



BEST PRACTICES IN DETECTING AND SANCTIONING CORRUPTION



**TRANSPARENCY
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BOSNIA AND HERZEGOVINA

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**BEST PRACTICES
IN DETECTING
AND SANCTIONING
CORRUPTION**

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INTRODUCTION

Publication *Best Practices in Detecting and Sanctioning Corruption* is the result of the project Support for Independence of Law Enforcement Authorities in Detecting Corruption Cases. The project is funded by the Ministry of Foreign Affairs of the Czech Republic through the Transition programme, and implemented by Transparency International Czech Republic and Transparency International Bosnia and Herzegovina in the period from 15 April to 31 December 2014.

The publication provides an overview of legal and institutional settings for combating corruption in the Czech Republic and Bosnia and Herzegovina, opinions and attitudes of the judicial authorities in BiH on the strengths and weaknesses of the system, data and trends on the prosecution of corruption offences in the Czech Republic and Bosnia and Herzegovina in recent years, and case studies of successfully prosecuted cases of corruption by judicial authorities at different levels in the Czech Republic and BiH, including both cases of petty corruption and cases of corruption by political officials or complex cases of organised crime.

Independence and accountability are key prerequi-

sites for integrity of the judiciary, without which there can be no successful prosecution of corruption. A large number of reports by national and international organisations monitoring the situation and progress in the judiciary reform in Bosnia and Herzegovina point out independence as one of the most vulnerable spots in the country's judicial system. In the last few years discussions have particularly focussed on the glaring examples of political influence on the BiH judiciary, as evidenced particularly by attempts to revise legislation in the direction of the politicisation of elections and appointment of judges and prosecutors. This has had negative repercussions on the general efficiency of the judiciary and, consequently, on the prosecution of corruption, as evidenced by recent trends in prosecuting corruption offences.

In addition to barriers and systemic weaknesses, the publication presents positive examples of applicable legislation and prosecution of corrupt activities, all with the aim of highlighting encouraging practices that should be carefully considered and serve as an impetus to a dialogue on how to improve current anti-corruption policies.

INVESTIGATION AND PROSECUTION OF CORRUPTION IN THE CZECH REPUBLIC

Corruption does not represent a single specific crime and its nature and appearance can be found in different provisions of the Penal Code. The answer to the question which provisions should be considered as a "corruption related crime" is not sufficiently clear.

While the Czech Ministry of the Interior covers corruption related crimes only by the terms of the Penal Code as Bribe-taking, Bribe-giving, Indirect bribery, Abuse of power by a public official (§ 329) and Thwarting a task by public official's negligence (§ 330), the Unit for Combating Corruption and Financial Crime, perhaps more accurately, subsumes much more criminal offences:

Bribe-taking (§ 331), Bribe-giving (§ 332), Indirect bribery (§ 333), Intrigues in insolvency (§ 226), Breach of economic competition rules (§ 248, subsection 1, lit. e)), Negotiation of advantages in procurement, Public tender or public auction (§ 256, subsections 1 and 3), Intrigues in procurement and public tender (§ 257, subsection 1, lit. b) and c)), Intrigues in public auction (§ 258, subsection 1, lit. b) and c)) and similar criminal offences according to the former Criminal Code No. 140/1961 Coll.²

To make a situation even more difficult the Czech Supreme Prosecutor's Office includes also the criminal offence of the Breach of duty in other's property administration (§ 220 and § 221) and Misuse of information and status in business relations (§ 255).³ And there are also some other criminal offences that can be considered as "corruption", such as Damage to the financial interests of the European Union (§ 260).

As a general rule the presence of a subjective side of the criminal offence in the form of the intentional culpability is necessary, unless the Penal Code explicitly stipulates that the culpable negligence is sufficient. Therefore the vast majority of corruption related crimes requires an intentional behavior as a necessary feature.

Until recently the Czech criminal law had enabled to punish natural persons only, but on 1st January 2012 the new Act on criminal liability of legal persons has

¹ Reference to the provisions of the Czech Penal Code

² Order of the Director of Unit for Combating Corruption and Financial Crime Nr. 10 of 18th January 2011.

³ Supreme Public Prosecutor's Office Report of 2011

come into effect which newly introduced the liability of companies into the Czech legal system. Current Czech criminal law also provides for the punishment of corruption in **business activities**, so that **bribe-giving or bribe-taking in the private sector** could also be punished according to the same provisions as similar behavior in the public sphere.

It is gradually recognised that that the main problem of the Czech Republic is more sophisticated corruption related to other forms of economic crime and often related to public procurement misuse⁴.

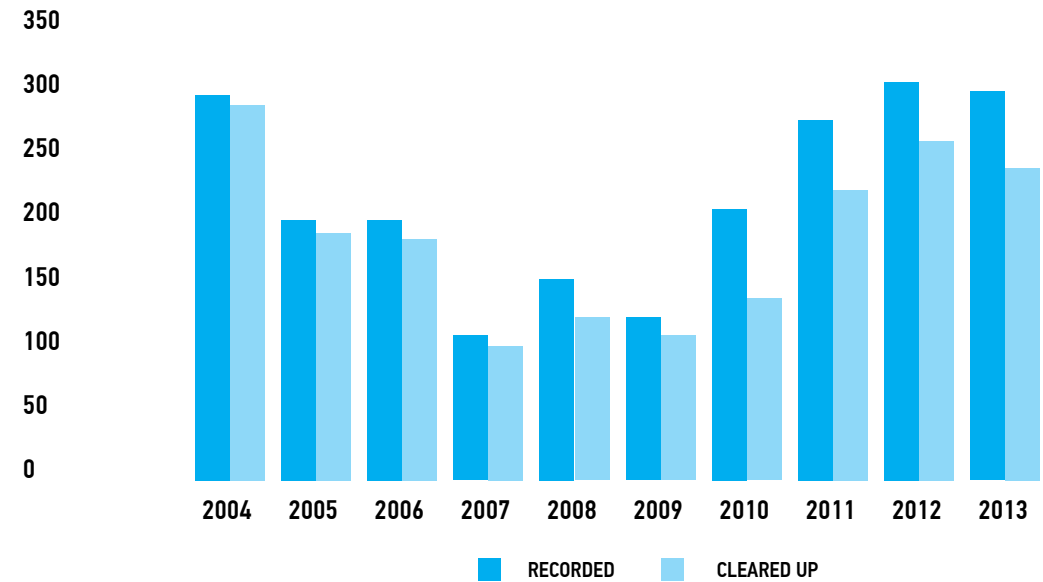
THE DEVELOPMENT OF INVESTIGATION AND PROSECUTION OF CORRUPTION

The issue of relevant statistical data depends on the sources and they vary significantly in accordance to how broadly corruption is considered. On an annual basis we can track the statistics on investigation and prosecution of corruption of the Ministry of the Interior - Report on Security Situation which, as mentioned above, defines corruption rather narrowly. The 2013 report brought out following figures:⁵

THE NUMBER OF RECORDED CRIMES RELATED TO BRIBERY COMMITTED IN THE CZECH REPUBLIC FROM 2004 UNTIL 2013

YEAR	§ 158 / § 329 ABUSE OF POWER BY A PUBLIC OFFICIAL		§ 159 / § 330 THWARTING A TASK BY A PUBLIC OFFICIAL'S NEGL.		§ 160 / § 331 BRIBE-TAKING		§ 161 / § 332 BRIBE-GIVING		§ 162 / § 333 INDIRECT BRIBERY		TOTAL BRIBERY	
	REC.	CLEARED	REC.	CLEARED	REC.	CLEARED	REC.	CLEARED	REC.	CLEARED	REC.	CLEARED
2004	248	205	18	18	126	125	149	147	12	11	287	283
2005	212	170	19	18	39	33	94	92	5	5	138	130
2006	160	124	16	15	43	35	89	87	6	4	138	126
2007	187	112	16	14	40	34	62	58	1	1	103	93
2008	228	132	18	14	46	29	99	88	5	4	150	121
2009	204	137	14	9	38	27	75	68	8	8	121	103
2010	198	141	14	7	53	27	124	96	4	2	181	125
2011	240	139	23	21	85	54	169	139	13	8	267	201
2012	207	118	20	11	63	44	221	197	8	7	292	248
2013	213	140	13	9	90	66	184	155	8	7	282	228

DEVELOPMENT IN THE NUMBER OF CRIMES OF BRIBERY RECORDED AND CLEARED UP



The figures show that the simple corruption cases have steadily been investigated and prosecuted. The law enforcement agencies do their work. The significant drop in the number of recorded and solved cases from 2005 to 2009 was never sufficiently explained. However, it is very likely that it was related to the political period. There were general elections in 2006 and 2010 and the government in power during 2006 – 2010 was allegedly connected with corruption. On the other hand the government which came into power in 2010 strongly pursued anti-corruption policy. This seems to be well reflected in the statistics. It can be concluded that political will is a strong impetus for the investigation and prosecution of corruption.

Next to really very simple bribery cases there are more serious cases when corruption has been detected, investigated and prosecuted in the last few years.

⁴ Page 18 of the Anti-corruption Strategy of the Czech Government for 2013 -2014.: http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2013-2014/Strategie-2013-a-2014---aktualni-verze_1.pdf

⁵ Situation Report on Internal Security and Public Order in the Czech Republic in 2013 (compared to 2012) Praha, <http://www.mvcr.cz/clanek/statistiky-kriminality-dokumenty.aspx>

Examples of the most prominent corruption cases detected, investigated and prosecuted in the last few years:

- In 2010 the ex-mayor of the City of Brno, Aleš Kvapil, was sentenced to 4-year imprisonment for bribe-taking after requesting a bribe of 7 mil CZK (approx. 260 000 EUR) for the arrangement of a building permit for a new construction project in Brno.
- The head of the Municipal Police of the City of Prague, Mr Kotrouš, was sentenced to 6-year imprisonment for abuse of power of a public official and bribe-taking. Thanks to the active use of operative means he was taken into the custody immediately after he had taken a bribe of 150 000 CZK (approx. 5 500EUR).
- 4-year imprisonment was also the sentence for the so called „Godfather“ and former mayor of the City of Chomutov, Alexandr Novák, who was convicted of bribe-taking of more than 40 mil CZK (approx. 1,5 mil. EUR) for his active involvement in the negotiations about selling off the City of Chomutov’s shares in two important Czech energy companies to a foreign investor. In this case a fine and a ban on carrying out public office for 5 years were also imposed.
- Also the case of ex-MP Roman Pekárek who was sentenced to 5-year imprisonment for bribe-taking and abuse of power of a public official received high media coverage. As a former vice-mayor of the City of Kolín he asked for a 1 mil CZK (approx. 37 000 EUR) bribe for selling off the municipal property significantly under price.

Several other major cases started to be prosecuted, like the one of the former President of the Regional Council, and of a senior prosecutor, but they are not closed yet.

SPECIFIC FEATURES IN INVESTIGATION OF CORRUPTION

Detailed information about investigation and prosecution of corruption cases could be found in special reports. The Analysis of the Effectiveness of the Czech Police in Investigation of Corruption Cases report of 2011 was compiled in accordance with the task from the National Anti-corruption Strategy. This report provides detailed analysis of 237 corruption cases (only the narrow definition of corruption was taken into the consideration). 88 of them were investigated by the Unit for Combating Corruption and Financial Crime, 10 cases by the Unit for Combating Organized Crime and 139 by Regional Police Headquarters.

The investigation of corruption cases is often criticized as being focused only on the “easy ones”. The analysis partly confirms this finding – from the total of 237 cases only 73 were described as complicated ones and 26 as very complicated.

How many of these 237 cases were brought to a successful end? Within the analyzed sample the criminal proceeding was commenced in 127 cases (in 93 of them the charge was brought), in 58 the prosecution was ceased, 8 case were transferred to a different relevant authority and 44 cases were still investigated.

The crucial precondition for the successful investigation and prosecution of the corruption case is that the law enforcement agencies learn about the case in its preparatory period and conduct the investigation in an early manner (before the bribe is given) or during the corrupt activities of the suspects. **Early reporting** is thus proven to be the crucial issue in successful investigation of corruption. Special attention should be given to the establishment of supporting channels pertaining

to corruption reporting (whistleblowers, anti- corruption hot-lines, pro-active operational search of the police).

WHO REPORTS THE CORRUPTION CASES?

Out of the 237 analyzed cases, in 83 of them the investigation was conducted on the ground of a criminal complaint submitted by a natural person or by a legal person (16 cases). 20 cases were detected as a side product of other criminal investigation, 61 by the police's own investigation activity and 57 were based on the information from another sources – e.g. military police, media.

It can be concluded that information on alleged corruption cases **mainly came from external sources**. The various internal law enforcement sources led to only 33% of cases. Therefore the operative search of law enforcement bodies should be further developed and supported through advanced training and technical and organizational support. At the same time it is important to encourage and protect whistleblowers as they seem to be one of the key elements in bringing relevant information to the attention of law enforcement.

HOW ARE THE SPECIAL INSTRUMENTS OF THE CRIMINAL PROCEDURE CODE USED?

In the Czech Republic the use of operational means of intercepting and recording telecommunication operations has proven their efficiency in detection and clearing-up of corruption cases many times. Telephone call interception was used in ¼ of the analyzed cases and in 50% of them this led to the indictment.

In the cases where the law enforcement bodies were informed prior to or during the corruption operation the use of telephone interception is understandably more frequent and its success is much higher.

Nevertheless, until the important amendment of the Czech Criminal Procedure Code was adopted in 2011, these special tools could be used only under excessively **strict conditions** which were partly paralyzing the work of law enforcement bodies. Although the legislation has been changed and since 2011 interception and recording of telecommunication operation could be used also for criminal offences such as fraudulent public tender manipulation or misuse of the public office, it is still strictly regulated.

The Czech Criminal Procedure Code also sets up **restrictive conditions** for the use of other operative means such as simulated transfer, surveillance of persons and objects and use of an agent. The basic precondition for the use of these operative means is that their deployment may not pursue any other interests than acquisition of facts important for criminal proceedings; they can be used only if the desired results cannot be accomplished otherwise and the persons’ rights and freedoms may be restricted only to the absolutely necessary extent.

Simulated transfer can be naturally used only in cases when law enforcement bodies know about the planned corruption in advance. Yet even in these cases it is used rather seldom. In 150 of cases which were detected in an early stage this instrument was used only in 8% of them. On the other hand, in all the cases it was used it helped to constitute valid evidence.

The use of an agent was proposed in 5 cases, approved in 4 and in only 1 case it led to the conviction of the accused.

With the adoption of the new Penal Code, the so called “effective repentance” was removed from our criminal law, as the full impunity of the accused was questioned by international organizations. According to the former Criminal Code the instrument of effective repentance enabled impunity in cases when the offender had provided or promised a bribe solely because he/she had been requested to do so and reported the fact voluntarily and without any delays to the prosecutor or police.

On the other hand the so-called **cooperative witness**, which is known in the Anglo-American legal tradition as the crown witness, was introduced into our Criminal Proceeding Code. Although the complete impunity is not guaranteed to the cooperative witness who reports facts important for the disclosure of criminal activity, this status brings him/her the advantage of lower severity of the sentence.

FINANSIJSKE ISTRAGE

It is a generally more and more accepted fact that confiscation of financial assets generated by criminal activity is an as important tool in combating financial crime as sentencing perpetrators. In the above mentioned analysis the specialized investigation of financial nets started in 33 cases (14%). Property was confiscated in 7 cases. Since the time of compilation of the analysis (2011), great progress has been made in this respect. Firstly, the cooperation between the police and the so called Financial Analytical Unit⁶ under the Ministry of Finance has improved and this unit uses investigation of financial transfers related to corruption cases more

⁶ Annual reports can be found here: <http://www.mfcr.cz/cs/verejny-sektor/regulace/boj-proti-prani-penez-a-financovani-tero/vysledky-cinnosti-financniho-analytickeh>

⁷ <http://www.danovakobra.cz/>

frequently. In 2014 the cooperation among different bodies was even more upgraded by the establishment of KOBRA⁷, a joint operation team of the police, customs and tax authorities. Shortly after its establishment KOBRA reported significant successes in detecting huge tax evasions which were often connected with corruption and other serious economic crimes.

The final step – which has not been accomplished yet – is the development of new legislation on confiscation of property if its lawful origin cannot be proved.

LEGISLATIVE FRAMEWORK FOR FIGHTING CORRUPTION IN BIH

1. CONSTITUTIONAL SET-UP OF BOSNIA AND HERZEGOVINA

In order to talk about the legislative framework for combating corruption in Bosnia and Herzegovina, it is first necessary to understand its constitutional set-up and system of government, due to the different levels of government and authorities belonging to them and, consequently, the different competences of these authorities.

According to the form of government, BiH is a republic, although this is not mentioned in its official name. In terms of the system of government, BiH contains elements of both federation and confederation. It consists of two entities, the Republic of Srpska (RS) and the Federation of BiH, as well as Brčko District, which is

under the jurisdiction of BiH. Such a complex state structure results in as many as 14 governments, 14 lawmaking bodies and 13 constitutions.

At the **state level**, the legislative power is exercised by the Parliamentary Assembly of BiH, consisting of two chambers – the House of Peoples and the House of Representatives. The House of Peoples has 15 delegates, two-thirds from the Federation of BiH (5 Croats and 5 Bosniaks) and one-third from the Republic of Srpska (5 Serbs). Croatian and Bosniak delegates are selected, respectively, by the Croat and Bosniak delegates to the House of Peoples of the Federation of BiH, while the Serb delegates are selected by the National Assembly of RS.⁸ The House of Representa-

⁸ Constitution of BiH (Article 4, Paragraph 1) (accessed on 7 July 2014)

tives is composed of 42 members who are elected by direct vote in the entities, with two-thirds elected from the Federation of BiH and one-third from the Republic of Srpska.⁹ The executive power in BiH is vested in the Presidency of BiH as a collective head of state, which consists of three members: one representative of the Bosniak people and one representative of the Croatian people, each elected by direct vote in the Federation of BiH, and one representative of the Serbian people, who is elected by direct vote in RS. In addition to the BiH Presidency, the executive power is exercised by the Council of Ministers of BiH, which has nine ministries.

In the **Republic of Srpska**, the legislative and constitutional power (Constitution of RS) is exercised by the National Assembly of RS, which is unicameral due to the unitary system in RS. It is composed of 83 deputies who are elected by direct vote in parliamentary elections in RS for a term of four years.¹⁰ The legislative power in RS is also vested in the RS Council of Peoples, which confirms the decisions of the National Assembly with regard to the 'issues of vital national interest' for any of the constituent peoples. The executive power in RS is vested in the President of RS, who is elected by the citizens of RS in general elections for a term of four years, as well as the Government of RS, which consists of 16 ministries.

The **Federation of BiH** is characterised by a federal system of government and consists of 10 cantons. The legislative and constitutional power at the level of this entity is performed by the Parliament of FBiH consisting of the House of Peoples with 58 delegates who are elected indirectly, and the House of Representatives with 98 deputies who are elected directly in parliamentary elections in FBiH. The executive power is exercised by the president and vice presidents of the Federation of BiH, who are elected indirectly by the Parliament of FBiH, as well as the Government of FBiH. At the cantonal level, the legislative power is exercised

by cantonal parliaments and the executive power is exercised by cantonal governments. The Constitution of FBiH establishes the exclusive responsibilities of the entity, the shared powers of FBiH and cantons, which can be exercised jointly or separately, and the presumption of cantonal jurisdiction over all matters not explicitly granted to the federal government.¹¹

Brčko District of BiH, which was created under Annex 2 of the General Framework Agreement for Peace in BiH, is a separate unit of local government under the sovereignty of Bosnia and Herzegovina.¹² The Assembly of the Brčko District of BiH is the legislative body which determines general policy for the District. It is composed of 31 councillors elected by direct vote in general elections. The executive power in the District is exercised by the Government of Brčko District, which consists of the Mayor, Deputy Mayor, Government Chief Coordinator and Heads of Departments.

⁹ Constitution of BiH (Article 4, Paragraph 2) (accessed on 7 July 2014)

¹⁰ Constitution of RS (Articles 72 and 73) (accessed on 7 July 2014)

¹¹ Ustavno pravo [Constitutional Law], Akademik Rajko Kuzmanović, Banja Luka 2002 (p. 347)

¹² Dr Mile Dmičić, Ustavno pravo, dopuna osnovnoj literaturi [Constitutional Law, supplement to the essential literature], Pravni fakultet Banja Luka [Faculty of Law in Banja Luka], Banja Luka 2011 (p. 75)

2. AGENCIES AND ORGANISATIONS RELEVANT TO THE FIGHT AGAINST CORRUPTION IN BIH

THE COMPLEX CONSTITUTIONAL SET-UP OF BIH HAS BROUGHT FORTH AN INTRICATE SYSTEM OF AGENCIES AND ORGANISATIONS INVOLVED IN THE FIGHT AGAINST CORRUPTION, WHICH EXIST AT DIFFERENT LEVELS OF GOVERNMENT – FROM ENTITIES TO CANTONS IN THE FEDERATION OF BIH TO BRČKO DISTRICT.

BOSNIA AND HERZEGOVINA

The most important state-level agencies and organisations involved in the fight against corruption are: Prosecutor's Office of BiH, Ministry of Security of BiH, State Investigation and Protection Agency (SIPA), State Border Service, Directorate for Coordination of Police Forces, Intelligence and Security Agency (OSA) and Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.

The **Prosecutor's Office of Bosnia and Herzegovina** was established by the Decision of the High Representative enacting the Law on the Prosecutor's Office of BiH, which was adopted without modification by the Parliamentary Assembly of BiH in 2003.¹³ The Prosecutor's Office is an independent and autonomous authority in BiH.¹⁴ Prosecutorial duties are performed by the chief prosecutor, four deputy chief prosecutors and a number of prosecutors. All prosecutors in the Prosecutor's

¹³ <http://www.tuzilastvobih.gov.ba/?opcija=sadržaj&kat=1&id=2&jezik=b> (accessed on 8 June 2014)

¹⁴ Law on the Prosecutor's Office of BiH, Article 7, consolidated version (Official Gazette of BiH, no. 49/09)

Office of BiH are selected and appointed by the High Judicial and Prosecutorial Council of BiH (HJPC). The chief prosecutor and deputy chief prosecutors have a mandate of six years and are eligible for reappointment, while other prosecutors have an unlimited term of office. The internal organisation of the Prosecutor's Office is governed by the relevant Rules, which are issued by the chief prosecutor upon approval of the Collegium of Prosecutors and the HJPC. Within the Prosecutor's Office of BiH there is the Special Department for War Crimes and the Special Department for Organised Crime, Economic Crime and **Corruption**, the latter including a separate Division for Corruption, established by the aforementioned Rules on Internal Organisation.

The Prosecutor's Office is the authority competent to investigate the criminal offences under the jurisdiction of the Court of BiH, and to prosecute offenders before the Court of BiH, in accordance with the Criminal Procedure Code of BiH and other applicable laws.¹⁵ It follows from this legal formulation that the Prosecutor's Office of BiH is responsible for those criminal offences that are under the jurisdiction of the Court of BiH, indicating a functional interconnection between the two authorities. These include criminal offences defined under the Criminal Code of BiH, as well as those defined under the laws of the Entities and the Brčko District of BiH, when such criminal offences violate or endanger the values of importance for BiH, may have serious repercussions or detrimental consequences to the economy of BiH, may have other detrimental consequences to BiH, or may cause serious economic damage or other detrimental consequences beyond the territory of an Entity or the Brčko District of BiH.¹⁶ When it comes to corruption

¹⁵ Law on the Prosecutor's Office of BiH, Article 12, consolidated version (Official Gazette of BiH, no. 49/09)

¹⁶ Law on Court of BiH, Article 7 (Official Gazette of BiH, no. 49/09)

offences, the Prosecutor's Office of BiH is specifically responsible for criminal offences pertaining to the corruption of senior officials of Bosnia and Herzegovina and responsible persons holding highest positions in economic companies and other legal entities.¹⁷ It follows that the Prosecutor's Office of BiH does not have jurisdiction over criminal offences of corruption not perpetrated by senior officials of BiH or persons with the highest corporate functions, indicating that such corruption offences are under territorial jurisdiction of the relevant entity and Brčko District Prosecutor's Offices, depending on where the offence is committed.

The **Court of BiH**, like the Prosecutor's Office of BiH, was established by the Decision of the High Representative for BiH, which was adopted without modification by the Parliamentary Assembly of BiH. The Court of BiH has three core jurisdictions: criminal, administrative and appellate, which means that it is at the same time both the first-instance and the second-instance court. Also, the court has three divisions corresponding to its jurisdictions: criminal, administrative and appellate divisions. The Criminal Division consists of three sections: Section I for War Crimes, **Section II for Organised Crime, Economic Crime and Corruption**, and Section III for all other criminal offences within the jurisdiction of the court, which also indicates a functional interconnection with the Prosecutor's Office of BiH. The Court is composed of a President and 53 judges who are selected and appointed by the High Judicial and Prosecutorial Council of BiH, on a competitive basis.

The **Ministry of Security of BiH** was established by the Law on Ministries and Other Bodies of Administration of BiH¹⁸ and forms part of the Council of Ministers of BiH.

Among other things, the Ministry has political oversight of the activities of the state-level police force, prepares laws and other regulations within its remit, and ensures their implementation and is responsible for their implementation.¹⁹ Within the organisational structure of the Ministry there is a Sector for Combating Terrorism, Organised Crime and Drug Abuse, and within it a special **Department for Combating Organised Crime and Corruption**.

The government agencies operating under this Ministry include: Directorate for Coordination of Police Bodies of BiH, Border Police of BiH, State Investigation and Protection Agency, Agency for Forensic Examinations and Expertise, Agency for Education and Professional Training, Police Support Agency, and Service for Foreigners' Affairs.

The **State Investigation and Protection Agency (SIPA)** was established in 2002, upon adoption of the Law on the Agency for Information and Protection. Subsequently, following adoption of the Law on the State Investigation and Protection Agency, SIPA was given police powers, becoming the first police agency to exercise its jurisdiction across the entire territory of BiH.²⁰ SIPA has the status of a government agency operating under the Ministry of Security of BiH. Its jurisdiction includes, *inter alia*, prevention, detection and investigation of criminal offences falling within the jurisdiction of the Court of BiH and collection of data and information on these offences²¹, suggesting a functional interconnection between SIPA, the Court of BiH and the Prosecutor's Office of BiH. The Agency is headed by a director who has the highest authorised police rank. The director

reports for his/her work and the work of the Agency to the Minister of Security and the Council of Ministers of BiH. Within the Criminal Investigation Department of the SIPA there is the Section for Prevention and Detection of **Financial Crime and Corruption**, and within it a special **team responsible for investigating corruption offences, customs fraud and criminal offences against official and other duties**, which is an indicator of SIPA's importance in combating corruption in BiH. Under the relevant Law²², SIPA's Financial Intelligence Department (FID) is responsible for activities related to the prevention, investigation and detection of money laundering and terrorism financing. Among other things, FID is responsible for collecting information from persons considered under obligation in terms of this Law (banks, post offices, real estate agencies, exchange offices, etc.) for the purpose of detecting and investigating criminal offences of money laundering and terrorism financing as well as informing the Prosecutor's Office of BiH of any such offences, if found to exist.²³

The **Border Police of BiH** is a government agency operating under the Ministry of Security of BiH. It was established by the Law on the State Border Service of BiH. It has operational independence, and acts exclusively on professional grounds and performs police tasks related to the surveillance and control of BiH border crossing.²⁴ The Border Police of BiH is managed by a director who has one deputy and one assistant director in charge of organisation and operations, who are appointed and dismissed by the Council of Ministers of BiH. Within the Directorate there is the Office for Cooperation with Interpol (NCB Interpol Sarajevo), as a service whose

powers and duties are regulated in separate laws.

The **Directorate for Coordination of Police Bodies** was established by the Law on the Directorate for Coordination of Police Bodies and on Agencies for Support to Police Structures of BiH. It has the status of a government agency operating under the Ministry of Security of BiH. The Directorate's basic duties include communication, cooperation and coordination among police bodies in BiH with relevant authorities in BiH as well as relevant foreign and international authorities, standardisation of work pertaining to police matters in BiH, organisation and implementation of physical and technical protection of persons and facilities of the BiH authorities and diplomatic representatives (responsibility transferred from the State Investigation and Protection Agency of BiH), and other duties. The Directorate is managed by a director with two deputies, who are appointed by the Council of Ministers upon the proposal of the Minister of Security.²⁵

The **Intelligence and Security Agency (ISA)** is an independent government agency of BiH having the status of a legal entity. ISA is responsible for collecting intelligence information related to threats against security of Bosnia and Herzegovina, both inside and outside the country.²⁶ The Agency reports to the Presidency of BiH and the Council of Ministers of BiH. Oversight of the Agency is exercised by the Parliamentary Assembly of BiH through a special body – the Security and Intelligence Committee. Within the Council of Ministers there is the Intelligence and Security Service, which sub-

¹⁷ <http://www.tuzilastvobih.gov.ba/?opcija=sadržaj&kat=2&id=5&jezik=b> (accessed on 8 July 2014)

¹⁸ Official Gazette of BiH, no. 5/03

¹⁹ Dr Petar Kunić, *Upravno pravo posebni dio [Constitutional Law, Special Part]*, Pravni fakultet u Banjaluci [Faculty of Law in Banja Luka], Banja Luka 2008 (p. 68)

²⁰ <http://www.sipa.gov.ba/bs/onama.php> (accessed on 9 July 2014)

²¹ Law on the State Investigation and Protection Agency of BiH, Article 3 (Official Gazette of BiH, no. 27/04)

²² Law on Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of BiH, no. 47/14

²³ Law on Prevention of Money Laundering and Financing of Terrorist Activities, Article 56 (Official Gazette of BiH, no. 47/14)

²⁴ Law on the State Border Service of BiH, Article 2 (Official Gazette of BiH, no. 19/01)

²⁵ Law on the Directorate for Coordination of Police Bodies and on Agencies for Support to Police Structures of BiH (Official Gazette of BiH, no. 36/8)

²⁶ <http://www.osa-oba.gov.ba/osaobabos.htm> (accessed on 8 July 2014)

mits ISA activity reports to the chair of the Council of Ministers. The Agency is headed by a director-general who has a deputy, both of whom are appointed and dismissed by the Council of Ministers of BiH.

Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (APIK) is, according to the law, an independent and autonomous administrative organisation, reporting about its operation to the Parliamentary Assembly of BiH.²⁷ The Agency's formal independence from political and other influences is ensured by the fact that the law provides for a special Commission for the Selection and Monitoring of the Agency's Work, authorised to monitor the work of APIK and reporting about it to the Parliamentary Assembly.²⁸ The Agency's internal organisation is regulated by the relevant Rules, under which the APIK consists of four basic organisational units, as follows: Director's Office, Corruption Prevention Sector, Sector for Coordination of the Fight against Corruption, and Sector for Legal, Personnel, General and Financial Affairs. The Agency is managed by a director who has two deputies. Responsibilities of the APIK consist of: developing the anti-corruption strategy, collecting statistical data, co-ordinating various bodies in the fight against corruption, advisory activities, harmonisation of legislation, training and education, establishment of inter-institutional cooperation, and strengthening integrity.

It is important to note that APIK has no investigative or repressive powers. This basically means that if it has any knowledge of corrupt behaviour, it can only notify such knowledge to the relevant prosecutor's office.²⁹

²⁷ Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (Official Gazette of BiH, no. 103/09)

²⁸ National Integrity System Assessment, Transparency International BiH, Banja Luka 2013 (p. 124)

²⁹ Ibid. (p. 128)

With the entry into force of the Law on Whistleblower Protection in the Institutions of BiH³⁰, the APIK was given certain powers in relation to its implementation. For example, APIK is competent to grant the whistleblower status to individuals who file with it reports of corruptive activities in BiH institutions.³¹ Also, the Agency can order the head of the institution in which the whistleblower is employed to undertake corrective measures aimed at eliminating the adverse action which was performed against the whistleblower (protected person) with the aim of preventing him/her from blowing the whistle or which constitutes an act of retaliation.³² The heads of institutions of BiH who fail to comply with APIK's orders may be fined between KM 10,000 and KM 20,000.

Furthermore, this Law stipulates that all institutions of BiH must adopt internal acts on the methods for reporting corruption internally. This legal provision makes it easier for employees in the institutions of BiH to report corrupt behaviour and enhances fight against corruption within the institutions themselves.

ENTITIES AND BRČKO DISTRICT

In the Republic of Srpska the authorities involved in the fight against corruption include prosecutor's offices, RS Ministry of Interior (Mol RS), and, indirectly, the courts.

In the **Republic of Srpska** there are the Republic Prosecutor's Office and five district prosecutors' offices.

³⁰ Law on Whistleblower Protection in the Institutions of BiH, (Official Gazette of BiH, no. 100/13)

³¹ Law on Whistleblower Protection in the Institutions of BiH, Article 7 (Official Gazette of BiH, no. 100/13)

³² Ibid., Article 8

Operating under the District Prosecutor's Office in Banja Luka is also the **Special Prosecutor's Office** for Organised Crime and Most Serious Forms of Economic Crime, whose jurisdiction includes the gravest forms of criminal offences against official duty, including various corruption offences. This prosecutor's office has jurisdiction over the entire territory of RS. Also, the Chief Special Prosecutor has the authority to take over cases from other district prosecutors' offices at any time prior to the indictment being issued if it determines that these cases fall within the jurisdiction of the Special Prosecutor's Office³³. In addition to the chief special prosecutor, deputy chief special prosecutor and special prosecutors, the internal structure of the special prosecutor's office comprises prosecutorial investigators who have the status of authorised persons under the Criminal Procedure Code.³⁴

District Prosecutors' Offices are responsible for all criminal offences committed on the territory of RS, except those falling within the jurisdiction of the Special Prosecutor's Office or the Prosecutor's Office of BiH.

The **Republic Prosecutor's Office of RS** represents before the Supreme Court of RS the appeals lodged by district prosecutors' offices against first-instance judgements of district courts and prosecutes cases in which the Supreme Court overturned the first-instance judgement and ordered a retrial.³⁵ Further, this office coordinates the work of district prosecutors' offices, resolves conflicts of jurisdiction between them, and

³³ Law on Combating Organised Crime and Most Serious Forms of Economic Crime, Article 12 (Official Gazette of RS, no. 112/07)

³⁴ Law on Combating Organised Crime and Most Serious Forms of Economic Crime, Article 17 (Official Gazette of RS, no. 112/07)

³⁵ http://pravosudje.ba/vstv/faces/kategorijevijesti.jspx?_af5a5873dd5fe7c45d30099.e34TbxyRbNiRb40Lb38TbheQbh0Te0?ins=108&modul=6416 (accessed on 10 July 2014)

performs other tasks.

In the Republic of Srpska there are basic courts, district courts and the Supreme Court of RS.

Basic courts have jurisdiction over criminal offences for which the law provides the penalty of fine or imprisonment of up to 10 years, as well as all proceedings against juveniles. **District courts** have jurisdiction over criminal offences for which the law provides the penalty of imprisonment exceeding ten years or long-term imprisonment, and are competent to hear appeals against the rulings of basic courts.

It follows that district prosecutors' offices act before both basic and district courts, depending on the severity and type of the criminal offence and characteristics of the perpetrator.

The **Supreme Court of RS** has jurisdiction to decide the remedies against first-instance rulings of district courts, extraordinary legal remedies against final judgements of courts, as well as legal remedies against its own departments.

To complement the work of the **Special Prosecutor's Office of RS, a Special Department for Organised Crime** and Most Serious Forms of Economic Crime was established under the District Court in Banja Luka. This Department has jurisdiction throughout the territory of RS over all cases which were taken over by the decision of the chief special prosecutor³⁶. Appeals against decisions of the Special Department are heard by the Special Panel of the Supreme Court of RS for organised crime and most serious forms of economic crime.³⁷

³⁶ Law on Combating Organised Crime and Most Serious Forms of Economic Crime, Article 28 (Official Gazette of RS, no. 112/07)

³⁷ FIDA, Article 30

Ministry of the Interior of the Republic of Srpska (MoI RS) has five Public Security Centres (PSCs), consisting of public security stations and police stations at the municipal level. PSCs report directly to the Police Administration and MoI RS, which is a result of the unitary organisation of this entity. Operating under the Criminal Investigation Bureau of the MoI RS is also a **special service for combating organised crime and corruption**.

In the **Federation of BiH**, the most important institutions in the fight against corruption are: cantonal prosecutors' offices (10 in total), Federal Prosecutor's Office of FBiH and Police Forces of FBiH.

The Federal Prosecutor's Office of FBiH and cantonal prosecutors' offices in the Federation of BiH have jurisdictions analogous to those of the Republic Prosecutor's Office and district prosecutor's offices in the Republic of Srpska. The cantonal prosecutors' offices do not have special departments for fight against corruption, but they do have departments for economic crime.

In 2014 the Federation of BiH passed the Law on Combating Corruption and Organised Crime in FBiH³⁸. This law established the Special Department of the Federal Prosecutor's Office for Combating Corruption, Organised Crime and Inter-cantonal Crime as well as the Special Department of the Supreme Court of FBiH for Corruption and Organised Crime, which has both subject-matter and territorial jurisdiction over criminal offences falling under the jurisdiction of the Special Department of the Federal Prosecutor's Office. The Special Department consists of the special deputy chief federal prosecutor and federal prosecutors. This Law has also

³⁸ Law on Combating Corruption and Organised Crime in the Federation of BiH, Official Gazette of the Federation of Bosnia and Herzegovina, no. 63/14

introduced the legal institute of cooperating witness, i.e. a witness who has become a member of an organised crime group.

In the Federation there are municipal and cantonal courts and the Supreme Court of FBiH. Jurisdictions of these courts, as is the case with prosecutors' offices, are identical to those of basic and district courts and the Supreme Court of RS.

The **police system of FBiH** operates on two separate organisational levels. The first, or lower level of the police system consists of the cantonal ministries of the interior, which, according to the constitutional set-up of FBiH, are 10 in number. The second organisational level is made up of the Federal Ministry of the Interior of FBiH (MoI FBiH). Responsibilities of the MoI FBiH (under which also operates the Federal Police Administration) are defined by the Law on Internal Affairs of the Federation of BiH and include, *inter alia*, fight against the criminal offences of terrorism, inter-cantonal crime, drug trafficking, organised crime, and detection and arrest of perpetrators of these criminal offences in accordance with the said Law³⁹. Cantonal ministries are not in a hierarchical relationship with the MoI FBiH because they are not an integral part of its organisational structure, but are completely independent in carrying out their duties and tasks.

The most important organisations in the field of combating corruption in the **Brčko District** are: Prosecutor's Office, courts, and Police of Brčko District of BiH.

General responsibilities of the **Prosecutor's Office of Brčko District** are defined by the Law on Prosecutor's

³⁹ Law on Internal Affairs of the Federation of BiH, Official Gazette of the Federation of Bosnia and Herzegovina, no. 49/05

Office of Brčko District and consist in taking the prescribed measures and actions with a view to investigating and prosecuting perpetrators of criminal offences and economic crimes, and performing other duties specified under the law.⁴⁰ The organisational structure of the Prosecutor's Office consists of the Prosecutorial Division and the Administrative Division. Operating under the Administrative Division are: Department for War Crimes, Department of Economic, Financial and Organised Crime, and Department for General Crime.⁴¹

The judicial power in the Brčko District is exercised by the **Basic Court** and **Court of Appeal**. The Basic Court has general jurisdiction for all offences except those falling within the jurisdiction of the Court of BiH. The Court of Appeal has the character of a second-instance court and decides on ordinary legal remedies against rulings of the Basic Court, as well as extraordinary legal remedies against final judgements.

Police of the Brčko District of BiH has full subject-matter and territorial jurisdiction in the territory of the Brčko District of BiH, as stipulated by the Law on the Police of the Brčko District of BiH.⁴² It is responsible for the safety of all persons in the District and operates in compliance with internationally recognised rights and fundamental freedoms recognised in the Constitution of BiH. Operating under the Police of the Brčko District, within the Criminal Investigation Unit, is the **Department for Combating Economic Crime and Corruption**.

⁴⁰ Law on the Prosecutor's Office of Brčko District of BiH, Official Gazette of Brčko District of BiH, no. 19/07

⁴¹ Rules on Internal Organisation of the Prosecutor's Office of Brčko District

⁴² Law on the Police of Brčko District of BiH, Official Gazette of Brčko District of BiH, no. 2/00 - 33/05

⁴³ Babić M, Filipović Lj, Mraković I, Raljić Z, Komentari krivičnih zakona u BiH [*Commentary on the Criminal Codes in BiH*], Savjet Evrope i Evropska komisija [*Council of Europe and European Commission*], Sarajevo 2005

3. LEGAL FRAMEWORK

This section discusses some of the most common criminal offences of corruption under the applicable laws in BiH, as well as some of the important domestic and international legal instruments relating to corruption.

THE CRIMINAL CODES IN BIH (CC BIH, CC FBIH, CC RS, CC BD)

Since there is no fundamental difference between the applicable provisions of the four criminal codes in BiH, this section will look at the criminal offences under the Criminal Code of BiH, with indication of any differences between the four laws.

In Chapter XIX – Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty, the Criminal Code of BiH establishes the following criminal offences of corruption: Accepting Gifts and Other Forms of Benefits, Giving Gifts and Other Forms of Benefits, Trading in Influence [*Illegal Mediation*], Abuse of Office or Official Authority, Lack of Commitment in Office, Embezzlement in Office, Fraud in Office, and Using Property of the Office.

The criminal offence of **Accepting Gifts and Other Forms of Benefits** (or “Accepting Bribe”, according to the CC RS) is characteristic in that the perpetrator can only be an official person. In terms of the CC BiH, CC FBIH and CC BD, the term “official person” is expanded to include a foreign official person, which is not the case with the CC RS. This criminal offence, also referred to as passive bribery, has three forms: true, non-true and subsequent passive bribery.⁴³ The act of commission in the first two forms consists in demanding or accepting a gift, accepting any other benefit, accepting a promise of a gift, and accepting a promise of any other benefit.

The difference between these two forms is reflected in the nature of the official action that the official person commits himself to doing. In the case of **true passive bribery** an official person commits himself to performing an action which ought not to be performed by him, or to omitting to perform an action which ought to be performed by him. In the case of **non-true passive bribery** it is about an action which the official person would otherwise be required to perform, or would not be allowed to perform. So, the first form of bribery implies *illegal* action on the part of an official person, while the second form implies acceptance of a bribe by an official person in order to act within the scope of his official authority, i.e. to undertake a *legitimate* official action. **Subsequent passive bribery** exists when an official person demands or accepts a bribe after he performed or refrained from performing an official action, and bribe was accepted in connection with these actions.⁴⁴ With this form of offence it is not relevant whether the action is legal or illegal – it involves actions from both true and non-true passive bribery. Criminal codes in BiH do not recognise the attempted criminal offence of Accepting Gifts and Other Forms of Benefits, since this offence is made complete by the very act of demanding and accepting a bribe or a promise of a bribe.

The criminal offence of **Giving Gifts and Other Forms of Benefits** (or “Offering Bribe”, according to the CC RS) is in functional relation with the criminal offence of Accepting Gifts and Other Forms of Benefits. The perpetrators of this criminal offence are individuals who are not official persons, and even when official persons perpetrate this offence, they do not do so in their official capacity. The act of commission consists in giving or

promising a gift. The official action that is solicited from an official person can be illegal (performance of an official action that ought not to be performed or omission to perform an official action that ought to be performed) or legal (performance of an official action that ought to be performed anyway, or ought not to be performed). These are true and non-true forms of active bribery. Both forms of this criminal offence also criminalise mediation in bribery of an official person. Mediation can be effected through actions such as introducing bribe giver and bribe taker to each other, relaying information about conditions, and the like. It is essential that in doing so the person is aware that he is bringing the bribe giver and bribe taker together for the purpose of bribery. For the criminal offence to exist, it does not matter whether the official person accepted a bribe or not, or who took the initiative. However, special grounds are provided for in the law for the exemption from criminal liability for this offence. Such grounds exist if the official person initiated bribery and the perpetrator reported the deed before it being discovered or before knowing that the deed has been discovered.

The criminal offence of **Trading in Influence** [*Illegal Mediation*] is characteristic in that the perpetrator is a person who takes advantage of his official or influential position (for example, in a political party) to mediate with another official person in order that he perform, or refrain from performing a specific official action. This criminal offence differs from accepting a bribe in that its perpetrator does not accept a bribe to perform or refrain from performing an action, but to exert influence on another person to do so.⁴⁵ The law provides for three forms of this criminal offence, depending on whether the official action sought to be performed is legal or illegal, or whether or not a reward is received for mediation. The first form is less serious and implies mediation for performance or omission of performance of a legal action. The second form implies mediation with the aim of effectuating an illegal action, i.e. action that

ought not to be performed or ought to be performed. The third form exists when illegal mediation implies the receipt of a reward, where such mediation is aimed at effectuating the performance or omission to perform of some illegal activity. This is a more serious qualification of the second form of this criminal offence.

Abuse of Office or Official Authority exists when an official or responsible person, taking advantage of his office or official authority, exceeds the limits of his official authority, and thereby acquires a benefit to himself or to another person, or causes damage to another person, or seriously violates the rights of another person.

Embezzlement in Office exists when the perpetrator, with the aim of acquiring unlawful property gain for himself or another, appropriates money, securities or other movable assets entrusted to him by virtue of his office.

Fraud in Office exist when an official or responsible person, with the aim of acquiring unlawful property gain for himself or another, submits false invoices or in some other way deceives another authorised person into making an illegal disbursement to the official or responsible person.

Using Property of the Office exists when somebody makes an unauthorised use of money, securities or other movable assets entrusted to him by virtue of his office, as well as if he confers these things to another person for unauthorised use.

OTHER DOMESTIC AND INTERNATIONAL LEGAL INSTRUMENTS

Other noteworthy domestic laws relating to corruption, in addition to the abovementioned criminal codes, include the Law on Whistleblower Protection in the Institutions of BiH, the Law on Prevention of Money

Laundering and Financing of Terrorist Activities, and the Law on the Witness Protection Programme in BiH.

The **Law on Whistleblower Protection in the Institutions of BiH** was adopted on 16 December 2013, introducing into the domestic legislation the concept of whistleblowers, provided for in Article 33 of the UN Convention against Corruption. The law regulates the status of whistleblowers, the procedures for reporting corruption, the procedure for protection of whistleblowers, as well as the obligations of institutions with respect to the reporting of corruption.⁴⁶ The Law provides for two types of protected reporting of corruption – internal and external. Internal reporting includes filing a report with the supervisor, manager or other person responsible for the lawful operation of the institution. External reporting includes filing a report with the competent prosecutorial authority, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, or the public. External reporting is undertaken if the internal reporting procedure lasts more than 15 days, and if the whistleblower believes that the person responsible for the lawful operation of the institution is associated with the act of corruption. Whistleblower status is awarded by the APIK. Persons having the whistleblower status are exempt from financial, criminal and disciplinary liability for disclosure of trade secrets when reporting corruption, and are protected from the harmful actions of their employers, in the manner described in the section of this paper relating to the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. These provisions ensure protection of persons who, in “good faith and on reasonable grounds” report the alleged perpetrators of criminal offences of corruption.

⁴⁴ Ibid., p. 714

⁴⁵ Ibid., p. 719

⁴⁶ Law on Whistleblower Protection in the Institutions of BiH, Article 1 (Official Gazette of BiH, no. 100/13)

The Law on Prevention of Money Laundering and Financing of Terrorist Activities sets forth measures and procedures in financial and non-financial sectors aimed at preventing and detecting money laundering and financing of terrorist activities. Legal persons considered to be under obligation to implement measures envisaged by the Law include banks, post offices, real estate agencies, exchange offices, lawyers, notaries, etc.⁴⁷. The obligations of these persons include risk assessment of clients in a business relationship or transaction, as well as the identification and monitoring of clients. The Law also defines the tasks and responsibilities of the Financial Intelligence Department (FID) operating under SIPA. The Department is competent to receive, gather, record and analyse data, information and documentation from persons considered under obligation in terms of this Law, and forward these to the relevant prosecutor's office as well as other foreign and domestic authorities, at the request of these authorities or *ex officio*. The Department also has the authority to order a temporary suspension of a transaction if it suspects money laundering or funding of terrorist activities exists in connection with a certain transaction, account or person.⁴⁸

The Law on the Witness Protection Programme in BiH was adopted on 23 April 2004. Its purpose is to provide protection to witnesses in cases when they or members of their families are faced with a danger to

life, health or freedom because of their willingness to testify.⁴⁹ Witness protection programmes are established and run by the Witness Protection Department operating under the State Investigation and Protection Agency.

The Law on Confiscation of the Proceeds of Crime⁵⁰ in the Republic of Srpska was adopted in 2010 and in the Federation of BiH as recently as 2014. These laws established the agencies for management of confiscated assets and introduced financial investigations. The aim of financial investigation is to gather all evidence pointing to the scope, amount, type, the actual value and other circumstances relating to the lawful income of the suspect or the accused, or a related person, their cost of living and real possibilities of lawful acquisition of assets for which there are grounds for suspicion that they were illegally obtained.⁵¹

All criminal codes in the country define the manner of and conditions for confiscation of material gain acquired through perpetration of a criminal offence.

The legislative framework in BiH does not recognise the criminal offence of corruption in the private sector, although UNCAC suggests that States Parties establish this as a criminal offence in their legislation. In other words, there are still no statutory offences where, for example, giving a bribe to the owner of a privately-owned company in order that he act or refrain from acting would be sanctioned as a criminal offence.

The most important international legal instrument on preventing and combating corruption is the **United Nations Convention against Corruption (UNCAC)**. The Convention was adopted on 31 October 2003 at the UN General Assembly by resolution No. 58/4. The Presidency of BiH made a decision ratifying the Convention at its 89th regular session on 27 March 2006. UNCAC is the first global legal instrument and comprehensive

document that contains measures for the prevention, criminalisation and international cooperation relating to corruption. The Convention is divided into five main parts, namely: *General Provisions* (basic concepts and objectives of the Convention); *Preventive Measures* (request for the States Parties to implement specific effective measures to combat corruption); *Criminal justice section* (defining various criminal offences of corruption and containing a request for the States Parties to incorporate these offences into their legislation); *International Cooperation* (enumerating specific forms of mutual legal assistance between the States Parties); *Asset Recovery* (defining specific terms related to the return of assets, defining the asset recovery procedure and the like.).

Also, Bosnia and Herzegovina has ratified the Council of Europe's 1999 Criminal Law Convention on Corruption and the Council of Europe's 1999 Civil Law Convention on Corruption.

⁴⁷ Law on Prevention of Money Laundering and Financing of Terrorist Activities, Article 4 (Official Gazette of BiH, no. 47/14)

⁴⁸ Ibid., Article 58

⁴⁹ Law on the Witness Protection Programme in BiH, Article 2 (Official Gazette of BiH, no. 29/04)

⁵⁰ Law on Confiscation of the Proceeds of Crime, Official Gazette of RS, no. 12/10, Law on Confiscation of the Proceeds of Crime, Official Gazette of FBiH, no. 73/14

⁵¹ Article 9, Paragraph 1 of the Law on Confiscation of the Proceeds of Crime of FBiH

EXPERIENCE OF LAW ENFORCEMENT AUTHORITIES WITH REGARD TO GOOD PRACTICES AND BARRIERS FOR COMBATING CORRUPTION

In June 2014, as an integral part of project activities and with a view to exchanging experiences and best practices, Transparency International Bosnia and Herzegovina and Transparency International Czech Republic organised a roundtable – *Best Practices in Investigating and Prosecuting Corruption*, as part of project *Support for Independence of Law Enforcement Authorities in Detecting Corruption Cases*. Participants in the roundtable included management of the most relevant judicial institutions in Bosnia and Herzegovina, as well as law enforcement agencies including: Agency for the Prevention of Corruption and Coordination of the Fight against Corruption of BiH, Indirect Taxation Authority of BiH,

Directorate for Coordination of Police Bodies of BiH, Prosecutor's Office of BiH, Federal Prosecutor's Office of FBiH, Republic Prosecutor's Office of RS, Prosecutor's Office of Brčko District of BiH, Federal Police Administration of FBiH, Mol of Canton Sarajevo, Mol of the Tuzla Canton, Transparency International Czech Republic and Transparency International BiH.

Below is an overview of the topics discussed at the roundtable:

1. Sources of information on corruption cases – whistleblowers, police investigation, links with other

criminal cases, public database research

2. Start of formal investigation

- Political obstacles/possible interventions as a risk to impartiality
- Technical barriers (jurisdictional issues – conflict of jurisdiction, possible changes in jurisdiction, bias), administrative barriers for starting an investigation

3. Investigations

- Investigative capacity (personnel, the number of cases in the portfolio of one investigator, the chances of establishing special investigation teams, the amount of work in simple cases vs. the most complicated cases)
- Professional capacity (availability of IT experts, experts on money laundering, tax experts)
- The role of the public prosecutor in the investigation (when it starts, the level of participation, power)

4. Using various investigative legal instruments (and their use as evidence)

- lawful interception and other forms of stakeout
- witnesses, principal witnesses, secret witnesses
- financial investigations into possible money laundering

5. Cases of corruption in the judicial process – the experience of how courts treat cases of corruption, how they admit evidence

6. Examples of good practice – exchange of information on cases in which corruption was detected, investigated and sanctioned

The current legislation regulates in detail the initiation and course of criminal proceedings at all administrative-territorial levels in Bosnia and Herzegovina, providing for exclusive jurisdiction of the prosecutor to launch an official criminal investigation⁵².

Information about possible offenders has great importance in the overall criminal proceedings in that it

opens up the possibility for implementing preliminary and regular investigation by competent authorities. This information may come from sources as diverse as official and anonymous reports filed with the competent authorities in writing, on-the-record and off-the-record oral tip-offs, media reports and articles (especially in the field of investigative journalism), and information submitted by whistleblowers and informants. This further includes information submitted through other avenues which is deemed helpful in that it provides an adequate basis for law enforcement agencies or judicial institutions to gain additional knowledge and gather evidence on the basis of which to make appropriate decisions or target efforts to prosecute perpetrators of criminal offences.

When it comes specifically to investigative media reports and articles, these may exhibit both strengths and weaknesses in relation to criminal proceedings. The importance of media reports that present arguments suggesting possible irregularities in the conduct of individuals or groups is undeniable in that they create opportunities for prosecutors to initiate and undertake concrete pre-investigative and investigative actions. Specifically, when looking into allegations contained in media reports, prosecutors can engage law enforcement agencies to perform appropriate checks or, if the sources warrant so, undertake investigative actions.

Experience shows, however, that Bosnia and Herzegovina does not have an impressive track record in this field. This is certainly a consequence of real problems in both journalism and law enforcement, posing difficulties in the use of media reports by competent authorities.

The media scene in Bosnia and Herzegovina is intensely competitive and often subject to political and other pressures. The past development of the media, as well as the dire economic situation acting as a form of

⁵² Criminal Codes and Criminal Procedure Codes of BiH, FBiH, RS, and Brčko District of BiH

pressure on the objectivity of their reporting, leaves the majority of judicial and police authorities in BiH convinced that there is currently not enough high-quality and serious investigative journalism offering credible information on which to base criminal proceedings. Also, some of the media outlets are often politically oriented, engaged in mutual rivalry, and driven by sensationalist and market concerns, all to the detriment of the accuracy and objectivity of reporting. Generally, judicial institutions regularly keep record of any knowledge and information about possible criminal offences gathered from media reports. All such knowledge and information is subject to relevant checks. However, media reports are not always reliable and are often driven by the media focus on current events and processes, such as were in previous periods war crimes and abuses in privatisation (for example, media coverage of the “Pogorelica Camp” case). Of course, there are sporadic cases [of...?] in Bosnia and Herzegovina, as there are in other countries. In the Czech Republic, for example, there have been several examples of the media influencing the initiation of appropriate prosecutorial actions in the cases of political corruption, by uncovering corrupt practices and notifying them to the relevant authorities.

It was only in late 2013 that the Law on Whistleblower Protection was adopted at the national level, but its implementation is still pending. Entities and Brčko District have not yet put such legislation in place, but there are an increasing number of telephone hotlines for reporting corruption opened by individual public authorities and institutions. A similar practice exists in the NGO sector⁵³, where NGOs provide citizens with legal advice and allow them to file complaints if they have enough information about possible irregularities in public authorities. Well-founded complaints are forwarded to competent authorities. However, all these activities have not yet yielded significant results due to the very low public trust in the system, inefficient

prosecution of corruption, and generally disheartening social climate in the country. Thus, for example, threats and attacks on corruption-exposing journalists are still a frequent occurrence.

This leaves the system largely left to its own resources, so a very small number of so-called ‘KTA cases’ (i.e. those in which there is still not enough evidence to warrant the formal launching of an investigation) are translated into concrete investigations. In such a climate, the mistrust, reluctance or refusal of citizens to be involved in criminal proceedings, not least to assume the central role by giving testimony or volunteering information to investigating authorities, poses a problem that can impede state authorities’ efforts to prosecute criminal offences. In particular, this problem is evident in the work of law enforcement agencies, which upon receiving information about possible criminal offences have an obligation to perform checks and, in doing so, act in a manner that will allow intense and deep investigation of the facts and circumstances. This, however, is accompanied by a number of obstacles: the unreliability of witnesses/persons being heard during checks, the requirement to have an order issued by judicial institutions in order to check transaction data (data stored in banks), as well as the discouraging fact that, after all effort, criminal proceedings for criminal offences of corruption result in light penalties and acquittals despite accumulated evidence.

Furthermore, there is the issue of specific segments of the criminal proceedings that are often not clearly differentiated. Specifically, although the investigation is not negligible in the legal sense, and it is launched when there are grounds for suspicion that a criminal offence has been committed, its main aim is to en-

⁵³ Advocacy and Legal Advice Centre, Transparency International BiH, <http://ti-bih.org/>

able accumulation of a sufficient amount of relevant evidence that will allow the bringing of an indictment and ultimately lead to the conviction of the defendant. The pressure of the media and public often leads to the launching of investigations (whether publicly disclosed or secret), but investigations launched without sufficient evidence or objective circumstances that need to be presented in the court do not result in success.

However, despite these problems, positive examples of cooperation and assistance in criminal proceedings against corruption are not entirely absent. In Brčko District, for example, information about the corrupt behaviour of a professor at the Faculty of Economics led to official actions. After successful implementation of investigation and investigative measures, an indictment was brought for the criminal offence of accepting a bribe, and the professor was ultimately convicted and punished by dismissal from university.

The Indirect Taxation Administration (ITA) makes it possible for citizens and whistleblowers to file anonymous complaints/reports via telephone hotline and in writing. It is possible to report any form of illicit trade, tax evasion and evasion of customs duties, as well as illegal behaviour of ITA tax inspectors and customs officers. Upon receipt of a report, ITA performs preliminary checks, and then forwards the report to investigative authorities. Up to 70 per cent of the reports received in this manner are rejected; others are pursued. About 5 to 7 per cent of reports received annually concern corrupt behaviour of ITA officers, and these reports are subjected to checks. However, no such case has resulted in the filing of criminal charges. In contrast, the filing of criminal charges is usually the result of police investigations or pending ITA cases, with KM 400–700 thousand collected annually in fines. This figure, however, relates to the economic cases of non-corrupt nature, but despite this, the activities aimed at catching up on the backlog of cases are ongoing and some im-

provements are evident. The untimely and insufficiently effective international cooperation remains an issue of particular concern as some of the cases in question have elements of international crime. In practice, the necessary information from other countries often comes late, after the case has become statute-barred. As regards other sources of information that can lead to the initiation of criminal proceedings, it is important to point out the weak performance of state authorities in charge of managing certain processes (e.g. entity-level privatisation agencies, professional standards units, etc.), which results in delayed detection of deficiencies, omissions or misuse in the processes. Establishment of an agency comparable to the Croatian Bureau for Combating Corruption and Organised Crime (USKOK) would significantly improve the prospects of monitoring corrupt practices. Unfortunately, Bosnia and Herzegovina currently has very few prosecutors dedicated to the specific issue. Furthermore, these prosecutors lack proper support in terms of adequate and effective anti-corruption legislation as well as sufficient number of associates, legal and economic investigators, other administrative staff, special anti-corruption institutions with appropriate powers, special units operating under the police authorities or entirely separate small organisations formed solely for the purpose of providing personnel and resource support to anti-corruption efforts. By way of contrast, the Croatian USKOK has forty active prosecutors from PNUKOK (Police National Bureau for Combating Corruption and Organised Crime), as a service exclusively dedicated to providing support to USKOK.

When it comes to audit reports for public institutions in Bosnia and Herzegovina, laws on the auditing of public sector institutions and authorities at the levels of BiH, FBiH, RS and BD provide for mandatory submission of information to law enforcement authorities when there are indications of significant violations of the law. Recent amendments to the Law on Public Sector Auditing

of RS provide for the obligation of delivering to the Chief Prosecutor of the Republic of Srpska only a copy of the section of the Supreme Auditor's Report which contains the adverse opinion.⁵⁴ In contrast, the Law on Auditing of Public Administration and Institutions of the Brčko District of BiH provides that, in addition to being submitted to the Parliament and the Government, copies of all audit reports must be submitted to the Prosecutor's Office of Brčko District.⁵⁵ So far only modest success has been achieved in this regard: of the five or six persons who were investigated in the Brčko District in relation to allegations contained in audit reports, only one person was convicted. The aggravating factors cited by judicial authorities as significantly impeding their work include the fact that supreme audit offices do not have the character of institutions under obligation to gather information and evidence relevant to criminal proceedings, that they are governed by a different kind of standards, that they do not perform deep scanning of specific incriminating circumstances, and, in particular, that they do not determine the damage or benefit as an essential element of the criminal offence. A particular problem in this area is the question of timeliness of the information obtained. All audit offices should submit this information in the course of the audit process, i.e. immediately as the irregularity is discovered, rather than upon the completion of the audit and publication of the audit report, until when enough time has passed to allow perpetrators to destroy any possible evidence and make undue influence on potential witnesses.

The Republic of Serbia approaches this problem in a markedly different way; there is a team of professionals operating under the State Audit Institution of the Republic of Serbia who are dedicated to preparing and bringing criminal charges and reports based on audits. Therefore, if BiH is to make further progress in this regard, it is important that it introduces a legal obligation for audit offices to report criminal offences to the competent prosecutor's offices in the course of

the audit procedure, i.e. as soon as they discover any information that may be of concern.

The above is also one of the important attitudes and measures advocated by the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption of BiH, which itself faces a wide range of problems in its operation, as already mentioned in the previous section. The Law on the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption of BiH did not provide the Agency with any usable tools or applicable powers that would allow a direct fight against overt forms of corruption. The objectives of the Agency, such as identifying and eliminating the causes of corruption, creating a sentiment of intolerance towards corruption, and ensuring and improving the legal framework for the prevention of corruption, are difficult to achieve in the current context. Although prevention is the backbone of a successful fight against corruption, the majority of media outlets and the general public in BiH are of the opinion that the APIK was deprived of powers such as those belonging to the State Investigation and Protection Agency, Intelligence and Security Agency, or generally any law enforcement agency at the national level, with the actual aim of preventing the existence of efficient mechanisms to fight corruption as well as cover up abuse of power, especially in high-profile cases.⁵⁶ Given its limited powers, it is evident that the Agency will effectively be unable to do anything other than managing statistical data and proposing measures whose adoption and implementation by the relevant authorities will continue to be uncertain.

⁵⁴ Law on Public Sector Auditing of the Republic of Srpska, "Official Gazette of the Republic of Srpska", nos. 98/05 and 20/14

⁵⁵ Law on the Auditing of Public Administration and Institutions in the Brčko District of BiH

⁵⁶ BiH Steeped in Corruption, <http://www.rtvbn.com/311060/BiH-ogrezla-u-korupciji>

Furthermore, the **issues of jurisdiction** of some judicial institutions in BiH remain unresolved, thus delaying the laying of foundations for future work of these institutions in the field of criminal justice. One of the most commonly raised questions, which concerns the immediate hearing of cases before the Court of BiH, is the question of jurisdiction. This gives rise to justified complaints and criticisms levelled at the BiH justice system: the Law on the Court of BiH provides that the Court has jurisdiction over criminal offences (whether under the Criminal Code of BiH or under the criminal codes of the entities) when such criminal offences endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina.⁵⁷ Article 7 of the Law on the Court of BiH is so broadly defined that it accommodates contradictory interpretations and conclusions. There is no piece of legislation that prescribes categorically, exhaustively, or at least with indications that would be subject to adequately geared discretion, what the endangerment of the sovereignty, territorial integrity, political independence, national security and international personality of Bosnia and Herzegovina involves and what exactly is meant by serious repercussions or detrimental consequences to the economy of BiH, or beyond the territory of an Entity or the Brčko District of BiH. Accordingly, many rightly complain of the Court of BiH being selective in deciding whether an offence prescribed under entity-level criminal codes may be prosecuted before this court. There is a recurring problem arising in connection with the following two questions: 1) what is the extent of harm caused by the perpetrator of a criminal offence prescribed under the entity-level criminal codes that is required for the perpetrator to be considered prosecutable by the Pros-

⁵⁷ Law on the Court of BiH, Article 7, "Official Gazette of BiH", nos. 29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07 and 49/09

ecutor's Office of BiH and triable by the Court of BiH; and 2) what is the amount of material gain obtained illegally in the performance of official duties for it to be considered causing economic repercussions beyond the borders of the cantons or entities. Unfortunately, there is still no concrete, standardised, articulated and legally incontrovertible answer to these questions, because judicial officials continue to base their answers in individual cases solely on their own beliefs and interpretations of Article 7 of the Law on the Court of BiH.

The consequence of this legislative deficiency is an inconsistency of the court practice, as shown by the fact that in some cases the Court of BiH declined jurisdiction for certain criminal offences prescribed under the entity-level criminal codes, but in other cases claimed jurisdiction for criminal offences where the damage caused was significantly lower. Despite such a simple and telling example of judicial inconsistency – an example bordering on the violations of human rights – it is impossible to place the responsibility solely on prosecutors and judges, except in that they are not vocal enough in demanding that these inconsistencies be eliminated even though they are the ones whose work suffers most from such lack of clear rules. The greatest responsibility actually rests on the legislators, some of whom, in fear of becoming subject to a possible future prosecution, make sure not to remove any obstacles in the judicial system that they might benefit from in the event that they become subject to prosecution. The question of jurisdiction, open and unresolved, is one of the biggest problems facing the state judiciary, if only because it is questionable how successfully entity judicial authorities can prosecute the abuses by executive and legislative officeholders in entities or crimes committed by local strongmen. Due to their relatively better protected independence and powers throughout the country, the Court of BiH and the Prosecutor's Office of BiH are in a far better position to prosecute 'sensitive cases', but they continue to be hampered by the lack of

clear regulations.

This statement, however, does not absolve the prosecutor's offices and courts at lower levels. On the contrary, in the circumstances of complete autonomy and independence from local budgets and budget makers, any prosecutor's office and court, whether at the district, cantonal, entity or state level, would be very much in a position to prosecute offenders regardless of who they are and what position they hold. Unfortunately, BiH is a country where political connections, personal connections and positions of power tend to exercise the greatest influence. Therefore, it is currently almost unrealistic to expect the judiciary at the local level to be completely free from pressure, which undoubtedly affects the initiation and resolution of criminal proceedings.

The process of conducting investigation in criminal proceedings is also a major stumbling block to the successful implementation of the criminal proceedings. In recent years, Bosnia and Herzegovina has made significant steps forward in terms of providing adequate financial and human resources for coping with the growing number of criminal offences, but despite this, there is still much room for improvement. Specifically, even when the budgets and capacities to deal with corruption and conduct investigations do not pose an obstacle to the intensification of work on corruption cases, there remains the question of responsibility for the initiation of criminal proceedings, i.e. the fact that the criminal proceedings in corruption cases against civil servants cannot be instituted easily and without a solid foundation.

Specifically, if an investigation is launched against them, civil servants are subject to suspension, and if an indictment is brought against them, they must resign. This raises the question of the real need for exercising extra caution in weighing the justification of instituting

proceedings, which is not only professional and legal, but also a moral obligation. It is for this reason that judicial institutions are faced with the lack of quality inputs and untimely response, as reflected in the delivery of criminal reports that lack adequate verifiable facts or are not based on evidence. This is certainly a phenomenon that happens sporadically, and it would not be correct to claim that the absence or paucity of evidence is a regular occurrence in corruption cases. However, perpetrators of criminal offences of corruption go to great lengths to destroy the clues and evidence that could hurt them in possible criminal proceedings against them, or to take care of it later, when criminal proceedings have already been instituted. In judicial practice there have been examples of documents whose illegal content would constitute conclusive evidence in criminal proceedings gone missing from the archives of some institutions.

Adequate resources and capacities, however, are not available and put in place for all stages of criminal proceedings. In Bosnia and Herzegovina, at all administrative levels, significant amounts are still being allocated for the engagement of *expert witnesses*, whose expertise and findings are essential in criminal proceedings. In this regard, there is a real need for an appropriate institution for expertise, particularly economic expertise in dealing with cases of economic crime, since the lack of such an institution affects cost and efficiency.

However, these resources and the absence thereof are not the only issue. The legal framework regulating criminal proceedings is not fully elaborated and remains under-developed and unable to adequately respond to modern circumstances and trends in crime. The same is true of secondary legislation, which does not adequately support the implementation of special investigative measures and other procedures and techniques. In recent years it has been very difficult or almost impossible to technically intercept communica-

tions between perpetrators of criminal offences, since this communication takes place via electronic means and software that is not covered by either the existing legal framework or technical capabilities of most investigative authorities. Lack of trained personnel or adequately trained special units is especially felt in the field of special investigative measures such as covert surveillance or recording of premises, as well as in the field of forensic procedures which, under the legal framework, are not available in a timely manner. The use of undercover agents is also faced with the devastating fact that there are no basic technical and other possibilities for their deployment (for example, the current regulations do not allow such persons to be issued documents supporting their "covert" identity, and a number of persons who previously performed these tasks are already known in the criminal milieu that they should infiltrate).

Another most common problem, which is often mentioned by the public, is the overall procedural legislation at the state level, but also at other levels in BiH. It is obvious from both the structure and content of the Criminal Procedure Code as well as the findings of many experts that the Criminal Procedure Code has been designed as a fusion of two different models of criminal procedure, its essence being composed of elements of both continental and Anglo-American procedural systems. Such Criminal Procedure Code of BiH could constitute a quality piece of legislation made up of acceptable and customisable elements of European and American legal traditions and practices, but it certainly needs to undergo specific changes and adjustments that would improve the efficiency of the judicial system whose main task is precisely the application of criminal law. Unfortunately, even after several rounds of amendments, the Criminal Procedure Code still contains serious inconsistencies and a number of provisions that may be subject to free interpretation by prosecutors, sole judges, presiding judges and lawyers,

the danger being that such interpretations often lead to confusion and result in inconsistent case law. In this context, it is important to note that in BiH the case law based on previous rulings is not binding upon judges rendering new judgements (in contrast to the Anglo-American legal system).

Finally, when it comes to the treatment of corruption cases before the competent courts, the prevailing opinion is that the court criteria vary and that of all judicial authorities courts are perhaps most heavily exposed to the pressures from politics and big business, with the consequence that court decisions are often made in consultations and agreements taking place outside the institutions of justice.

Bosnia and Herzegovina is not alone in facing these problems. In the Czech Republic one of the most pressing issues are the attitudes and perceptions in judicial and public circles that the application of certain investigative measures significantly violates the right to privacy, and that these measures should be used only in exceptional cases. Also, it was concluded that the relationship between prosecutors and auditors functions in a similar way as in Bosnia and Herzegovina, but also that certain steps have been made towards further improvement of co-operation between these institutions. One of the main problems cited is that law enforcement agencies place greater emphasis on the quantity of submitted reports, instead of focussing on larger and more important individual cases of corruption.

TRENDS IN THE PROSECUTION OF CORRUPTION OFFENCES IN BOSNIA AND HERZEGOVINA⁵⁸

Every year since 2009, Transparency International Bosnia and Herzegovina has performed annual monitoring of the prosecution of corruption in courts and prosecutors' offices in BiH and produced reports analysing the data obtained from judicial authorities on the efficiency of detection, prosecution and sanctioning of corruption offences. Statistical data obtained from the High Judicial and Prosecutorial Council of BiH (HJPC)⁵⁹ include the total number of criminal charges handled by prosecutors' offices and the total number of investigations and indictments for all criminal offences, with special focus on criminal offences of corruption, as well as the data on the number and structure of court judgements rendered for the criminal offences being analysed in this report. Also of interest is the number of court cases relating to the confiscation of illegal proceeds, with special focus on trends in imposing monetary penalties.

The main results of the 2012 and 2013 Reports are shown below.

⁵⁸ Data from *Monitoring the Prosecution of Corruption in Courts and Prosecutors' Offices in Bosnia and Herzegovina in 2012 and 2013. Key findings*, Transparency International BiH, 2014

⁵⁹ This report is based on the data submitted by HJPC, at the request of Transparency International BiH, as per Decision No. 01-50-440-48/2014, dated 06/05/2014. It is noteworthy that there is a marked discrepancy between the number of court judgements for corruption offences as presented in the HJPC 2013 Annual Report and the data submitted to TI BiH as per the said decision of HJPC.

TABLE 1.

COMPARISON OF STATISTICAL DATA ON THE TOTAL NUMBER OF CRIMINAL CHARGES HANDLED BY PROSECUTORS' OFFICES IN BIH AND THE NUMBER OF CRIMINAL CHARGES FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY IN 2012 AND 2013

LEVEL OF PROSECUTORS' OFFICES	TOTAL NUMBER OF CRIMINAL CHARGES HANDLED		NUMBER OF CRIMINAL CHARGES FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY		PERCENTAGE OF CRIMINAL CHARGES FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY	
	2012	2013	2012	2013	2012	2013
PROSECUTOR'S OFFICE OF BIH	1.265	1.352	145	154	11,5%	11,6%
CANTONAL PROSECUTORS' OFFICES TOTAL	28.866	29.118	2.128	1.529	7,3%	5,2%
DISTRICT PROSECUTORS' OFFICES TOTAL	12.366	12.027	883	657	7,2%	5,5%
PROSECUTOR'S OFFICE OF BRČKO DISTRICT	446	376	13	23	3%	6,1%
TOTAL	42.943	42.873	3.174	2.363	7,4%	5,5%

TABLE 2.

COMPARISON OF STATISTICAL DATA ON THE TOTAL NUMBER OF INVESTIGATIONS UNDERTAKEN BY PROSECUTOR'S OFFICES IN BIH AND THE NUMBER OF INVESTIGATIONS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY IN 2012 AND 2013

LEVEL OF PROSECUTOR'S OFFICES	TOTAL NUMBER OF INVESTIGATIONS		NUMBER OF INVESTIGATIONS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY		PERCENTAGE OF INVESTIGATIONS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY	
	2012	2013	2012	2013	2012	2013
PROSECUTOR'S OFFICE OF BIH	787	783	44	46	5,5%	5,6%
CANTONAL PROSECUTOR'S OFFICES TOTAL	16.291	16.170	768	418	4,7%	2,6%
DISTRICT PROSECUTOR'S OFFICES TOTAL	9.248	8.021	614	253	6,6%	3,2%
PROSECUTOR'S OFFICE OF BRČKO DISTRICT	653	570	38	30	5,8%	6,7%
TOTAL	26.979	25.544	1.464	747	5,4%	2,9%

TABLE 3.

COMPARISON OF STATISTICAL DATA ON THE TOTAL NUMBER OF CONFIRMED INDICTMENTS ISSUED BY PROSECUTOR'S OFFICES IN BIH AND THE NUMBER OF CONFIRMED INDICTMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY IN 2012 AND 2013

LEVEL OF PROSECUTOR'S OFFICES	TOTAL NUMBER OF CONFIRMED INDICTMENTS		NUMBER OF CONFIRMED INDICTMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY		PERCENTAGE OF CONFIRMED INDICTMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY	
	2012	2013	2012	2013	2012	2013
PROSECUTOR'S OFFICE OF BIH	170	184	5	9	2,9%	5%
CANTONAL PROSECUTOR'S OFFICES TOTAL	9.945	9.898	101	133	1%	1,3%
DISTRICT PROSECUTOR'S OFFICES TOTAL	5.087	4.755	112	107	2,2%	2,3%
PROSECUTOR'S OFFICE OF BRČKO DISTRICT	353	297	5	16	1,4%	5,7%
TOTAL	15.555	15.134	223	265	1,4%	1,7%

TABLE 4.

COMPARISON OF STATISTICAL DATA ON THE NUMBER AND STRUCTURE OF COURT JUDGEMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY RENDERED BY THE COURT OF BOSNIA AND HERZEGOVINA IN 2012 AND 2013

COURT	CC	ARTICLE	YEAR	ACQUIT-TALS	DISMISS-ALS	CONVIC-TIONS	STAYED PROCEED-INGS	TOTAL
COURT OF BIH	CC BIH CHAPTER XIX	217 (ACCEPTING GIFTS AND OTHER FORMS OF BENEFITS)	2012	1	2	3	N/A	6
			2013	1	N/A	N/A	N/A	1
		218 (GIVING GIFTS AND OTHER FORMS OF BENEFITS)	2012	N/A	N/A	2	N/A	2
			2013	N/A	N/A	N/A	N/A	0
		220 (ABUSE OF OFFICE OR OFFICIAL AUTHORITY)	2012	N/A	N/A	3	N/A	3
			2013	N/A	N/A	1	N/A	1
		221 (EMBEZZLEMENT IN OFFICE)	2012	N/A	N/A	2	N/A	2
			2013	N/A	N/A	N/A	N/A	0
		222 (FRAUD IN OFFICE)	2012	N/A	N/A	1	N/A	1
			2013	1	N/A	N/A	N/A	1
TOTAL 2012				1	2	11	0	14
TOTAL 2013				2	0	1	0	3

GRAPH 1.

COMPARISON OF THE TOTAL NUMBER OF JUDGEMENTS FOR CORRUPTION OFFENCES AND THE NUMBER OF CONVICTIONS FOR CORRUPTION OFFENCES IN THE COURT OF BIH IN THE PERIOD 2009–2013

COURT OF BIH

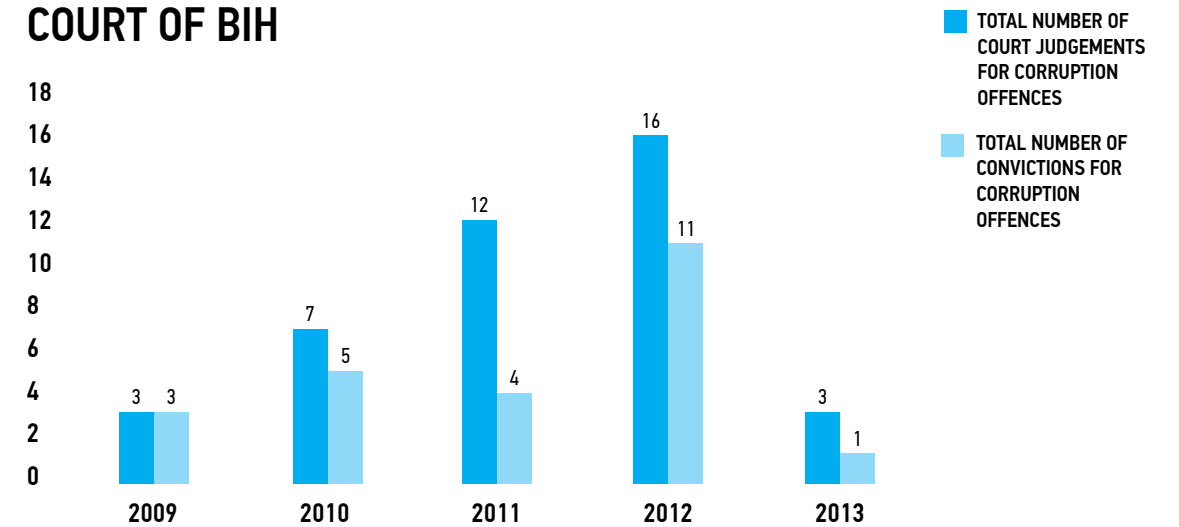


TABLE 5.

COMPARISON OF STATISTICAL DATA ON THE NUMBER AND STRUCTURE OF COURT JUDGEMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY RENDERED BY COMPETENT COURTS IN THE FEDERATION OF BIH IN 2012 AND 2013

COURT	CC	ARTICLE	YEAR	ACQUIT-TALS	DISMISS-ALS	CONVIC-TIONS	STAYED PROCEED-INGS	TOTAL
CANTONAL COURTS	CC FBIH CHAPTER XXXI	383-392	2012	10	29	13	N/A	52
		383-389	2013	4	N/A	5	N/A	9
MUNICIPAL COURTS	CC FBIH CHAPTER XXXI	383-392	2012	12	4	52	N/A	68
		383-389	2013	5	1	55	N/A	61
SUPREME COURT OF FBIH	CC FBIH CHAPTER XXXI	383-392	2012	N/A	4	N/A	N/A	4
		383-389	2013	N/A	1	N/A	N/A	1
TOTAL 2012				22	37	65	0	124
TOTAL 2013				9	2	60	0	78

GRAPH 2.

COMPARISON OF THE TOTAL NUMBER OF JUDGEMENTS FOR CORRUPTION OFFENCES AND THE NUMBER OF CONVICTIONS FOR CORRUPTION OFFENCES IN THE COURTS IN THE FEDERATION OF BIH IN THE PERIOD 2009–2013

FEDERATION OF BIH

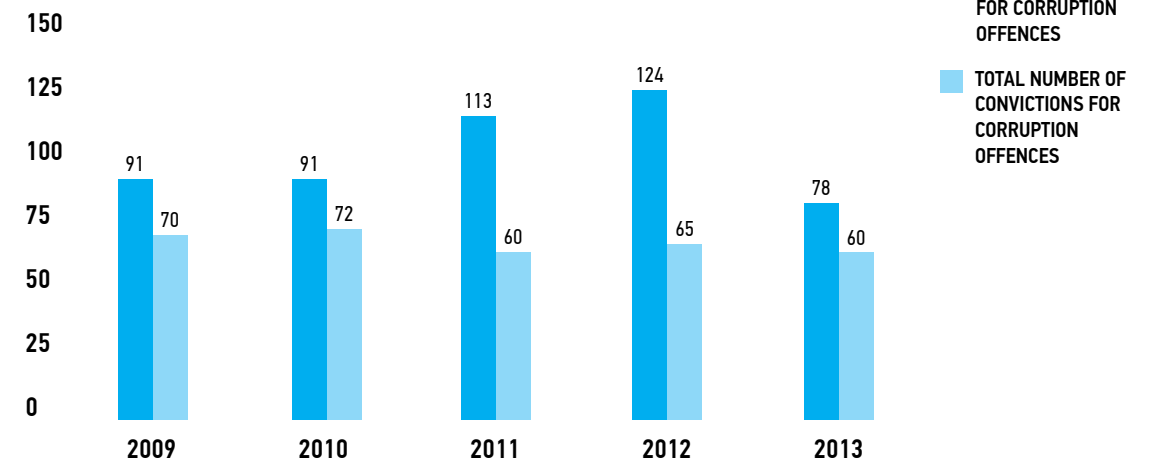


TABLE 6.

COMPARISON OF STATISTICAL DATA ON THE NUMBER AND STRUCTURE OF COURT JUDGEMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY RENDERED BY COMPETENT COURTS IN THE REPUBLIC OF SRPSKA IN 2012 AND 2013

COURT	CC	ARTICLE	YEAR	ACQUIT-TALS	DISMISS-ALS	CONVIC-TIONS	STAYED PROCEED-INGS	TOTAL
DISTRICT COURTS	KZ RS GLAVA XXVII	347-360 347-360	2012	5	21	2	N/A	28
			2013	2	2	2	N/A	6
BASIC COURTS	KZ RS GLAVA XXVII	347-360 347-360	2012	15	5	57	N/A	74
			2013	14	3	35	N/A	52
SUPREME COURT OF RS	KZ RS GLAVA XXVII	347-360 347-360	2012	N/A	3	N/A	N/A	3
			2013	N/A	2	N/A	N/A	2
TOTAL 2012				17	29	59	N/A	105
TOTAL 2013				16	7	37	N/A	60

GRAPH 3.

COMPARISON OF THE TOTAL NUMBER OF JUDGEMENTS FOR CORRUPTION OFFENCES AND THE NUMBER OF CONVICTIONS FOR CORRUPTION OFFENCES IN THE COURTS IN THE REPUBLIC OF SRPSKA IN THE PERIOD 2009–2013

REPUBLIC OF SRPSKA

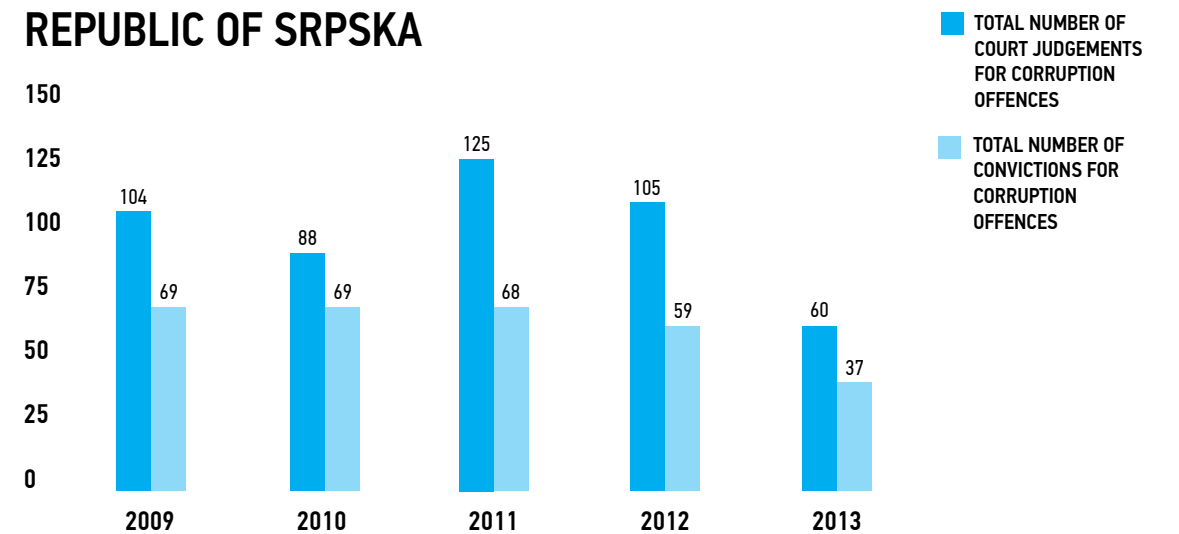


TABLE 7.

COMPARISON OF STATISTICAL DATA ON THE NUMBER AND STRUCTURE OF COURT JUDGEMENTS FOR CRIMINAL OFFENCES OF CORRUPTION AND CRIMINAL OFFENCES AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY RENDERED BY THE BASIC COURT OF BRČKO DISTRICT BIH IN 2012 AND 2013

COURT	CC	ARTICLE	YEAR	OSLOBA- ĐAJUĆE PRESUDE	ODBIJA- JUĆE PRESUDE	OSUĐU- JUĆE PRESUDE	OBUSTAV- LJENI POSTUPCI	TOTAL
BASIC COURT OF BRČKO DISTRICT BIH	CC BD CHAPTER XXXI	377 (ABUSE OF OF- FICE OR OFFICIAL AUTHORITY)	2012	N/A	N/A	N/A	N/A	N/P
			2013	1	N/A	N/A	N/A	1
		378 (MISAPPROPRIA- TION)	2012	N/A	N/A	1	N/A	1
			2013	N/A	N/A	N/A	N/A	N/P
		383 (COUNTERFEITING OF OFFICIAL DOCU- MENTS)	2012	N/A	N/A	N/A	N/A	N/P
			2013	2	N/A	3	N/A	5
TOTAL 2012				N/A	N/A	1	N/A	1
TOTAL 2013				3	N/A	3	N/A	6

GRAPH 4.

COMPARISON OF THE TOTAL NUMBER OF JUDGEMENTS FOR CORRUPTION OFFENCES AND THE NUMBER OF CONVICTIONS FOR CORRUPTION OFFENCES IN THE COURTS IN THE BRČKO DISTRICT BIH IN THE PERIOD 2009–2013

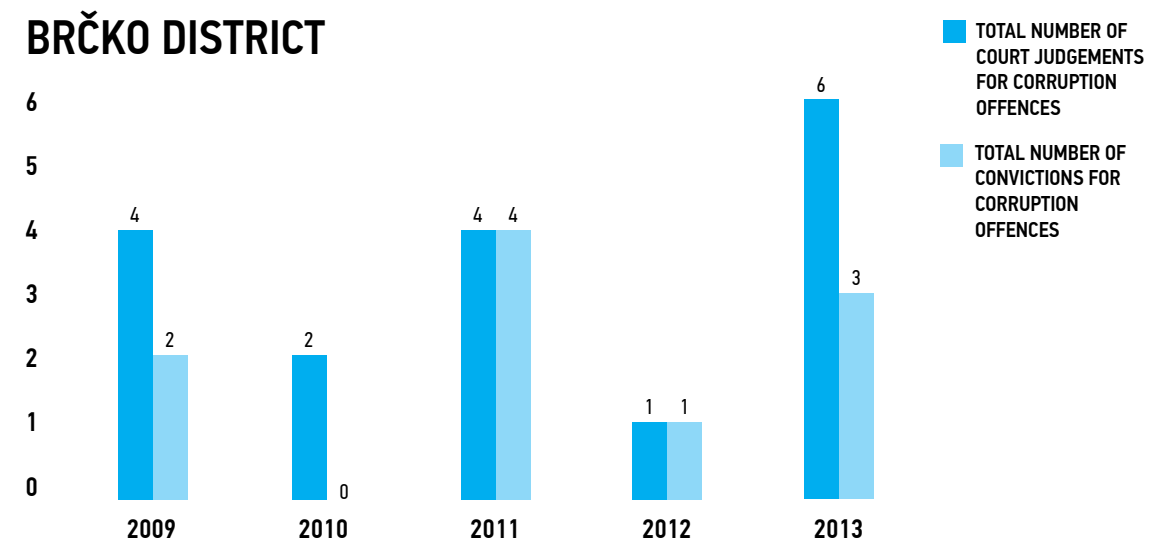


TABLE 8.

BREAKDOWN OF COURT JUDGEMENTS BY TYPE OF CRIMINAL OFFENCE OF CORRUPTION AND CRIMINAL OFFENCE AGAINST OFFICIAL DUTY OR OTHER RESPONSIBLE DUTY RENDERED IN 2013

CRIMINAL OFFENCE**COURT JUDGEMENTS 2013**

	STAYED PROCEED- INGS	CONVIC- TIONS	DISMISS- ALS	ACQUIT- TALS	TOTAL
ACCEPTING GIFTS AND OTHER FORMS OF BENEFITS (ART. 217 CC BIH, ART. 380 CC FBIH, ART. 374 CC BD); ACCEPTING BRIBE (ART. 351 CC RS)	N/A	4	N/A	2	6
GIVING GIFTS AND OTHER FORMS OF BENEFITS (ART. 218 CC BIH, ART. 381 CC FBIH, ART. 375 CC BD); OFFERING BRIBE (ART. 352 CC RS)	N/A	5	N/A	N/A	5
TRADING IN INFLUENCE (ART. 219 CC BIH, ART. 382 CC FBIH, ART. 376 CC BD, ART. 353 CC RS)	N/A	1	N/A	N/A	1
ABUSE OF OFFICE OR OFFICIAL AUTHORITY (ART. 220 CC BIH, ART. 383 CC FBIH, ART. 377 CC BD, ART. 347 CC RS)	N/A	45	7	18	70
EMBEZZLEMENT IN OFFICE (ART. 221 CC BIH, ART. 384 CC FBIH, ART. 378 CC BD, ART. 348 CC RS)	N/A	31	N/A	2	33
FRAUD IN OFFICE (ART. 222 CC BIH, ART. 385 CC FBIH, ART. 379 CC BD, ART. 349 CC RS)	N/A	1	N/A	1	2
USING PROPERTY OF THE OFFICE (ART. 223 CC BIH, ART. 386 CC FBIH, ART. 380 CC BD); UNAUTHORISED USE OF OFFICIAL PROPERTY (ART. 350 CC RS)	N/A	3	N/A	N/A	3
LACK OF COMMITMENT IN OFFICE (ART. 224 CC BIH, ART. 387 CC FBIH, ART. 381 CC BD); CARELESS PERFORMANCE OF OFFICIAL DUTIES (ART. 354 CC RS)	N/A	3	2	7	12
DISCLOSURE OF OFFICIAL SECRET (ART. 225 CC BIH, ART. 388 CC FBIH, ART. 382 CC BD, ART. 355 CC RS)	N/A	N/A	N/A	N/A	0
FORGING OF OFFICIAL DOCUMENT (ART. 226 CC BIH, ART. 389 CC FBIH, ART. 383 CC BD)	N/A	9	N/A	5	14
ILLEGAL COLLECTION AND DISBURSEMENT (ART. 227 CC BIH, ART. 390 CC FBIH, ART. 384 CC BD, ART. 356 CC RS)	N/A	N/A	N/A	N/A	0
UNLAWFUL RELEASE OF A DETAINEE (ART. 228 CC BIH, ART. 391 CC FBIH, ART. 385 CC. BD, ART. 357 CC RS)	N/A	N/A	N/A	N/A	0
UNLAWFUL APPROPRIATION OF OBJECTS WHILE SEARCHING OR CARRYING OUT AN ENFORCEMENT ORDER (ART. 229 CC BIH, ART. 392 CC FBIH, ART. 386 CC BD, ART. 360 CC RS)	N/A	N/A	N/A	N/A	0
EXTORTION OF STATEMENTS (ART. 358 CC RS)	N/A	N/A	N/A	N/A	0
VIOLATION OF HUMAN DIGNITY THROUGH ABUSE OF OFFICE OR OFFICIAL AUTHORITY (ART. 359 CC RS)	N/A	N/A	N/A	1	1
UKUPNO	0	102	9	36	147

TABLE 9.

COMPARISON OF STATISTICAL DATA ON THE NUMBER OF CASES AND THE AMOUNTS OF CONFISCATED MATERIAL GAIN AND THE AMOUNTS OF MONETARY PENALTIES

COURT	NUMBER OF CASES IN WHICH CONFISCATION OF UNLAWFUL MATERIAL GAIN WAS ORDERED		TOTAL VALUE OF CONFISCATED MATERIAL GAIN (IN KM)		NUMBER OF CASES IN WHICH MONETARY PENALTY WAS IMPOSED		TOTAL VALUE OF MONETARY PENALTIES IMPOSED (IN KM)	
	2012	2013	2012	2013	2012	2013	2012	2013
COURT OF BIH	42	70	2.419.084	4.896.644	33	41	163.000	431.500
SUPREME COURT OF FBIH	N/A	N/A	0	0	1	N/A	18.000	0
SUPREME COURT OF RS	N/A	N/A	0	0	N/A	N/A	0	0
APPELLATE COURT OF BD BIH	N/A	N/A	0	0	N/A	N/A	0	0
CANTONAL COURTS (FBIH)	5	16	170.212	56.234	172	27	787.480	86.800
DISTRICT COURTS (RS)	1	21	10.000	3.093.499	3	29	2.800	190.300
MUNICIPAL COURTS (FBIH)	9	17	42.505	476.629	722	781	856.262	1.437.500
BASIC COURTS (RS)	0	2	0	175	1.065	1.237	1.618.510	1.990.899
BASIC COURT – BRČKO DISTRICT	0	0	0	0	53	40	63.760	68.750
TOTAL	57	126	2.641.801	8.523.181	2.049	2.125	3.509.812	4.205.749

CONCLUSION

The above data show that in 2013 the performance of judicial authorities in BiH reached the lowest level in the last five-year period. Negative trends have been observed in all stages of criminal proceedings, as well as at all judicial levels in the country. The reason for such poor judicial performance in prosecuting corruption seems to be the compromised independence of the judiciary, which has fallen victim to the complex web of ties between politics, business and media. This is further evidenced by the fact that judicial authorities tend to only prosecute criminal offences of 'petty corruption'. The following conclusions are drawn based on the analysis of all indicators relating to the prosecution of corruption offences in 2013 and their comparison with previous years:

- In the observed period prosecutors' offices maintained a relatively equal number of criminal charges handled annually for all criminal offences, but the number of charges for corruption-related offences has dropped by 25% compared to 2012.
- The number of investigations conducted by prosecutors' offices for all criminal offences in 2013 declined only slightly compared to the preceding year. Conversely, in the same year the number of investigations conducted for corruption-related offences sank to a five-year low, with 50% fewer investigations than in 2012.
- In 2013 prosecutors' offices issued a nearly equal number of indictments as they did in the preceding year, while the number of indictments for corruption-related offences has seen a 20% increase. This trend should have been even higher considering that in 2012 a record number of investigations were launched for these criminal offences.
- In 2013 the total number of judgements and convictions by the Court of BiH fell further, reaching a five-

year low.

- An extremely negative trend has been observed in the total number of judgements and convictions by the competent courts in the Federation of BiH.
- The lowest number of judgements and convictions for corruption-related offences has been found in the Republic of Srpska, where the number of convictions in 2013 was as much as 60% lower than in previous years.
- The territory of Brčko District BiH is too small for serious analysis of judicial statistics. Encouragingly, however, unlike the other three judicial systems in the country, Brčko District has seen an upward trend in the prosecution of corruption-related offences.
- The fact that of the 147 total convictions for corruption-related offences, the majority were for abuse of office and embezzlement in office indicates that judicial authorities continue to employ a reactive rather than proactive approach to corruption.
- A modest upward trend has been observed with respect to the confiscation of unlawful material gain over the previous year. However, this is not enough, given the importance of this institute in fighting corruption.

EXAMPLES OF BEST PRACTICES IN PROSECUTION OF CORRUPTION IN BIH

U ovom poglavlju obuhvaćeno je nekoliko studija

This chapter presents four case studies of successful prosecution of corruption in Bosnia and Herzegovina. The cases were selected on the basis of the information and materials relating to successfully prosecuted cases of corruption which were obtained from judicial institutions at various levels in BiH. Transparency International BiH contacted 22 judicial institutions in the country, sending requests for information about successfully prosecuted corruption offences resulting in non-appealable judgements of conviction. Institutions were asked to select one or two cases they considered as representative examples of good practice.

Requests for information were sent to the following institutions:

- Court of BiH
- Prosecutor's Office of BiH, Special Department for Organised Crime and Corruption
- Federal Prosecutor's Office of the Federation of BiH
- Basic Court of Brčko District BiH
- Prosecutor's Office of Brčko District BiH
- District Court in Trebinje

- District Prosecutor's Office in Trebinje
- Basic Court in Prijedor
- Basic Court in Trebinje
- Basic Court in Banja Luka
- District Prosecutor's Office in Doboj
- District Prosecutor's Office in Bijeljina
- District Prosecutor's Office in Banja Luka
- District Prosecutor's Office in Banja Luka – Special Prosecutor's Office
- District Prosecutor's Office in East Sarajevo
- Cantonal Prosecutor's Office of the Sarajevo Canton
- Cantonal Prosecutor's Office of the Tuzla Canton
- Cantonal Prosecutor's Office of the Herzegovina-Neretva Canton
- Municipal Court in Sarajevo
- Municipal Court in Bihać
- Municipal Court in Tuzla
- Municipal Court in Zenica

Most of the institutions responded positively, providing the requested information and data. The most representative cases, as selected by Transparency International BiH, are presented below.

CASE STUDY 1⁶⁰

INTRODUCTION

THIS CASE STUDY PRESENTS AN EXAMPLE OF PUBLIC OFFICIALS OF THE INDIRECT TAXATION AUTHORITY CONVICTED BY TWO FINAL JUDGEMENTS OF THE APPELLATE DIVISION, SECTION II FOR ORGANISED CRIME, OF THE COURT OF BIH. THE CRIMINAL OFFENCES PRESENTED HEREIN INCLUDE SUCH TEXTBOOK EXAMPLES OF CORRUPT ACTIVITIES AS LACK OF COMMITMENT IN OFFICE, ORGANISED CRIME, ABUSE OF OFFICE AND CUSTOMS FRAUD. THESE CRIMINAL ACTIVITIES WERE DEvised WITH THE INTENTION OF ACHIEVING ILLICIT FINANCIAL GAIN, AND AS SUCH ARE IN CONTRAVENTION OF LAWFUL AND CONSCIENTIOUS PERFORMANCE OF THE CIVIL SERVICE AND, ULTIMATELY, CREATE IMMENSE DAMAGE TO THE LEGAL SYSTEM OF BOSNIA AND HERZEGOVINA. POSITIVE EXAMPLES PRESENTED IN THIS CASE STUDY INCLUDE JUDICIAL SENTENCING POLICY, ADVOCACY OF BROAD INTERPRETATION OF THE DEFINITION OF A CRIMINAL ORGANISATION, AND REASONABLY FORMULATED OPINIONS OF THE JUDICIAL PANEL WHICH AIM TO PROMOTE THE IMPORTANCE OF CIVIL SERVANTS, THE OVERSIGHT OF THEIR WORK AND PUNISHABILITY IN THE EVENT OF UNLAWFUL CONDUCT.

In its final judgement dated 13 June 2008, the Appellate Division, Section II for Organised Crime, Economic Crime and Corruption, of the Court of BiH sentenced G.N., M.O. and A.J., officials of the Indirect Taxation Authority, to prison terms of one year, one year and six months, and six months respectively for lack of commitment in office under Article 224, paragraph 2 of the Criminal Code of BiH.⁶¹ The convicted officials failed to inspect cargo vehicles contrary to the Law on Indirect Taxation Authority, thus allowing multiple uncleared imports of coffee in the period between 15 September

2005 and 19 January 2006. By doing so, they caused losses to the BiH budget totalling KM 464,445.75.

Article 29, paragraph 1⁶² of the Law on Indirect Taxation Authority provides, *inter alia*, that “an authorised ITA official, within the scope of his/her powers established by the laws of Bosnia and Herzegovina, has the right and obligation to stop a vehicle inside the customs area, enter it, inspect the vehicle and goods...”, which in this particular case the convicted officials failed to do. It is interesting to note that some witnesses attempted to account for the fact that the convicted officials failed to inspect the vehicle by citing “high confidence among colleagues”, i.e. that the convicted officials believed the word of their colleagues who conducted the first inspection. The court here correctly took the view that “the trust that existed between the customs officers cannot be without limits and does not absolve them of responsibility for failing to perform a physical inspection of cargo vehicles”. In its statement of reasons for the judgement, the Court emphasised the importance of performing official duties, as well as legal and lawful conduct, rebutting the arguments presented by witnesses.

In the section relating to the sentence, the Court treated the absence of prior convictions as an extenuating

⁶⁰ Based on the final judgements of the Appellate Division, Section II for Organised Crime of the Court of BiH, dated 6 December 2007 and 13 June 2008

⁶¹ Judgement of the Court of BiH, no. X – KŽ – 06/270, dated 13 June 2008

⁶² http://www.uino.gov.ba/download/Dokumenti/Dokumenti/bos/Propisi/Zakon_o_UIO.pdf

circumstance, although the theory rightly criticises the behaviour of the practice in the evaluation of this aspect.⁶³ Among the aggravating circumstances the Court correctly included the degree of threat and injury to the protected interests, as well as the manner of causing threat as manifested in the officials’ irresponsible conduct. Given the importance of the violated protected interest, it is commendable that the panel reflected on the methods of conducting inspections at border crossings in a separate opinion, criticising the current inspection practices.

The complexity of the judiciary’s attitude to a corruptive criminal offence it is dealing with is best seen in the sentencing section of the judgement. In this specific case, the Appellate Chamber of the Court of BiH treated the circumstances of the case, specifically the fact that there had been no significant oversight by the superiors, as an extenuating circumstance.⁶⁴ It is unclear whether the panel’s evaluation of and attitude towards the relevant circumstances of the case (lack of oversight is cited as an extenuating circumstance) primarily point to the required grading of responsibility and increased accountability of the superiors, or it is only a criterion used to find an extenuating circumstance in practice. It would have been expedient if the court had extended the argumentation concerning the responsibility of

⁶³ “It should be noted that courts typically treat absence of prior convictions as an extenuating circumstance, which is controversial because it has nothing to do with some unexpectedly good behaviour that should be rewarded, but it is the normal and expected behaviour, a condition that is the norm.” Miloš Babić PhD, Ivanka Marković PhD, *Criminal Law – General Introduction*, Banja Luka 2011

⁶⁴ “It has also been proven that the superiors failed to exercise oversight, as witnesses stated in their testimonies that their superiors had not objected to their work and that the way they performed their job was already established practice, both at the border crossing in question as well as the other border crossings that they knew of.” Excerpt from the statement of reasons of the Court of BiH’s judgement no. X-KŽ-06/270 dated 13 June 2008, pp. 15–16

superiors by providing recommendations for future cases, which would result in achieving the objectives of general prevention and help establish the principle of accountability in managerial positions.

In the judgement of the Court of BiH in the same case, dated 6 December 2007, the panel of the Court’s Appellate Division upheld the first-instance judgement against D.S., an employee of the Indirect Taxation Authority, for the criminal offence of Organised Crime under Article 250, paragraph 1, in conjunction with the criminal offence of Abuse of Office or Official Authority under Article 220, paragraph 2 of the Criminal Code of BiH, for which he was sentenced to four years imprisonment. Also upheld were the verdicts against P.M. and D.S. for continuing offence of Customs Fraud, for which they were sentenced to three years imprisonment. According to the facts established in the final judgement, in his capacity as a customs officer, D.S. illegally issued an official document, having failed to perform a physical inspection in order to verify the accuracy of the shipping documents, thus allowing illegal importation of large quantities of coffee. A positive aspect of this case was the fact that the court considered all the circumstances of the case, forming the basis for proper legal characterisation of the facts. The convicted officials committed criminal offences of Customs Fraud and Abuse of Office, but more importantly, the way in which their offences were related and mutually dependent was qualified as organised crime and the convicted officials were characterised as members of a criminal organisation.

The Court also took the view that should serve as a general guidance in other cases. Specifically, the judicial panel noted that “for a criminal organisation to exist, it is not necessary to prove that there was a formal meeting and familiarity between its members”, but it suffices to prove the existence of “structural connections and actions of its members in the commission of certain criminal offences, which includes awareness

and willingness to commit these offences as part of a criminal organisation”.⁶⁵ “Structural actions”, as a guiding principle used by the Court in assessing whether the standard definition of a criminal organisation/organised crime has been qualitatively met, is in line with modern tendencies of manifestation of corrupt behaviour because it helps prevent the failure to recognise a criminal organisation through casual remarks about members of the group not meeting in person or not knowing each other. The widely held public perception of penal policy as being too mild proved mistaken in this case, as the final judgement upheld the prison sentences of four years (D.S.), six years (M.P.) and five years (D.S.). For example, in relation to D.S., who was convicted as an official person, the Court emphasised the persistence of the convicted in committing the criminal offence, and the amount of damage he caused, which are good examples of sentencing policy that take into account the extent of the damage caused and the nature of the criminal offence, with consequences for the state budget.

CASE STUDY 2⁶⁶

INTRODUCTION

THE CASE STUDY PRESENTED HEREIN LOOKS AT THE CRIMINAL OFFENCES OF ABUSE OF OFFICE OR OFFICIAL AUTHORITY, TRADING IN INFLUENCE, AND ACCEPTANCE OF BRIBES, THE CRIMINAL PROSECUTION FOR WHICH WAS CONCLUDED BY THE FINAL JUDGEMENT OF THE CANTONAL COURT IN MOSTAR. THIS CASE

⁶⁵ Excerpt from the statement of reasons of the Court of BiH's judgement no. X-KŽ-06/270, p. 14

⁶⁶ Based on the judgement rendered by the Municipal Court and the Cantonal Court in Mostar (Abuse of Office or Official Authority, Trading in Influence, Accepting Gifts and Other Forms of Benefits)

STUDY PROVIDES AN OVERVIEW OF THE OFFENCES, THE JUDICIAL CONTRIBUTION TO UNDERSTANDING THE MATERIAL ELEMENTS OF THE OFFENCES, THE ESTABLISHED PENAL POLICY AND RECOGNITION OF THE BASIC PRINCIPLES THEREIN, AS WELL AS THE OVERALL ATTITUDE TOWARDS CORRUPTIVE OFFENCES. THE CONVICTED WAS AN EMPLOYEE OF A CORRECTIONAL INSTITUTION WHO WAS IN CHARGE OF WORKING WITH PRISONERS, WHICH MAKES HIS OFFENCES EVEN GRAVER BECAUSE, BY TAKING ADVANTAGE OF HIS OFFICE AND ENGAGING IN OTHER ILLEGAL ACTIVITIES, HE ABUSED HIS AUTHORITY IN SUCH HIGHLY SENSITIVE AREAS AS REHABILITATION OF PRISONERS AND PENAL CONDITIONS.

In its first-instance ruling, dated 22 November 2010, the Municipal Court in Mostar sentenced I.K. to a prison term of three years and nine months for the criminal offences of Abuse of Office or Official Authority, continued criminal offence of Accepting Gifts and Other Forms of Benefits, and Trading in Influence. These criminal offences are the most common corruptive offences, and the convicted committed them in his capacity as an official person. Specifically, in 2005, in his capacity as an educator of the Semi-open Correctional Institution in Mostar, and then from 2006 to 2008, as head of the Re-education Group and manager of the Re-education Sector, he repeatedly solicited and accepted gifts from convicts in exchange for agreeing to their written requests for the use of various rights and benefits. Taking advantage of his official authority, I.K. solicited and accepted gifts and other benefits in the form of cash, works of art and other items, thus acquiring illegal property gain not exceeding KM 10,000 – the ceiling above which a more severe punishment is provided for.⁶⁷ The first-instance court sentenced him to a prison term of three years and nine months, consisting of: two years and six months for the continued criminal offence of Accepting Gifts and Other Forms of Benefits, ten months for the criminal offence of Abuse of Office or Of-

ficial Authority, and six months for the criminal offence of Trading in Influence. Deciding in the same case, the court also imposed a ban on carrying out occupation, activity or duty, provided for under the Criminal Code of FBiH, for a period of three years. This ruling was upheld by the final judgement. In its ruling, the first-instance court spelled out in detail what the ban implied.⁶⁸

The three years' security measure was properly employed in this case, because it is his official authority that enabled the convicted to commit the said criminal offences and there was reasonable suspicion that he could have committed them again if he had been allowed to continue exercising the same authority.

However, the term range for the said security measure, as provided for in the law, is too broad,⁶⁹ giving the courts broad latitude of discretion, i.e. room for individualisation of each case when determining the length of the ban on carrying out occupation, activity or duty. It is exactly for this reason that the courts should approach the evaluation of this aspect with careful attention, and the accompanying explanation should make it clear why the court decided to impose shorter or longer ban on carrying out occupation, activity or duty. This is particularly important because this security measure

⁶⁷ Article 383 of the Criminal Code of the Federation of BiH, http://tuzilastvobih.gov.ba/files/docs/zakoni/Krivicni_zakon_FBiH_36_03_bos.pdf

⁶⁸ The ban applies to the performance of the following activities and duties: an elected or appointed official in the legislative, executive and judicial bodies and other administrative bodies and services of the Federation of BiH, cantons, cities and municipalities that perform certain administrative, professional and other activities within the scope of rights and duties of the authority that has founded them, or an authorised person in a company or other legal entity which is entrusted, by virtue of the law or another legal regulation, with exercising public authority, and which performs a certain duty within the scope of this authority. The judgement of the Municipal Court in Mostar, no. 58 0 K 061390 11 Kž., dated 22 November 2010.

also affects the rights of convicted persons, such as the right to work, rehabilitation, career advancement and promotion, and rightly draws the attention of the general public.

The Municipal Court in Mostar recognised the importance of I.K.'s official position in the institution in which he committed the offences, not only on the basis of the legally established hierarchy, but also on the basis of factual relations⁷⁰, which is a desirable approach to the particular circumstances. Also commendable is the court's approach to the understanding of the legal nature of the criminal offences, as the judgement's statement of reasons provides detailed explanation of the essence and quality of each committed offence. Thus, with regard to the criminal offence of Accepting Gifts and Other Forms of Benefits, the judgement points out that the soliciting of gifts or benefits should be interpreted broadly. Soliciting means not only explicit requests, but also any statement or conduct which can be reasonably construed as constituting a request for a gift. When considering whether this element was present in a criminal offence or not, it is necessary to establish the existence of undoubted intention or ultimate intention. To provide a vivid explanation as to why it imposed the said security measure, the Court quotes sentences used by the perpetrator of the criminal offences in question, which were recognised as constitut-

⁶⁹ Article 76, paragraph (2) of the Criminal Code of FBiH: The security measure of ban on carrying out a certain occupation, activity or duty may be imposed for a term not less than one year and not more than ten years, counting from the date the decision becomes final, with the provision that the time spent serving the punishment of imprisonment shall not be credited towards the term of this security measure.

⁷⁰ "... the defendant enjoyed broad powers – what with his hierarchical position in the institution, and what with his factual position granted to him by the then Director of the Correctional Institution." Quote from the judgement of the Municipal Court in Mostar, no. 58 0 K 061390 11 Kž.

ing solicitation for gifts or benefits.⁷¹

It is evident from the statement of reasons for the section of the judgement relating to the choice of criminal sanction and sentence that the court paid great attention to the individualisation of punishment. Here, it is first important to look at the separate section relating to the “objective gravity of the criminal offences committed” because the first-instance court makes the point that the gravity of these offences consists in the very fact that they were committed by an official person, i.e. a person who has a specific social responsibility provided for by law, but also a person who is aware of the unlawfulness of the committed acts, which must be taken into account. Also commendable is the first-instance court’s position on the “persistence of the defendant’s criminal will”, which was recognised in the repetition of actions, circumstances of the case, the degree of cunning shown, etc. It is interesting to note that at one point, after evaluating the aggravating circumstances and stressing the importance of general deterrence, the Mostar Municipal Court approached the issue of stricter punishment almost with an apology. Observed in the context of the current legislative framework, the imposed penalties (a total of three years and nine months of imprisonment, consisting of: two years and six months for the continued criminal offence of Accepting Gifts and Other Forms of Benefits, ten months for the criminal offence of Abuse of Office or Official Authority, and six months for the criminal offence of Trading in Influence) are not considered particularly harsh, which begs the question as to the reasons behind the court’s arguable statement about the penal policy.

Except for the poor financial situation of the convicted, the first-instance court found no other extenuating circumstances.

The first-instance judgement of the Municipal Court in Mostar was not substantially modified by the final

judgement of the Cantonal Court in Mostar, except for a minor revision – accepting the arguments presented in the appeal in favour of a more lenient sentence. Specifically, the Cantonal Court revised the first-instance judgement insofar as it required that account be taken of other extenuating circumstances, such as the fact that the convicted has a family, commuting the total prison sentence to three years and three months (the prison sentence for continued criminal offence of Accepting Gifts and Other Forms of Benefits remained two years and six months, while the sentence for the criminal offence of Abuse of Office or Official Authority was reduced to seven months, and sentence for the criminal offence of Trading in Influence was reduced to three months).

Courts in BiH tend to follow a mild penal policy, especially when rendering final judgements, even when the grounds for such lenience are insufficient or completely non-existent.

⁷¹ *“Soliciting means any statement or other form of conduct which can undoubtedly be construed as a request for a gift or other benefit. For example, when a prisoner (convict) asks to be allowed to receive occupational therapy inside the prison compound, and the defendant says, “This will take some palm-greasing”, ... [or] when he tells a prisoner (convict), “You need to give me something for coffee”, “I’m not alone in this game, there are other palms to grease” ... “It’s okay for you to buy me a drink”; “You see how decrepit my mobile phone is...”.”* Quote from the judgement of the Municipal Court in Mostar, no. 58 0 K 061390 11 Kž.

CASE STUDY 3

INTRODUCTION

THIS CASE STUDY LOOKS AT CORRUPT ACTIVITIES OF MAYOR OF THE BROD MUNICIPALITY, A PROMINENT OFFICIAL OF THE SOCIALIST PARTY, WHICH AT THE TIME WAS PART OF THE RULING COALITION IN THE REPUBLIC OF SRPSKA. THE CASE PRESENTED HEREIN HAS SPARKED A LOT OF MEDIA ATTENTION BECAUSE THE ACCUSED, AND LATER CONVICTED, MAYOR WAS AN INFLUENTIAL PARTY OFFICIAL AND PRESIDENT OF THE SOCIALIST PARTY MUNICIPAL COMMITTEE IN BROD. THE OFFENCES IN QUESTION INCLUDE BRIBERY AND TRADING IN INFLUENCE. A NUMBER OF COMPLEX INVESTIGATIVE MEASURES WERE EMPLOYED AS PART OF THE INVESTIGATION. DUE REGARD IN THIS CASE STUDY IS GIVEN TO THE QUESTION OF JUDICIAL REVIEW AND EVALUATION IN PASSING THE PARTICULAR SENTENCE. THE CASE WAS CONCLUDED BY FINAL JUDGEMENT OF THE SUPREME COURT OF RS, WHICH FULLY UPHELD THE JUDGEMENT OF THE DISTRICT COURT IN BANJA LUKA AND REJECTED ALL APPELLATE CLAIMS, WHICH SUGGESTS THAT THE INVESTIGATION PROCEDURE WAS THOROUGH.

Criminal proceedings against M.Č., Mayor of the Brod Municipality, captured much public attention in BiH, because at the time of his arrest he was a prominent member of one of the ruling parties in the Republic of Srpska. The indictment was brought by the Special Prosecution Office of the Republic of Srpska, following complex investigative measures. The trial took place before the Special Division of the District Court in Banja Luka in charge of organised crime and most serious forms of economic crime.

The District Court sentenced the accused to three years in prison (main penalty) and a fine of KM 15,000

(supplementary penalty) for accepting money in the period from August 2010 to 14 September 2012 (in the total amount of KM 126,000) in order to approve, in the course of his official duties, the discharge of the Brod Municipality’s liabilities to the legal entity “2” Ltd from Derventa for completed construction works for a sports and recreation centre in Brod. The contractor had won the tender on the basis of the most favourable bid. According to witnesses, from the very beginning the accused M.Č. had repeatedly approached the contractor requesting an award payment to the tune of KM 100,000. Since the contract price of work was minimal and not sufficient for the payment of award, annexes were subsequently made to the main contract in the value sufficient to compensate the contractor for the amount of the award.⁷²

By doing so, the accused committed actions meeting the statutory definition of the criminal offence of bribery,⁷³ carrying a prison sentence of one to five years. Upon completing the individualisation of punishment, the court imposed the aforementioned sentence and a fine. It is evident that the court correctly recognised that the criminal offences were motivated by greed and self-interest, since in such cases a fine can be imposed as a supplementary penalty even when it is not provided for under the law.

⁷² Judgement no. 11 0 K 010199 12 K of the District Court in Banja Luka, Special Division for Organised Crime and Most Serious Forms of Economic Crime, dated 20 March 2013

⁷³ “An official or responsible person, who demands or accepts a gift or any other benefit or who accepts the promise of a gift or a benefit in order that he performs, in the course of his official duties, an act, which ought to be performed by him, or not to perform an act, which ought not to be performed by him, shall be punished by imprisonment for a term between one and five years.” Article 351, paragraph 2 of the Criminal Code of the Republic of Srpska, http://www.tuzilastvobih.gov.ba/files/docs/zakoni/Krivicni_zakon_lat_RS_49_03.pdf

M.Č. performed the incriminatory activities in his capacity as a responsible official, over a longer period of time. Based on the witness testimonies and other evidence it was determined with absolute certainty that he demanded and received the money on a number of occasions, so that he would arrange for the Municipality to do what it was, in any case, required by law to do. More specifically, the Brod Municipality had outstanding debts to the contractor and the Mayor took advantage of this circumstance to make the debt payment conditional upon receiving a bribe. The contractor had won the tender on the basis of the most favourable bid, and, according to witnesses, from the very beginning the accused M.Č. repeatedly approached the contractor requesting an award payment to the tune of 5% of the contracted work, or KM 100,000. Since the contract price of work was minimal and not sufficient for the payment of award, annexes were subsequently made to the main contract in the value sufficient to compensate the contractor for the amount of the award. Economic life in the municipality thus depended on the corruptive activities of a local official, whose illegal behaviour brought about adverse effects on economic activity and business climate in the community.

Furthermore, on 13 September 2012 the accused received an award to the tune of KM 10,000 in order to arrange for the public company "Gradska Toplana" [*District Heating Company*], owned by the municipal-

⁷⁴ "Whoever accepts a reward or any other benefit in return for mediating that an official duty is or is not performed by using his office or social status shall be punished by imprisonment for a term not exceeding three years." Article 353, paragraph 1 of the Criminal Code of the Republic of Srpska, http://www.tuzilastvobih.gov.ba/files/docs/zakoni/Krivicni_zakon_lat_RS_49_03.pdf

⁷⁵ Ban applies to the performance of duties of a responsible person in administrative authorities, public enterprises and public companies which are entrusted, by virtue of the law or another legal regulation, with managing assets...

ity of Brod, to approve payment of a part of debt to the legal entity "L." Ltd from Banja Luka, in the amount of KM 250,000. The illegal actions of the accused were correctly qualified as constituting the criminal offence of trading in influence⁷⁴ because, by receiving the award and taking advantage of his official position, the accused acted as a middleman expediting the completion of an official act. For this offence the District Court sentenced M.Č. to a year's imprisonment (major penalty) and a fine (supplementary penalty) of KM 9,000. In committing this criminal offence, the accused took advantage of his official position, trading in his importance and reputation, in order to ultimately obtain a personal benefit. Contrary to his statutory authority, the public official violated legal certainty and order (debt payment) establishing political voluntarism, trading in influence and corruption as a model of behaviour in his community. It is reasonable to assume that this also produced negative consequences to other businesses as well as the community in general, as the state of unlawfulness and legal uncertainty was created from the highest decision-making position.

Total sentence for both offences is three years and eight months' imprisonment and KM 24,000 in fines. Also, the court imposed a security measure banning the performance of occupation, activity or duty for a period of five years,⁷⁵ and ordered forfeiture of financial gain in the total cash amount of KM 122,500. All fines and measures imposed were upheld by final judgement of the Supreme Court of the Republic of Srpska, which fully agreed with the viewpoints of the District Court, both factually and legally. It is also important that, in imposing a security measure banning the performance of occupation, activity or duty, the court justified the employment of this measure by citing the corrupt character of the offences perpetrated,⁷⁶ because they cause reasonable concern as to the convicted person and his future behaviour. It remains unclear why the court failed to explain in more detail the reasons why it

decided to impose the ban for the period of five years.

It is noticeable that in this particular case the courts did not get into a detailed elaboration of their legal viewpoints with respect to the selection and weighing of criminal sanctions imposed. The courts identified both aggravating circumstances (the strength of the legally protected value⁷⁷, the degree of criminal responsibility, the motives for the offence, the large amount of material gain obtained, perseverance shown, etc.) and extenuating circumstances (the fact that the convicted person has a family, that he has demonstrated good behaviour throughout the trial), and based on these meted out the final punishment. Obviously, there are more aggravating than extenuating circumstances identified. Despite this, the overall sentence imposed may be qualified as medium heavy. However, in order to dispel any doubts as to its professionalism and impartiality, the court would be advised to carefully analyse the circumstances material to the weighing of the sentence and present its analysis in the elaboration of the judgement. The criteria applied by the court as well as the mutual correlation of all the circumstances, their value and overall evaluation should be an integral part of the elaboration. Otherwise, mere enumeration of circumstances will only raise concerns and, possibly, doubts. Furthermore, detailed evaluation of each individual item is desirable because of the increased interest of the public in the penalties imposed, especially in cases involving prominent political officials. This case has attracted great interest from the public in BiH because it was generally thought to be the product of political confrontation within the ruling coalition, in which the junior partner in the government ended up with the rough end of the stick. This speaks to the fact that the public is unaccustomed to seeing senior officials prosecuted and has little trust in independence of judicial institutions, as well as that it sees fight against political corruption as being possible only if there is political will. The political will in turn is not seen as a firm and

unwaveringly just decision, but rather as an expression of diverse interests and current political disagreements between political partners, which is obvious from the timing of prosecution of public officials – often when they are no longer part of the ruling political elite. The small number of pursued cases of political corruption is consistent with the assumption that the prosecution of high-ranking public officials is merely the result of the above-described political processes.

⁷⁶ "In view of the fact that the accused committed the criminal offence of accepting bribes for personal gain in his capacity as Mayor of the Brod Municipality, as well as the fact that this offence falls into the category of corruption offences, this court is of the opinion that there is a risk that the continued performance of the duties of a responsible person in administrative authorities, public enterprises or public companies which, by virtue of the law or other regulations, are entrusted with management of assets, could encourage the accused to commit a new criminal offence by taking advantage of his occupation, activity or duty with respect to the property entrusted to him..." Excerpt from the judgment of the District Court in Banja Luka, no. 11 0 K 010199 12 K, dated 20 March 2013.

⁷⁷ "The strength of the protected value" is taken to mean the social importance of the value being protected as well as its ranking in the legal system. In this particular case damage was caused to the reputation of a governmental authority and the principle of legality in performing regular duties. In view of the fact that legality is the basic underlying principle of the work of the executive authorities, it is clear why the court put so much weight on this aggravating circumstance.

CASE STUDY 4

INTRODUCTION

IN THE CASE PRESENTED HEREIN THE PROSECUTOR'S OFFICE OF BIH AND THE ACCUSED NEGOTIATED A PLEA AGREEMENT. THIS IS NOT A RARE PRACTICE IN BIH AS IT MAKES THE CRIMINAL PROCEDURE MORE EFFICIENT AND REDUCES THE COSTS OF THE PROCEEDINGS. HOWEVER, REGARDLESS OF THE ADMISSION OF GUILT, PENALTY IS IMPOSED ON THE ACCUSED AS THIS HELPS ACHIEVE THE SPECIAL AND GENERAL PREVENTION PURPOSE. THE LEGAL INSTITUTION OF PLEA AGREEMENT IS CONDITIONAL UPON CERTAIN REQUIREMENTS.⁷⁸ FIRST AND FOREMOST, IT IS ESSENTIAL TO ENSURE THAT THE ACCUSED IS ENTERING INTO THE AGREEMENT OF GUILT VOLUNTARILY, CONSCIOUSLY AND WITH UNDERSTANDING. WHILE EXAMINING THE AGREEMENT, IT IS PARTICULARLY SIGNIFICANT THAT THE COURT, DESPITE THE ADMISSION OF GUILT, ALSO DETERMINES WHETHER THERE IS SUFFICIENT EVIDENCE PROVING THE GUILT OF THE ACCUSED. THE CASE REVIEWED HEREIN CONCERNS THE ABUSE OF OFFICE OR OFFICIAL AUTHORITY ON THE PART OF AN EMPLOYEE OF THE BIH BORDER POLICE.

The Court of BiH found M.D. guilty, imposing on him a suspended sentence in the form of imprisonment for a period of five months and fifteen days. On 21 April 2010, in his capacity as an officer of the BiH Border Police, the accused failed to perform customs inspection by not asking for travel documents. The vehicle that he let through, which was driven by P.P., was visibly loaded with agricultural products that are subject to customs inspection. Furthermore, this happened at the border crossing where transport of goods intended for commercial use is not allowed. By failing to perform his official duties, the accused, in his capacity as a member of the Border Police, facilitated the entry of uncleared

goods, and at the border crossing which is not intended for transport of commercial goods. In doing so, he helped P.P. acquire material gain, thus entirely meeting the statutory definition of the criminal offence of Abuse of Office or Official Authority.

The Court passed a suspended sentence in the form of reduced sentence below the statutory minimum, taking into account mitigating factors such as: confession of culpability for the criminal offence committed, remorse, lack of prior convictions, difficult social circumstances and the fact that the accused is a family man. Based on the verdict's reasoning⁷⁹, these circumstances seem to be justified, especially considering the fact that the accused pleaded guilty, showing a willingness to cooperate with the Court and the Prosecutor's Office with the aim of determining appropriate penalty. It is important to note that the court does not accept plea agreement automatically, but in every case checks a number of requirements to determine whether a particular agreement is allowed (e.g. whether the accused understands that by entering into an agreement on the admission of guilt he waives his right to trial and that he may not file an appeal against the pronounced criminal sanction), as well whether there is sufficient evidence proving the guilt of the accused. These checks provided for by the law are in the interest of protecting the accused and his

rights, and they also preclude the potential tendency of the Prosecutor's Office to frequently enter into such agreements with a view to achieving greater efficiency and reducing the amount of work.

In the procedure against M.D. the Court established the guilt on the basis of other evidence too, such as photo-documentation of the border crossing, the minutes of the hearing of witnesses, the minutes of the interrogation of the suspect, etc.⁸⁰ This evidence allowed the court to obtain irrefutable belief in the existence of guilt on the part of the accused, bearing in mind that the defence raised no objections to the evidence.

The plea agreement concluded in this case was clearly justified because the Court examined all the circumstances concerning the voluntariness of the agreement as well as the existence of guilt on the part of the accused. This helped successfully prosecute a case of criminal offence of corruption, at minimum cost. Statutory provisions allowing the court to examine the agreement and the existence of guilt do not allow for an automatic application of the agreement. Finally, it is important to ensure that the concluding of such agreements and attaching too much value to the act of admission of guilt, which greatly facilitates the work of investigating authorities, should not defeat the very purpose of punishment.

⁷⁸ Criminal Procedure Code of BiH, Article 231. (Official Gazette of BiH, nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13), available on: http://www.sudbih.gov.ba/files/docs/presude/2010/2357_Demic_Miralem_Prvoštena_presuda_19_11_2010.pdf (the link leads to a consolidated, unofficial version of the text)

⁷⁹ http://www.sudbih.gov.ba/files/docs/presude/2010/2357_Demic_Miralem_Prvoštena_presuda_19_11_2010.pdf

⁸⁰ http://www.sudbih.gov.ba/files/docs/presude/2010/2357_Demic_Miralem_Prvoštena_presuda_19_11_2010.pdf (p. 3 of the verdict's reasoning)



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