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**SECURITY AND LEGAL PROTECTION
OF THE JUDICIAL SYSTEM IN JUSTICE
IN BOSNIA AND HERZEGOVINA**

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AMIR JAGANJAC
Federation of Bosnia and Herzegovina
Supreme Court President

REVIEW
of ‘Security and legal protection of the judicial system in
Bosnia and Herzegovina’

I am very honored and delighted by the offer to be the reviewer of *Security and Legal Protection of the Judicial System in Bosnia and Herzegovina*, as a compilation of texts written by authors Vildana Helic, Katica Artukovic, Dzenad Groso and Milijan Tunjic. Security and legal protection of the judicial system in Bosnia and Herzegovina is a topic that is completely marginalized in both legislative and practical sense. I hope that authors will initiate a proposal for finding a solution to this problem.

In the Federation of Bosnia and Herzegovina, the issues of security and legal protection of the judicial system, which in my opinion, concerns security and legal protection of judges, prosecutors, witnesses and other participants in the proceedings, is solely left to the Federation of Bosnia and Herzegovina Court Police. I have relatively great experience given that I am in charge of the Federation of Bosnia and Herzegovina Court Polices according to the Constitution of the Federation of Bosnia and Herzegovina. I did however hand the operational management of the Court Police over to the Chief Commander of the Federation of Bosnia and Herzegovina Court Police; nevertheless, I am informed on daily basis of all developments in the work of this institution.

The discussion in this regard could include a detailed analysis of a whole range of issues including the number of court police officers, the equipment at their disposal, the level of training but in this review, I will focus on the legislation of the Federation of Bosnia and Herzegovina Court Police, which is also highlighted as a problem by authors themselves. The Law on Federation of Bosnia and Herzegovina Court Police was passed in 1996. There was no prior experience of such a system considering that the legal tradition of Bosnia and Herzegovina had no court police institutions as a special form of a police agency. The law was passed without any prior experience. It was quite general; moreover, other laws such as regulations on treasury in the Federation of Bosnia and Herzegovina are in direct contradiction with that law. The existing law of 1996 has considerably reduced

the possibilities of a quality internal organization of the Federation of Bosnia and Herzegovina Court Police, as well as the establishment of appropriate work units and departments. It can be therefore said that the indisputably successful work of the Federation BiH Court Police can only be credited to sacrifice and efforts of all court police officers, and managerial structure in particular.

Few years ago, based on the need in enforcement of the effective law and the rising need to pass a brand new law on court police, as the FBiH Supreme Court President, I have established a working group to draft a new Law on FBiH Court Police. We have embedded all our experiences and comparative analysis of similar institutions in the world into this working material which was submitted to the FBiH executive and legislative authorities. Unfortunately to this day, even with the specific procedures with the executive and legislative branches, the law has not yet been adopted for a quality organization of the Court Police would require certain financial investment.

Therefore I hope that the compilation of texts by authors Vildana Helic, Katica Artukovic, Dzenad Groso and Milijan Tunjic who also have recognized the problem of insufficiently regulated legislation of the Court Police, will be used as additional argument in the discussion and adoption of the new Law on the Federation of Bosnia and Herzegovina Court Police, which would resolve many issues recognized in the work of the mentioned authors.

Sarajevo, March 3, 2014

BOZANA BANDUKA

**President of the Municipal Court in Kiseljak and President of the
FBiH Association of Judges**

REVIEW OF PUBLICATION

‘Security and legal protection of the judicial system in Bosnia and Herzegovina’

The authors of *Security and Legal Protection of the Judicial System in Bosnia and Herzegovina* will certainly generate great interest in the professional community with this title. Accordingly, authors should be commended for assuming this responsibility and complexity of the assignment to analyze and comment on this important issue.

The authors have offered our legal community a highly valuable and extensive document related to security and legal protection of the justice system in BiH. One of the key roles in the justice system is the protection of human rights and freedoms. Impartial and independent judicial system is the guarantee of rule of law and efficient combat against all forms of crime, in the processes of prosecution and punishment of perpetrators.

In order to perform this responsibility that they have been entrusted with, judges and prosecutors must possess a high level of professionalism and they need to perform their function in accordance with international standards and national regulations, whilst respecting ethical and moral principles.

It is for this responsible role they have been assigned with that the conditions that will guarantee independency, impartiality and freedom in the execution of their professional authority must be secured.

Due to their vital role in the protection of rights and freedoms of citizens, it is necessary that the state ensures them adequate protection so that judges and prosecutors can enjoy the same human rights like everybody else.

If the judges and prosecutors are not physically protected and if their life or the lives of their family members are in danger on account of their work, then their professionalism becomes questionable. Therefore, in order to perform their professional duties independently and in accordance with international standards, the state must secure, among other, conditions where they can perform their professional function without obstructions, disturbances, obstacles, intimidation, inadequate interference or unjustified

exposure to civil, criminal or other liabilities; that they and their family members are physically protected when their personal security is endangered because they are performing the function they have been entrusted with.

Judicial security in general needs to be viewed in a wider context, because security refers not only to judicial function holders, their families and property, but also security of other employees in judicial institutions that perform their duties. It involves security of witnesses and security of judicial institution buildings in BiH. All of this is an important part of protection and accordingly an important part of successful functioning of the judicial system as a whole.

Witness and Victim Support Sector is also taking a leading role in institutionalization of the support system for witnesses and witnesses within the judicial system, which includes international and institutional cooperation and monitoring of the application of international documents in issues related to the support of witnesses, victims and their family members - support that is provided before, during the arrival to the Prosecutor's Office or in court where evidence is given, as well as after the court proceedings.

All these issues may be found in SECURITY AND LEGAL PROTECTION OF THE JUDICIAL SYSTEM IN BOSNIA AND HERZEGOVINA, addressing security problem and legal protection as a whole.

The value of this publication lies in the fact that it is a product of professionals. They have viewed the complexity of the security problem and legal protection of the judicial system in BiH in a methodically clear, comprehensible and unique way.

From the legal and institutional point of view, this publication will certainly enable improvements in protection and security of judges, prosecutors, members of their families, employees in the judicial system, victims and witnesses and judicial institution, that is, the judicial system as a whole.

Authors of this publication have recognized an immense gap in our practice of security and protection of the BiH judicial system; namely, that the existing legal and institutional framework does not provide sufficient basis for adequate security and legal protection of judicial function holders and the judicial system in general, which represent a great significance to authors themselves.

Further, authors are pointing out the need to define clearly and more precisely the area of security and legal protection of the judicial system in BiH, and that the Court Police in BiH should be entrusted with the legal security and protection of judges and prosecutors.

This publication highlights all current problems in the area of legal security and protection of the judicial system in BiH; it also provides answers and recommendations for the improvement of this area with an aim

to guarantee security of the judicial system in BiH, ensure the rule of law, freedom and security of the judicial function holders in performing of their responsible duties by providing legal protection. This is where the quality of this publication is reflected – in that authors give answers on the concept, form and mechanism of protection and security of the BiH judicial system by providing a magnitude on information.

This publication represents a significant and expert publication. It is written in a clear and comprehensible style, with an array of information and representing facts on security and legal protection of the judicial system in a professional way, motivating everybody to read it carefully.

It can also be said that the publication also has a social significance in terms of raising awareness of judicial function holders to understand this problem and it can also be a motivator to certain institutions to engage in enforcement of recommendations and conclusions made by authors.

The message of authors in this publication is that the security and legal protection of judicial function holders and the judicial system as a whole, is a very important area and we recommend that the publication SECURITY AND LEGAL PROTECTION OF THE JUDICIAL SYSTEM IN BOSNIA AND HERZEGOVINA is used in future trainings of judges and prosecutors.

**HAJRIJA HADZIOMEROVIC-MUFTIC,
Federation Prosecutor of the FBiH Prosecutors Office and
Chairwoman of the FBiH Association of Prosecutors**

REVIEW OF PUBLICATION

‘Security and legal protection of the judicial system in Bosnia and Herzegovina’

In the process of democratization and sustainable development, the judicial system plays an instrumental role in the protection of human rights and freedoms. An independent and impartial judicial system is a guarantee of the rule of law and efficient combat against all forms of crime and prosecution processes and sentencing of perpetrators. In order to perform this responsibility that they have been entrusted with, judges and prosecutors must possess a high level of professionalism and they need to perform their function in accordance with international standards and national regulations, whilst respecting ethical and moral principles. It is for this responsible role they have been assigned with that the conditions that will guarantee independency, impartiality and freedom in the execution of their professional authority must be secured by the state.

Judges and prosecutors enjoy human rights just as any other persons, but it is also because of the important role they have been assigned with in order to protect the rights and freedoms of citizen, that the state needs to secure adequate protection. If judges and prosecutors do not have the possibility to freely review facts and apply the law, national or international, then the judicial system becomes arbitrary.

By executing their basic rights and obligations to detect and prosecute perpetrators of criminal offences that fall under jurisdiction of the court, prosecutors have the obligation to advocate preservation of the rule of law, justice and protection of basic human rights and freedoms in accordance with domestic and international standards. It is the duty of the prosecutor to investigate and implement procedures in cases where human rights have been violated regardless of who has committed the violation. If the prosecutor is not physically protected, in conditions when their life is in danger due to the nature of the work they perform, then their professionalism becomes questionable. Thus, prosecutors as well as judges must maintain their independence, impartiality and objectivity in their work.

In the realization of rights and obligations of the prosecutor that are determined by the law, the state plays a significant role. According to the Recommendations of the European Council of Ministers, No. 200-19, adopted October 6, 2000, the state must undertake efficient measures that will guarantee that the prosecutor will be able to perform his professional duties and responsibilities under adequate legal and organizational conditions.

So, in order to secure the ability of the prosecutor and judge to perform their professional responsibilities independently and in accordance with all international standards, the state must secure, among other things, the performance of their professional function free from any intimidation, disturbances, obstacles, inadequate interference or unjustified exposure to civil, criminal or other responsibilities. They need to be protected physically along with their families when their personal security is threatened as a result of the correct performance in their office.

Witness and Victim Support Sector is also taking a leading role in institutionalization of the support system for witnesses and witnesses within the judicial system, which includes international and institutional cooperation and monitoring of the application of international documents in issues related to the support of witnesses, victims and their family members - support that is provided before, during the arrival to the Prosecutor's Office or in court where evidence is given, as well as after the court proceedings.

Judicial security in general needs to be viewed in a wider context, because security refers not only to judicial function holders, their families and property, but also security of other employees in judicial institutions that perform their duties. It involves security of witnesses and security of judicial institution buildings in BiH. All of this is an important part of protection and accordingly an important part of successful functioning of the judicial system as a whole.

What is also significant is that the authors of this publication have identified the problems related to security and protection of the BiH judicial system. This mainly refers to the existing legal and institutional framework, which does not provide enough bases for adequate security and legal protection of judicial function holders and the judicial system in general. Protection and security of the BiH judicial system is viewed as a whole, as a legal, institutional, ethical, criminal and criminological problem of an individual, but also of the people and the country.

The security of the judicial institution buildings on all levels falls under the jurisdiction of the Court Police which is not adequately equipped in terms of staff, experts, material and technical equipment to execute duties they have been entrusted with. The law has not clearly defined their status,

rights and obligations. The practice has shown that there is no necessary coordination and cooperation between the court police and other police agencies. A similar situation also applies to protection of judicial function holders, where the Court Police has a significant role, but no unified approach to this segment of protecting all judicial function holders and judicial institutions in Bosnia and Herzegovina. This particularly refers to the protection of BiH State Court judges and prosecutors of the BiH Prosecutors Office, which fall under the jurisdiction of the BiH Directorate for Coordination of Police Bodies. The Directorate's role in this sense overlaps with the jurisdiction of the Security Investigation and Protection Agency (SIPA). This points out to the need to define this area more clearly, to harmonize the legislation and secure a uniform approach in the protection of all judicial function holders, witnesses/victims and judicial institutions (legal and institutional); then also the need to equip the Court Police as the leader in legal protection and security in Bosnia and Herzegovina with staff, resources, experts and equipment. Legal protection and security within in the judicial system would be expanded on to the BiH Constitution Court.

The quality of this publication also lies in the fact that the authors provide recommendations on how to improve the legal security and protection of the judicial system in Bosnia and Herzegovina whilst being aware that only independent and impartial judges and prosecutors, the key factors for the realization of a fair trial, can provide the protection of human rights and freedoms in accordance with international standards by deciding freely without any pressure, fear or political influence.

All of the afore mentioned can be found in the publication *Security and legal protection of the judicial system in Bosnia and Herzegovina* which represents a comprehensive and multidisciplinary approach to the problem of security and legal protection of the judicial system in Bosnia and Herzegovina. A special value of this publication lies in the fact that this is a product of professionals. They have viewed the complexity of the security problem and legal protection of the judicial system in BiH in a methodically clear, comprehensible and unique way.

From the legal and institutional point of view, this publication will enable the improvement of protection and security of judges, prosecutors, employees in the judicial system, witnesses and judicial institutions.

It's important to emphasize that the issue of security and legal protection of the judicial system in Bosnia and Herzegovina in this publication professionally presents the facts of the problem. It is methodologically clear and it is written in a comprehensible style, motivating the interest of the reader. It has an abundance of information, and it offers professionals a sol-

id basis for an efficient and effective protection and security of the judicial system in BiH.

It can also be said that the publication has a social significance in terms of raising awareness regarding this issue among professionals, mostly judges and prosecutors, but it can also motivate certain state institutions to engage more actively in the realization of given recommendations and conclusions that represent the practical part of this publication.

The message the authors of this publication are giving is that the security and legal protection of judges and prosecutors, as well as witnesses but also the judicial system as a whole, is a very important area that needs to be addressed by the competent state institutions and bodies with the goal of preserving the independency and impartiality of the BiH judicial system as the basis for a successful and efficient prosecution of criminal offences. Something we can rely on the path towards European integrations.

Having in mind the importance of this topic, we recommend that the publication *Security and Legal Protection of the Judicial System in Bosnia and Herzegovina* should be used in the future not only for the education process of judges and prosecutors, but also for the education of police structures in BiH.

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FOREWORD

SECURITY AND LEGAL PROTECTION OF THE JUDICIAL SYSTEM IN BOSNIA AND HERZEGOVINA

A Resource for Ensuring the Safety and Security of Judicial Officials Vital to the Rule of Law Essential for Justice to Prevail

Ever heard of Abraham Maslow? He was a psychologist who studied the needs of human beings. As you might expect, his research revealed that the most basic of human needs is physiological: air, water, food and shelter. Perhaps surprisingly, he found that the next most basic need was for safety and security.

If people lack safety and security other aspects of living fade into the background. If people are unsafe they are not worried about their retirements, their next vacation, or what to watch on television. Without security people are constantly fearful, becoming suspicious and selfish. Individuals and the community cannot advance and prosper without safety and security.

This is especially true in one of the most hallowed of our societal institutions – the courts. Courts represent the rule of law and the maintenance of good order. It is where people are equal before the law and where citizens find justice. If this most important of governmental organizations, and the judicial officials who preside over the judicial system are not safe and secure, how can anything or anyone be?

There was a time when the safety and security of the courts and judicial officials was not an issue, or if it was it was one society ignored. However, those days are gone forever. Now the safety and security of the courts and the judicial officials who conduct the business of the courts is entrusted to both dedicated and trained court police professionals, as well as knowledgeable, experienced and seasoned judicial officials. Collaboratively they are entrusted with the protection of judicial officials, the courts, and the people who labor and visit there.

The protection of the judicial system is the responsibility of both the court police and of the judicial officials who are the guardians of justice and the implementers of the judicial system. That is what this book is about. It is and will be a resource for all professionals involved in the security of the officials who comprise the judicial branch of government: the judges, the prosecutors, the witnesses and even the defendants. It is also a primer on the security of judicial facilities – the buildings and offices that make up the physical court and prosecutors' offices.

The authors of this book are both highly trained and experienced senior court police officials, as well as judges who have substantial experience dealing with issues of judicial security. Their knowledge has been recognized here in Bosnia and Herzegovina, across the Western Balkans, and even in the USA. Combining their judicial security experiences and proficiencies, the authors have produced a book that will enlighten and enable judicial officials to better enhance their security.

Read and study this book. Benefit from the authors' research, experience and knowledge. Consider how best to use the concepts presented here to vastly improve the judicial security paradigm in Bosnia and Herzegovina. This is not a book for the bookshelf! This work, if promptly and properly employed, will make the judicial system, the courts and judicial officials themselves safer and more secure as they do their important work for their community and their country.

Colonel Charles W. Bennett

Director

International Criminal Investigative Training and Assistance
Program (ICITAP)

Bosnia and Herzegovina

United States Department of Justice

United States Embassy, Sarajevo

Retired Chief of Police

Lynchburg, Virginia Police Department

INTRODUCTION

“I’ll haunt you for as long as I live”, “Cantonal court president’s car blown up“, “Garage door cut open and state prosecutor’s car stolen“, “Brother of convicted war criminal made threats on judge’s life“, “Explosive planted under the vehicle of judge’s son“, “Attempt to deliver a bomb package to Court President“, “Tires slashed on judge’s vehicle“, “Threats to prosecutor’s children“, “New bomb in front of the house of Cantonal Court Judge“, “War crimes convict and prison escapee sends threat letters to judge“, “Bomb package left in the yard of the Municipal Court President“, “Fire in the Basic Court’s evidence room”.

These are but few of the media headlines that we have witnessed over the past years, as a result of attacks or threats to justice in Bosnia and Herzegovina (hereinafter: BiH). Such news or headlines would not be as concerning had they been followed up with news on perpetrators being arrested or prosecuted, while providing judges and prosecutors (judicial office holders) or their family members with appropriate protection and other measures to safeguard judicial integrity and judicial office holders. In some cases, certain measures were indeed taken; however, although such cases were reported in the media, they did not attract the attention of legislative and executive branches, or the judiciary and law enforcement, and were deemed isolated instances. It was disregarded judicial office holders are the pillar of governance, guarantee of the rule of law and a symbol of an organized and strong state, and that those attacks are clear messages to judicial office holders to stop investigations and prosecutions of certain crimes and persons or else they will be punished. The absence and inadequacy of response by those in charge of protecting moral and professional credibility judicial office holders may also be a discouraging factor to the officials, in addition to affecting their engagement in work.

Threats or attacks on judicial buildings, officials, their family members or their property, including attacks on witnesses as well, must be an alarm for any state that strives to ensure the rule of law and personal safety for its citizens, and to combat all types of crime efficiently. It is known that even those less complex court cases can be a reason for threats or attacks on judicial office holders, their family members or property. The highest percentage of safety threats to judges is found in criminal prosecution; however, threats to their safety have also been registered in litigation, divorce

cases, property disputes or cases pertaining to complex enforcement proceedings. Clearly, given the job they perform, judicial office holders, as well as their family members, are often targets of threats and attacks. Previous reforms of BiH judicial system had neglected those aspects pertaining to judicial security, which had to be regulated in parallel with the reforms, so as to allow for an unobstructed functioning of the judiciary.

Authors aim to highlight the weaknesses in the current judicial system from the perspective of security and safety of judicial institutions, judicial office holders, their family members, their property, employees in judicial institutions, visitors in judicial institutions, and protection of witnesses, as well as to stress the need to create an adequate safety environment in the work of judicial institutions. Further, a comparison will be made in terms of the authority of the Court Police and other law enforcement agencies, responsibilities in relation to judicial institutions, judicial office holders, and other. It is hoped that the book will be of assistance to authorities in creating the environment needed for unobstructed and safe functioning of judicial system in BiH, which contributes to the rule of law, full of the principles of independence and impartiality, as well as to promotion of public trust into the BiH judicial system. The text will cover all levels of judiciary in BiH with an emphasis on the Federation of BiH (hereinafter: FBiH) due to its complexity, significant number of judicial institutions and judicial office holders, etc.

Judiciary is a guarantee of the rule of law in every country, represented in essence by courts and prosecutor's offices, as well as judicial office holders in the wider sense through performing their everyday duties. One could ask whether the courts and prosecutor's offices as well as judicial office holders can guarantee the rule of law to their citizens if they are exposed to threats and attacks due to the work they perform, that is, due to decisions they made or are to make, while, on the other hand, there is no systematic response to it. Independent and unbiased judicial office holder is instrumental for adequate and unobstructed functioning of judiciary in any country. Independence and impartiality of judicial office holder whose safety is jeopardized is very much debatable. We believe that professionalism, independence and impartiality of judicial office holders and a systematic response to threats and attacks would in most cases depend largely on personal safety of judges or prosecutors. Besides the fact that the security of the judiciary is for the most part a guarantee of the rule of law and a prerequisite for an independent and impartial judiciary in any country, it can be said that judicial security is a prerequisite for efficient combat against all types of crime, as well as for adequate prosecution and sanctioning of perpetrators. Importance of judicial safety is demonstrated in a myriad of

guarantees provided under international law for any state to ensure for judicial office holders, so that they could perform their professional duties as required. In addition, Structural Dialogue on Justice between the EU in BiH, in the section titled 'Technical Information required by the European Commission', tackles issues pertaining to judicial security and protection, including competencies of the Court Police. Accordingly, the issue bears importance for future activities of BiH on its path to EU in terms of judiciary functioning.

Discussions on judicial security within the judicial and wider community commonly imply protection of facilities of judicial institutions and protection of judicial office holders or other employees while at work. However, the authors aim to stress that judicial security is a far broader issue, representing both an important segment in the functioning of the judiciary and a serious safety challenge, given that the judicial institutions in BiH also prosecute the most serious types of crimes. Judicial security encompasses security of buildings of judicial institutions, safety of judicial office holders, their close family members and property, as well as the safety of employees in judicial institutions and witnesses. As a rule, safety is a state of not being exposed to risk or exposure with an acceptable risk level from possible danger or harm. Protection generally differs from safety for it includes activities of prevention and protection of a certain facility or person from an unwanted event, attack and similar.

Justice, including law enforcement and prosecutorial agencies, and in particular, independent judiciary, as well as the legal profession as a whole, in full conformity with applicable standards under international human rights instruments, is instrumental for a comprehensive and non-discriminatory realization of human rights and indispensable as such in democracy and sustainable development processes.¹ The main task of the judiciary is to protect the legal order on behalf of the state, established within a society in form of generally accepted legal norms that regulate basic relations among members of that society resulting from common everyday contacts among individuals, groups, legal entities and other subjects and participants in a legal life of a state. Through judicial authority, the state evaluates the degree of compliance of human behavior with specific legal norms, all with an aim to resolve a dispute. Judicial authority is exercised through courts as public institutions whereas the courts exercise judicial authority through judges, as natural persons and individuals with names and surnames. Simply put, judicial authority in the form of concrete judicial decisions is enforced by

¹ Vienna Declaration, adopted by the World Conference on Human Rights on 25 June 1993.

judges as natural persons, by applying and interpreting the law and therefore supporting every decision by their name, surname and office, which in majority of cases deal with fundamental human rights and freedoms, ranging from material assets such as committing one of the parties to pay certain amount of money to freedom, as an intangible asset most precious to every human being. Accordingly, judges are often “moving targets” to discontented parties, with likelihoods of an array of potential consequences, ranging from verbal assaults to most serious and life threatening physical attacks on judges and other participants in proceedings. In addition to judges, prosecutors are equally endangered, as they prosecute perpetrators of crimes in order to bring them to justice and before courts on behalf of the state. It is for this very reason that the authors pay equal attention to prosecutors in developing concrete proposals of *de lege ferenda*, in a firm belief that both judges and prosecutors belong to the most immediate circle of judicial office holders in need of separate legal protection under the FBiH Criminal Code.

Judges and prosecutors ensure respect and protection of the rights of other members of a society, as well as prosecution and sanctioning of all types of deviant behavior. The very nature of their job has placed them in a group of particularly endangered persons compared to the rest of the population. Such specific and indisputable classification also calls for a special physical, technical, as well as legal protection of judges and prosecutors through legal provisions on protection, which is not currently foreseen under the FBiH Criminal Code. In other words, a systemic protection provided by the state to these spearheading the protection of the rule of law on behalf of the state. By no means would such a protection serve as a privilege of individual judges; instead, it is yet another tool enabling them to combat all types of crime in an even more determined and devoted manner. Otherwise, judges and prosecutors in the FBiH will remain a category without proper care of the state, which represents a potential threat of them dealing with safety and security issues they may encounter in pursuing honorable profession they have chosen at their own discretion, on a case by case basis, in absence of a systemic solution. Based on the analysis of the available jurisprudence, the authors could identify differing approaches, which often leads to legal insecurity. Finally, if judges and prosecutors do not feel properly protected, there is every reason to question their objective capacity to persist in seeking adequate punishment for those who, whether in courtroom or outside, violate their sense of safety or otherwise tarnish reputation, profession and function of judges and prosecutors in various ways. Judges, prosecutors and lawyers are crucial in enforcing the right to a fair

trial. If some of them are not in position to properly do their job, the rule of law and right to a fair trial would be seriously at risk.²

In addition to the need to regulate criminal prosecution of persons that pose a threat to security of judicial buildings and, in particular, pose a threat to safety of judicial office holders, authors deem that the FBiH criminal legislation should also regulate the crime of disclosure of identity of a protected witness more adequately. Considering that any such disclosure is at the same time a threat to safety of the witness, there is a need to adequately regulate criminal prosecution of those who have, in one way or another, placed witnesses at risk in any way - witnesses being those who were granted such status by competent courts in line with the provisions of the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses in the FBiH.³ An analysis of procedural laws clearly demonstrates that the legislator introduced the institute of witness identity protection at all levels of BiH, in compliance with the trends in modern European legislations. At the same time, by introducing the aforesaid institute, preconditions have been created for prosecution and bringing to justice of offenders who had committed the most serious crimes. This institute is further supported under the Convention of the Council of Europe ref # 23 as of November 23, 1995 on witness protection in combating organized crime as well as Resolution of December 20, 1996 on persons who collaborate in criminal proceedings in combat against organized crime. Evidently, the legislator has disregarded the legal vacuum in this regard, arising from the fact that, for example, under the FBiH CC, prerequisites for adequate sanctioning of those who possibly threaten witness safety or undertake activities aimed at disclosing the identity of protected witness have not been entirely met. Furthermore, authors believe that it is equally important for security and safety of judiciary to also ensure legal protection for employees of judicial institutions, court police officers and immediate family members of judicial office holders. More specifically, any influence exerted on employees of judicial institutions and court police officers may amount to indirect attempt to influence the justice system simply because these persons haven an important role in proceedings conducted before judicial institutions.

² For more information, please see International Principles of Independence and accountability of judges, lawyers and prosecutors, International Commission of Jurists, Geneva-Switzerland, 2004, pg. 3.

³ Official Gazette of FBiH, # 36/03.

PART ONE

JUDICIAL SECURITY IN BOSNIA AND HERZEGOVINA

I SECURITY OF JUDICIAL INSTITUTIONS

When it comes to protection of the facilities of judicial institutions, the issue is for the most part regulated in BiH. Namely, competencies pertaining to security of judicial institutions at all levels lay with Court Police institutions, hence the competency for the security of:

- BiH Judicial institutions' facilities is with the BiH Court Police;⁴
- FBiH Judicial institutions' facilities is with the FBiH Court Police;⁵
- RS Judicial institutions' facilities is with the Court Police of Republika Srpska (hereinafter: RS);⁶
- Judicial institutions' facilities of Brčko District of BiH are with the Court Police of Brčko District of BiH (hereinafter: BDBiH).⁷

Having in mind the above mentioned jurisdictions, it should be noted that:

- BiH Court Police has jurisdiction for protection of two judicial institutions in total, with seats in the complex of BiH judicial institutions, namely:
 - BiH Court and
 - BiH Prosecutor's Office.
- FBiH Court Police has jurisdiction for protection of 55 judicial institutions in total, with seats in different locations across the territory of the Federation of BiH, including:
 - FBiH Constitutional Court;
 - FBiH Supreme Court;
 - FBiH Federal Prosecutor's Office;
 - 10 Cantonal courts in the Federation of BiH;

⁴ Article 5 of the Law on Court Police BiH, Official Gazette of BiH, No 31/03, 21/03 and 18/13.

⁵ Article 7 and 9 of the Law on Court Police of the Federation of BiH, Official Gazette of FBiH, No 19/96 and 37/04.

⁶ Article 13 of the Law on Court Police RS, Official Gazette RS, No 98/11.

⁷ Article 5 of the Law on Court Police BDBiH, Official Gazette BDBiH, No 42/04, 19/07 and 31/11.

- 10 Cantonal Prosecutor's Offices in the Federation of BiH;
- 32 Municipal Courts in the Federation of BiH.

It should be noted that on top of the listed facilities, FBiH Court Police also protects certain court departments dislocated from the seat of their respective courts (e.g. court departments in Srebrenik, Kladanj, Ilidza, etc.)

- RS Court Police has jurisdiction for protection of 38 judicial institutions in total, with seats located in various locations across the RS territory, including:
 - RS Supreme Court;
 - RS Higher Commercial Court;
 - RS Special Prosecutor's Office;
 - RS Prosecutor's Office;
 - 5 RS District Courts;
 - 5 RS District Prosecutor's Office;
 - 5 RS Commercial Courts;
 - 19 RS Basic Courts.
- BD BiH Court Police has jurisdiction for protection of three judicial institutions in total, with seats in the complex of BD BiH judicial institutions, including:
 - BD BiH Appellate Court;
 - BD BiH Basic Court;
 - BD BiH Prosecutor's Office.

1.1. Security of judicial institution buildings and the current situation

The authors will not address the tactics and methodology of protection of judicial institution buildings in greater detail, but it can be noted that the tasks are executed depending on available personnel and material and technical resources of the Court Police institutions. The current situation suggests that all Court Police agencies in BiH mostly lack personnel and material resources and therefore give more priority to execution of judicial institution orders (such as ensuring appearance in courts, escorting, detaining, assistance in enforcing other judicial decisions and warrants, and alike) as opposed to protection of judicial institution buildings, considering that the work of judicial institutions directly depends on the execution of these orders. It should be noted that the safety of judicial institution buildings is also dependent on the actual positions of a building,

conditions inside and outside the buildings, as well as other elements that might influence the safety, which altogether dictate the tactics, technique and procedures for securing a collective facility.

Most certainly, security assessment is a prerequisite for determining the protection level. Such assessments are to be performed for every building by an authorized Court Police unit, including elements related to the interior, exterior and surroundings of the building. It should be noted that this security does not always imply presence of a Court Police officer (physical protection), for it can be rely on technical or combined protection. Indisputably, the Court Police institutions are responsible for judicial institution building security; therefore it is necessary to point out the need for constant cooperation and coordination between court presidents or chief prosecutors and other judicial office holders with authorized seniors of organizational units of Court Police on issues related to security and safety.

The issue of security of buildings and security assessment requires certain expertise; hence, it is necessary to involve particular organizational unit of the Court Police in all activities⁸ that could have a bearing on the security and safety of people inside those buildings, in a timely manner. It is important to note that opinions or suggestions given by authorized Court Police organizational unit on case-by-case basis must not interfere with the right or authority of a court president or chief prosecutor in managing the institution or organization of workflow and functionality of a judicial institution. Court Police must tackle only issues pertaining to security of judicial institution buildings and persons inside. It is necessary to emphasize the need to develop adequate and preferably uniform regulations in this field, all with an aim to secure uniform approach in practice. For example, some judicial institutions are equipped to search persons and belongings on entrance, cell phone bans, separate entrances, and alike, while no such options are available in other institutions.

Current situation points out a fact that due to lack of personnel or material-technical assets in judicial institutions and court police, security preconditions for safe operations of judicial institutions have not been met. To illustrate, during the February 2014 citizens' rallies and protest, there were no necessary capacities to adequately protect judicial institutions, resulting in some cases with attacks against judicial institution buildings and causing damages. Protest brought about latent pressure against judicial institutions when protestors demanded release of arrested persons in front of some judicial institutions, threatening with new attacks to judicial institution buildings and individual judicial office holders. In such extraordinary

⁸ Refurbishment of a building, dignitary visits, complex trials, hearings, etc.

situations, coordination with other police agencies is needed, regardless of the readiness of court police to respond to security challenges.

1.2. Prosecutors' access to the court building

Given the cases in the past of orders denying access to prosecutors through a separate and official entrance, and also considering that in criminal proceedings the prosecutor, defendant and the defense attorney are all parties to the proceedings, we deem necessary to comment on such treatment. This practice requires specific importance, since the entrance to a courthouse is not an entrance into courtroom at the same time, or criminal proceedings as such, especially since the jurisdiction related to security, namely, control at the entrance, movement and exit of persons is in the hands of the Court Police, which has absolutely no role in either conduct or decision-making in a particular procedure. Whilst respecting the principles of criminal procedure and the role of attorneys, the authors of this text find it inappropriate to treat prosecutors and attorneys in the same way when it comes to access and entrance, considering that the role of the prosecutor is to prosecute offender on behalf of the state. Further, in the Federation of BiH, the Court Police has jurisdiction to protect prosecutors, just as it protects judges.

Such inadequate practice may endanger safety or put a prosecutor under pressure due to the possibility of encountering a defendant, his relatives or often his supporters at the entrance to the court. If the current practice of subjecting prosecutors to the same type of control as attorneys and other visitors is maintained, in our opinion, such control should include everyone entering the building, including all judicial office holders and judicial institutions' employees, thus eventually guarantying a higher level of security. According to the practice so far, such control for all accessing the building, including judicial office holders, in majority of judicial institutions, has been recorded only in extraordinary situations, such as high-risk trials, or large-scale protests, etc. However, in order to control every person entering a judicial institution building, technical conditions must be ensured to enable that entrance and control on entrance is not done at the same site for judicial office holders and others entering the courthouse.

1.3. Courtrooms, suspect interviewing rooms, offices of judicial office holders, and other premises

The authors will not dwell on the technical conditions of the premises in the facilities of judicial institutions; however, it should be noted that in terms of safety, courtrooms, suspect interviewing rooms, offices of ju-

dicial office holders, evidence rooms and detention premises are premises that should have special significance as opposed to other premises. It should not be forgotten that a courtroom is a symbol of justice, but also a place leaving one side dissatisfied with the decision or outcome of the proceedings, thus giving rise to incidents against safety, but also even more severe consequences. It is known that the rules for maintaining the order in a courtroom, pursuant to Criminal Procedure Codes in BiH, are determined by a judge or a presiding in a panel of judges. For these very reasons, as an example, FBiH Criminal Procedure Code (hereinafter: CPC), stipulates that only Court Police officers and others approved to do so by a judge or a presiding judge in a panel of judges may bear weapons in trial. Furthermore, a judge or a presiding judge also orders a search of persons in attendance at the main trial, or a removal of persons from a courtroom. Mindful of the judge's discretion to approve bearing a weapon for persons who are not operationally engaged in escorting the defendant or immediate security of the main trial, such decisions should be done in coordination and with prior notice to the Court Police officers who are directly involved in securing the main trial. However, in the event of large-scale disruptions of law and order leaving the judge without a possibility to apply procedural disciplinary measures, the responsibility for restoring the order and taking other measures as necessary lies with the Court Police.

Judges are not obliged by Criminal Procedure Codes to issue a written order for search of those in attendance at the main trial. For that reason, it is recommended that such searches are done whenever possible. Further, items suitable for attacking or inflicting injuries should be seized at all times, and such individuals should be registered before entering the courtroom. Offices of judicial officials and suspect interviewing rooms in prosecutor's offices often contain objects suitable for an attack and inflicting injuries such as scissors, letter openers, glass ashtrays, glasses, etc.

1.4. Role and activities of BiH High Judicial and Prosecutorial Council

High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: BiH HJPC) in accordance with the Law on BiH HJPC⁹ has no

⁹ Integral text contains text of Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina („Official Gazette BiH“, No 25/04), enacted on June 1, 2004, Law on Amendments of Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina („Official Gazette BiH, No 93/05), enacted on January 7, 2006 and Law on Amendments of Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina („Official Gazette BiH, No 15/08) announced by the

obligations and responsibilities in terms of judicial security. However, having in mind the obligation to ensure implementation of principles of professionalism, independence and impartiality of judiciary, BiH HJPC recognized the importance of judicial security in BiH, for without an adequate safety environment, it is difficult to ensure professionalism, principles of independence and impartiality, as well as an unobstructed administration of justice on the overall. BiH HJPC accepted the initiative of the Federation of BiH Court Police sent via the President of FBiH Supreme Court (No Su-sp-202/10 dated July 16, 2010), as a person in charge of managing the Court Police, seeking active participation of BiH HJPC in solving security issues important for the work and functioning of the judiciary. Upon accepting of the initiative, on August 27 2010, BiH HJCP held a meeting between the President of the BiH HJCP, most senior judicial office holders, representatives of BiH Court Police and representatives of the International Criminal Investigative Training Assistance Program (Hereinafter ICITAP¹⁰). All parties agreed on the problems as identified and the need that these problems be addressed within the authorized institutions in BiH, with active participation of BiH HJCP.

According to the conclusions of this meeting and proposals of the representatives of competent institutions, BiH HJCP made a decision to set up a working group to assess the security of judicial institutions buildings, as well as other safety aspects, comprising representatives of BiH HJCP, ICITAP, BiH Ministry of Justice, BiH Court Police, FBiH Court Police, RS Court Police, BD BiH Court Police and Directorate for Coordination of Police Bodies in BiH, at its session held on September 22, 2010. The Working Group has been tasked with the following:

- Identifying minimum standards related to judicial security, and security and protection of facilities of courts and prosecutor's offices;
- Resolving the issue of adequate measures and protection of judges and prosecutors under threat, which would also require additional education of Court Police officers and judicial office holders, in addition to creating necessary prerequisites for performing this task;
- Analysis and recommendations for harmonizing and amending laws and bylaws regulating the status of Court Police officers, competencies, rules and procedures, etc.;

Decisions of the High Representative from June 15, 2007 („Official Gazette BiH, No 48/07), enacted on July 3, 2007. Integral text is for internal use only and not for official use.

¹⁰ International Criminal Investigative Training Assistance Program. ICITAP is a part of the US Department of Justice.

- Analysis of the current human and material and technical resources and recommendations for a possible increase in the number of officers, additional resources, equipment and space, additional training of officials and similar;
- Other issues of importance for the work and unobstructed functioning of judiciary in BiH in terms of security and Court Police authority.

As tasked, the Working Group had prepared Guidelines on Standards and Safety Measures for Judicial Institutions and Judicial Office Holders in BiH, adopted by BiH HJPC in its session held on July 14, 2011. Bearing in mind the importance of judicial security and the need for continuous work on implementation of guidelines and regulation of BiH judicial security, under its Decision No. 08-02-2423-2/2011 dated July 26, 2011, BiH HJPC appointed the Working Group for Monitoring the Implementation of Guidelines on Standards and Safety Measures for Judicial Institutions and Judicial Office Holders in BiH. The Working Group is also tasked with other issues pertaining to judicial security in BiH. Continuous efforts are taken to increase work efficiency of this Working Group through involvements of judicial office holders in its work and its direct cooperation with managerial staff of judicial institutions.

1.5. Examples from practice

The practice has seen multitude examples of threats or assaults against judicial institutions buildings, as well as incidents that occurred inside a building, to name but a few:

- An assault of the defendant against a close relative of the victim in the complex of judicial institutions of BiH;
- An attempt of delivering a package bomb to the President of the Court of BiH;
- Countless anonymous calls on explosive devices allegedly planted inside the judicial institution building;
- Slamming a vehicle against the wall of the court building in attempt to set it on fire and have it explode;
- Attempting assault against the judge and prosecutor at the time of delivering a verdict;
- An attempt of taking a weapon from the Court Police officer during trial, with the aim to endanger persons present in the courtroom;
- Assaulting ex-wife in a courtroom with a letter-opener during a divorce suit.

A tragic incident of several years ago in the Municipal Court in Zagreb, during a divorce proceedings, when a defendant fled after he had shot his wife dead, her attorney, and the judge, and wounded the record keeper, shows that the area of the Balkans is not immune to the cases with serious consequences. This was a textbook example of failure to secure a court building, given that firearms was still brought inside the court despite the available metal detector device.

II SAFETY AND PROTECTION OF JUDICIAL OFFICE HOLDERS

2.1. General considerations for security and protection of persons

When it comes to securing a person who is under special protection pursuant to regulations or a person whose safety is endangered, it should be understood that such protection includes immediate protection at the place of residence, workplace and on the move. This rule may have its exceptions. It is known that in practice there are rules which define that, for example, a person under protection can sign a special waiver of rights to immediate protection or protection of his/her residence. Availability of this alternative is acceptable to a certain extent, when dealing with persons to whom personal protection is granted when assuming a position of a public duty. However, it is hardly acceptable in cases where protective measures for a person or the person's residence were ordered after gathering intelligence and conducting safety analyses, which have shown that a person or several persons are endangered, especially if those are persons whose main task is to protect the rule of law and process all types of crime. Protection is generally organized and conducted in a manner that creates all required preconditions for arrival and stay of person under protection at any place. It was noted earlier that protection may be physical and technical. One of the general rules of protection of persons is that from the moment when it is estimated that protection is necessary, protective measures are provided 24/7, so as to create an adequate safety environment for the person under protection, applying all necessary measures and actions to protect the physical integrity of the person under protection.

It should be primarily pointed out here that the safety of a person under protection does not depend only on actual measures defined and persons assigned to carry out these measures, but also, in a large percentage, on the person under protection itself, because he/she is obliged to obey rules and measures for safety and protection, too. Ordering and conducting protection should, as a rule, be preceded by security evaluations that should be made in a highly professional and serious manner by a law enforcement agency competent for providing protection, in cooperation with police bodies or other bodies with direct or indirect information related to safety endangerment of a person under protection. Providing protective measures

requires enormous financial, personnel, and material-technical resources, and generally, protective measures within competent police agencies are provided by specially organized, trained and equipped organizational units. Being a police officer or a Court Police officer, that is, having the legal authority to use the means of force and other means, does not necessarily imply being able to perform the duty adequately or providing protective measures of direct physical protection. Therefore, only officers who, in addition to basic training, have had special training in these types of tasks and duties and who have continuous professional training may carry out measures of immediate physical protection. Some of the basic characteristics of an officer providing protective measures on the move are that he/she is experienced, tactical, thorough and highly professional. Only an officer with such characteristics may anticipate possible events, consult the person under protection, ease possibly tense situations and overcome them with minimum consequences or used force, be calm and ready for proper reaction and act preventively at all times thanks to his professional attitude. In addition to all the above mentioned, it is required to have a continuous inter-agency cooperation based on legal regulations and bylaws, which in general is initiated by the body that provides protective measures. Such cooperation must gather all agencies, from the lowest – local level of police organizations, to the highest level, including also intelligence agency.

2.2. Why are the safety and the protection of judicial office holders important

First of all, it should be emphasized that the so-called persons under protection are not those who will be provided protective measures right after they assume an office of a judge or a prosecutor, as is the case when taking an office in legislative and executive branches. Instead, they may be awarded a status of a person under protection only after their personal safety or safety of their family members had been seriously endangered due to the job they perform.

Judges and prosecutors enjoy human rights just as any other individual; however, the issue of their safety must not and cannot be defined or addressed merely in accordance with the general principle, which guarantees safety to all citizens. When it comes to judges and prosecutors whose safety is endangered due to the job they perform, there has to be a special system of protection compared to other citizens, for they are the ones that guarantee protection of human rights and safety for the rest of the population. Judges and prosecutors have to be protected by laws and in practice against physical assaults and persecution because of the duties they perform. If a judge or a prosecutor is not

physically protected, and due to the nature of the job, his/her life or lives of his/her family members are at risk, then his/her professionalism becomes highly questionable. A judge or a prosecutor, who enjoys a systemic protection, has special responsibilities in comparison to the public and society in general. This responsibility is reflected in a clear message to the public that he will be protected as long as it's needed in order to preserve the rule of law.

Judges and prosecutors are instrumental in ensuring the rights to a fair trial. If some of them are unable to perform their tasks properly, the rule of law and the right to a fair trial are in serious danger. For that reason, judges and prosecutors must not consider threats or assaults without serious consequences as a part of their job, but in order to protect dignity of the function they perform, any threat or assault needs to be reported to competent bodies. People are often unsatisfied or affected by decisions brought by judicial office holders. As a result, they are very often targets of threats or assaults, although their rulings are based on law. In comparison with the issue of judicial institutions buildings security and considering the current legislation and known cases of endangerment of judges and prosecutors, the legal framework is evidently disharmonized. It can be said that this issue is not sufficiently and precisely defined through laws and bylaws and there are different approaches in practice. It is noticeable in the introductory part that assaults or threats to judicial office holders and their family members have grown in frequency, but at the same time, activities that would result in a systematic solution of this problem neither exist nor have been implemented by competent institutions.

2.3. Prosecuting serious crimes

A rise in the number of organized crimes and crimes related to production and distribution of drugs, and especially corruption crimes across the country, is a serious challenge to judicial security. Namely, based on the experience of other countries, such crimes result in greater frequency of threats and assaults to judiciary, especially against judicial office holders. Considering the fact that there is an increased number of crimes of “conspiracy, preparation, association and organized crime” in BiH, an increased number of threats and assaults to judicial system can be expected as well.¹¹ The research has shown a steady increase in number of persons reported for committing a crime of “conspiracy, preparation, association and organized crime”. In 2004, 63 persons were reported for these types of crimes, compared to 1487 in 2012.

¹¹ Sijercic – Colic, H: et al. Trends in crimes committed by persons of age in Bosnia and Herzegovina in the period from 2003 to 2012.

Such drastic increase in number of acts of organized crime, as well as crimes related to production and distribution of drugs, and corruption crimes, should be worrisome both for the judiciary, and law enforcement agencies competent for judicial security and protection. These are the crimes that involve large sums of money, allowing offenders to get rich overnight. Thus, they are ready to undertake any action needed, even resort to threats or assaults to the judiciary in order to influence the outcome of their criminal proceedings and sanctions.

2.4. What were the actions in follow-up to threats or assaults?

Regardless of the fact that threats or assaults to judicial office holders have happened in the most serious cases, it is a known fact that all individual threats or assaults against a judge or a prosecutor, or their family members and their property, were resolved on case-by-case basis, by using different approaches and without any coordination of competent police and other bodies, and without any attempt to resolve this issue at all levels of judicial system in BiH. Clearly, this issue in BiH cannot be solved as it was done in other systems. Namely, given the arrangement in the country, BiH is a complex system *sui generis*. In our opinion, with regards to legislation, the issue should be resolved by one single act in whole of the territory of BiH.

This complex organization of BiH led to situation where, along with four institutions of Court Police (the Court Police of BiH, the Court Police of the Federation of BiH, the Court Police of RS, and the Court Police of Brčko District of BiH), there are also three police agencies at the state level, eleven police agencies in the Federation of BiH, one police agency in Republika Srpska and one police agency in Brčko District of BiH. In addition, this led to a situation where competences of particular police agencies overlap or are not clearly and fully defined, as an additional aggravating fact in this field.

2.5. Protection of judges and prosecutors in judicial institutions of BiH

Directorate for Coordination of Police Bodies in BiH (hereinafter: the Directorate) has competences for protection of judges of the Court of BiH and prosecutors of the Prosecutor's Office of BiH¹² when their safety is endangered. One of the duties of the Directorate is organizing and

¹² Currently, there are about 90 judges and prosecutors working in judicial institutions at the state level.

conducting physical and technical protection of persons and facilities of BiH bodies and diplomatic-consular bodies, which enjoy special protection pursuant to particular laws, international obligations and other regulations issued by the Council of Ministers of BiH.¹³ Therefore, it is evident that the aforementioned provision does not precisely stipulate who are the persons and facilities whose physical and technical protection the Directorate is competent for. However, considering the fact that prior to the adoption of this law, this was the task of the State Investigation and Protection Agency (hereinafter: SIPA), pursuant to procedural bylaws,¹⁴ as of January 1, 2011, the Directorate took over the competences of protection of the judges and prosecutors of the State Court of BiH and the State Prosecutor's Office of BiH. Hence in the former regulation¹⁵ of the Law on the State Investigation and Protection Agency,¹⁶ one of its duties included "physical and technical protection of persons, facilities, and other property protected by this law", whereas pursuant to another previously valid regulation,¹⁷ protected persons on official duty were the President of the State Court of BiH and the Chief Prosecutor of the State Prosecutor's Office of BiH. In addition, previous effective regulation¹⁸ stipulated that upon a reasoned request of the President of the State Court of BiH and the Chief Prosecutor of the State Prosecutor's Office of BiH, the SIPA would provide protection for other judges of the State Court and to the Deputy Prosecutor and other prosecutors of the State Prosecutor's Office, upon the decision of the Director and based on an expert assessment of the SIPA. Therefore, according to the cited Law on the State Investigation and Protection Agency, competences for protection of judges and prosecutors at the state level were precisely defined; yet due to the adoption of the Law on the Directorate for Coordination of Police Bodies in BiH,¹⁹ those provisions have become invalid.

¹³ Article 6 (1) (h) of the Law on the Directorate for Coordination of Police Bodies in BiH (Official Gazette of BiH, No. 36/08).

¹⁴ Instruction on the scope and the ways of conducting protective measures for protected persons in BiH and the Conclusion of the Council of Ministers.

¹⁵ Article 3 (1) (4) of the Law on the State Investigation and Protection Agency-SIPA (Official Gazette of BiH, No. 27/04).

¹⁶ Official Gazette of BiH, No. 27/04.

¹⁷ Article 15 (1) (f) and (g) of the Law on the State Investigation and Protection Agency-SIPA (Official Gazette of BiH, No. 27/04).

¹⁸ Article 15 (2) of the Law on the State Investigation and Protection Agency-SIPA (Official Gazette of BiH, No. 27/04).

¹⁹ Article 2 and Article 12 of the Law on Amendments to the Law on the State Investigation and Protection Agency (Official Gazette of BiH, No. 49/09).

In our opinion, this issue should be defined more clearly and precisely, but it is also necessary to consider a possibility of including the President of the Constitutional Court of the Federation of BiH and if necessary the judges of that court, and the president of the HJPC of BiH among protected person, given their competences and important roles in the judicial system of BiH. Regardless of the legal framework, there are problems in practice when determining protective measures for some judges or prosecutors, as well as personal and financial problems that the Directorate is faced with. It is noteworthy that the Directorate has competences and is in charge of providing continuous protection of persons that hold certain positions in legislative and executive branches (members of the Presidency of BiH, Chairperson of the Council of Ministers, ministers with the Council of Ministers, the Speaker of the House of Peoples and the House of Representatives of the Parliamentary Assembly of BiH, foreign dignitaries visiting BiH, and other persons upon the decision of the Council of Ministers) which requires significant human and material-technical resources. We believe that the issue of protection of judges and prosecutors at the state level should be under competence of the Court Police of BiH, and for the reasons of implementing the principle of independency of judicial authorities from executive and legislative branches. The Court Police of BiH has competences to secure judges and employees of the State Court of BiH, and other persons in the building of the State Court of BiH,²⁰ from which it follows that they have no competences whatsoever when it comes to protection of judges and prosecutors outside the building of the court.

2.6. Protection of judges and prosecutors in judicial institutions of FBiH

In terms of competences for protection of judges of the Constitutional Court of the Federation of BiH, the Supreme Court of the Federation of BiH, Cantonal Courts and Municipal Courts, as well as prosecutors with the Prosecutor's Office of the Federation of BiH and Cantonal Prosecutor's Offices,²¹ whose safety is in danger, it should be mentioned that the practice recognizes not only different interpretations but also different proceedings. Certain interpretations, from the legislative community and police agencies in the Federation of BiH, argue that the Court Police of the Federation

²⁰ The Law on Court Police of BiH („Official Gazette of BiH“, no. 31/03, 21/03 i 18/13).

²¹ There are about 555 judges in judicial institutions of the Federation of BiH, and about 175 prosecutors in prosecutor's offices in the Federation of BiH, totaling about 730 the holders of judicial office.

of BiH has competences for protection of judges and prosecutors whose safety is in danger, while others believe that these competences are in hands of other police bodies in the Federation of BiH, that is, the Federation Police Directorate (hereinafter: FPD) or Cantonal Police Authorities (hereinafter: CPA). When it comes to practice and experience, it can be said that judges and prosecutors, whose safety is in danger, have had protective measures provided by officers of the Court Police of the Federation of BiH and police officers from FPD or CPA.

2.7. Court Police of the Federation of BiH

The Court Police of the Federation of BiH provides assistance to the Constitutional Court of the Federation of BiH, the Supreme Court of the Federation of BiH, and cantonal courts in providing information, executing court orders for forced appearance of witnesses, executing court orders for forced apprehension of defendants, apprehending convicted persons to penitentiary institutions on court orders, maintaining order in a courtroom, safety of judges and other officers of the court, security of the court building, and executing court orders.²² Also, the Court Police maintains order in a courtroom, provides safety of judges and other officers of the court, security of the court building pursuant to the regulations of the Presiding of the Supreme Court.²³ Competences of the Court Police of the Federation of BiH are extended to the Prosecutor's Offices in the Federation of BiH when, pursuant to the law and other regulations, they request help and assistance from the Court Police in performing their duties, or when necessary, to maintain order and safety in the premises of the Prosecutor's Office, safety of the prosecutors and other officers of the Prosecutor's Offices in the Federation of BiH.²⁴ The manners of executing the afore mentioned task of the Court Police of the Federation of BiH are described in provisions of the Book of Rules on performing duties and management at the Court Police of the Federation of BiH (hereinafter: the Book of Rules) which is adopted by the President of the Supreme Court of the Federation of BiH.

Specifically, provisions of the mentioned Book of Rules prescribe that the Court Police of the Federation of BiH will provide physical and technical protection for judicial office holders and other employees in judi-

²² Article 7. paragraph 1. of the Law on Court Police („Official Gazette of FBiH“, no 19/96 and 37/04).

²³ Article 9. of the Law on Court Police („Official Gazette of FBiH“, no 19/96 and 37/04).

²⁴ Article 2. of the Law on amendments to the Law on Court Police („Official Gazette of FBiH“, no 37/04).

cial institutions, in case that their safety is in jeopardy. Such protection may last 24/7, while measures may be determined by the work location, residence location or movement. Protection is ordered upon a request of judicial office holder or other employees in judicial institutions submitted to the Chief Commander of the Court Police of the Federation of BiH through judicial institutions, competent section of the Court Police or pursuant to security assessment of the Court Police officer in the case of receiving a report on jeopardizing safety of judicial office holders.

The decision on protection and the level of protection will in each case depend on the security assessment conducted by officers of the Court Police pursuant to provisions of the Book of Rules, approved by the Chief Commander of the Court Police of the Federation of BiH. Security assessment implies conducting security investigation to establish seriousness, motive, possibility of repetition, and the link between threats or assaults with the duty and concrete official tasks of the person in jeopardy, as well as all other facts and information relevant to jeopardizing security or protection of the person in jeopardy. If the circumstances demand so, the Chief Commander of the Court Police of the Federation of BiH may order emergency, temporary or protective measures for judicial office holder, pending the completion of security assessment.

The Book of Rules also defines a procedure in the case when a judicial office holder refuses protective measures ordered by the Chief Commander of the Court Police of the Federation of BiH. In that case, the judicial office holder prepares a written waiver of rights, after which the Court Police terminates any protective measures provided. It should be noted that the Court Police of the Federation of BiH may provide measures of physical and technical protection for conferences, professional counseling or seminars organized for judicial office holders.

2.8. Ministry of Interior of the Federation of BiH – Federation Police Directorate and Cantonal Ministries of Interior

When it comes to authority of other police agencies in the Federation of BiH with regards to security and protection of judges and prosecutors, it is necessary to say that none of the laws on internal affairs precisely defines competences regarding protection of judges and prosecutors. The FPD has competences for protection of certain dignitaries and buildings of the Federation,²⁵ and the government of the Federation of BiH determines in its

²⁵ Article 2 (1) (2) of the Law on Internal Affairs of the Federation of BiH (Official Gazette of FBiH, No. 49/05).

special decree the persons and buildings of the Federation to be protected and the ways of their protection.²⁶ In the Decree on determining persons and facilities in the Federation of BiH that need special protection and the ways of protection,²⁷ the Government of the Federation of BiH decided those who are subject to protection include the President and Vice-presidents of the Federation of BiH, the Speaker of the House of Representatives of the Parliament of the Federation of BiH, the Speaker of the House of Peoples of the Parliament of the Federation of BiH, the Federation Minister of Interior and the Director of FPD. This goes to show that, unlike the state level, none of judicial office holders in the Federation of BiH are under the protection of the FPD, unless a special provision is enforced whereby police officers of the Ministry of Interior are obliged to protect lives of all people.

2.9. Complexity of securing judges and prosecutors in the Federation of BiH

As mentioned earlier, complex organization of BiH is reflected in all aspects, including security. Following the indicators presented and analysis conducted, one can observe an extreme complexity in conducting protection measures for judges and prosecutors in the Federation of BiH. Therefore, the analysis shows that there are 12 police agencies in the Federation of BiH that can or have conducted activities on protection judges and prosecutors whose lives are in danger.²⁸ From the professional point of view, in the case of differing opinions than those of authors, it should be mentioned that in an economic and operational manner, the matter would be better regulated through the Court Police of the Federation of BiH, rather than the Federation and Cantonal Ministries of Interior. The reasons are as follows:

- Court Police of the Federation of BiH is an institution whose existence is defined in the Constitution of the Federation of BiH, in the chapter on Judicial Branch;
- The president of the Supreme Court of the Federation of BiH is in charge of management of the Court Police of the Federation of BiH, from which it follows that the Court Police of the Federation of BiH is organized in the framework of independent and impartial judiciary;

²⁶ Article 7 of the Law on Internal Affairs of the Federation of BiH (Official Gazette of FBiH, No. 49/05).

²⁷ Official Gazette of FBiH, No. 57/07.

²⁸ Federation Ministry of Interior – Federation Police Directorate, the Court Police of the Federation of BiH and ten Cantonal Ministries of Interior.

- The Court Police of the Federation of BiH is centralized at the level of the Federation of BiH, through one Federal and ten cantonal organizational unit, and internal organizational units organized depending on the organization of judicial institution;
- Competences of the Court Police, unlike the wide spectrum of competences of the police agencies, are related strictly to the work of judicial institutions, encompassing the creation of a safety environment in the work of judicial institutions and implementation of decisions of judicial institutions, and providing assistance in implementation of other court decisions.

The above mentioned and other reasons may serve as a guideline for judicial community to take necessary measures and actions, in coordination with the Court Police of the Federation of BiH, so as to create necessary conditions and provide necessary human and material-technical resources, as well as additional education for adequate implementation of protective measures for judges and prosecutors. Without any intention to prejudice certain legal solutions, authors would like to stress that the draft of new Law on Court Police of the Federation of BiH precisely defines competences of the Court Police to conduct, in full powers, protective measures for judges and prosecutors whose lives are in danger. This entails, among other, the commitment for defining this issue in its entirety. It can be concluded that following a possible adoption of this new Law on Court Police of the Federation of BiH, the Court Police of the Federation of BiH should be a service and a helping hand in the work of judicial institutions of the Federation of BiH.

2.10. Protection of judges and prosecutors in judicial institutions of Republika Srpska and the Court Police of Republika Srpska

The Court Police of RS, within their competences, performs duties and tasks for the Supreme Court, County and Basic courts, and upon court orders, takes following measures and actions:

- a) Securing information,
- b) Forced appearance of witnesses and court experts,
- c) Forced apprehension and escort of suspects, defendants, and convicted persons,
- d) Escorting convicted person to the correctional facility,
- e) Executing court orders,
- f) Providing security for the court and prosecutor's office buildings,

- g) Protects judges and other court employees,²⁹ and
- h) Maintains order in courtroom and other court premises during trial.³⁰

The analysis of the mentioned provisions shows that in the case of security of buildings, the building includes both the court and the prosecutor's office, whereas in the case of protection of persons, only judges and other court employees are protected, leading to a conclusion that the Court Police of RS has no authorization to provide protection for prosecutors in judicial institutions of RS whose lives are in danger. It seems justified to raise a question whether the Court Police of RS can protect a prosecutor whose life is in danger, provided that such protection is defined by a special agreement on providing assistance to Prosecutor's Offices in RS, which can be signed by the President of the Supreme Court of RS and the Chief Prosecutor of RS.³¹ The authors did not discuss bylaw relevant for this issue; yet being familiar with the organization and work of the Court Police of RS, there is also a need here for judicial community to provide necessary assistance and support to define this issue properly, as well as to satisfy human and material-technical prerequisites for execution of the mentioned work in full capacity.

2.11. Ministry of Interior of Republika Srpska

Unlike the organization of the bodies of internal affairs in the Federation of BiH where competences are defined under eleven different Laws on Internal Affairs, the organization of RS police is far simpler. Namely, the RS Police conducts its duties throughout the entire RS and acts pursuant to the Law on Internal Affairs. As for authorizations of the Ministry of Interior of RS (hereinafter: RS MI), it should be noted that the protection of persons and facilities of special concern is also defined,³² in addition to other types of protection, but without specifying the persons or facilities to be protected. The Law reads that the Government of RS will issue a decision identifying persons and facilities to be protected, and that other RS administrative bodies, organizations and institutions are obliged to act upon requests of this Ministry in conducting special measures of protection of persons and facilities.³³ Therefore, nothing in the above mentioned legal provision precisely defines the obligation of RS MI in regards to taking protective

²⁹ There are about 320 judges employed in judicial institutions of RS.

³⁰ Article 13 of the Law on Court Police of RS, Official Gazette of RS, No. 98/11.

³¹ Article 15 of the Law on Court Police of RS, Official Gazette of RS, No. 98/11.

³² Article 4 (1) (e) of the Law on Internal Affairs of RS, Official Gazette of RS, No. 4/12.

³³ Article 4 (2) of the Law on Internal Affairs of RS, Official Gazette of RS, No. 4/12.

measures for judges and prosecutors whose lives are in danger, unless the special provision is enforced, that reads that police officers of the Ministry of Interior are obliged to protect lives and provide security for all citizens.

2.12. Protection of judges and prosecutors in judicial institutions of Brčko District of BiH and Brčko District Police

The authors would like to stress the need to also regulate this field in Brčko District of BiH, but without discussing the issues of protection of judges and prosecutors in judicial institutions of BD BiH,³⁴ considering that the capacities of judicial institutions and police agencies in BD BiH are adequate. Further, its specific and simpler organization enables prerequisites for a more efficient regulation of the matter of protection of judges and prosecutors.

Duties of Brčko District Police, among other, include protection of lives and property, as well as protection of certain persons and facilities in the District.³⁵ The same law stipulates that the Government of Brčko District, upon a proposal of the Chief of Police of Brčko District will decide on persons and facilities to be protected.³⁶ It is also defined that the Chief of Brčko District Police will decide on forms of protection.³⁷ Accordingly, when it comes to police procedures in Brčko District, this issue was defined based on the FBiH and RS model, and there is no precise definition of obligation of Brčko District Police in regards to protection of judges and prosecutors in judicial institutions of BD BiH whose lives are in danger, unless the provision is enforced on the duty of police officers to protect lives and provide personal safety to all citizens.

2.13. The Court Police of Brčko District of BiH

The Court Police of BD BiH is established within the framework of the Judicial Committee of BD BiH and provides assistance to the Appeal Court and Basic Court of BD BiH, in regards to collecting information, executing court orders for apprehension of parties in court proceedings

³⁴ There are about 27 judges employed in courts of BD BiH, and about 10 prosecutors, or 37 judicial office holders in total.

³⁵ Article 12 (1) (a) and (e) of the Law on Brcko District Police, Official Gazette of BD BiH, No. 31/09, 60/10 and 31/11.

³⁶ Article 15 (1) of the Law on Brcko District Police, Official Gazette of BD BiH, No. 31/09, 60/10 and 31/11.

³⁷ Article 15 (2) of the Law on Brcko District Police, Official Gazette of BD BiH, No. 31/09, 60/10 and 31/11.

pursuant to orders of courts in BD BiH, escorting convicted persons to correctional facilities as ruled by the court, maintaining order in a courtroom, protecting judges and other court employees, and other persons inside the court building, internal security of the building, and executing other court orders. The Court Police also provides assistance in checking court documentation, including court and administrative documents, especially when collecting necessary information, documents, and acts in a case of resistance or non-cooperation of any officials during investigation. Further on, the Court Police executes court orders related to search of property and persons, temporary seizure of objects, providing implementation of executive court orders, and other court orders whose goal is to take steps to secure successful continuation of the court procedure. For expert opinion or operational support, the Court Police may request assistance of law enforcement agencies at entity or state level.³⁸

The Chairperson of the Judicial Committee of Brčko District of BiH, upon a request of the Chief Prosecutor of BD BiH and the Director of the Office for Legal Assistance of BD BiH may enter a special agreement on providing assistance to the Court Police to define the issue of protection of prosecutors whose lives are in danger.³⁹ The Court Police of BD BiH is in charge of security of judges and court officials, and other persons inside the court building, which means that they have no powers outside the court building. Therefore, this issue needs to be re-examined so as to have it precisely defined.

³⁸ Article 5 of the Law on Brcko District Police, Official Gazette of BD BiH, No.: 42/04, 19/07, 2/08, 31/11 and 48/11.

³⁹ Article 6 of the Law on Brcko District Police, Official Gazette of BD BiH No.: 42/04, 19/07, 2/08, 31/11 and 48/11.

III SAFETY OF CLOSE FAMILY MEMBERS OF JUDGES AND PROSECUTORS

As for safety of close family members of judges and prosecutors, the authors wish to stress that this issue has the same weight as the issue of personal safety of judges and prosecutors. There are many known cases in practice where, due to the role or particular activities of judges or prosecutors, members of their families were the target of the threat or assault. The goal of the threats or assault to family members is identical to the goal of immediate threats or assaults to a judge or a prosecutor, and in essence, it represents jeopardizing safety of a judicial official, or an attempt of influencing professionalism, independence and impartiality of judges or prosecutors through threats and intimidation. Considering the importance of close family member for any individual, especially an underage child, it is clear that any threat or assault that would bring lives of family members of a judge or a prosecutor in danger, would lead to possible doubts as to professionalism of the judge or the prosecutor. It can also be said that, when one is trying to use threats and assaults to put pressure on a judge or a prosecutor, all means available will be used and threats will be directed to where it will have the biggest impact. Many judges or prosecutors, after receiving such threats or after assaults, tried to point out the importance of protection of their family members and not their personal protection, due to the fear that possible threats or assaults will be directed towards their underage children or other close family members.

Previous analysis of laws and bylaws has indisputably shown that the issue of safety of judges and prosecutors was not defined clearly and precisely, and that the issue of protection of their close family members is not at all defined. Therefore, the issue of protection of close family members of judges and prosecutors is placed through legal regulations into an issue of general safety of all citizens, which is in jurisdiction of local police authorities, and that is why this issue needs to be defined comprehensively and jointly with the issues of safety and protection of judges and prosecutors. Very often, protective measures for family members by one police agency, and for judges and prosecutors by another, do not have the necessary effects. First of all, protective measures require a legal framework, good organization and constant communication. Lack of coordination questions

execution of the task, and jeopardizes safety and lives of protected persons. It is necessary to say that, with regards to issues of security and protection of close family members of judicial office holder in judicial institutions in the Federation of BiH, the Court Police of the Federation of BiH has no legal grounds for their protection, but they are obliged, pursuant to provisions of the Book of Rules on information related to jeopardizing safety of close family member of judicial office holder, to inform a competent police agency.

In our opinion, alongside protection of judges and prosecutors, it is necessary to regulate the protection of the immediate family members, and this protection should be carried out by one and the same police agency, and not by different police agencies, as is currently the case.⁴⁰ Generally speaking, when assessing the needs for protection of immediate family members of judges and prosecutors, it is necessary to bear in mind the relations between a judge/prosecutor and a particular family member. Therefore, protection needs should be assessed individually.⁴¹

^{40 38} For example, there are known cases of the protection of judicial office holders being carried out by one agency, protection of the immediate family members carried out by another agency, and protection of property by a third police agency. There are also known cases of one police agency providing protection to judicial office holders during the working hours, and another one providing protection off-hour.

⁴¹ For example, sometimes a protection of a judge or prosecutor's grandson could be justified, although a grandson does not qualify as an immediate family member, at first glance.

IV SAFETY OF THE PROPERTY OF THE HOLDERS OF JUDICIAL OFFICE

The aim of threats to or attacks on the property of a judicial office holder is identical to the aim of the immediate threat or attack on a judge or a prosecutor, and in essence it represents a threat to safety of judicial office holder, or an attempt to affect professionalism, independence and impartiality of a judge or a prosecutor by means of threat or intimidation. It is precisely for this reason that the safety of the property of the holders of judicial office should be an integral part of judicial security. In this context, we are not referring to continuous security of judges and prosecutors/property provided by relevant authorities. Instead, we are talking about the need to create a legal framework to regulate the issue of security and protection of the property of judicial office holders. If basic principles of protection of vulnerable people are taken into consideration, than it can be concluded that there is no sense in immediate protection of judicial office holders, or some of their family members, without protecting their place of residence, as partial measures cannot lead to the ultimate goal of a preventive or repressive response to threats or attacks that might endanger a life, of affect professionalism, independence and impartiality of judicial office holders. In regards to issues of security and protection of close family members of a judicial office holder in judicial institutions in the Federation of BiH, it should be noted that the Court Police of the Federation of BiH has no legal grounds for their protection, but they are obliged, pursuant to provisions of the Book of Rules on information related to jeopardizing safety of close family member of a judicial office holder, to inform a competent police agency accordingly.

Just like all other forms of protection, protection of property of judicial office holders should be entrusted to police agencies in charge of the safety of judges, prosecutors and their immediate family members, and not to various other police agencies, as is currently the case.⁴²

⁴² Here too there are many cases of poor practice, and it is for this particular reason that the authors of this essay would like to point out to a need for a systematic solution problems in this filed.

V SAFETY OF EMPLOYEES OF JUDICIAL INSTITUTIONS

Employees of judicial institutions are an indispensable part of judiciary, and have an important role. It is well known that the majority of judicial employees have direct contact with case files, or more specifically evidence and other documentation of importance for specific proceedings. Therefore, the question arises whether a threat or an attack on a judicial employee could affect the proceedings and pertinent outcomes. It is clear that an influence on judicial employees does not directly affect professionalism, independence or impartiality of the judicial office holder, thus it ultimately does not affect the rule of law. However, it is well known that a pressure exerted on a judicial employee can lead to important evidence missing from files, confidential information being disclosed, or some other activities taken with the aim of preventing or affecting criminal prosecution and the proceedings, affecting directly the rule of law. Certainly, anyone that uses threats, intimidation or attack in order to influence the final outcome of proceedings will direct those threats, intimidations and attacks at the decision-makers, meaning judges, prosecutors or indirectly their immediate family members, and in some instances it is equally possible that potential attacker would aim precisely at obstructing the work of a judicial office or judicial office holder. It is for this very reason that the safety of judicial employees should be an integral part of judicial security, and as such it should be adequately standardized within that field.

VI SAFETY AND PROTECTION OF WITNESSES

It is well known that the issues pertaining to safety and protection of witnesses at judicial institutions of Bosnia and Herzegovina were subject to analyses and reports of several national and international governmental and non-governmental organizations. The conclusion in majority of these reports is related to numerous instances of witnesses being intimidated and their physical integrity threatened just because they intended to testify. Some witnesses claim that the rights and the integrity of the defendant and the convicted were better protected than the rights and the integrity of witnesses. For this reason, the witnesses try to avoid testifying, which indirectly hinders the work of judicial institutions, especially the Prosecutor's Office, which bears the burden of proof. There are cases where witnesses under threat and vulnerable witnesses:

- came in on their own and identified themselves as protected witnesses at the reception desk or to security guards;
- personally encountered the defendant or the family members of the defendant;
- waited in front of the courtroom along with the family members of the defendant or the defense witnesses in close relationship with the defendant;
- sat in the courtroom just a meter away from the defendant;
- encountered numerous reporters/journalists in front of the court building who would take photos or make video recording upon their arrival, and then have those photos of video recordings published in the media;
- received court summons via regular mail in unsealed or half-open envelopes, and in some small towns, the courier would even leave the summons in local coffee bars or restaurants, grocery shops, or simply hand them over to the witness' relatives or acquaintances.

In such cases, measures set forth by the court in accordance with the provisions of the Law on the Protection of Witnesses become meaningless, and the integrity and the safety of the witness are being threatened. Finally, such practice causes witnesses to avoid testifying or alter their testimony, despite the fact that such conduct in some cases might constitute a criminal

offense, out of fear and due to the fact that the system did not provide even the minimum measures to protect witnesses from intimidations, threats or attacks. As a result, criminal proceedings turn ineffective and citizens lose trust in judicial institutions.

It should be noted that the abovementioned cases of poor practice mainly came as a result of the lack of adequate legal framework and the lack of human, material and technical resources within judicial institutions necessary for the implementation of witness protection measures. Certainly, we would not want the readers to think that the authors have neglected the witness support. On the contrary, we consider the witness support to be as important as witness protection, but as this topic deals with the issue of safety, hereinafter we will not be dealing with the issue of witness support and potential shortcomings in that area. In order to demonstrate why safety and the protection of witnesses should be an integral part of judiciary, it would among other things be necessary to bear in mind that the good quality witness protection increases the readiness of witnesses to cooperate with prosecuting authorities, and the proceedings itself become more effective, while at the same time the trust of citizen in judicial institution is increased too.

Regulating safety and protection of witnesses in Bosnia and Herzegovina is particularly important within the framework of judicial institutions of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina, since this area is mostly regulated when it comes to protection of witnesses before the Court of Bosnia and Herzegovina. The fact that witness protection within the entities and Brčko District of Bosnia and Herzegovina is still not regulated should be a concern to all those that were given certain role in addressing this issue, particularly judicial institutions. Specifically, the level of cooperation between the Prosecutor's Office/ the Court and the witnesses, particularly the victims of serious offences, is a certain indicator of the efficiency of justice administration. In some countries, the inability to protect witnesses is considered the highest level of crisis in the functioning of judicial system, and consequently a crisis in the functioning of the government.

6.1. Protection of witnesses at judicial institutions of Bosnia and Herzegovina

Protection of witnesses before the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina is regulated under the Law on Protection of Witnesses under Threat and Vulnerable Wit-

nesses,⁴³ which was imposed by a decision of the High Representative. In accordance with needs arising from practice, and in line with international standards, this law underwent certain changes and amendments, unlike the entity laws regulating this particular field. In addition to this particular law, at the state level there is also the Law on Protection of Witnesses in Bosnia and Herzegovina,⁴⁴ as a *lex specialis*, and no such law exists at the entity level or in Brčko District of Bosnia and Herzegovina. At the same time, the existing state law enables the implementation of the Program of Protection of Witnesses in Criminal Proceedings before the Court of Bosnia and Herzegovina,⁴⁵ and one could therefore conclude by *argumentum a contrario* that the abovementioned law does not pertain to proceedings taking place before the courts in the entities and Brčko District of Bosnia and Herzegovina.

Given than the fact that the Witness Protection Unit of SIPA is financed from the budget of Bosnia and Herzegovina, the question arises if it would be possible to finance witness protection for judicial institutions at the Brčko District of Bosnia and Herzegovina, for example, from that very same budget. Specifically, the Witness Protection Unit of SIPA is one of a kind in the entire Bosnia and Herzegovina, when it comes to the nature of work and the authority it has. Practically, this is a unit that successfully provides protection to witnesses, and implements witness protection programs with equal success. It should be mentioned here that the new Law on the of Witness Protection Program was adopted in December 2013, which is in line with the Recommendations of the Council of Europe and other international standards, but this law still does not cover entities and the Brčko District of Bosnia and Herzegovina. We believe that there should be one legal provision for all judicial institutions in Bosnia and Herzegovina, in regard to witness protection programs. The Court Police of Bosnia and Herzegovina, which is in charge of securing the premises of the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina, as well as acting on orders issued by the abovementioned institutions, has no direct power in terms of carrying out witness protection measures, not even at the point when such witnesses come to the building of mentioned judicial institutions.

⁴³ Official Gazette of Bosnia and Herzegovina, No. 3/03, 21/03, 61/04 and 55/05.

⁴⁴ Official Gazette of Bosnia and Herzegovina, No.29/04.

⁴⁵ Article 1 of the Law on the Program of Witness Protection in Bosnia and Herzegovina: "The purpose of this law is to ensure effective protection of witnesses during and after the criminal proceedings, in order to enable witnesses to testify freely and openly at the criminal proceedings before the Court of Bosnia and Herzegovina".

6.2. Protection of witnesses at judicial institutions of the Federation of Bosnia and Herzegovina

When it comes to protection of witnesses at the judicial institutions of the Federation of Bosnia and Herzegovina, it should be mentioned that there is a *lex specialis* rule that regulates this field, namely the Law on Protection of Witnesses under Threat and Vulnerable Witnesses.⁴⁶ This law stipulates the measures that enable the protection of witnesses under threat and vulnerable witnesses in criminal proceedings led before municipal courts, cantonal courts and the Supreme Court of the Federation of Bosnia and Herzegovina, or the cantonal prosecutors and the federation prosecutor for criminal offenses under the jurisdiction of the court.⁴⁷ Unlike the state level, there is no other rule at the level of the Federation of Bosnia and Herzegovina that defines the nonprocedural witness protection measures,⁴⁸ except for an obligation to pass bylaws. Specifically, every court is obliged to adopt rules of procedure that ensures the appropriate use of witness protection measures stipulated under this law and the ones that guarantee that the witnesses would be provided with adequate protection or care as stipulated under the relevant laws of the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina.⁴⁹ Here the question of collision of legal provision arises, given that implementing regulations on the work of Court Police of the Federation of Bosnia and Herzegovina may be adopted only by the President of the Supreme Court of the Federation of Bosnia and Herzegovina.

6.3. The role of the Court Police of the Federation of Bosnia and Herzegovina

In order to overcome problems and shortcomings in the implementation of witness protection measures at the judicial institution in the Federation of Bosnia and Herzegovina, the President of the Supreme Court of the Federation of Bosnia and Herzegovina passed the Rulebook on Court Police Performance in Implementing Witness Protection Measures before the Judicial Institutions in the Federation of Bosnia and Herzegovina⁵⁰

⁴⁶ Official Gazette of the Federation of Bosnia and Herzegovina, No. 36/03.

⁴⁷ Article 1 of the Law on Protection of Witnesses.

⁴⁸ For example, physical and technical protection of witnesses or their family members, relocation of witnesses, securing the arrival of witnesses to the court, psychosocial support for witnesses etc.

⁴⁹ Article 26 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses.

⁵⁰ No. Su-sp-59-1/12 dated 1 June 2012.

(hereinafter the Rulebook). Therefore, this Rulebook created conditions for an unhindered application of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses in criminal proceedings, given that this law stipulates that nonprocedural witness protection measures before all courts and prosecutor's offices in the Federation of Bosnia and Herzegovina shall be carried out by the Court Police of the Federation of Bosnia and Herzegovina, more specifically the Intervention and Operations Unit of the Court Police of the Federation of Bosnia and Herzegovina,⁵¹ as a unit specialized in carrying out the most complex and high-risk tasks from the field of Court Police work and the implementation of protection measures for witnesses of judicial institutions in the Federation of Bosnia and Herzegovina. In addition to deriving from the provision of the Constitution of the Federation of Bosnia and Herzegovina stipulating that the Court Police should assist in ensuring the presence of witnesses,⁵² legal foundation for the adoption of the abovementioned Rulebook derives from provisions of the Law on Court Police, which among other things stipulates that the Police of the Federation of Bosnia and Herzegovina executes other orders to ensure success of certain proceedings, and carries out its duties in accordance with this law, the laws on rules of procedure and the rules set forth by the President of the Supreme Court of the Federation of Bosnia and Herzegovina.⁵³

6.4. Potential witness protection measures in the Federation of Bosnia and Herzegovina

The Rulebook defines competences, cooperation and coordination, the manner of sending letters and dealing with documents, confidentiality, the manner of carrying out witness protection activities, reporting and informing, training and other questions of importance for the work of Court Police in the area of witness protection before judicial institutions in the Federation of Bosnia and Herzegovina stipulated under the provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. Specifically, the Intervention and Operations Unit of the Court Police of the Federation of Bosnia and Herzegovina may carry out the following measures in accordance with orders of courts and prosecutor's offices:

⁵¹ Article 5 of the Rulebook on Court Police Performance at Implementing Witness Protection Measures before the Judicial Institutions in the Federation of Bosnia and Herzegovina.

⁵² Article IV C.8 of the Constitution of Federation of Bosnia and Herzegovina.

⁵³ Article 2, Article 4 (1) and (7) of the Law on Court Police.

- a. physical protection of witnesses during their arrival at the judicial institutions, during their presence in judicial institutions, during testimony and upon return to a safe location;
- b. submission of summons and other letters to witnesses treated in criminal proceedings in accordance with provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses;
- c. implementation of security assessments and provision of recommendations to judicial function holders in order to take concrete measures of physical and technical protection of witnesses;
- d. taking other measures set forth under the order of the judicial function holder, which provide witnesses with adequate security measures and protection of their privacy.⁵⁴

In addition to the abovementioned possibilities to provide witness protection measures, we would also like to point out to potentials those judicial institutions could draw on from Article 25 of the Rulebook, which defines relocation of witnesses, as follows:

1. If the purpose of witness protection was not achieved through measures under Article 4 of the Rulebook, and the witness and his/her family are facing serious threat to their lives, health or freedom because of their intention to testify, relevant judicial function holder may order the organizational unit referred to in Article 5 of the Rulebook to temporarily relocate the witness and his/her family to some other location within the Federation of Bosnia and Herzegovina during criminal proceedings and with the consent of the witness.
2. The other location where the witness would be relocated to referred to in paragraph 1 of this Article is determined by the organizational unit of the Court Police referred to in Article 5 of the Rulebook.
3. In case of a scenario referred to in paragraph 1 of this Article, relevant judicial function holder, the head of the organizational unit referred to in Article 5 of the Rulebook, and the witness sign an agreement by which the witness is bound to respect the security measures and the rules applied in order to provide witness protection.

⁵⁴ Article 4 of the Rulebook on Court Police Performance in Implementing Witness Protection Measures before the Judicial Institutions in the Federation of Bosnia and Herzegovina.

4. Security measures and rules in the agreement referred to in paragraph 3 of this Article are determined by the head of organizational unit referred to in Article 5 of the Rulebook.
5. The agreement under paragraph 3 of this article is signed and approved by the relevant President of the Court/Chief Prosecutor and the Chief Commander of the Court Police of the Federation of Bosnia and Herzegovina.
6. Resources necessary for the implementation of measures set forth in paragraph 1 of this Article are provided by judicial institution that issued the order, and the resources may include economic, legal, medical, psychological and social assistance necessary for the relocated witness or his/her family member.
7. The assistance referred to in paragraph 6 of this Article should not exceed the amount necessary to cover living expenses of the relocated witness and his/her family member.

We would like to stress here that this field is only partially regulated in the Federation of Bosnia and Herzegovina, for it only covers protection of witnesses for the duration of criminal proceedings, rather than before, during and after the proceedings, as it should be the case, and due to the lack of clearly defined legal framework for implementation of the witness protection program in the judicial institutions in the Federation of Bosnia and Herzegovina.

6.5. Preliminary Draft Law on Court Police of the Federation of Bosnia and Herzegovina

Precise competences of the Court Police of Bosnia and Herzegovina in terms of the execution of nonprocedural witness protection measures based on orders of judicial institutions in the Federation of Bosnia and Herzegovina stem from the abovementioned Preliminary Draft Law on Court Police of the Federation of Bosnia and Herzegovina.⁵⁵ Given the fact that this field is still not regulated, the commitment to have the Court Police of the Federation of Bosnia and Herzegovina in charge of witness protection, rather than some other police agency, follows from some basic principles, such as the fact that “protection of witnesses is an indicator of successfulness of justice administration”, “adequate witness protection increases readiness of witnesses to testify”, “adequate witness protection increase the trust of citizens in judicial institutions”, and especially the fact

⁵⁵ Article 15 (I) and Article 32 of the Preliminary Draft Law on Court Police of the Federation of Bosnia and Herzegovina.

that the Court Police of the Federation of Bosnia and Herzegovina is set up within the framework of judicial power.

Therefore, given its competencies, the Court Police of the Federation of Bosnia and Herzegovina is a police agency whose role is to ensure unobstructed work of judicial institutions through the execution of orders issued by those very same institutions, and to create the necessary safety environment to ensure an unhindered work of judicial institutions in the Federation of Bosnia and Herzegovina. However, due to its specific nature, complexity and confidentiality, as well as culpability in case that certain confidential information pertaining to witness protection is disclosed, it is necessary to carry out protection of witnesses exclusively within the bounds of a structured and specialized organizational unit.

6.6. Protection of witnesses at judicial institutions of RS

Procedural part of witness protection at the judicial institutions of RS is based on the very same principles as in the Federation of Bosnia and Herzegovina, and this procedural part is regulated under the *lex specialis* Law on Protection of Witnesses in the Criminal Proceedings.⁵⁶ When it comes to nonprocedural witness protection measures, it should be noted that this field is not regulated precisely, nor is placed within the framework of the RS Interior Ministry, or within the framework of RS Court Police. Unlike the Preliminary Draft Law on Court Police of the Federation of Bosnia and Herzegovina, the Law on RS Court Police from 2011 does not define assignments pertaining to witness protection. With this in mind, relevant institutions in Republika Srpska should determine the course of action, or, specifically, set up a special unit in charge of nonprocedural witness protection measures, so as to address witness protection in judicial institutions of Republika Srpska. Potential concepts of establishing one such unit is to set it up within the framework of RS Interior Ministry or RS Court Police.

6.7. Witness Protection at judicial institutions of Brčko District of Bosnia and Herzegovina

Procedural part of witness protection at judicial institutions of Brčko District of Bosnia and Herzegovina is based on the same principles as in the Federation of Bosnia and Herzegovina and Republika Srpska, and this procedural part is regulated under the *lex specialis* Law on Protection of Wit-

⁵⁶ Official Gazette of RS No. 48/03.

nesses in the Criminal Proceedings.⁵⁷ Nonprocedural witness protection measures, on the other hand, are not regulated precisely, either through special legislation, or bylaws. For this reason, and within the framework of this particular part of judicial system in Bosnia and Herzegovina, certain witness protection related activities should be undertaken.

6.8. Comparison with other systems

In the special report entitled the INSTITUTE FOR WAR AND PEACE REPORTING (IWPR)⁵⁸, there were, among other things, remarks in regard to witness protection in Serbia. Specifically, the Witness Protection Unit over there is set up as a part of the Ministry of Interior of Serbia, and the remark is that there is a need to shift the Witness Protection Unit to the Ministry of Justice, due to problems identified in this field. It should be noted that Special Witness Protection Units in other Balkan countries also exist within respective ministries of interior, which cannot be easily compared and applied in Bosnia and Herzegovina due to the complex makeup of the country and the division of institutional competences.

If one is to analyze regulations in this particular field in the United States of America (hereinafter USA), one may conclude that the key principles were to place the safety and protection of witnesses in the framework of judicial security. Hence, witness protection in the USA is carried out by the U.S. Marshals Service, which is in charge of security and protection of judicial institution premises, safety and protection of judges and prosecutors, their family members and property, enforcement of court orders, seizure of property based on court orders etc., which shows that the competencies of the US Marshals Service is similar to those of the Court Police of the Federation of Bosnia and Herzegovina. The idea that the witness protection should be regulated within judicial framework is supported by the fact that officers carrying out protection measures are not to discuss the case with the witness, conduct additional investigations or urge the witnesses to testify, given that the Court Police is not authorized to conduct investigations, unlike many other police agencies, and it therefore does not have an interest in carrying out additional activities in order to fill in the gaps created at an earlier stage of investigation.

⁵⁷ Official Gazette of Brčko District of Bosnia and Herzegovina, No. 10/03, 8/07 and 19/07

⁵⁸ Irwing, R.: and Šarić, V.: Weak Witness Protection at Trials in the Balkans, 22 November 2012

6.9. The role of High Judicial and Prosecutorial Council of Bosnia and Herzegovina

The endeavors of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina to regulate this field comprehensively and precisely at all levels in Bosnia and Herzegovina, is yet another indicator that witness protection is of special importance and an integral part of judicial professionalism in Bosnia and Herzegovina. Concrete activities taken by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina are known to the authors of this essay, and, among other, they consist of the following:

- Passing the Decision on Adoption and Mandatory Application of Standards in the Implementation of Witness Protection Measures before the Courts in Bosnia and Herzegovina, No. 02-02-3128-1/2010, dated 17 September 2010;
- Adoption of Guidelines to Standards and Security Measures of Judicial Institutions and Judicial Functions Holders in Bosnia and Herzegovina, which in one part define technical questions pertaining to judicial premises and witness rooms, and provision of recommendations for legislative regulation of this field;
- Development of educational modules - procedural witness protection measures dated March 2012.

We believe that all or most of these activities were taken in order to implement the National Strategy for War Crime Cases, or more specifically, in order to implement procedural witness protection measures in war crime trials before Cantonal and District Courts, and the Court of Brčko District of Bosnia and Herzegovina. However, parallel regulation of enforcement and nonprocedural witness protection measures has been neglected.

VII RESEARCH CONDUCTED AND MATERIAL PUBLISHED

7.1. BH Judges and Prosecutors' Safety Survey (the reason and the aim of the survey)

As we pointed out to the activities and endeavors of High Judicial and Prosecutorial Council to adequately regulate the field of judicial security, it should be noted that based on the recommendation of the Task Force for the Implementation of Guidelines on Standards and Measures of Security of Judicial Institutions and Judicial Functions Holders in Bosnia and Herzegovina (hereinafter the Task Force) with the aim of establishing the level of security, threats or attacks on judicial function holders, the High Judicial and Prosecutorial Council conducted a survey on threats and attacks on judicial function holders. The main reason to conduct the survey is that no authority in Bosnia and Herzegovina has consolidated information pertaining to the type and the number of threats or attacks on judges or prosecutors in Bosnia and Herzegovina. This information is important so that the entire situation and the implementation of Guidelines on Standards and Measures of Security of Judicial Institutions and Judicial Function Holders in Bosnia and Herzegovina could be looked at. The aim of the abovementioned survey was to collect and analyze information pertaining to attacks and threats posed to judges and prosecutors in Bosnia and Herzegovina, as well as the actions of the police after receiving a report on threats or attacks. In order to collect as much relevant information as possible, it was decided to conduct an anonymous survey.

This survey will certainly soon be of importance to the High Judicial and Prosecutorial Council of BiH too, as one of the roles of the High Judicial and Prosecutorial Council is to establish professional, independent and impartial judiciary. This will certainly be impossible unless conditions are created in which judicial institutions and judicial functions holders feel secured and safe from threats. The same goes for judicial institutions, the Court Police and other police agencies in charge of safety and protection of judges and prosecutors. It is important to mention here that this sort of survey was surely conducted for the first time in Bosnia and Herzegovina and in the region. In line with the survey, as of January 1, 2014, the Court Police of the Federation of BiH has introduced unified records on reported threats and assaults against judicial office holders in the FBiH, and the

measures taken in each case. It is important to stress the confidentiality of data recorded on judicial office holders whose safety was jeopardized, and the measures taken.

7.2. Survey questionnaire form and method

The questionnaire consisted of 22 questions in total, which might be qualified as follows:

- demographic questions;
- questions pertaining to self-assessment of threats posed to judicial functions holders given the nature of their job;
- questions pertaining to self-assessment of attacks attempted and carried out against judicial functions holders;
- questions pertaining to self-assessment of the type and the manner of reported attempted or executed attacks on judicial functions holders;

Here it should be stressed that the survey was not conducted directly, that is, using the interviewer – interviewee method. Instead, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina sent the questionnaire to courts and prosecutor offices, with the request for court presidents and chief prosecutors to disseminate the questionnaire to all judges and prosecutors to fill it in and send it back to the High Judicial and Prosecutorial Council of Bosnia and Herzegovina within 15 days.

7.3. Sample, processing and the results of the survey

Bearing in mind the manner in which the survey was conducted, the time it took to conduct the survey and its scope, and especially the overload of judicial institutions and judicial functions holders with their regular duties and activities, it should be mentioned here that the response to the survey was satisfactory, and the processor of questionnaire rated the survey as relevant. So, once all the questionnaires were collected, it was established that out of 1525 judicial functions holders, 870 of them filled in the questionnaire. Given the quantity and the importance of information addressed in the survey, the main objective of the Task Force was to process the survey in a professional way, which is why the Institute for Social Research of the Faculty of Political Science of the University of Sarajevo was chosen as a partner in processing the survey data. Before providing a brief overview of survey results, it should be reiterated that the data from this survey represent the only official information to weigh frequency of threats or attacks on judicial functions holders and the manner of prevention of threats received or attacks. The authors of this essay will not conduct a com-

prehensive analysis of certain data. However, in order to keep the reader of this essay entirely informed, the authors would like to point out to the following data that stem from the survey:

- 24% of judges or prosecutors interviewed have received some form of threat or were attacked in one way or another because of the work they perform;
- 60% of judges or prosecutors reported threats to police agencies or Court Police, while 40% of judges or prosecutors did not report any such threat to anyone;
- A large number of threats were not considered serious at first, although they turned into attacks later on, with some 13% of judges or prosecutors being attacked because of their office or the work they do;
- 75% of judges or prosecutors reported attacks to police agencies or Court Police, while 25% of judges or prosecutors did not report the attacks to anyone.

In addition to the above mentioned indicators, the authors have also tried to identify reasons behind a concurring large number of unreported threats and attacks; therefore, the following answers to the question “why did you not report a threat” have been identified: “judges and prosecutors are not protected anyway”, “because I did not take the threat seriously”, “because of the fear for my safety and the safety of my family”, “whom to report the threat to”. “I think it would only make things worse”, etc. The above answers suggest that the issue on reporting threats or attacks has not been systematically dealt with, that there is a lack of procedures for approaching reported threats or attacks, and that judges and prosecutors have not been sufficiently educated about their own safety, for they would have to take each and every threat or attack rather seriously and immediately report it to an agency in charge of providing safety and protection to judges or prosecutors. Among described threats or attacks, the following have been reported as well: endangering life and safety of persons with the use of explosive devices, firearms, cold steel, damaging of items, delivery of threat letters, verbal threats, etc. Therefore, it must be stated that any threat is by no means accidental, and that, for the sake of preventing possible threats or attacks to judges or prosecutors with major consequences, each and every threat or attack must be reported immediately. In addition to a concerning fact that a large percentage of threats or attacks has not been reported to respective law enforcement agencies, perhaps what is even more concerning is the lack of actions involving the threats or attacks which have been reported, and that in large percentage of cases an investigation has been

initiated where in 50% of the cases it did not result in identifying and prosecuting perpetrators.

In previous sections, the authors have pointed out to the fact that any action on possible protection, as well as the conclusion that a threat has not been serious, must be undertaken and made after conducting the assessment on the seriousness of the threat, or the so-called security check. Taking into consideration that more than 80% of judges or prosecutors, when filling out questionnaires, stated that the security check has not been made or they were not aware of it, the question has to be raised as to the seriousness of institutions in receiving reports on threats and taking actions in follow-up. With such indicators, it is deemed necessary to refer to certain statements made in previous sections, which was a result of the fact that there is no police agency at any level in BiH that would possess necessary resources and would properly deal with the issues of safety and protection of judicial offices holders, members of their families and assets. Therefore, there is a lack of precise data on the number of received threats, the number of attacks, conducted investigations, results of investigations or other relevant proceedings, as well as concrete actions which have been carried out. Also, we need to state that judicial offices holders have not been properly introduced with the proceeding and procedures which must be conducted after receiving a threat or being attacked. Unknown are also the rules on reporting a threat, as well as jurisdiction or obligations of other bodies after the threat has been received (for example, conducting security check, applying possible protection measures, duty to adhere to basic principles for persons under protection, etc.).

7.4. Educational Video ‘The Safety Starts with You’

The educational video on judicial security in BiH is a 25 minutes long video prepared by the Working Group, and is a product of efforts of the HJPC BiH to properly tackle the issues of judicial security in BiH, and to introduce the judges and prosecutors with actual events which had resulted in attacks on judges and prosecutors with certain consequences. Since the objective of the video is to raise the awareness of judges and prosecutors when it comes to their own safety, the safety of the members of their families and their property, with special focus on permanent application of preventive protection measures and the obligation of reporting the possible threat or attack, the educational video was officially named ‘The Safety Starts with You’.

Persons participating in the video are the current judges and prosecutors who were subject to threats or attacks, who talk about their own

experiences and emotions pertinent to threats or attacks. The contribution in making this video was also made by officials of the Court Police, who provided concrete advice in terms of the safety for judicial office holders, and by officials who were in charge of conducting protection measures, who spoke about specific cases in the protection phase. The main goal is to show the video in trainings, seminars and conferences organized for judges and prosecutors, with the prior approval of the HJPC, which represents the only institution authorized to approve the broadcasting and reproduction of this video. The authors would like to note that the significant contribution in making of this educational video, apart from the HJPC, was also given by ICITAP BiH, providing the funds for video recording and editing.

7.5. Manual on the Judicial Security ‘The Safety Starts with You’

Manual on the Judicial Security, just like the educational video, was the product of activities carried out by the Working Group, and efforts made by the HJPC, to properly regulate matters pertaining to the judiciary, and to make judges and prosecutors aware of the necessity to undertake preventive measures and behavior modes in specific situations which may lead to safety risks. The objective of the Manual is to provide safety guidelines to judges and prosecutors, as well as members of their families, and assist them in overcoming possible threats or attacks. Also, the objective of the Manual is to assist judicial institutions, Court Police agencies and other authorized police agencies in creating the safe environment and the safe surroundings for the functioning of judicial institutions and judicial office holders in BiH.

The Manual covers three sections, as follows:

- personal safety
- workplace safety
- home safety

It is deemed necessary to emphasize once again the altruistic support and assistance provided by ICITAP BiH in implementation of this project as well, consisting of professional assistance in drafting the Manual, and providing funds for printing a certain number of copies.

VIII CASE STUDY / THREAT AND ATTACK ON A JUDGE OF A MUNICIPAL COURT

„To seek a judge is to seek a justice.“
Aristotle

An equal sign between a judge and the justice means that a judge has certain inherent and/or acquired qualities that are required for performance of judicial duties. Among the most important ones⁵⁹ are independence and impartiality, followed by competence, work responsibility, integrity and proper behavior. The above qualities have been framed as ethical principles incorporated in the Code of Judicial Ethics⁶⁰ (hereinafter: the Code). Thereby, in accordance with the Code, the independence of the judiciary represents a precondition for the rule of law⁶¹. Article 2.02.II of the Universal Declaration on Independence of Justice⁶² specifies that judges as individuals should be free and their duty is to make *unbiased decisions* based on their own evaluation of facts and understanding of law, free of limitations, influences, incitements, pressures, *threats* and involvements, whether direct or indirect, from any side or for any reason.

There are many aspects of independence and impartiality; however, for the sake of this argument, we shall focus on guarantees for protection of judges from external pressures (threats or attacks, in particular), being the aspect that equally applies to the principle of independence and the principle of impartiality of a judge. When in office of a judge (in accordance with judicial ethics principles), it is expected that a judge would come across various types of threats or attacks, in most cases from convicted persons. However, we believe that a judge, despite threats or attacks, must carry on with his/her duties, applying the highest ethical and professional standards. Personal, physical and mental characteristics of each and every judge,

⁵⁹ The Human Rights Committee in several of its decisions emphasized the right to independent and unbiased court as an absolute right with no exceptions. For example, see *Gonzales del Rio vs. Peru*.

⁶⁰ Published by the HJPC in 2005.

⁶¹ The Code of Judicial Ethics, page 1.

⁶² So-called Montreal Declaration accepted at the plenary session of the First World Conference on the Independence of Justice (held in Montreal on June 10, 1983).

in most cases define his/her approach in resolving a dilemma: "I've been threatened, attacked, whom to report it to and whether to do it at all?" Generally speaking, we all have different criteria and the view on the concept of having our own safety jeopardized, as well as understanding of a threat or attack. Renowned Indian philosopher Tagore offered his opinion on those who were capable of implementing the justice: "Only the weak dare not be just". This brings us in direct connection with weaknesses of each and every judge as a human being, for it is believed that threats or attacks shall typically target their weaknesses. However, we would like to focus on general safety risks of judges who try in criminal cases and protection measures available to them. Depending on our own personality, some of us would only ignore it, some would get scared and give up, but we strongly believe that the majority of judges shall continue working on the case. However, in this latter situation, a judge must have someone by his side to guarantee the safety and protection for him and his family. In 2010, one of the co-authors was first faced with less serious threats, followed by a direct attack on her personal property, and finally ending with the death threat. Based on her experience, we to offer a short reflection of her understanding of the current situation pertaining to the safety of judicial office holders.

A judge who has received a threat or has been attacked in any way, is faced with a tremendous challenge that he/she must respond to if he/she wants to remain a guarantor of the rule of law. The substance of the threat includes acceptance of the fact that he/she must continue working on the specific case, applying all ethical principles at the highest level, while at the same time, he/she is aware of the fact that such actions may put his or her life in danger. Fortunately, in BiH we did not face tragic outcomes of threats or attacks made against judicial office holders, which was not the case in neighboring countries. On May 23, 1992, the whole of Italy was shaken, when the premonition of the-then Chief Investigative Judge, combating mafia in Palermo, Giovanni Falcone, came true, who said: "I know I will win the war against the mafia, because the mafia will make a mistake and kill me, and then the people will rise, and that is my goal". It may be appropriate to wonder what is it that should happen to have the entire BiH rise and call for a systematic protection of judges and prosecutors who are the guarantors of the rule of law, but also a democratic and legal country." The previous experience has revealed that in most cases we learn about attacks and threats against judges and prosecutors from the media in sensation-seeking headlines and photos. In some cases, professional community would issue a press statement with harsh criticism of attacks, extend the support to a judge or prosecutor, and raise concerns about the safety of judicial office holders. As for the general public, such events often become

watercooler moments on potential perpetrators and motives, while various police agencies deal differently with each case. However, it has never happened that a threat or attack to any judge or prosecutor in BiH amounted to a reason to systematically resolve the issue of the safety of judicial offices holders. A great deal of responsibility rests on the judicial community itself, which must be the first to point at and insist on the necessity to come up with a systematic solution for the safety and protection of judges and prosecutors, and that is something the authors of this text have tried to do and offer concrete recommendations *de lege ferenda*.

However, it is important to make sure that protection provided to judges and prosecutors is not viewed by the public as a privilege for a specific judge or prosecutor; it must be clearly communicated that the only goal of the protection is to enable optimum functioning of the judiciary, protection of the independence of the judiciary, since it is a judge who guarantees the above by lawful and professional performance of his/her duties. In that regard, living under the police protection for a judge is far more than a pure security measure. It is a 24/7 lifestyle, while the protection is being applied. Even that bit of privacy that a judge has due to the nature of his/her job now disappears. A marked police vehicle parked in front of the building 24/7 is something you would have to explain to your children in an acceptable manner, to understand why the police officer is in front of the building at all times; the presence of the police itself causes discomfort with the majority of citizens (including the neighbors of protected person), you have a constant feeling that someone is following you, which is correct, because the police follows you, and all of that, combined with many other emotions, may be rather frustrating. Performance of the judicial office itself is difficult enough, and if you add to it a police protection, it indeed requires a lot of effort and understanding, primarily from the family and other close persons, in order to be able to continue performing your job in accordance with laws and conscience. A simple coffee with friends or going to the park with children becomes a subject to security assessment, much less going for vacation to the coast with family, etc.

Police agencies providing protection to a judge only do their job by their own rules, and it is very important for a judge to respect recommendations made by police officials who protect him/her, even though it can get very difficult sometimes. In reality, it often happens that protected persons “do what they feel”, even try to evaluate on their own the moments when they believe that they do not need protection, thus directly jeopardizing they own safety. In addition to this, a judge has many more important and more difficult issues to deal with in order to do his/her job; that is, try in a specific trial for which protection has been applied to. A judge does not

possess required or adequate professional skills to question the rules of procedure of police officials while he/she is under police protection. However, a judge is entitled to expect qualified and trained police officers next to whom he/she actually feels safe and protected, and that is exactly what must be provided to him/her by the government in a systematic approach, for, in return, a judge shall resolutely defend legal system of the country and represent a solid rock of a judicial authority. Unfortunately, according to the Global Report on Independence of Judges and Lawyers, “Attacks on Justice”, what happens in reality is quite the opposite. Many judges from all over the world are faced on daily basis with various types of threats and attacks, from verbal threats to killings and tortures. The UN Committee on Human Rights has invited all governments to respect and support the independence of judges and adopt effective laws in order to introduce such independence, as well as other measures which would enable judges to perform their professional duties *without harassment and fear*.⁶³ In case of Columbia, the UN High Representative for Human Rights has requested the government to: “accept the responsibility for protection of lives of prosecutors, judges, judicial and police officials, victims and witnesses, without jeopardizing fundamental rights of defendants.”⁶⁴

The fear⁶⁵ is exactly that feeling which never leaves the judge who was the subject to serious threat or attack. Regardless of who has been protecting him/her, and how serious protection measures have been, in the sub-conscience of a judge there is still a certain dose of fear that something is going to happen to him/her, their families or property, as result of previously received threat or attack. One should live and cope with such fear, and what is most important, should carry on with the trial, in most cases, against those who initiated the fear – defendants threatening or attacking judges. In order to maintain the intensity of the fear at the acceptable level, where a judge would not be obstructed from performing his/her duties, it is necessary to provide him with an adequate police protection.

⁶³ Human Rights Committee Resolution, 2004/33.

⁶⁴ The Report prepared by the UN High Representative for Human Rights in Columbia, UN Doc E/CNH.4/2000/11; also see the Report of the UN High Representative for Human Rights UN Doc E/CN.4/98/16, in which the High Representative has invited the Colombian Government to undertake immediate actions to guarantee the full effectiveness of the judicial system, particularly through effective protection of judicial office holders.

⁶⁵ The fear is the oldest and the strongest human emotion, in most cases defined as uncomfortable mental condition, the feeling of life or body integrity threatening, experienced when observing the danger.

As a person under protection, I was protected by the Court Police (during working hours) and officials of the police station in charge (after working hours). In addition to other measures, the protection was mainly about telephone arrangements between me and police officers, and I had to wonder whether professionalism is a phenomenon with different meanings in small environments. In other words, I placed myself in the position of police officials and wonder what would I do and how would I take if a judge reported a threat or attack to me. There is no overthinking and there is no choice, it must be understood as an attack to the country, the rule of law and legal system in general. As a judge, I expected a systematic approach to the problem, however, it failed, although I must stress positive examples of individuals of the Court Police and the police station, and I hope they will be able to recognize themselves when reading this text. Despite initial disappointment, we jointly decided to persist in protecting the dignity of the judicial office, understanding it as one of the most divine professions a human being can occupy, because it rises from authorities given to the judge by citizens in order to protect the legal system, as well as the rights and freedoms of each and every person.

After the attack on my own property, I forced myself to take previous numerous threats⁶⁶ more seriously, and to perceive this attack as a warning for something even worse that might follow. My first emotions were disappointment and fear. I was disappointed because of the superficial approach towards resolving the issue by authorized police structures, as well as by professionals and general public. It was viewed as an attack on me as an individual, and not the holder of judicial office. Even the investigation of the crime scene was done poorly, as if it was not the case of deliberate wreckage of tires on a personal vehicle of judicial office holder. The message was more than clear, since a few days before an incident I had for the first time pronounced sentences to several returning offenders. I was in fear for the fact that this was the only vehicle of my family, used to transport my child on daily basis, and I did not feel safe at all especially after witnessing the approach of the police in my case. Soon after there was an open death threat, and the fear intensified with the legal understanding that, as a judge, *I was supposed to request my own exclusion from proceeding in criminal trials before the court against defendants who threatened me, if indeed I felt jeopardized or in fear for my own life or body.* Here it seems appropriate to ask the following open question to the professional public: Whether a judge, in

⁶⁶ For example, “If you continue that way, we’ll deal with things in our own way”, “I’ll come out of the prison even stronger, I have been exercising for 4-5 hours, I’ll only be mentally weaker, and that is not going to go well for someone else”, etc.

charge of the trial during which a defendant poses a threat to beat him/her up, kill him/her, etc, is “entitled” to be a victim of a certain criminal offence or he/she must request to be excluded from the trial for the fear and jeopardy for his/her own life or body, and only then eventually be entitled to successful initiation of a prosecution of the perpetrator which might result in an “acquittal”? If we accept the position that a judge must be excluded, dangerous criminals would get the formula for getting rid of those judges who wish to continue despite threats and intimidations, but at the same time, want what they offer to others on daily basis. They want protection of their own rights, the right to be recognized as victims of a criminal offence, refusing the view that this was an integral part of their job.

Even from this short illustration of the case by one of the co-authors, the above argument that the issue about the safety and protection of holders of judicial offices is rather unregulated may be confirmed, while appropriate proceedings are done on case to case basis. Without intention to criticize relevant institutions or individuals, it may be stated that certain measures which have been applied in specific case were superficial, perhaps even in opposition to general principles of policing, while certain information from presented case are rather concerning. Namely, the attack on the property of the judge performing her duty in a smaller town and pronouncing decisions in first instance proceedings, represents indeed an attack to, not only justice, but the country as well; therefore it is unacceptable that the investigation, assessment of the seriousness of the threat and attack, and making decisions on applying protection measures, as well as implementation of such measures, has been done in such superficial manner. Due to the nature of the job they are performing, all police officials must understand that each and every threat or attack must be taken seriously and must be investigated in details, and, depending on results, additional appropriate actions must be carried out. It is unacceptable that decisions on potential actions and levels of protection measures are left to be made by the judge being threatened and/or attacked. That cannot be the duty of a jeopardized judge, but the Court Police and authorized police agencies. They are obliged to, upon thoroughly conducted investigation and assessment of the seriousness of the threat or attack, in accordance with the rules of profession, to eventually make a decision not to engage any protection measures or a decision on undertaking actions in order to create safety preconditions for a judge to perform his/her duties free from disturbance, for that is the only way to create and maintain the rule of law and the legal system.

Also, we find it necessary to comment on the legal understanding according to which a judge who received a threat should request own exclusion or disqualification, if indeed experiences a fear for his/her own life and

body. It was said earlier that threats against and attacks on judicial offices holders, members of their families and their property, send them a clear message to cancel their activities on investigating and prosecuting those making the threats. However, it can be freely said that such legal view is a message from a judicial office holder sent to a defendant who seeks disqualification of a certain judge, and such motion is rejected within regular proceeding, that the next step is to threat or attack the judge, and in large number of cases it will most certainly result in the fear for own life, and the goal would be achieved – exclusion or disqualification of the judge. It can be asked: when will the threats and attacks disappear and who will be the “brave” judge not to report threats or attacks, but try and perhaps even pronounce a judgment under fear, as well as, if such judge, trying under fear and without protection, would be able to guarantee the rule of law and fair trial, as rights of each and every defendant? What about the rights of judges and is this the rule of law? Our position is clear – in this case, judges do not have the right to protection and safety, and it does not represent an establishment and maintenance of the high level of rule of law. The system trying to provide for the rule of law must primarily guarantee the right to holders of judicial offices. These rights, among others, must include the right to adequate protection of judicial office holders, members of their families and their property, when being exposed to serious pressures, threats or attacks, while, at the same time, the perpetrators will be prosecuted and sanctioned. Therefore, it is the system which must provide judges with required safety environment in order for them to freely, without any disturbance and fear, continue pronouncing decisions to those who threatened or attacked them for the purpose of intimidating and influencing the final outcome of the criminal proceeding.

PART TWO

PROSECUTION OF PERSONS POSING A THREAT TO JUDICIAL SECURITY AND HOLDERS OF JUDICIAL OFFICE IN THE FEDERATION OF BOSNIA AND HERZEGOVINA

IX JUDICIAL BRANCH AS CONSTITUTIONAL CATEGORY

All democratic constitutional systems in the world recognize separation of powers as three branches system of government that is, executive, legislative and judicial authority, as a form of government organization within a state. French writer Charles-Louis de Secondat Montesquieu in his famous literary work *On the Spirit of the Laws* of 1748 gave the most simple yet accurate description of his understanding of legislative, executive and judicial authority by noting that bodies of all three branches of authority should supervise one another and act within the limits of their authority in order to refrain from exercising their authority at the expense of citizens' liberties and legal security. The system of separation of powers is also recognized in BiH and was contained in provisions of the FBiH Constitution.⁶⁷ More specifically, under section II C titled „Judicial Authority of the Federation“, Article 4 (1) the FBiH judicial authority has been defined as autonomous and independent authority that is particularly autonomous and independent from the legislative and executive branch. Furthermore, the FBiH Constitution Article 5 Paragraph 1 of the section II C prescribes that the

⁶⁷ Official Gazette of FBiH # 1/94, Amendment I (“Official Gazette of FBiH”, #1/94), as of July 21, 1994, Amendments II-XXIV (“Official Gazette of FBiH”, #13/97), as of June 2, 1997, Amendments XXV-XXVI (“Official Gazette of FBiH”, #13/97), as of June 2, 1997, Amendments XXVII-LIV (Wolfgang Petrisch) (“Official Gazette of FBiH”, #16/02), as of April 28, 2002, Amendments LVI-LXIII (Wolfgang Petrisch) (“Official Gazette of FBiH” #22/02), as of June 5, 2002, Amendments LXIV-LXVII (Paddy Ashdown) (“Official Gazette of FBiH” # 52/02), as of October 28, 2002, Amendments LXVIII-LXXXVII (Paddy Ashdown) (“Official Gazette of FBiH” # 52/02), as of October 28, 2002, Amendments LXXXIX-XCIV (“Official Gazette of FBiH” # 63/03) as of December 16, 2003, Amendments XCV-CII (Paddy Ashdown) (“Official Gazette of FBiH” # 9/04) as of February 16, 2004, Amendments CIII and CIV (“Official Gazette of FBiH” # 20/04), as of April 15, 2004, Amendment CV (“Official Gazette of FBiH” #33/04) as of June 19, 2004, Amendment CVI (Paddy Ashdown) (“Official Gazette of FBiH” # 72/05) as of December 26, 2006, Amendments CVI-CVIII (“Official Gazette of FBiH” #71/05) as of December 21, 2005 and Amendment CIX (“Official Gazette of FBiH” # 88/08) as of December 31, 2008.

judges of the Federation Courts⁶⁸ shall be reputable lawyers of outstanding moral qualities. This is how judicial authority became constitutional category protected by the Constitution, as a supreme piece of legislation of any sovereign state. Judicial authority puts itself under the protection of constitutional provisions because of a sublime nature of its duties and responsibilities such as application and respect of rights and freedoms of all citizens,⁶⁹ ensuring equal treatment in proceedings before courts, making provisions for practical application of basic principles of fairness in proceedings before the courts⁷⁰ as well as resolution of legal disputes and deciding in all civil and criminal matters, as the main task imposed upon the courts.

The FBiH Constitution also recognized the HJPC of BiH as the state-level body that ensures autonomy, independence, impartiality, professionalism and efficiency in work of the courts and prosecutors in BiH. Competencies of the HJPC BiH, among other things, include appointment, conducting disciplinary action against judges, except for judges of the FBiH Supreme Court.⁷¹ The importance of such bodies at the level of some countries in fostering independent and impartial judiciary has been recognized in a form of Resolution being adopted at the Assembly of International Association of Judges held in Yalta, Ukraine, on October 10, 2013. On this occasion, it was emphasized, among other things, that the High Judicial Councils play an important role in providing independence and efficacy to judicial systems.

Finally, the FBiH Constitution and its Chapter on judicial authority also recognizes the Court Police as a constitutional category, whose main task is to provide assistance to the Courts in the Federation, including securing information, ensuring that witnesses be present when needed, accused persons brought in, order maintained in the court room, the court security be provided and court orders enforced. In the spirit of the FBiH Constitution's provisions, the President of the Supreme Court manages the Court Police. Authors of this Article firmly believe that such concept of Court Police whose existence is guaranteed by the Constitution and is within the scope of judicial authority along with potential extension of court

⁶⁸ This is reference to the FBiH Constitutional Court and the FBiH Supreme Court (please see provision of the Article 1 Paragraph 2 Section II C of the FBiH Constitution Article 6 Section II A of the FBiH Constitution.

⁶⁹ Article 6 Section II A of the FBiH Constitution. 6 Section II A of the FBiH Constitution.

⁷⁰ Please see Article 2 Paragraph 1 Item e) Section II A of the FBiH Constitution and Article 3 Section II C of the FBiH Constitution.

⁷¹ Please see Article 4 Paragraph 4 Section II C of the FBiH Constitution.

police authorizations in terms of protecting all segments of judiciary, is a step forward to reaching optimum level of independent and impartial justice system and rule of law in FBiH. To put it simply, the Court Police must be considered as an extension and force of justice.

X LEGAL FRAMEWORK OF CRIMINAL LEGISLATION IN BOSNIA AND HERZEGOVINA

10.1. Criminal legislation at the level of the Federation of Bosnia and Herzegovina

The General Part of the FBiH CC Article 2 Paragraph 3 contains definition of an official person as “an elected or appointed official or other official person in legislative, executive and judicial bodies...”. The notion of an official person is identically defined under BiH CC, RS CC and Brčko District BiH CC. According to the cited Article of the FBiH CC, the prosecutor, as an official person, could be subsumed under the body of the law defining an official person also as “another person who performs certain official function on a basis of legal authorization or other provision being adopted pursuant to the law”.

In Chapter XV, the Special Part of the FBiH CC under ‘Criminal offences against the Constitutional order of the Federation’, the following criminal offences can be regarded as relevant to the subject-matter in question:

- Assassination of the Highest Officials of the Federation (Article 161 of the FBiH CC)
- Kidnapping of the Highest Officials of the Federation (Article 162 of the FBiH CC)

Both criminal offences essentially contain motives of political nature and have specific political goals. Argument in favor of this contention is intent to assassinate and kidnap the officials of the highest FBiH institutions hence the “threat to Constitutional order of the BiH”. Furthermore, the characteristic of a passive subject also supports the contention that this refers to “political” assassinations and kidnappings. From the very beginning of criminal laws science development in the material sense, the attacks and threats to security of holders of the highest judicial offices of one county from any of the three authorities was considered a direct attack on the state itself. When it comes to both previously mentioned criminal offences, and with respect to all holders of judicial office in capacity of passive subjects, all official persons of the FBiH institutions are included herein but only when exercising an official duty. Outside of office, i.e. when these persons are not performing their function, only the President of the Constitutional

Court of the Federation and President of the Supreme Court of the Federation as well as the Chief Prosecutor of the Federation shall enjoy privilege of protection. However, these provisions do not apply to official persons of the Federation institutions in passive capacity (except for the President of the Constitutional Court of the Federation, President of the Supreme Court of the Federation and Chief Prosecutor of the Federation) when they are at home, at restaurant or when they take trip to the coast so these provisions are flawed. In addition to this, if an assassination or kidnapping has been committed with any other intent except for placing the constitutional order at risk or posing a threat to Federation security, these provisions shall not apply. For example, if someone kills a judge of some municipal court or prosecutor of the cantonal Prosecutor's Office while the judge/the prosecutor is at home, this would be the basic type of criminal offense of Assassination or Kidnapping, which is unacceptable. Furthermore, provability of intent of threatening the FBiH constitutional order i.e. the FBiH security is questionable in terms of an offender's subjective relation towards the goal he/she want to achieve. Therefore the authors of this work deem that it would be more correct to omit the aforesaid motive and add new wording to read as follows: "who deprives of life an official person of the FBiH institutions in the line of duty or in connection with his/her office or function".

In Chapter XXX Criminal offences against public order and legal transactions, the following criminal offences can be regarded as relevant to the subject-matter in question:

- Obstructing an Official Person in Execution of Official Activity (Article 358 of the FBiH CC)
- Attacking an Official while Carrying out Security Work (Article 359 of the FBiH CC)

Essential flaw of the provision of Obstructing an Official Person in Execution of Official Activity is that the official persons are protected only and exclusively while executing an official activity that there are entitled to undertake as a part of their authorizations. The primary recipient of protection under this provision would be an official activity and not the person. As for the offense of Attacking an official while Carrying out Security Work the authors of this work found a problem in definition of the Article's title according to which the official person, as passive subject of protection when carrying out security work whereas the body text of the Paragraph 1 of this Article mentions "*carrying out work related to public security or security of the Federation, or duties related to the maintenance of public order*". If we

accept the definition of public security work⁷² as the work relevant to maintaining public law and order, protection of life and personal security of citizens, prevention and detection of criminal acts, capturing of offenders etc., then it is easy to conclude that judges and prosecutors do not fall under definition of official person in carrying out security work whereas the police officials from various levels of police agencies, guards from security agencies etc. do fall under this definition. Besides, in order for this offence to exist, it is necessary that an attack or threat thereof is committed against passive subject in the line of official duty. Therefore it is necessary that an attack or threat of an attack and carrying out of an official duty happen at the same time. As can be seen in crimes of Assassination and Kidnapping of the highest Federation officials, the official persons are not protected as passive subjects if attacked in front of the house, while on vacation etc., although the motive for such attack may be the service or function that official person is performing. The FBiH CC also recognizes the crime of Participation in a Group of People which Obstructs an Official Person in Execution of Official Activity (Article 360 of the FBiH CC) yet again failing to provide protection to official persons when they are not carrying out an official activity. Furthermore, in Paragraph 1 of the Article 361 of the FBiH CC, the legislator envisaged criminal accountability of a person who obstructs an official person in execution of official activity so yet again, only during execution of an official activity.

Thus the Chapter XVI Criminal Offences Against Life and Limb as qualified form of basic offence (Article 166 of the FBiH CC) in its relevant part stipulates that whoever deprives a life an official or military person in the exercise of duties of safeguarding the security, public peace and order or apprehending the perpetrator of a criminal offence or guarding a person deprived of freedom shall be punished by imprisonment for no less than ten years or long term imprisonment. Yet again the passive subject shall receive protection only when executing an official activity whereas it is questionable whether the judges and prosecutors can be considered as official persons in the exercise of duties of safeguarding security, public law and order, apprehending the perpetrator of a criminal offence or guarding a person deprived of freedom.

As for the criminal offences that would enable adequate prosecution and sanctioning of persons who in any way possible threaten the security of protected witnesses, the Chapter XXIX – Criminal Offences Against the Judiciary define the following criminal offences as relevant:

⁷² Just like the Commentaries on the criminal laws in BiH, Volume II, Joint project of the Council of Europe and European Commission, Sarajevo, 2005, page 1811.

- Tampering of Evidence (Article 349 of the FBiH CC);
- Breach of Secrecy of Proceedings (Article 350 of the FBiH CC);
- Disclosure of Identity of Protected Witness (Article 352 of the FBiH CC).

The aforementioned criminal offences have characteristics that leave a possibility to prosecute and sanction persons who, in some manner, threatened the witness security or disclosed witness identity yet the application of such provisions in practice is disputable. Connection with characteristics of criminal offence Breach of Secrecy of Proceedings can be found in provision of Article 25 of the FBiH Law on Protection of Witnesses and Vulnerable Witnesses. However the essential deficiency of this provision arises from the growing consensus that this provision can only be applied to persons who had been warned of the obligation to keep an official secret. This Article, among other, also regulates that information concerning witness protection measures is confidential and constitutes an official secret as well as that the court or the prosecutor shall warn the persons present at the hearing or persons who learn of confidential information in the line of duty, that unauthorized disclosure of such information constitutes a criminal offence.

By analyzing provision relevant to criminal offence Disclosure of Identity of Protected Witness it can be observed that this provision aims at sanctioning a judge or other official person who makes available to unauthorized person information on the identity of a protected witness. It is not completely out of question that a judge or another official person might commit this offence; yet such practice is unlikely. In some instances other persons intentionally or accidentally obtained information on protected witness identity. With reference to aforesaid, there is the concerning fact that the FBiH institutions currently are not in a position to sanction persons who without authorization disclose, mediate in disclosure, enable disclosure or make available the information on the identity of protected witness. Examples from judicial practice indicate that identity of the protected witness might be known to his/her relatives who then may disclose this information to the media etc., for various reasons and motives, without being held criminally liable under the legislation currently in force. Since there have been some cases in which the media disclosed identity of protected witnesses, the BiH Press Council together with the Association of Court Reporters in 2006 amended the existing Press Code with an Article on “Respecting Integrity of Protected Witness”, that is, nondisclosure of any information that may pose a threat to security and life of protected witnesses (Article 10 a- Protection of Witnesses).

As a rule, media generally adhere to procedures on nondisclosure of identity of protected witnesses yet there were cases in which the identity of protected witness was disclosed to the media. In 2009, the Court of BiH held a trial in the case against an editor and a journalist of a magazine. They were both charged with disclosing the identity of protected witness for whom the Court of Bosnia and Herzegovina ordered protective measures. The editor and journalist published an article in which they disclosed five photos and the name of the witness. For example, the International Criminal Tribunal for the Former Yugoslavia has a record of six persons sentenced, out of which five were journalists for criminal offence Contempt of Court. More specifically, the case involved one journalist from Kosovo and four journalists from Croatia who received a sentence of pecuniary penalty ranging from Euro 7,000 to Euro 20,000 for disclosure of protected witness identity. The latest publicly known case of sentencing a person who disclosed the identity of protected witness occurred in October 2013. The court in Macedonia sentenced a journalist with name initials T.K., to a prison term of 4 and half years for disclosing identity of a protected witness. According to judge with name initials D.G. the aforesaid journalist was sentenced for “illegal disclosure of the protected witness name”, in his article written in 2008.

While taking into account the fact that quality protection increases the willingness of a witness to cooperate with bodies involved in criminal proceedings whereas the criminal proceedings becomes more efficient and this will lead to increased citizen's confidence in judicial institutions, it would be also necessary to initiate a procedure that will, in addition to creating preconditions for physical-technical protection of witnesses and their families, by way of using criminal code, provide assumptions for legal protection of witnesses; hence, this issue is to be defined by an autonomous legal provision. In Bosnia and Herzegovina this issue has been adequately regulated by provision of Article 240 of BiH CC so by amending the FBiH CC, in addition to other goals set in this area, we would also be able to harmonize criminal legislation.

The importance of this provision shall especially become evident in prosecution of organized crime, corruption and war crime cases considering that legal protection of witnesses will create preconditions for successful prosecution of the most serious types of criminal offences. At the same time, this shall ensure more efficient work of special departments of the Federation Prosecutor's Office and the FBiH Supreme Court whose establishment has been envisaged by provisions of the proposed Law on Prevention of Corruption and Organized Crime in FBiH.

CASE LAW:

In the case of the Municipal Court of Mostar ref. # K. 180/05, person with name initials P.B. has been sentenced to a six- months prison sentence for the crime of Endearing Security under Article 183 Paragraph 2 of the FBiH CC against judicial office holder (i.e. threat to commit assassination), but also against all employees in some judicial institution (i.e. threat to blow them and the building up).

10.2. Criminal legislation at the level of Bosnia and Herzegovina

The Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC) to a certain extent adequately prescribes criminal offences aimed to protect judicial and prosecutorial office that is, holders of such judicial functions. Therefore, Chapter XX of the BiH CC regulates the Criminal Offences against Administration of Justice, out of which the following criminal offence can be regarded as relevant to the subject-matter in question:

Obstruction of Justice under Article 241 Paragraph 2 of the BiH CC that reads as follows:

“Whoever uses physical force, threats or intimidation to interfere with the exercise of official duties by a judge, prosecutor or law enforcement official person in relation to a criminal proceedings conducted pursuant to the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term between one and ten years”.

Judges and prosecutors but also other officials from the law enforcement agencies enjoy protection as passive subjects only in execution of official duty. Therefore the intent of undertaking all alternatively determined actions is to prevent a judge, prosecutor or official from the law enforcement agency *in execution of official duty*⁷³ relevant to the criminal proceedings conducted in accordance with the law of Bosnia and Herzegovina. Although criminal proceedings by its definition entails the highest extent of danger for the holders of judicial office, this should not be the reason to exclude the protection of judges and other officials of law enforcement agencies who are charged with less risky cases such as marriage lawsuits (the case of judge Ljiljana Hvalec in Zagreb, Republic of Croatia), real property litigations (division, sale of family homes etc., such as the case of judge Milorija Djukic Pejovic dated September 19, 2005 who was murdered in Bar, Montenegro because of the real property litigation) as well as civil suits

⁷³ Please see the Commentaries on the criminal laws in BiH, Volume II, Joint project of the Council of Europe and European Commission, Sarajevo, 2005, page 776.

(District Court judge for the Northern District of Illinois, Joan Lefkow who returned home to find the bodies of both her husband and mother killed).

With reference to criminal offence of Obstruction of Justice in order to prevent an official person to exercise his official duty referred to in Article 241 a) of the BiH CC and the crime of Attack on official person in execution of works related to security, detection of arresting the perpetrator of criminal acts, the same remarks and commentaries for the said criminal offences shall apply in both laws – the FBiH CC and the BiH CC.

In matters concerning witness legal protection it can be concluded that the BiH CC adequately defines acts that can be of benefit to the judicial institutions yet in some instances, also benefit some other institutions at the state level. Hence the provision of the Article 241 Paragraph 1 of the BiH CC prescribes criminal offence of Obstruction of Justice that reads as follows:

“Whoever uses physical force, threats or intimidation or the promise, offering or giving of undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a criminal proceedings conducted pursuant to the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term of a minimum three years.”

The power of the aforesaid provision arises from the fact that its application is exclusive to criminal offences hence providing prosecution and sanctioning also of those who attempt to influence the witness during the investigation. This would be an advantage compared to the FBiH CC, considering that the witness protection is equally important before, during after criminal proceedings. In addition to this, the FBiH CC in provisions of the Article 236 also defines criminal offense of Tampering of Evidence that is much broader and, among other things, leaves the possibility to prosecute and sanction those who induce a witness or a court expert to falsely testify before the court, in minor offence, administrative or disciplinary proceedings, by use of force, threat or other form of coercion, or by promising a gift or any other type of benefit. This criminal offence also exists in provisions of the Article 349 of the FBiH CC yet does not leave a possibility to prosecute or sanction persons who commit the aforesaid offence prior to confirming the indictment.

As can be seen in analysis of this area with reference to Chapter on Criminal Legislation at the level of Federation of BiH, the BiH CC compared with the FBiH CC defines in more adequate and more comprehensive manner the crime of Disclosure of Identity of a Protected Witness (Article 240 of the BiH CC). This provisions enables prosecution and sanctioning

of all persons who make available to an unauthorized person data on the identity of a protected witness who provided evidence or is to provide evidence before the institutions of Bosnia and Herzegovina, that according to the law, cannot be disclosed, or that are declared by the Court of Bosnia and Herzegovina or by an official person as secret information. This provision also leaves the possibility to prosecute and sanction the judge of the Court of Bosnia and Herzegovina or other official persons as well as the persons who, without an authorization, disclose, mediate in disclosing, enable disclosing or make available data or information on identity of a person who gave or is to give evidence. The same provision ensures prosecution and sanctioning of a person who accidentally obtain information on identity of a person who gave or is to give evidence as well as persons who refuse to disclose the source and manner of obtaining data or information.

With regards to protection of witness identity it can be concluded that the BiH CC unlike the FBiH CC provided that persons, who in any way attempt to influence the witness, shall be adequately prosecuted and sanctioned, whereas the special attention is paid to legal protection of persons in capacity of protected witnesses in criminal proceedings whose identity is protected from public. Witness legal protection regulated like this resulted in large number of criminal cases led before the Court of Bosnia and Herzegovina involving witness under threat, endangered or protected witness, as opposed to the courts in entities and Brčko District of BiH. This certainly increases citizen's confidence in the said judicial institution and their willingness to testify, hence at the same time, contributing to efficient work of judicial institutions at the state level.

CASE LAW:

In the court decision No. X-KZ-05/61, dated February 11, 2008, the Council of the Appellate Division of the Court of BiH properly recognized the factual state and actions the first defendant Z.T. is charged with, as instigation to a crime of Obstruction of Judiciary under Article 241, Paragraph 1 of the CC of BiH. As the head of an organized criminal group from the Kula prison in the East Sarajevo, the defendant organized the setting up of an explosive device in front of the house of N.D. (a potential witness in the criminal proceedings against Z.T at the Court of BiH, with a view to murdering him).

10.3. Criminal legislation at the level of Republika Srpska

In comparison to the Criminal Codes of BiH, the Criminal Code of Republika Srpska prescribes criminal acts protecting in the most adequate

manner judicial and prosecutorial official duty, i.e. holders of judicial office. Chapter XVI therefore qualifies a murder of a judge or a public prosecutor on account of the performance of their official duty as an Aggravated Murder (Article 149 of CC of RS). It is due to this legal methodology, that passive subjects (judges or prosecutors) are protected 24 hours, regardless of whether they are at work, on their way to/from work or on vacation. The important aspect of this criminal act is whether a judge or a prosecutor is deprived of life on account of the performance of their judicial or prosecutorial duty. This criminal act will not exist if a judge or prosecutor is murdered for private or personal reasons such as the existence of their debts, debts to loan sharks, love problems, random shooting in a shopping center, etc.

Moreover, Chapter XX of the CC of RS prescribes the criminal offenses against judiciary, thus stressing a criminal offense of Coercion against a Person Performing Judicial Duty under Article 369 of CC of RS that protects passive subjects such as judges, prosecutors or their deputies, against whom a threat was made or force used with a view to doing or omitting to do something. As for significant characteristics of this criminal offense, they are almost the same as those of a criminal act of Obstruction of Judiciary under Article 241 of the CC of BiH⁷⁴. However, this criminal offense also has its shortcomings such as the intention of the undertaking of all alternatively established actions-obstruction of a judge, prosecutor or their deputies in the performance of their duty, but it does not include any acting outside of that aspect, e.g. at their homes.

Particular attention is paid to the crime of Damaging the Reputation of Court (Article 370, CC) committed by a person who subjects the court to derision, or who commits the same act by submitting a writ to the court. The legally protected value of this criminal act is generally judiciary, the reputation of court, court authority and duty, but also the reputation of judges. The manner of commission of this criminal offense is subjecting the court to derision, by means of insulting and disparaging court values, court function and the judges themselves. The commission of the offence may be direct in the court, during the procedure, or in a written form submitted to the court. Example of this could be an accused insulting a judge or other persons present in the courtroom. This form of a criminal offense is one of the proposals *de lege ferenda*, of the author of the article which will be further discussed in the following chapters. The CC of RS recognizes a

⁷⁴ See the Commentaries to the Criminal Codes in Bosnia and Herzegovina, Book II, Jont Project of the Council of Europe and European Commission, Sarajevo, 2005, pg. 1773.

criminal act of Obstructing an Official in the Performance of Official Duty (Article 387, CC of RS) whose basic form corresponds to this criminal act pursuant to the CC of BiH and CC of FBiH; however the CC of RS foresaw a qualified form in Item 3, pertaining to the individual committing a criminal offense against a judge or a public prosecutor during the performance of their judicial or prosecutorial duty. The primary protected value is an official duty, not a person. The protection of a judge or a prosecutor shall neither be expected prior to nor after the official action (except immediately prior or after the action). Nonetheless, a criminal act of an Attack on an Official Person During the Performance of their Duties (Article 388, the CC of RS) prescribes the basic form even more adequately than the CC of FBiH does, as it includes all official persons to be protected as passive subjects (undoubtedly including prosecutors and judges) only during the performance of their official duty, but not outside of working places or working hours. However, the criminal act of an Attack Against an Official Person during Performance their Official Duty (Article 388, the CC of RS) prescribes as a qualified form a criminal offense committed against a judge or public prosecutor on account of the performance of either their judicial or prosecutorial duty. A practical question is hereby raised as to whether such a criminal act will still exist if a judge or prosecutor is either attacked or threatened on account of the performance of their official duty after working hours or not. Bearing in mind the former explanations and interpretation of the basic form of this criminal offense referred to in Item 3 of this Article, such criminal offense does not exist if it is committed after working hours as there is a lack of the simultaneity of the attack or a threat with the undertaking of an official duty⁷⁵.

10.4. Criminal legislation at the level of Brčko District, Bosnia and Herzegovina

The Criminal Code of Brčko District of BiH (hereinafter: the CC of BDBiH) does prescribe criminal offenses pertaining to the respective matter; however none of these clearly indicate either a judge or a prosecutor or their duties. In general terms, what is prescribed as a qualified form of some basic criminal offenses is a criminal offense committed against a person that is undoubtedly either a judge or prosecutor. Chapter XVI, Criminal Offences against Life and Limb thus prescribes as a qualified form of a basic criminal act of Murder (Article 163 of the CC of Brčko District of Bos-

⁷⁵ See the Commentaries on Criminal Codes in Bosnia and Herzegovina, Book II, Joint Project of European Council and European Commission, Sarajevo, 2005, pg. 1810.

nia and Herzegovina) that a person who deprives an official or a military person of life in the exercise of their security duties or while maintaining the public order, apprehending a perpetrator of a criminal offense or guarding a detained person, shall be sentenced to not less than 10 years in prison or a long-term imprisonment may be imposed.

So, the passive subject is again protected only during the performance of their duties; it is however questionable whether prosecutors and judges may be considered official persons or not while performing security duties or maintaining the public order, apprehending a perpetrator or guarding an arrestee. Moreover, according to the same methodology, the CC of BiH of BD prescribes the following as a qualified form: a criminal offense of Endangering Safety (Article 180 of CC of BiH of BD) committed against an official person in relation to the performance of their duties. This specific term of “in relation to the performance of their duties” refers to endangering safety of a judge or a prosecutor after working hours, i.e. 24 hours a day. Chapter XXX, “Criminal Offenses Against Public Order and Legal Transactions” indicates the following criminal offenses relevant for the subject matter, including those from the CC of FBiH, as they lack the same issues: Obstructing an Official in the Performance of Official Duty (Article 352, CC of FBiH), Attack on an Official Performing Security Duties (Article 353, CC of FBiH), Participating in a Group Preventing Officials from Performing Their Official Duties (Article 354, of CC of FBiH) and Organizing Resistance (Article 355, CC of FBiH).

XI COMPARISON OF CRIMINAL LEGISLATION IN NEIGHBORING AND OTHER COUNTRIES ON THE MATTER OF ENDANGERING THE SAFETY OF JUDGES AND PROSECUTORS

11.1. Criminal legislation in the Republic of Croatia

The Criminal Code of the Republic of Croatia (hereinafter: the CC of RC) prescribes a criminal act of Coercion against a Judicial Official (Article 312 of CC of RC) as a separate criminal act thus protecting a holder of judicial office as a passive subject in the broadest sense of the word beginning with judges, state attorney and notary public, up to the general legal protection of any other judicial official. The manner of committing a crime is the use of force or the making of a threat against a judicial official in order to prevent them from undertaking a specific action or reaching a decision within or outside of their authorities. It is thus clear that this criminal act is primarily directed towards the protection of an official duty and the freedom to reach official decisions, and also the protection of judicial officials during the performance of their official duties. What is lacking here, however, is the protection of holders of judicial office after the undertaking of official duties and reaching official decisions.

Moreover, the CC of RC, as well as all the legislation of BiH and the surrounding countries, recognizes criminal offenses that protect official persons from coercion or attack. Chapter XXX, Criminal Offenses against Public Order, therefore prescribes the following relevant criminal offenses:

- Coercion against an official (Article, CC of RC).
- Attack on an Official (Article 315, CC of RC)

Both of these Articles are applicable to the holders of judicial office, particularly if an official (a judge or a prosecutor) suffers from serious bodily injuries sustained during the perpetration of a basic crime, which is not anticipated as a consequence in Article 312 of CC of RC. As is the case with the surrounding countries, the CC of RC foresees the special protection in the event of the use of coercion against the highest state officials of the Republic of Croatia (Article 346 of CC of RC). Among the judicial officials, the president and judges of the Constitutional Court of the Republic of

Croatia enjoy the special legal protection. It is required to specifically emphasize the fact that the CC of RC , Chapter VII, Article 87 , paragraph 3 strictly prescribes that (among others) an official is considered a holder of judicial office, thus covering a prosecutor as well, whereas the criminal legislation in the territory of the entire BiH the term “prosecutor” falls under a category of “another person performing a specific official duty pursuant to the authorizations provided by the Law or any other regulations passed pursuant to the Law.”

Furthermore, CC of RC recognizes a criminal offense of an Aggravated Murder (Article 11 of CC of RC) when the murder of an official is related to the performance of their official duty. The crime shall be punishable by a term of imprisonment of not less than ten years; however, a long-term imprisonment may be imposed. Official persons are protected in a satisfactory manner, considering the fact that this criminal offense shall exist regardless of whether these persons are deprived of their lives at work or on vacation. What matters is the fact that the murder of an official is related to the performance of their duty, whereas the term “judges and prosecutors” is undoubtedly encompassed by the term “official persons”.

A Threat, as a special form of a criminal offense prescribes (Article 139, CC of RC) the basic crime committed against an official pertaining to the performance of their duty or their position, or if a person being threatened for a longer period of time is put in an unfavorable position. This crime is punishable by six months to five years of imprisonment. Judges and prosecutors are therefore adequately protected after their working hours and away from their working locations.

As for criminal offenses pertaining to the disclosure of the identity of a protected witness, it should be noted that that CC of RC under Article 308 prescribes as a qualified form of a criminal act “Disclosure of Identity of an Endangered person or a Witness under Protection”. This criminal act shall include every form of unlawful informing, handing over or announcing of data related not only to a witness under protection, but also related to an endangered person, which includes persons that are in the process of entering the witness protection program. This crime is punishable by six months to five years of imprisonment. Not only are witnesses under protection therefore adequately protected, but also persons for whom competent bodies have initiated procedural protection measures due to their intention to testify.

11.2. Criminal legislation in the Republic of Serbia

The Criminal Code of the Republic of Serbia (hereinafter: CC of RS) provides judges and prosecutors with adequate legal protection. Pursuant

to Article 138 Paragraph 3 of the CC of RS, a qualified form of a criminal act of Endangering Safety is committed by a person who endangers the safety of a judge of the Constitutional Court, a judge, public prosecutor or deputy public prosecutor, in relation to their official duty, by threatening them with their lives and limbs, or the lives and limbs of their closest ones. This crime is punishable by six months to five years of imprisonment. This criminal act accordingly includes the legal protection of judges and prosecutors while performing their official duty, but also afterwards as well; for instance at home, on vacation, etc., as the legislator relates the criminal offense to the legal term of “in connection with the official duty they perform”.

A specifically prescribed form of an Aggravated Murder under Article 114, CC of RS is committed by a person who deprives a judge, public prosecutor or deputy public prosecutor of life on account of the performance of their official duty. This crime is punishable by ten years to forty years of imprisonment. The protection of a judge and prosecutor’s life is extended to beyond working hours and the workplace, due to the wording “in connection with the official duty they perform”.

As was the case with all the above states criminal legislation, the CC of RS also prescribes as punishable the criminal offenses of Obstructing an Official in the Performance of Official Duty (Article 322, CC of RS), and Attack on an Official in the Performance of Official Duty (Article 322, CC of RS). The legislature in RS foresees Participating in a Group Obstructing an Official in the Performance of Official Duty as a criminal offense (Article 324 of CC of RS). By this group of criminal offenses indicated in Chapter XXIX, *Criminal Offenses against State Bodies*, the officials, including judges and prosecutors are protected, but exclusively during the performance of their specific duty, but not beyond that legal framework.

By Article 336 b) of the CC of RS, the legislature extensively protected judges and prosecutors, prescribing that a criminal offense of Obstruction of Justice is committed by a person who calls for resistance or the non-compliance with of court decisions, or in any other manner obstructs the conduct of criminal proceedings (will be punishable by three years of imprisonment and a fine). Paragraph 2 of this Article reads that a criminal offense committed by a person who obstructs or prevents a judge, public prosecutor, deputy public prosecutor or an attorney from performing their judicial or prosecutorial duty or attorney practice, by insulting them, by force, threat or another form shall be punishable by six months of imprisonment and a fine. If during the perpetration of a criminal offense under paragraph 2 of this Article, a judge, public prosecutor or deputy public prosecutor, or an attorney sustained a minor bodily injury, or a perpetrator threatened with the use of a fire arm, then the perpetrator shall be punished

with one to eight years of imprisonment. Paragraph 4 prescribes that the perpetrator shall be punished by two to ten years of imprisonment, if during the commission of a crime under Paragraph 2 the perpetrator imposes a serious injury on a judge, public prosecutor or deputy public prosecutor, or an attorney. Due to a legal term being used “in the performance of their judicial or prosecutorial duty”, it remains unclear whether it is extended outside of working hours and working locations or not. However, if the legislature had used the legal terminology “in connection with the performance of their prosecutorial or judicial duty” it would have been clear that prosecutors and judges are provided with 24 hours protection, and not only during their working hours at work.

Protected by Article 336 paragraph 1 of the CC of RS (a criminal offense of Obstruction of Evidence) are the witnesses, expert witnesses and other participants in the proceedings before the court or any other state body, to whom a perpetrator of a criminal offense promises a gift or any other gain, or by force or threat intends to have an impact on another person to change their statement by either providing a false statement or to fail to provide a statement in order to have an effect on the final outcome of the proceedings (shall be punishable by six months to five years of imprisonment and a fine). In addition to the aforementioned, Article 337, Paragraph 3 of the CC of RS, the criminal offense of CC of RS, “Damaging the Secrecy of Proceedings” prescribes the possibility of punishing a person who makes an unauthorized disclosure of information on the identity or personal data of a person protected during the criminal proceedings, or the data pertaining to the protection program (and it shall be punishable by six months to five years of imprisonment). The same Article, paragraph 4 foresees the possibility of pronouncing a sentence of one to eight years of imprisonment, if the person under protection suffered the serious consequences that arose from the criminal act from paragraph 3, Article 337; or the criminal proceedings were obstructed or significantly impeded. It is evident that a qualified criminal offense exists even here with the persons who, by disclosing the identity of a witness under protection, endanger the safety of a witness thus impeding the criminal proceedings.

11.3. Criminal legislation of the United States of America

In the United States of America (hereinafter: USA) the matter of protection of judges and prosecutors is adequately resolved, as the prosecutors and judges in the role of passive subjects are protected during both the performance of their official duties and outside of working hours and places. More precisely, the legislature in the USA very skillfully used a legal term

“on account of, due to, in connection with the performance of their official duty” thus ensuring that the protection of judges and prosecutors is complete. Chapter 18 of the United States Code thus prescribes the protection of judges and prosecutors as passive subjects by providing the following federal criminal offences:

- 18 USC § 111 – A criminal offense of Assaulting, Resisting or Impeding Certain Officers or Employees provides for the protection of any officials (judges and prosecutors) during the performance of their official duty, or if the alternative action of a criminal offense is in relation to the performance of a criminal offense. The persons no longer performing official duties (i.e. the retired) are also protected, if a criminal offense was committed at the time these persons performed their official duty. A perpetrator of this crime shall accordingly be punished by up to twenty years of imprisonment,

- 18 USC § 115 – a criminal offense of Influencing, Impeding or Retaliating against a Federal Official by Threatening or Injuring a Family Member: By this criminal offense, the closest family members of the judges and prosecutors are directly protected in the USA.⁷⁶ The judges and prosecutors are indirectly protected as well, considering the fact that by alternative actions of a criminal offense (assault, kidnapping, murder, as well as their attempts, threats and planning) the underlying criminal offense is reached, which is influencing, impeding and retaliating against a judge or prosecutor. The second paragraph of the same Article, prescribes the protection of the prosecutors and judges from the threats of an assault, kidnapping or murder posed directly against prosecutors and judges while performing their official duty, or on account of their official duty. By this criminal offense, the persons having performed the judicial or prosecutorial duty, as well as their closest family members are protected, if the crime was committed on account of the performance of their official duty. To illustrate, a crime of an assault within this criminal act shall potentially be punishable by up to thirty years of imprisonment.

- 18 USC § 1114 – a criminal offense of Protection of Officers and Employees of the United States provides for the broadest legal protection of judges and prosecutors (also of all other officials in the broadest sense of the word) prescribing the crime as a murder, an attempt of a murder of a judge or prosecutor while performing their official duty, but also if the

⁷⁶ See the court ruling No: 809 F.2d 579: United States of America, Plaintiff-appellate, v. James Edward Gray, Defendant-appellant, United States Court of Appeals, Ninth Circuit. - 809 F.2d 579 Argued and Submitted Nov. 3, 1986. Decided Feb. 3, 1987.

murder or an attempted murder related to the performance of their duty (outside of working places and hours)

– 18 USC § 1503 – a criminal offense of Influencing or Injuring Officer or Juror, generally provides for legal protection of any court officer in the US (a judge and prosecutor) while performing their official duty in the event that anyone endeavors to influence, intimidate or impede them by threats or force or by any threatening letter or any form of communication. A crime is also committed if a person injures a judge or prosecutor, or causes any damage to their property on account of the performance of their duty. By applying Article 1503 in relation to Article 1111 of Chapter USC, a murder carries a sentence of life imprisonment or even death penalty.

XII CONCLUSION

The judicial authority is one of the three pillars of government in every country and the fundamental guarantor of the rule of law from which the security of entire society is derived. Thereby the judicial security is one of fundamental prerequisites for professional, independent, and impartial judiciary. Therefore, the area of judicial security must encompass security and protection of judicial institution buildings, judicial office holders and their property, close family members, employees in judicial institutions, and witnesses. One should not disregard the fact that such comprehensive organization of judicial security would reduce possible contacts and influences, pressures and corruption, to judicial office holders.

Aware of the fact that no country in the world can guarantee 100% safety of either citizens or judicial office holders, it is necessary to emphasize that we consider it necessary to try every day to get that as close as possible to that absolute level of security. To raise the level of security to the highest possible, this area should be adequately regulated through legal framework, separated from the general security of citizens. We believe that the area of judicial security in BiH would be best solved with one legal solution, which would be optimum solution for this issue. However, due to the complex organization *sui generis* in BiH, this requires more than just efforts of the profession, that is, we need political will too; the proposal of *de lege ferenda* (being on the basis of new law) is to have judicial security issue regulated exclusively within competences of one police agency, namely the Court Police, at all levels in the country of Bosnia and Herzegovina. Justification for such proposal is drawn from the constitutional provisions of the Federation of BiH, which recognized the Court Police as a component of judicial authorities. The conclusion derived from the above mentioned is that the Court Police is a service and a helping hand of judicial institutions. Since the duties of the Court Police are directly connected with the Courts and the Prosecutor's Offices, proposal *de lege ferenda* would be to consider a possibility of changing a title of this police to, e.g. title Judicial Police. Meeting aforementioned prerequisites represents the foundation for the citizens of BiH to expect and demand from the judicial community the highest level of Rule of Law, directly creating a trust towards judicial institutions in BiH, among the citizens, which is a safe path for accession of BiH to the EU.

In addition, we find it necessary to regulate the area of legal protection of judicial system in a more comprehensive manner. The analysis of the current legislation at the level of Bosnia and Herzegovina (including Republika Srpska and Brčko District of BiH), shows that judicial office holders are protected only when performing their official duty, and only in special circumstances, after work. But, if we consider that the Federation of BiH is expecting an increase in combating corruption and organized crime, international trend is such that when judicial system and organized crime confront, organized crime fights back. When the profit from organized crime is in danger, life of a judicial office holder becomes absolutely irrelevant for the criminals. Therefore, it is important to provide judicial office holders with legal protection in all cases when their safety is in danger, because of the duty that they perform, no matter if the illegal actions take place while on duty or after. Namely, a comprehensive protection of judicial office holders is a prerequisite for adequate combating against all forms of crime, especially against the corruption and organized crime.

Also, obstruction of work and other attempts of influencing the work of judicial system are possible in an indirect way through commission of crimes against judicial institution buildings, employees at judicial institutions, Court Police officers, witnesses, and close family members of judicial office holders. Due to likelihood of adoption of the Law on suppression of corruption and organized crime in the Federation of BiH and the Law on forfeiture of proceeds of crimes and minor offences in the Federation of BiH, we can expect an increase in commission of crimes that would jeopardize safety of judicial office holders, attacks against their property, their family members, judicial institution building, employees at judicial institutions, and other persons that play certain roles in criminal proceedings.

Nobody is stronger than the state, no individual or a criminal organization; all we need are judges and prosecutors who are ready to fight, relentlessly, against all forms of crimes and socially unacceptable behavior, and well organized Court Police that will stand behind those judges and prosecutor, on behalf of the state. Authors strongly believe that no judge should request exemption or disqualification from a trial of the defendant who made threats or assaulted him, but should be entitled to effective protection and criminal prosecution of perpetrators of those assaults and threats, and continued trial to those perpetrators. Of course, this is taken under presumption that the judge is capable to continue with the trial in accordance with the highest ethical principles mentioned earlier. This belief protects dignity of individual judges, and their profession, and sends clear message to everybody that the state will decisively support the judge who has been threatened or assaulted. Therefore, the authors wish to point out

proposals of *de lege ferenda* that they have presented in order to solve this matter systematically before “Falcone” case happens in Bosnia and Herzegovina.

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ATTACHMENT #1.

AUTHORS' PROPOSALS FOR CHANGES AND MODIFICATIONS TO CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

Chapter I, the CC of FBiH-GENERAL, Article 2 shall be amended to include Paragraphs 34 and 35 to read:

34) Judiciary institutions in terms of this Law shall be courts and prosecutor's offices in the Federation of Bosnia and Herzegovina.

35) Judicial office holders in terms of this Law shall be the judges and prosecutors employed in the judiciary institutions of the Federation of Bosnia and Herzegovina.

Chapter XVI, the CC of FBiH- CRIMINAL OFFENSE AGAINST LIFE AND LIMB:

Article 166 (Murder), Paragraph 2 shall be amended to include Item f) to read:

“Whoever deprives of life a judicial office holder on account of the performance of their duty”

Article 172 (Aggravated Bodily Injury), Paragraph 2, after the wording:

“Whoever perpetrates a criminal offense referred to in paragraph 1 of this Article against”, the following wording shall be added to read “a judicial office holder on account of the performance of their official duty”.

Article 173 (Slight Bodily Injury), Paragraph 2, after the wording:

“Whoever perpetrates a criminal offense referred to in paragraph 1 of this Article against”, the following wording shall be added to read “a judicial office holder on account of the performance of their official duty”.

Article 180 (Kidnapping), Paragraph 2, after the wording:

“Whoever perpetrates a criminal offense referred to in paragraph 1 of this Article against”, the following wording shall be added to read “a judicial office holder on account of the performance of their official duty”.

Article 183 (Endangering Safety), Paragraph 2, after the wording: “Whoever endangers safety” the following wording shall be added to read “a judicial office holder on account of the performance of their official duty”.

Chapter XXV of the CC of FBiH-CRIMINAL OFFENSES AGAINST PROPERTY, shall be amended to read:

Article 293 (Malicious Mischief), shall be amended to include a new Paragraph 3 and read:

3) Whoever damages, deforms or renders unusable an item belonging to a judicial office holder, on account of the performance of their duty, shall be punished by imprisonment not exceeding three years.

Chapter XXIX of the CC of FBiH- CRIMINAL OFFENSES AGAINST JUDICIARY shall be amended to include new criminal offenses as follows:

**Article 341 a)
Attack against Judiciary Institutions**

4) Whoever attacks a judiciary institution by causing fires, floods, explosion, or by use of poisonous substances or poisonous gas, ionized radiation, engine power, electrical or any other power, or by firing from weapons or by any hazardous action or means, thus putting people’s lives, property of broader scope at risk, shall be punished by no less than six months to five years of imprisonment.

5) If by a criminal offense under Paragraph 1 of this Article a person sustained serious bodily injuries or a serious damage is caused to their property, a perpetrator shall be punished by one to twelve years of imprisonment.

6) If the commission of a criminal offense referred to in Paragraph 1 of this Article, caused death of one or more persons, a perpetrator of this crime shall be punished by one to fifteen years of imprisonment.

Article 341 b)

Indirect Impact on Judiciary

1) Whoever deprives of life a person employed in a judiciary institution, court police officer or a close family member of judicial office holders, on account of the performance of their official duty shall be punished by ten to fifteen years of imprisonment.

Whoever causes serious bodily injuries to an employee of a judicial institution, court police officer, or a close family member of judicial office holder, or imperil their health on account of the performance of their official duty, shall be punished by one to ten years of imprisonment.

2) Whoever unlawfully confines, keeps confined or in any other manner deprives a person of freedom or restricts the freedom of a person employed in judiciary institution, or a close member of a judicial office holder, with a view to forcing either them or other persons to do or omit to do something, or suffer, on account of the performance of their duty, shall be punished by one to ten years of imprisonment.

3) Whoever commits criminal offences referred to in Paragraphs 1 to 3 of this Article against retired judicial office holders, on account of the period of time when they performed the official duty, shall be punished as if a criminal offence was committed against an active judicial office holder.

Article 341 c)

Damaging the Reputation of Court

Whoever subjects the court to derision or commits the same offense by submitting a writ to the court shall be punished to six months of imprisonment and a fine.

Article 352 of the CC of FBiH shall be amended to read:

Article 352

Disclosure of Identity of a Protected Witness

(1) Whoever unlawfully communicates or submits information to others, or undertakes any other action with a view to disclosing the identity of a person that provided or is to provide some evidence before the institutions of the Federation of Bosnia and Herzegovina, whereas pursuant to the Law it must not be announced, or pursuant to the decision of a competent court in the FBiH, or by an authorized person is declared secret, shall be punished by three months to three year of imprisonment.

(2) A judge of the court in the FBiH or any other official that makes the data or information referred to in paragraph (1) of this Article accessible to any unauthorized person, shall be punished by six months to five years of imprisonment.

(3) The punishment under Paragraph (2) of this Article shall be applicable to whoever unlawfully publishes, intervenes in or enables the publishing of data or information, or makes it accessible as referred to in Paragraph (1) of this Article.

(4) Whoever unintentionally comes in the possession of the disclosed, but not published information from Paragraph (1) of this Article, and regardless of knowing the nature of this information communicates it or makes it accessible to others, shall be punished by one year of imprisonment or a fine.

(5) If the perpetrator of the criminal offense from paragraphs (1) and (3) of this Article who at the request of a competent body does not reveal the source and manner of acquiring the knowledge of this information, shall be punished by one to eight years of imprisonment.

(6) A perpetrator of a criminal offense from paragraphs (4) of this Article at the request of a competent body does not reveal the source and manner of acquiring the knowledge of the information under paragraph (1) of this Article shall be punished by three years of imprisonment or a fine.

Explanation of possible solutions:

As already said, we can expect an increase in the crime rate, especially for those afore mentioned, after the proposed legal regulations related to suppression of corruption and organized crime, and forfeiture of proceeds of crime, are implemented in full capacity.

New types of crimes that protect integrity of judicial system are proposed considering that in the territory of the Federation of BiH, judicial institution are mainly located in buildings that do not meet minimum security standards. At the same time in regards to the crime of Causing General Danger, with such qualification of the crime, penal policy would become more serious, and that would probably have preventive effect to potential perpetrators, and enable greater safety in work of judicial institutions. Influencing judicial system through employees in judicial institutions and Court Police officers is a possible in a way of committing crimes against them, in attempt of obstructing the work of judicial office holders who have a burden of making decisions prescribed under the law. It is known fact that in all stages of the proceedings, beside the judicial office holder, other employees of judicial institutions and officers of the Court Police take part

in the proceedings in a technical sense. Under influence and due to lack of legal protection, they could remove evidence, give information, or obstruct or preclude work of judicial office holders. We believe that legal protection of close family member of the judicial office holder is particularly important since there are numerous examples from the practice where assault or threats against a child of the judicial office holder were an attempt of influencing their concrete activities, which can be reflected in his work, and accordingly affect the principles of independence and impartiality. International practice has witnessed the cases where such crimes were committed against retired judicial office holders, for the reasons related to period when they were active holders of such positions. At the same time, this form of legal protection would have positive effects with judicial office holders who participate in procedures where they are being threatened, and the persons sentenced with long term prison will serve their time in prison when the judicial office holder is already retired.

A special reason for introducing a crime of Violation of Dignity of the Court is found in a fact that according to the current criminal legislation in the Federation of BiH, the accused cannot be sanctioned for insulting the court, other than being removed from the courtroom. Introduction of this crime will allow alignment of the Law with the Criminal Code of Republika Srpska, which already stipulates this crime. A crime of Disclosing Identity of a Protected Witness is proposed as such considering that the current regulation reads that only a judge and other officials are criminally liable if they reveal identity of protected witness to an unauthorized person. However, there are examples from the practice where other persons accessed data on identity of protected witness, accidentally or deliberately, and therefore we may say with a great concern, that it is not possible to sanction other persons that disclose, mediate in disclosure, enable disclosure or make accessible data or information on identity of protected witnesses before the judicial institutions of the FBiH. Examples from the practice show that it is possible that the identity of protected witness is known to his relatives, who, for different motives and reasons, may reveal identity of protected witness (e.g. to the media), but cannot be liable pursuant to current laws. Considering the fact that good quality witness protection increases readiness of the witness to cooperate with the law enforcement, and the criminal procedure itself increases its effectiveness, which further strengthens the trust of citizens in judicial institutions, it is obvious that it is necessary to initiate procedures that will create conditions for physical and technical protection of witnesses and their families through Criminal Code, and conditions for legal protection of witnesses, in a way that this issue will be defined with an autonomous crime. It is necessary to mention the fact that this issue

was defined in BiH with provisions of Article 240 of the CC BiH in a way identical to this amendment, so the changes and amendments of this Article of the CC FBiH, beside other goals, would achieve harmonization of a criminal legislature too. Importance of this crime will be seen especially in criminal proceeding against organized crime, corruption, and war crimes, considering that legal protection of witnesses creates conditions for successful processing of the most serious forms of crime. This will also enable more efficient work of special departments of the Federation Prosecutor's Office and the Supreme Court of FBiH, whose adoption is stipulated in provisions of drafts of Law on suppression of corruption and organized crime in the Federation of BiH.

AUTHORS' BIOGRAPHIES

Vildana Helić (born in Gracanica in 1953), a judge at the Cantonal Court Tuzla. She earned her B.A. at Law School in Sarajevo in 1976, and passed the judicial service exam in 1977. Was selected as a judicial intern at the High Court in Sarajevo in 1977, became an expert adviser at the same court in 1978, and appointed deputy High Public Attorney at the High Public Attorney's Office in Tuzla in 1978. She stayed at the position of the High Public Attorney until 1997. In the period 1998-1999, she worked as a lawyer, and since 1999 she has been a judge at the Cantonal Court in Tuzla. She is also one of the educators at the Public Institution Center for Judicial and Prosecutorial Training of the FBiH (CEST FBiH). She was actively involved in the Association of prosecutors of FBiH (she was the president) and now is actively involved in the Association of judges of FBiH (she was the president). She participated in various conferences, lectured in numerous seminars, and published works related to criminal procedure code.

Katica Artuković (born in Ljubuski in 1980), a judge at the Municipal Court Ljubuski. She earned her B.A. at Law School in Zagreb, Republic of Croatia in 2003, and passed the judicial service exam in Sarajevo in 2005. Was hired as a judicial intern – a volunteer at the Municipal Court Ljubuski, and became an expert adviser at the same court in 2006. She was appointed as a judge at the Municipal Court Ljubuski in 2009. She is a co-author of the Manual for judges on intellectual property in BiH 2013, CEST FBiH and CEST RS, and she is an educator on Intellectual property in BiH – criminal-law aspects at CEST FBiH, co-author of the expert article Reviewing charges before the investigation judge and the accusatory panel published in a magazine for legal theory and practice *Law and Justice* in 2013, and a member of the expert team of the working sub-group A - courts for earning rights of intellectual property; EU IPR Enforcement project. In April 2014, she has been appointed by the BiH HJPC as a member of the Working Group for Security of Judicial Institutions and BiH Judicial Function holders.

Dženad Grošo (born in Kiseljak in 1979). He finished secondary level police school in Sarajevo, and gained title of Police officer – techni-

cian for security affairs. After high school, he studied at the Law School in Sarajevo, where he earned his B.A. and title of a lawyer. Since 02/04/1999, he was working at the Court Police in position of a Court Police officer at Section of Court Police for Canton Sarajevo courts performing various managerial duties and currently holds a rank of Independent inspector of court police and performs duties of Assistant Chief Commander of Court Police of the Federation of BiH for operations and security. Beside the basic course for court police, he completed several other courses of basic and advanced training related to security and protection of persons and facilities. Since 2010, he is a member of the HJPC BiH Working Group for judicial security in BiH.

Milijan Tunjić (born in Tuzla in 1965). He graduated from the Law School in Sarajevo and earned his B.A. He works at the Court Police of the Federation of BiH since 1999, and holds a position of Deputy Commander of the Section of Court Police for Canton Tuzla courts. Since 2010, he has been a member of the HJPC BiH Working Group dealing with issues of security of judicial institution buildings and holders of judicial office in BiH. Beside the basic course for court police, he completed several other courses of basic and advanced training related to security and protection of persons and facilities.