

Legal Protection of Journalists in BiH: Only 30% of attacks and threats get a judicial epilogue

The Free Media Helpline has, in the last few years, recorded an increase in threats and assaults directed at journalists, particularly regarding threats in online setting

By: Rubina Čengić

Hate speech, physical violence, destroying the equipment, defamation suits or death threats are daily events in the life of a journalist in BiH.

I know where you live, my godfather lives there, you'll see when I find you; I'm dead serious, I'll kill you, put a bullet in your head; I'll break all your fingers or I'd slaughter them, not just them, but you too for being goody-two-shoes and welcoming these assholes... are just some of the threats journalists receive. Yet, the findings of the BH Journalists Association, which operates a Free Media Helpline, show that only 30 percent of the reports result in a trial.

According to the data in the report *Indicators on the Level of Media Freedom and Journalists Safety in BiH 2020* created under the Regional Platform for Advocating Media Freedom and Journalists Safety in Western Balkans (www.safejournalists.net) with the support of the European Union, 26 cases of assault, threats and pressure on journalists and media in Bosnia and Herzegovina were registered in BiH during 2020, including 3 physical assaults, 6 death threats and 7 assaults and threats directed at media outlets, and there were additional 69 cases of violations journalists rights and media freedom, including journalist's working right, mobbing, defamation suits and violations of the right to freedom of access to information.

The police are reacting, but not the prosecutor's offices

“The Free Media Helpline has, in the last few years, recorded an increase in threats and assaults directed at journalists, particularly regarding threats in online setting. In the last three years, FMHL has registered more than 143 criminal offenses committed against journalists, including an attempted murder, numerous death threats, physical assaults and violations of journalists' rights which compromises their safety as a result. The impunity of the assaults against journalists, as well as pressures and violations of their rights have increased by 23% in 2020, in comparison to 2019, and only a third of those cases were ruled in journalists' favour”, says Vildana Džekman, legal counselor in the Free Media Helpline/BH

Journalists. She explains that *journalists and media outlets have been facing obstructions in their work and that the Free Media Helpline/BH Journalists Association has recorded more than 13 cases of denying journalist access to information and political pressures on journalists in their professional roles, in the period between January and July 2021.*

“The police authorities react in a timely manner and receive the reports, but the competent Prosecutor’s Offices and judicial institutions are neither efficient nor fast enough”, states Džekman.

The High Judicial and Prosecutorial Council of BiH has, in October 2018, adopted a conclusion that *the code book of the system for automatic management of cases in courts and Prosecutor’s Offices (CMS/TCMS) should be amended with an inclusion of a journalist profession and that this decision shall be announced, as well as the recording of the journalist profession in the aforementioned cases, to all the courts and Prosecutor’s Offices in Bosnia and Herzegovina.* But it is impossible to get the full statistics – first the HJPC BiH had *technical difficulties to locate the cases involving journalists in the records*, and a few days later they sent the incomplete records related to the four cases in Doboj, Banjaluka, Istočno Sarajevo and Zenica-Doboj Canton, three cases of reckless endangerment and one case of physical assault. The Doboj and Zenica-Doboj Canton court proceedings are ongoing, in Banjaluka case the perpetrator was fined with BAM 600, and in Istočno Sarajevo a verdict was passed and a penalty order issued, but there are no records on the details.

The Chief Prosecutor of the CPO Sarajevo Sabina Sarajlija explains *that any threat or an assault, including those committed against journalists, becomes the case of prosecutorial processing once a report has been made or information about it has been passed to the competent police department or a prosecutor, and the prosecutor then determines, based on the available information, whether the events in question have the characteristics of a criminal act or an offence.*

Serious, concrete and clear threats are suable

“FBiH Criminal Code does not stipulate any special characteristics for journalists, which would make the argumentation easier for the prosecutors, but these events are prosecuted criminally only if serious threats have been made against an individual’s life or physical integrity. The seriousness of a threat is determined with consideration to the case circumstances. To constitute a criminal act, it is necessary that there are circumstances which allow us to conclude that a threat is

achievable, serious, clear and concrete, and that it makes a specific, objectively possible crime likely to happen. It is necessary that the injured party felt as if they were in danger or that they were scared for their safety or the safety of their loved ones. Sarajevo Canton Law on Public Peace and Order proscribes a penalty for an offence if the perpetrator puts a person in danger or causes them to feel endangered with threats against their life or physical integrity... If the threat takes place in a public place, which is a prerequisite, it is not necessary to prove that the threat was serious, as it is the case in regards to criminal acts”, explains Sarajlija in her written response.

She gives the example of a case when a member of the security of the Chief Prosecutor of the Prosecutor’s Office BiH approached the journalist Avdo Avdić, grabbed his arm and asked him *do you like me, do you want me to fuck you hard, you should only see the way I fuck* which caused Avdić, as he testified later, to feel afraid and scared for his life. In this case the Judge Tanja Curović determined that the element of seriousness was lacking, which has ruled out the possibility of a criminal act, and left the case in the domain of potential offence against public peace and order.

Sarajlija says that the Prosecutor’s Office of Canton Sarajevo recognizes *the importance of the journalist profession as a special form of democratic monitoring in the society and as a corrective to the judiciary’s efforts, and that they pay special attention to the cases involving journalists.*

“On the other hand, prosecutors as the institutions of criminal prosecution must take care of the importance of the freedom of expression in a democratic society and they have to distinguish between libels, insults and serious threats, as well as pay attention to the jurisdiction of other institutions in preventing hate speech in the media, such as for example the Communication *Regulatory Agency, and also to the jurisdictions of courts in other types of procedures*”, says Sarajlija.

One of the journalists who had received threats the court did not consider serious is the editor of the news program of BHT Svjetlana Topalić who received threats in 2019, primarily via social networks, including that her eyes should be gouged out, that she should be raped, beaten, even killed.

"Inaccessibility" of people who spread hate speech

“I reported only some of the threats, but I don’t know what needs to happen in order for the court to consider the threats serious. First – you can’t believe that

there is so much hate and intolerance in people. Second – you feel bad. For a while I had, although I am not a timid person, parked my car under video surveillance because my face is on TV screens and people know me although I don't know them, and the least that can happen in such situation is that someone verbally assaults you in the streets and calls you names, let alone hurts you. And only when you receive the decision stating that the reported threats have no serious bases – you start wondering where you live and what is needed for the threats to become serious: for someone to beat me, smash my head or my car? I have a feeling that assaults against journalist are treated here in the manner of *it's all good until something serious happens*, but I don't know if there will be any response once something happens and if it is necessary that someone loses a kidney or has subdural haematoma for the judiciary to take action”, says Topalić and notes *that she has a hard time believing that they can't find the ones threatening journalists if the institutions do manage finding those who threaten politicians*.

And journalist Aida Štilić has been assaulted multiple times, but she has reported only one of those to the police authorities – the one which took place in front of the journalists in the Una-Sana Canton Government building when Asim Kamber, an SDA delegate in the House of Peoples of the FBiH Parliament, approached her and verbally threatened her and criticized her work.

“There were multiple assaults, but I only reported the one with Kamber. A few months later I approached the police authorities and, quoting the Law on Freedom of Access to Information, asked them if there were any updates on the case, and they responded that both him and I were reprimanded for causing a disturbance, even though I had not received any documents about a court ruling. So, both of us were found responsible, even though he had assaulted me on my workplace, in an institution I was invited to”, says Štilić and states that the *assault had not frightened, but that she feels angry*.

“When I wrote about the electoral frauds and mentioned him in relation to them, and that was prior to his arrest, he had published a picture of me sitting in a coffee shop with another politician on his blog with the commentary that *I was receiving instructions on what to write, and that I was maybe receiving some other things*. He wrote that I was meeting those people in motels, and my only response was that I don't go to motels”, says Štilić.

Frequency of threats via the Internet

Elvira Jukić-Mujkić from Mediacentre, the Editor-in-Chief of media.ba portal warns that *online threats to journalist have become very common during the last few years and that the level of the abuse of freedom of expression is particularly concerning, and that, due to the specificity of the journalist profession, it is necessary for the judicial system to act in a more efficient manner and to send a powerful message that the institutions are protecting journalists under threats.*

“People use this freedom in the worst possible way, especially on social networks, they say the worst things they can think of, without a personal filter. To the same extent to which it is positive that there is a space for communication on social media, it is negative that social networks, and article comments in certain very prominent portals too, are perceived by many as a dumping ground where it is allowed to swear, threaten journalists with murder, incite people to beat them up, call them names. There is no response from the judicial system, there are no arrests, proceedings or verdicts which would show that this is prohibited. In the same sense there is no protection for journalists. If there was a will, and I believe there is a way, to arrest someone without any delays, someone who threatens with slaughter on Facebook or raping a journalist, to put him on trial and sentence him. That would be a message”, says Jukić-Mujkić, *pointing out that even in the rare cases when the threats against journalists are processed, it all takes very long and demotivates the journalist in question, sending them a message that it is just another case in the judicial system and it will be over when it is over.*

“We need to know that institutions are here to protect journalists who are being threatened and that those who threaten will be treated without mercy. A journalist who was threatened with decapitation because they reported on a certain issue continues reporting about the same issue the next day. If the threats and lack of protection lead to them stopping reporting about the same issue – I hope it is clear then that we as a society have a massive problem”, says Jukić-Mujkić.

BH Journalists Association believes also that a more efficient protection would be ensured if by amendments to the criminal legislation.

“Hate speech against journalists and media workers is becoming more common, and the legal regulations are fragmented and they do not protect the integrity of journalist profession. In 2019, BH Journalists have submitted a proposal of amendments to the BiH Criminal Code and entity criminal laws with the goal of achieving a special level of protection for journalist performing their professional tasks, and treating an assault against a journalist as an assault against a public officer and as a criminal offense, but the Ministry of Justice RS has pointed out in

their response to BH Journalists that the initiative was denied because *there is no equivalent legal formulation anywhere in the region* which is not the case, but FBiH Ministry of Justice has pointed out that they will consider the amendments when the amending the FBiH CC takes place”, states Džekman.

Amendments to criminal law

In April 2019, the House of Representatives of Parliament FBiH has adopted an Initiative for amendments to the Criminal Code of Federation of Bosnia and Herzegovina (FBiH) with provisions which would protect journalists while they are performing their duties – the initiative was supported by 54 out of 74 representatives attending the session. This initiative was inspired by the case known as *attack on camera*. If the Code was amended in line with this initiative, assault against journalists would be treated as an assault against police officers, which is an offense for which the valid Criminal Code of FBiH proposes a jail penalty between one and 10 years in prison.

We are not aware of a single case, including verbal and physical assault, where the perpetrator was found guilty, which means that there are clearly some loopholes in the code, the Representative Damir Mašić stated on the occasion. The initiative was submitted to FBiH Government which was obliged to consider it within 30 days.

In 2017, the Ombudsmen of BiH have issued recommendations, in its special report on the rights of journalists, regarding a more efficient protection of journalists in the manner that the attack against a journalist should be treated as an attack against an official performing their duties or that the laws on public order and peace should define it as a separate offence and that additional training needs to be conducted in the judiciary.

Jasminka Džumhur, one of the three human rights ombudsmen in BiH, says that the number of complaints regarding the treatment by the prosecutor’s offices is growing, regardless of who the victim of an assault is, as the proceedings are terminated due to the lack of evidence or because the limitation period for the criminal prosecution ends.

“The fact that the assault against journalists has never been clearly determined in the criminal legislation definitely leaves little room for efficient proceedings, so these assaults are treated as assaults against any other citizen, and the inefficient treatment of the victims, journalists or victims of domestic violence, reduce the

victim's willingness to report the violence. Additionally, regarding the journalists, it is not only an issue of whether they will report the assault, but it also has a long-term effect of making them lose interest for publishing the truth or they implement self-censorship and only publish the information acceptable to those they refer to, which is definitely not in the public interest. Hence, our recommendations are that a separate criminal act is established regarding physical assaults and verbal threats and that journalists are treated as individuals conducting public mandate, if the judiciary cannot treat them as officials, because that is precisely what informing is; as soon as we amend the legislation, we will get a more efficient instrument, but we must not forget that, without the control by the courts, too much power lies in the hands of the prosecutor's offices as they decide on their own whether an investigation will be launched and whether charges will be pressed, and the only remedy available is a complaint to the chief prosecutor, which is not efficient enough", says Džumhur.

Education of judges and prosecutors

And until the laws are amended – we must rely on education. Jukić-Mujkić believes that *it is the way to sensitize the people in the judiciary about the nature of the journalist profession.*

“Given that they possess extensive knowledge, and many of them possess great experience too, in legal terms and that they perform their job with honesty and integrity, the lack of familiarity with foundations of journalism simply cannot result in a quality process. My impression, based on what I hear from my colleagues who were a part of court proceedings against journalists, is that the understanding of this profession is problematic. And that can be concluded from the way in which questions are asked why something was published in a certain way. The fundamental knowledge about the profession will help with understanding and perceiving each threat a journalist reports in its seriousness. It is clear that every negative comment made about our work is not a threat, but at the same time, a comment on social networks which contains a threat to a journalist is not casual or insignificant”, says Jukić-Mujkić.

The Director of Center for Judicial and Prosecutorial Training in FBiH Arben Murtezić announces that the *Center will, once the current limitations due to pandemic are lifted, organize round tables and debates for the judiciary and media professionals.*

“So for we had hosted many trainings about freedom of expression, but more can be done by starting an open dialogue and debate. It seems to me that there is a certain animosity between these two groups of professionals, and that it is growing with each passing year, and that should not be the case. If we discuss the manner in which the proceedings related to assaults on journalists take place – I am certain that there is no influence on individual cases and I am convinced that judges and prosecutors, everything aside, are following the law and act in line with the facts, but my personal opinion is that journalist, in general terms, have more freedom than people employed in the judiciary system who face many limitations in their work. I often hear that the judiciary fails to recognize the issues journalists face, but you will often hear the representatives of the judiciary saying that their work is not recognized by the public, and the media is the main communication channel between the judiciary and the public”, says Murtezić and *highlights that the judiciary should pay particular attention to cases related to journalist because of the public interest.*

“The journalist possession should not face limitations or violence, and I believe that the insisting that these cases are filed in a particular manner should continue, and that an analysis should be done whether a certain assault was processed in a faster or slower manner, since they should not occur”, says Murtezić.

Individual rulings prove that this can be done differently: a member of the Armed Forces BiH was sanctioned with a prohibition on promotion within the following year because of the threats he made against journalist EldinHadžović; in case concerning MilkicaMilojević, the attacker was sanctioned with a fine of BAM 700; the salary of the employee of the Ministry for Human Rights and Refugees BiH who threatened journalist ZinaidaĐelilović was cut by 10%; HarisPendić was sentenced to six months on probation because of threats he made against BranimirGalić... and the statements of reasons in the rare rulings are educational for the public. Thus, Judge Lena Raspudić has stated in the statement of reasoning at the Municipal Court in Ljubuški, regarding the case of hate speech posted on Facebook against the current Ambassador of Bosnia and Herzegovina in the Czech Republic Martina Mlinarević, when the ruling was made in March 2021 against Jurica Pavlović who referred to Mlinarević as *a traitor of her people and the enemy of Croats*, that Pavlović *could have incited ethnic hatred toward Bosniaks and other constituent peoples in FBiH through his use of his Facebook profile and a comment available to the public.*

In the meantime, journalists no longer report the assaults, and when asked why, they most commonly answer that they do not have the time needed for it, that the

potential sanctions are less severe, the higher the position the threats were made from is, but the counter-question is asked “For whom?” But the problem for the profession and the public stemming from the lack of reporting is self-censorship.

“Eighty percent of my colleagues are supportive, but the remaining twenty percent like to say that I deserved it because I wrote about him”, says Štilić.

This analysis was prepared with the financial support of the European Union and the Council of Europe. The views expressed herein can in no way be taken to reflect the official opinion of either party.