

Prosecuting Corruption- What Doesn't Work?

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«Without the rule of law and an independent and impartial judiciary, there can be no future for Bosnia and Herzegovina as a modern, prosperous European nation». Annex to Madrid Declaration of the Peace Implementation Council

1. INTRODUCTION

Corruption, as a generic term (which is as such determined in normative, legal, theoretic and conceptual sense, *i.e.* it is not about one and unambiguously determined quality, it is more about the series of actions),¹ is historically and geographically an omnipresent fact. It is not about the exclusivity of one era or region: it is about deviation and aberration *sui generis*. However, due to the institutional restructuring, countries in the so-called process of transition are especially vulnerable to the phenomenon of corruption. That is why corruption requires

¹ For the purpose of this study we will determine corruption as use of the position for one's own interests. This more sociological than legal definition, in our opinion, expresses the essence of the phenomenon with which we are dealing. As such, corruption is undoubtedly sociopathological phenomenon: its dysfunction (and not, say, moral condemnation: Kregar, 1999) is a reason for considering it as a form of social pathology.

Since we are dealing with the government policy regarding the efficient fight against corruption, we find the legal definition more appropriate. However, in BiH laws, there is no unique definition of corruption. Instead, they describe the acts of corruption (active and passive bribery, abuse of office, trade of influence, embezzlement in office, fraud in office), whose common denominator is undue usage of office for one's own benefit. In our opinion, this is included in the definition above. The same approach – without defining the corruption as a unique phenomenon but as a range of actions - is accepted in other European criminal codes, e.g. in Croatia, Slovenia, Germany, but also in the leading international documents that deal with the phenomenon of corruption such as Council of Europe Criminal Law Convention On Corruption (ETS No 173), and the United Nations Convention Against Corruption (UN General Assembly Resolution 58/4).

elaboration and studying in postwar and post socialistic BiH community, with all its specific ballasts of most different kinds.

Corruption is certainly not a phenomenon of modern time: there are recorded cases from as early as 2000 B.C. However, in Bosnia and Herzegovina (hereinafter: BiH), the state of social disorganization as a consequence of war, created special conditions for corruption to appear and develop. Although there is a widely spread opinion that the losses made by corruption are enormous, there are no exact data. The research of the World Bank² showed that corruption is more widespread in Bosnia than in other countries in the process of transition in Eastern and Southeastern Europe.

Some of the current features of corruption in BiH:

«public administration inefficiencies reflected in widespread bribery in public offices; distorted business environment and a significant burden on poor households, exacerbating poverty and inequality»(World Bank, 2001: 2).

One of the approximations of the price of corruption was given by High Representative First Deputy and it says that due to the corruption scandals, BiH loses 1.5 billion KM a year.³

»The economic costs of corruption for BiH include: a negative effect on investments and growth (e.g. BiH attracts the lowest level of FDI in SEE and has a lower GDP growth rate than anticipated); negative effect on development of the private sector (e.g. low number of registered private enterprises per capita; low confidence in the economy from the private sector); increased administrative expenditures (e.g. BiH runs the highest transitional figures in total government expenditure – almost 50% of GDP per annum), etc.» (Transparency International BiH [b], 2004: 27).

As a direct result of corruption, living costs in BiH are 10-20 % higher (Transparency International BiH [a], 2004: 21); social positions are undefined and unstable; system of values is considerably distorted, etc. Corruption undermines democracy, because democratic environment means freedom, equality and the rule of law; corruption means

² *Anti-Corruption in Transition: A Contribution to the Policy Debate* (2000).

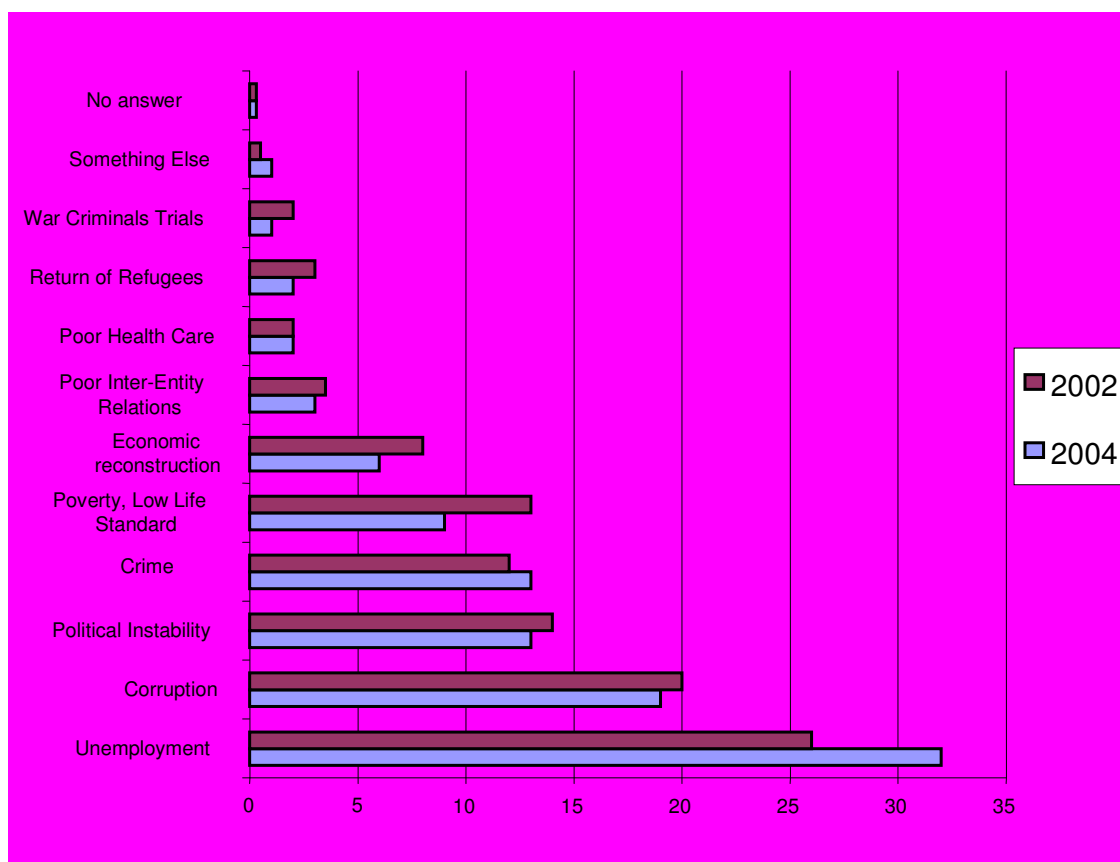
³ Statement of the International Community High Representative First Deputy, Mr. Donald S. Hays, *Oslobođenje*, 10 December 2004.

crime, inequality, social exclusion, lack of trust in institutions; therefore corruption is an obstacle for healthy and sustainable social and economic progress.

Corruption Perception Study 2004, carried out by Transparency International BiH, shows that 42 % of people in BiH have been in situation to bribe someone. 24 % of the respondents answered that there are price lists that are used in this kind of situations, while 17 % of the respondents pointed to the direct bargaining about the price.

«Closely following *unemployment* (26%), *corruption* (20%) is perceived as the second most serious problem... By comparing these categories one can conclude that corruption is the only phenomenon constituting an integral part of every acute problem BiH is faced with» (Transparency International [a], 2004: 27) (see figure 1.).

Figure 1. The most serious problems the BiH society is faced with



Source: Transparency International [a], 2004: 28.

The state, as an institution which owns the legitimate monopoly of force in the society, is one of the main agents of fight against corruption. For this purpose, it possesses numerous systems. The criminal justice system is exactly the part of the state institutional infrastructure which is responsible for repression and implementation of the prescribed norms. However, the Criminal justice system of BiH does not deal with the problem of corruption in the appropriate way. This is reflected in the series of problems which can be classified into three categories: problems on the normative level, problems regarding the professionalism and competence of investigating personnel, and problems regarding the cooperation between the state institutions.

Our intention in this paper is:

- To evaluate the legal regulations that regulate the duties of prosecutor and police regarding the fight against corruption (normative and organizational level);
- To discover the major problems of the criminal justice system institutions regarding the fight against corruption (operative level); and
- To offer some recommendations for more successful fight against corruption.

2. THE ROLE OF THE CRIMINAL JUSTICE SYSTEM IN THE FIGHT AGAINST CORRUPTION

The criminal justice system has by far the most prominent role in suppressing criminal actions. Its main components are police, prosecutor's office, and judiciary. Although the fight against corruption, if it intends to be successful, means the all-inclusive engagement of the whole society and developed citizen consciousness about the inappropriateness of corrupt behavior, it is exactly the criminal justice system which is most invited to deal with this kind of crime.

However, the criminal justice system is not the primary mean of society in the fight against corruption: it is more considered to be *ultima ratio*, the last instrument which is used only if other mechanisms and instruments of social control are not successful. But, the role and significance of the criminal justice system is not to be neglected for that; vice versa, it is (necessary and unavoidable) guarantee of the state that the socially unacceptable behavior will not be tolerated.⁴ For the criminal justice system, the way of exercising its function is to successfully prosecute and punish those who commit crimes of corruption.

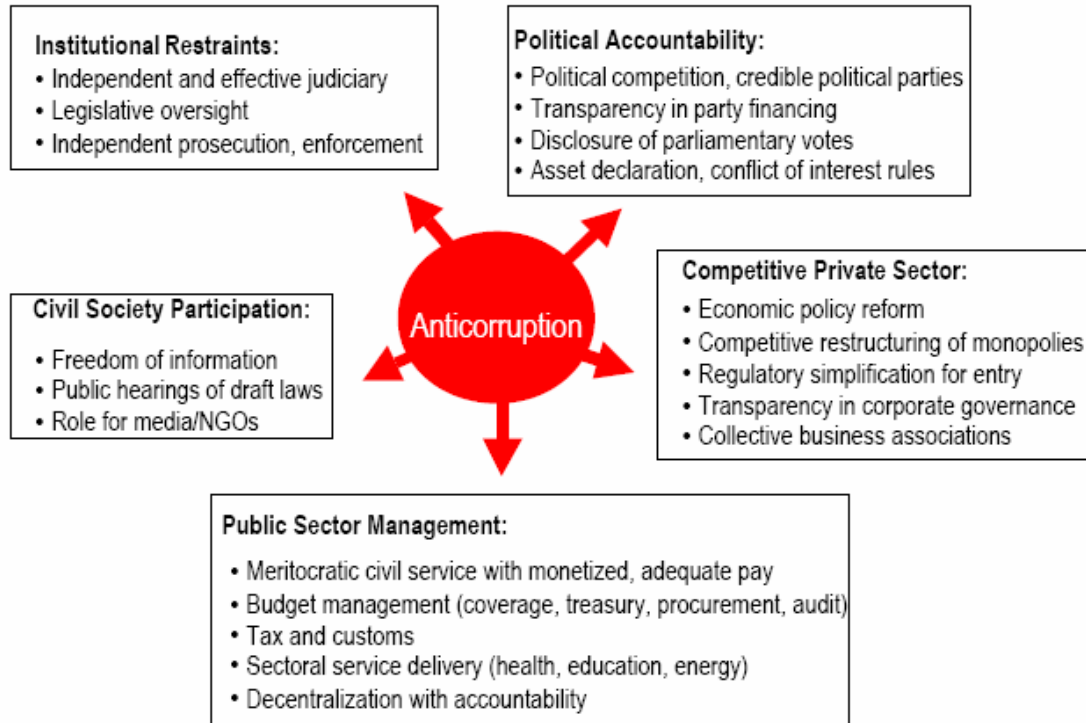
Corruption is not only legal, but also moral, religious, sociological, and cultural. Therefore, initiatives and strategies for its suppression need to be multi-disciplinary. Multi-disciplinary approaches, in this context, means that societies that have a certain degree of problems with corruption, must apply anticorruption measures in equal degree and appropriately to circumstances and needs of a situation. Therefore, all segments of society should, in their way, contribute to the reduction of corrupt practices in a community (similar to other forms of crime, elimination is practically impossible). In this process, the role of media is important but also is the affirmation of codes of behavior in public and private sector, the spreading of the idea of responsibility of political authorities and as especially important, the role of the legal system.

«Each block of this comprehensive set of instruments is designed to target a structural relationship that contributes to the level and profile of corruption» (World Bank, 2000: 21),

as showed on the figure 2.

⁴ That is why it is important to remind of subsidiarity and fragmentation as important characteristics of modern criminal law. This simply means that criminal law protects only the most important aspects and dimensions of goods that are of great importance for society.

Figure 2: Multi -pronged Strategy: Addressing State Capture and Administrative Corruption



Source: World Bank, 2000.

3. BIH CRIMINAL JUSTICE SYSTEM SOLUTIONS REGARDING THE FIGHT AGAINST CORRUPTION

3.1. General Remarks Regarding the Organization of BiH and Its Criminal Justice System

BiH is situated in the Southeastern Europe (on the western part of the Balkans peninsula), the Republic of Croatia being on its west, and Serbia and Montenegro on the east side. In its present form, Bosnia and Herzegovina exists since the signing of the Dayton Peace

Agreement in 1995. This Agreement stopped the war which was destroying and devastating the country in the period 1992-1995, and annex IV of the Agreement is the Constitution of BiH. According to the Constitution, BiH continues its legal existence as a state (independent since 1992). It is a decentralized country which consists of two entities: Federation of Bosnia and Herzegovina and The Republic of Srpska (Article I.3. of the Constitution). Each of the entities has its Constitution, and its legislative, judicial, and executive branch of government. Since entities have primary jurisdiction in the majority of the important functions of the state (in fact, they can be considered to be *de facto* states in the state), it is the BiH that has subsidiary jurisdiction in many state functions (recently, there is a trend of strengthening of state authorities, e.g. in army, foreign policy, fiscal system etc.). Both the Federation of BiH and The Republic of Srpska have complex territorial and administrative organization, and both have lower levels of government (in Federation of BiH there are cantons, cities, and municipalities, and in the Republic of Srpska there are regions and municipalities.) Brčko District of BiH, situated in the very northern side of the country, has the special status within Bosnia and Herzegovina, which is a result of the international arbitration in the late 90s of the last century (again with its own Constitution and branches of government). An integral part of current organization of BiH is the Office of the High Representative (OHR) which, due to various disagreements of local political factors and their inability to reach compromise, has made important political state decisions in the past several years. Sarajevo is the capital of the state, but also the capital of Federation of BiH and Sarajevo Canton.

Criminal (material and procedural) legislation was under the jurisdiction of the entities until 2003. On the state level, Criminal Code and Criminal Procedure Code took effect on 1 March 2003, while on the entity levels it happened on 1 August 2003. Now, the country has the Court of BiH, entity courts, the Court of Brčko District, but there are also courts of lower levels of territorial organization, such as regions and municipalities in RS or cantons and municipalities in FBiH. When it comes to the fight against corruption, the regulations are

almost the same in all laws on criminal proceedings. It could be useful to note here that state laws are applied in the cases under the jurisdiction of the state court. This jurisdiction is, again, regulated by a specific law. Following the principle of subsidiarity, for every other case (where there is no jurisdiction of the state), the entities are responsible for the preparing and applying of the criminal law regulations.

3.2. Previous Solutions of BiH Criminal Justice System Regarding the Fight Against Corruption

Since we are focused on the successful prosecution of the corruption cases, our research will deal with the criminal procedure codes, especially because of the fact that this part of criminal legislation regulates the activities of the subjects of the criminal justice system.⁵ Yet, this study will deal only with the Criminal procedure code of Federation of BiH,⁶ which, after the establishing of the Federation of BiH in 1994, was for the first time significantly changed in 1998.

The Criminal procedure code of Federation of BiH governed, among the rest, the proceedings of investigation and criminal prosecution. In continental criminal law, to which BiH belonged, the role of formal investigator belonged to investigative judge, while the role of police and the prosecutor was more significant in pre-investigative proceedings, *i.e.* in the proceedings of collecting the important facts which would be the basis for dropping of charges against

⁵ It is important to note that the regulations regarding the criminal proceedings are in mutual concord in all laws on criminal proceedings in BiH (Criminal procedure code of BiH, Criminal procedure code of FBiH, Criminal procedure code of the Republic of Srpska, Criminal procedure code of Breko District of BiH), with small exceptions which have no substantive significance.

⁶ Again, due to the fact that the regulations in all other Criminal procedure codes are largely identical, but also because we did our primary research in Sarajevo Canton, where the Criminal procedure code of FBiH is in force.

someone, or for further proceedings against the suspect. According to the 1998 criminal procedural provisions, if there were grounds that the committed crime was connected to corruption, the duty of the police was to find the suspect and collect relevant information and evidence which could be significant for the further investigation. This information later served as a basis for prosecutor's estimate whether the demand for carrying out the investigation should be submitted or not. If the prosecutor found that pressing of the criminal charges is justified, he would demand carrying out the investigation.

Only if the investigative judge agreed with the request of the prosecutor, he ordered the investigation. After this order, the investigative judge took the responsibility for the process of investigation. The investigation was undertaken in order to establish whether there was enough evidence for pressing charges. Depending on the findings of the investigative judge, the prosecutor could end the investigation, press charges, or demand the additional investigation from the judge. There was no possibility of using either special investigative actions⁷ or plea bargaining, which proved to be very efficient in the fight against major criminal offences, such as corruption. In conclusion, it should be noted that both the investigative judge and the prosecutor had the role of investigator of the crime (of course, it was a double work), which is the fact that reflected on the efficiency of the investigation.⁸ This, *ultima linea*, influenced the whole criminal proceedings thus making it slow, inefficient and without any guarantees for success in major criminal offences.

⁷ There was a possibility of using some of these actions (such as interception of communications), but it included a complicated procedure regarding the approving of their use.

⁸ See more in United Nations Mission in Bosnia and Herzegovina (UNMIBH), 2000.

3.3. Current Solutions in BiH Criminal Justice System Regarding the Fight Against Corruption

The reform of the whole BiH Criminal justice system was carried out in 2003, aiming at introducing some rather untraditional solutions for the BiH criminal justice system.⁹ The adversarial nature of the proceedings (which characterizes today's BiH criminal proceedings) means the emphasized role of the parties in the proceeding, and the restriction of the influence of judge on the one who, according to the presented facts, makes the judgment in the concrete case. His role (specific for previous criminal law solutions), as of one of the main participants in presenting of the evidence and establishing the truth, is minimized, and for the main proceedings, the rule is that it is *de facto* about dispute between the parties-prosecution and the defense.

Namely, according to the new Criminal Procedure Code of BiH, and the Criminal procedure codes of entities and Brčko District of BiH, the prosecutor is considered to have the main role

⁹ In this sense, the aims of «new» criminal proceeding are: higher efficiency of the proceeding, protection of the basic and in international law affirmed rights, and freedom of the participants in the criminal proceeding; reducing the period of the criminal proceeding; relieving the criminal judiciary by simplifying the proceedings for minor criminal offences (Sijerčić-Čolić, 2003). According to the opinion of the group of prominent experts of criminal law, who were consulted in the preparation of Comment of the Criminal procedure codes in BiH, the most important change is the abolishing of the institution of investigative judge (according to the new law, the role of the investigative judge is abolished in order to free the municipal courts of huge obligations regarding the carrying out the investigation. The abolishing of the investigative judge institution should foster criminal proceedings [UNMBiH, 2000]); the strengthening of the prosecutor's role has already been mentioned; introducing of the special investigative actions; plea bargaining; transformation of the criminal proceedings according to the practices of the adversarial system; strengthening the role of parties in securing the evidence; cross-examination, etc. (Savjet/Vijeće Evrope, 2005).

(*dominus litis*) in the investigation and the criminal proceedings. The prosecutor manages and supervises the investigation, and also manages the activities of the official personnel whose duty is to find the suspect and solve the case. **Therefore, the prosecutor does not only conduct the prosecution but also the investigation of the crime.** It means obtaining the facts that will help fair and truthful solving of the crime, regardless of the fact whether it is bad or *in favorem* for the suspect. That is why the purpose of the investigation is obtaining the evidence for pressing the charges or rejecting the brought criminal charges against someone.

In this context, the active involvement of the prosecutor means:

«planning the investigation, analysis of the collected findings and evidence, suggesting the directions and ways for collecting evidence of the official personnel, ordering the new investigative actions, demanding the investigative actions that are under the Court's jurisdiction, and constant communication with official authorities in order to exchange information and coordinate activities between them and the prosecutor. This role of the prosecutor should especially be expressed with the complex and serious crimes, regardless whether it is about the investigations which require the involving of the official personnel from more different law enforcement departments» (Savjet/Vijeće Evrope, 2005: 591).

We can see, from above emphasized role in the criminal proceeding, that the police personnel and the prosecutor are expected to show a high level of professionalism and competence. Since the whole burden of investigation is placed on them, the efficiency of criminal proceedings is directly correlated to involvement and professionalism of investigative personnel.

In order to fight crime efficiently, it is very important that the prosecutor is competent, skillful and able to deal with the case, of course with the help of other prosecutors and law enforcement agencies. For delicate crimes, like corruption, that involve high level of secrecy, the prosecutor is especially expected to be competent, skillful, and well acquainted with the

newest achievements, techniques, and means for suppressing of serious crimes, both on the theoretic and legal level.¹⁰

In the new criminal justice system it is possible to bring legal action in the cases where the identity of the suspect is not known. This is something that was not possible before, and it opened the way for applying the investigation even when no information about the suspect is available. Furthermore, the possibility of using the special investigative means is considered to be one of the most important positive innovations in the criminal proceeding. We will mention only some of them: undercover agents, informants, electronic surveillance of premises, simulating acts, access to computer systems etc. The specificities of modern organized crime require the introduction of special measures and actions in discovering and proving of such crimes. Classic means of collecting evidence which are used for other crimes such as hearings of the witnesses and experts, or using physical evidence, have small or no effect. The investigative organs should therefore be acquainted with the possibility and conditions of applying of these actions and, of course, they should know how to find a moment when their application seems appropriate.

In criminal proceedings, there has been introduced a legal possibility immanent to common law - plea bargaining. Namely, according to the new criminal proceedings, the duty of the accused is to plead guilty or not guilty. If the prosecutor estimates that the accused could provide important and useful information about the case, and reveal other persons involved in the crime, there is a possibility for the accused to negotiate (bargain) the charge (s) (charge bargaining), or the sentence (sentence bargaining), in order to get a less severe sentence. This

¹⁰ In other words, he should be well acquainted with legal regulations and best practices in applying of these regulations. One of the possible ways of achieving this, beside one's own interest and engagement, is taking the courses, special training, attending meetings and workshops, (etc.), that are thematically connected to fight against crime.

is a moment when a competent and creative prosecutor should take an initiative and try to negotiate for revealing all important aspects of a particular crime.

In a state where the adversarial system of criminal proceeding is used, the police have a huge responsibility for a successful investigation (CDPC, 2000): in this sense, the things said for the work of the prosecutor also refer to the work of the police.¹¹ Police are the very first instance to whom citizens report that crimes have been committed, which, on the other hand, obligates police to provide high-quality and systematic preliminary investigation. This does not mean that the prosecutor can do his/her job from the office only. It is necessary that the prosecutors are included in every aspect of the criminal investigation and that also means fieldwork. The investigation of corruption is usually very complex and by its nature includes more suspects (with bribing, at least the one who bribes and the one who takes bribe). Therefore, the participation of more than one law enforcement agency is also desirable. Under these circumstances, law enforcement agencies (beside the police, we mean the personnel of tax services, the customs, market inspectorate etc.) need to act in coordination in order to collect useful evidence. Without cooperation, the chances that the investigation will end with successful indictment are minimal. Again, as for the prosecutors, the police are also expected to have skill, competence, and to be specialized for the fight against the serious forms of crime, such as corruption. Again, the experience, professionalism, attending the special courses, exchange of the information, and good knowledge of the law, are of great importance for efficient fight against corruption.¹²

¹¹ It is generally accepted in the experts' cycles that successful work of the prosecutor is based on the work of the police.

¹² After all, this was also pointed out in *Principles and Procedures* of the Ministry of Internal Affairs of the Sarajevo Canton (internal document-handbook which consists suggestions and directives about the correct conduct of the personnel). In the part with the title *Professional Training*, some of the goals that the Ministry emphasizes as a permanent task, are professional training of the police officers, increasing of the knowledge and

4. PROBLEMS OF THE NEW CRIMINAL JUSTICE SOLUTIONS REGARDING THE FIGHT AGAINST CORRUPTION

In the previous parts we examined the main difficulties in the former criminal justice system of BiH regarding the fight against corruption, and how the system should work according to the new law on these matters, i.e. what is expected from the new criminal justice system of BiH. It should be emphasized that BiH has modern legislative solutions which are the results of constant harmonization with European and world standards. However, does the system really work the way it should? Are the new solutions applicable in the particular place and at the particular moment? Have the subjects of the Criminal justice system performed their (new) duties in a competent and professional way? The answer is negative. It is our general impression that the criminal justice system of BiH still does not deal, in an appropriate way, with the prosecution of the cases of corruption.¹³

the expertise of the employed, organization of the trainings for the specific fields of law enforcement, and coordination of the training with the obligation of law enforcement (Ministry of Internal Affairs of the Sarajevo Canton. (2000). *Principles and Procedures. Document No. G.O. 203*).

¹³ An opinion that is shared by others, both experts and laymen: in a rather broad and detailed report *Financial, Organisational and Administrative Assessment of the BiH Police Forces and the State Border Service*, there writes: «Rising forms of criminality such as organised crime, corruption, financial crimes, youth criminality and narcotics are not properly addressed by the system» (Ministry of Justice BiH, 2004: 104); in recently published *Situation Report on Organised and Economic Crime in South-eastern Europe*, CARPO (project of technical cooperation for «Development of reliable and functioning policing systems, and enhancing of combating main criminal activities and police co-operation», jointly funded by the Council of Europe and the European Union), there writes: «...the countries have recognised this problem (of corruption) and have undertaken a variety of measures, legislative and others, to address it. More work, however, needs to be done, namely, better targeted investigation and prosecution of corruption directly linked with organised crime» (2005: 52); in *Corruption Perception Study 2004*, Transparency International BiH reached the following results: «Out of 24 offered institutions and public companies, the respondents in this survey perceived the police and the judiciary as the

«While the establishment of the legislative framework has been broadly successful and corresponds to international standards... without efficient and effective enforcement, these reforms will have been in vain» (Devine & Mathisen, 2005: 54).

In order to establish what does not work in the criminal justice system of BiH regarding the dealing with corruption, we conducted primary research (the survey that included both questionnaires and interviews), consulted statistical data about recorded cases of corruption in Sarajevo Canton, conducted an analysis of the legal frame for the fight against crime (focus is on the Criminal procedure code of FBiH), and the numerous data in secondary sources, which are the results of many research of the same problem – the fight against corruption in BiH.

Bosnian Government adopted in March 2004 a BiH Medium Term Development Strategy-MTDS (or Poverty Reduction Strategy Paper-PRSP).

«The `Strategy for Combating Crime and Corruption` is an integral part of the MTDS. It is complemented by an Anti-Corruption Action Plan. The Strategy is a largely descriptive document, in which the Bosnian authorities commit themselves to legislative, institutional and educational activities. It outlines broader concerns about good governance and repression of corruption through investigation and prosecution, and strengthening the judiciary and law enforcement agencies» (Devine, Mathisen, 2005: 49).

In the very *Anti-Corruption Plan* there reads:

«By assigning a more active role in the investigation and prosecution process to the justice ministries, processing of crimes will be accelerated, and the preconditions for a higher efficiency of the judiciary as a whole have been created» (Office of the BiH Coordinator for PRSP, 2004: 127).

Unfortunately, the strategy has neither indicators of its success nor failure. Accordingly,

Devine and Mathisen note:

«Experience from other countries suggests that this could lead to a situation of a successfully implemented, comprehensive anti-corruption strategy, with all objectives being ‘ticked’ off, while at the same time, the real-life situation will not have changed, or might have changed a little, but without the authorities being able to capture or measure this difference» (2005: 62).

third and fourth most corrupt institution in BiH, closely following political parties and customs administration»

(Transparency International BiH [a], 2004: 74). Can institutions with such a bad reputation serve as guards of social values?!

In this light, let us first look what the official statistics says about corruption. According to *Statistical Yearbook 2004* of Federation of BiH and its bulletins *Cantons in Figures 2004* and *2005*, in 2002, in Sarajevo Canton there were 208 reported cases of bribery, acts against the official and other positions of authority;¹⁴ in 2003 there were 100 of such cases, and in 2004 – 87; only 31 of them in 2002 (14,9%), 31 of them in 2003 (31%), and 54 of them in 2004 (62,06%) were indicted for actions that were reported to be cases of corruption (Federal Office of Statistics [a], 2004: 286-7; Federal Office of Statistics [b], 2004: 36; Federal Office of Statistics [c]), 2005:). Therefore, we had a small number of indictments in 2002 and 2003, and rather large number of them in 2004 (of course large and small in the context of the relation between the reported and indicted cases of corruption). We do not have official statistics on persons who were sentenced for corruption (because the *Statistical Yearbook* does not present the information about the particular crimes, but only the information about the sentences for the whole population). These numbers do not tell us anything significant about the qualitative progress regarding the proceedings against the cases of corruption in Sarajevo Canton. Although they suggests that the number of indictments is constantly increasing (what may seem to be very good), this does not have to mean that the work of the investigative personnel has improved. Recent studies (Bannenberg, Schauptensteiner, 2004) show that only 5% of the corruption cases enter the criminal justice system. Instead of recording the progress in the number of reported cases, in Sarajevo Canton we see the constant decrease in this regard (the number of reported cases is in permanent decrease). On the other hand, since it is almost impossible to find out how many charges resulted in

¹⁴ This is a specific criminal law term for the acts of corruption. Although we have some conceptual remarks regarding the essence of the actions of corruption, we think that the legislator mostly in an appropriate way included the existing forms of corruption.

convictions,¹⁵ it is rather inappropriate to discuss how efficiently the criminal justice system is dealing with corruption, from the purely statistical data point of view. This, again, does not mean that we completely neglect the official data (from *Statistical Yearbook*) – we think that they simply do not reflect the real situation.¹⁶ Therefore, instead of focusing only on pure statistical data, we are going to pay more attention to primary and secondary sources which we used, as well as the content analysis of the Criminal procedure code of FBiH regulations which refer to the process of investigation.

In our primary research which was conducted in the period July-October 2005, we asked the police officers, prosecutors and judges a set of questions about the current legal and operative measures that had been undertaken in the fight against corruption.¹⁷ At the question «Do you

¹⁵ Due to the fact that the Municipal Court of Sarajevo still does not have a computer system which would enable us to conduct the research in the reasonable time period, one would virtually spend hundreds of hours in manual searching for the cases of corruption.

¹⁶ In this light, CARPO (see footnote 13) notes: «Current efforts against corruption in the countries have produced an increasing number of investigations and prosecutions but few convictions» (2005: 5). «`Good governance`, on the other hand, in practice is demonstrated by such universal principles as participative government processes, impartiality of service provision, user-oriented service, transparency and accountability, professionalism, non-discrimination, efficiency and cost-effectiveness» (UNDP, 2003: 4), not solely by statistical indicators.

¹⁷ The target group of the research were the police officers (15), prosecutors (11), and judges (11) of Sarajevo Canton, department for the economic crime and corruption, the lowest police and court levels in the fight against corruption. The reason for this is the fact that we usually pay a very small attention to the work of those who fight the crime every day on the first line («State Court deals only with major cases»; Devine, Mathisen, 2005: 42). They are the ones that confront with the numerous cases of corruption, and it is very likely that they are the first level where the investigation begins, and possibly develops into the case of the federal or the state`s concern. Therefore, we think that the investigation of the problem of the successful fight against corruption should start there.

think that the Criminal justice system of BiH promotes efficient fight against corruption?“, 62.2% of the respondents answered «No, it does not». This is a significant percentage of those that fight the crime every day, who are not satisfied with the current situation regarding the fight against corruption. If we take into consideration that we are talking about the practitioners, the part of the criminal justice of BiH which is the most competent to estimate whether the criminal justice system is fighting corruption in an appropriate way, it is clear that BiH really has problems in suppressing corruption.¹⁸ These problems could be divided into those on normative and organizational level, and those on operative level. The latter ones

We chose to conduct a case study (of Sarajevo Canton), because Sarajevo is the capital of BiH; Sarajevo is the financial and administrative center of BiH, FBiH, and Sarajevo Canton (which is significant for the nature of the crime that we research, because «corruption is use of position for one's own benefit»); due to the fact that most of the cases of corruption in Federation were investigated and conducted in Sarajevo (out of all reported cases in 2003 in Federation of BiH, 26.73% were reported in Sarajevo Canton; 20,52 % of all cases in 2003 where the charges were pressed, it was done in Sarajevo Canton). Another fact is in favor of this argument – in the interviews that we conducted we discovered that most of the Federal and State prosecutors are recruited from Sarajevo Canton, but with a good reason: in experts' circles they are considered to be the most professional and most competent. The problems that they emphasize are definitely the problems of whole, at least, Federation of BiH. We consider this rational and we are convinced that the chosen case, Sarajevo Canton, will be represent whole, again, at least Federation of BiH.

¹⁸ In our analysis how practitioners evaluate legal (both penal and penal procedure) solutions regarding the fight against corruption, we had following results: 62.2% of respondents think that Criminal code of FBiH clearly describes the notion of corruption; 54, 1 % of respondents think that the Criminal procedure code of FBiH specifies the efficient procedures for successful fight against corruption. This does not reflect the previous analysis of opinions about the efficiency of the whole system of criminal justice. Therefore we can conclude that our respondents experience problems on other levels, outside of strictly normative and legal frame.

refer to problems of professionalism and competence of the investigative personnel, and the problems regarding the cooperation between the institutions in the fight against corruption.

4.1. Normative and Organizational Level

The Criminal procedure code of FBiH predicts the possibility of using the special investigative means for certain criminal activities. According to the law, the application of these actions is reduced to those that are reasonably suspected to have committed crimes that can be sentenced to minimally three years of prison. Beside these formal and material conditions, the law reduces the using of special investigative means by further, more or less, procedural conditions, which are reflected in subsidiarity of application of these actions. That subsidiarity is reflected in the fact that the special investigative means can be used only in the cases where it is not possible to find evidence in some other way, or their obtaining would cause insurmountable difficulties (article 130 of the Criminal procedure code of FBiH).

According to these assumptions, special investigative means can be applied in the investigation of a rather large number of felonies. However, the possibility of their application does not include all offences of corruption, although the reform of criminal justice system in 2003 aimed exactly at improving the fight against corruption (in this light, some prominent theorists of criminal code, like Sijerčić-Čolić, but also the High Representative in BiH, Lord Ashdown, described the reform of 2003 as «a set of laws for efficient fight against corruption», Sijerčić-Čolić, 2003: 10).¹⁹

When all legal conditions (both material and procedural) are fulfilled, the special investigative means can be applied in the investigation of the following offences, which are included in the earlier definition of corruption: aggravated form of abuse of office (article 383, paragraph 3.); aggravated form of embezzlement in office (article 384, paragraph 3.),

¹⁹ Allowing the use of special investigative means in detection of corruption and other serious forms of crimes, was recommended by Group of States Against Corruption (GRECO) in their *Evaluation Report on Bosnia and Herzegovina*.

and aggravated form of fraud in office (article 385, paragraph 3. of Penal code of FBiH). Nevertheless, what is traditionally considered to be the essence of corruption,²⁰ remained outside of the legal possibility for using the special investigative actions.

But, what seems to be more disturbing, is the fact that **86.5% of the respondents think that the special investigative means (for those acts of corruption where there is a possibility to use them) are insufficiently applied in practice.** This seems to be a serious omission of the practitioners.

Following the OHR's Anticorruption strategy, as well as the recommendations of the Council of Europe for the fight against corruption, which can be found in Criminal Law Convention on Corruption and in the *Twenty Principles for the Fight against Corruption*,²¹ in the last two years, in the Federation of BiH there were established offices which strictly work on the suppression of corruption. Both the police and the office of prosecutor in Sarajevo Canton have a special department for economic crime and corruption.²² These special departments have their own premises, chief, and are supposed to deal only with those cases that have features of corruption. It is also worth mentioning that 68% of the respondents (statistics of

²⁰ It needs to be mentioned that all international conventions dedicated to fight against corruption primarily consider corruption to be active and passive bribing and trade of influence. Furthermore, above mentioned acts, for which the legislator specifies the use of special investigative actions, are aggravated forms of acts of corruption. No single example of the basic form of these acts fulfills legal conditions for using the special investigative actions.

²¹ Office of the High Representative-OHR (1999). *A Comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina*; Council of Europe Resolution (97) 24 *On the Twenty Guiding Principles for the Fight Against Corruption* (Adopted by the Committee of Ministers on 6 November 1997).

²² In Ministry of Internal Affairs of Sarajevo Canton, within the sector of crime investigations, there is a department for economic crime which deals with «economic and criminal offenses against official and responsible duty» (article 21. of the Book of Regulations of the Internal Organization of Ministry of Internal Affairs of Sarajevo Canton, No. 01-195/03).

police and prosecutors only) of our research answered that in the institutions where they work, there is no special department that strictly/mostly deals with the cases of corruption. Let us remind you that these answers come from the officials who work in the departments whose official name is «department of economic crime and corruption». Therefore, it is very questionable whether this name is only a formal adjusting to the above mentioned documents, or these departments really do their job in an appropriate way.²³

4.2. Professionalism and Competence of the Investigative Personnel²⁴

In the part 3.3 of this study, we pointed out how important are professionalism and competence in the suppressing of crime. An important indicator for the mentioned characteristics, in our opinion, is constant improving and specialization of the investigative personnel, which are exercised, among the rest, through special training/courses. **75.7% of the respondents (investigative personnel) of our research answered that they had not attended special training/course for the fight against corruption.** It still seems that an adequate education and training of the investigative personnel are not given enough attention. In this light, it is very ambiguous whether or not the investigative personnel have skills and competence and whether they are trained to deal with a complex kinds of crime (such as corruption), if they have not attended any program of training which would insure

²³ In the interviews that we made, our respondents usually referred to the departments that they belong to as departments for the economic crime, rarely using the term 'corruption'. Again this could be a sign of not considering the fight against corruption as their primary task.

²⁴ In the light of this study, professionalism and competence will be determined as «delivering the highest quality of service, exhibiting appropriate personal professional behaviours and practising work in an ethically responsible manner».

appropriate knowledge and the possibility to exchange experience with other, more prominent (or at least, more experienced) practitioners.

The plea bargaining is considered to be one of new, progressive, and positive criminal-justice measures in the fight against corruption and organized crime (Savjet/Vijeće Evrope, 2005: 17). The plea bargaining (article 246 of the Criminal code of FBiH) is a special form of agreement, signed by the prosecutor and the accused, which may be applied during the whole criminal proceedings, but primarily before pressing charges, or before confirming of the charges (Sket, Sijerčić-Čolić, Langusch, 2001).²⁵ Most often, the prosecutor suggests less severe sanctions if the accused accepts to plead guilty. However, since the prosecutor has the authority to negotiate the terms of pleading, the skillful and competent prosecutor will know how to use this strategy for discovering other persons involved the activities of corruption.²⁶ Derenčinović (2001) argues as well, that plea bargaining is a useful strategy for obtaining information and evidence about the case (the strategy which the competent prosecutor will know how to appreciate and take advantage of).

During the interview that we made, our respondent, the head of the department for economic crime and corruption in the office of the prosecutor, said: «plea bargaining is generally good, promising strategy, but it is used very rarely». The answers in the questionnaires that we sent show the following, not very encouraging results: **81.1% of**

²⁵ Plea bargaining - the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge. Taken from: [http:// www.the3rdjudicialdistrict.com /glossary.htm](http://www.the3rdjudicialdistrict.com/glossary.htm).

²⁶ The research in other European countries (e.g. Germany-Vahlenkamp and Knauß,1997), pointed to the «snowball system» as one of efficient methods in investigation of corruption cases. «Snowball system» is the discovering the identity of the perpetrators of the crime, based on the statement given by already processed individual. More simply, the statement of person A leads to the involvement of person B in a crime; the statement of person B leads to the person C who could be involved in a crime, etc.

the respondents answered that they used plea bargaining very rarely; 8.1% of them answered «often» and 5.4% answered «very often».

In 2003, BiH got a new Law on Protection of Witnesses under Threat and Endangered Witnesses,²⁷ which supposes the possibility for the prosecutor to suggest a special status of particular witnesses during the trial (in case someone threatens them or the security of them or their families is in danger). But, as we were informed during the interviews with the prosecutors, «this measure has been used in only several cases». Namely, in order to animate witnesses to come to a trial or to encourage the informants (when it is necessary) to come out from anonymity and give an official statement which could be used as an evidence in a court of law, the prosecutor can suggest a special status for a witness. This possibility is completely new in a criminal justice system of BiH and seems to have been neglected so far.²⁸

Another very important regulation of Criminal procedure code of FBiH which could be used in the fight against corruption is the right of a witness to refuse to answer certain questions (regulated by the article 98 of Criminal procedure code of FBiH). According to paragraph 1 of this article, a witness has a right to refuse to answer certain questions if the true answer could put him/her under criminal investigation. But, if the prosecutor guarantees immunity for that witness, there is no reason for not answering these questions. In other words, by guaranteeing the immunity for persons who are in some way involved in crimes of corruption, they could be encouraged to reveal other criminal perpetrators. According to the statements given by the prosecutors during our research, immunity against the criminal

²⁷ Official Gazette of BiH, No. 3/03, 21/03, 61/04.

²⁸ The prosecutors think that it is almost inapplicable since BiH is a small country «where everybody knows everybody. How can you hide someone in such a surroundings? Impossible», said one of them during our research. An other important obstacle, in their opinion, is lack of financial resources for the witness protection programs.

proceedings as a strategy for obtaining useful information about other persons or activities which can be connected with corruption, is «still in infancy», and is used «very rarely».

Attending special training and using the newly introduced possibilities for the fight against corruption are, in our opinion, important indicators of the prosecutors' skill and competence. But, we thought that such an important question deserves more attention, and we questioned the personnel of the criminal justice system in order to see their general opinion about the professionalism and competence of the investigative staff on the Cantonal level in the fight against corruption. The results were not encouraging: **54.1% of the respondents answered that they think that work of the police/the prosecutors on the suppression of corruption «does not meet the basic standards of professional and competent handling».**

During the interviews, we learned that the prosecutors rarely follow the police to the crime scene. The prosecutors tend to treat corruption as a misdemeanor (lesser form of offense), not as a criminal offence. The work of prosecutors was often judged as incompetent, and the remark that «whatever is suggested to the prosecutor to do next in the investigation is accepted without much of the thinking», was often repeated. On the other hand, the prosecutors often criticize the work of the police as «careless and unresourceful». «Their reports are often bad written and incomplete» could often be heard during our conversations with the prosecutors. Obviously, there is still criticism regarding the work and professionalism of investigative personnel (both the police and the prosecutors).

4.3. Cooperation between Agencies

In investigation of complex and serious crimes such as corruption, the cooperation between agencies plays a significant role. The chances that investigation ends with indictment and sentence directly correlates with exchange of information between the agencies involved in suppression of corruption. The Criminal code of BiH, art. 228 prescribes a general duty of

different categories of public service personnel to report criminal offences; according to the article 86, the prosecutor is authorized to order bank or other legal person to give information about financial transactions of the persons accused for committing a felony; the prosecutor can ask for an opinion of the expert; he/she can order a search of the crime scene; according to article 233 of the Criminal code of FBiH he/she can supervise the work of the police in criminal investigations, which means that police are directly responsible to the prosecutor when they conduct a criminal investigation. Art. 132. of the Criminal procedure code of FBiH establishes the duty of the companies providing the transfer of data, required information to the investigative bodies while conducting the special investigative actions, foreseen in art. 130 of the Code.

The significance of the cooperation between the institutions in suppressing of corruption is also confirmed by the practitioners- respondents in the research of Vahlenkamp and Knauß (1997: 231): «in an investigation of complex crimes, the investigators are directed to the other criminal justice system institutions».²⁹ However, there is still not enough cooperation between the investigative personnel and other criminal justice system subjects, but also other institutions outside of this system. According to *Situation Report on Organised and Economic Crime in South-eastern Europe*³⁰ «the law enforcement agencies (in BiH) are still fragmented, disconnected, and overstretched...the exchange of information within the country is cumbersome» (2005: 58). This is supported by the statistic information which we made during our research, which again does not help the efficient promotion of the suppression of crime: **at the question «How often do you cooperate with other institutions of criminal justice in solving the cases of corruption?», even 80% of the respondents (only police and prosecutors) answered «in a small number of cases», and 20% of them answered «in**

²⁹ In BiH, that would be law enforcement agencies/ offices of prosecutor/ judges at Municipal, Cantonal, Federal and State level.

³⁰ See footnote 13.

a large number of cases» (none of them answered «on regular basis»). **76% of the respondents (police and prosecutors) answered that their cooperation with other institutions which are not part of the criminal justice system, happens only in the small number of cases;** 16% of them answered the same question «in a large number of cases», and only 8% answered «on regular basis». Interviews showed that the police consider the cooperation with the office of the prosecutor to be «low-quality»: they find the supervising aspect of the prosecutor to be «not present enough», and they are often left to conduct the investigation on their own, therefore risking to make an omission (despite of the legal obligation of a prosecutor to exercise a supervising and directing role in an investigative activity). During the interviews, one of the police investigators emphasized that «there is no point in trying to cooperate with the Customs service, Post office, Tax service, Market inspection service – they just do not appropriately answer our demands». During the interviews with the prosecutors, the cooperation with other criminal justice system institutions was qualified as generally «good», but when it comes to cooperation with the institutions outside of the system, this cooperation is qualified as «not so good». The reason for this lays in the fact that the institutions outside of criminal justice system, as one of the respondents formulated, «do not have enough personnel to answer our demands, e.g. to give a competent opinion, etc.».

5. CONCLUSION

The criminal justice system has an important role in the fight against corruption. However, it is not the only social system which is primarily and exclusively supposed to deal with the problem of corruption. It is only one of several mechanisms of the institutional infrastructure of BiH which is supposed to protect the welfare and values of the society and its members (subsidiarity of the criminal justice system). In the recent years we experienced the lack of citizens' confidence in BiH authorities, i.e. the services of the criminal justice system, because it does not promote the efficient fight against corruption. For example, it was noted in the study *National Integrity Systems- Country Study Report: Bosnia and Herzegovina* of the Transparency International: «The country still faces a serious corruption challenge and only weak and ineffective institutions to combat it» (2004: 12). Although BiH reformed its Criminal justice system in 2003, and the main aims of the reform were the strengthening of the judiciary and improving of the quality and the efficiency of the system, these aims have been only partly accomplished. In order to find out what has and what has not been accomplished, we conducted a research which included a survey (questionnaires and interviews with practitioners – police investigators, prosecutors and judges), content analysis of the law regulations, and available secondary sources. In the survey that we conducted, 62.2% of practitioners think that the current criminal justice system does not promote the efficient fight against corruption. Trying to find the source of the problems, we discovered a number of problems which should be analyzed. These problems can be divided into three categories: the problems on normative level, the problems regarding the professionalism and competence of the investigative personnel, and problems regarding the cooperation between the state authorities.

What could be done to make things more effective? 10.8% of respondents in our survey answered «in larger financial resources»: argument that could be heard before, but it did not bring any long- term improvement.³¹ 27% of them answered «in dealing with corruption on the state level». This option seems not success- promising either. The primary confrontation with crime, before it develops to major case of state`s interest, usually happens on the Cantonal (regional) level. Having in mind modest results (in spite of the agencies on the state level) in the suppressing of corruption and the complexity of the territorial and administrative organization of BiH, we really doubt that one organ on the state level could solve all the problems in suppression of corruption.

On normative level, although at the beginning it was declared as a reform which wanted to strengthen the capacities for the more efficient fight against corruption and organized crime, the criminal justice system reform of 2003 failed to establish the instruments for the accomplishing of such aims. It failed to include all crimes of corruption into those crimes for which the special investigative means can be used. We think that it is wrong. The secrecy and complexity of this crime require using of the special investigative actions. In *The Report on Interception of Communication and Intrusive Surveillance*, prepared by the Group of Specialists on Criminal Law and Criminological Aspects of Organised crime, there reads:

«although it is very difficult to establish in a scientific manner the effectiveness of the use of covert methods, ...the representatives of the three countries, who were interviewed for best practice survey, all shared the opinion that covert investigative methods are indispensable in the fight against organised criminals. A number of them even said that these methods gain significance, among other things in the pro-active tackling of corruption» (CDPC, 2000: 21). «Only since about one year information collected by covert investigative methods is presented as evidence during the trial. This policy change resulted in a shock among organised criminals, but is generally considered to lead to more convictions...Many of these are major cases involving very serious crimes» (ibid.: 19).

³¹ See Devine, Mathisen, 2005: 42.

This is further supported by a number of European best practitioners in this field.³² An argument that can often be heard³³ is that «BiH is a poor country and therefore financially incapable to ensure the application of sophisticated measures and techniques, such as interception of communications, access to computer systems, etc.». Accepting this kind of opinion, «the emphasis could be given to non-technical special investigative means (e.g. deployment of undercover agents)».³⁴

We think that there are enough arguments for the BiH authorities to reconsider the existing regulations regarding the application of the special investigative actions, and to include the possibility of their using for all acts of corruption, determined as such in Criminal Codes of BiH.

Especially important question when we talk about corruption is professionalism and competence of the investigative personnel. Can BiH society expect an efficient fight against corruption from those who are not adequately trained to fight against such a complex and serious crimes like corruption? Rather not. Even 75.7% of the respondents (investigative personnel) in our research answered that they had not attended a special training/course for the fight against corruption. 54.1% of the respondents answered that they think that the work of the police/prosecutors in the fight against corruption «does not meet the basic standards of

³² For instance, see conclusions of the 5-th European Conference of specialised services in the fight against corruption, available at http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Conferences_of_specialised_services/2000%28Istanbul%29Conclusions.asp#TopOfPage. In this regard, see also SPAI, 2001: 14; Bannenberg, 2003; Savjet/Vijeće Evrope, 2005: 363.

BiH neighboring country, Croatia, already introduced law that allows the application of special actions in criminal investigation of acts of corruption.

³³ From practitioners on both the Cantonal and the State level.

³⁴ Very successful remark of the CARDS Regional Police Project. Available at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Regional_project_CARDS_Police/Output_3_-_Special_investigative_means/Output13_intro.asp#TopOfPage.

professional and competent handling»! It is not surprising, therefore, that 37.8% of them think that the opportunity for more successful fight against corruption should be sought in improvement of the professionalism of investigative personnel. True specialization is necessary (in the sense of acquiring necessary skills and competence, and familiarizing with the best practices in the fight against corruption). This is recognized by both the Council of Europe,³⁵ and United Nations.³⁶ In this light, worth mentioning are the conclusions of the 5th European Conference of specialised services in the fight against corruption, which was thematically dedicated exactly to inquiries and prosecutions of corruption cases:

«The investigation and prosecution of corruption cases should be entrusted upon specialised services which have the expertise, the knowledge and the means needed to conduct pro-active investigations...».

Again go the investigations of Bannenberg (2003) *in favorem* such opinion, but this opinion is shared by other prominent European experts on investigation of corruption (as, for example, noted in conclusions of the 1st European Conference of specialised services in the fight against corruption, and in draft conclusions of the Council of Europe Octopus Interface 2003).³⁷

As one of the indicators of the expertise and competence of the investigative personnel in fight against corruption, could be used the utilization of the newly introduced measures into the Criminal justice system of BiH, such as the plea bargaining. According to the opinion of one of the prosecutors, «plea bargaining is generally good, promising strategy; however, it is not used often enough». This was also confirmed by the questionnaires: 81.1% of the respondents answered that plea bargaining is used very rarely. According to some countries

³⁵ See art. 20 of Criminal Law Convention on Corruption.

³⁶ See art. 36 of the United Nations Convention Against corruption.

³⁷ Available at: http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/Programme_OCTOPUS/2003/Seminar%282003%29Sxb_conclusions.asp#TopOfPage.

which have introduced this measure into their legal system, it is worth consideration,³⁸ but this was confirmed by BiH officials on higher level of authority as well.³⁹

Very small attention in the period 2003-2005 was given to the program of the witness protection and their immunity from prosecutions, as two very valuable strategies in the suppressing of corruption, especially when the high positioned authorities are involved. As noted in the conclusions of the 5th European Conference of specialised services in the fight against corruption «the granting of such advantages has proven useful in certain countries, enabling the disclosure of corruption offences and the punishment of the perpetrators». This strategy was considered useful in other relevant discussions as well.⁴⁰

Systematic and sound approach in investigation of corruption is necessary. One more reason *in favorem* of such argumentation lays in the fact that «many cases are founded on accidental findings» (Vahlenkamp, Knauß, 1997: 395). Therefore, selective approach and not doing systematic and exemplary investigation of the cases of corruption, a number of significant evidence may be overlooked or missed, which is only in the interest of the criminals.⁴¹

The cooperation is another important question, almost completely neglected by BiH authorities. Even 80% of respondents in our survey (only police and prosecutors) answered that they cooperate with other criminal justice system institutions in «a small number of cases», and 76% of the respondents (again only police and prosecutors) answered that their

³⁸ See CDPC, 1999: 11.

³⁹ During the conversation with the high-positioned adviser in the Office of the state prosecutor, we were informed that this is a rather usual practice in their work which «brings success in numerous cases of a serious crime».

⁴⁰ Such as 1st European Conference of specialised services in the fight against corruption, Strasbourg, 1996, and above mentioned *Evaluation Report on Bosnia and Herzegovina*, GRECO, 2003.

⁴¹ De Speville (2003) argues that paying attention only to major cases could deter the complainant from returning with perhaps more valuable information, and raises suspicion that investigator himself could be corrupted.

cooperation with other institutions which are not part of the criminal justice system, happens in small number of cases. On the other hand, exactly 13.5% of them think that the perspective in more efficient fight against corruption should be looked in cooperation with other institutions. The cooperation with other institutions in the complex crime cases, such as corruption, is indeed very useful and necessary strategy.

In this regard, Bannenberg conducted a detailed research of 101 cases of corruption in Germany. Her results pointed to «directed exchange of information between the federal state as a likely success» (2003: 31). She also argues that solid preparation of the case and coordinated approach of the police and prosecutors in investigation of corruption leads to success in particular case.

Similar results and recommendations made Vahlenkamp and Knauß in their research on corruption in 1997,⁴² promoting task force approach (to particular case pointed and coordinated action of the police, tax control, customs services, inner investigation). They also found it very useful to have «desk officers for the purposes of these investigations» (1997: 396).

It depends on the particular country and particular case whether these strategies will be used. In the case of BiH, there were hardly attempts to use them. All mentioned conclusions and recommendations were given by best European practitioners. This practice and experience should be discussed by Bosnian authorities. In this light, we call for the change of policy which does not pay enough (if any) attention to education and studying the prominent and experienced practitioners, and to cooperation between institutions in fight against corruption. This policy should become the policy of acquiring and appreciating the knowledge and best practices.

⁴² The research involved, among others, the opinions of 22 experts of criminal justice.

Therefore, in order to deal with the above discussed problems of normative nature (omitting to include all acts of corruption as the ones for which special investigative actions could be undertaken), and operative nature (referring to lack of professionalism and competence of the investigative personnel, and the lack of the cooperation between the institutions in the fight against corruption), more efficiently, and in order to return the confidence of BiH citizens in the institutions, we need to establish strong, credible, independent, and professional criminal justice system forces.

In order to accomplish this, we need:

- To ensure the legal framework which defines the usage of the special investigative means by allowing and legal defining of their use;
- To ensure systematic and constant specialized training (in best practices of the fight against corruption) of the personnel (both police and prosecutors) of all levels of territorial and administrative organization of BiH;
- To strengthen the cooperation between the institutions: - by promoting task force approach (particular cases investigated by the common forces of police, prosecutor and other organs); - by ensuring the operative exchange of information between the police, prosecutors, financial intelligence units, the customs, tax office control and other relevant institutions;
- To ensure a number of procedural and nonprocedural measures for the protection of the witnesses, before and after criminal proceedings, through the witness protection program;
- To promote the code of ethical and professional conduct of court and police personnel.

FINAL REMARKS

In this study we dealt with the problem of the fight against corruption, from the point of the criminal justice system. As it was noted before, the criminal justice system is a subsidiary social system for the suppression of the socially unacceptable behavior. But it is the system from which citizens expect to do the most. The consequences of unfulfilling these expectations will not affect only those who failed to pay an adequate attention to these problems, but also the whole society. Therefore, the lack of trust in BiH government is not surprising. BiH mostly has modern laws which have been harmonized with European and global best practices, and it continues to improve its legislation. However, the implementation of these laws is problematic. In order to return the trust, BiH needs to make a change. It needs to make change towards more professional, competent, responsible, independent and strong criminal justice system. It is the only way for BiH to make a progress. We consider this study to be a small contribution in this process. Namely, by conducting a research and suggesting the possible solutions, we hope that these reforms will really be accomplished, and that BiH will have a better future.

**Appendix: Questionnaire on opinions of the Criminal justice officials in BiH on
corruption**

1. Sex

- a) Male
- b) Female

2. Year of birth _____

3. Occupation _____

4. To your opinion, how big is the problem of corruption in BiH?

- a) very big
- b) big
- c) no bigger than other problems
- d) small
- e) I don't see it as a problem

5. To your opinion, where is corruption most widespread?

- a) state administration
- b) among politicians
- c) among medical staff
- d) among university staff
- e) elsewhere _____

6. Do you perceive corruption more widespread in BiH than in other countries?

- a) Yes
- b) No

7. Do you think that the Criminal justice system of BiH promotes efficient fight against corruption?

- a) Yes, it does
- b) No, it does not

8. To your opinion, does the Criminal code of FBiH clearly describes the notion of corruption?

- a) Yes
- b) No, it should be changed/added _____

9. To your opinion, does the Criminal procedure code of FBiH specifies the efficient procedures for successful fight against corruption?

- a) Yes
- b) No, it should be changed/added _____

10. Have the special investigative means been sufficiently applied in practice?

- a) Yes
- b) No

11. If the answer to the previous question was «no», do you see it as a problem in fight against corruption?

- a) Very big problem indeed
- b) Small problem
- c) I don't see it as a problem

12. To your impression, how often has the plea bargaining been used in corruption cases?

- a) very rarely
- b) often
- c) very often

13. If the answer to the previous question was «very rarely», do you see it as a problem?

- a) Yes
- b) No

14. Have you attended special training/course for the fight against corruption?

- a) Yes, I have attended special training/course for the fight against corruption
- b) No, I have not attended special training/course for the fight against corruption

15. Do you see previous question to be of relevance in considering the successful fight against corruption?

- a) Yes
- b) No

16. In institution you work, is there a special department that strictly/mostly deals with the cases of corruption?

- a) Yes
- b) No

17. If the answer to the previous question was «no», do you see it as a problem?

- a) Yes
- b) No

18. What do you think about work of the police/prosecutors on the suppression of corruption (for the purpose of this study, professionalism and competence will be determined as «delivering the highest quality of service, exhibiting appropriate personal professional behaviours and practising work in an ethically responsible manner»)?

- a) professional and competent
- b) does not meet the basic standards of professional and competent handling

19. How often do you cooperate with other institutions of criminal justice in solving the cases of corruption?

- a) in a small number of cases
- b) in a large number of cases
- c) on regular basis

20. Do you think this cooperation should be on higher level?

- a) Yes
- b) No

21. How often do you cooperate with other institutions which are not part of the criminal justice system in solving the cases of corruption?

- a) in a small number of cases
- b) in a large number of cases
- c) on regular basis

22. Where should we first look for an opportunity for more successful fight against corruption?

- a) in larger financial resources
 - b) in dealing with corruption on the state level
 - c) by improving the professionalism of investigative personnel
 - d) in cooperation with other institutions
 - e) elsewhere
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