondary victimization in criminal proceedings are not applied (provisions on especially vulnerable witness were not applied in Belgrade sample cases).

Education of the police officers, public prosecutors and judges on requirements of the Istanbul Convention, focusing on better understanding of the dangerousness of gender-based violence, which is obvious in stalking, is one of the suggestions. The other is related to further and deeper research on this topic (to collect data not only on the sex and age of the victims (and they are also incomplete in official statistics), but also on the nature of the relation between the perpetrator and the victim, which is also required by the Istanbul Convention).

Finally, let us remind of the still burning problem of femicide in Serbia – there are no official statistics about it either, but it is very well known that it happens very often after victimization by domestic violence or stalking being reported to authorities, but not responded to in a timely and adequate manner.

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