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Introduction

Transparency, judiciary system and media



To what extent are judiciary institutions – prosecutor's offices and courts in Bosnia and Herzegovina open towards media world, that is, to what extent are they ready to provide information regarding particular cases, respond and reply to journalists' questions and enquiries? What is it that prevents and limits them in providing information and is it only transparency or rather non-transparency and disrespecting the right to information access, or, as in certain cases, is there an obligation that specific information cannot be revealed and released? Why do journalists receive accusations and indictments issued by prosecutor's office and are prevented from attending court hearings?

“Cold war” has been on for years between media representatives and judiciary institutions in BiH, although both parties involved, looking thoroughly, should be on the same side; that is, the side based on righteousness, unbiased side, side guided by arguments and evidence based on confidential and classified information and proofs. Unfortunately, as far as both “headquarters” are concerned, professional principles are often neglected and greatest complaint journalists direct against the judiciary system is directly related to general transparency or access to information. BH journalists' community often quote the anecdote regarding copy – paste based answer provided by BH Prosecutor's Office official

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spokesperson, every time journalists send an enquiry. BH Prosecutor's Office official spokesperson almost always replies with "No Comment". Unlike BH Prosecutor's Office, some other judiciary institutions seem to be more opened and are indeed ready to cooperate with media representatives. On the other hand, journalists sometimes refuse to accept that there are limits and obstacles in receiving information, especially if these relate to cases with an ongoing court procedure or in cases where all parties must be careful and cautious as far as witness protection processes are concerned, including underaged persons and similar.

This E-Journalist edition shall cover these issues and more. These questions have been considered as current affairs during the specific period when the amendments of the Law on Information Access have been taken into serious consideration and these amendments, we shall all hope, should allow and enable journalists to easier access to information treated as public interest information and at the same time, amendments should improve more transparent work by local institutions.

77th edition of E-Journalist shall cover the issue of access to information under direct control of prosecutors' offices and courts in BiH with remarks by Denis Džidić, executive director of Balkan Investigative Network (BIRN) BiH, Irhad Bilić, legal adviser at the cabinet of the President of Court of BiH, Nina Hadžihajdarević, special adviser for public relations with the Federal Prosecutor's Office of the Federation of Bosnia and Hercegovina and Faruk Durmišević, journalist of Istinomjer.ba, a local platform.

Maja Radević, E-Journalist editor



Free Media Help Line

Current cases:

Hacker attacks on web portals, February 2021: The BH Journalists Association sent letters to the cyber crime departments of the Federal Police Administration and MoI of Republika Srpska regarding the recent hacker attacks on web portals in Federation of BiH and Republika Srpska. Portal Žurnal (www.zurnal.info) from 18.02.2021. was exposed to planned DDoS attacks for four days, as a result of which access to the website was blocked. Almost simultaneously with this attack, hacker attacks were carried out on the web portals Nomad.ba and BUKA. The editors and owners of the above mentioned media expressed justified suspicions that these hacker attacks are connected with certain centers of power which do not like the critical and investigative writing of the journalists of these portals.

2. Threats to journalists, March 2021: The Prosecutor's Office of BiH has formed a case and opened an investigation against Jasmin Mulahusić, with the address of residence in Luxembourg, for the criminal offense of inciting national, religious or racial hatred and intolerance through various publications on the Internet, public space and social networks. One of those who testified in the Prosecutor's Office in connection with the mentioned investigation is the well-known BH journalist and owner of Face television Senad Hadžifejzović, who was also threatened by Mulahusić.

War between judiciary institutions and transparency

By: Denis Džidić

The inbox is empty. Twelve e-mail addresses are there. In total, there were 360 enquiries sent. Altogether there were zero (0) answers replied.

This is a short story that you should all know about judiciary system and its transparency.

At the beginning of this year, the Balkan Investigative Network of Bosnia and Herzegovina (BIRN BiH) became a part of the project whose goal was based on insisting on transparency increase. The project gathered 30 journalists from different editing offices and required from them to send a plain e-mail enquiry (every Monday) to Prosecutor's Office of BiH, regarding the same confirmed indictment in corruptive cases.

Journalists came from numerous and different media houses and there have been younger and older journalists, but in the end, that fact meant absolutely nothing. Every one of them sent 12 e-mail enquiries and received zero answers. They sought indictments that had recently been confirmed and also indictments that had been under procedure, as well as those that had previously been completed based on first – instance verdicts. There was no difference in terms of receiving answers by the official judiciary representatives. E-mail enquiries for 12 indictments resulted in zero answers.

Therefore, there were 360 sent e-mail enquiries in total and zero received indictments.

Journalists have not been surprised by the Prosecutor's Office attitude which regularly and under the management and leadership by Gordana Tadic, have been in an open war with media representatives. It is important to emphasize that, during the period of last 12 months only, this particular female state prosecutor, during several press conferences, blamed media houses for poor and inadequate perception in public, regarding the work of this institution – despite several reports by international organizations that confirmed the same claims (poor and insufficient work by the Prosecutor's Office of BiH).

Additionally, in August 2020, Prosecutor's Office of BiH sent an official reaction to journalist's text posted at Istraga.ba (local web site), regarding the accusations by Gordana Tadic, chief prosecutor of BiH when she had accused Avdo Avdic, a local investigative journalist and reporter for allegedly posting untrue and incorrect information, which was completely inappropriate for this judiciary institutions and which additionally reflected personal interests by the chief prosecutor. This reaction by the Prosecutor's Office became a part of the report on human rights issued by State Department concerning media liberties and freedoms in Bosnia and Herzegovina in 2020.



Mrs. Tadic has been disallowing other prosecutors to communicate with media representatives and to issue public press releases which, according to media experts, resulted in additional public mistrust in judiciary system thus disabling media representatives to receive adequate reports, regarding the work of this particular

3. Attacks on journalists, Vahidin Mujagić, March 2021:

Correspondent of O Channel Vahidin Mujagić was detained by police officers while on duty in Brod. While filming the Brod Oil Refinery, police officers approached journalist Mujagić and, explaining that it was not allowed to film the Refinery, demanded that the footage be confiscated, then took the journalist to the police car and issued him a misdemeanor warrant for unauthorized filming.

In his report to the FMHL, Mujagić points out that nowhere at the place where he filmed the Refinery was there a sign that filming was prohibited.

4. Threats to journalist Eldin Hadžović, April 2021:

N After Hadžović published an article on Prometej.ba portal on April 10 this year, entitled “How the mayor of Sarajevo failed the first exam: They are not Serbian criminals, but the RS Army”, which was later transmitted by numerous portals, a member of the Armed Forces of BiH Vahid Hota sent him a message via Facebook with extremely threatening content in which, with numerous curses and insults, he threatened Hadžović with “slapping” and “breaking his fingers with a hammer”.

judiciary institution and to perform their duties and tasks in most professional way. Chief state prosecutor rarely gives interviews in media and during the period of last couple of months, she has refused to give interviews to BIRN BiH thus rejecting their enquiries.

Prosecutor’s Office of BiH announced that they will launch an investigation in order to detect how media investigative reporters and journalists had managed to get the information regarding the “Medical ventilators” case, before the indictment was even confirmed. Furthermore, this only confirmed that all attempts to make Prosecutor’s Office more open to media has been pointless, since Prosecutor’s Office officials have never expressed their will to provide media representatives with indictment details in the first place.



The question of whether confirmed indictments (regarding corruption cases), should be revealed and released in public, has been defined in Guidelines issued by the High Judicial and Prosecutorial Council (origin. VSTV) and Guidelines were legally affirmed in September 2014. According to this document, prosecutor’s offices at all levels should reveal and release all indictments (considered as public interest issues), which certainly did happen with corruption cases. The problem was the fact that this document was not legally obligatory, so therefore Guidelines have not been implemented equally within all judiciary institutions. Almost all prosecutor’s offices, at all levels, have failed to post the above-described indictments on their official web sites. On one hand however, Zenica Prosecutor’s Office do post indictments on their official web site, while Sarajevo and Tuzla Cantonal Prosecutor’s Offices, on the other hand, tend to provide indictments upon request only. BiH State level Prosecutor’s Office refuse to provide indictments.

This kind of different practice results in problem, as far as media following is concerned, taking into consideration that journalists are deprived of available information provided in time, in order to check all specific allegations deriving from indictments, during the monitoring of court procedures and court hearings on daily basis.

It is quite similar with courts with some of them, such as Court of BiH, reveal and release non-anonymous verdicts regarding corruption cases or war crimes, while on the other hand, other courts make their verdicts anonymous. First – instance courts reject and refuse to reveal and release their verdicts by any means, since they do not consider and treat them as first – instance and legally valid verdicts yet.

Comparing to Court of BiH transparency, it is important to emphasize the problem with providing first ten minutes of either audio or video recordings at court hearing sessions. Bearing in mind that journalists are allowed and entitled to attend complete court hearing sessions, this particular practice of providing video or audio recording at court hearing sessions puts journalists and reporters (working for electronic media houses) into an unequal position, taking into account that they have been deprived of having audio or video recordings from complete court hearing sessions and are thus disabled to create quality – based and genuine reports consisting of most important parts of court hearing sessions. Having in mind that electronic media houses web site posts still represent most dominant information sources for most BiH citizens, this particular fact directly has endangered and jeopardized the public right to become familiar with the processes of most significant court procedures in BiH.

State court has recently, and for the first time, begun with online court hearing broadcasting in case against Fadil Novalić and others, but this practice was soon terminated only after few court hearing sessions, with

Courts and prosecutor's office throughout BiH tend to limit and prevent journalists and media representatives of having access to various information and High Judicial and Prosecutorial Council of BiH (HJPC), as roof organization, sends legally unbounded Guidelines concerning the revealing and releasing the documents, thus creating a complete disharmony and disproportion in practice



the explanation (provided by the court officials), claiming that the technology required for such online broadcasting was very complex and complicated and requested a lot of effort.

All these issues regarding the transparency should be addressed by the recently appointed members of the HJPC (VSTV), along with the passing of new law (regarding this institution), thus resulting in a trust regained by the general public, after several controversial affairs. However, current situation in this judiciary institution is far from ideal. Despite the fact that Disciplinary hearings held against judges and prosecutors in BiH are made available to public and journalists are allowed and entitled to attend, the question raised by BIRN BiH investigative reporter and journalist demanding the submission of hearing schedule and time table for the forthcoming period was rejected by the VSTV officials claiming that such information may consist of information revealing the identity of the persons that have been subjects to indictments and against whom the legal procedures have been held.

Passing the Communication Strategy of VSTV is under procedure. This particular document should address several sensitive issues and questions, as far as information access is concerned. According to present practice, the work on this document (until now) has not been transparent either.

Furthermore, the question of transparency must be the core of all discussions regarding the Law on High Judicial and Prosecutorial Council of BiH or other judiciary reforms due to high level of public mistrust towards the judiciary system.

(The author of this text is executive director and editor with the Balkan Investigative Network BIRN BiH)

Proactive reporting is necessary and required for strengthening and reinforcing the trust into judiciary institutions

By: Nina Hadžihajdarević

Freedom of access to information is a condition required for every single democratic process and displays a constitutional category that emerges not only as an individual right but also as a constituent part of rights to freedom of expression, defined by Article 10 of the European Convention of Human Rights.

In order to attain and ensure the concept of good governance, the judiciary institutions in Bosnia and Herzegovina have been obliged to provide public with the results of their work and to inform them about their activities too. This includes providing public with answers and replies whenever they receive enquires from their citizens, as well as to be available and transparent by all means necessary. In this particular sense, the request for establishing and developing the transparency cannot relate to court procedure publicity only, but it also must refer to other segments, regarding the



work of judiciary system, including the work by the High Judicial and Prosecutorial Council of BiH and courts and prosecutors' offices. Limitations, comparing to the above described, should only exist when revealing and releasing certain information is strictly banned and prohibited by the law.

“In cases where, on one hand, journalists, reporters decide to provide general public with as many information as possible, courts and prosecutors’ offices on the other hand, limit and impose restrictions to available information, considering thus that they ensure obeying the principles of righteous legal and court proceedings”

Recommendations and Guidelines

In practice, judges, prosecutors, journalists or reporters often tend not to have mutual understating between each other, as far as their individual needs and requirements are concerned, including public needs as well. In cases where, on one hand, journalists, reporters decide to provide general public with as many information as possible, courts and prosecutors’ offices on the other hand, limit and impose restrictions to available information, considering thus that they ensure obeying the principles of righteous legal and court proceedings based on genuine justice. Additional problem is applying technological innovations that simplify enormous and uncontrollable information sharing through the internet, which makes these procedures even more complicated and difficult. Consequently, it would be recommended that media houses put in additional effort, especially in the field of special reporting and education, again regarding the reporting covering the court proceeding sessions and upgrading new levels of knowledge and skills, as far as professional journalists and reporters are concerned, including responsibility and ethic in their work. Therefore, knowledge, scope and type of information that professional journalists and reporters can require and get from judiciary institutions is also important.

Communicating with all parties interested in this issue, is crucial and very important process in order to improve understanding of the work itself and to comprehend the scope of judiciary institutions activities. In this way, the strengthening and reinforcing undoubtedly restore trust of the work of judiciary system and rule of law in Bosnia and Herzegovina.

For this reason, judiciary institutions and prosecutors’ offices in particular, have been, for the period of last couple of years, trying to seek and find optimal solutions and acceptable outcome for both sides (parties) involved, in terms of sufficient providing of information, bearing in mind and taking into serious account the presumption of innocence of indicted and accused persons, including their rights for righteous trials, as well as their personal and privacy rights and including privacy rights of their family lives and of all persons involved in court procedures and trials. Many formal and informal initiatives have been taken into consideration (with some of them being accepted), in order to make these processes improved and advanced, and accordingly, several important recommendations and guidelines provided by the High Judiciary and Prosecutorial Council of BiH have been passed on, also including internal rules, guidelines and other acts that have currently been implemented in practice by numerous courts and prosecutors’ offices throughout BiH. Apart from those that regulate the relationship itself between particular judiciary institution and media world, including the nature of information providing, there have also been those that suggest and recommend information providing during and after criminal procedures and trials.

Most of these documents refer and relate to relationship and bound between the categorization of criminal offences, in a sense of their potential danger for community and public interest as they (public) should be familiar with details concerning criminal offences and eventual goals (in general) and special prevention that should emerge or that should be accomplished, and including the level of information availability, regarding the accused and indicted persons or those that have been convicted for criminal offences that head committed in the past. Generally speaking, during the information providing, every prosecutor’s office shall take into account that the scope of privacy rights protection (during the court proceedings) is tied and connected with the procedure stage when the information is provided.

This particular way of regulation, that is, problems emerging, is common sense and usual occurrence, if you take into consideration that procedure stages have been revolving and rotating chronologically, thus the level of suspicion, assuming that someone had committed a criminal offence varies and the starting and initial point is reasonable suspicion which furtherly continues through so called probable suspicion and carries on all the way to so called suspicion proved outside rational suspicion. Also, it is important to outline the level of information protection that moves

from weaker cases (where, for instance, we have cases concerning public figures political officials Etc.) to more complex cases. It is also important to include into this issue a set of information that may require a higher level of protection, which may additionally include a complete restriction or banning of information provided. This particularly relates to underaged persons, regardless to whether they had committed criminal offences or whether they had been victims of the process.

According to principles of judiciary openness and right of access to information, judiciary institutions should ensure access to information regarding the confirmed indictments and verdicts in criminal offence cases processed against mature and over 18 persons. If there are solid and convincing reasons for that, certain personal details, regarding the accused, indicted and convicted persons or other persons that appear in the procedure, shall become anonymized, which shall again be determined in every single and individual case.

Minimum transparency is attained and accomplished in war crime cases and other criminal offences against international rights and these cannot expire in cases of organized crime, criminal offences (based on corruption), criminal offences based on a misusing public functions, criminal offences based on business crimes and criminal offense that can be subject to verdicts imposing long – term sentences or imprisoning up to ten years, as well as in some other criminal offences where “public interest” is detected and determined.

It is also important to highlight the fact that technological development would enable direct implementation of principles of public institution proactive transparency, including judiciary institutions too, and by this, make things easier for citizens, media houses and other interested parties involved in these legal processes, regarding the access to information, through their official web sites. Many countries, through the provisions of the Law on Free Access to Information, order public institutions to reveal and release proactive information considered as general public interest. Laws on free access to information at levels in Bosnia and Herzegovina do not even define and require proactive transparency; instead, information is often received upon enquiry or request. This particular information only displays how conservative our laws actually are and also demonstrate how unavailable they are and how poorly and insufficiently they have been adopted to modern digital trends. Therefore, interior guidelines, rules, strategies and other documents in some judiciary institutions and to some extent, all try to make up and diminish discrepancies of the Law on Free Access to Information thus enabling public audience to have easier and more convenient access to information they require.

Education of public, media and citizens

Apart from information that should in uncompromisable way be available to general public (such as the information regarding public procurements, strategic documents, operation information, organizational information and information concerning free access to information, Etc.), proactive transparency of judiciary institutions should be considered through availability of information that display no exceptions, that is, represent the information whose revealing and releasing would not make any harm to other legitimate interests. Proactive informing is necessary when specific interest is to be obtained, including the strengthening and reinforcing the trust in judiciary bodies, including the prevention of committing criminal offences and similar, or in cases that have been considered as greatest interests to the public; or those that represent frequent number of requests required for free access to information (such as general recommendations by the Council of Europe).

For the purpose of strengthening and reinforcing the transparency and restoring the trust into the judiciary system in Bosna and Herzegovina, judiciary institutions must intercede for open, truthful, genuine and objective informing concerning their work, taking into serious consideration the presumption of innocence of the accused and indicted persons, their rights to righteous and fair trials, including their privacy rights and rights

of all parties involved in court procedures.

During these processes, it would be considered as necessary to apply continuous education of public, media representatives and citizens, regarding the roles of courts and prosecutors' offices, in terms of justice implementation, thus additionally encouraging social interaction into justice conducting. On the other hand, journalists' and reporters' role would include going through continuous special trainings, again covering the issue of reporting about the work of judiciary institutions. Media play extremely important role in every democratic society, particularly in relation with judiciary system, because the public perception regarding the quality and functional operational work of judiciary institutions, in many ways would depend on their own reporting.

(The author is a female special adviser for public relations with the Federal Prosecutor's Office of the Federation of Bosnia and Herzegovina)



Prosecutor's Offices and Courts – serving the public or serving the institution management?

By: Faruk Durmišević

Third governing pillar, by its nature, would in every ordered country represent the most important factor in society, because it does represent a corrective element to executive and legislative governing levels, whereas all entities should be equal by law, or at least it is how things should be arranged. Along with media, judiciary system should compose of a great team in detecting and identifying many discrepancies in a society, including illegal deeds, that is, suspicions as far as the occurrences of illegal offences are their confirming are concerned, where court should eventually have final say. When things are arranged (as described above), everything sounds very nice and encouraging, in fact, it seems ideal. However, in practice its implementation often "fails" even at first stage. This first stage is a communication between media (journalists representing media houses they work for) and spokespersons representing judiciary institutions.

In over five years of professional journalism (mostly working for television news program), I have come across countless number of spokespersons that, until a year or two, were in same journalism role as myself. Judiciary topics, arresting and black chronicles have altogether been segments of news programs which, along with politicians and their conduct,



have always been the issues that general public audience have most of the time been interested in. Additionally, by adding these two entities into one, rather coherent unit, where the politicians become a part of judiciary topics or black chronicles, all these spotlights become directed to these issues. Availability, that is, information provided in time is crucial, because if false and incorrect information appear in public or information that is considered as semi-information, we then face disavowed public and unprofessionalism by journalists revealing and releasing such information (which often happens in practice and reality), particularly in an online sphere where the tendency is to obtain as many clicks as possible on certain web sites, again with the purpose of increasing the number of viewers and visitors.

Heaviest burden, in terms of receiving information, including replies to journalists' enquiries, as far as I am concerned, has always been "No Comment" reply by the Prosecutor's Office official spokesperson. This has been the most common response from this institution that we used to get from Boris Grubescic, official Prosecutor's Office spokesperson and journalists have often been writing about this, so I have therefore outlined what has left the greatest impression on me personally. Namely, in March 2019, journalists had, instead of receiving "urgent" e-mails regarding concrete actions that should have or were taken by the Prosecutor's Office authorities, been receiving "urgent" e-mails on activities concerning (at this time in charge) Gordana Tadic, chief persecutor of Prosecutor's Office of BiH, so Veldin Custovic, "Slucajevi X" TV show editor, accordingly decided to send Mr. Grubescic (and Mrs. Tadic as well) clear message:

"Boris, I sincerely hope, and I believe that all my journalists colleagues hope too, that you shall, once in your career, send us ("journalists") video footages of concrete "actions" that are considered as general public interest or at least send us the information regarding the locations where these actions have been taking place, thus making partial contribution to our professional reporting."

However, the situation has actually never changed and improved either. Situation on the other hand has become "urgent", only when Gordana Tadic, chief prosecutor, suspected that someone had attempted to assassinate her on her way to Tuzla. In most cases, she only addresses the public when she reports about the work of High Judicial and Prosecutorial Council of BiH. There have been no concrete and firm answers delivered by her, especially not those concerning the critics addressed and directed against the work of Prosecutor's Office of BiH.

Public audience still remembers (and this case echoed for a long period of time) protests organized by journalists based on Gordana Tadic (chief prosecutor) misuses of official communication channels of Prosecutor's Office of BiH, with the purpose of threatening certain media representatives by announcing that she would press private and legal charges against particular journalists and reporters for alleged defamation and libeling directed against her. However, Prosecutor's Office of BiH and Boris Grubescic, their official spokesperson, sometimes manage to surprise media representatives in positive way when he decides to stand in front of judiciary institutions in Sarajevo and, in front of journalists, deliver comments in regard with war crimes verdicts. Usually, their strict practice, in that matter, would include video recordings made by Mr. Grubescic himself, and these recordings would eventually be sent to media representatives.

Court of BiH would, in respect with this issue, be very limited through their PIOS system. This basically means that once you send an e-mail; you receive an answer and you shall receive (by e-mail) every verdict but these would be short version verdicts.

As far as lower Cantonal and prosecutorial levels are concerned, there are two prosecutor's offices that have been considered as most represented positive cases; namely Sarajevo Canton Prosecutor's Office and Tuzla Canton Prosecutor's Office. The work of Tomislav Ljubic, Tuzla Canton Prosecutor's Office chief prosecutor and Admir Arnautovic, Tuzla Canton Prosecutor's Office official spokesperson, should particularly be highlighted in this sense. They have been available, clear and concise every time when it came to discuss sensitive issues and cases. They even

"Heaviest burden, in terms of receiving information, including replies to journalists' enquiries, as far as I am concerned, has always been "No Comment" reply by the Prosecutor's Office official spokesperson. This has been the most common response from this institution that we used to get from Boris Grubescic"

managed to organize media press conferences where they would display actual facts concerning certain indictments that would, of course, not incriminate, endanger or jeopardize court procedures and all with the purpose of providing general public audience with necessary information. Mr. Ljubic has never tended to avoid discomfoting questions, especially not during his appointing (for his second mandate) when present VSTV management, led by Milan Tegeltija, was significantly divided in their opinions regarding Mr. Ljubic's appointing for Tuzla Canton Prosecutor's Office chief prosecutor.

As far as Sarajevo Canton Prosecutor's Office is concerned, Mrs. Azra Bavcic, just as Boris Grubestic, had emerged from media field and she actually seemed completely opposite to Boris Grubestic.

Whilst communicating with Mrs. Azra Bavcic and regardless to the extent of, what had seemed to me as formal reply, I was at least satisfied with her response, unlike with the above mentioned "No Comment" response that I used to get from Prosecutor's Office of BiH. Perhaps best illustration of Mrs. Azra Bavcic conduct and relationship with journalists and reporters was displayed when, she, along with Mirza Hadziabdic, Ministry of Interior of Sarajevo Canton official spokesperson, created a Viber channel aimed to improve communication with journalists and reporters, which vastly made things easier for journalists, particularly when certain actions were concerned, including new and most recent information and indictments. Additionally, this information would find its path to journal-

ist in easier way, as a result of the engagement of members of Federal Police Administration and consequently, this information would become available to general public in the end. My only complaint is concerning Mrs. Sabina Sarajlija, Sarajevo Canton Prosecutor's Office chief prosecutor, who should communicate more with the public. I sincerely hope that she will improve her communication with the public and lifted to a greater level, especially after Coronavirus pandemics is over, where I expect that she might organize a public press conference respectively.

Finally, journalists and representatives of third-pillar of governing levels, regardless to whether this include judiciary officials or public information spokespersons, must be on the same side performing same tasks and duties. Those working

in public information judiciary departments, especially those that used to work as journalists before they joined judiciary institutions, should know that internal and operational activities by prosecutor's offices that altogether create daily reports regarding the work of their superiors cannot be classified as "urgent" or "immediate" categories that they release in media. At the end, it is important to outline that journalists should not reveal their information sources and must not be interrogated for articles and texts they post in prosecutor's offices, where again, they are often being put under pressure to reveal their sources. Journalists must not be "targets" to judiciary bodies, just because they manage to, with help of their sources, discover criminal offences or have justified suspicions of potential criminal offences.

(Author is a journalist of local platform Istinomjer.ba and former journalist of Federal Television)





Information access under control by courts and prosecutor's offices in Bosnia and Herzegovina

By: Irhad Bilić

Public informing, regarding legal procedures in courts and prosecutor's offices in Bosnia and Herzegovina, has exponentially been increasing over the period of last couple of years, so therefore, it has become most represented issue in local media field. Front pages of printed media sources, as well as TV shows headlines, have all been overwhelmed with reports covering criminal offences and some local web sites have been dedicated to these topics and issues only. In what way and based on what premises, that is, with what rights and to what extent journalists and media representatives have access to information under control by local courts and prosecutors' offices, has become the most popular public issue, since the sub-framework of revised Law on Free Access to Information in Bosnia and Herzegovina was released.

Access to information under control by governing institutions in Bosnia and Herzegovina has been arranged and set through a single (approximate) state law, including two laws on lower levels. Courts and prosecutors' offices, although different from institutions by their genuine nature, have not been recognized as a special category. This has emerged as a consequence of previous legal system, when the executive governing levels would display the core of most focused occurrences, so seclusions of judiciary (court) branches would neither be perceived nor realized in most appropriate and adequate way, again in accordance with democratic principles, mostly related to the rule of law. Therefore, courts and prosecutors' offices have been levelled up with other institutions, as far as access to information was concerned, despite the fact that the quality of information has mostly been different from two other (political) governing branches. New law should accept and appreciate this, rather important guideline, and journalists and media representatives should pay attention about this, even under the provisions of local existing laws.

„Closeness “of institutions and misuses of media

The quality of information significantly determines the possibility of information approach. courts and prosecutors' offices leading legal procedures that concern specific persons, achievement of their competences, and it clearly intrudes into subjective human rights, freedoms and liberties, that is, it encroaches into human rights, freedom and liberty of particular person. It additionally defines the opportunity by courts and prosecutors' offices in different procedures and different stages to share certain information with general public. Journalists and media representatives often disregard and neglect limitations and boundaries set up by courts and prosecutors' offices and (because of that we often witness) information acquiring and their releasing without legal and defined procedures. Courts and prosecutors' offices in this particular tendency, have specific role which, due to insufficient reception of the Law on Free Access to Information in practice and due to low – level comprehension that the information under their control actually display public good, consequently results in “closeness” of institutions. This is completely undemocratic and opposed to proclaimed obligation and duty defined by the Law which they are bound to implement in reality. This kind of practice must stay in the past.

Both journalists and media representatives contribute in “closeness” of institutions by misusing acquired and collected information and by displaying the opposite of what had been revealed and released as a result, with the purpose of creating particular public opinion, rather than informing general public that should help them in developing their own judgement regarding certain facts.

“As far as criminal proceeding is concerned, both courts and prosecutors' offices have different possibilities when it comes to information release, depending on a procedure stage. On one hand, while the investigation stage is sensitive, with prosecutors' offices having narrow scope regarding the possibility to reveal and release information, proceeding operations taken at courts allow courts to reveal and release such information”

That retrograde tendency has become vastly apparent and present, so that certain statements have been displayed completely opposite in comparing to what had previously been stated. Ethic and professional standards do not seem to exist anymore and rights of others (persons that are involved in court procedures, as subject to journalists' reports), appear as though they tend to be violated deliberately and on purpose. On one hand, we seem to have constant tendency where someone is accused in advance and, on the other hand, someone released and set free, also in advance, depending on journalists' and media preferences. That is utterly opposite to all existing standards, particularly due to the situation where court room is "moved" to media space; that is, where journalists tend to "act" as judges and where verdicts are passed on even before court hearings are concluded and completed. Such journalists' practices must stop in a very short period of time.

The above-described situation may represent and display utter violation of innocent presumptions which again may result in responsibility assessment by the state of Bosnia and Herzegovina in respect with the European Court for Human Rights in Strasbourg. First verdicts like this had been passed on with this particular courts, some 30, 50 or more years ago.

The Law sets up the information under control by courts and prosecutors' offices as public goods. This type of affirmation actually means that everything that happens with attaining competences, does represent the fact that general public are entitled to and the institutions are bound and obliged to provide the public with such information in easiest and most appropriate ways. However, this is not an absolute rule and it may become subject to exceptions. Accordingly, Law does recognize three cases of exceptions: exceptions regarding the functions by public bodies, commercial interests of the third party involved in legal procedures and privacy protection. Therefore, Law may establish limits based on absolute possibilities to access all information under control by courts and prosecutors' offices, and these must be questioned, interrogated, examined and tested in every single concrete case. Consequently, courts and prosecutors' offices must not allow and entitle access to information, unless, in that specific moment (author's remarks) the revealing and releasing of the information would be a constituent part of some of the above-mentioned exceptions. But the Law still balances this and accordingly, it introduces a public interest test which must be implemented by competent institutions.

In this natural core, although some information does represent an exception from posting (or publishing), the information may be revealed and released if the general public interest is on a very high level, so its releasing would result in less damage comparing to general public interest would benefit from its releasing. However, according to courts and prosecutors' offices practices, the will by general public would rarely be accepted, because these are very complex issues that directly intrude into subjective human rights of particular and designated person. General public interest would, most of the time, overbear in political issues within executive and legislation governing level.

Inasmuch, the information quality determines and guides its availability; common, collective and joint issues are of general society and public importance, since these have a larger and greater level of availability than special, single and subjective information that, at the same time, intrude into human rights, freedoms and liberties of a particular individuality of person.

Therefore, there is no need in making quick judgements regarding the "closeness" of courts and prosecutor's offices, since these (judgements) must be questioned and examined from one institution to another and tested from one case to another, which again requires detailed, unbiased and comprehensive analysis, unlike repeated and flosses based on "I am not happy with the work of judiciary institutions" premises.

Information under control by courts and prosecutors' offices also differ. On one hand, prosecutors' offices are strictly authorized, competent and in charge with criminal offences, while courts, on the other hand, run civil proceedings, out-of-court proceedings, criminal proceedings whose reporting attract countless "clicks" – which had, once upon a time, been best illustrated through a number of published editions or number of viewers. Clicks have naturally been counted based on algorithm methods.

Although, businessmen would assumingly have significantly more interest from reporting that concerns procedures of, for instance, public procurements and bids, processes and practices, which is not what actually happens in reality; namely the above listed is not in focus, or in words of modern technology and categorical apparatus; it would not attract clicks. Important distinction between the information regarding criminal offences and civil proceedings, which journalists and media representatives often tend to forget when they apply to have free access to information, is the fact that criminal offences, legal and court procedures do represent general public interest, so these information are (in larger and greater level) basically more available in terms of their releasing, comparing to civil procedure cases. Civil procedure is processed for private reasons only, that is, it includes property issues, which is clearly defined by Article 7 of the Law - classified and confidential commercial interests. Insofar, courts determine the exceptions deriving from that specific Article and implement the procedure of getting the authorizations of opposite parties involved in the case, which may take time, bearing in mind that journalists and media representatives are always in a hurry. Additionally, asking the parties involved in civil procedures is at least questionable, if the time is crucial element as far as information releasing is concerned. Same exceptions deriving from Article 7 are valid when parties involved in court procedures are actually the states, that is, their lower levels, regardless to the fact that the state budgets are very much general public issue.

Criminal Proceeding Information

As far as criminal proceeding is concerned, both courts and prosecutors' offices have different possibilities, when it comes to information release, depending on a procedure stage. On one hand, while the investigation stage is sensitive, with prosecutors' offices having narrow scope regarding the possibility to reveal and release information, on the other hand, proceeding operations taken at courts, including detention unit, court bail, allow courts to reveal and release such information. However, this is where retrograde tendencies emerge during the process of information collecting, including the reporting itself.

For example, witness interrogating and details from testimonies given by all parties involved in investigations (when we still have no higher – level suspicions regarding the accused), result in information reaching the public through media in very “unusual” ways. There is no legal foundation for revealing and releasing such information, despite the fact that prosecutor and judge both may have information and there can accordingly be no other conclusions but to create a public opinion that would emerge as a result of blame imposed upon media representatives (investigation journalists and reporters).

The blame would not be considered and treated legally in front of courts, where the innocence presumption would be violated in most cruel manner, including the principles of investigation secrecy and many other criminal proceeding standards. On the other hand, courts cannot reveal and release information regarding the court verdict until they legally and officially receive return confirmation (about the verdict decision) from the accused person, because the party involved in court proceeding should not be informed about the court decision from media sources. If we take into consideration that detention unit may be reasonably far and, for instance, if we take into account that prosecutors' offices may receive the verdict before other parties involved and accordingly reveal and release this information as their own, we might again face the emerging of developed retrograde tendencies.

Any following stage of criminal proceeding has its own specific rules. Consequently, these rules appear during the accusation stage and may include questions raised by journalists and media representatives, in regard with passed decision and indictment, or more precisely, include questions regarding whether the indictment had been legally confirmed even before the official announcement by local courts. Naturally, not all courts have developed practice of public informing, however, it has been noted that media representatives often fail to understand the rules of court proceedings, including the limits pursuant to the Law on Free Access to

Information, rights of other parties Etc.

Access to information, controlled by courts and prosecutors' offices and reporting on court of prosecutors' offices proceedings, which has been displayed and presented in this particular text has only covered certain segments of this, rather complex system and very interesting social process. Quality – based laws, its accurate and correct reception by legal and judiciary institutions, mutual respect and understanding between journalists and media representatives on one hand, and judiciary institutions on the other hand, may altogether serve as initial basis required to establish functional system, including the developing and creating of stable and firm practices by both sides involved and all in accordance with certain standards as in developed democratic societies, ethic principles and professional regulations. There are several ways to attain these goals and they include: a) identifying and detecting (good practice and retrograde tendencies); b) communication (individual, proactive and social communication through conferences and expert – based meetings, sessions and gatherings and c) education based on previous experiences.

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