

The relationship between the judiciary and the media in BiH

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INTRODUCTION

The position of journalist in BH society has never been more difficult than today. Since 2002. I've been covering trials of people who were, at that time, declared as „the chiefs of Sarajevo underground“. My colleagues and I have reported about them daily, and none of those people with „bad reputation“ ever threatened us with the lawsuits or physical attack. Or at least, such situations were extremely rare. If these people were threatening us, maybe we could even understand that because we reported about their crimes. But what can we say today¹, when we are threatened by those who should be on our side: first of all citizens, and then representatives of the judiciary and the police?

The number of attacks on media representatives over the past year is increasing daily, and these attacks are becoming more brutal. One of the most extremes examples is the attempted murder of our colleague **Vladimir Kovacevic** in Banja Luka². Here are more examples: the charges brought by the former President of RS and today, the BiH Presidency Chairman **Milorad Dodik** to journalist of **BNTV**, attack on the **BHRT** team in Konjic, attack on the photojournalists of **Klix** and **Al Jazeera** at the protest in Sarajevo, attack by the president of OO SDA Novi Grad Sarajevo **Huso Cesir** on the cameraman of magazine **Žurnal...** This problem has been recognized by the European Commission as well. In their 2018. report³, among other things, it states that significant improvements in the strategic, legal, institutional and political framework are needed for the respect of human rights, as well as freedom of expression where political pressure on journalists and their intimidation continues, including physical and verbal attacks.

In Bosnia and Herzegovina lately there are numerous examples of pressures on media caused by the disclosure of the affairs "Diploma", "Salafis", and up to the last "Shoeing" affair, which involves **High Judicial and Prosecutorial Council of BiH**. All of these affairs have been revealed by the online magazine Zurnal since the beginning of this year, so the journalists of this magazine are often „targeted“ by different people from the judiciary.

EXPOSING THE WEAKNESSES OF JUDICIARY SYSTEM

The „Diploma“ affair: In January this year, Zurnal published a video about buying diplomas in BiH titled: "How to Buy a Diploma in Secondary Medical School in Only 17 Days". After ignoring the video for a few days, the Prosecutor's Office of BiH issued a public announcement stating that they had estimated there was „no reasonable doubt“ that schools in Široki Brijeg and Central Bosnia are selling diplomas.

¹ Tužilaštvo BiH u ratu s novinarskim slobodama, Al Jazeera Balkans, 22.06.2019.

<http://balkans.aljazeera.net/vijesti/tuzilastvo-bih-u-ratu-s-novinarskim-slobodama>

² Napadnuti novinar Kovačević: Razvukli su šipke i počeli me udarati, Radio Sarajevo, 27.08.2018.

<https://www.radiosarajevo.ba/vijesti/bosna-i-hercegovina/napadnuti-novinar-kovacevic/310814>

³ <http://europa.ba/wp-content/uploads/2018/04/20180417-bosnia-and-herzegovina-report.pdf>

The Prosecutor's Office issued a motion on this occasion on January 9, 2019: *"The Prosecution of Bosnia and Herzegovina has never submitted a report or information about the crimes committed in relation to the person P. Senad, born in 1978 in Fojnica, appearing on a footage published by Journal, which is why, in relation to that person, the Prosecutor's Office of BiH did not act. The Prosecutor's Office of BiH, the State Investigation and Protection Agency of BiH, submitted information No. 16-04 / 2-04-1-6395 / 18, which states that a completely different person was born in 1982. in Bihać. So the person who appears on the footage was not reported to the Prosecutor's Office of BiH."*

They did not have enough material to initiate pre-investigative actions, but they decided to call on questioning the **journalist of magazine Zurnal Azra Omerovic**. She received a call for questioning in March 2019 from the state **prosecutor Oleg Cavka**. According to Zurnal, the call did not indicate the circumstances on which the journalist is going to be questioned. "I can ask you about anything I want," said prosecutor Cavka to journalist Omerovic. And he asked, although he knew that in Article 82 of the BiH Criminal Procedure Code it is written that a person cannot be questioned as a witness if he or she would violate the duty of keeping a professional secret/religious official, confessor, journalist for the purpose of protecting the source of information", writes Zurnal⁴.

The „Salafis“ affair: In March of this year, magazine Zurnal published a testimony of a Salafi from BiH claiming that he was recruited by the Croatian Security and Intelligence Agency (SOA)⁵. The story raised a lot of dust, not only among the public in Bosnia, but also in the region. The world media, like the renowned German Die Tageszeitung, also reported about it⁶. **Journalist of Žurnal Avdo Avdic**, who revealed this affair on March 25, was invited to the BiH Prosecutor's Office to make his statement. This was reported by all Bosnian media. And in this case, the prosecutor is once again - Oleg Cavka. He called Avdic to give his statement in the criminal case concerning the alleged intelligence invasion of the Republic of Croatia in BiH and the recruitment of BiH citizens for intelligence work for the needs of the Republic of Croatia.

"The prosecutor kept me for half an hour to wait outside, and before that he brought a witness of the initial H.C. H.C. said in the hallway they were pressuring him. After that, Cavka let me in. He asked me about my contacts, sources and visits to different places in Sarajevo, and what's crucial, he asked me from where I got the information about Russian influence in Bosnia and Herzegovina. He did not ask me anything about this case of invasion of the intelligence services from Croatia", said Avdic after the hearing for N1 TV ⁷. He added that he did not want to reveal his sources for this story.

On April 3, 2019, the Prosecutor's Office of BiH released a statement on this issue: "All of the witnesses questioned, except for Avdic Avdo who was not asked about the issue because of the legal obstacles to his hearing, did not reveal any information that the three persons mentioned (**Mato Djaković, Mijo Kresic and Ivan Bandic**) participated in the activities described above".

⁴ Žurnal, 08. 03. 2019: [Državno tužilaštvo isljeđivalo novinarku Žurnala](#)

⁵ YouTube - Žurnal, 19. mart 2019: [Afera Selefije: Vrbovali su me da prenosim oružje](#)

⁶ [Teror in Bosnien und Herzegowina: Waffen](#) 30. 03. 2019.

⁷ N1 TV, 22. 03. 2019: [Avdo Avdić pozvan u Tužilaštvo BiH](#)

The "Shoeing" affair: At the end of May 2019, Žurnal published correspondence followed by a video that the media called „Potkivanje“ (Shoeing)⁸, which shows the **president of High Judicial and Prosecutor's Council (HJPC) Milan Tegeltija** in Banja Luka talking with **Nermin Alešević**, a businessman from Velika Kladusa, and already suspended SIPA inspector **Marko Pandza**. They are talking about a court case that is active in the Sarajevo Cantonal Prosecutor's Office. You can hear on the footage when Pandza asked Alešević for 2,000 KM meant for, as he said, „shoeing“ Tegeltija.

Related to this case, the Prosecutor's Office of Bosnia and Herzegovina questioned the suspects Alešević and Pandza, while Tegeltija gave testimony as a witness.

The passions around this affair have not yet calmed down and the reactions are numerous, especially after the last statement by the **BiH Prosecutor's Office** on 20th June, stating: *"Given that the recent pressures on the work of the HJPC BiH, the Prosecutor's Office of BiH, or the judiciary of Bosnia and Herzegovina, as a whole, which pressures to some extent already hinder the regular work of the judiciary, are present, the BiH Prosecutor's Office has formed a case will be treated with due diligence and in accordance with the law, to examine the motives and reasons of persons who, through media, send such negative messages about the work of the judiciary with the aim of destabilizing the judicial system."*

The Prosecution's announcement that it will examine, in accordance with the law, the "motives and reasons of persons who send a negative message to the public about the work of the judiciary through the media with the aim of destabilizing the judicial system", caused numerous reactions in BiH. The first was the reaction of the **US Embassy to BiH**, posting on its Twitter account that responsible and independent institutions should investigate corruption and abuse of office, rather than those who are working to detect offenses: *"Free media and investigative journalism play an important role in the defense of the public interest in a democratic society"*.⁹

The **BH Journalists Association** also reacted. They believe that this statement does not hide the intent of the Prosecutor's Office of BiH to attract and imprison journalists and editors whose media have published controversial videos of the "Shoeing" affair. *"We believe that the Prosecutor's Office knows the media freedom and rights of journalists in the way that they are regulated by domestic and international laws and regulations and that they will not resort to judicial pressure on media professionals in the way that this happened in April and March this year, when chief prosecutor Gordana Tadić and a number of acting prosecutors have tried in an unlawful manner to force journalists from the portal Žurnal to disclose sources of information and, contrary to the Criminal Code of BiH, force them to violate the professional secrecy"*, BH Journalists emphasized in their statement.¹⁰

The decision of the Prosecutor's Office of BiH was condemned also by **Dunja Mijatović, Council of Europe Commissioner for Human Rights**, calling it on her Twitter account unacceptable and an attack on freedom of expression.

The **Forum of Ethics and Compliance of BiH**¹¹ also responded: *"The Prosecution's claims that the daily public pressure on the HJPC and the BiH Prosecutor's Office are already beginning to interfere with the regular work of the judiciary, in fact only proves that public*

⁸ Žurnal, 23. 05. 2019: [Pogledajte video Potkivanja: Ti ćeš meni sve dostaviti pa ću ja vidjeti sa Dalidom!](#)

⁹ <https://www.klix.ba/vijesti/bih/ambasada-sad-a-u-bih-pravosudje-treba-istrazivati-korupciju-a-ne-one-koji-otkrivaju-zloupotrebe/190619115>

¹⁰ UO BHN: [Reakcija na saopćenje Tužilaštva BiH](#), 19.06.2019

¹¹ WEFEC, 20. 06. 2019. [Tužilaštvo BiH baca petarde u pogrešnom pravcu](#)

criticism is indispensably necessary and useful to the citizens. If criticism hampers them in regular work, it means doing wrong and unfair, because otherwise why would the public criticism interfere with the work. After all, a naive observer can be asked whether the situation in the state is regular, so that the Prosecution will work regularly”, they said in statement.

The Prosecution's announcement that it will reconsider negative messages about their work and form cases about them represents intimidating the public with criminal persecution, because such criticisms lie in freedom of expression and are inherent to democratic societies, **Transparency International (TI)** in BiH said¹². Critiques by the professional and wider public or media reporting on the work of the judiciary cannot be related with interference with the work of the judiciary, nor can they be seen as unacceptable pressure:

“TI BiH considers the latest statement by the Prosecutor's Office of BiH as an attempt to prevent further media reporting on irregularities in the work of the judiciary and to shut down that part of the public which responded to the inscriptions on the latest affairs in which judges and prosecutors appear as the lead actors. (...) The only way for the judiciary to regain its reputation and citizen's confidence is by processing the cases of high and political corruption, not through the clash with the media and their critics”, TI statement said.

On the third day of the HJPC session held on June 21st 2019., **President of HJPC Milan Tegeltija** said he would sue all media, journalists and politicians who claimed that he was involved in corruption. He said that "no one is above the law, even journalists, who have no right to violate the law and commit criminal offences". Tegeltija also announced that he will sue some of the media in Germany who wrote about his alleged involvement in corruption.

"Please do not understand this as an attack on journalistic profession. Protecting my rights concerns on transgression of what journalists have the right to do", Tegeltija said. He went a step further announcing the filing of disciplinary, but also criminal reports against the people from the judiciary who had suggested to the Prosecutor's Office of BiH that he should be a suspect in the „Shoeing“ affair, although this was an ongoing proceeding. As he says, all the people who argued that he is corrupted will be sued for slander.¹³

At the **BHJA Journalist's Club of Banja Luka**, they hope that when the Prosecution said they would investigate, they did not think of journalists, *Oslobođenje* wrote.¹⁴ *"If this was about journalists who are discovering problems in the functioning of the judiciary in BiH, in the work of judges and prosecutors, and we can see that there is a lot of such problems, it is a huge step backwards in terms of media freedom,"* said **Sinisa Vukelic**, president of the Club.

The lawyer and former state judge Vlado Adamovic believes that the Prosecution can't do anything about public communications unless they are defamation, insults and hate speech. *„Everything else is allowed, so every attempt to prevent freedom of speech and freedom of thinking is in vain - says Adamović.*

Selim Karamehic, a judge and a member of the HJPC BiH, in an interview for *Oslobodjenje*¹⁵ said that "without going into the jurisdiction of the Prosecutor's Office of BiH,

¹² Žurnal, 20. 06. 2019. [Reakcije na najavu Tužilaštva BiH: Javno demonstriranje pravosudne sile nad medijskim slobodama!](#)

¹³ Patria, 21. 06. 2019. [Tegeltija najavio tužbe protiv novinara, medija, ljudi iz pravosuđa](#)

¹⁴ Oslobođenje, 21. 06. 2019. [Pravosudna sila nad novinarima](#)

¹⁵ Oslobođenje, 28. juni 2019. [Selim Karamehić: VSTV izbjegava da razgovara o suštinskim stvarima](#)

that part of their statement really creates a dilemma and a justified fear for the people in media, but also others who give comments and critics".

„I think the BiH Prosecutor's Office is a bit - I will not say overdrive -they acted too hard. They should pay attention on the weight of the words in the announcement. Does this mean that Ambassador Berton, or ambassadors of some countries that have been writing critically will also be a part of the case? I don't approve restricting the rights of freedom of speech and media freedom in this way. If a person finds that his right has been violated, he can file a lawsuit, but it is an individual right. Special standards apply to us (from judiciary) in the sense that they have to be particularly high, both professional and moral standards. We have to be patient, tolerant, and argumentally responsive to criticism. Our qualitative work and results are the best contra arguments for any criticism“, Karamehic said.

JOURNALISTS IN THEIR OWN WORDS

Admir Muslimovic, journalist of the portal **Detektor.ba**, believes that the relationship of the judiciary towards the media in BiH is at a disastrously low level.

"In addition to pressures on the media, and the hearing of journalists who discover and initiate some of the affairs, such as the "Shoeing" affair, fake diplomas and others, the problem between journalists and judicial institutions is reflected in the closeness of their system, which should be completely transparent and opened to the public. The courts and the Prosecutor's office are trying to limit the access to judicial proceedings to the media, despite the fact that the law in BiH provides that the trials are public, and that international standards call for transparency - which means prompt response to inquiries as well as the availability of indictments and verdicts. Fifteen years after the judicial reform in Bosnia and Herzegovina, courts and prosecutors' offices do not have the same transparency rules so the indictments can't be obtained at the state level , audio and video recordings are issued only for up to ten minutes and reporters have extremely bad experiences when it comes to answering their questions", says Muslimovic.

The recent announcement by the Prosecutor's Office of BiH that they will, in accordance with the law, "examine the motives and reasons of persons sending a negative message to the public about the work of the judiciary with the aim of destabilizing the judicial system" as well as Tegeltija's announcement of lawsuits against the media and politicians, represents public demonstration of the judicial power over media freedom, says Muslimovic.

"Free media and investigative journalism play an important role in defending public interest in a democratic society. Therefore I regard the announcement by Tegeltija and the Prosecutor's Office of BiH as an attempt to intimidate and the absolute pressure of the judiciary on the media. The Prosecutor's Office's decision on examining alleged motives and reasons represents intimidating the public with criminal persecution. In that way they are trying to prevent further media reporting of irregularities in the work of the judiciary and to shut down the part of the public that responded to the inscriptions on the last affaires, in which main actors are judges and prosecutors", claims Muslimovic. Asked how to improve this relationship, he replies that the situation is crystal clear, ie "judiciary has to open up, be more transparent, because the public has the right to know what is going on in the processes that take place before the courts that are ultimately paid by the funds from budget users in this country".

"I have to mention an example of a positive relationship between the judiciary and the media in BiH. This is the case with Prosecutor's Office in Canton Tuzla and their spokesperson Admir Arnautovic, who has phenomenal cooperation with media from BiH and the region. So,

improve the complete judicial system and the relationship with journalists, according to the model of Arnautovic", concludes Muslimovic.

Faruk Durmisevic, a reporter for Federal Television (FTV), also believes that the relation judiciary-media is bad.

"There are many cases that illustrate this, but the most important are those cases when criticisms actually works. For example, when journalists recently criticized the relation between the Prosecution's Office of BiH and the media, we testified that Boris Grubestic, spokesperson of this judicial institution, came out in front of the journalists and made a public statement after a long time", says Durmisevic.

He further states that the Prosecutor's Office has many other problems and challenges to face (for example, the OSCE report on war crimes) and that dealing media coverage is, in his view, unnecessary, especially considering that journalists are not obliged to disclose their source.

*"It just creates a picture that those who criticize are the target of revanchism of those who reject these critics. It is the same with HJPC because we have a more serious dimension there. Let me rephrase our respectable colleague **Senad Avdic**, who said that it is not possible to believe in the impartiality of judges in the processes when members of the HJPC are sueing journalists, because if that judge releases a journalist, then his fate may be questionable because some Council member decide on his career. And that is a fact. There are many examples that prove this and we are in a delicate situation, where those responsible for the third pillar of authority in the country have become the purpose to themselves and isolated from the environment they are in. Criticism and reporting of possible unlawfulness must be present - of course, with the respect of all ethical and professional standards of journalism, and on the other hand, judicial officials must feel that pulse of the public and the media and insist on determining any possible illegality within impartial process, so that they can return the confidence in the judiciary system at least to some extent", emphasizes Durmisevic.*

„ADVICES“ FROM THE PROSECUTOR'S OFFICE AND THE POLICE

Judge of the Court of BiH Branko Peric in an interview for June issue of magazine „Dani“ said: *"I don't think they know what they are writing or what they are doing. Such statements confirm their incompetence in the management of the institution. Just remember how the chief prosecutor Gordana Tadic advised journalists."*

And we remember very well when **Gordana Tadic** on April 19th 2019, during the OSCE presentation of their latest corruption report, advised journalists that "their discoveries of crime, abuses, intelligence affairs and similar unlawful actions do not need to be published, but to report them first to the Prosecutor's Office or the police, or to inform the Presidency of BiH or the Council of Ministers?! And all that, she added, with the evidence gathered!

This wasn't the only such appearance of Mrs. Tadic. As an example of her's relationship to the media, especially those who point to irregularities in the judiciary, we can also state the situation from the presentation of the OSCE Report "War Crimes Management in the Prosecutor's Office". Journalist Avdic had a question for the chief prosecutor, and she briefly responded: *"Avdo, I do not answer your questions."*

We can't neglect the various statements of the **Vicepresident of HJPC Ruzica Jukic** as well. She likes to use the sessions of HJPC regularly to talk about the media and journalists who were critical of her work.

Vicepresident Jukic often addresses to the public through her Facebook profile. On May 29th this year, she wrote a status on how "Federal TV is doing it's part of the task of attacking an independent judiciary. The task given to it by the paralegal state power centers". Journalists have asked her on several occasions to clarify who are these "paralegal state power centers", but Mrs. Jukic never answered.

The second vicepresident of HJPC, Jadranka Lokmic-Misiraca, also likes to "mention" journalists at HJPC sessions in cases when she doesn't like a certain title or article in the media where her name was mentioned.

WHEN HJPC SUES THE PRESS

According to the **Faktor portal**¹⁶, in the past several years two deputies of President Tegeltija have raised seven lawsuits for alleged defamation.

According to Sarajevo Municipal Court data, Lokmic-Misiraca filed four lawsuits, and Jukic one less. Judgments in these cases are brought by judges whose careers lie in the hands of Lokmic-Misiraca and Jukic and their colleagues from HJPC, which in minimum raises the question of objectivity of the verdicts and their fairness. The frequent practice of filing the lawsuit, taking into account the present situation, represents an obvious example of pressure on the media, limiting their freedom and stopping or seriously endangering open debate on issues of public interest.

In addition to the frequent lawsuits, journalists are also prevented from executing task assignments by denying information.

The Prosecutor's Office of BiH is not replying to the press inquiries for a long time now, nor can any information be obtained from this judicial institution. A few months ago, **Boris Grubescic, a spokesman for the Prosecutor's Office of BiH**, sent a circular e-mail notification to all media entitled with "Urgent" - the information related to Gordana Tadic's meeting with the Council of EU work group. The first one to react was **Veldin Čustovic, the editor of Hayat TV**. In his answer to Grubescic, he wrote: *"Boris, I trully hope, and I believe that all my colleagues journalists are hoping too, that once in your career you will send us a video, photos of concrete actions that are in the public interest or at least information on locations of these actions so that you can partly contribute to our professional reporting on the Prosecution's work. I trust that none of the colleagues has interest in publishing the daily report of the activities of your boss."* Custovic was supported by colleagues from other media houses in BiH.

WHAT TO DO NEXT

Pressures on the media in Bosnia and Herzegovina are not something that's new. However, recently they have increased more and more, and the very way of the threats has become more sophisticated: sue the media and, if they lose in court, they will have to pay extreme penalties.

Reflecting on the latest developments in HJPC and our judiciary, **Ivan Šijakovic, professor and sociologist from Banja Luka**, says that "they (the representatives of the judiciary institutions, op.a.) are in fact controlling all of the institutions in BiH".

¹⁶ [Članovi VSTV-a discipliniraju medije: Afere im uzrokuju "duševnu" bol vrijednu nekoliko hiljada KM](#), Faktor, 16. 06. 2019.

„There are several media out there, maybe five or six, who are still struggling and want to publish something honest and true. When you gain control over these few media, then you don't have anyone anymore who is opposed, you have no one to point to you about your dishonorable behavior. And that is going to happen in the coming months, I'm actually convinced of it. No one will be able to fight them back anymore. Whoever pronounces their name will be arrested in the street or people with baseball bats will be sent to beat them somewhere in the dark“, professor Sijakovic says.

Judge Branko Peric wrote in his column on **Nezavisne novine** on May this year: *"There is no longer any trust in the judiciary, and the honor and dignity of judges and prosecutors no longer exists. For the citizens of this country, all of us today are Ruzica, Milan and Jadranka. We deserve nothing else, because we kept silent when we needed to talk."*

As for us journalists, we should learn from this statement of judge Peric: every threat, a "goodwill warning" and an attack on us and our colleagues we must report, because the silence has not brought any good to anyone.