



## ASSESSING NEEDS OF JUDICIAL RESPONSE TO CORRUPTION THROUGH MONITORING OF CRIMINAL CASES (ARC)

# TRIAL MONITORING OF CORRUPTION CASES IN BIH: SECOND ASSESSMENT





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SECOND ASSESSMENT

APRIL 2019





## Executive Summary

This is the second public report by the OSCE Mission to Bosnia and Herzegovina (“the Mission”) based on the monitoring of corruption cases. Comprising eight chapters, it draws on and continues the work presented in the first ARC report issued in February 2018 (“2018 ARC Report”).

Chapter I follows up on the 15 recommendations proposed in the first report (“2018 recommendations”) aimed at improving the judicial response to corruption in several problematic areas, including at the legislative and institutional levels. The recommendations were addressed to the judiciary and the High Judicial and Prosecutorial Council (HJPC) in particular, as well as to the executive and legislative structures. In this regard, the Mission notes that the report’s findings – including those of a critical nature – were generally accepted by the judicial community and that the vast majority of the report’s recommendations were endorsed, at least formally, by domestic authorities. However, the status of implementation of these 2018 recommendations cannot be considered, thus far, as satisfactory. In fact, in six out of 15 recommendations, the Mission could detect no progress at all. The executive and legislative branches in particular have not demonstrated political willingness to improve the effectiveness of the judicial response to corruption. Just to cite one example, no progress or even a suggestion of a commitment could be detected in relation to the issue of harmonization of the relevant material and procedural criminal legislation across all levels of authority in BiH. Albeit disappointing, this is hardly surprising. Many consider BiH, together with other Western Balkans states, to be characterized by state capture, namely with systematic political corruption. On the other hand, the Mission notes some initial steps taken with regard to seven of the 2018 recommendations (mostly addressing medium and

long-term targets) which can accordingly be characterized as “in progress”. Finally, with regard to two recommendations requiring implementation in the short term, measures have since been taken by authorities which have led to the partial implementation of these two recommendations.

The Mission’s trial monitoring findings, based on the quantitative and qualitative analyses of corruption cases monitored in 2017 and 2018, are presented in Chapters II to VII. Specifically, the sample of monitored cases (presented in Chapter III) includes 189 cases which were ongoing as of 31 December 2018 and 111 cases which were finalized with a final and binding verdict, or which were finalized for procedural reasons in 2017 and 2018. Based on a methodology specifically developed for this Project (presented in Chapter II), these cases were analyzed under four dimensions identified as crucial for assessing the effectiveness and quality of the judicial response to corruption: productivity, capacity, fairness and efficiency. The primary findings related to each of these dimensions can be summarized as follows:

The Mission’s findings with regard to productivity (see Chapter IV) present a rather confounding picture. The analysis indicates that the specialized prosecutorial bodies for serious corruption were not the initiator of the majority of such cases in 2017 and 2018. Specifically, the majority of the most serious corruption cases – those categorized as high and medium level according to the criteria developed under the project – were not initiated by the Prosecutor’s Office of BiH (PO BiH) or by the Special Department within the Republika Srpska (RS) Prosecutor’s Office (RS PO), bodies with a defined jurisdiction focusing on corruption, organized crime or other serious crimes. The data presented here show instead that together, Cantonal Prosecutor’s Offices in Sarajevo and Tuzla (which have general criminal jurisdiction) have initiated more high and medium level corruption cases in 2017 and 2018 than the other two offices combined. In an attempt to identify the causes for the unsatisfactory performance of the RS PO’s Special Department and PO BiH, the Mission has identified two issues: (i) the decline in the exercise by the Court of BiH (C BiH) and PO BiH of their so-called “extended jurisdiction” over offences under the RS, Federation of BiH (FBiH), and Brčko District BiH (BD) criminal codes, when such offences cause damage or threat to the country as a whole; and (ii) the focus on petty corruption cases by the RS PO. Due to their centrality in the prosecution of corruption, the lackluster results of these two institutions reflect poorly on the overall level of commitment of the judiciary in addressing this problem. This analysis of productivity also represents a cautionary tale with regard to the allegedly forthcoming but thus far incomplete establishment of the Special Department within the Supreme Court of the FBiH and of the Special Department within the FBiH Prosecutor’s Office.

With regard to prosecutorial and judicial **capacity** (see Chapter V), the Mission’s analysis substantially confirms the critical picture presented in the first ARC report. Namely, effectiveness and quality of the judicial response to corruption continues to be severely hampered by the inadequate capacity of: (a) prosecutors in the drafting of indictments and in the gathering of evidence supporting the charges; and (b) judges in reasoning their decisions and in applying the law in a consistent and predictable manner. The combined effect of these two problems severely affects the principle of equality before the law as, in some cases, it leaves room for doubt as to whether provisions are interpreted differently, not on account of the specificities of the alleged facts, but due to the status and connections of the defendant.

In relation to the **fairness** of the proceedings (see Chapter VI), it should be noted that this topic, unlike the previous two, was not addressed in the 2018 ARC Report. A first assessment, however, seems to indicate that courts are generally conscious about the importance of adhering to fair trial standards and take them into due consideration when adjudicating corruption cases. That said, the Mission did identify problematic practices relating to two fair trial issues: (1) the inconsistent application by judges of procedural guarantees to ensure the impartiality of the court in a given case; and (2) the inadequate judicial interpretation of the rules regulating the admissibility and legality of evidence.

As with the previous dimension, the fourth dimension – **efficiency** of proceedings – (see Chapter VII) is addressed here for the first time since the start of the project. The Mission's findings on the length of proceedings in cases monitored during the reporting period give rise to concerns. It noted serious delays in the processing of high and medium level cases occurring at the trial stage. These depend, to a large extent, on two factors: changes in the composition of the panel requiring a restart of the trial, and poor management of the trial by the presiding judge, especially with regard to the inadequate use of available measures to ensure the presence of parties at the trial. The Mission's trial monitoring findings point to a concrete risk that extreme delays in the conduct of proceedings may result in a violation of the right to trial within a reasonable time, or in a lack of accountability when charges are dismissed due to the passing of the statute of limitations.

Chapter VIII presents 24 recommendations developed in light of the above findings, aimed at improving the judicial response to corruption. This list merges 9 new recommendations with the 15 recommendations made in 2018, including the Mission's assessment of their implementation status.

To sum up, the Mission concludes that the judicial response to corruption in BiH is still insufficient, particularly with regard to the processing of medium and high-level cases, suggesting a reality of *de facto* impunity for these crimes. In particular, the performance of the justice system in relation to three of the four above-mentioned dimensions (**productivity, capacity and efficiency**) is affected by serious problems which require sustained corrective efforts and sincere political commitment. In particular, the political and judicial leaderships should recognize that corruption is endemic in BiH and that the fight against this social plague will require the implementation of a coherent and comprehensive strategy as well as their uncompromised attention for many years to come. The activities of some prosecutors' offices in FBiH in recent years gives reason for optimism that the justice system is capable of addressing corruption seriously, but, as trials are ongoing, it is too early to say whether this trend will lead to broader and more sustainable results.

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## Introduction

This is the second public report by the OSCE Mission to BiH based on the monitoring of corruption cases in BiH. This report has been produced as part of the Mission's Project on *Assessing Needs of Judicial Response to Corruption through Monitoring of Criminal Cases* launched in October 2016 with the support of the US Department of State's Bureau of International Narcotics and Law Enforcement Affairs. The main objective of the Project is to identify and analyze problems in the quality and effectiveness of judicial response to corruption at the legislative, institutional and individual capacity level, as well as to propose adequate and feasible measures to address these problems.

This report, comprising eight chapters, draws on and continues the work presented in the first ARC Report issued in February 2018.

Chapter I follows up on the 15 recommendations proposed in the first report, which suggested measures at the legislative and institutional levels for improving judicial response to corruption.

Chapters II to VII set forth the Mission's trial monitoring findings based on the quantitative and qualitative analyses of corruption cases monitored in 2017 and 2018. Specifically, the sample includes a total of 300 cases – 189 cases which were ongoing as of 31 December 2018 and 111 cases which were finalized in 2017 and 2018. These cases were categorized according to their seriousness as high, medium or low level on the basis of criteria developed by the Mission pursuant to the project. In selecting cases for monitoring, the Mission has undertaken and, so far, succeeded in following all high and medium level corruption cases initiated in BiH since January 2017.

Based on a project-specific methodology, these cases were analyzed under four critical dimensions of the effectiveness and quality of the judicial response to corruption:

- I) **productivity**, mainly in terms of number of cases initiated and completed every year according to their level of seriousness;
- II) **capacity** of prosecutors and judges in the application of the law, with specific regard to whether criminal laws are enforced in a uniform and predictable way, thereby ensuring accountability and legal certainty for individuals;
- III) **fairness** of the process in terms of adherence to fair trial standards, including the independence and impartiality of the judiciary;
- IV) **efficiency**, mainly in terms of length of the proceedings and promptness of judicial and prosecutorial action.

Accordingly, Chapter II clarifies the scope of the assessment from a methodological point of view; Chapter III provides an overview of the cases monitored by the Mission in 2017 and 2018; Chapter IV assesses the productivity of courts and prosecutor's offices in BiH; Chapter V addresses the issue of capacity of judges and prosecutors in the application of relevant laws; Chapter VI provides an assessment of procedural fairness in terms of adherence to fair trial standards; and Chapter VII addresses the issue of efficiency, with specific regard to length of proceedings.

Chapter VIII presents 24 recommendations developed in light of the above findings, aimed at improving the judicial response to corruption. This list merges 9 new recommendations with the 15 recommendations made in 2018, including the Mission's assessment of their implementation status.

In adherence to the principle of non-interference with the course of justice, which guides all OSCE trial monitoring programs, this report mentions the names of cases only when they have been finalized by a binding verdict. When commenting on ongoing cases, this report excludes case details (names, court location, or other information) which could lead to identification of the case. With this policy, the Mission intends to avoid prejudicing the outcome of any ongoing criminal case.

# 1

## FOLLOW-UP ON RECOMMENDATIONS FROM THE 2018 ARC REPORT AND RELATED DEVELOPMENTS

Based on its trial monitoring findings, the 2018 ARC Report proposed 15 recommendations aimed at improving judicial response to corruption in several areas identified as problematic. As such the recommendations were addressed to the judiciary – particularly the High Judicial and Prosecutorial Council (HJPC) – as well as to the executive and legislative structures. This chapter follows up on the recommendations to illustrate how they were received by the relevant institutions and their stage of implementation.

Before addressing each recommendation separately, the Mission notes that the 2018 ARC Report’s findings, including those of a critical nature, were generally accepted by the judicial community in BiH, as demonstrated by the discussions held with judges and prosecutors in peer-to-peer events organized by the Mission following the 2018 ARC Report launch. The vast majority of the report’s recommendations were endorsed by the domestic authorities in the form of several conclusions at a roundtable organized by the European Commission (EC) in June 2018. The topic of this event was “Enhancing the fight against corruption and organized crime, including money laundering, and encompassing the entire rule of law chain” and the conclusions adopted by the EC represented a joint effort of the Commission, representatives of domestic institutions, the US Agency for International Development (USAID) and the Mission. In September 2018, the HJPC endorsed the roundtable conclusions addressed to it by embedding them in a specific Action Plan on the Fight against Corruption and Organized Crime, including Money Laundering.<sup>1</sup>

The executive and legislative branches, in contrast, have not demonstrated equal political willingness to improve the effectiveness of the judicial response to corruption. Albeit disappointing, this is hardly surprising. Many consider BiH, together with other Western Balkans states, to be characterized by a situation of state capture, namely of systematic political corruption.<sup>2</sup>

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1 On file with the Mission.

2 See European Commission, *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, Strasbourg, 2018, p. 4.

The first section below assesses the status of the recommendations addressed to the political authorities, while the second deals with those addressed to the judiciary, including the HJPC. The text of each recommendation with its status of implementation is included in the final chapter of this report.

### 1.1 Follow-up on recommendations to the executive and legislative authorities

In its 2018 ARC Report, the Mission addressed **three recommendations** to political authorities. Since the issuance of this report, the Mission has observed no progress or even a suggestion of a commitment by these authorities towards implementing the first recommendation, pertaining to the harmonization of the relevant material and procedural criminal legislation across all levels of authority in BiH.<sup>3</sup> There is also currently no plan or initiative by the Ministries of Justice at the state, entity (RS and FBiH), or BD levels to re-establish a standing body of experts with the mandate of preparing harmonized amendments to criminal laws at all levels of authority in BiH, as suggested by the Mission in order to streamline the harmonization process (per the **third** 2018 recommendation).<sup>4</sup>

On the other hand, the **second** 2018 recommendation,<sup>5</sup> urging the adoption of harmonized amendments to the four criminal procedural codes (CPCs) in accordance with the requirements set under the Decision of the Constitutional Court of BiH of June 2017, has been partially implemented; in fact, the BiH legislature adopted amendments to the BiH CPC in September 2018 in order to replace the provisions which had been declared unconstitutional by the Constitutional Court of BiH. The adoption of these amendments at the state level was an urgent matter, as the standing practice of provisionally applying unconstitutional provisions – with a view of avoiding a legal vacuum – presented a serious potential threat to the rule of law.

However, the new provisions of the September 2018 amendments present novel challenges. Their implementation should thus be carefully monitored to assess their impact on the prosecution and adjudication of serious and complex crimes at the state level. Given the importance of this matter, the Mission provides a short analysis of the new provisions and of the potential future challenges in their concrete application.

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3 Namely: “the material and procedural criminal legislation relevant for the processing of corruption cases should be harmonized across all jurisdictions in BiH. Political authorities at the state and entity level should commit themselves to harmonizing the legal framework as part of their efforts to fight corruption”.

4 Namely: “with a view to streamlining the harmonization process in the medium term, the Ministry of Justice of BiH, together with the MoJs at the entity level, should consider re-establishing a standing body of experts (following the CCIAT precedent) with the mandate of preparing harmonized amendments to criminal laws at all levels of authority in BiH”.

5 Namely: “in this regard, the priority in the short term should be to adopt harmonized amendments to the four criminal procedural codes in accordance with the requirements set under the Decision of the Constitutional Court of BiH of June 2017. The amendments should strike a fair balance between the rights of individuals recognized under international human rights instruments and the need to ensure the effective prosecution of corruption and other serious crimes”.

### *Analysis of the 2018 CPC amendments*

As a reminder, the provisions declared as unconstitutional concerned: the procedure for granting witness immunity;<sup>6</sup> the range and type of offences for which special investigative measures can be used during the investigation;<sup>7</sup> the permissible length of these measures;<sup>8</sup> the timeframe for completion of the investigation;<sup>9</sup> and the timeframe for the filing of an indictment to the preliminary hearing judge.<sup>10</sup> In its Decision of June 2017, the Constitutional Court ordered the authorities to harmonize the provisions in question with the Constitution within six months of the date of communication of the Decision– a deadline missed by the authorities.<sup>11</sup>

The new provisions regarding the granting of witness immunity and the range and type of offences for which special investigative measures can be used, seem to adequately address the concerns of the Constitutional Court.<sup>12</sup> These provisions clearly regulate and stipulate the conditions for granting witness immunity and narrow down the range of crimes for which the measures can be applied.

However, the amendments concerning the timeframe for completion of the investigation are problematic due to the various procedural lacunae as well as their possible negative impact on the capability of the justice system to adequately investigate serious and complex crimes. Under these new provisions,<sup>13</sup> if an investigation is not completed within six months, the prosecutor in charge must inform the Chief Prosecutor about the reasons why the investigation was not completed. Upon being informed, the Chief Prosecutor shall set a new deadline for

6 Constitutional Court of Bosnia and Herzegovina, Decision of 1 June 2017, Case no. U 5/16, paras. 40-42, available at <http://www.europeanrights.eu/public/sentenze/Bosnia-1giugno2017.pdf>

7 Ibidem, paras. 50-51.

8 Ibidem, paras. 59-60.

9 Ibidem, paras. 77-79.

10 Ibidem, paras. 82-83.

11 Ibidem, p. 2.

12 Arts. 84 and 117 CPC BiH.

13 Art. 225 CPC BiH: (1) The prosecutor shall order a completion of investigation after he finds that the status is sufficiently clarified to allow the bringing of charges. Completion of the investigation shall be noted in the file. (2) If the investigation has not been completed within six (6) months after the order on its conducting has been issued, the prosecutor shall inform the Chief Prosecutor of reasons for not having completed the investigation. The Chief Prosecutor shall within 30 days set a new deadline for the completion of investigation which shall not exceed six months, and/or which shall not exceed one year for the criminal offenses for which a punishment of ten or more years of imprisonment is prescribed, and order taking necessary measures for the completion of investigation. (3) If it was not possible to complete the investigation within the deadline referred to in Paragraph (2) of this Article, the prosecutor shall within eight days inform the Chief Prosecutor, the suspect and injured party of reasons for not completing the investigation. (4) The suspect and injured party may submit a complaint regarding the length of procedure to the Chief Prosecutor within 15 days of receiving the information referred to in Paragraph (3) of this Article. If the Chief Prosecutor finds that the complaint is founded, he/she shall within 30 days set a new deadline within which the investigation has to be completed, which shall not exceed six months and/or which shall not exceed one year for the criminal offences for which a punishment of ten or more years of imprisonment is prescribed, and order taking necessary measures for the completion of investigation, of which he/she shall inform the complainant within 15 days. (5) If the investigation is not completed within the deadline referred to in Paragraph (4) of this Article, and the procedural requirements have been met, the investigation shall be deemed to have ceased, of which the prosecutor shall issue an order and inform within 15 days the Chief Prosecutor, the suspect and injured party. (6) The indictment shall not be issued if the suspect was not questioned.

the completion of the investigation within thirty days, which cannot exceed six months, or one year for the most serious offences (those punishable by 10 years' imprisonment or more). If the investigation is not completed within this timeframe, the prosecutor is obliged to inform not only the Chief Prosecutor, but also the suspect and the injured party, who can submit a complaint to the Chief Prosecutor regarding the excessive length of the procedure. If the Chief Prosecutor finds the complaint is founded, she sets an additional and final deadline of six months (or one year for offences punishable with 10 years of imprisonment or more) after which, if not completed yet (and if other unspecified procedural requirements are met), the investigation will be automatically closed. The problem with these provisions lies first in the unnecessarily cumbersome mechanism of control over the length of the investigative procedure that they establish. This mechanism is characterized by a significant increase in cumbersome administrative procedures, which drain resources and take time from actual investigative work.

A second problem lies in their lack of clarity due to gaps in the process. The provisions foresee the mandatory termination of an investigation after 18 months (or 30 months for more serious crimes) upon the expiry of the final deadline given by the Chief Prosecutor after accepting a complaint filed by the suspect (or the injured party); on the other hand, they are silent as to the consequences of the expiry of the first deadline extension granted by the Chief Prosecutor in case no complaint is filed by one of the parties or if the Chief Prosecutor does not find a complaint is founded. Since the expiry of the final deadline (conditional to the granting of the complaint) was included in the amended provisions as a grounds for closing an investigation – though the expiry of the original deadline has not been similarly included in the amended provisions as a grounds of closing an investigation<sup>14</sup> – a plain reading of the legislation indicates that the expiry of the originally-set deadline is not currently a legally justified reason for terminating an investigation. As a result, the above-mentioned scenario remains unregulated, and would be subject to varying interpretations in practice. Aside from this concerning legislative gap, the temporal limits set under these provisions appear very stringent in relation to the investigation of serious and complex crimes under state-level jurisdiction, such as terrorism, war crimes and high-level corruption and economic crimes.

Remarkably, the Constitutional Court Decision of June 2017 did not request the legislature to set a final deadline for the completion of an investigation; it instead asked for amendments which would guarantee the rights of the suspects and of the injured parties to see the conclusion of an investigation, notably by allowing them to submit a complaint against undue delays in the investigation. It is true that, in order to mitigate the possibility of impunity caused by the closing of an investigation due to a lapse of time, the amendments foresee the possibility of reopening it if new facts or new circumstances emerge.<sup>15</sup> Nonetheless, the arising of new facts or circumstances is a very high standard for reopening an investigation.<sup>16</sup>

14 See art. 224(1)(e) CPC BiH, which makes reference to circumstances for cessation of investigation referred to in article 225(5); this provision, in turn, refers to the final deadline foreseen in paragraph 4, but not to the previous deadline which is foreseen in paragraph 2.

15 See art. 224(3) CPC BiH.

16 The Italian Criminal Procedure, for example, allows for the reopening of an investigation upon the authorization of a judge and request by the prosecutor motivated "by the need for further investigation" and nothing more (see art. 414 of the Italian CPC).



To conclude, the new provisions regulating the length of investigations are concerning as they would, in practice, substantially shorten the amount of time available for the investigation of complex, serious crimes. This could result in these crimes going unpunished or in investigations being rushed to comply with the deadlines, with foreseeable negative impacts on their quality. The latter would further negatively impact the efficiency and effectiveness of any related trial proceedings.

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› For these reasons, it is recommended that the implementation of these provisions is closely monitored by the HJPC and by the PO BiH with a view to assess: ambiguities and inconsistencies in their interpretation; the number of investigations closed due to expiry of terms; and the overall effects of the enforcement of the deadlines on the quality and comprehensiveness of investigations. Based on the results of this monitoring, authorities should consider whether the provisions in question need to be amended again.

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In addition to the problems related to the quality of the amendments passed at the state level, the Mission observed no attempt whatsoever by the entity and BD legislatures to harmonize their own criminal procedure codes with that at the BiH level. While the RS legislature in June 2018 passed amendments to its CPC aimed at addressing some of the issues raised by the Constitutional Court, specifically with regard to the range of offences for which special investigative measures can be ordered and their permissible length,<sup>17</sup> these changes differ from those passed at the state level. Moreover, they do not touch upon the length of investigations. The FBiH authorities, on the other hand, did not pass any amendment aimed at addressing possible issues of the unconstitutionality of the corresponding FBiH CPC provisions.

As a result of these issues, the Mission concludes that the 2018 ARC Report recommendation pertaining to harmonization of all CPCs in line with the June 2017 Constitutional Court Decision has been implemented only in part, and in a manner which will require close scrutiny and possible revision in the short to medium-term.

## 1.2 Follow-up on recommendations addressed to the HJPC and the judiciary in general

The **fourth** 2018 ARC Report recommendation<sup>18</sup> was addressed to the HJPC and called for the HJPC to consider adopting criteria which adequately differentiate between high and low level corruption cases when it comes to the calculation of the “orientation quota”, namely the number of cases that should be processed by each individual judge or prosecutor on an annual basis. This recommendation was proposed with the aim of stimulating the prioritization

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<sup>17</sup> See art. 235 CPC RS.

<sup>18</sup> Namely: “with a view to stimulating the processing of high level corruption cases, the HJPC should consider the adoption of criteria which adequately differentiate between high and low level corruption cases when it comes to the calculation of the “orientation quota”, namely the number of cases that should be processed by each individual judge or prosecutor”.

of high-level corruption cases by authorities. As of the time of launch of this report, this recommendation had been endorsed and implemented only in part.

Namely, in November 2018, the HJPC adopted criteria for the identification of high-level corruption cases and organized crime cases.<sup>19</sup> This was done upon the specific request of the EC, and aimed to ensure adequate reporting by BiH on its progress in the fight against those crimes in the context of the EU integration process. Similar to the criteria adopted by the Mission for the categorization of corruption cases as high, medium or low level, the criteria adopted by the HJPC consider both the status of the accused (for instance his or her position as a senior state official or director of a public company) and the gravity of the offence (mainly in terms of economic damage to the state) in order to identify high level corruption cases.

### *The “orientation quota” for judges and prosecutors*

While this is certainly a positive step, as of the time of drafting, the HJPC was not planning to use this categorization, or other suitable “weighting criteria” to account for the complexity of a corruption case in the calculation of the “orientation quota” for judges and prosecutors. The fulfilment of the quota is one of the benchmarks against which the performance of judges and prosecutors is assessed; as such, giving appropriate credit for the processing of a high level (and generally more time-consuming) complex case by weighting it more heavily than a low level case could be properly used to incentivize the processing of high or medium level corruption cases.

In November 2018, the HJPC also adopted new criteria for the performance appraisal of judges and prosecutors.<sup>20</sup> The new criteria have introduced an important and positive new appraisal process, consisting of an analytical assessment of the quality of decisions or other acts issued by a judge or a prosecutor based on a sample of their work. This assessment will complement the other two criteria which were already featured in the previous performance evaluation system, namely the fulfilment of the above-mentioned “orientation quota” and the statistical assessment of the quality of acts issues by the judge/prosecutor.<sup>21</sup>

As noted above, however, this important reform did not amend the manner of calculating the quota with regard to corruption cases or other serious and complex crimes. By contrast, the above-mentioned HJPC Action Plan does foresee the amendment of the rules concerning the prosecutorial quota to award “extra points” for cases involving financial investigations.<sup>22</sup> While this is a step in the right direction, it is insufficient to ensure that the work of the judiciary is assessed in light of the seriousness and complexity of the cases they tackle, as opposed to simply the number of cases.

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19 On file with the Mission.

20 VSTV, Kriteriji za ocjenjivanje rada sudija u Bosni i Hercegovini, 27.11.2018, on file with the Mission; VSTV, Kriteriji za ocjenjivanje rada tužilaca u Bosni i Hercegovini, , 27.11.2018, on file with the Mission.

21 This last criterion essentially consists of the rate of verdicts revoked upon appeal for the judges and the rate of convictions for the prosecutor.

22 See point 8.1 of the Action Plan: “Amend the Book of Rules on Book of Rules on Performance Indicators for Prosecutors in Prosecutor’s Offices in BiH by prescribing separate values for cases involving financial investigations”; on file with the Mission.

At the time of this report's drafting, there were indications that the judiciary was taking steps to encourage the HJPC to address this issue. The Mission was pleased to see that two of the conclusions adopted in December 2018 during the annual HJPC conference on the status of the judiciary, comprising primarily judges and prosecutors, concerned the performance appraisal of judges and prosecutors.<sup>23</sup>

The first of these conclusions calls on the HJPC to revise the standards used for measuring the performance of prosecutors and judges working on corruption and organized crime in order to improve the quality of processing in these cases. The second asks the HJPC Standing Committee for the Efficiency of Prosecutor's Offices to issue "guidelines regarding the issuance of a mandatory instruction on priority processing of high-level corruption cases, guidelines for organizing on-call duty and appointing contact persons in prosecutor's offices, guidelines on the obligation to open financial investigations, as well as additional criteria for making agreements in high level corruption cases".<sup>24</sup> The Mission fully supports these recommendations and invites the HJPC to promptly implement them.

### *Harmonization of judicial practice*

The **fifth** 2018 ARC recommendation<sup>25</sup> invited the HJPC to ensure that relevant jurisprudence on corruption-related legislation is systematically gathered and disseminated to all relevant courts, including through the issuance of guidelines on the preparation of case-law summaries. This recommendation aimed to facilitate harmonized interpretation of corruption-related legislation by providing judges with widespread access to existing jurisprudence in corruption cases.

The Mission observes that the HJPC and appellate courts have taken important steps in the last two years towards systematizing and ensuring access to jurisprudence at all levels and across all jurisdictions. The most important innovation has arguably been the creation of "case-law departments" within the supreme courts of the RS and FBiH, as well as the BD Appellate Court. The function of these departments is to gather and systematize in accordance with specific criteria the legal standings (i.e. the jurisprudence) from decisions issued by the different panels; the main purpose is to decrease the likelihood that different panels of the same appellate level court would come to dissonant conclusions on legal issues in similar cases.

While this is certainly a positive step, these departments are still not fully functional and will need substantial support to become efficient and effective in their role. The main challenge seems to lie in the development and implementation of the procedures for the selection, drafting and systematization of the legal maxims. As pointed out by the Head of the Case-

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23 See recommendation no. 9 from Conference "Judiciary - Current Status and Perspective" - Conclusions Mostar, 5 and 6 December 2018, available at [https://www.pravosudje.ba/vstv/faces/docservlet.jsessionid...?p\\_id\\_doc=50112](https://www.pravosudje.ba/vstv/faces/docservlet.jsessionid...?p_id_doc=50112)

24 Ibidem, recommendation no. 11.

25 Namely: "with a view to harmonizing the interpretation of corruption-related legislation by facilitating the reference to existing jurisprudence in judicial decisions, the HJPC should ensure that relevant jurisprudence is systematically gathered and disseminated to all relevant courts. In this regard, specific guidelines should be developed to regulate and streamline the preparation and compilation of case law summaries or digests grasping the essence of the relevant point of law discussed in each decision".

Law Department of the Supreme Court of FBiH, currently there exists no case-law database that would enable research on appellate level court decisions in BiH, for example by filtering by specific legal issues or provisions, and existing research tools are not user-friendly or well structured. As a consequence, relevant jurisprudence is not easily accessible and legal research is very time-consuming.<sup>26</sup> Because of this, judges are effectively hampered in making reference to precedents of the highest court instances in BiH for consistent and well-reasoned decisions.<sup>27</sup> The need for further efforts in the collection and organization of relevant case-law in all fields of law including in corruption-related cases has been acknowledged by the HJPC in the above-mentioned Action Plan.<sup>28</sup>

In conclusion, the setting of proper mechanisms and tools ensuring adequate systematization and accessibility of relevant jurisprudence has been recognized as a key factor for achieving the goal of harmonizing judicial practice, and is ultimately necessary for safeguarding the principles of legal certainty and equality before the law. The realization of these tools and mechanisms will require sustained efforts in the short term. Ensuring that they are actually used to improve the quality of justice in BiH will require the strong commitment of each member of the judiciary in the long term.

The Mission recommends that the HJPC, in close co-ordination with the highest courts at the state, entity and BD levels, takes all necessary steps for the creation of a single, user-friendly and public database which would enable searches by topic of jurisprudence as well as the decisions of those courts.

### *Strengthening the capacity of judges and prosecutors*

The **sixth** recommendation<sup>29</sup> was addressed to the HJPC and to the executive authorities, suggesting that they strengthen the capacity of the prosecution and of law enforcement agencies with specific regard to the investigation of financial aspects of corruption. The recommendation proposed increasing access to forensic accountants and other financial experts during the investigation. The need to increase capacity relevant for financial investigations (including for the purpose of identifying assets for possible seizure and confiscation) has been widely acknowledged, but the implementation is still in its early stages. At the 3<sup>rd</sup> Subcommittee meeting on Justice, Freedom and Security (JFS),<sup>30</sup> the EC recommended that BiH authorities adopt measures to improve the quality of financial

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26 Email correspondence with the Head of the Case-Law Department of the Supreme Court of FBiH dated 9 January 2019.

27 Ibid.

28 See Action Plan, point 21.2: "in cooperation with courts, collect and publish all relevant judgments in the HJPC JDC's database of court decisions, including cases with elements of corruption", on file with the Mission.

29 Namely: "the HJPC and the executive authorities should augment the capacity of the prosecution and of law enforcement agencies with specific regard to the investigation of financial aspects of corruption. The prosecution, in particular, should have access to, and make use of, continuous assistance from forensic accountants and other financial experts during the investigation. The availability and quality of courts' financial experts should also be improved".

30 This body is established under the European Union – Bosnia and Herzegovina Stabilisation and Association Agreement (SAA)

investigations carried out by prosecutors.<sup>31</sup> As acknowledged in the HJPC Action Plan, in the medium term (i.e. for two years) the hiring of additional financial experts in the prosecutors' offices will be ensured through EU (IPA) funds.<sup>32</sup> The Mission underlines in this regard that it is fundamental to ensure that these efforts are sustainable in the long term. It is worth noting that one of the conclusions adopted at the previously mentioned annual HJPC conference in December 2018 asks for an increase in the number of qualified financial experts to support the prosecution in all cases of corruption, organized crime, money laundering and confiscation of assets.

Recommendations **seven**,<sup>33</sup> **nine**,<sup>34</sup> **ten**,<sup>35</sup> **twelve**<sup>36</sup> and **thirteen**<sup>37</sup> were aimed at addressing shortcomings in the capacity of individual judges and prosecutors. They call for more effective capacity building of judges and prosecutors, by way of trainings and developing training materials or official guidelines addressing the following skills or subjects: the quality of indictments in corruption cases, with particular regard to the identification of the elements of a crime; the gathering of evidence on key aspects of corruption cases, including establishing the financial aspects of the crimes and the criminal intent of the defendants; the review and confirmation of indictments by the preliminary hearing judge; and the quality of judges' reasoning in corruption cases.

The need to improve the quality of specialized trainings for judges and prosecutors in corruption and organized crime, with a focus on conducting financial investigations, was also the objective of one of the conclusions of the above-mentioned HJPC Annual Conference. The HJPC Action Plan foresees: a) to continue implementing specialized trainings on money laundering and financial investigations in co-operation with the Judicial and Prosecutorial Training Centers (JPTCs); b) to monitor and analyze the reasons for acquittals in corruption cases and propose measures for improvements; c) to ensure that trainings for judges address

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31 See EU Delegation BiH, Press Statement on the EU-BiH 3rd SAA Subcommittee on Justice, Freedom and Security, 29.11.18, available at <http://europa.ba/?p=60899>

32 See Action Plan, point 6.2: "Implement activities from the IPA 2017 Project (hiring financial advisors in prosecutor's offices for a 2 year period) and advocate expanding the systematisations and filling financial expert positions in the prosecutor's offices".

33 Namely: "The HJPC should develop specific guidelines and training materials on drafting indictments in corruption cases".

34 Namely: "prosecutors should improve the quality of indictments in corruption cases. The indictment should be structured so that it is clear to which element (factual or mental) a specific fact refers to. In this regard, prosecutors should consider changing the way of presenting factual description of charges in indictments with a view to enhance their clarity and comprehensibility. Chief prosecutors should exercise proper oversight on drafting and finalization of indictments in corruption cases".

35 Namely: "With a view to improve the evidence gathering process in corruption cases, specific guidelines should be developed with regard to establishing the financial aspects of the crimes, the criminal intent of the defendants, the existence of a common intent among different perpetrators and the use of factual circumstances to prove these elements".

36 Namely: "Judges at the preliminary phase of the proceedings should ensure that indictments which do not comply with the necessary legal requirements are not confirmed".

37 Namely: "Judges should strengthen the quality of their reasoning in corruption cases. In particular, the reasoning should clearly address each element of the crime separately and assess the evidence by linking it to the relevant element of the crime. Also, judges at both trial and appellate levels should refer to relevant jurisprudence with a view to improving coherence and certainty in the application of the law".

problems specific to the quality of reasoning in corruption cases and to the role of the preliminary hearing judge in the review of indictments.<sup>38</sup>

With specific regard to trainings, the programs of the FBiH and RS JPTCs for 2019 envisage three seminars on the investigation, prosecution and adjudication of corruption, economic crimes and organized crime, specifically for prosecutors working on those types of cases. Two seminars on the same topic will also be separately delivered to judges. The seminars are open to judges and prosecutors throughout the country and are organized in co-operation with the USAID Justice Program.<sup>39</sup>

With regard to the development of educational materials it is worth mentioning another USAID initiative, namely the February 2019 publication of a universal benchbook (i.e. a guide) on how to prosecute and adjudicate cases of corruption, organized crime, and economic crime.<sup>40</sup> This tool is aimed at assisting prosecutors and judges in reaching efficient and fair results in these serious cases and was drafted by a team comprised of three judges, three prosecutors, and an attorney.

#### *Raising and deciding upon conflicts of jurisdiction*

Recommendation **eight**<sup>41</sup> addressed the need to clarify (through judicial interpretation or legal amendments) the procedure for raising and deciding upon conflicts of jurisdiction between the PO BiH, the entity POs and the BD PO. Recommendation **eleven**<sup>42</sup> required clarification of the corresponding procedure, but related to conflicts of jurisdiction at the level of courts, namely between state and entity courts and between courts in different entities. No progress can be reported in this process. The issue of conflicts of jurisdiction (at court and PO levels) has not, to the Mission's knowledge, been addressed either through emerging judicial practice or through new provisions.

Addressing this issue was among the objectives of the draft Law on Courts of BiH. Aside from creating a separate Appellate Court of BiH, the other main objective of the proposed legislation was to clarify the conditions for the exercise of jurisdiction by the Court of BiH on crimes foreseen under the criminal laws of the entities (so-called extended jurisdictions of the Court).<sup>43</sup> The adoption of this law has been one of the key priorities of the EU-BiH Structured Dialogue on Justice since it began in 2011.<sup>44</sup> However, after eight years of negotiations, the

38 See Action Plan, point 10.1, 12.1, 13.1 and 21.1, on file with the Mission.

39 See CEST FBiH, Program početne obuke i program stručnog usavršavanja za 2019. godinu, available at <http://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke>, CEST RS, Program stručnog usavršavanja i početne obuke za 2019. godinu, on file with the Mission.

40 See USAID press release available at <https://usaidjp.ba/bs/event/predstavljen-prirucnik-i-vodic-kroz-dobre-prakse-u-procesuiranju-koruptivnih-krivicnih-djela/173>

41 Namely: "the procedure for raising and deciding upon conflicts of jurisdiction between the PO BiH, the entity POs and the BD PO should be clarified through judicial interpretation or legal amendments if necessary".

42 Namely: "the procedure for raising and deciding upon conflicts of jurisdiction between state and entity courts and between courts in different entities should be further clarified through judicial interpretation".

43 See OSCE Mission to BiH, ARC Project Report, *Trial Monitoring of Corruption Cases – a First Assessment*, February 2018, p. 18 (hereinafter 2018 ARC Report).

44 On this mechanism, see the EU Delegation in BiH webpage at [http://europa.ba/?page\\_id=553](http://europa.ba/?page_id=553)

preparation of several drafts and the provision of technical support by a range of international experts, the law has not yet been adopted and there are no indications that it will be adopted in the foreseeable future. Against this background, the Mission concludes that in the short and possibly medium terms, discordant judicial interpretations relating to conflict of jurisdiction will have to be addressed, to the extent possible, through the consolidation and harmonization of judicial practice (see Chapter 4.1 below).

The absence of tangible progress with regard to the implementation of recommendation **fourteen**<sup>45</sup>, related to the harmonization of judicial practice, should be underlined. This recommendation called for the panels for harmonization of jurisprudence (formed by representatives of higher courts at the state, entity and BD levels) to address challenges of harmonization posed by corruption cases with regard to the application and interpretation of criminal and procedural law. The panel dealing with criminal justice, however, has met only once since the issuing of the 2018 ARC Report, on an unrelated topic.<sup>46</sup> As of December 2018, there was no plan for the panels to address issues relevant to the processing of corruption.

Likewise, and for the same reasons, no progress can be reported with regard to recommendation **fifteen**,<sup>47</sup> which asked for the development of a harmonized sentencing policy in high-level corruption cases. Trial monitoring findings included in Chapter III in relation to sentencing practices confirm the concerns expressed in the first ARC report with regard to the leniency of those sentences.

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45 Namely: “inconsistencies in the application of material or procedural criminal provisions specifically relevant for the processing of corruption cases should be identified and solved with a view to improve clarity and predictability of the law. In the absence of a supreme court of BiH (the establishment of which is obviously politically sensitive but legally compelling), the task of harmonizing the case-law throughout the Country should be carried out by harmonization panels. The panels, in particular, should systematically address the specific challenges posed by corruption cases with regard to the application and interpretation of criminal and procedural law”.

46 The harmonization panel met in December 2018 with a view to harmonize legal stances related to double jeopardy and sentencing in war crimes related proceedings.

47 Namely: “Courts throughout the BiH judicial system should adopt a harmonized sentencing policy in high level corruption cases, which would take into due account the gravity of the crime and ensure the deterring function of punishment”.





# 2

## THE FOUR DIMENSIONS OF JUDICIAL RESPONSE TO CORRUPTION – A METHODOLOGICAL NOTE

The Mission’s assessment of the quality and effectiveness of judicial response to corruption is presented in Chapters II to VII. It is based on two years (2017–2018) of trial monitoring activities carried out in courts throughout BiH. As such, it draws on and continues the work presented in the 2018 ARC Report both from a methodological and substantive viewpoint.

This Chapter clarifies the breadth and the limits of the assessment from a methodological point of view; as such it offers detail into what is meant by “quality” and “effectiveness” in the context of processing of corruption cases.

While a provisional definition of these two concepts was given in the 2018 ARC Report,<sup>48</sup> the consolidation of the empirical data gathered during the implementation of the project led to the identification of four critical dimensions for assessing judicial response to corruption:

- I) **productivity**, mainly in terms of the number of cases initiated and completed every year according to their complexity and seriousness;
- II) **capacity** of prosecutors and judges in the application of the law, with specific regard to whether criminal laws are enforced in a uniform and predictable way, thereby ensuring accountability and legal certainty for individuals;
- III) **fairness** of the process in terms of adherence to fair trial standards, including the independence and impartiality of the judiciary;
- IV) **efficiency**, mainly in terms of the length of proceedings and promptness of judicial and prosecutorial action.

While the content of these dimensions is further clarified in the following Chapters, it is important to underline that they were conceived bearing in mind the two main goals behind the trial monitoring of corruption cases, namely a) to identify and analyze problems and trends in the quality and effectiveness of judicial response to corruption; and b) to propose

<sup>48</sup> See 2018 ARC Report, p. 14.

adequate and feasible measures at the legislative, institutional and individual levels aimed at strengthening the role and capacity of the judiciary in the fight against corruption. Considering the complexity of the factors influencing the judicial process, the four dimensions cover both the substantive and procedural aspects of the judicial response to corruption. Substantive aspects concern the outcome of the judicial process, specifically the merit of a case, and are mainly the objective of the first two dimensions (productivity and competence); procedural aspects instead refer to the process through which the outcome is determined and are linked primarily to the other two dimensions (fairness and efficiency).

A second fundamental feature of this methodology is the employment of both qualitative and quantitative analytical methods to assess these dimensions. This is important since the former are necessary for ensuring proper identification of the problems affecting the processing of corruption cases and of their root causes, while the latter are required to assess broader systemic trends and to measure progress toward certain goals through time. Both methods are instrumental in assessing the impact of measures taken by the domestic authorities. In this chapter, accordingly, the four dimensions will be assessed, depending on their nature, from a quantitative and/or qualitative point of view. The findings presented here with regard to productivity and competence draw heavily and expand on those already presented in the 2018 ARC Report. An assessment of fairness and efficiency is offered here for the first time, since these other two dimensions were not specifically addressed in that report.

# 3

## MAPPING OF CASES MONITORED BY THE MISSION

This Chapter will provide an overview of the ongoing cases the Mission is currently monitoring and of those cases monitored by the Mission which were finalized in 2017–2018. Specifically, it presents contextual information on the number, types, seriousness, and outcome of these proceedings. In this sense, it is important to underline that the Mission does not monitor all corruption cases carried out in BiH, as this is currently not feasible resource-wise. To ensure that monitored cases are selected in a clear and transparent manner and form a representative sample, the Mission has adopted criteria to categorize those cases according to their seriousness.

Accordingly, the ARC Project categorizes corruption cases as high, medium or low-level in terms of their overall seriousness. This is done by assessing two main criteria: the status of the accused<sup>49</sup> and the gravity of the (alleged) conduct.<sup>50</sup>

On the basis of this categorization, the Mission has undertaken and thus far succeeded in monitoring *all* high and medium level corruption cases initiated in BiH since the start of the ARC Project in January 2017. It is important to underline that, while the first category covers only the most serious and sensitive cases, medium level cases can also cover a

49 Specifically, the status of the accused is defined according to their status as public figures and to the degree of power they are in the position to effectively exercise. Accordingly, a case is ranked “high” when the defendants are high profile elected and appointed officials at the state or entity level, heads of public companies at the entity level, or the highest ranking civil servants/members of the judiciary. A “medium” ranking is given when the defendants are low profile elected officials, senior civil servants from public institutions, and members of the judiciary not evaluated as highest ranking. A “low” ranking is given when the defendants are civil servants at various level of government with no or minimal supervisory authority, for example, employees of health, law enforcement, education, or employment public institutions.

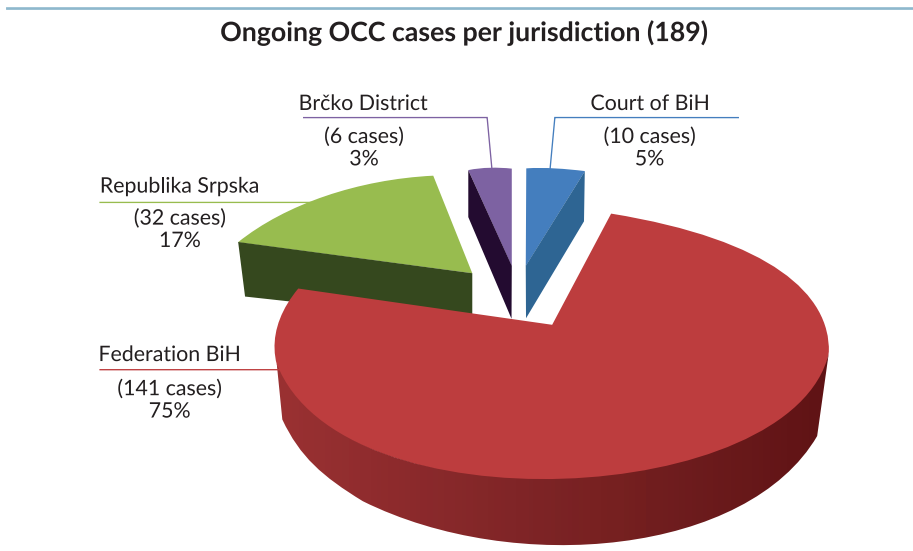
50 The second criterion aims at assessing the gravity of the consequences of the offence for the victims and society in general. In this sense, cases are ranked as “high” when the economic gain or damage resulting from the criminal conduct is quantified as more than 200,000 BAM (approximately 100,000 Euro); or when non-quantifiable harm to victims or society in general is of such gravity that citizen’s trust in public institutions is radically undermined (for example, cases of corruption linked to sexual exploitation). Cases are ranked as “medium” when the economic gain or damage is quantified between 200,000 BAM and 10,000 BAM; or, when non-quantifiable, harm to victims or society is of significant gravity or related to sensitive areas of the administration (for example, corruption linked to the health or education system). Cases are ranked as “low” when economic gain or damage is quantified as less than 10,000 BAM; or when non-quantifiable harm, harm to victims or to society is of low gravity

range of criminal conduct with serious societal consequences. Due to their relevance and larger number, the monitoring of these medium level cases is essential for a comprehensive assessment of judicial response to corruption. The Mission, on the other hand, does not have sufficient manpower to follow all low-level corruption cases, which, accordingly, are monitored in relevant numbers in accordance with available resources.<sup>51</sup>

### 3.1 Ongoing monitored cases

As of 31 December 2018, the Mission was in the process of monitoring 189 corruption cases,<sup>52</sup> with monitoring beginning from the filing of the indictment. Out of this total, 49 cases were at the pre-trial stage (pending either indictment confirmation, plea hearing or scheduling of the main trial), 72 were at the trial stage, 57 were pending a decision on appeal, and 11 were undergoing a retrial. In accordance with the methodology, out of 189 cases, 18 were categorized as high-level, 91 as medium-level, and 80 as low-level cases. Figures 1 and 2 below show the distribution of the cases throughout BiH, by level of jurisdiction and by court. The distribution of high and medium level cases is illustrated in the next Chapter, on productivity.

Figure 1

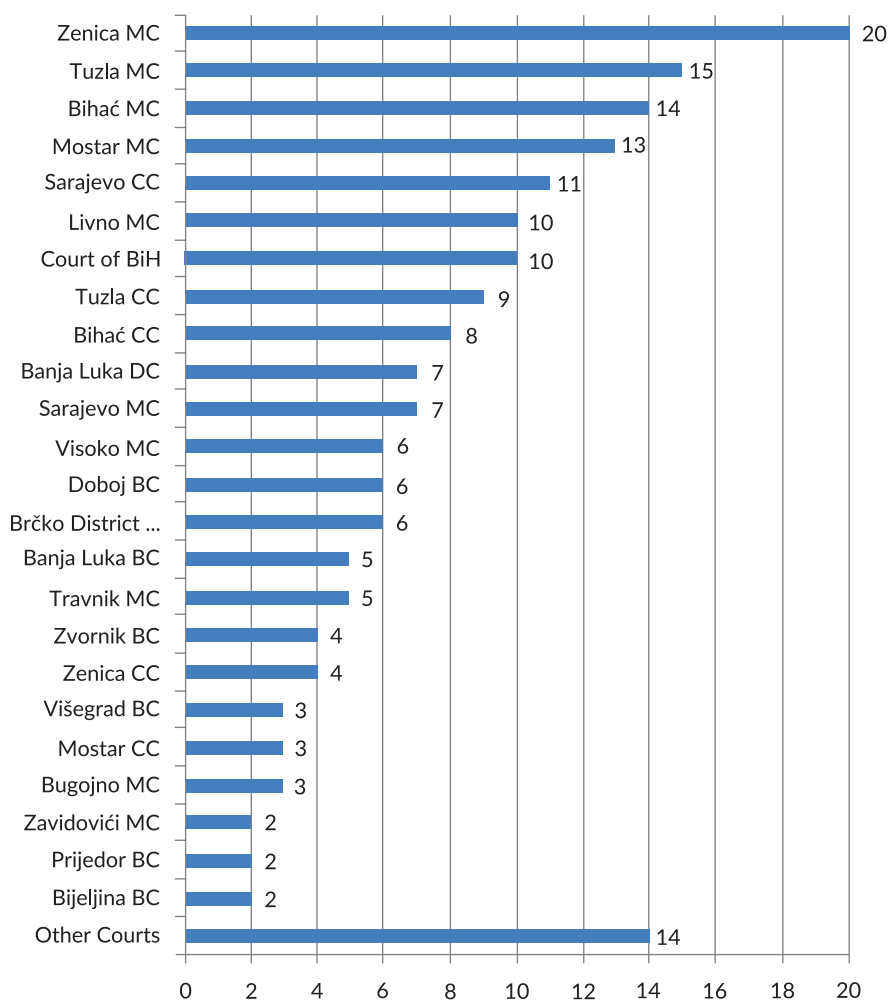


51 This means, in practice, that this category of cases is monitored mainly in jurisdictions where no high or medium level corruption cases are identified by the Mission

52 The definition of corruption cases adopted by the Mission is broader than the definition adopted by the domestic institutions. For more details see Chapter 1.2, 2018 ARC Report.

Figure 2<sup>53</sup>

### Ongoing monitored cases by court of first instance (189)



53 In this and following tables, CC stands for Cantonal Court, MC for Municipal Court, DC for District Court and BC for Basic Court. The “other courts” category includes all courts where only one case is monitored.

Figure 3 presents the specific type of corruption offences for which defendants have been charged in cases monitored by the Mission. The majority of charges are for the offence of abuse of office (41 per cent), while charges related to giving or receiving bribes amount to 8.2 per cent.

Figure 3

**Criminal charges in ongoing monitored cases**

Charge under applicable code	Total	CBiH	FBiH	RS	BD
Abuse of office or official authority	124	9	100	15	
Accepting gifts and bribes	25	2	16	6	1
Lack of commitment in office	20	1	14	3	2
Illegal interceding	16		10	3	3
Counterfeiting of official documents	15		12	3	
Organised crime	14	6	6	2	
Embezzlement in office	9		6	3	
Abusing power in business	7		4	3	
Forging documents	7		5	2	
Fraud in office	7		7		
Giving gifts and bribes	7	2	3	2	
Money laundering	7	2	5		
Fraud	5		4	1	
Other	39	2	32	5	
<b>Total</b>	<b>302</b>	<b>24</b>	<b>224</b>	<b>48</b>	<b>6</b>

### 3.2 Monitored cases finalized in 2017 and 2018

The Mission monitored 111 cases which were finalized in 2017–2018. These cases have been categorized as follows: three high-level, 35 medium-level and 73 low-level cases. The higher ratio of low-level cases in the finalized cases compared to the ratio in ongoing cases is due to the fact that these cases on average are solved much faster than high and medium-level cases (see Chapter VII below). Figures 4 and 5 below show the distribution of the completed cases throughout BiH, by level of jurisdiction, by court and by level of seriousness.

Figure 4

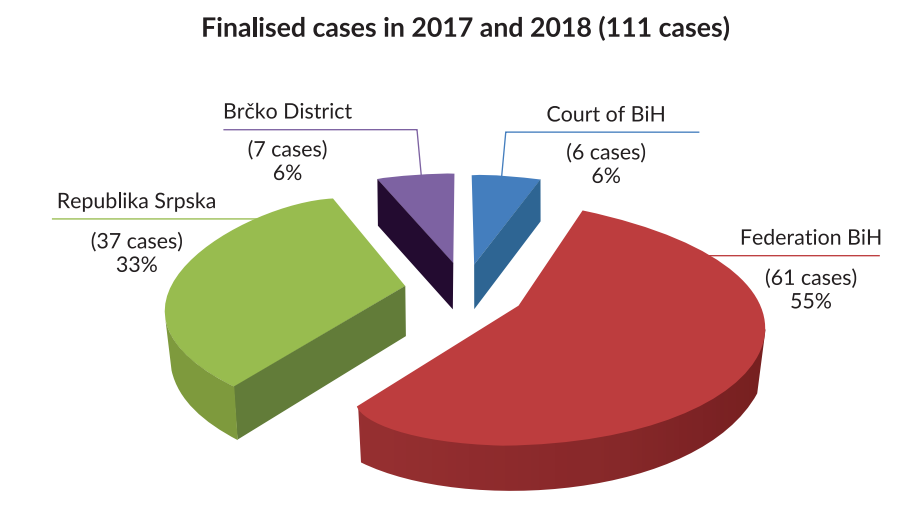


Figure 5

**Distribution of 2017–2018 completed cases monitored, by court and level of seriousness**

1st Instance Court	High	Medium	Low	Tot. no. of cases
Zenica MC	0	1	10	11
Livno MC	0	4	4	8
Trebinje BC	0	0	8	8
Banja Luka DC	1	0	6	7
Bihać MC	0	3	4	7
Brčko District BC	0	6	1	7
Court of BiH	1	1	4	6
Bijeljina BC	1	1	3	5
Doboj BC	0	1	4	5
Srebrenica BC	0	0	5	5
Tuzla MC	0	5	0	5
Bugojno MC	0	0	4	4
Visoko MC	0	0	4	4
Kiseljak MC	0	1	2	3
Sarajevo CC	0	2	1	3
Sarajevo MC	0	0	3	3
Tuzla CC	0	2	1	3
Zvornik BC	0	2	1	3
Doboj DC	0	0	2	2
Kakanj MC	0	0	2	2
Mostar MC	0	2	0	2
Tešanj MC	0	0	2	2
Višegrad BC	0	2	0	2
Zavidovići MC	0	0	2	2
Travnik MC	0	1	0	1
Zenica CC	0	1	0	1
<b>Total</b>	<b>3</b>	<b>35</b>	<b>73</b>	<b>111</b>

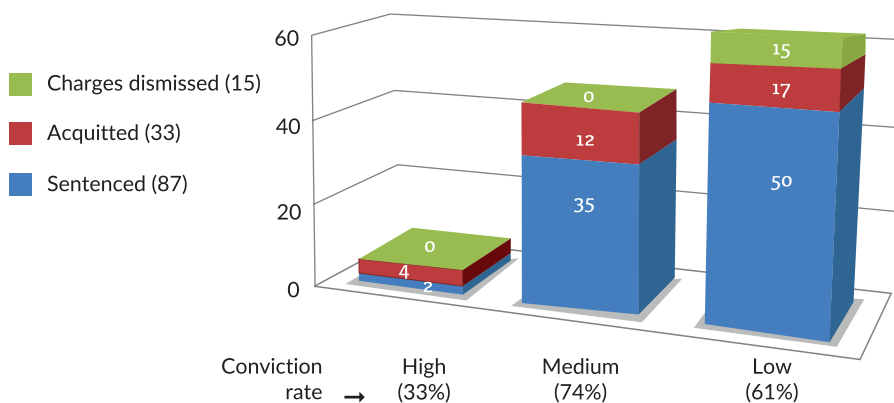


With regard to the outcome of these completed cases, the data presented in figure 6 below confirm the trend observed in the 2018 ARC Report, that is, a higher rate of acquittals in high-level cases compared to the acquittal rate in medium and low-level cases.<sup>54</sup> The conviction rate in these last two categories of cases (74 and 61 per cent) is also concerning. By contrast, the conviction rate reached by prosecutor’s offices in BiH in “general” crimes” is around 95 per cent.<sup>55</sup> Furthermore, a consistent portion of all convictions in the corruption cases monitored by the Mission (38 per cent) was obtained through the signing of plea bargaining agreements.

The higher rate of convictions in medium level cases compared to low-level cases is an unexpected finding and one that requires further analysis to understand. However, it is important to underline again that, since the Mission does not monitor all low-level corruption cases, it is possible that a spread of ten percentage points in this sample may not reflect the true conviction rate difference if one would consider all low-level corruption cases processed in BiH. In this sense, the very poor rate of convictions (0 per cent) of the Trebinje District PO in the eight low-level cases monitored before that court may have skewed the low-level conviction rate.

Figure 6

**Outcome in final instance for each defendant in completed monitored cases by level of seriousness (2017-2018)**

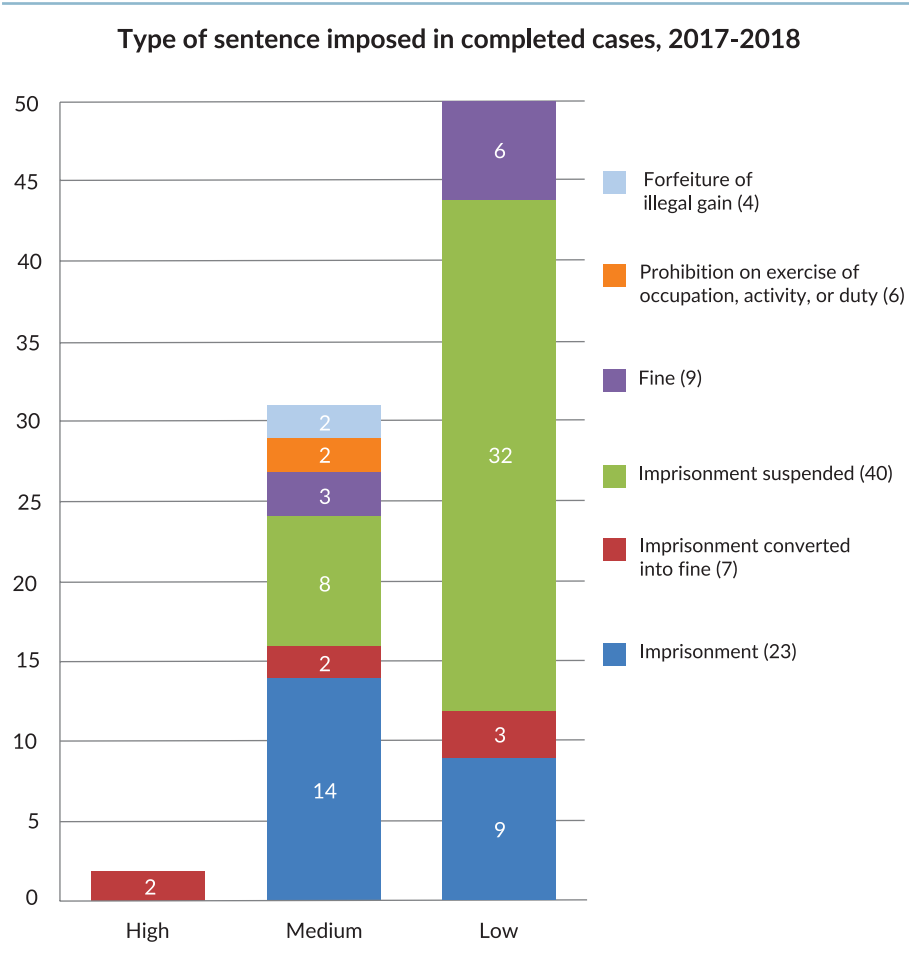


54 See 2018 ARC Report, pp. 29, 30.

55 See HJPC 2017 Annual Report, p. 67-69, available at [https://vstv.pravosudje.ba/vstv/faces/pdfservlet?p\\_id\\_doc=50281](https://vstv.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=50281). The term “general crimes” refers to all criminal offences not belonging to specific categories of offences created by the HJPC for statistical purposes, such as: corruption, organized crime, economic crimes and war crimes.

The results presented in figure 7 relate to the types of punishment for completed corruption cases monitored by the Mission. Similarly to conviction rate differences, these data confirm the trend outlined in the 2018 ARC Report, which presented a strong tendency by courts to suspend an imposed imprisonment sentence.<sup>56</sup> This, together with the very low number of cases in which confiscation of an illegal gain was ordered by the court, suggests that general leniency of punitive policy in corruption cases has continued throughout 2017 and 2018.

Figure 7



56 See 2018 ARC Report, p. 30.

# 4

## PRODUCTIVITY: QUANTIFYING JUDICIAL RESPONSE TO CORRUPTION

In order to assess the effectiveness of the justice system in investigating, prosecuting and adjudicating cases of corruption, this methodology considers **productivity** both by referring to the number of cases and also by paying special attention to their level of seriousness. Corruption is a multifaceted phenomenon which includes a wide range of conducts differing in magnitude, seriousness and level of organization. Corruption includes both episodes of a petty nature (e.g. a bribe paid to police to avoid traffic offences) and those of a much graver nature, encompassing complex financial schemes involving a number of perpetrators at different levels of authority.

An assessment of productivity which would disregard the seriousness of cases would produce an incomplete, flawed, and inaccurate picture. For example, a decrease in the number of indictments filed from one year to the next should not necessarily be taken as a negative sign if accompanied by an increase in the weight and profile of the cases for which charges are filed.

However, the seriousness of a case may be understood differently depending on the background of the observer. In order to ensure adherence to the aforementioned principle of objectivity, these concepts are assessed on the basis of well-defined criteria presented in the 2018 ARC Report and reproduced in Chapter II.<sup>57</sup> As already mentioned, in selecting cases to monitor, the Mission prioritizes high and medium level corruption cases, and has in fact monitored all such cases initiated in BiH since the start of the ARC Project in January 2017.

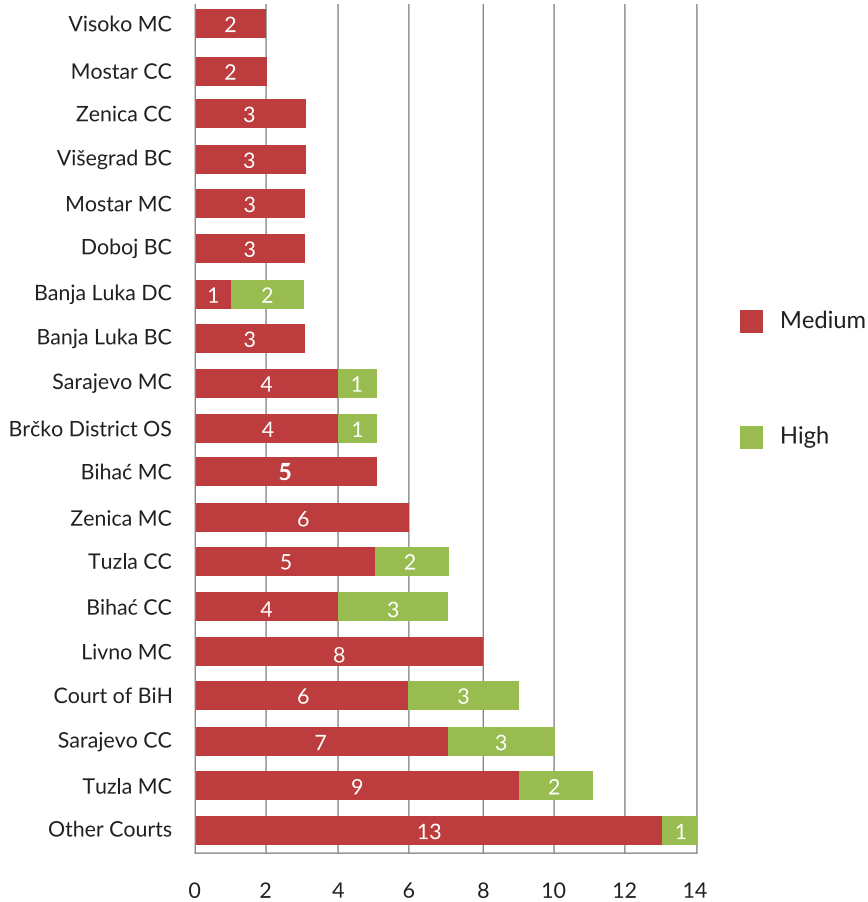
This Chapter, accordingly, presents figures related to the number of ongoing high and medium level cases in domestic jurisdictions or which were finalized in 2017–2018. These data provide the basis for observations and recommendations aimed at improving the productivity of different prosecutor's offices and courts.

Figure 8 below shows the distribution by court of all high and medium-level cases which were ongoing in BiH as of December 2018. The total number is 18 high-level and 91 medium-level cases.

<sup>57</sup> See 2018 ARC Report, pp. 12–14

Figure 8

**Distribution per court of ongoing high and medium level cases**



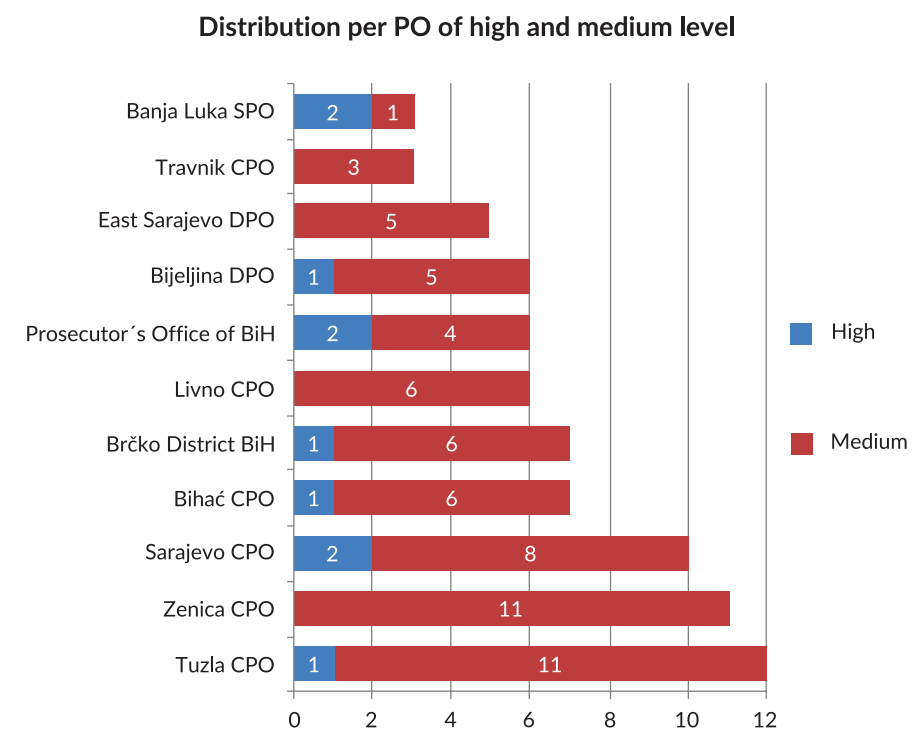
As mentioned above, on the basis of available data, these figures represent the totality of ongoing corruption cases falling into those two categories. The figures show that the courts which are more actively involved in the processing of high and medium-level cases of corruption are: Tuzla Municipal and Cantonal Courts, Sarajevo Municipal and Cantonal Courts, Bihać Municipal and Cantonal Courts, Livno Municipal Court, the Court of BiH and the BD Basic Court. These figures indicate that high and medium level cases are *not* concentrated in courts with a more or less delimited jurisdiction focusing on corruption, organized crime or other serious crimes, such as the Court of BiH<sup>58</sup> and the Special Department within the

58 The Court of BiH has three sections, with corruption cases handled by Section II, responsible for organized crime, economic crime and corruption. The Prosecutor's Office of BiH mirrors the jurisdiction and internal division of work in the CBiH. Accordingly, corruption cases are dealt with by the Special Department for Organized Crime, Economic Crime and Corruption of the PO BiH.

District Court of Banja Luka.<sup>59</sup> Courts in Sarajevo and Tuzla Cantons alone have a larger portion of these types of cases than the two courts at the state and RS levels. This seems to suggest that the work of specialized jurisdictions at the state level and in the RS have so far failed to substantially impact the judicial response to serious corruption.

This conclusion is also supported by the number of high and medium-level cases initiated (i.e. for which an indictment was filed) by each prosecutor's office in BiH in 2017 and 2018, as presented in figure 9 below.

Figure 9<sup>60</sup>



The cases considered in figures 8 and 9 are only partially overlapping. Many cases accounted for in figure 8 were initiated in 2015 or 2016, with a few dating back as early as 2012. Figure 9 considers only cases initiated in 2017 and 2018. For this reason, the total numbers in figure 8 (18 high-level and 91 medium-level cases) are higher than those in figure 9 (10 high-level

59 Pursuant to the RS Law on Fighting Corruption, Organized and the Most Severe Forms of Economic Crime, which entered into force in July 2016, Special Departments within the District Court of Banja Luka and the Supreme Court of RS have been established with exclusive jurisdiction over first-instance trials and appeals in cases concerning a broad list of crimes committed on the territory of RS. Under the same law, the Special Department within the RS Prosecutor's Office was created with the responsibility to prosecute these crimes.

60 In this figure, CPO stands for Cantonal Prosecutor's Office, DPO stands for District Prosecutor's Office, and SPO stands for Special Prosecutor's Office.

and 67 medium-level cases). That said, it is interesting to note that the data from the two different samples indicate a consistent trend. Prosecutor's offices in Sarajevo and Tuzla are more productive than the BiH Prosecutor's Office and the Special Department within the RS PO in terms of bringing to trial high and medium level cases of corruption. A decent level of productivity in such cases by the POs in Bihać, Zenica, Brčko, and Livno is also consistent over time.

It is important to underline that these figures shed little light on matters of quality, i.e. whether the indictments were well written and the charges properly substantiated with evidence duly gathered in the course of the investigation. As most of these cases are still ongoing, it is too early to assess the performance of the prosecution from that point of view. While the issue of quality in the prosecution's work is addressed here (see Chapter 5.1) and in the 2018 ARC Report, it should be noted that the present and previous assessments are mainly based on finalized cases which were initiated before 2017–2018.

Notwithstanding this limitation, the data presented here raise a number of important questions related to the productivity of different prosecutor's offices. The relatively poor performance of the PO BiH and of the Special Department within the RS PO must be examined in greater detail. Since the Mission has not monitored the investigation phase of corruption cases, its insight into the level of seriousness of cases investigated by these offices is limited. This said, an analysis of the type of cases for which indictments are filed by these and other prosecutor's offices offers some useful information.

#### 4.1 The performance of the PO BiH

One of the reasons for the lacklustre performance of the PO BiH in high-level corruption cases may be the now-limited exercise of so-called "extended jurisdiction"<sup>61</sup> by the state level institutions. Of the two high-level cases for which an indictment was brought by the PO BiH in the 2017–2018 period, one was charged under the BiH CC and the other under the RS CC through the use of this now rarely-applied tool.

The first indictment relates to alleged corruption involving the non-payment of customs-related taxes by certain companies importing goods into BiH in exchange for bribes to high ranking officials, including the former Director of the Indirect Taxation Authority of BiH. As the accused are state officials, the charges were brought under the BiH Criminal Code. The second indictment filed during this period brought charges of organized crime, abuse of office, and money laundering under the RS Criminal Code, relating to acts allegedly committed by

61 The Court of BiH has jurisdiction primarily over criminal offences defined in the Criminal Code of BiH and other laws enacted at the state level. This includes corruption offences when committed by officials of state institutions, regardless of their gravity. Under art. 7(2) of the Law on Court of BiH, it has further jurisdiction (commonly referred as "extended jurisdiction") over criminal offences provided in the laws of the FBiH, the RS, and BD when the alleged criminal behaviours are particularly serious, namely: "(a) endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina, or (b) may have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina or may have other detrimental consequences to Bosnia and Herzegovina or cause serious economic damage or other detrimental consequences beyond the territory of an entity or the Brčko District of Bosnia and Herzegovina".

RS officials and by the management of a bank based in RS in connection with the illegal granting of loans for millions of BiH Convertible Marks (BAM).

It appears that in recent years, the CBiH has minimized the use of the “extended jurisdiction” tool over crimes defined in the entity and BD codes. To the best of the Mission’s knowledge, the second case described above is the only corruption case tried before the CBiH on the basis of its “extended jurisdiction” since 2013. All other medium and high-level corruption cases ongoing at the state level as of 31 December 2018 or finalized in 2017–2018 were for offences charged under the BiH Criminal Code. This is an important fact since in the past a number of high-profile corruption cases for charges provided under the RS, FBiH, and BD codes were processed before the CBiH on the basis of “extended jurisdiction”. Therefore it is fair to argue that the decline in the exercise of this type of jurisdiction by the PO BiH and the CBiH may be limiting the impact that state level institutions are able to have on combatting high-level corruption.

In order to appreciate the sensitivity and importance of this issue, it is necessary to provide additional context. “Extended jurisdiction” of the CBiH represents an important tool in combatting corruption, as certain modalities of its perpetration (and economic crimes in general) may require, due to their complexity and inter-entity scope, that investigations and trials are carried out by judicial institutions at the state level, having better resources as well as possessing territorial jurisdiction over the whole country. In fact, overcoming some of the problems related to the excessive fragmentation of the judicial system and law enforcement agencies in BiH represented one of the key reasons for the establishment of the CBiH and PO BiH.<sup>62</sup>

In the past, however, the exercise of “extended jurisdiction” in corruption-related cases has been challenged and publicly opposed by leading political forces in both entities. Apart from longstanding threats in RS to hold a referendum calling into question the powers of the state level judicial institutions,<sup>63</sup> opposition to state-level oversight over corruption crimes found in the entity and BD codes has also legally manifested itself, for example in a 2008 petition for the review of the constitutionality of the provisions defining the scope of this extended jurisdiction. While the Constitutional Court upheld the legality of the provisions, it also underlined that, due to the use of broad terms (such as “serious economic damage”) to define their scope, the provisions needed to be further clarified through the development of consistent case-law in order to avoid arbitrariness in their application.<sup>64</sup>

However, more than a decade later, the judicial practice on this matter remains unconsolidated. At the same time, as noted in Chapter I, political authorities in BiH have been trying over the last eight years to agree on amendments to those provisions which would clarify, or limit to the extent possible, their scope. Against this background, it is perhaps not inappropriate to underline that the failure of political authorities to amend these provisions should not have as

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62 See OHR, *Decision Enacting the Law on the Prosecutor’s Office of Bosnia and Herzegovina*, 8 June 2002, available at <http://www.ohr.int/?p=66327>

63 See BBC, *Bosnia’s Serbs vote for referendum on national court*, 16 July 2015, at <https://www.bbc.com/news/world-europe-33550137>

64 See Constitutional Court of BiH, *Decision*, U16/08, 28 March 2009, para. 42, 43.

one of its consequences an unspoken and *ad libitum* suspension of the exercise of “extended jurisdiction”. It is noteworthy that in the above-mentioned sole corruption case in which this form of jurisdiction was recently exercised, the case was taken over by the PO BiH only after the Special Department within the RS PO decided that it could not exercise jurisdiction.<sup>65</sup>

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➤ **Against this background, the Mission recommends that the HJPC and PO BiH fully examine the reasons behind the change of policy in the exercise of “extended jurisdiction” in order to determine their (due or undue) nature;** this assessment should consider whether it is necessary to undertake appropriate measures to address this situation so that the PO BiH can fulfil its potential as one of the primary institutions charged with tackling high-level corruption crimes.

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#### 4.2 The performance of the Special Department within the RS PO

By contrast, the possible reasons behind the unsatisfactory performance of the Special Department within the RS PO seem to be of a totally different nature. This is seen in the ratio of high to low-level cases initiated by that office. Out of the 13 cases monitored by the Mission for which the RS Special Department issued an indictment in 2017–2018, 10 were categorized as low level, one as medium-level, and two as high-level cases. This means that the majority of cases dealt by the RS Special Department relate to petty corruption, often concerning small bribes (10 to 100 BAM) offered by drivers to police officers to avoid being fined for traffic infractions.

While the prosecution of this type of case by a special department goes against the very concept and objective behind the creation of specialized judicial bodies, this likely stems at least in part from how this office’s jurisdiction is defined by law. The RS Law on Fighting Corruption, Organized Crime and the Most Serious Forms of Economic Crime foresees a broad list of crimes under the exclusive jurisdiction of the Special Departments in the RS PO and in the Banja Luka District Court. This includes serious offences such as: murder, terrorism, and trafficking in human beings. With regard to corruption-related offences and other economic crimes, however, the list is arguably too wide as it encompasses all acts of bribery, trading in influence and tax evasion, regardless of their gravity. The lack of a seriousness threshold triggering the jurisdiction of the RS Special Departments could be a leading reason behind the high ratio of low-level cases processed by those institutions.

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<sup>65</sup> See Capital.ba, *Specijalno tužilaštvo odbilo istražiti kriminal u Bobar banci*, 13 April 2015, available at <http://www.capital.ba/specijalno-tuzilastvo-odbilo-istraziti-kriminal-u-bobar-banci/>



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- Against this background, the Mission **recommends that the RS Law on Fighting Corruption, Organized Crime and the Most Serious Forms of Economic Crime is amended with a view to limit its jurisdiction to cover corruption-related offences only in their most serious forms.**<sup>66</sup> This should enable the RS Departments to focus their attention on high and medium-level cases of corruption. In the event that the RS legislative and executive powers are not willing to amend the provisions in question, **it is recommended that the Special Department within the RS PO adopts internal guidelines aimed at ensuring an adequate prioritization of the most serious cases within its jurisdiction, including in the field of corruption.**
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### 4.3 The establishment of the Special Departments in the FBiH

The findings presented here with regard to the performance of the PO BiH and of the Special Department within the RS PO are reason to reflect on the – so far highly problematic – establishment of the Special Department within the Supreme Court of FBiH and of the Special Department within the FBiH Prosecutor’s Office. As a reminder, in February 2015, the Law on Fighting Corruption and Organized Crime in FBiH entered into force.<sup>67</sup> It foresees the creation of the mentioned special departments with exclusive jurisdiction over organized crime, terrorism and corruption offences in FBiH when committed by an elected or appointed FBiH official or when involving amounts exceeding 100,000 BAM (approximately EUR 50,000).<sup>68</sup>

As of December 2018, however, the special departments have not been established, ostensibly due to lack of funds or the absence of office premises.<sup>69</sup> Yet the more likely reason for this failure is a lack of political will, since the FBiH Government changed between the passing of the law and its due implementation. In 2015, the Supreme Court of FBiH passed a decision<sup>70</sup> which sought to avoid institutionalized impunity for high-level corruption due to the inertia of the FBiH executive. In that decision, the Court decided that the courts in FBiH will continue to exercise their jurisdiction irrespective of the entry into force of the Law on Fighting Corruption and Organized Crime in FBiH and until the actual creation of the Special Department. Although as a result of this decision corruption cases continue to be tried before other courts in FBiH, it is clear that the prolonged failure to implement an important piece of legislation is incompatible with the very notion of the rule of law.

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66 The need to limit the jurisdiction of the RS Special Departments has already been acknowledged by the national authorities in the context of the roundtable organized by the European Commission (EC) in June 2018 on “Enhancing the fight against corruption and organized crime, including money laundering, and encompassing the entire rule of law chain”. One of the conclusions adopted there called for a review of the jurisdiction of the entities’ special departments for combatting corruption/organised/economic crime in order to limit its jurisdiction to the most serious cases of corruption/organised/economic crime.

67 Law on Fighting Corruption and Organized Crime in FBiH, Official Gazette of FBiH, no. 59/14, 23 July 2014.

68 Ibidem, articles 7 and 25(1).

69 Detektor, Politička kočnica borbe protiv korupcije u Federaciji, 28 March 2018, at <http://detektor.ba/politicka-kocnica-borbe-protiv-korupcije-u-federaciji>

70 See February 2015 press release by the FBiH Supreme Court at <https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=54616>.

In 2018, the complex layer of issues surrounding the creation of the FBiH Special Departments became even more convoluted due to an initiative to amend the provisions regulating their jurisdiction. In April 2018, the FBiH Government approved the text of a new law that, if adopted, should replace the law passed in 2015.<sup>71</sup> This new law is essentially the same as the initial one, with the main change being a much narrower foreseen jurisdiction for the Special Departments. The new law is titled the Law on Fighting Organized Form of Criminal Offences of Corruption, Organized Crime, Terrorism and Inter-cantonal Crime,<sup>72</sup> and as the title suggests, the new provisions foresee that the jurisdiction of the Special Departments in the field of corruption would be limited to cases where the relevant offences are committed by an organized criminal group or by a group of people associated in order to commit criminal offences.<sup>73</sup> The reasons behind this initiative seem to lie in an attempt to closely tie the jurisdiction of the Special Departments to the powers conferred to FBiH institutions under the FBiH Constitution.<sup>74</sup> It should be noted in this regard that the judiciary supports and actually participated in the amendment process.<sup>75</sup>

It is not difficult to predict that this new law, if adopted, would result in a major restriction of the role and possible impact of the (still non-existent) FBiH Special Departments in the fight against corruption. According to the Mission's data, corruption offences are charged in connection with organized crime in just a small percentage of cases overall. As shown in Chapter III above, out of a total of 302 charges filed in the 189 corruption cases currently monitored by the Mission, only 14 charges are for organized crime.

As a result, it is very likely that, if the amended legislation passes, the majority of medium and high-level corruption cases in the FBiH would still be handled by the cantonal prosecutor's offices. Considering this and the fact that financial and human resources in the fight against corruption are limited, one could legitimately wonder whether it is wise, from a cost-benefit perspective, to establish new judicial institutions from scratch to process only a handful of cases, instead of strengthening existing resources in already established organs at the cantonal level. This is especially true considering that some of the cantonal POs where special departments for corruption and/or economic crimes have been established (Sarajevo, Tuzla, Una-Sana, and Zenica-Doboj) have also been performing reasonably well, at least in terms of the number of high and medium level cases initiated in the last three to four years.

71 See FBiH Government press release of 26 April 2018 at [http://www.fbihvlada.gov.ba/bosanski/sjednica\\_v2.php?sjed\\_id=715&col=sjed\\_saopcenje](http://www.fbihvlada.gov.ba/bosanski/sjednica_v2.php?sjed_id=715&col=sjed_saopcenje)

72 Text of the draft law is available at [http://parlamentfbih.gov.ba/dom\\_naroda/v2/userfiles/file/Materijali%20u%20proceduri\\_2018/Zakon%20o%20suzbijanju%20korupcije%20BOS.pdf](http://parlamentfbih.gov.ba/dom_naroda/v2/userfiles/file/Materijali%20u%20proceduri_2018/Zakon%20o%20suzbijanju%20korupcije%20BOS.pdf)

73 Ibidem, art. 24.

74 See FBiH Constitution, Part. III Art. 1: "The Federation shall have exclusive responsibility for...combating terrorism, intercantonal crimes, drug trafficking and organized crime".

75 See conclusion no. 4 of WG II adopted in December 2018 at the end of the annual HJPC conference on the status of the judiciary, available at <https://vsts.pravosudje.ba/>

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› Taking all this into account, **the Mission recommends that plans to establish the Special Departments at the FBiH level are reappraised by the executive in light of the possibility that the (yet to be established) institutions under the current law could at some point be replaced by corresponding bodies with a much narrower jurisdiction.**

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In particular, a constructive discussion among the FBiH political and judicial authorities should immediately take place with a view to considering all relevant factors. This should include a reflection on whether the current law represents a viable legal foundation for the creation of the Special Departments or whether the law needs to be changed as suggested by the judiciary and by the outgoing FBiH Government. If the latter is the case, it should also be considered whether logic for the establishment of the Special Departments (for which premises have yet to be allocated) prevails or whether it would be more worthwhile to use those resources to strengthen the special departments within the cantonal POs. This discussion should be informed by an assessment of the caseload that would be transferred from the cantonal prosecutor's offices to the Special Department on the basis of the proposed – narrower – jurisdiction. Additionally, and given the frequent conflicts of jurisdiction characterizing the functioning of the judicial system in BiH,<sup>76</sup> the risk of possible overlap between the jurisdiction of the Special Departments and that of judicial bodies in the RS or at the state level should be fully considered. In sum, this is a key strategic decision in the fight against corruption that must be taken on the basis of a careful assessment of the possible benefits and detriments of the Special Departments – an analysis which has so far been lacking.

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76 See 2018 ARC Report, p. 30.



# 5

## CAPACITY OF PROSECUTORS AND JUDGES IN THE APPLICATION OF THE LAW

Prosecutorial and judicial capacity is considered by many legal experts to be an underlying foundation of the rule of law. Respect for the rule of law requires that criminal laws are enforced in a uniform and predictable way, thereby ensuring accountability, legal certainty, and equality. Competence of judges and prosecutors in the application of the law is mainly demonstrated in the written decisions or orders issued in their respective capacities during the judicial process. These include indictments, first instance verdicts, and decisions on appeal, which can be viewed as milestones in any type of criminal proceeding.

These acts (and through them the competence of judges and prosecutors) are evaluated by making reference to a number of well-defined criteria. With particular regard to indictments, for example, their quality is assessed by making reference to the notion of “charging accuracy”.<sup>77</sup> In short, a prosecutor has been accurate in the filing of charges when the charges clearly and comprehensively illustrate “the cause of the accusation - that is to say, the acts one is alleged to have committed and on which the accusation is based, but also of the nature of the accusation - that is, the legal characterization given to those acts”.<sup>78</sup>

Judicial decisions, on the other hand, are assessed on the basis of their reasoning; namely, the reasoning should be consistent, clear, unambiguous and not contradictory; must allow the reader to follow the chain of reasoning which led the judge to the decision; must respond to the parties’ arguments and requests; and should refer to the relevant provisions of the constitution or relevant national, European and international law as well as, where appropriate, to national, European or international case-law.<sup>79</sup>

Against this background, the analysis of cases monitored in 2017 and 2018 and which were ongoing as of 31 December 2018 or were finalized in those two years substantially confirms

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<sup>77</sup> *Ibidem*, page 33.

<sup>78</sup> See ECtHR, *Pélissier and Sassi v. France*, 25 March 1999, § 51.

<sup>79</sup> CCJE, Opinion no. 11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions, December 2008, page 13, <https://wcd.coe.int/ViewDoc.jsp?id=1924745&Site=COE>.

the critical picture presented in the 2018 ARC Report.<sup>80</sup> Primarily, the effectiveness and quality of judicial response to corruption continues to be severely obstructed by the inadequate capacity of: (a) prosecutors in the drafting of indictments and in the gathering of evidence supporting the charges; and (b) judges in reasoning their decisions and in applying the law in a consistent and predictable manner.

### 5.1 Prosecutorial capacity

With regard to the quality of indictments, in the majority of monitored cases the description of the criminal behaviour in supporting the charges was flawed due to the lack of, or unclear identification of, one or more of the elements of the offence. As already underlined in the 2018 ARC Report,<sup>81</sup> in some cases the problem lay in the inadequate identification and description of the regulations, norms or general principles of public administration (the “blanket provision”), which were violated by the defendant as part of the alleged criminal conduct. In other cases, the elements of undue gain and the link to criminal intent were not adequately demonstrated. Very often the analyzed indictments exhibited poor quality in some combination of these shortcomings. This generally negative assessment of prosecutorial capacity in corruption cases also helps to explain the results presented in Chapter 3.2 above showing a low rate of convictions in corruption cases as a whole (compared with the substantially higher rate obtained by the prosecution in all categories of crime) and a particularly low rate when considering only high-level cases. Below are a number of illustrative examples of these shortcomings.

In the case against **Ševketa Ganibegović before Zenica Municipal Court**, a city construction inspector was charged with abuse of office or official authority as she failed to impose relevant sanctions on a company which erected billboards without having obtained the required authorizations from the city administration. The indictment was flawed on a number of grounds: the factual description of the criminal conduct did not clearly underline what exactly the accused did or failed to do; the provisions regulating the powers and duties of a city construction inspector were not included in the description; while the indictment indicated that the accused failed to apply certain provision of the applicable Law on Construction, it did not specify which provisions were disregarded; and finally, the indictment did not clarify how the undue gain resulted from the alleged conduct of the accused – an element of the offence.<sup>82</sup> The accused was acquitted in the first instance. As explained in the appellate decision confirming the acquittal, the prosecutor attempted to remedy the mentioned shortcomings by specifying the blanket provisions and the nature of the undue gain in the appeal. In this regard, the appellate court correctly found that

80 See Chapter III of the 2018 ARC Report. Since the first report covered cases finalized in the period between January 2010 and September 2017, this part of the report uses only examples from cases which were finalized between October 2017 and December 2018; this with a view to avoid any overlapping between the cases presented in the first report and those presented in this report.

81 See 2018 ARC Report, chapter 3.2.2.

82 Ševketa Ganibegović, Zenica-Doboj Canton Prosecutor's Office Indictment of 30 September 2016, pages 1-3.

these new allegations could not be taken into consideration as they would amount to new incriminations, which at that stage of the proceedings was not permissible.<sup>83</sup>

In the case against **Salkan Merdžanić before Kiseljak Municipal Court**, the former Mayor of Fojnica municipality was charged with abuse of office in conjunction with a violation of the right to equal treatment at work for hiring seven individuals between 2005 and 2014 without conducting public vacancy announcements and bypassing the civil service agency. The factual description of the charge, however, does not indicate the provisions regulating the scope of the authority of the accused and their content. Moreover, the indictment did not elaborate at all on the elements of the offence of a violation of the right to equal treatment at work. In particular, it did not explain how the hiring of these seven individuals resulted in the unequal treatment of other citizens.<sup>84</sup> However, the accused pleaded guilty and accepted a suspended sentence of ten months.<sup>85</sup>

In the case against **Hamed Tičević and Munib Alihodžić before Zenica Municipal Court**, the president of the commission for renewal of property borders of a public forestry company and one of the members of the commission were accused of falsely marking the border between public and private land in order to benefit the owner of the neighboring private land, who was thereby allowed to log from the public forest. The indictment, however, lacked specificity with regard to the precise conduct of the two defendants and how this conduct was aimed at benefiting the owner of the private land. This, in turn, made establishing criminal intent very difficult.<sup>86</sup> Despite these shortcomings, the case ended with the conviction of one of the accused (namely the member of the commission), while the charges against the other accused were dropped during the trial.

The problem of establishing criminal intent was also observed in an ongoing case against the director of a cantonal institution, in which the accused was charged with unconscientious behaviour in office for not allocating funds in the amount of almost 20.000 BAM to a private company in accordance with the order of two entity level ministries. The indictment, however, makes no reference to the *mens rea* of the defendant; accordingly the first instance verdict acquitted the defendant, as the prosecutor did not prove this element of the crime.

### *Gathering of evidence*

As already noted in the 2018 ARC Report, the problems observed in monitored cases were not limited to the quality of indictments, but also encompassed the process of gathering and presenting evidence during the trial, including expert witness evidence.

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83 Ševketa Ganibegović, Zenica Cantonal Court Verdict of 18 January 2018, page 3.

84 Salkan Merdžanić, Central-Bosnia Canton Prosecutor's Office Indictment of 27 December 2017, page 1.

85 Salkan Merdžanić, Kiseljak Municipal Court Verdict of 16 March 2018.

86 Hamed Tičević and Munib Alihodžić, Zenica-Doboj Canton Prosecutor's Office Indictment of 24 April 2017, pages 1-2.

In the case against **Milorad Sofrenić before Bijeljina Basic Court**, a member of a major political party was charged with the criminal offence of bribery during elections or voting. The charge alleged that in 2016 he promised to the head of the local Roma community food packages for Roma citizens in exchange for their votes in the local elections. The evidence proposed in the indictment consisted mainly of the testimonies of the head of the community and of individuals who should have received the packages in exchange for their votes.<sup>87</sup> The testimonies given by the witnesses in court, however, did not support the charges, underscoring the weakness of the evidence gathered by the prosecution. The court of first instance acquitted the defendant since the essential elements of the offence, or decisive facts, had not been proven. The verdict found that the testimony of the head of the Roma community indicated that it was he who requested a reward for himself and other members of the Roma community for their vote and not the defendant who offered them such a reward. Moreover, the court noted in its verdict, other incriminating aspects of his testimony were not corroborated by the witnesses, who had been promised the reward from the head of the community. The court concluded that the statement of this witness was contradictory and not credible, and that it was not corroborated by statements from any other witness nor through material evidence. Therefore the court acquitted the accused.<sup>88</sup>

In another ongoing case involving tax fraud by the president of the supervisory board and the director of a public company, a problem arose pertaining to the testimony of the prosecution's key expert witness. Rather than providing a full and comprehensive set of factual findings, the expert financial witness gave a legal evaluation of the conduct of the accused, expressing his opinion on the existence of the elements of the crime and their criminal liability. His conclusions essentially mirrored the description of the elements of the crime as presented in the indictment.<sup>89</sup> To compound the problem, the expert's testimony comprised the bulk of the prosecution's evidence against the accused. The court of first instance accepted the findings of the expert in their entirety and convicted the defendants, sentencing them to six months of imprisonment. The verdict, however, was quashed on appeal as the court of second instance correctly pointed out that "the expert witness in giving findings and opinion exceeded his prerogatives since he provided legal conclusions, which is in the exclusive jurisdiction of the court" and that for this reason the legality of this evidence was disputable. The case is now in retrial.

### *Positive examples*

While the general picture presented here is mainly negative, some positive examples of prosecutorial performance have been observed as well, although they still remain the exception rather than the norm.

For example, in the case against **Safet Pjanić before Tuzla Cantonal Court** (one of the very few high level corruption cases finalized in the period covered in this report), the director of a public company was charged with running a criminal organization for the purpose of

<sup>87</sup> *Milorad Sofrenić*, Bijeljina District Prosecutor's Office Indictment of 31 October 2016, pages 1-3.

<sup>88</sup> *Milorad Sofrenić*, Bijeljina Basic Court Verdict of 14 February 2018, pages 10-11.

<sup>89</sup> See Article 109 of the CPC of FBiH "... an expert as a special witness may testify by providing his findings on the facts and opinion that contains the evaluation of the facts."



committing a number of economic crimes, including abuse of office and money laundering. The indictment, charging six persons in addition to the director as members of a criminal group, alleged that, over a period of eight years, the organization gained illicit profits in the amount of 4.5 million BAM, and created an additional public debt of 5.5 million BAM through tax evasion and failure to pay contributions for the company's employees. The investigation lasted 13 months, during which more than 4,000 pieces of evidence were gathered, including through special investigative measures such as "surveillance and technical recording of telecommunications".<sup>90</sup>

The intricate financial investigation in this case proved crucial for gathering key evidence in a timely manner. The order for conducting the financial investigation was issued against all suspects together with the investigation order based on the provisions of the FBiH CPC and of the FBiH Law on Confiscation of Unlawfully Acquired Property.<sup>91</sup> Accordingly, the prosecution issued orders to law enforcement agencies to conduct all necessary operations. Taking into due consideration the urgency of the case (as the suspects were in pre-trial detention), the prosecutor set specific deadlines for their implementation, thereby ensuring promptness in the conduct of the investigation.<sup>92</sup> Furthermore, the prosecution gathered thorough information related to the property of the suspects and their families from all relevant institutions and authorities. The financial investigation revealed that two of the suspects had bank accounts in Slovenia, which, with the cooperation of the Slovenian authorities, were successfully blocked.<sup>93</sup> The evidence gathered through the prosecution's efficient and thorough financial investigation, in conjunction with other material evidence, clearly highlighted and supported the charges alleged in the indictment.

The primary defendant and organizer of the criminal group signed a plea bargain agreement by which he received a sentence of 5 years of imprisonment with an obligation to return illegal material gain in the amount of 227,000 BAM.<sup>94</sup> Despite being issued on the basis of an agreement, this sentence is still more severe than those handed down by courts in BiH in the vast majority of corruption cases, even those of a serious nature.

## 5.2 Judicial capacity

Similar to the generally inadequate capacity of prosecutors outlined in the previous section, the analysis of verdicts and decisions during the monitored period confirms the main concerns expressed in the 2018 ARC Report in relation to the capacity of judges in applying and interpreting the law in a reasoned and predictable manner.

Specifically, unclear or insufficient reasoning in judicial decisions and the related problem of disharmonized judicial practice, and a failure to refer to precedents in the court's reasoning, continue to represent major obstacles to effective judicial response to corruption. In addition,

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90 *Safet Pjanić et al.*, Tuzla Canton Prosecutor's Office Indictment of 21 December 2017.

91 *Safet Pjanić et al.*, Tuzla Cantonal Court Verdict of 19 April 2018, page 20

92 *Safet Pjanić et al.*, Tuzla Cantonal Court Verdict of 19 April 2018, page 18, 19

93 *Safet Pjanić et al.*, Tuzla Cantonal Court Verdict of 19 April 2018, page 207

94 *Safet Pjanić et al.*, Tuzla Cantonal Court Verdict of 19 April 2018, pages 11-12, 207.

the lack of an adequate sentencing policy in cases where the accused is convicted<sup>95</sup> continues to thwart the deterrence and preventive goals of criminal justice. With regard to the quality of reasoning in first instance verdicts and inconsistent judicial practice, below are a few examples to bolster the findings of the 2018 report's assessment on this topic.

In one ongoing case, charges against the defendants were dismissed at the end of the first instance trial on the basis of a peculiar interpretation of the *ne bis in idem* principle. The judicial panel in this case found that a previous prosecutorial order to terminate the investigation against the defendants (on the grounds that the reported offence was not a criminal offence)<sup>96</sup> amounted to a final and binding acquittal decision. This finding, according to the court's reasoning, prevented the court from adjudicating a case based on the same facts covered in that prosecutorial order, as according to the court this would constitute a violation of the *ne bis in idem* principle or prohibition on double jeopardy. The court justified its finding by stating that, according to the criminal procedure, it is possible to re-open an investigation only when the reason for closing it in the first place was due to a lack of evidence and, in the meantime, new facts or circumstances have emerged pointing to new evidence.<sup>97</sup> The reasoning of the court, however, did not elaborate on the legal interpretation of the *ne bis in idem* principle or on how a prosecutorial order to close an investigation can amount to *res judicata*, which is typically triggered by a judicial decision (as opposed to a prosecutorial order to close an investigation).<sup>98</sup> The only argument provided in the court's reasoning makes reference to the previously mentioned procedural bar to the re-opening of an investigation. As noted in the 2018 ARC Report, the failure of many judges to refer to any case law precedent supporting their stance often leads to weak and unpersuasive verdicts. In this case, it should be underlined that this shortcoming cannot be evidenced by a scarcity of relevant judicial practice since this specific issue has actually been addressed in detail by higher courts both at the domestic and at the international levels.<sup>99</sup>

Pursuant to this analysis, the Mission has also noted examples of poor or incomplete reasoning in verdicts resulting from plea bargain agreements. These verdicts require the judge to establish the existence of certain conditions, including whether "there is enough evidence proving the guilt of the accused".<sup>100</sup>

In the case against **Mustafa Manjgić before Bugojno Municipal Court**, for example, the defendant was accused of abuse of office or official authority in conjunction with a violation of the right to equal treatment at work. The indictment alleged that as director of a public company, he illegally hired 24 persons over a period of three years with the intent

95 See Chapter 3.2 above.

96 See Article 239(1)(a) of the CPC of FBiH.

97 See Article 239(1)(c) of the CPC of FBiH.

98 Article 298(d) CPC FBiH encapsulates the *ne bis in idem* principle as applied in the relevant jurisdiction, providing that the court shall pronounce a verdict dismissing the charges if a defendant has already been convicted of the same offense by a final and binding decision, or has been acquitted of charges or if proceedings against him have been dismissed by a final and binding decision.

99 See BiH Constitutional Court, Decision on Admissibility in the case no. AP 3555/13 of 9 December 2014 and FBiH Supreme Court Verdict in the *Kadić* case, no. K 0514114 Kz, of 20 November 2014; ECtHR, *Marguš v. Croatia*, Application no. 4455/10, Grand Chamber Judgment of 27 May 2014, para. 120.

100 CPC FBiH, Art. 246(6)(e).

of providing them with undue gain, while, at the same time, violating the right of others to be employed.<sup>101</sup> After the plea hearing, the defendant signed a plea bargain agreement with the prosecution, agreeing to a suspended sentence of ten months with 18 months of probation. In the verdict confirming the agreement, however, the court did not elaborate on how the evidence presented by the prosecution in support of the indictment supported the charges and fulfilled the elements of the alleged offences. The verdict merely stated that “all the essential elements of the criminal offence committed by the accused were fulfilled” and made a cursory reference to the intent of the accused. It then proceeded with listing the material evidence, without attempting to explain how the accused violated the right to equal treatment at work by hiring the 24 individuals in question.<sup>102</sup>

Very often, such shortcomings in the reasoning of first instance verdicts – those that are not based on plea bargain agreements – result in the quashing of the verdict upon appeal. Reasons for this may include the erroneous or incomplete establishment of the facts, the wording of the verdict being incomprehensible, internally contradictory or contradictory with the grounds of the verdict, the verdict having no grounds at all, or not citing decisive facts.<sup>103</sup>

In a case currently under retrial, the defendant, a Minister at the entity level, was charged with abuse of office for hiring an advisor despite having been informed that the person in question did not have the necessary qualifications. The defendant was acquitted in the first instance as the court found that, while it had been proven that the appointed advisor did not fulfil all the qualifications for that position, it had not been proven that the defendant, by appointing her, had the intention to provide an undue benefit to this person. The appeals court, however, revoked the verdict and ordered a retrial on the grounds that the relevant facts were wrongfully and incompletely established in the verdict and that the wording of the verdict was inherently contradictory. In particular, the appellate court found the lower court’s reasoning contradictory and flawed in its assessment of the evidence, as it did not assess each piece of evidence separately and examine their connection. It also did not explain why certain testimonies, which were at odds with the conclusions of the verdict, were not taken into due consideration.

#### *Inconsistent standards of review of verdicts upon appeal*

While in this case the court of second instance properly assessed whether the verdict fulfilled the requirements set by the law, we have observed that standards of review of verdicts upon appeal are not always consistent. In particular, sometimes the court of second instance, instead of limiting itself to addressing the grounds of the appeal, actually re-evaluates the evidence presented during the trial in a fashion resembling that of a court of first instance. In this way, flaws in the reasoning of the first instance verdicts may be overlooked in cases where the second instance court essentially rewrites the reasoning on the merits of the case. This kind of approach risks rendering the filing of appeals as instruments to verify the legality of first instance trials and verdicts moot.

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101 *Mustafa Manjgić*, Travnik Cantonal Prosecutor’s Office Indictment of 28 December 2017.

102 *Mustafa Manjgić*, Bugojno Municipal Court Verdict of 26 June 2018, pages 5-6.

103 See CPC FBiH, Art. 312(1)(k).

The above-mentioned case of **Hamed Tičević and Munib Alihodžić before Zenica Municipal Court** is an illustrative example of this problematic approach. In the first instance, the second defendant was found guilty of an aggravated form of abuse of office under article 383(2) and was convicted to six months of imprisonment. The first instance verdict was flawed in several aspects. First, the court summarized the testimony of each witness, simply repeating after each testimony that the specific piece of evidence was corroborated by other evidence and is accepted as credible by the court. The material evidence was listed and summarily pronounced to have proven the guilt of the defendant, without any serious degree of reasoning. The court expanded further on its explanation of the mental element of the crime, but without sufficient clarity. It first rejected the defence presented by the accused in his testimony that, in wrongly marking the boundaries between private and public land, he had acted without intent, rather doing so out of mere negligence. The verdict dismissed this argument simply as an attempt by the accused to avoid responsibility. Subsequently, the court based its finding as to the existence of the intent by generically referring to the testimonies of witnesses, including the expert witness, and to the statement of the accused himself, as he failed to apply due diligence in the performance of his duty.<sup>104</sup> The verdict did not clarify how the awareness by the accused of his own negligence (as demonstrated by his statement) could prove the intent to commit the abuse of office – in fact, these seem to represent contradicting stances on the accused's *mens rea*.

Compounding this situation, the court made a substantial error in imposing the sentence, declaring a sentence of six months of imprisonment while stating that under article 383(2) of the FBiH CC, the prescribed punishment should range from six months to five years of imprisonment.<sup>105</sup> This was a clear error, as the code prescribes a minimum of one year to a maximum of ten years of imprisonment for that aggravated form of abuse of office.<sup>106</sup>

The court of second instance, deciding upon the appeal of the defence, confirmed the first instance verdict without addressing these flaws. The decision – instead of directly addressing the claims of the defense that the first instance verdict was unclear, contradictory, and lacking a proper and complete explanation as to the establishment of facts – took another approach, first by stating that the first instance verdict had listed all the evidence, and then by proceeding with its own independent evaluation of the evidence, concluding by endorsing the conclusions of the first instance court as its own.<sup>107</sup> With regard to the issue of intent, the decision merely restates the questionable stance expressed by the first instance court that the defendant, by admitting that he acted with negligence, had actually shown intent in committing the offence.<sup>108</sup>

104 *Hamed Tičević and Munib Alihodžić*, Zenica Municipal Court Verdict of 13 April 2018, page 9: "The defence stated without any ground that the accused did not commit the crime, as for this crime, it is necessary that the crime is committed with intent, without the possibility of committing it out of negligence, because this fact was proven by witnesses of the prosecution, expert witnesses and even the accused, who finally admits that he failed to apply due attention, because of all the tasks he had, and that he wanted to do the job at any cost, and also by material evidence, since the defence did not challenge this, except by the accused's admission that he 'though nothing would happen, but it did!'"

105 *Hamed Tičević and Munib Alihodžić*, Zenica Municipal Court Verdict of 13 April 2018, page 2.

106 See art. 383(2), FBiH CC.

107 *Hamed Tičević and Munib Alihodžić*, Zenica Cantonal Court Verdict of 5 October 2018, pages 2-4.

108 *Ibidem*, page 3.

In some other cases analyzed, the appeal decisions quashing the first instance verdict also lacked proper reasoning.

The case of **Ljubinka Kolundžija tried in first instance by Doboj Basic Court** but finalized upon retrial by Doboj District Court is illustrative. In this case, the defendant was charged with the offence of accepting bribes, with the indictment alleging that she, in the role of inspector, took bribes in exchange for not reporting certain violations of provisions regarding sanitary requirements of commercial premises.<sup>109</sup> While the court of first instance found the defendant guilty, this verdict was quashed upon appeal as the district court found that some of the evidence was illegally acquired and that the verdict was incomplete as it did not properly assess some of the evidence.<sup>110</sup> As the case was sent back for retrial, the basic court again found the defendant guilty for some of the acts charged in the indictment and issued a suspended sentence of one year of imprisonment.<sup>111</sup> After further appeal, the district court again quashed the first instance verdict, but did not provide any reasoning as to why the appeals lodged by both parties had been granted; the decision merely stated that the first instance court had failed to act upon the instructions given by the district court in the previous decision granting the appeals and ordered that the (second) retrial be carried out before the district court itself.<sup>112</sup>

While appeal decisions lacking basic reasoning such as in this case are a rare occurrence, a more frequent problem is that courts of second instance fail to comprehensively address the individual grounds of appeal by the parties. As shown in the next example, by not considering the appeal claims in their entirety, the higher courts may be missing opportunities to provide guidance on the interpretation of substantive and procedural law, thereby encouraging harmonization of norms in the long term.

For example, in the case of **Stevan Tešić before the Banja Luka District Court**, the defendant, a tax inspector responsible for carrying out certain investigative acts in a criminal case, was charged with the offence of trading in influence as he allegedly promised a suspect that he would talk to the prosecutor in charge of the case against him in order to have the case settled as soon as possible with a guilty plea and a suspended sentence.<sup>113</sup> In exchange for this intercession, the inspector allegedly asked the suspect for a reward for the prosecutor. Under article 353(1) of the RS Criminal Code, the offence in question is committed when someone “demands or accepts a reward or any other benefit for himself or for another person, directly or through a third party for interceding that an official act be or not be performed by taking advantage of his official or social position or his actual or presumed influence”. The District Court acquitted the defendant, finding that the prosecutor had failed to prove that the accused had actually demanded a reward or had in fact interfered with the work of the prosecutor alleged to have been the promised beneficiary of the reward. In its reasoning, the

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109 *Ljubinka Kolundžija*, Doboj District Prosecutor's Office Indictment of 15 March 2013.

110 *Ljubinka Kolundžija*, Doboj District Court Decision, 13 April 2016, p. 2

111 *Ljubinka Kolundžija*, Doboj Basic Court Decision, 30 June 2016.

112 *Ljubinka Kolundžija*, Doboj District Court Decision of 16 November 2016, pages 1-2.

113 *Stevan Tešić*, RS Prosecutor's Special Department Indictment, 16 June 2017.

court stated that the act of “demanding” prescribed in the definition of the offence requires “the highest degree of seeking a certain award” or another benefit.<sup>114</sup>

The verdict, however, does not elaborate further on the difference between “demanding” (“zahtijevati” in BCS) and “seeking” (“tražiti” in BCS) as elements of the crime, but simply concludes that, on the basis of the evidence, it had not been proven that the defendant had demanded a reward.<sup>115</sup> This point was raised by the prosecution in its appeal to the RS Supreme Court. The point raised by the prosecution was important both in connection with the outcome of the specific case and for the purpose of establishing judicial practice clarifying a key element of a relatively newly defined offence, “trading in influence”, a provision introduced into RS criminal legislation only in 2013<sup>116</sup> and thus in need of judicial guidance as to its interpretation. Despite this, the RS Supreme Court did not express a stance on how the act of “demanding” should manifest itself in concrete terms; it instead confirmed the first instance verdict, stating that the district court was correct in its view that the elements of the crime had not been proven.<sup>117</sup>

In light of the foregoing examples, paired with the findings of the 2018 ARC Report, the Mission concludes that judicial and prosecutorial capacities are still substantially lacking in the investigation, prosecution, and adjudication of corruption-related offences across BiH.

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114 *Stevan Tešić*, Banja Luka District Court Verdict of 1 December 2017, page 8: “The act of demanding implies the highest degree of seeking a certain award or other favour which is committed by an official person, certainly by the abuse of his status and that is the status of an official person”. (In the original: “Radnja zahtjevanja podrazumjeva najveći stepen traženja određene nagrade ili druge usluge, da to čini službeno lice svakako zloupotrebom svog statusa a to je status službenog lica”).

115 *Ibidem*.

116 RS Law No. 67/13.

117 *Stevan Tešić*, RS Supreme Court Verdict of 6 September 2018, pp. 1-4.

# 6

## FAIRNESS - ADHERENCE TO FAIR TRIAL STANDARDS, INCLUDING INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

Fair administration of justice is generally and rightfully considered one of the cornerstones of a democratic society. The right to a fair trial is a basic human right and it is enshrined in the Constitution of BiH<sup>118</sup> and in the European Convention on Human Rights (ECHR).<sup>119</sup>

Fairness is also a key factor in the context of judicial response to corruption. While productivity and competence in the application of the law are also key factors for assessing the effectiveness of a judicial system, they cannot be taken as proof of respect for the rule of law in the absence of basic guarantees of fairness and respect for the rights of the accused during criminal proceedings. Quality of justice and effectiveness of the judicial system cannot be achieved without respecting fair trial standards. This is particularly true in relation to processing corruption cases, as they can be used as a weapon for persecuting political opponents where a weak judiciary succumbs to pressures from political and other interest groups.

To safeguard the rights of accused, Article 6 of the ECHR foresees in its first paragraph an overarching right for everyone to a fair and public hearing by a competent, independent and impartial tribunal established by law, and to a trial within a reasonable time. In the case-law of the European Court of Human Rights (ECtHR), the concept of fairness evoked in that paragraph has been held to encompass the general principles of equality before the law and equality of arms. While this part of the article applies to both civil and criminal proceedings, the remainder of the article provides for additional due process guarantees specific to the criminal process, including: the right to presumption of innocence, the right to be promptly informed of charges against oneself, the right of the accused to counsel of one's own choosing in preparation of one's defense, the right to adequate time and facilities for the preparation of one's defense, the right to call and examine witnesses, and the right to have the assistance of an interpreter if necessary.

<sup>118</sup> Constitution of BiH, Art. II(3)(e).

<sup>119</sup> ECHR, Art. 6.

A first assessment of these issues based on the monitoring of corruption cases in BiH in 2017–2018 suggests that courts in the country are generally conscious of the importance of adhering to fair trial standards and take them into due consideration when adjudicating these cases. However, there are important exceptions. One prominent concern noted by the Mission is the excessive length of proceedings observed in many cases – an issue which could result in a violation of the accused’s right to trial within a reasonable time.

While the general situation regarding the respect of fair trial standards can be considered satisfactory, concerns remain. The excessive length of proceedings, due to this issue’s complexity and interconnection with the more pervasive issue of efficiency in the overall administration of justice, is analyzed in Chapter VII as part of the Mission’s assessment of the efficiency of the judicial response to corruption. In this Chapter, instead, particular attention is given to two fair trial issues which have been identified as problematic and have proven to have an impact on the overall quality and effectiveness of the judicial response to corruption:

- 1) the application of procedural guarantees to ensure the impartiality of the court in a given case; and
- 2) the interpretation of the rules regulating the admissibility and legality of evidence.

### 6.1. Impartiality of the court

Impartiality is closely interlinked with the independence of the judiciary and together they represent the central pillar of the fair administration of justice. As explained in the ODIHR Legal Digest of International Fair Trial Rights:

“The requirement of independence means, in general terms, that tribunals should be free from any form of direct or indirect influence, whether this comes from the government, from the parties in the proceedings or from third parties, such as the media ... Impartiality is a guarantee that is linked to the principle of equality before courts and tribunals ... and involves the idea that everyone should be treated the same. It requires that judicial officers exercise their function without personal bias or prejudice and in a manner that offers sufficient guarantees to exclude any legitimate doubt of their impartiality”.<sup>120</sup>

With specific regard to impartiality, the ECtHR has developed both subjective and objective tests for assessing whether a court can be considered impartial. The former takes into consideration the personal convictions and behaviour of a judge in a given case. As judges must carry out their function without personal bias or preconceptions, personal impartiality is presumed until there is evidence to the contrary. The Court has considered displays of hostility towards a certain party or inappropriate comments as to whether the accused is guilty or innocent as relevant evidence for determining bias in a subjective test.<sup>121</sup> With regard to the objective test, the ECtHR stated in *Fey v. Austria* that:

120 ODIHR Legal Digest of International Fair Trial Rights, September 2012, page 58.

121 ECtHR, *Piersack v. Belgium*, 1 October 1982, para. 30.



“Under the objective test, it must be determined whether, quite apart from the judge’s personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, as far as criminal proceedings are concerned, in the accused. This implies that in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the accused is important but not decisive. What is determinant is whether this fear can be held to be objectively justified”.<sup>122</sup>

### *Incidents of bias*

Turning now to the situation in BiH as assessed by the Mission, with specific regard to the subjective test, the behaviour of judges in cases monitored in 2017–2018 was generally free of visible bias, exhibiting overall a well-balanced approach to all parties. Examples of conduct suggestive of possible bias of a judge in favour of one of the parties were observed in just a few cases.

In **one ongoing case currently under appeal**, for example, the Mission observed during the first instance court trial hearings that interactions between the presiding judge and the accused and his defence counsel were often tense and characterized by a certain degree of animosity. This tension escalated on a few occasions when the judge, in taking measures for management of the trial, took decisions which could be considered as prejudicial to the accused and not in accordance with the principle of equality of arms. During one hearing, for example, the judge refused to let the defence counsel present a procedural objection on the manner of presentation of evidence by the prosecutor, on the grounds that the counsel had raised a similar objection (although on a different substantive matter) at a previous hearing; the judge refused to hear the objection, simply stating that the defence “can present all his objections in the closing arguments”. During another hearing, the judge did not allow the counsel to present an objection to the reading in court of the statement of a witness who could not be summoned. As the counsel attempted to articulate the objection, the judge forbade him from speaking further and threatened to hold him in contempt if he continued to talk. Furthermore, on two occasions the judge granted the prosecution’s requests to submit additional (i.e. rebuttal) evidence during the prosecution case and not after the defence case as is prescribed under the code. While the judge is allowed, in the interest of justice, to change the order of presentation of evidence, this approach towards the requests of the prosecution was not matched by an equal understanding with regard to some requests of the defence. In fact, the judge refused a defence request for assistance in obtaining some official documents as material evidence as the judge deemed them not to be relevant or redundant.

In the case of **Ševketa Ganibegović before Zenica Municipal Court**, by contrast, the judge exhibited certain signs of prejudice against the prosecution rather than the defence. During the main trial, the Mission observed that the judge frequently interrupted the prosecutor during the examination of witnesses, commenting negatively on the questions posed to the witness (although without alleging that they were impermissible) and on the

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<sup>122</sup> ECtHR, *Fey v. Austria*, 24 February 1993, para. 30.

work of the prosecution in general in a demeaning tone. In one such instance, when the prosecutor asked a witness whether or not an urban permit is required for an inspector to visit a site, the judge cut him off, explaining that “no one did anything without an urban permit in this case”. Comments such as this one can be deemed as inappropriate as they may suggest that the judge has already made up his or her mind regarding the issues at stake in the case. In another instance, as the accused decided to testify on her own behalf, the judge asked her several leading questions, which seemed to support the thesis of the defence. When the prosecutor questioned the accused on the stand, however, the judge often interrupted the prosecutor with comments that seemed to undermine the effectiveness of his line of questioning. For example, when the prosecutor asked the accused how she determined that the disputed billboard was well fixed to the building wall, the judge interrupted the prosecutor and stated that the accused can well determine this as she has a degree in engineering.<sup>123</sup>

As said, instances of apparent bias like the ones described above are rare and do not appear to have a substantial impact on the processing of corruption cases overall. The Mission’s trial monitoring found a number of cases where the disqualification of a judge was sought by one of the parties on the basis of objective reasons provided by law.

### *Disqualification of Judges*

Domestic legislation adequately regulates the grounds and the procedure for raising and deciding on requests for disqualification of a judge. The relevant provisions<sup>124</sup> stipulate that the parties may seek disqualification of a judge on a number of grounds indicating a possible conflict of interest, blood relations to one of the parties, or for having already ruled on some aspect of the case in a previous stage. A residual clause allows for disqualification if other circumstances exist that raise a reasonable suspicion as to the judge’s impartiality. Based on its analysis of monitored cases, the Mission concludes that the application of these provisions is generally not problematic, although the comprehensiveness of the prescribed grounds for disqualification may sometimes put a court, especially smaller ones with few judges, under strain when it comes to appointing a suitable judge to a case.

In **one ongoing case**, for example, the prosecution requested the disqualification of the presiding judge on the basis of the residual clause – circumstances that raise a reasonable suspicion of lack of impartiality. Specifically, the prosecution submitted evidence suggesting that the husband of the judge in question had been hired by one of the defendants in the company he directed. For this reason it could be argued that the husband of the judge had a personal interest in seeing a positive outcome for the defendant in the proceedings. The collegium of judges granted the motion and appointed a new presiding judge. The prosecution then filed and was granted a motion for disqualification of this new judge as well, this time because the judge had already decided on the substance of the case (namely a request for custody) as the preliminary proceeding judge. It must be underlined that, according to domestic criminal procedure, a judge is automatically disqualified if she participated in the same case in the capacity of preliminary proceedings judge or preliminary hearing judge. While the court acted according to the law, this case is a good example of how challenging

123 Trial monitoring reports from main trial hearings held on 16 May 2017 and 14 June 2017.

124 See CPC BiH, arts. 30, 31; CPC FBiH, arts. 39, 40; CPC RS, arts. 37, 38; CPC BD BiH, arts. 29, 30.

the appointment of a panel of judges fulfilling all the necessary impartiality requirements may be in a smaller court without a large pool of judges.

### *Transferring cases due to impartiality of the court*

This issue is magnified and has proven to be more problematic when, instead of a single judge, the impartiality of an entire court is cast into doubt. This situation has been observed in at least four cases monitored by the Mission, detailed below. Interestingly however, the relevant courts took varying approaches in dealing with the problem. Based on an analysis of the decisions issued in these cases, it can be argued that part of the problem lies in a lack of provisions expressly regulating this specific matter. The provisions on disqualification mentioned above concern single judges, but not entire courts. For this reason, and in an attempt to ensure the impartiality of the system, some courts have resorted to a more general and unqualified provision allowing the transfer of cases to another court when “important reasons” exist.<sup>125</sup>

In **another ongoing case**, for example, a preliminary hearing judge filed a motion to the higher court for the transfer of a case against a prosecutor (accused of taking bribes) who had been working within the same jurisdiction of the court seeking the transfer. The motion argued that the prosecutor in question, due to his work, had frequent contacts with all the judges working in the court. Additionally, the judges were also familiar with some of the witnesses in the case, who were judges from a neighbouring court. Accordingly, the transfer of the case was deemed necessary as a way to avoid any doubt as to the impartiality of the court. The higher instance court thus granted the motion and ordered the transfer of the case to another court. It held that the circumstances mentioned in the motion constituted the “important reasons” required for the transfer, as they showed that holding the trial in the original court would not satisfy the objective test of impartiality under the ECHR.

In **a second ongoing case**, the transfer of the proceedings was sought by the preliminary hearing judge on the grounds that one of the judges employed in the court seeking the transfer (although not the judge assigned to the case) was the wife of the accused. The higher court accepted that this fact qualified under the “important reasons” requirement and ordered the transfer of the case. The decision, however, did not make any reference to the need to preserve the appearance of impartiality of the court and did not elaborate on the reasons why the legal requirements for the transfer were fulfilled.

In **a third ongoing case**, the defence filed a motion for transfer of the case as the accused had served as a judge in that very court for a long period of time before being charged for taking a bribe. The motion, opposed by the prosecutor, was rejected by the preliminary hearing judge, as she held that the defendant’s concerns regarding the impartiality of the court could not qualify as “important reasons” requiring the transfer of the case. The judge reasoned that, in order to be justified, fear of bias could not be applicable to all the judges of the court on the basis of the abstract assumption that they would not be impartial because the defendant was herself a judge.

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<sup>125</sup> Criminal Procedure Code of BiH, Art. 27; Criminal Procedure Code of FBiH, Art. 35; Criminal Procedure Code of RS, Art. 33; Criminal Procedure Code of BD BiH, Art. 27.

In coming to this conclusion, the preliminary hearing judge deciding on the motion referred to case-law of the ECtHR in support of her position and finally stated that, when deciding on the transfer of cases, the court had, in previous cases of transfer, also considered other factors, such as the nature of the offence and the gravity of the consequences. Considering all these factors, it could not be concluded that “important reasons” justifying the transfer of the case existed. As this decision was upheld by a panel of three judges, the trial was conducted before the same court and ended with the partial conviction of the defendant. Among other grounds of appeal against the verdict, the defence alleged again the lack of impartiality of the court for the same reasons expressed in the original motion for transfer. Clearly departing from the approach taken in the previous decision, the court of second instance held that the main rationale of the provision allowing the transfer of cases for “important reasons” was the preservation of the objective impartiality and independence of the court. It added that, in previous decisions, the court had departed from this rationale in assessing the existence of the “important reasons” by applying criteria that were too broad and vague, and concluded that in this case the court of first instance had misapplied this provision to the detriment of the defendant, who had legitimate concerns as to the existence of factors undermining the appearance of impartiality of the court. Accordingly, the case was transferred to another court.

A fourth example, showing a similar pattern as the previous case, concerns the finalized **case against Alida Nađ Madarac**, a judge of the Bijeljina District Economic Court accused of breaking the law with the intention to procure an undue benefit for a third party in connection with the selection of bankruptcy commissioners.<sup>126</sup> In June 2017, the RS Supreme Court, upon the motion of Bijeljina BC, transferred the case to Zvornik BC for the stated reason of preserving the objective impartiality of courts in the adjudication of the case. The motion had argued that the Bijeljina BC lacked objective impartiality in this case because the defendant had previously served as a judge in Bijeljina BC before the creation of the Bijeljina District Economic Court and that for this reason she was personally known to all the judges of Bijeljina BC. The motion added that the defendant was still using the premises of Bijeljina BC for holding hearings in her cases since the Bijeljina District Economic Court did not have its own courtroom.<sup>127</sup>

In deciding on the motion, the RS Supreme Court accepted the arguments therein and agreed that the need to avoid doubt as to the impartiality of the court constituted “important reasons” justifying the transfer of the case.<sup>128</sup> The case was accordingly transferred to the Zvornik BC, which acquitted the defendant.<sup>129</sup> The prosecutor then filed a motion to the RS Supreme Court seeking the transfer of the appeal proceedings from Bijeljina DC to another court with subject matter jurisdiction. In its motion the prosecution proposed the same essential arguments found in the Bijeljina BC’s original motion for transfer of the first instance proceedings, namely that the Bijeljina DC is located in the same building as Bijeljina BC and that some of the judges are former colleagues of the defendant, as well as the fact

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126 *Alida Nađ Madarac*, Bijeljina District Prosecutor’s Office Indictment of 10 April 2017.

127 *Alida Nađ Madarac*, RS Supreme Court Decision of 12 June 2017.

128 *Ibidem*.

129 *Alida Nađ Madarac*, Zvornik Basic Court Verdict of 28 March 2018.

that the defendant, in her bankruptcy-related proceedings, was using the same courtrooms used by both Bijeljina BC and DC.

Surprisingly, however, in this case the RS Supreme Court refused the motion for transfer of the proceedings, reasoning that the defendant's proximity to some of her former colleagues – now judges at the Bijeljina DC – and her sharing the use of courtrooms with the Bijeljina DC could not cast doubt on the impartiality of all judges of that court. The RS Supreme Court further reasoned that the Bijeljina DC, as a court of general jurisdiction, lacks a jurisdictional link with the Bijeljina District Economic Court.<sup>130</sup> In September 2018, the Bijeljina DC confirmed the first instance acquittal.<sup>131</sup>

### *Conclusions on impartiality of the court*

There are at least two reasons for the divergent stances taken by the courts in the illustrated examples. The first is simply the diversity of the specific factual situations in each case. A second reason, however, may stem from uncertainty as to the legal standards which should be applied in cases where the impartiality of a whole court is called into question. This uncertainty is due, at least in part, to the vagueness of the requirement (“important reasons”) foreseen under the law for the transfer of a case to another court. The vagueness of this provision represents a problem not only in relation to the protection of the impartiality of the court, but also from the standpoint of legal certainty, which requires that rules defining the jurisdiction of courts are sufficiently clear.<sup>132</sup>

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➤ For these reasons, **the Mission recommends that the provisions regulating the transfer of cases in the four criminal procedural codes in BiH are amended, in a harmonized fashion, in order to further define the reasons which justify the transfer of cases.** In particular, the amended provisions should clarify whether relevant grounds for transfer should be related exclusively to the need to protect the impartiality and independence of a court or should include other factors such as economy of proceedings and efficiency.<sup>133</sup>

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<sup>130</sup> *Alida Nađ Madarac*, RS Supreme Court Decision of 3 September 2018.

<sup>131</sup> *Alida Nađ Madarac*, Bijeljina District Court Decision of 18 September 2018.

<sup>132</sup> See Venice Commission, *Opinion on Legal Certainty and Independence of the Judiciary in Bosnia and Herzegovina*, 18 June 2012, p. 8-11, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)014-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)014-e)

<sup>133</sup> It should be noted that one of the recommendations stemming from the Session of the Third Sub-Committee on Justice, Freedom and Security held in November 2018 requires legislative and executive authorities at all levels to amend the law with a view to provide more reasons for the transfer of jurisdiction.

## 6.2. Admissibility and legality of evidence

When it comes to the issue of admissibility and legality of evidence gathered during the investigation, fair trial standards appear less stringent compared with other facets of Article 6 of the ECHR. As this issue is not directly regulated in that provision, the ECtHR has frequently stated that “it is not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, unlawfully obtained evidence – may be admissible or, indeed, whether the applicant was guilty or not”.<sup>134</sup> In this regard, the Court has consistently held that, while the admission of unlawfully obtained evidence does not in itself violate Article 6, it can give rise to unfairness, and therefore to a violation of Article 6, when taking into consideration the proceedings as a whole.<sup>135</sup>

### *The legislative framework*

The domestic rules regulating this matter are concise and provide only a basic framework. The main provisions can be found in one article contained in the first chapter of all four CPCs, in the section covering basic principles. Despite their brevity, these provisions are not fully harmonized across the CPCs. The BiH CPC reads that “the Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code”.<sup>136</sup> The corresponding articles in the FBiH and RS CPC are the same, while the BD CPC has one important difference as it makes reference to evidence obtained through violation of this Code but omits the term “essential” in that passage.<sup>137</sup> As a consequence, differently from the other codes, it seemingly prescribes that any violation of the criminal procedure code, however slight, would result in the illegality of the evidence so acquired.

While some additional provisions are applicable to the legality of special investigative measures,<sup>138</sup> they do not clarify the fundamental issue of which violations of the criminal procedure code should be deemed “essential,” thus entailing the inadmissibility or illegality of the related evidence. In order to ensure a sufficient degree of legal certainty, the domestic legal framework would require clarification through, and consolidation of, coherent judicial practice. On the basis of its monitoring of corruption cases to date, the Mission concludes that judicial practice in this field is neither consolidated nor coherent. It is also evident that this shortcoming has a direct impact on the quality and effectiveness of the judicial response to corruption.

### *Lack of harmonized judicial practice*

To illustrate this issue, the remainder of this sub-section will present a few cases demonstrating a lack of clear and harmonized judicial practice in relation to this matter. Specific attention

134 ECtHR, *Khan v. UK*, para. 34.

135 ECtHR, *Schenk v. Switzerland*, para. 46.

136 See the CPC of BiH, Art. 10.

137 CPC of BD BiH, Art. 10.

138 CPC of BiH, Art. 121; CPC of FBiH, Art. 135; CPC of RS, Art. 239, CPC of BD BiH, Art. 121.

will be paid to which kinds of human rights and criminal procedure violations should result in finding that the evidence in question is illegal.

In **one ongoing complex corruption case**, a court denied a prosecutorial motion for ordering the custody of the defendants. In so doing, the court found that the evidence providing the basis for the grounded suspicion of a criminal offence was illegal, and thus could not be used. The court found, specifically, a violation of the procedural provision prescribing that, after the conclusion of the special investigative measures, the suspects should be informed by the preliminary proceeding judge so that he/she can ask for a review of the legality of the order, or of the method by which the order was enforced.<sup>139</sup> Considering that the preliminary proceeding judge had not informed the suspects according to this provision, the court held this to be an essential violation of the code and declared the evidence gathered through the use of the special investigative measures illegal. As a result, the main requirement for ordering custody (the grounded suspicion) was missing.

The higher instance court, upholding the appeal filed by the prosecution, quashed the decision of the first instance court, finding that it lacked proper reasoning. The decision on appeal underlined that, in order to argue that a violation of a criminal provision resulted in the illegality of evidence, the court must evaluate the purpose and importance of the provision in question as well as the effects of the violation on the basic principles of the criminal process. In other words, the court needs to explain why the violation in question amounts to an essential violation of the CPC as prescribed under the provision on the illegality of evidence. As the appealed decision lacked any reasoning to this effect, the second instance court did not need to further elaborate on what constitutes an essential violation of the CPC in order to revoke the appealed decision on custody. By failing to do so, however, it missed an opportunity to provide guidance to lower courts on this important matter.

The Mission also noted a lack of clear standards in judicial reasoning on the illegality of evidence in **another case currently under appeal**. In this case, the defendants were all acquitted in the first instance as the court found that the prosecution was mainly based on material evidence which had been seized in violation of certain domestic criminal provisions and was, therefore, declared illegal. In particular, the court held that the evidence in question had been seized by the police without a judicial order and that the operation was not characterized by a need for urgency justifying the seizure of evidence before the issuance of a judge's order. In addition, the court also ruled that there had been a violation of criminal procedure provisions requiring the generation of an inventory list of the seized objects and obliging the prosecutor to carry out an official opening and inspection of the temporarily seized objects for which an inventory list cannot be made. The reasoning, however, did not explain how these breaches amounted to essential violations of the criminal procedure – as required by the applicable legislation for a finding of the illegality of evidence – and whether each breach was to be considered essential in that sense. While it seems clear that prima facie a seizure carried out without a judge's order would amount to an essential violation, the same cannot be necessarily said with regard to other violations related to the procedure of inspection and inventory of the seized evidence.

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139 CPC of FBiH, Art. 133.3.

### *Issues surrounding the application of ECtHR case law in BiH*

In **another ongoing case**, the court referred to the case-law of the ECtHR in order to supplement and interpret the relevant domestic provisions. In the first instance verdict, the court declared the illegality of evidence gathered through the use of special investigative measures, finding that the order of the preliminary proceeding judge allowing the use of those measures did not include reasoning as to why the evidence in question could not be obtained in any other way – a condition for the granting of such measures under the code. In excluding the evidence, the court explained that the order in question simply restated the arguments in the prosecutorial motion proposing the use of the measures.

While the applicable domestic criminal procedure provisions require that a prosecutorial motion requesting use of special investigative measures must be properly reasoned and fulfil a number of conditions, they do not explicitly require reasoning in the order issued by the judge.<sup>140</sup> In finding the evidence illegal, however, the court supported its conclusion with reference to a similar ECtHR case against Croatia which found a violation of the ECHR as a result of interceptions in criminal proceedings ordered by a judge without adequate reasoning.<sup>141</sup>

Such references to international case-law to complement domestic legislation are a clear sign that judges take respect for human rights during the criminal process into due consideration. However, it also seems clear that adequate and coherent regulation of the conditions for the legality of evidence, striking a fair balance between the rights of the accused and the need to preserve the effectiveness of the criminal justice system, can be achieved only through a clearer and more detailed domestic legal framework. In particular, it should be acknowledged that the stance expressed by the court in this case puts the prosecution in the uneasy situation of “losing” key evidence gathered through special investigative measures not because of its own failure to comply with the necessary legal requirements, but because of a defect in an act issued by a judge; moreover, this legal defect, once occurred, cannot be remedied as the evidence cannot be gathered again in a legal manner.

The above-mentioned **case of Ljubinka Kolundžija**, tried in first instance by Doboj Basic Court but finalized upon retrial by Doboj District Court, is another good example of the uncertainty and challenges surrounding the application of domestic and international standards related to the admissibility of evidence. The first instance court found the defendant guilty on the basis of evidence which had been gathered not by official authorities, but by one of the witnesses, who had secretly recorded an incriminating conversation with the accused. As the applicable CPC does not regulate the use of this kind of evidence, the court found it admissible and compared it to evidence gathered through security cameras, thus not requiring adherence to specific legal requirements.<sup>142</sup>

140 See the CPC of BiH, Art. 118; CPC of FBiH, Art. 132; CPC of RS, Art. 236; CPC of BD BiH, Art. 118.

141 ECtHR, *Dragojević v. Croatia*. It should be noted that the same stance, including the reference to this precedent from the European Court, has been expressed by the Supreme Court of FBiH in another case where evidence gathered through special investigative measures was declared illegal because of lack of adequate reasoning in the order issued by the judge (see *Ado Baljagić*, FBiH SC Verdict of 7 November 2017, p. 12, para. 4).

142 *Ljubinka Kolundžija*, Doboj Basic Court Verdict of 29 December 2015, pp. 9-10.



The court of second instance, however, revoked the verdict and sent the case to retrial as it held that that piece of evidence was illegal and could not be used; this was because, according to the court, the recording of that conversation had been taken in violation of the right to private life under Article 8 of the ECHR. As domestic criminal provisions prescribed the inadmissibility of evidence obtained in violation of human rights, the Doboj District Court quashed the first instance verdict as it had found the accused guilty on the basis of illegal evidence. Considering the importance of the matter, the reasoning of the second instance court appears insufficient as it fails to properly address the key question of how the recording of an incriminating conversation by a private citizen can amount to a violation of the ECHR, which, being an international treaty, is mostly concerned with protecting individuals from actions or omissions from state authorities. The court does not refer to any case-law of the ECtHR in support of its conclusion, and in fact does not present any argument whatsoever justifying its finding of a violation of the ECHR.<sup>143</sup>

#### *Conclusions on admissibility and legality of evidence*

In light of the examples presented here, it can be concluded that:

- There is a lack of harmonized judicial practice with regard to the key issue of the legality of evidence and the specific grounds for declaring some evidence illegal.
- This, together with the fact that the relevant domestic provisions are neither fully harmonized nor sufficiently developed, creates legal uncertainty undermining the judicial response to corruption both in terms of the rights of the accused and of effectiveness in prosecuting such offences.

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› The Mission therefore recommends that the issue of the legality of evidence, and the conditions under which evidence may be excluded by a court, are further clarified through the development of a harmonized judicial practice, thoroughly reasoned in court acts, and/or through harmonized legal amendments to the criminal codes.

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143 Ljubinka Kolundžija, Doboj District Court Verdict of 13 April 2016, p. 2.



# 7

## EFFICIENCY, WITH SPECIFIC REGARD TO LENGTH OF PROCEEDINGS

The length of proceedings is a key factor in determining the quality and effectiveness of a judicial system. As already mentioned, the right of the accused to a trial within a reasonable time is one of the key aspects of a fair trial under the ECHR. However, it is not only defendants who have a legitimate interest in the efficient processing of criminal cases. Victims and society in general, as represented by the prosecutor, also have an inherent interest in a reactive judiciary capable of ensuring accountability in a timely manner.

Recognizing the importance of this matter, the HJPC identified efficiency as one of the four key principles for the functioning of the judiciary, the other principles being quality, accountability and independence.<sup>144</sup> Following the recommendations and guidelines issued by the European Commission for the Efficiency of Justice (CEPEJ),<sup>145</sup> the HJPC established procedures and internal regulations for determining optimal and predictable timeframes for the processing of all types of cases. The optimal timeframes “represent a standard timeframe for the efficient resolution of cases in accordance with the law.” The predictable timeframes, on the other hand, are “the realistic timeframes within which one can expect the conclusion of a case”.<sup>146</sup> While the former represents a target to be achieved and are the same for all courts and prosecutor’s offices, the latter is established by each judicial organ on the basis of a set of common parameters. When predictable timeframes are estimated to be longer than the optimal ones, measures should be taken to narrow the gap.<sup>147</sup>

These parameters offer a useful point of reference when assessing the efficiency dimension of judicial response to corruption. The optimal timeframe for the completion of first instance criminal proceedings (from receiving the indictment to issuing the written verdict) is set at

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144 HJPC 2017 Annual Report, page 42, available at [https://vstv.pravosudje.ba/vstv/faces/pdfservlet?p\\_id\\_doc=50281](https://vstv.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=50281).

145 For details on this organ established within the Council of Europe, see <https://www.coe.int/en/web/cepej>.

146 A Decade of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, page 55, available at [https://www.pravosudje.ba/vstv/faces/pdfservlet?p\\_id\\_doc=27870](https://www.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=27870).

147 Ibidem.

140 days; the appeal process (from the filing of the claims by the parties to the issuing of the appeal decision) optimal timeframe is 158 days.<sup>148</sup>

Given these standards, the Mission's findings from observing the length of proceedings in the monitored cases is concerning. The results show that, on average, it takes 489 days to complete a corruption case. This average is based on a sample of 111 cases including all monitored cases finalized in 2017–2018 regardless of their level of seriousness. This is considerably longer than the optimal timeframe for the completion of first instance and appeal proceedings, which is set at 298 days.<sup>149</sup> The gap, however, significantly increases if one considers only the length of medium and high-level corruption cases in the sample. The average length based on such a sample (amounting to 38 cases – three high-level and 35 medium-level) is 598 days, which is double than the optimal timeframe. Still, the average duration of low-level cases (based on a sample of 73 of them) is 432 days, substantially in excess of the recommended duration of such trials.<sup>150</sup>

It must be underlined that these statistics are conservative as they do not take into account the high-level corruption cases currently being monitored but which have been in the trial stage for the last two or three years. The length of these ongoing cases would in all likelihood result in a substantial increase of the average length of time necessary to finalize serious and complex corruption cases.

That said, it should also be underlined that over this period, the Mission monitored many cases which were handled efficiently at each stage of the proceedings, including the main trial, and were completed within periods close to those set under optimal timeframes. This seems to demonstrate that the standards set by the HJPC are actually attainable in practice. In particular, the following examples from proceedings held in the Brčko District demonstrate that, with due care, it is possible to complete even fairly complex corruption cases within a reasonable time.

In the case against **Sabrina Drapić**, the indictment was submitted in October 2017 and confirmed in November;<sup>151</sup> the defendant pleaded not guilty in December and the main trial started in January 2018. After four hearings where 10 witnesses were heard, material evidence (160 documents) was admitted and closing arguments presented, and the verdict (an acquittal) was pronounced in mid-February.<sup>152</sup> The BD Appellate Court rejected an appeal from the prosecution and confirmed the verdict in July 2018.<sup>153</sup> Notwithstanding the fact that the case was not complex (two counts mostly based on material evidence), nine months

148 See VSTV, *Aneksa pravilnika o vremenskim okvirima za postupanje po predmetima u sudovima i tužilaštvima Prečišćeni tekst*, on file with the Mission, p. 48 and 53. It should be noted that, within these general timeframes, specific timeframes are set for each stage of the process at first instance and at the appeal stage.

149 Ibidem.

150 It should be observed that, while this sample is very significant from a numerical viewpoint, it is skewed with regard to the high ratio of high/medium level cases vs. low level cases which results from the fact that the Mission decided to prioritize the monitoring of high and medium level cases.

151 *Sabrina Drapić*, Brčko District Prosecutor's Office Indictment of 24 October 2017.

152 *Sabrina Drapić*, Brčko District Basic Court Verdict of 16 February 2018.

153 *Sabrina Drapić*, Brčko District Appellate Court of 25 July 2018.

from the filing of the indictment to finalization is still solid proof that efficient proceedings are feasible.

Similarly, the case against **Danijela Gnjidić** was completed in one year. The indictment was submitted in November 2016<sup>154</sup> and confirmed five days later; the defendant pleaded not guilty in December and the trial started in January 2017. After five hearings were held between February and May, where five witnesses were heard, the defendant gave a statement and material evidence was submitted. The verdict (another acquittal) was pronounced in June.<sup>155</sup> The BD Appellate Court rejected an appeal from the prosecution and confirmed the verdict in October 2017.<sup>156</sup>

Against this background, the rest of this Chapter will present examples and causes of delays and their impact on the processing of corruption cases, divided according to the phase of the procedure as follows:

- pre-trial phase;
- conduct and management of trials;
- appeals phase

### 7.1 Pre-trial phase

Based on a sample of 210 cases, including all monitored cases (ongoing or finalized) which have concluded the pre-trial phase, the average length of this stage of the process (namely from the filing of the indictment to the start of the main trial) is 217 days. This is almost four times longer than the optimal timeframe of 52 days and, indeed, we have observed that many monitored cases have stalled in this phase for years.

In one ongoing case, the defendants were charged in December 2015 with accepting bribes, forging documents, exerting improper influence and abuse of office in 2013. While the proceedings in relation to two defendants were stopped as they reached a plea agreement with the prosecution, the trial against the other defendants was due to start in September 2017. However, after a status conference held in April 2017, the trial did not commence until September 2018, three years after the start of the pre-trial stage. The first hearing, however, was immediately adjourned to November 2018 as one of the defendants did not appear.

In another ongoing case, two years passed between the plea hearing in March 2016 and the main trial in February 2018. Similarly to the previous case, however, the first hearing was immediately postponed for five additional months since one of the witnesses was not available; accordingly the first effective hearing took place in October 2018.

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154 *Danijela Gnjidić*, Brčko District Prosecutor's Office Indictment of 9 November 2016.

155 *Danijela Gnjidić*, Brčko District Basic Court Verdict of 5 June 2017.

156 *Danijela Gnjidić*, Brčko District Appellate Court of 4 October 2017.

In another case, the Mission observed a gap of 17 months between the filing of the indictment (in October 2016) and the start of the main trial (in March 2018).

In yet another ongoing case, the Mission observed a gap of nine months as the indictment was confirmed in October 2016, the plea hearing was held in February 2017, and the main trial started five months later.

In the finalized case against **Alija Hadžiabdić and Džemal Memagić before Visoko Municipal Court**, the pre-trial gap lasted ten months as the indictment was confirmed on 23 May 2016 and the main trial began on 8 February 2017.

In one more ongoing case, the main trial has been pending for 18 months. The indictment was filed in March 2017 and confirmed in May 2017. The plea hearing took place in July 2017 and the main trial has been pending since then for unknown reasons.

While the delays in these cases clearly affect their proper processing, it is often difficult to understand the causes of the delays. This is mainly because they have stalled during the pre-trial stage, and as such are not the subject of discussion in the course of public hearings.

Sometimes, however, the Mission observed that the delays were caused by a lack of available judges. The criminal division of one Cantonal Court, for example, was not working at full capacity for a period of 18 months during 2016 and 2017 because the only two criminal judges composing that division ceased to work there, as one retired and the other was appointed to the Supreme Court of FBiH. It was only in May 2017 that the criminal division became fully operational again with the appointment of two new criminal judges. This situation resulted in an increase in the number of all cases pending trial, including corruption cases.

Accordingly, in the entire period of 2017–2018 this court managed to schedule and complete only one corruption case trial. The procedural history of this case represents an extreme example of excessively long proceedings. As the indictment was filed and confirmed in July 2011, the trial was held before the cantonal court and the verdict was issued in June 2012. The Supreme Court of FBiH quashed the verdict and ordered a retrial in April 2014. Since two out of three of the panel judges who had tried the case in first instance had ceased to work at the cantonal court for the above-mentioned reasons, the retrial could not be scheduled for two and a half years. After the filing of a motion of urgency by the prosecution, the retrial eventually started in January 2017 and was completed in May. As of December 2018, the case is still pending appeal before the Supreme Court. This means that this case, of medium complexity, has been ongoing for more than seven years, which clearly disrespects the right to trial within a reasonable time.

Another case has been awaiting scheduling of its main trial since December 2016. The case was reassigned twice to a new judge since the originally appointed judge left the relevant court in December 2016. Ironically, the case in question had been transferred to this court from another cantonal court upon the decision of the FBiH Supreme Court in December 2015. The reason for the transfer was that, because judges who had a role in the previous phases of the case were automatically disqualified, there were insufficient judges in the transferring court to form the panel of three judges for the trial.

In other courts where substantial delays were observed in the pre-trial stage, however, the delays did not appear to be related to the lack of judges or the length of time required to appoint new judges. Unveiling the other reasons behind those inefficiencies requires further analysis.

## 7.2 Conduct and management of trials

The Mission observes that based on a sample of 123 cases, including all monitored cases in which the (first instance) trial has been concluded, the average length of this phase (from the first hearing to the pronouncement of the verdict) is more than one year (381 days). The optimal timeframe for this process is approximately five and a half times shorter - 168 days. Compared with the pre-trial phase, the gap between the ideal standard and the reality in the trial phase is even more dramatic.

As this stage of the process is open to the public, the factors determining the inefficient handling of trials in corruption cases are also more easily discernable. Consistent with its findings related to the pre-trial stage, the Mission observed significant delays during trial due to a change in the composition of the panel resulting from the retirement of a judge, or a judge taking a new position.

For example, in one ongoing case, the trial against the defendants started in January 2015 and continued for several hearings until December 2015, when the presiding judge took over a position in another office. As a result, the trial was adjourned for an indefinite period of time and resumed before a new presiding judge only in December 2017 – two years after adjournment. As of December 2018, the trial was still ongoing.

In another case, the main trial has been ongoing since February 2016. In July 2017, at the end of the prosecution's presentation of evidence, the presiding judge resigned from the court. As a result, the case was put on hold until November 2017, when a new presiding judge, newly appointed to the court, assumed this role. In accordance with the applicable CPC, the trial had to restart from the beginning in light of the change in panel and, upon the request of the defence, two witnesses were forced to testify again. After the restart of the trial, more delays followed as the trial was adjourned for six months and resumed in October 2018 following the filing of a motion for the disqualification of one of the judges on the panel as well as a strike that was declared by the *ex officio* defence counsel.

In another case, the indictment was confirmed in March 2015 and the main trial was nearing a close in May 2017, when the presiding judge was appointed to a new court. As the other criminal judge working in the court had also been assigned to another court, there was no criminal judge available to fill the empty seat on the panel. This stalemate lasted until October 2018, when the trial was due to commence before a newly appointed presiding judge. The hearing, however, had to be adjourned as the defendant and his two attorneys failed to appear. Although they did not provide the court with any justification for their absence, the new presiding judge failed to issue an apprehension order against the defendant, though this is permissible under the code.<sup>157</sup>

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157 CPC of RS, Art. 183.

This inaction of a presiding judge is another important factor pertaining to the length of trials observed by the Mission. This issue relates to the presiding judge's skill and attitude in the management of the trial, and specifically how the judge responds to frequent postponements due to the failure of one of the parties to attend hearings.

In one ongoing very complex case involving almost 50 defendants, comprising both natural and legal persons, the indictment was filed in October 2017. But the first main trial hearing has been adjourned eight times, so that the actual beginning of this phase has been pending for approximately six months. The continuous adjournments stem from the non-appearance of one or more defendants at every new hearing date. As this is to-date the largest corruption case processed in BiH in terms of the absolute number of defendants, it must be acknowledged that this factor presents formidable logistical and organizational challenges. Still, the Mission observes that the presiding judge often fails to establish whether the absence is justified or not and to make use of the instruments given to him by criminal procedures to ensure the presence of the defendants, including the ordering of apprehension or custody.<sup>158</sup>

In many other cases, the main cause for an excessive length of the trial seems to lie in the presiding judge's slow pace in the scheduling of hearings. For example, in one high level but from an evidentiary point of view, relatively simple case, the main trial lasted 26 months, as only one hearing per month (rarely two) would take place. Most of the time, two witnesses would be summoned for the hearing but only one of them would respond to the summons, so that, in the end, only one witness per hearing would be heard. The length of the trial was also affected by long periods when no hearings took place due to a combination of summer recess and medical issues on the part of various parties.

This practice of scheduling only one hearing per month has been observed in many courts and in most of the monitored cases. As such, it is one of the main factors leading to the excessive length of trials. Frequent adjournments of hearings due to ostensibly poor health conditions of the defendant are another major factor preventing the holding of expeditious trials.

In another ongoing case, at the start of the main trial in July 2017, the presiding judge agreed with the parties to schedule one hearing per week in order to conclude this complex case within a reasonable time. This agreement, however, was never respected due to the inability of some of the defendants to attend the trial on health grounds, causing an initial adjournment of three months, followed by the scheduling of just one hearing over a seven-month period. Eventually, the case against one defendant with the most severe health condition was separated from the rest of the case and transferred to a court near her place of residence. After that, the trial was adjourned due to the health condition of yet another defendant, who was due to have surgery in another country. The trial will recommence only once the defendant recovers. All these seemingly justified interruptions are having a profound impact on the conduct of the trial as only 16 hearings effectively took place over the course of 18 months. During this period, only nine witnesses were heard. Considering that the examination and cross-examination of each witness has so far averaged the length

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158 CPC of FBiH, Art. 139.



of about two hearings, and that the prosecution alone plans to call 73 witnesses, the trial will last several years at this pace.

A similar timeline has already taken form in another case, which is less complex than the one mentioned above. Having begun with six accused persons, at present only two remain, as two defendants signed a plea bargain agreement, one became a fugitive and another had his case separated on health grounds. Commencing in July 2015, this trial has been ongoing for three and a half years, with 17 hearing postponements, due in large part to the frequent absence of one of the defendants for health reasons.

This pattern has been noted in another case where the trial was scheduled to start in April 2016 but had to be postponed until September due to the health of one of the defendants. After the case against this defendant was eventually severed from the rest, the trial came to another standstill as another defendant failed to appear, alleging that his health conditions required him to be treated abroad. As an expert report ordered by the presiding judge established that the defendant in question was capable of attending the trial, an international arrest warrant was eventually issued against him, as his whereabouts are unknown. As this defendant is still at large, proceedings against him were eventually separated from the rest of the case. As of December 2018, the prosecution was concluding the presentation of its case.

### **7.3 Appeal phase**

Based on a sample of 52 cases, including all monitored cases with completed appeals proceedings in 2017–2018, the Mission observes that the average length of this phase (from the pronouncement of the first instance verdict to the issuing of the appeal decision) is 181 days. The optimal timeframe for the appeal phase is 158 days. For this phase, therefore, the trial monitoring findings show a gap of only 23 days between the ideal standard and the sample data. In fact, it is very likely that the actual performance is even better if one takes into consideration that the Mission's statistics, for technical reasons, include in the appeal phase the time necessary for the delivery of the 1<sup>st</sup> instance written verdict. This period is not considered as part of the appeal phase in the calculation of the optimal timeframe.

Although this shows a generally positive picture about the length of the appeal stage in corruption cases, the Mission has observed some exceptions. In one case, for example, the first instance verdict was issued in October 2015, but as of December 2018 no appeal decision had been issued by the Supreme Court of FBiH. In another case, the appeal decision by the Supreme Court has been pending since March 2016. In a third case, the first instance verdict was delivered in March 2017, but no appeal decision has been issued by the Supreme Court of FBiH as of December 2018.

### **7.4 General remarks on the impact of efficiency on judicial response to corruption**

Based on the analysis presented in this Chapter, the Mission concludes that primary factors affecting the length of proceedings in corruption cases occur at the trial stage and concern 1) changes in the composition of the panel requiring a recommencement of the trial; and 2) poor

management of the trial by the presiding judge, especially with regard to the use of available measures to ensure the presence of parties at the trial.

The problem of management of complex corruption trials is particularly striking if one considers the status of high-level corruption cases which are either at the trial or plea hearing stage (as of December 2018). According to the Mission's findings, there are 12 such cases, and serious and systemic delays have taken place at the trial in six of them. Case 1: the indictment was filed in December 2015, the trial started in April 2016 and is still in the prosecution phase. Case 2: the indictment was filed in March 2016 and the trial has been ongoing since September 2016 (still in the prosecution phase). Case 3: the indictment was filed in January 2016, the trial started one year later and is currently still in the prosecution phase. Case 4: the indictment was filed in March 2017, the trial has been ongoing since June 2017 and reached the defence phase only in November 2018. Case 5: the indictment was confirmed in March 2017, the trial has been ongoing since July 2017 and is still in the prosecution phase. And Case 6: the indictment was filed in October 2017, the plea hearing was held in January 2018 and start of the main trial has been postponed since June 2018.

Such systematic delays in these trials can have serious ramifications. In the worst-case scenario, extreme delays in the conduct of proceedings can result in a violation of the defendant's right to trial within a reasonable time, or in a lack of accountability when charges are dismissed due to the passing of the statute of limitations. The latter occurred in relation to one of the defendants in an ongoing high-level corruption case. In this case, four university professors were indicted in 2012 for events which allegedly occurred during the period of 2003–2007. The charges against two of the defendants alleged that they had committed the offence of sexual intercourse by abuse of position by requesting and receiving sexual favours from students in return for passing grades in courses they were teaching. As the trial started in October 2012, only 15 hearings were effectively held during the three years of the trial, which was completed in November 2015. Over this time, most of the hearings were adjourned with no activity at all for various reasons. On at least five occasions, summoned witnesses did not appear as they are now living abroad. In several instances the defence counsel or a defendant did not appear due to illness or other commitments. Some hearings were postponed until the court found a courtroom in which audio recording was available. Other hearings were postponed due to procedural motions from the defence requesting the disqualification of the judge, after the judge had refused another defence motion, or to amend the indictment to erase the names of two of the defendants who had passed away during the trial. The two remaining defendants were convicted in the first instance in November 2015. One was given a suspended sentence of four months for sexual intercourse by abuse of position, and the other received a suspended sentence of seven months for abuse of office.<sup>159</sup>

In September 2016, the court of second instance quashed the first instance verdict, dismissing the charges against the defendant convicted for sexual intercourse by abuse of office, on the grounds that the statute of limitations had passed. In fact as the criminal conduct had been committed in 2006, the absolute statute of limitation for the related offence had been

<sup>159</sup> As the case is still ongoing, the Mission cannot comment on whether this sentence is adequate or not in relation to the nature of the offences.

reached in 2016.<sup>160</sup> The court also ordered a retrial for the second accused. As the judge in charge of the retrial retired in 2017, a new judge was appointed, but only in 2018. The retrial has been ongoing since then.

While it is still premature to predict whether the high-level cases currently at the trial stage are likely to meet a similar destiny, this is definitively a scenario which cannot be excluded.

Taking into consideration the different examples of positive and negative practices presented here, this report recommends that adequate measures are undertaken in the short term to ensure that proceedings, especially in high and medium level corruption cases, are carried out in accordance with the right to trial within a reasonable time and in a way that ensures accountability and protects the rights of victims.

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› In this regard, **the Mission recommends that the HJPC, together with court presidents, consider the adoption of guidelines for the management of plea hearings and trials in complex cases. The guidelines should address all main factors which have an impact on the efficient and prompt conduct of these phases.**

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To give some concrete examples, these guidelines could:

- indicate the desirable or mandatory frequency of the hearings according to the complexity and importance of the case;
- give directions and indicate best practices on the proper use of status conferences;
- present domestic and international standards on striking a fair balance between the need to ensure expeditiousness in the conduct of the trial and to guarantee the rights of the accused;
- give directions on the need to properly and promptly verify the effective existence of the reasons given by the parties to justify their absence during trial;
- instruct the judges on the appropriate and fair trial-compliant use of coercive measures and fines to ensure the presence of parties and witnesses;
- advise the judges on the use of expert assessments to verify the health conditions of the accused and whether these conditions are compatible with attending the trial.

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<sup>160</sup> While the national criminal codes foresee a number of procedural situations when the statute of limitations is suspended, they also set a maximum term (the absolute statute) for the completion of the proceedings. For example, under art. 16(6) of the CC FBiH: "The period set by statute of limitations to institute prosecution expires in any case when twice as much time lapses as is set by the statute of limitations for the initiation of prosecution".

Finally, it is important to underline that this analysis of the problems and factors affecting the efficiency of criminal proceedings in corruption cases does not profess to be comprehensive. For instance, the role of chief prosecutors and court presidents in the management of their offices, albeit an issue beyond the scope of this report, is fundamental in terms of ensuring that investigations and trials are carried out in due time and with a rational allocation of resources.

# 8

## CONCLUSIONS AND RECOMMENDATIONS

On the basis of the analysis and data offered in this report, the Mission concludes that judicial response to corruption in BiH remains insufficient, particularly with regard to the processing of medium and high-level cases, signalling a concrete risk of impunity for these crimes. In particular, the performance of the justice system in relation to three of the four above-mentioned dimensions – productivity, capacity, and efficiency – is beset by serious problems which require sustained corrective efforts and sincere political commitment. The activity of some prosecutor’s offices in the FBiH in recent years is encouraging, but as corruption trials progress, it is too early to say whether this trend will lead to broader and more sustainable results.

The Mission stands ready to support domestic institutions in any effort to strengthen the judicial response to corruption. In this light the Mission offers to the appropriate authorities across BiH a comprehensive set of 24 recommendations for their consideration. The table below merges the recommendations from the 2018 ARC Report, in light of their status of implementation, with the new set of recommendations stemming from the present report. The 2018 ARC Report recommendations include their implementation status (see Chapter I for more detail).

### Recommendations addressed to the executive and legislative authorities of BiH, FBiH, RS and Brčko District

Number	Recommendation	Status of implementation
1.	The material and procedural criminal legislation relevant for the processing of corruption cases should be harmonized across all jurisdictions in BiH. Political authorities at the state and entity level should commit themselves to harmonizing the legal framework as part of their efforts to fight corruption (see Chapter 2.1 and 2.2 in 2018 ARC Report).	NO PROGRESS
2.	In this regard, the priority in the short term should be to adopt harmonized amendments to the four criminal procedure codes in accordance with the requirements set under the Decision of the Constitutional Court of BiH of June 2017. The amendments should strike a fair balance between the rights of individuals recognized under international human rights instruments and the need to ensure the effective prosecution of corruption and other serious crimes (see Chapter 2.2 in 2018 ARC Report).	PARTIALLY IMPLEMENTED
3.	With a view to streamlining the harmonization process in the medium term, the Ministry of Justice (MoJ) of BiH, together with the MoJs at the entity level, should consider re-establishing a standing body of experts (following the CCIAT <sup>161</sup> precedent) with the mandate of preparing harmonized amendments to criminal laws at all levels of authority in BiH (see Chapter 2.1 in 2018 ARC Report).	NO PROGRESS

4.	The RS Law on Fighting Corruption, Organized Crime and the Most Serious Forms of Economic Crime should be amended in order to limit its jurisdiction on corruption-related offences only to their most serious forms. This should enable the RS Special Departments to focus their attention on high and medium level corruption cases (see Chapter 4.2 in this report).	NEW
5.	Plans to establish the Special Departments at the FBiH level should be reappraised. In particular, a constructive discussion including the FBiH political and judicial authorities should immediately take place with a view to considering all relevant factors as well as the potential benefits and detriments related to their establishment (see Chapter 4.3 in this report). <sup>162</sup>	NEW
6.	Provisions in the four criminal procedural codes in BiH regulating the transfer of cases between courts should be amended in a harmonized fashion in order to further define the reasons justifying the transfer. In particular, the amended provisions should clarify whether relevant grounds for transfer should be related exclusively to the need to protect the impartiality and independence of a court or should include other factors such as the economy of proceedings and efficiency (see Chapter 6.1 in this report).	NEW

<sup>162</sup> This includes for example: whether the current law represents a viable legal foundation for the creation of the Special Departments or needs to be changed as suggested by the judiciary and by the outgoing FBiH Government; in the second case, whether it still makes sense to go on with the establishment of the Special Departments (for which, premises must still be allocated) or it would be more worthwhile to use those resources to strengthen the special departments within the Cantonal POs. This discussion should be informed by an assessment of the case-load that would be transferred from the cantonal prosecutors to the Special Department on the basis of the proposed, narrower, jurisdiction. Additionally, and given the frequent conflicts of jurisdiction characterizing the functioning of the judicial system in BiH, the risk of possible overlaps between the jurisdiction of the Special Departments and that of judicial bodies in the RS or at the state level should be fully considered.

### Recommendations addressed to the High Judicial and Prosecutorial Council BiH and judiciary

Number	Recommendation	Status of implementation
7.	The implementation of the CPC BiH provisions adopted in September 2018 in response to the Constitutional Court Decision of June 2017 should be closely monitored by the HJPC and by the BiH Prosecutor's Office. Such monitoring should carefully assess: ambiguities and inconsistencies in their interpretation; impact in terms of a number of investigations closed due to the expiry of deadlines; and overall effects of the enforcement of the deadlines on the quality and comprehensiveness of investigations. Based on the results of this monitoring, the authorities should consider whether the provisions in question must be amended again (see Chapter 1.1 in this report).	NEW
8.	In light of the sharp decline in recent years in the exercise of "extended jurisdiction" by the state level institutions in corruption cases, the reasons behind this change of policy should be fully examined in order to determine their (due or undue) nature and, if necessary, to undertake appropriate measures to address this situation (see Chapter 4.1 in this report).	NEW
9.	The Special Department within the RS Prosecutor's Office should adopt internal guidelines aimed at ensuring adequate prioritization of the most serious cases within its jurisdiction, including in the field of corruption (see Chapter 4.2 in this report)	NEW
10.	With a view to stimulating the processing of high level corruption cases, the HJPC should consider the adoption of criteria which adequately differentiate between high and low level corruption cases when it comes to the calculation of the "orientation quota", namely the number of cases that should be processed by each individual judge or prosecutor (see Chapter 3.1 in 2018 ARC Report).	PARTIALLY IMPLEMENTED
11.	With a view to harmonizing the interpretation of corruption-related legislation by facilitating the reference to existing jurisprudence in judicial decisions, the HJPC should ensure that relevant jurisprudence is systematically gathered and disseminated to all relevant courts. In this regard, specific guidelines should be developed to regulate and streamline the preparation and compilation of case law summaries or digests grasping the essence of the relevant point of law discussed in each decision (see Chapter 3.2.3.c in 2018 ARC Report).	IN PROGRESS
12.	The HJPC, in close coordination with the highest courts at the state, entity and Brčko District levels, should take all necessary steps for the creation of a single user-friendly and public database which would enable research by topic of jurisprudence and decisions by those courts (see Chapter 1.1 in this report).	NEW



13.	The HJPC and the executive authorities should augment the capacity of the prosecution and of law enforcement agencies with specific regard to the investigation of financial aspects of corruption. The prosecution, in particular, should have access to, and make use of, continuous assistance from forensic accountants and other financial experts during investigations. The availability and quality of courts' financial experts should also be improved (see Chapter 3.2.2.b in 2018 ARC Report).	IN PROGRESS
14.	The HJPC should develop specific guidelines and training materials on drafting indictments in corruption cases (see Chapter 3.2.2.a. in 2018 ARC Report).	IN PROGRESS
15.	The procedure for raising and deciding upon conflicts of jurisdiction between the PO BiH, the entity POs and the BD PO should be clarified through judicial interpretation or legal amendments if necessary (see Chapter 3.2.1 in 2018 ARC Report).	NO PROGRESS
16.	Prosecutors should improve the quality of indictments in corruption cases. The indictment should be structured so that it is clear to which element (factual or mental) a specific fact refers. In this regard, prosecutors should consider changing the way of presenting factual descriptions of charges in indictments with a view to enhance their clarity and comprehensibility. Chief prosecutors should exercise proper oversight on drafting and finalization of indictments in corruption cases (see Chapter 3.2.2.a in 2018 ARC Report).	IN PROGRESS
17.	With a view to improve the evidence gathering process in corruption cases, specific guidelines should be developed with regard to establishing the financial aspects of crimes, the criminal intent of defendants, the existence of common intent among different perpetrators and the use of factual circumstances to prove these elements (see Chapter 3.2.2.b in 2018 ARC Report).	IN PROGRESS
18.	The procedure for raising and deciding upon conflicts of jurisdiction between state and entity courts and between courts in different entities should be further clarified through judicial interpretation (see Chapter 3.2.1 in 2018 ARC Report).	NO PROGRESS
19.	Judges at the preliminary phase of proceedings should ensure that indictments which do not comply with the necessary legal requirements are not confirmed. (see Chapter 3.2.3.a in 2018 ARC Report).	IN PROGRESS
20.	Judges should strengthen the quality of their reasoning in corruption cases. In particular, the reasoning should clearly address each element of the crime separately and assess the evidence by linking it to the relevant element of the crime. Also, judges at both trial and appellate levels should refer to relevant jurisprudence with a view to improving coherence and certainty in the application of the law (see Chapter 3.2.3.b and Chapter 3.2.3.c in 2018 ARC Report).	IN PROGRESS

21.	Inconsistencies in the application of material or procedural criminal provisions specifically relevant for the processing of corruption cases should be identified and solved with a view to improve clarity and predictability of the law. In the absence of a supreme court of BiH (the establishment of which is politically sensitive but legally compelling), the task of harmonizing case-law throughout the Country should be carried out by harmonization panels. The panels in particular should systematically address the specific challenges posed by corruption cases with regard to the application and interpretation of criminal and procedural law (see Chapter 3.2.3.c in 2018 ARC Report).	NO PROGRESS
22.	The legal framework related to the legality of evidence and the specific grounds for declaring some evidence illegal should be clarified through the development of harmonized judicial practice and/or through harmonized legal amendments to the criminal codes (see Chapter 6.2 in this report).	NEW
23.	Courts throughout the BiH judicial system should adopt a harmonized sentencing policy in high-level corruption cases, which would take into account the gravity of the crime and ensure the deterring function of punishment (see Chapter 3.2.3.d in 2018 ARC Report).	NO PROGRESS
24.	Adequate measures should be urgently taken to ensure that proceedings, especially in high and medium level corruption cases, are carried out swiftly, in accordance with the right to trial within a reasonable time and in a way that ensures accountability and protects the rights of victims. In this regard, the HJPC, together with court presidents, should consider the adoption of guidelines for the management of plea hearings and trials in complex cases (see Chapter 7.4 in this report). <sup>3</sup>	NEW

163 The guidelines should address all main factors having an impact on the efficient and prompt conduct of these phases. To give some concrete examples, the guidelines could: indicate the desirable or mandatory frequency of the hearings according to the complexity and importance of the case; give directions and indicate best practices on the proper use of status conferences; present domestic and international standards on striking a fair balance between the need to ensure expeditiousness in the conduct of the trial and to guarantee the rights of the accused; give directions on the need to properly and promptly verify the effective existence of the reasons given by the parties to justify their absence during the trial; instruct the judges on the appropriate and fair trial compliant use of coercive measures and fines to ensure the presence of parties and witnesses; and advise judges on the use of expert assessments to verify the health conditions of the accused and whether these conditions are compatible with attending the trial.

# Annex A

Summary of finalised corruption cases  
analysed in this Report



## Court of BiH

### 1. Fahrudin Radončić et al. – High-level corruption

Defendant Fahrudin Radončić was charged along with other co-defendants, Bakir Dautbašić, Bilsena Šahman and Zijad Hadžijahić, under February 2016 indictment with several criminal offenses, including associating for the purpose of perpetrating criminal offenses, obstruction of justice, offering reward or other form of benefit for illegal interceding (trading in influence) and accepting reward or other form of benefit for illegal interceding. More specifically, the defendants were charged with intimidating a witness who was scheduled to testify in December 2015 via video link in the case of *Naser Keljmeđi* conducted before the Basic Court (BC) in Priština. After the witness reported threats and intimidation by members of the group to the Prosecutor's Office of BiH and after the Court of BiH postponed her testimony on the grounds of her reporting that she feared for her safety, in January 2016 the group allegedly exerted direct and indirect influence on the course of investigations involving Radončić, Dautbašić and Šahman through Zijad Hadžijahić. The latter, a then-employee of the U.S. Embassy in BiH, used his influential position by contacting prosecutors from the Prosecutor's Office of BiH with the aim to have these investigations closed, in return for which his wife was to be appointed BiH Ambassador to Slovenia. In May 2018, the Court of BiH acquitted defendants in the first instance of all charges. In October 2018, the panel of the Appellate Division of the Court of BiH upheld the full acquittal.

### 2. Vehid Sadiković et al. – Medium-level corruption

Defendant Vehid Sadiković, along with ten other defendants, faced organised crime, abuse of office and bribery charges. As alleged in the November 2015 indictment, in their capacities as employees of BiH Indirect Taxation Authority (BiH ITA) Customs Office at the Sarajevo International Airport, in the first six months of 2014 defendants provided more favourable treatment or exemption from customs duties to passengers arriving mostly from Turkey and China, in return for which they received money. In May 2017, the Court of BiH sentenced in the first instance six customs officers to a total of 18 years of imprisonment and a 14,000 BAM supplementary fine. Defendant Sadiković, head of the Customs Office at Sarajevo Airport, was sentenced on the abuse of office charge to two years of imprisonment and a 2,000 BAM fine. Two shift leaders at the Sarajevo Airport Customs Office, Zoran Lončar and Mensur Mašetić were sentenced to four years and six months imprisonment and a fine of 4,000 BAM and three years imprisonment and a fine of 2,000 BAM respectively on the bribe-taking charge. The third shift leader Teufik Šemdin was acquitted of charges. Finally, customs officers Maid Keč, Branka Tešić and Muhamed Hanjalić received prison sentences between two and a half and three years and a fine of 2,000 BAM on the bribe-taking charge. The six defendants convicted in the first instance were all acquitted of the organised crime charge. Defendants Damir Burnazović and Damir Dudo were acquitted of all charges, while customs officers Zijad Hadžifežović and Emir Čaušević had earlier signed plea agreements with the prosecution and their cases were separated from the case against other defendants. In November 2016, defendant Hadžifežović was sentenced to 8 months imprisonment, a fine of 1,000 BAM and was banned from performing the duties of a customs officer for two years. Similarly, in February 2017, defendant Čaušević was sentenced to 10 months imprisonment, a fine of 1,000 BAM and was banned from performing the duties of a customs officer for

two years. In October 2017, the panel of the Appellate Division of the Court of BiH partially quashed the first-instance verdict in the convicting part and ordered a retrial. In March 2018, the Court of BiH rendered the second-instance verdict. It sentenced defendant Lončar to three and a half years imprisonment and a fine of 2,000 BAM, defendant Mašetić to two years imprisonment and a fine of 2,000 BAM, defendants Keč, Tešić and Hanjalić to one and a half years imprisonment and a fine of 2,000 BAM each. First-listed defendant Sadiković was acquitted of all charges.

### Sarajevo Cantonal and Municipal Courts

#### *3. Nihad Druškić, Hamdo Spahić, Samir Muslić and Sejda Filipović* (severed from *Alija Delimustafić et al.*) – Medium-level corruption

Under an October 2017 indictment, a total of 38 defendants and eight companies are charged with organised crime, abuse of office, money laundering, fraud and violation of law by a judge in what is currently the most significant organised crime and corruption trial in Bosnia and Herzegovina in terms of the number of defendants. Some defendants, including the first-listed defendant Alija Delimustafić, were initially arrested and ordered into custody in November 2016. However, the trial has not started yet due to a number of adjournments caused by the absence of some defendants at each of the scheduled hearings following the entering of pleas in early January 2018. The case concerns an alleged organised crime scheme, which was in place for seven years (2009-2016), for illegal acquisition of ownership over the real estate in Sarajevo worth millions of BAM, involving among others people in business, judges, attorneys, notaries, prosecutors, public officials, financial court experts. Four defendants – Nihad Druškić, Hamdo Spahić, Samir Muslić and Sejda Filipović – signed plea agreements with the prosecution. In August 2018, the Sarajevo Cantonal Court (CC) delivered suspended sentences for Druškić and Spahić. Druškić's sentence will only be applied if he fails, within five years, to pay 74,000 BAM in undue gains. The Sarajevo CC delivered a one year sentence for Filipović and five months prison sentence and a fine of 30,000 BAM for Muslić.

#### *4. Esad Hrvačić, Branka Husanović and Elmin Džino* (severed from *Ismet Hamzić et al.*) – Medium-level corruption

In May 2017, Sarajevo Canton Prosecutor's Office filed an indictment against eleven defendants, including three attorneys (Ismet Hamzić, Samina Skopak and Esad Hrvačić), one judge of the Sarajevo Municipal Court (MC) (Milena Rajić), 4 administrative staff of the Sarajevo MC (Tanja Jović, Branka Husanović, Zaim Spahović and Muamer Pita) and one administrative staff of the Sarajevo CC (Mirsada Alić). They were charged with organised crime, bribery, abuse of office, breach of law by a judge and forging of official documents. Defendant Hamzić was accused of having organised a criminal group from 2013 to 2016 whose acts ultimately led to the rendering of 46 unlawful judgments by the Sarajevo MC. This criminal group allegedly included defendants Alić, Pero Vuković, Spahović, Jović and Husanović. As alleged, defendant Hamzić arranged for cases to be assigned to Judge Rajić, who rendered verdicts in favour of Hamzić's clients in violation of the law. In August 2017, defendant Hrvačić signed a plea agreement with the prosecution pleading guilty to charges of associating for the purpose of committing criminal offences, abuse of office and forging an official document. Sarajevo CC sentenced defendant Hrvačić to one-year imprisonment,

and he also received a 10,000 BAM fine. Criminal proceeds of 47,520 BAM were seized from Hrvačić. Additionally, he was banned from performing duties of an attorney for a one and a half year period. Finally, under the terms of the plea agreement, defendant Hrvačić was obligated to compensate the aggrieved parties who filed a property claim about an illegally registered real estate (with the value of the real estate in question estimated at over 1 million BAM). Hrvačić's prison sentence was subsequently substituted for a 27,000 BAM fine. Defendants Husanović and Džino also signed a plea agreement with the prosecution and received suspended sentences.

**5. Jasmin Kulenović, Vahid Alić, Neriman Čeho, Kemal Elkaz, Senadin Didik, Sabina Bajraktarević and Jasmina Šehović (severed from Alen Čengić et al.)**  
– Medium-level corruption

This case is about a *Holiday Inn* Hotel in Sarajevo and alleged criminal activities of defendant Alen Čengić's group that was operating the hotel, including running a dual payment system (secret cash register), stealing of hotel's artworks, running a prostitution ring, attempting to bribe judges of the BiH Constitutional Court, to name a few of the charged offenses. In April 2016, an indictment was filed against twelve defendants, seven of whom signed plea agreements with the prosecution and were sentenced accordingly. In September 2016, defendant Kulenović, who made replicas of the stolen paintings, was sentenced to two years imprisonment, defendant Alić, the hotel chief of security, to one year and eight months imprisonment, while defendants Bajraktarević and Šehović, the cashier and invoice assistant, were sentenced to one year imprisonment to be commuted to 90 days of community service. Defendant Čeho, director of the private company that provided financial and accounting services to Čengić's company *Holiday Resort d.o.o.*, was sentenced to one year imprisonment. Defendants Elkaz and Didik were sentenced in June and September 2017 respectively to one year imprisonment each, on the charge of inciting into prostitution.

**6. Željko Asić (severed from Živko Budimir et al.) – Low-level corruption**

Under a January 2015 indictment, Živko Budimir was accused of, in his capacity of FBIH President, abusing his office and receiving bribes in the process of granting pardons to two convicted persons in the period 2011-2013. Four other co-defendants were charged together with Budimir, two of whom signed plea agreements with the prosecution and were sentenced accordingly. Defendants Budimir and Asić were also charged with bribe-taking in return for securing employment of one person in a public utility company in Mostar. Under the last two counts of the indictment, defendant Budimir is charged with making out a 847.50 BAM bill for a lunch for around 20 persons to *Elektroprivreda HZHB d.o.o.*, without appropriate authorization, as well as buying two Calvin Klein jackets and trousers worth 494 BAM on an official trip to the United States, which he later falsely presented as an official purchase. In February 2018, defendant Asić was found guilty on the unauthorised interceding charges, and Sarajevo MC imposed a suspended sentence on him. In general, the trial has been characterised by many adjournments. The second-listed defendant Petar Barišić fled to Croatia and the prosecution issued an international arrest warrant for him. After almost four years since the filing of the indictment, the proceedings are still at the main trial stage.

## Tuzla Cantonal and Municipal Courts

### 7. Enes Durmišević (Enes Durmišević et al.) – High-level corruption

Under a May 2012 indictment, Enes Durmišević, Fuat Saltaga, Bajro Golić and Zdravko Lučić were accused of, in their capacity of professors of the Law Faculty in Sarajevo, abuse of office in the period 2003-2007, by giving passing grades to students without taking the exams in question (defendants Saltaga and Lučić) and by requesting and receiving sexual favours from students in return for passing an exam (defendants Durmišević and Golić). Defendants Saltaga and Golić passed away in May and June 2012 respectively. In November 2015, Tuzla MC found the defendants Durmišević and Lučić guilty of sexual intercourse through abuse of position (Durmišević), and abuse of office (Lučić), and imposed suspended prison sentences of four months (Durmišević) and seven months (Lučić), with a two years probation period. In September 2016, the Tuzla CC quashed the first instance verdict, dismissing the charges against defendant Durmišević because of the statute of limitations and ordered a retrial for the defendant Lučić.

### 8. Safet Pjanić, Husein Nurikić, Alija Nurikić and Redžo Delimehić (severed from Safet Pjanić et al.) – Medium-level corruption

In this case, a December 2017 indictment charges seven defendants with organised crime, in conjunction with other offences including abuse of office and money laundering. Defendants are accused of, in the period 2009-2017, acting as an organised criminal group in their capacities as director, board members and employees of *Fortuna d.d.*, and causing millions of BAM of damages to the company and the budgets of the Tuzla Canton and Gračanica and Lukavac municipalities. In April 2018, four defendants signed plea agreements and received prison sentences ranging from one to five years, with an obligation to return the undue financial gain. First-listed defendant Safet Pjanić, the company's CEO, was sentenced to five years imprisonment and ordered to return 227,000 BAM. Defendant Husein Nurikić, the company's financial director, was sentenced to 2 years and ten months imprisonment. Defendants Alija Nurikić and Redžo Delimehić were sentenced to one year imprisonment each, while defendant Delimehić was also ordered to return 4,000 BAM undue gain.

### 9. Alija Sutović – Medium-level corruption

Under a February 2016 indictment, Alija Sutović was accused of requesting and accepting a 5,000 BAM bribe in the period October-November 2006. During this period, Sutović, as a court certified psychiatrist, during a trial of a person charged with murder, allegedly requested a bribe from the defendant's brother in return for a more favourable expert opinion, which resulted in this person getting a seven year prison sentence. In December 2017, Tuzla MC delivered a suspended sentence for Sutović. Additionally, he was ordered to return 2,000 BAM in criminal proceeds and was banned from performing duties of a court expert for two years. In November 2018, Tuzla CC confirmed the MC decision.



#### **10. Azra Džafić (severed from Vesna Švancer et al.) – Medium-level corruption**

Under a July 2018 indictment, Azra Džafić was charged along with Vesna Švancer (proceedings against whom are on-going) that Vesna Švancer, in her capacity of deputy speaker of the FBiH Parliament House of Representatives (HoR), abused her office in the period 2017-2018 by disbursing money to individuals and non-profit organizations under the condition that they pay her back half of the money received. Defendant Džafić signed a plea agreement with the prosecution, and in August 2018 the Tuzla MC sentenced her to 11 months imprisonment.

#### **11. Robin Mujačić – Medium-level corruption**

Robin Mujačić was accused of, in his capacity of the assistant director of Tuzla Prison (Kozlovac unit) in the period 2010-2011, providing one convict with special treatment by allowing him to use a phone, computer and internet, which is contrary to the interest of the prison service and in violation of applicable rules and regulations. This allowed the convicted person to run his businesses from prison. Defendant Mujačić allegedly conditioned these privileges on the convict's family buying poultry from the Tuzla Prison farm through which he allegedly obtained 11,300 BAM in undue financial gain. In December 2017, the Tuzla MC sentenced the defendant Mujačić to six months imprisonment and ordered him to return the criminal proceeds. In November 2018, Tuzla CC upheld the conviction.

### **Bihać Cantonal and Municipal Courts**

#### **12. Nuho Kurtović et al. – Medium-level corruption**

Under a December 2015 indictment, Nuho Kurtović and Amir Hadžić (successive Ministers of Education in Una-Sana Canton), were charged with abusing their official authority in 2007 by awarding driving test examiner licenses to persons who failed to meet the necessary requirements (in case of Kurtović such license was also awarded to him personally although he did not meet the requirements). In May 2017, Bihać MC sentenced Kurtović and Hadžić to eight months imprisonment and a suspended sentence respectively. In December 2017, Bihać CC converted Kurtović's imprisonment to a suspended sentence.

#### **13. Fahrudin Goretić – Low-level corruption**

Under a June 2015 indictment, Fahrudin Goretić was accused of negligence, in his capacity of director of *Metalgoffi d.o.o.* in the period 2004-2009, resulting in 89,574 BAM in damages to the company. Additionally, he allegedly misappropriated 15,642 BAM in company funds. In June 2017, the Bihać MC sentenced defendant Goretić to one year and three months imprisonment. He was also ordered to pay damages/undue gain to the company in the above-noted amounts. In December 2017, Bihać CC upheld the conviction.

#### **14. Asima Husetić et al. – Low-level corruption**

Under a July 2015 indictment, the defendants in this case, acting in their capacities as the chair (defendant Asima Husetić) and members of the housing commission (other defendants), were accused of acting contrary to regulations and providing preferential treatment to a number of persons in relation to the purchase of apartments intended for war veterans' population. In

June 2017, the first-listed defendant Husetić was sentenced to one year imprisonment and co-defendant Selver Vojić to ten months imprisonment. Other defendants, (Adnan Sabljaković, Nevzeta Mujčinović and Džafer Alibegović) received suspended sentences. In December 2017, Bihać CC converted Husetić's and Vojić's prison sentences to suspended sentences.

#### **15. Nikola Mirković – Low-level corruption**

Under a November 2016 indictment, Nikola Mirković was accused of, in his capacity of a Bosanski Petrovac police officer in July 2016 stopping a Slovenian citizen and requesting and receiving a 25 EUR bribe in return for not issuing a speeding ticket (although there was no speeding and no speeding ticket issued). In February 2018, the Bihać MC imposed a suspended sentence on defendant Mirković. In July 2018, the Bihać CC confirmed the suspended sentence.

#### **16. Naser Memčaj (severed from Amenar Muratagić et al.) – Low-level corruption**

Under a January 2018 indictment, Amenar Muratagić was accused of, in his capacity of an Una-Sana Canton Office for Inspections official, providing a favourable inspection of bakery company *Veli d.o.o.* Bosanska Krupa in the period 2014-2015, in return for the owner providing certain building services. In April 2018, the owner of the bakery (co-defendant Memčaj) signed a plea agreement with the prosecution and received a suspended sentence. The proceedings against Muratagić are ongoing.

### **Banja Luka District Court**

#### **17. Stevan Tešić – Low-level corruption**

Under a June 2017 indictment, Stevan Tešić was accused of, in his capacity of Republika Srpska (RS) Tax Administration inspector, abusing his position in the period 2016-2017 by offering to intervene with the prosecutor on behalf of a director of the Novi Grad *Veterinarska stanica* (Veterinary station), concerning the payment of debt. In December 2017, Banja Luka DC acquitted in the first instance defendant Tešić of the charge. In October 2018, the RS Supreme Court upheld the acquittal.

#### **18. Srđen Petković – Low-level corruption**

Under an April 2018 indictment, Srđen Petković was accused of offering a 50 BAM bribe to police officers after failing an alcohol test. In April 2018, he signed a plea agreement with the prosecution and received a suspended sentence and a 4,000 BAM fine.

#### **19. Kenan Porča – Low-level corruption**

Under a June 2018 indictment, Kenan Porča was accused of attempting to bribe a police officer with 10 BAM after committing a traffic offence. In September 2018, he signed a plea agreement with the prosecution and received a fine of 1,500 BAM.

## **Doboj District and Basic Courts**

### **20. Ljubinka Kolundžija – Low-level corruption**

Under a March 2013 indictment, Ljubinka Kolundžija was accused of, in her capacity of sanitation inspector in the Doboj area, requesting and receiving a bribe of approximately 500 BAM in exchange for not reporting irregularities in the grocery shop and beauty salon inspected in the period September-October 2012. In December 2015, the Doboj BC found defendant Kolundžija guilty of accepting the bribe and delivered a suspended sentence. In April 2016, the Doboj District Court (DC) repealed the first instance verdict and ordered a retrial. In June 2016, the Doboj BC rendered a new verdict with the same suspended sentence. In November 2016, the Doboj DC again ordered a retrial, this time before the Doboj DC. Finally, in March 2017, the Doboj DC sentenced defendant Kolundžija to six months of imprisonment.

### **21. Gopa Cvijanović – Low-level corruption**

Under a May 2015 indictment, Gopa Cvijanović was accused of, in her capacity of cashier of the Housing and Utility Matters Department of Doboj municipality, misappropriating 11,539 BAM in the period 2008-2010. The trial commenced in March 2017. In January 2018, the Doboj BC delivered a suspended sentence and ordered her within a year to compensate damages caused to the City of Doboj in the above-noted amount.

## **Zenica Cantonal and Municipal Courts**

### **22. Hajrudin Hedžić (severed from Senka Balorda et al.) – Medium-level corruption**

Under an October 2018 indictment, Hajrudin Hedžić was accused of (along with Senka Balorda), in his capacity of secretary of the Zenica-Doboj Canton (ZDC) Ministry of Health, abusing his office in the appointment of the director of the ZDC Health Insurance Institute. Defendant Hedžić signed a plea agreement with the prosecution, and in December 2018 the Zenica Municipal Court (MC) delivered a suspended sentence.

### **23. Ševketa Ganibegović – Low-level corruption**

Under a September 2016 indictment, Ševketa Ganibegović was accused of, in her capacity of construction inspector of Zenica City Inspection Services, failing to carry out her duties in October 2013 concerning two billboards put up by *Ekor Komerc d.o.o.*, which allegedly did not have the necessary license. In June 2017, Ganibegović was acquitted, and in January 2018 the Zenica CC upheld the acquittal.

### **24. Haris Berbić – Low-level corruption**

Under a November 2017 indictment, Haris Berbić was accused of, in his capacity of the director of public enterprise *Đački dom*, employing one person in violation of applicable rules and regulations. In October 2018, Berbić signed a plea agreement with the prosecution and received a suspended sentence.

### 25. Nermin Bajtarević (severed from Akif Smailhodžić et al.) – Low-level corruption

Under an October 2017 indictment, the four defendants in this case are charged with taking bribes in 2017 in return for enabling candidates to pass a driving test. Nermin Bajtarević was specifically accused that for this purpose, he abused his position of a member of the Test Commission. At the time of their arrest, the police seized from defendants around 100,000 BAM. The proceedings have been severed and are conducted separately in relation to each of the four defendants. In February 2018, following Bajtarević's guilty plea, the Zenica MC sentenced him to one year imprisonment, seizing from him the undue gain of 300 BAM. In August 2018, the prison sentence was substituted with a fine.

### 26. Hamed Tičević and Munib Alihodžić – Low-level corruption

Under an April 2017 indictment, Hamed Tičević and Munib Alihodžić were accused of, in their capacity of members of the commission of the Zenica-Doboj Canton forestry company (*Šumsko-privredno društvo*), abusing their position by enabling a private person to cut 140 birch trees from the state-owned forest, thereby allegedly causing 13,970 BAM in damages. In April 2018, the prosecution dropped charges in relation to defendant Tičević, while defendant Alihodžić was sentenced to six months imprisonment. In October 2018, the Zenica CC upheld Alihodžić's conviction.

### 27. Ernest Pisker – Low-level corruption

Under an October 2017 indictment, Ernest Pisker was accused of abusing his position of administrative staff with the Zenica-Doboj Canton police by taking bribes and acting in violation of applicable rules and regulations in the 2016-2017 period. In January 2018, Pisker pleaded guilty, and the Zenica MC sentenced him to 10 months imprisonment.

## Mostar Cantonal and Municipal Courts

### 28. Eniz Čolaković – Medium-level corruption

Under a June 2016 indictment, Eniz Čolaković was accused of, in his capacity of the director of Public Health Institute of Herzegovina-Neretva Canton, employing one unqualified person to the position of the Head of Sanitary Chemistry and Chemical Diagnostics Department in violation of applicable regulations. In June 2017, the Mostar MC found Čolaković guilty and imposed a suspended sentence. In January 2018, the Mostar CC upheld the conviction and confirmed the suspended sentence.

## Brčko District Appellate and Basic Courts

### 29. Ismet Dedeić et al. – Medium-level corruption

Under a June 2016 indictment, Ismet Dedeić and Gabriela Ljoljić-Đurđević were accused of, in their capacity of the head and assistant respectively in the Brčko District (BD) Government Spatial Planning and Property Rights Matters Department, acting contrary to the relevant regulations in legalising several residential and commercial construction projects in BD. In

December 2017, Brčko District BC acquitted Dedeić and Ljoljić-Đurđević of the charges. In May 2018, the BD Appellate Court (AC) upheld the acquittal.

### **30. Senad Alić – Medium-level corruption**

Under a September 2016 indictment, Senad Alić was accused of, in his capacity of chair of the commission for housing issues of the war veterans' population in BD, in the 2013-2014 period, requesting and receiving around 2,000 BAM in bribes in exchange for a family receiving financial support from the fund intended for families of fallen soldiers. In May 2018, the BD BC acquitted defendant Alić of the charges. In September 2018, the BD AC upheld the acquittal.

### **31. Emir Krako – Medium-level corruption**

Under a September 2018 indictment, Emir Krako was accused of, in his capacity of head of the utility affairs department in the BD Government, performing his official duties unconscientiously in 2016, thus causing 14,890 BAM damage to the BD budget. In November 2018, Krako signed a plea agreement with the prosecution and received a suspended sentence. The Brčko District BC also ordered defendant Krako to pay the financial damage mentioned above within two years.

### **32. Sabrina Drapić – Medium-level corruption**

Under an October 2017 indictment, Sabrina Drapić was accused of, in her capacity of an official in the agriculture, forestry and water management department of the BD Government, acting contrary to applicable rules and regulations in approving incentives to *Kompot voće d.o.o.*, thereby causing 98,156 BAM in damages to the BD budget. In February 2018, the BD BC acquitted Drapić. In July 2018, the BD AC upheld the acquittal.

### **33. Danijela Gnjidić – Low-level corruption**

Under a November 2016 indictment, Danijela Gnjidić was accused of, in her capacity of the urban planning and construction inspector in the Office of BD Mayor, in June 2015 failing to exercise her duties in relation to the failure of *Osteria i Divan d.o.o.* company BD to obtain a permit for their commercial construction project. In June 2017, the BD BC acquitted defendant Gnjidić in the first instance of the charge. In October 2017, the BD AC upheld the acquittal.

## **Livno Cantonal and Municipal Courts**

### **34. Branko Ivković – Medium-level corruption**

Under a December 2014 indictment, Branko Ivković was accused of abuse of office in his capacity of director of the Health Insurance Institute of Livno Canton. Specifically, in the period 2006-2007, he allegedly arranged for the Institute to take over a debt (worth 1,250,000 BAM) owed by Livno Cantonal Hospital to the private company *Melifico d.o.o.* for medicine provided to the hospital; in doing so he allegedly violated the Statute of the Health Insurance Institute and the Law on Health Insurance. In January 2016, the Livno MC acquitted Ivković of the charges. In July 2016, Livno CC quashed the first-instance verdict

and ordered a retrial. In December 2016, following a retrial, the Livno MC again acquitted Ivković of the charges. In June 2017, Livno CC upheld the acquittal.

### **35. Darinko Mihaljević – Medium-level corruption**

Under a December 2017 indictment, Darinko Mihaljević was accused of, acting in his capacity of the Minister of Interior of Canton 10, in the period 2015-2016, abusing his office in the process of employment of three persons. In August 2018, the Livno MC acquitted Mihaljević in the first instance. In November 2018, the Livno CC upheld the full acquittal.

### **36. Davorka Boban – Low-level corruption**

Under a December 2014 indictment, Davorka Boban was accused of, in her capacity of FBiH Ministry of War Veterans employee, in the period 2009-2011, abusing her office by enabling several persons to receive the status of war veterans and related benefits without these persons meeting the requirements. In March 2017, the Livno MC found Boban guilty and imposed a suspended sentence. In June 2017, the Livno CC quashed the first-instance verdict and ordered a retrial. In July 2017, the Livno MC imposed an identical suspended sentence on Boban.

### **37. Jozo Maganjić – Low-level corruption**

Under a May 2015 indictment, Maganjić was accused of, in his capacity of employee of the Department of Urban Planning, Housing and Utility Matters of Livno municipality, in 2008, exceeding his authority by signing a document without authority, which enabled a person to take part in a tender procedure for the allocation of construction land. In December 2015, the Livno MC imposed a suspended sentence on Maganjić. After a retrial was ordered, the defendant was acquitted of all charges in February 2017. The Novi Travnik CC confirmed the acquittal with a final decision in August 2017.<sup>164</sup>

### **38. Niko Ivić – Low-level corruption**

Under a September 2015 indictment, Niko Ivić was accused of, in his capacity of assistant Mayor for economics, finance and war veterans issues of Kupres municipality, in the period 2010-2011, allowing a municipal administration employee to receive full salary during her maternity leave while failing to substantiate her status. In this way, Ivić allegedly caused 26,496 BAM damages to the municipal budget. In March 2016, the Livno MC imposed a suspended sentence, with this conviction quashed by the Livno CC in January 2017. In March 2017, following a retrial, the Livno MC again imposed a suspended sentence on defendant Ivić. In September 2017, the Livno CC confirmed the suspended sentence.

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164 Correction: the first version of this report published in April 2019 erroneously stated that Mr. Maganjić had been convicted with final verdict. This version has been updated to reflect that Mr. Maganjić was has been actually acquitted of all charges. The Mission regrets the error and has apologized to Mr. Maganjić.

## Novi Travnik Cantonal and Travnik Municipal Courts

### 39. Husein Eminović – Low-level corruption

Under a November 2015 indictment, Husein Eminović was accused of, in his capacity of head of finance department in the public enterprise *Bašbunar* Travnik, acting negligently by failing to deposit money from the cashbox to the company's bank account and failing to keep a key to the cashbox in a safe place, which resulted in the theft of 28,578 BAM from the cashbox in February 2012. In April 2017, defendant Eminović was acquitted in the first instance. In November 2017, Novi Travnik Cantonal Court upheld the acquittal.

### 40. Alija Begić – Low-level corruption

Under an April 2018 indictment, Alija Begić was accused of, in his capacity of owner and general manager of *Fire-wood d.o.o.* and director of *Libos* company, abusing his office in the period 2014-2017 by acting contrary to contractual obligations, thus causing 16,993 BAM in damages to the microcredit company *Mikrofin d.o.o.* and by mortgaging the property of *Libos* company without the authorisation of its owner. In December 2018, Begić signed a plea agreement with the prosecution and the Travnik MC imposed a suspended sentence and ordered Begić to pay the above-mentioned financial damages to *Mikrofin d.o.o.*

## Bijeljina District and Basic Courts

### 41. Milorad Sofrenić – Medium-level corruption

Under an October 2016 indictment, Milorad Sofrenić was accused of promising gifts in the form of food parcels to members of the Roma community in the Bijeljina area in return for their votes for a major political party in the 2016 municipal elections. The head of the Roma community allegedly collected 78 ID cards from members of the Roma community for this purpose. The Bijeljina District Prosecutor's Office asked the court to impose a suspended sentence of four months imprisonment with a one year probation period. In February 2018, Bijeljina BC acquitted defendant Sofrenić in the first instance of the charge. Since no appeal was filed, the first-instance verdict became final and binding.

### 42. Alida Nađ Mađarac – Medium-level corruption

Under an April 2017 indictment, Alida Nađ Mađarac was accused of, in her capacity of a judge of the Bijeljina District Economic Court, in the period 2013-2016, breaching the law in the process of appointment of bankruptcy commissioners in case of different bankrupt companies. In June 2017, acting on the motion of Bijeljina BC, the RS Supreme Court transferred the case to Zvornik BC in order to preserve objective impartiality in the adjudication of the case given that Nađ Mađarac was a former judge of the Bijeljina BC. In March 2018, Zvornik BC acquitted in the first instance defendant Nađ Mađarac of the charge. In May 2018, the prosecution moved the RS Supreme Court to transfer jurisdiction for deciding on its appeal from Bijeljina District Court (DC) to another court with subject matter jurisdiction. In September 2018, the RS Supreme Court ruled that Bijeljina DC had subject matter jurisdiction to decide on the case of defendant Nađ Mađarac. In September 2018, Bijeljina DC upheld the acquittal.

#### 43. Mile Mirković – Low-level corruption

Defendant Mile Mirković was charged under June 2017 indictment that in the period 2013-2014, in his capacity of director of *Agrosemlerija* Bijeljina, he abused his position by operating through other companies since *Agrosemlerija*'s accounts have been blocked due to enforced debt collection and thereby causing 80,883 BAM in damages, among other creditors, to the RS Tax Office. In August 2018, defendant Mirković was acquitted in the first instance. In October 2018, Bijeljina DC upheld the acquittal.

### Visoko Municipal Court

#### 44. Mustafa Barut et al. – Low-level corruption

Under a March 2016 indictment, Mustafa Barut was accused of, in his capacity of the acting general manager of the company *Velepromet-maloprodaja d.d.* company, in 2006, selling a land plot in Visoko to *IGM* company without a required authorisation of the Zenica Canton Tax Office. This allegedly caused 30,600 BAM damages to the Tax Office. Co-defendant Emir Bukurević was accused of, in his capacity of the assistant mayor in the Department for Spatial Planning, Property and Legal Matters, Geodetic, Housing and Utility Matters and Environmental Protection of Visoko municipality, preparing an opinion upon the request of *Velepromet-maloprodaja d.d.* Visoko that misrepresented the facts concerning the land plot. In June 2017, the Visoko MC found Barut guilty of abuse of office in the first instance and imposed a suspended sentence. Bukurević was acquitted in the first instance. In April 2018, the Zenica CC confirmed Barut's suspended sentence.

#### 45. Munib Alibegović – Low-level corruption

Under an April 2018 indictment, Munib Alibegović was accused of, in his capacity of the Mayor of Visoko, in 2010 abusing his office by signing a contract with *Gradska groblja d.o.o.* Visoko (funeral services company) for the maintenance of local roads during the winter season. In June 2018, upon a preliminary motion by the defence, the court's confirmation of the indictment was reversed because the charged offence did not constitute a criminal offence, but a minor offence or a misdemeanour crime. In July 2018, the Visoko MC dismissed the prosecution's appeal and confirmed the decision on reversing the confirmation of indictment.

#### 46. Kamilo Pralas – Low-level corruption

Kamilo Pralas was charged with offering a bribe of 20 BAM to a police officer in return for not reporting to the inspection authorities the malfunction of the front lights on his vehicle and the fact that he was transporting around 100 kg of tobacco leaves. In May 2018, the Visoko MC found Pralas guilty and imposed a suspended sentence. In October 2018, the Zenica CC confirmed the suspended sentence.



## **Kiseljak Municipal Court**

### **47. Nenad Rajić – Medium-level corruption**

This case concerns allegations of requesting kickbacks for allocating financial incentives by the FBiH Ministry of Agriculture to agricultural producers. Under a March 2017 indictment, Nenad Rajić was accused of acting as an intermediary between two agricultural producers and Stipe Šakić, a former advisor in the FBiH Ministry of Agriculture. It is alleged that Rajić received 54,136 BAM in kickbacks. In July 2018, the Kiseljak MC found defendant Rajić

guilty and sentenced him to one year imprisonment. In December 2018, the Novi Travnik CC upheld the conviction.

### **48. Salkan Merdžanić – Low-level corruption**

Under a December 2017 indictment, Salkan Merdžanić was accused of, in his capacity of the mayor of Fojnica municipality, abusing his office by violating applicable rules and regulations in the process of employing eight persons in the municipal administration. In July 2018, at the request of the prosecution, the Kiseljak MC imposed a suspended sentence on defendant Merdžanić.

## **Srebrenica Basic Court**

### **49. Lazar Marjanović – Low-level corruption**

Under a March 2014 indictment, Lazar Marjanović was accused of, in his capacity of director of the military facility *Tehnički remontni zavod*, requiring from the Hungarian company *Luno* to pay for 10 tank motors to the bank account of a private company *Frotex Export-Import*, thus causing 91,000 DM (Deutsche marks) in damages to *Tehnički remontni zavod*. In February 2017, the Srebrenica BC sentenced Marjanović to six months imprisonment. In June 2017, the Bijeljina DC quashed the first instance verdict and ordered a retrial. In October 2017, the Srebrenica BC again sentenced defendant Marjanović to six months imprisonment. In May 2018, the Bijeljina DC quashed the first instance verdict dismissing the charges against defendant Marjanović due to the statute of limitations.

### **50. Milenko Katanić – Low-level corruption**

Under a December 2015 indictment, Milenko Katanić was accused of, in his capacity of construction inspector, abusing his authority by failing to take action after conducting an inspection and establishing that a person did not have a necessary permit for the ongoing construction works. In December 2016, the Srebrenica BC acquitted defendant Katanić of the charge. In March 2017, the Bijeljina DC upheld the acquittal.

### **51. Petar Lončarević – Low-level corruption**

Under a December 2017 indictment, Petar Lončarević was accused of, in his capacity of director of the Srebrenica Health Center, approving in 2008 the payment of 4,500 BAM to a member of the Health Center's managing board for obtaining a PhD thesis in the field

of political science. In February 2018, Srebrenica BC dismissed the defence's preliminary objections to the indictment. In May 2018, Srebrenica BC rendered the verdict dismissing charges against defendant Lončarević due to the expiry of the statute of limitations.

## Trebinje District and Basic Courts

### 52. *Slobodan Babić and Milivoje Brčić* – Low-level corruption

Under a June 2017 indictment, Slobodan Babić and Milivoje Brčić were accused of, in their capacities as directors of *Autometal d.o.o.* and *Neimarstvo a.d.* companies in Trebinje respectively, entering false information in their companies' financial records. In October 2017, Trebinje BC granted a preliminary motion by the defence and ruled on the termination of criminal prosecution of defendants Babić and Brčić due to the expiry of the statute of limitations.

### 53. *Branko Grbušić* – Low-level corruption

Under an April 2017 indictment, Branko Grbušić was accused of presenting false information to the RS Pension and Disability Insurance Fund (PIO) in 2009, based on which he was receiving disability pension in the period 2008-2016 in the total amount of 19,105 BAM, amounting to damages to the RS PIO Fund. In January 2018, Trebinje BC dismissed the charges against Grbušić due to the expiry of the statute of limitations. In this and similar cases (*Kisić, Radovanović, Šarenac, Smiljanić* and *Vujović* cases), Trebinje BC applying the new RS Criminal Code that foresees shorter periods for the relative and absolute statute of limitations for specific criminal offences (5 and ten years), compared to 10 and 20 years from the old code. In April 2018, Trebinje DC upheld the verdict dismissing the charges.

### 54. *Jovanka Kisić* – Low-level corruption

Under an April 2017 indictment, Jovanka Kisić was accused of presenting false information to the RS PIO Fund in 2008, based on which she received 30,049 BAM in disability pension in the period 2008-2016, which amounts to damage allegedly caused to the RS PIO Fund. In December 2017, the Trebinje BC dismissed the charges against Kisić because of the expiry of the statute of limitations. In April 2018, the Trebinje DC upheld the dismissal of the charges.

### 55. *Bratimir Radovanović* – Low-level corruption

Under an October 2016 indictment, Bratimir Radovanović was accused of presenting false information to the RS PIO Fund in 2008, based on which he received 17,651 in disability pension in the period 2010-2016, which amounts to damage allegedly caused to the RS PIO Fund. In December 2017, the Trebinje BC dismissed the charges against Radovanović because of the expiry of the statute of limitations. In April 2018, Trebinje DC upheld the dismissal of the charges.

### 56. *Mišo Šarenac* – Low-level corruption

Under a March 2017 indictment, Mišo Šarenac was accused of presenting false information to the RS PIO Fund in 2009, based on which he received 22,097 BAM in disability pension

in the period 2009-2015, which amounts to damage allegedly caused to the RS PIO Fund. In May 2018, the Trebinje BC dismissed the charges in the same way as in the abovementioned cases. In August 2018, the Trebinje DC upheld the dismissal of the charges.

#### **57. Mirko Smiljanić – Low-level corruption**

This case is similar to the above-noted cases of *Grbušić*, *Kisić*, *Radovanović* and *Šarenac*, the difference being that defendant Smiljanić was not charged with fraud and causing damages to the budget. More specifically, under an August 2017 indictment, Smiljanić was accused of presenting false information to the RS PIO Fund in 2009. Irrespective of the falsehood of the information, it was established that he had a legitimate disability. In February 2018, the Trebinje BC dismissed the charges against Smiljanić because of the expiry of the statute of limitations. In April 2018, the Trebinje DC upheld the dismissal of the charges.

#### **58. Vukan Vujović – Low-level corruption**

Under an April 2017 indictment, Vukan Vujović was accused of presenting false information to the RS PIO Fund in 2008, based on which he received 26,556 BAM in disability pension in the period 2008-2016, which amounts to damage allegedly caused to the RS PIO Fund. In June 2018, the Trebinje BC dismissed the charges against Vujović because of the expiry of the statute of limitations. In October 2018, Trebinje DC upheld the dismissal of the charges.

### **Bugojno Municipal Court**

#### **59. Mustafa Manjgić – Low-level corruption**

Under a December 2017 indictment, Mustafa Manjgić was accused of, in his capacity of director of public enterprise *Gračanica d.o.o.* (coalmine), abusing his office in the period 2008-2011 by violating applicable rules and regulations in the process of employing 24 persons in the company. The indictment included a warrant for pronouncement of criminal sanction that was rejected by the court. Manjgić signed a plea agreement with the prosecution, and in June 2018 the Bugojno MC imposed a suspended sentence.

#### **60. Pavo Pavlović – Low-level corruption**

Under a December 2016 indictment, Pavo Pavlović was accused of, in his capacity of an official in Bugojno municipality, abusing his office in the period 2015-2016 by failing to carry out his duties concerning the removal of prefabricated buildings from a private land plot in the Bugojno area. In July 2018, the Bugojno MC imposed a suspended sentence. In October 2018, the Novi Travnik CC upheld the verdict.

### **Tešanj Municipal Court**

#### **61. Ilija Nikić – Low-level corruption**

Under a May 2016 indictment, Ilija Nikić was accused of, in his capacity of Mayor of Usora municipality, abusing his office in June 2015 by employing one person in the municipal

administration in violation of applicable procedures and regulations. In December 2017, the Tešanj MC found Nikić guilty and imposed a suspended sentence. In May 2018, the Zenica CC upheld the verdict.

## **Kakanj Municipal Court**

### **62. Mirnes Bajtarević – Low-level corruption**

Under a July 2016 indictment, Mirnes Bajtarević was accused of, in his capacity of director of public enterprise *Grijanje*, employing one unqualified person in violation of applicable regulations. In December 2016, the Kakanj MC acquitted Bajtarević. In September 2017, the Zenica CC quashed the first-instance verdict and ordered a retrial. In December 2017, the Kakanj MC acquitted Bajtarević again. Finally, in April 2018, the Zenica CC upheld the acquittal.

### **63. Zijad Tahirović – Low-level corruption**

Under a March 2018 indictment, Zijad Tahirović was accused of bribing a police officer with 20 BAM. In June 2018, Tahirović signed a plea agreement with the prosecution and the Kakanj MC imposed a suspended sentence.

## **Višegrad Basic and Istočno Sarajevo District Courts**

### **64. Boris Gavrilović and Dalibor Nešković – Medium-level corruption**

Under a July 2017 indictment, Dalibor Nešković and Boris Gavrilović were accused of, in their capacity of Mayor of Novo Goražde municipality and president of the Novo Goražde farmers' association respectively, abusing their position. Allegedly, Nešković approved a 10,000 BAM loan to the farmers' association, which Gavrilović repaid twice, once to Nešković's private bank account and once more to Novo Goražde municipality's bank account. In this way, 9,000 BAM damages were caused to the Novo Goražde farmers' association. In June 2018, Višegrad BC found both defendants guilty. It sentenced Nešković to six months imprisonment and imposed a suspended sentence for Gavrilović. In September 2018, Istočno Sarajevo DC converted Nešković's prison sentence to a suspended sentence while confirming Gavrilović's suspended sentence.

### **65. Slaviša Mišković – Medium-level corruption**

Under a June 2018 indictment, Slaviša Mišković was accused of, in his capacity of Mayor of Višegrad, abusing his office in 2016 by paying 2,200 BAM for the transport of supporters of a major political party to a Banja Luka rally, while presenting it in the financial records as a school excursion for elementary school students. In October 2018, defendant Mišković pleaded guilty, and the Višegrad BC imposed a suspended sentence.



