

**Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors**

**Reply by Bosnia-Herzegovina**

**1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?**

According to the experience of journalistic association in BiH, relevant state-level institutions including some police and judicial institutions and organs, do not assess freedom of expression nor attacks on journalists as explicit examples of human rights violations. As a consequence, investigations and prosecution of attacks against journalists last for a long time, often times these cases do not reach the Court, and when they do, proceedings last for couple of years until valid adjudication. According to information received by Association of BH journalists (through Free Media Help Line – FMHL), they registered 65 criminal acts against journalists in the period 2006-2015 (September). Among these acts are: physical assaults, death threats, damage of equipment and journalists material, hate speech ... According to the analysis FMHL, only 9 cases were resolved in favor of the journalists and media (15%), 2 of which are treated as criminal cases and 7 as violations. According to the same records, in the period 2013-2014, there were 14 physical attacks (particularly during civil protests in the spring of 2014, when 10 journalists and media crews have suffered physical violence). Only one case (an attack on RTV Slon cameraman from Tuzla) police adequately investigated and handed over to the prosecution for further action.

Brčko district BiH; Police of District: In 2014., one case was registered: verbal attack on journalist and hijacking of equipment, without bodily harm. The case was prosecuted in civil law procedure, perpetrator convicted – conditional fine issued.

Federation of Bosnia and Herzegovina, Federal Ministry of Interior Affairs, Federal Police Department: In case of need or/and in cases where there is reasonable doubt that there will be criminal acts against them, journalists or other media actors, in accordance with existing law, could be assigned with police protection. Police officers of the Federal Police, in previous work, did not have such cases.

**2. Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?**

There are several mechanisms in Bosnia and Herzegovina dealing with threats and crimes against journalists and other media actors on different levels of authority. Parliamentary Assembly of Bosnia and Herzegovina appoints the Commission that discusses, considers and has the authority to request explanations from competent authorities in the field of human rights violations, security and other. Similar commissions exist within the BiH Federation Parliament and the National Assembly of the Republic of Srpska. Those commissions may adopt conclusions, as well as other decisions, by which they may invite competent authorities to undertake certain measures (to establish special commissions in order to investigate certain cases, special reports, instructions proposals, analyze certain provisions of the law, etc.). Such bodies exist within legislative bodies of Cantons, and the Assembly of the Brcko District of Bosnia and Herzegovina. It is worth noting that although they may have a very limited effect that some representative bodies of local self-government (municipal assemblies and municipal councils) have committees to discuss issues related to human rights, it can be significant because a large number of local radio and TV stations, and local newspapers, are founded and owned by those units of local self-government, hence it is one of the mechanisms to which journalists who work in these media may address.

Apart from the above mentioned, Institution of Ombudsman for Human Rights is authorised to consider all issues that fall under the good governance and the rule of law, and considers complaints by citizens who deem that their rights have been violated. In the case of threats and crimes against journalists and other media actors Institution of Ombudsman is authorised to inspect government's obligation to investigate such threats and crimes, and undertake measures accordingly in terms of identifying and punishing perpetrators.

Non-judicial mechanisms that are engaged in issues related to threats and /or safety of journalists are: Free Media Help Line (works within Association of BH journalists), Helsinki Committee for human rights in BiH seated in Sarajevo, Helsinki Board for human rights of Republika Srpska and Institution of ombudsman for human rights in BiH and related to journalists rights: public inspection office, parliamentary commission for information, Union of graphic and media workers of the RS, Union of publishers and media workers in BiH Federation.

### **3. Is the confidentiality of journalists' sources of information protected in both law and practice?**

The confidentiality of sources is protected by law, and mostly by practice. However, there have been a small number of cases where the media were requested by the police to submit all the footage made during certain events (most notably the protests in February 2014) which has been seen inter alia as jeopardizing the sources.

Federation of Bosnia and Herzegovina, Federal Ministry of Interior Affairs, Federal Police Department: The protection of source of information is protected by law and in the practice, primary by "Instruction on the management of informants" and "Instruction on working with informants". In the past two years there were no cases of disclosure of journalists' sources.

**4. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?**

No, the libel and defamation were decriminalized in 1999, and subsequently in 2001, the laws on protection against defamation were adopted at entity levels in BiH.

Brčko District BiH, Police of District: No, there is no criminal law provisions, the right is exercised by private lawsuit.

Republic of Srpska, Ministry of Interior Affairs of Republic of Srpska: In the accordance with the Law on Protection Against Defamation ("Official Gazette of Republic of Srpska", no: 37/ 01) in Republic of Spska, the decriminalization is made in a way that all responsibility for defamation is transferred from criminal to civil law, pursuant to which the responsibility for the defamation is actually responsibility for damage caused by presenting inaccurate facts by identification of a person to the third party.

In the Law it is explicitly stated that this Law shall be interpreted so as to ensure the principle of freedom of expression to the fullest extent, one can not be held responsible for expressing an opinion, for expressing what is essentially true or reasonable, and it's regulating to protect journalists' sources. Also, the Law on Defamation explicitly provides that the limitation of the right to freedom of expression must be in accordance with Article 10, paragraph 2 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

Indemnification does not have a penalty character but is awarded solely with the purpose indemnification to the damaged reputation and must be proportional to the harm caused, whereby, in accordance with the Law, the court shall take into account the fact that the amount of damage awarded would likely result in severe financial difficulties or bankruptcy for the injurer.

**5. What are the procedural guarantees (the right to defense, the periods of limitation applicable to defamation suits, *exceptio veritatis* and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?**

All of the above instruments are included in the civil legislation related to defamation.

**6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?**

No.

However, in practice, some courts directly apply ECHR case law setting higher threshold for defamation in case public officials, while there has been one case where the court did exactly the opposite, determining that indeed there had been a defamation, underlining the fact that it was an attempt to damage the dignity and reputation of the public official. This underlines the problem of lack of Supreme Court in Bosnia and Herzegovina which would be in charge of harmonizing the practice of lower instance courts.

**7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?**

Federation of Bosnia and Herzegovina, Federal Ministry of Interior Affairs, Federal Police Department: The right to freedom of expression for both legal and physical persons, is contained in European Convention for the Protection of Human Rights and Fundamental Freedoms and as such is the basis of democratic societies which includes Bosnia and Herzegovina, as a signatory to the Convention. Since the usage of these freedoms carries duties and responsibilities, it may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law, which are necessary in a democratic society, in the interests of national security, territorial integrity and morality, protection of reputation or rights of others, preventing information received in confidence or for maintaining the authority and impartiality of the judiciary.

Republic of Srpska, Ministry of Interior Affairs of Republic of Srpska: The Law on Public Peace and Order ("Official Gazette of the Republic of Srpska" No. 11/15) also recognizes the right to freedom of expression, in a way to limit this right when necessary in a democratic society and in the interests of public safety for the prevention of disorder or crime, protection of health or morals and the protection of the reputation or rights of others, in accordance with Article 10, paragraph 2 of the European Convention on Human Rights. This Law as a basic offenses against public order, among others, provides: quarrel, shouting, screaming, harassing and insults.

**8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?**

Most of the listed have been distributed through the training programmes organized by the BH Journalists and Press Council of BiH. Some of the listed documents (right of reply and reporting on criminal proceedings) were consulted and transposed into the CRA regulatory framework.

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)
- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity
- Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007
- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment
- Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content
- Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings
- Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists