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CORRUPTION RISK ASSESSMENT IN THE SECURITY SECTOR OF BOSNIA AND HERZEGOVINA

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FOR THE PUBLISHER:
Denis Hadžović, Secretary General
EDITOR:
Armin Kržalić, PhD
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Svjetlana Pavičić
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Corruption risk assessment in the security sector of Bosnia and Herzegovina

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Table of Contents

List of acronyms	
PREFACE	6
EXECUTIVE SUMMARY	7
INTRODUCTION.....	8
METHODOLOGY.....	11
1. Notion and definitions of corruption	13
2. Security sector and corruption	17
3. Legislative framework and institutional capacities	22
3.1. Internal control in the security sector	23
3.1.1. Defence sector	24
3.1.2. Law enforcement sector	26
3.1.3. Intelligence sector	31
3.1.4. Justice sector	33
3.1.5. Customs/border sector.....	35
3.1.6. Agency for the Prevention of Corruption and Coordination of the Fight against Corruption	36
3.2. External control mechanisms	38
3.2.1. State level	38
3.2.2. BiH Federation entity	42
3.2.3. Republika Srpska entity	43
3.2.4. Other bodies and mechanisms.....	43
4. Security sector and strategic anti-corruption documents	44
4.1. Implementation of the National Strategy for the 2009 to 2014 period.....	44
4.2. Development and adoption of an Anti-Corruption Strategy (2015-2019)	49

5. Assessment of the situation and analysis of risk areas of anti-corruption behaviour in the security sector	51
5.1. Statistics on investigation, prosecution and trials of corruption offences	53
5.2. Statistics on the involvement of employees in the security sector in corruption and internal measures undertaken	60
5.3. Cooperation between institutions in investigating and prosecuting corruption offences	64
5.4. Financial reports of audit institutions	70
5.5. Integrity of institutions in the security sector and integrity plans	76
5.6. Recruitment and career advancement of employees in the security sector	81
5. 7. Public procurement in the security sector and the risk of corruption	86
5.7.1. Provisions of the BiH Public Procurement Act.....	89
5.7.2. Specificities of public procurement in the security sector	91
6. Perceptions and attitudes of citizens on corruption in the security sector	98
CONCLUSIONS AND RECOMMENDATIONS	104

List of acronyms

ACS - Anti-corruption strategy

AF BiH – Armed Forces of BiH

AP – Action plan

APIK – Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (Anti-Corruption Agency)

BD – Brcko District of Bosnia and Herzegovina

CC – Criminal Code

CPC – Criminal Procedure Code

DM – BiH Defence Ministry

MoI – Ministry of the Interior

OSA –BiH Intelligence and Security Agency

PPA – Public Procurement Act

PSU – Professional Standards Unit

PA – Police Administration

PREFACE

The presence of corruption is particularly dangerous for the countries in transition or the countries with underdeveloped democratic institutional and value systems. The reason is that the legal and political mechanisms in place in those countries are not offering sufficient guarantees for efficient oversight of government, and their abuse of power manifests itself as corruption. Corruption corrodes the rule of law, undermines citizen confidence in public institutions and thereby also reputation of the state, and represents one of the forms of crime which is most difficult to eradicate. The proceeds of corruption become the basis of political and economic influence, which largely weakens democratic institutions.

BiH, as the country in transition, is facing great challenges in fighting corruption. The weaknesses in the implementation of the key anti-corruption policies, insufficiently effective institutional and administrative capacities, as well as the shortfalls and imprecision of the present anti-corruption laws together contribute to the spread of this unacceptable social phenomenon in BiH. Corruption in BiH largely impedes the economic development, and jeopardizes the rule of law, social justice and stability of democratic institutions.

The security sector, due to its specific features related to secrecy and weaker oversight and control, compared to other social sectors, often provides a very fertile ground for manipulation, while weakening the principles of transparency and accountability and the basic democratic tenets. This is the reason why it is extremely important to try to demystify this sector, which continues to be rather closed, and to introduce the norms of respect for democratic standards and practices, whereby the causes of corruptive behaviour and all types of corruption would be removed.

EXECUTIVE SUMMARY

The presence of corruption in the security sector is a very serious problem for the society as a whole, since the institutions in the security sector are both objects and subjects in that relationship. As an important consumer of the budget, the security institutions are vulnerable to corrupt behaviour, while on the other hand, they are the main institutions of the government apparatus in the fight against corruption. To what extent are these institutions able to resist the temptation of corruption and to work effectively towards detecting, investigating and prosecuting corruption offences if they themselves are involved in and susceptible to corruption? This study attempts to find a credible answer to this question through an analysis of credible sources and collected qualitative and quantitative data. A qualitative analysis shows that the occurrence of corruption in the security sector is not caused by accumulated problems in the society. Rather, it is the consequence of insufficiently regulated relations and a reflection of the overall situation in the country in transition. In order to assess the proportions of corruption in the security sector, we analysed the norms and practices related to corruption in the security sector. Quantitative data which we obtained through a survey conducted on a representative sample indicate that out of the five areas in the security sector, in the opinion of respondents, corruption occurs most frequently in the police – respondents link as many as 42.8% of a total number of corruption offences known to them to the police. 14% of citizens believe that corruption is most prevalent in the justice sector; 10.9% believe it is most prevalent in the customs/border service; 4.9% believe it occurs most often in the defence sector; and almost a negligible 0.5% believe it is most prevalent in the intelligence sector. In addition to the findings of the analysis of qualitative and quantitative data, the assessment has identified risks of corruptive behaviour in the security sector and gives recommendations for improving the fight against corruption in this sector. We are confident that there are good assumptions for their implementation under the present social and political circumstances, which will not require a long period of time.

INTRODUCTION

The state's commitment to fighting corruption is the basic assumption if the political, legal and economic systems of the state are to be protected against imploding. Bosnia and Herzegovina is trying to establish a systemic approach to combating corruption, however, there are many areas which should be improved and advanced. Some indicators, like Transparency International's Corruption Perceptions Index for 2013, show that BiH is ranked high among 176 states scored by the Index – 72nd.¹

BiH's position on the international corruption perceptions index deteriorated in 2014, when the country was ranked number 80 out of 175 countries on the annual corruption index. Among the countries of the region, only Albania and Kosovo are ranked lower. This information leads to a conclusion that there is a lack of progress in this field and that BiH still represents a very fertile ground for corrupt activities. According to the Worldwide Governance Indicators of the World Bank, the aggregate indicator used to construct control of corruption for Bosnia and Herzegovina is at 52.2 percentile,² with a slight improvement in the last decade.

Most developing countries show an evident need for creating a better framework for combating corruption. The European Commission's progress reports for 2013 and 2014, which assess BiH's progress in moving forward to the EU, show that BiH has achieved a small progress in implementing reforms to suppress corruption and that the networks of political patronage are widespread and affect all levels of government. Both reports state that the level of effective investigations, criminal procedures and convictions in corruption cases remains low, and that the capacities needed for investigating economic and financial crimes and the crimes related to public procurement and fraud are weak. Furthermore, the EU and NATO are quite resolved when it comes to the fight against corruption in our country,

¹ See <http://radiosarajevo.ba/novost/173259/indeks-percepcije-korupcije-na-listi-od-175-zemalja-bih-zauzela-0-mjesto>

² <http://info.worldbank.org/governance/wgi/c24.pdf>

claiming that building integrity is the main challenge for the ongoing reforms of the defence and security sectors as well as for the process of Euro-Atlantic integration of BiH.

The U.S. Department of State's Report for Bosnia and Herzegovina entitled "Investment Climate Statement", from June 2015, says that "Corruption remains prevalent in many political and economic institutions in Bosnia and Herzegovina and raises the costs and risks of doing business. (...) Although open to foreign investment, investors face a number of serious obstacles, including complex legal and regulatory frameworks, non-transparent business procedures, corruption, insufficient protection of property rights, and a weak judicial system."

³ Also, the U.S. Department of State's Country Reports on Human Rights Practices for 2014 say in the report on BiH that "Government corruption remained among the country's most serious problems, resulting in continued political and economic stagnation."⁴

Through the previous Anti-Corruption Strategy (2009-2014) and the Action Plan to implement the Anti-Corruption Strategy, Bosnia and Herzegovina began to identify priorities in its efforts to fight corruption. However, the Strategy and the relevant documents were rather limited in terms of projections and plans for concrete anti-corruption actions. They failed to identify the areas in which corruption was prevalent or the weak points in the security structure and public administration vulnerable to corruption.

A new Anti-Corruption Strategy of Bosnia and Herzegovina for 2015-2019⁵ is based on a systemic approach and best practices and experiences of other countries, which implies strengthening of institutional capacities and creating the appropriate legal framework for a more effective action to combat corruption. The creation of a general framework for a decisive and comprehensive fight against all types of corruption is certainly a necessary condition for suppression of corruption in every society and also guidance for government institutions which are formally responsible for uncovering and prosecuting but also for preventing corruption.

³ <http://www.state.gov/documents/organization/241701.pdf>

⁴ <http://www.state.gov/documents/organization/236718.pdf>

⁵ Strategy and Action Plan were adopted at the 6th session of the BiH Council of Ministers, held on 7 May 2015

Consistent implementation of the Anti-Corruption Strategy will largely depend on activities of the institutions in the security sector which will have to prove with their own examples that the government is firmly committed to a decisive and comprehensive fight against corruption. In this regard, it is extremely important that the security sector establishes efficient cooperation mechanisms and a quality integrity system in its institutions which are the only ones that can offer credible results in preventing and fighting corruption.

The adoption of a new approach and comprehensive measures within the security sector institutions may be seen also as a part of the overall reform which must be implemented within Bosnia and Herzegovina's integration into the Euro-Atlantic structures. Only a transparent and accountable security sector, with built integrity which demonstrates commitment and concrete results in practice, will be the only indicator of the candour of office holders to eradicate this plague from our society and will serve as a basis for the necessary strengthening of citizen trust and confidence in government institutions.

Particularly in the countries in transition, like Bosnia and Herzegovina, there is an evident need for inclusive, transparent and ambitious reforms in the security sector, in order to ensure respect for the highest democratic principles and practices and to enhance the ability of those institutions to respond to the challenge of corruption.

This study presents institutional capacities and the legal framework of the security sector of Bosnia and Herzegovina relevant for fighting corruption, the real situation and the basic areas which pose the biggest risk of corruption in the security sector. A special chapter is devoted to the specific characteristics of public procurement because in addition to public procurement, the security sector carries out procurement which involves confidentiality which, as such, creates a higher corruption risk as the selection process is done by a small group of people, rather far away from the public eye.

METHODOLOGY

Survey design

Quantitative and qualitative methods were combined in the implementation of this study. A questionnaire was used to collect the views and opinions of respondents. A survey interview was used to gather data and information on certain issues. For that purpose, we used standardised and an open-ended interviewing methods. Moreover, the review of the relevant literature provided comprehensive definitions of corruption, and the analysis of secondary data was used to take stock of the current situation and determine a trend in corruption in the security sector of Bosnia and Herzegovina.

Primary data were collected through a questionnaire-based public opinion survey conducted between December 2014 and the early April 2015. The public opinion survey was administered using a sample of 1,500 respondents, through face-to-face intercept interviews with randomly selected passers-by. The sample was multi-stratified on the following variables: sex, age and ethnicity, level of education, status, cantons and entities. This means that the quotas were set for each entity and the Brcko District of BiH, based on the size of population (under the 1991 census) and then within each entity, based on cantons/ regions. Every interviewer received a sample quota for his or her geographic area, which consisted of a precise number of respondents. Besides, the interviewers were given for each geographic area of the sample the name of the place (selected at random) where they would start the survey process.

Standardised interviews were conducted with officers of the security agencies, representatives of the BiH Defence Ministry, the BiH Ministry for Security, representatives of the local authorities, courts, the civil society and NGOs. Open-ended interviews were conducted with citizens, and some individuals who had directly witnessed acts of corruption. In addition, meetings were held with the project team members and interviewers, and records were kept during meetings and throughout the survey with reflections on the field research. The public opinion research survey targeted perceptions, positions and opinions of citizens about

corruption in the security sector, as well as the measures that citizens and security institutions would undertake in fighting corruption.

The responses, observations of surveyors and the rest of the team, the information and data which we obtained through the interviews, as well as a desk analysis were the main materials used to develop this study. The survey and interviews were administered by the project team members, with the support of interviewers and other interested parties.

Limitations of the survey

The survey shows that it is very difficult to assess corruption risk areas in the security sector of BiH for many reasons, such as the quality of data and the data-sharing procedure, different approaches to control, a complex security structure and the lack of unified official statistics. Apart from the phenomenology of corruption in the security sector, the study offers also recommendations for prevention of corrupt behaviour in the security sector.

1. Notion and definitions of corruption

There is no generally accepted definition of corruption at the international level. This is why, we shall deal with the notion of corruption, which was not recognized as an important global problem before mid-1990s, at the level of its definitions adopted by the national structures or international organizations all of which included fight against corruptive behaviour and abuse in their priority actions.

According to the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, corruption means any abuse of public power entrusted to a public official or a person holding a political office at the state, entity and cantonal levels, at the level of the Breko District of BiH, and the city or municipal level, which may result in private gain. In particular, corruption may include any direct or indirect soliciting, offering, giving or taking of bribe or any other inappropriate gain or privilege or prospect thereof, which destroys the proper performance of any duty or behaviour expected from the recipient of the bribe.⁶

The definition of corruption contained in the Civil Law Convention on Corruption is regarded as comprehensive. It defines corruption as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.”

Definitions of corruption employed by established international bodies, such as the European Bank for Reconstruction and Development, the International Monetary Fund and Transparency International, revolve around the understanding of corrupt practices as the abuse of public power for private profit. According to Rose-Ackerman, such practices occur in the interface of the public and private sectors and involve the inefficient use of resources (1999). Slightly broader definitions of corruption are offered by Colin Nye, who describes corruption

⁶ <http://www.apik.ba/o-nama/default.aspx?id=43&langTag=bs-BA>

as the abuse of public power not solely for private profit or wealth but also for “status gains” (Nye, 1967), and Khan (1996), who defines corruption as the abuse of public power for wealth or status.

Spencer et al describe corruption as many kinds of “irregular” influence, the objective of which is to allow the participants to make profits they are not entitled to, the method being the breaking of internal or external rules (Spencer et al, 2006.).⁷ The term “corruption” implies diverse processes which have different meanings within different societies and jurisdictions, therefore the concept of corruption does not refer to the same thing across jurisdictions. Heidenheimer (1989) classifies corruption according to the degree of social acceptability, outlining shades of corruption ranging from “white” (socially acceptable) through grey to black corruption (socially unacceptable).

The complexity in understanding corruption across jurisdictions is in accepting that there are different expectations and traditions, different opportunities and options and different sanctions for violations. Spencer (2006) identified the following levels of corruption:

- Systemic, when corruption is incorporated within the whole or a certain aspect (e.g. border control), the rule of law (multiple institutions: judiciary, police, customs, taxation, etc.);
- Institutional, when the institution affected is tolerant of corrupt practices; and
- Individual, when a person is prepared to adopt unlawful practices due to the opportunities offered by his/her occupational position.

Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. Grand corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who are often trying to gain access to basic goods or services in places like hospitals, schools, police departments and other agencies. Political corruption is a manipulation of

⁷ Source “Examining the links between the organised crime and corruption”, Centre for the Study of Democracy, 2010, pp. 28, print version

policies, institutions and rules of procedure in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth.⁸

Also, the World Bank (1997) and the United Nations Development Programme – UNDP – (1999) define corruption as the misuse or the abuse of public office for private gain. Corruption can come in various forms and a wide array of illicit behaviour, such as bribery, extortion, fraud, nepotism, graft, speed money, pilferage, theft, and embezzlement, falsification of records, kickbacks, influence peddling, and campaign contributions (Klitgaard).⁹ (While corruption is commonly attributed to the public sector, it also exists in other aspects of governance, such as political parties, private business sector, and non-governmental organizations (USAID, Anti-Corruption Strategy, 2005).¹⁰

Certain types of corruption may not necessarily involve money. They may involve gift giving or influence-peddling. Corruption can also come in the form of future benefits. With this type of corruption, the boundary between a corrupt and a non-corrupt behaviour becomes quite thin. Take, for instance, the act of giving a gift to a public official as a token of appreciation for services done. In some cultures, this may be ethically condoned. Laws and definitions of corruption, in this regard, become culturally bound.¹¹

The UN Convention against Corruption – UNCAC – which became effective in December 2005, gives an extended description of bribery and defines corruption for the purposes of the criminal law as: “The promise, offering or giving to, (or soliciting or accepting by) a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official acts or refrains from acting in the exercise of his or her official duties.”¹² However, generally, no convention defines corruption. Instead, they set parameters of a crime for a wide array of behaviour.

⁸ https://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/

⁹ Source: Anti-Corruption and Governance: The Philippine experience, APEC Study Centre Consortium Conference, 2006 http://www.apec.org.au/docs/06ascc_hcmc/06_9_1_balboa.pdf

¹⁰ Ibid

¹¹ Ibid

¹² UN Convention against Corruption, Article 15a

In the end, while appreciating that the study deals with corruption and the security sector, we believe that it is necessary to mention also a definition provided by the Interpol Group of Experts on Corruption (IGEC), under which “corruption is every activity or inactivity of an individual or an organization, either public or private, in violation of law or trust for profit or gain.”¹³

¹³ www.interpol.int/public/corruption/igec/default.asp

2. Security sector and corruption

It is not possible to conduct a detailed sectoral review in Bosnia and Herzegovina without taking into consideration the country's complex constitutional structure. Regarding the security sector, on which the current constitutional structure reflects manifestly, it is noticeable that many security institutions have been formed at various levels of government in BiH. The security sector structured in this way complicates the functioning and reduces the capacities of government institutions necessary to respond properly to all security challenges, while corruption is certainly one of the modern-day threats which is perilously jeopardizing stability and prosperity of every society.

Complex but cumbersome security apparatus is the largest consumer of the budgets in BiH. It is characterized by a huge staff, which inherently increases its risk of being vulnerable to corruption, and of an increased public interest and sensibility towards spending in the present socio-economic situation. The activities of this sector related to identification and prosecution of perpetrators of corruption offences in particular are under public scrutiny, which are also the most direct proof of the genuine commitment of government institutions to fighting corruption.

The security sector provides a particularly fertile setting for corrupt practices for a number of reasons, which makes it specific. Primarily, the clandestine nature of its activities protects this sector from internal and particularly external oversight; secondly, prevention and law enforcement measures are not sufficiently developed. Furthermore, the present laws are not precise or concrete as much as they should be, leaving vast room for discretionary actions by individual managers.

We should add to this the fact that the security sector in BiH spends over one billion convertible marks (BAM) from the budget on an annual basis, of which a significant portion is spent for public procurement purposes. More precisely, the amount of close to 650 million BAM is allocated annually for 22 police and related agencies in BiH; around 300 million for

the defence system; around 150 million for the customs/border sector (Indirect Taxation Authority¹⁴ and Border Police of BiH¹⁵); over 215 million for the justice sector; and around 36 million for the intelligence sector.

The security sector is responsible for prevention of corruption, detection and investigation of corrupt practices in the society. This responsibility also makes it specific. Its right to use law enforcement measures and its monopoly over the use of force and restriction of the basic human rights of citizens in the performance of its duties is another important characteristic of this sector. All these characteristics of the security sector, perhaps, have the most important impact on the perception of citizen trust and confidence in government institutions.

In terms of responsibilities and scope of work, we have divided the security sector, analysed in this study in its entirety, into five sub-sectors:

- Defence sector
- Law enforcement sector
- Intelligence sector
- Justice sector, and
- Customs/Border sector.

Since the study focuses on the role and significance of the security sector in BiH in fighting corruption and on the identification of the areas with the highest risk of corruption in this sector, it is purposeful to list the institutions from within this sector. They include:

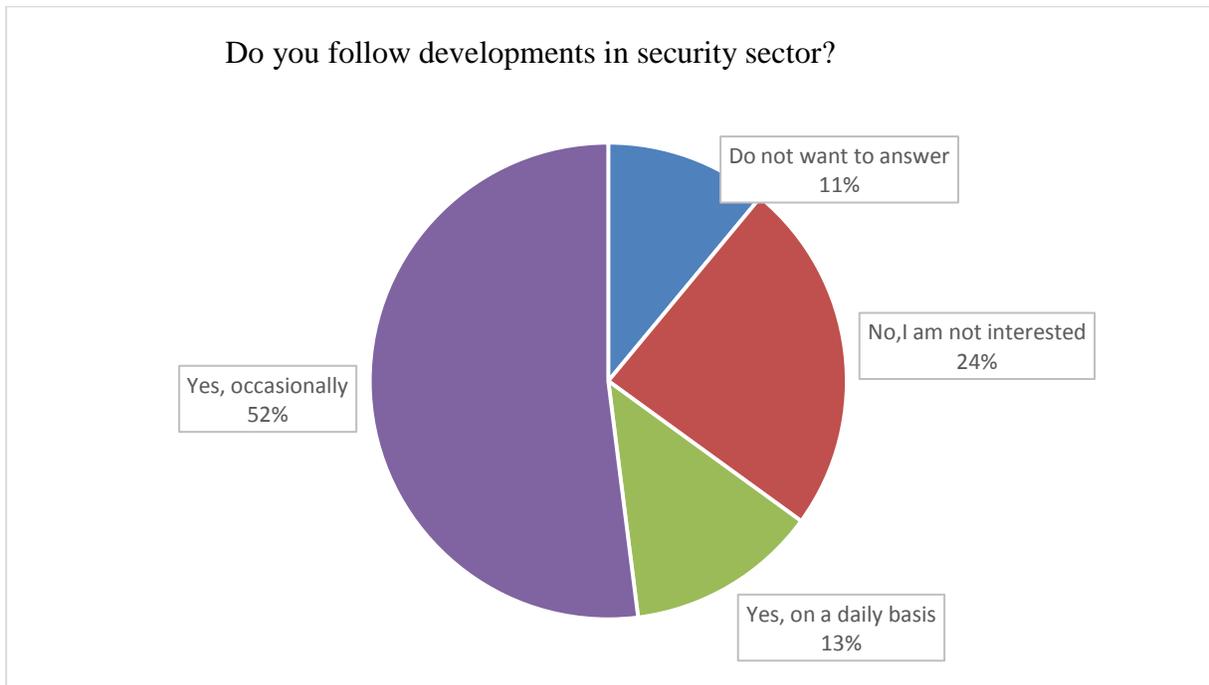
1. The BiH Defence Ministry and the BiH Armed Forces
2. The BiH Ministry of Security
3. The BiH Agency for the Prevention of Corruption and Coordination of the Fight against Corruption
4. The BiH Intelligence and Security Agency
5. The State Investigation and Protection Agency of BiH

¹⁴ The budget for ITA's running costs is around 80 million BAM, and during the most recent years, due to capital investments, it has gone up to 100 million BAM

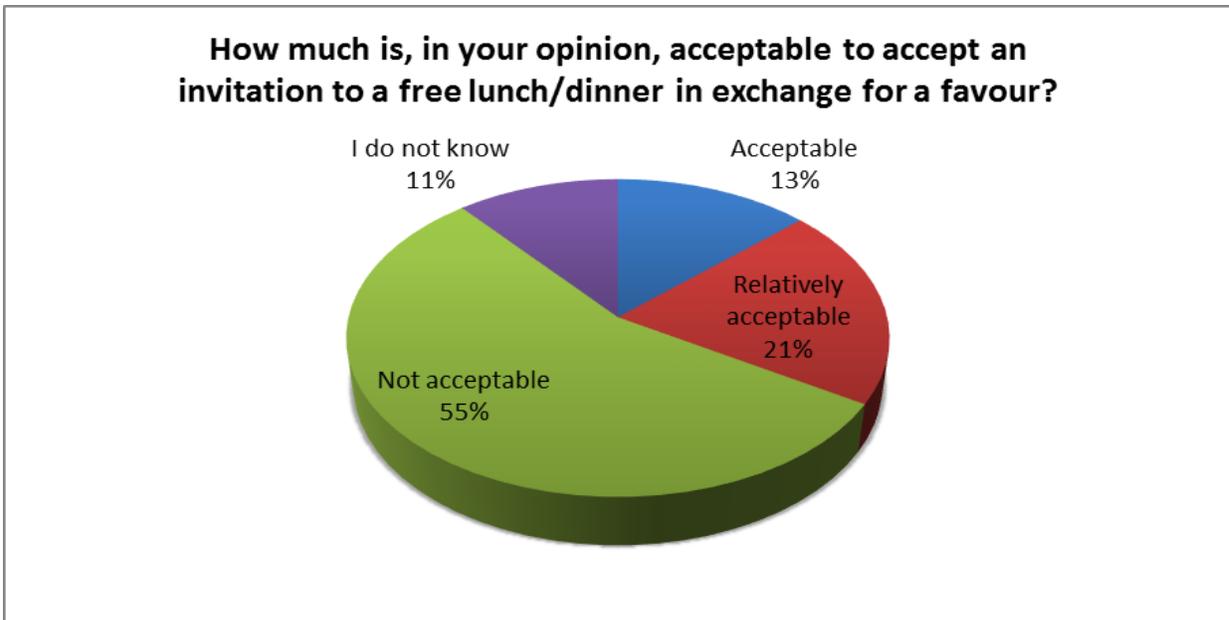
¹⁵ The budget of the BiH Border Police in the amount of around 70 million BAM includes the amount of 650 million BAM, the amount spent by the police agencies in BiH on an annual basis, but by reason of approach to the security sector it is included also in the area of customs/border police where we placed this institution in view of its tasks and duties.

6. The BiH Border Police
7. The BiH Department for Police Coordination
8. The BiH Aliens Department
9. The BiH Agency for Forensic and Expert Examinations
10. The BiH Agency for Education and Professional Training
11. The BiH Police Support Agency
12. The Interior Ministry and Police Administration of the Federation
13. The Interior Ministry of Republika Srpska
14. The Police of the Brcko District of BiH
15. The BiH Indirect Taxation Authority
16. Interior Ministries of 10 Cantons in the BiH Federation
17. Courts and Prosecutors' Offices at all levels in BiH

The public interest in what is happening within the security sector is relatively huge. Research shows that more than one half of respondents (51.2%) occasionally follow what is going on in this sector, while 13.4% follow the activities on a daily basis. The presence of the security sector is probably identified with the crime news and the information which has an impact on their rights and duties. The respondents with a bachelor's/master's/doctoral degree, 49.3%, demonstrate the highest level of interest in overall developments and events in this important social sector, which, in principle, affects the overall social development. To increase citizens' interest in following the security sector more closely is the task of institutions themselves for the purpose of their more adequate positioning in the society. Encouraging further development of the security sector which citizens will feel to be actively engaged in and be a part of that environment is the best way to change the omnipresent ambivalence of the public which perceives security as the public good which is guaranteed and should be provided solely by security institutions.



Mature and correct views were noticed during the survey among most of citizens regarding their perception of the occurrences within the security sector which may imply corrupt behaviour. Over half of respondents (55.3%) believe it fully unacceptable that the security sector staff accept money, services or lunch in exchange for such favours as solving somebody’s problem and misusing office or authority in the security sector. 13.2% of respondents who have said such behaviour is acceptable, believe it is nevertheless necessary to work toward raising awareness. 20.5% of respondents believe it is relatively acceptable.



Bearing in mind such a big number of institutions in the security sector, which are rather independent and regulated by various constitutional provisions and laws, it is not possible to gain insight into every individual institution and make general conclusions for all of them. This is why we shall present statistics, practices and positions in individual sectors or institutions which indicate a possible cross-section view and provide an overview of trends in the security sector, while we are fully aware that other conclusions may be drawn from the analysis of each individual institution. The methodology used by some organizations, such as Transparency International (TI) UK, focuses research and analysis of the risks of corruption on five categories: transparency, human resources, management, internal and external control¹⁶. In view of the limitations and complexity of the security sector in BiH, the present study pays more attention to internal and external controls which, to some extent, subsume other areas. When necessary, for the purpose of clarification, it includes other categories of the TI methodology.

In principle, internal audit is conducted by the executive authority, i.e. by the cabinet ministries and institutions of the security sector. In compliance with the principles of independent operational and professional activity and the tenets of the civilian oversight of the security sector, the institutions are managed by the representatives of the political establishment, i.e. civilians. The operations of the institutions are the responsibility of professionals from the security sector who are appointed on the basis of their qualifications, in compliance with the established democratic principles at all levels of government. Such a system represents the frontline defence against the abuse of power in the security sector, and has certainly achieved positive results over many years of its existence. External control is established in order for the legislative authority to be able to oversee the security sector, i.e. the executive branch, through its own mechanisms. For those purposes, parliamentary committees for oversight of security institutions were formed, and also independent parliamentary bodies are formed to carry out these duties on behalf of parliament, when necessary.

Below we shall briefly present the legislative framework in place in BiH relating to corruption, and institutions and agencies which carry out internal and external controls in the security sector, with a brief reference to and comment on their responsibilities and authority.

¹⁶ <https://www.transparency.org/country/>

3. Legislative framework and institutional capacities

The legislative framework in Bosnia and Herzegovina is largely harmonized with the European standards and international conventions, and provides a good basis for combating corruption. Corruption is punishable under all four Criminal Codes in BiH. Twelve corruption offences are punishable under Chapter XIX of the BiH Criminal Code: criminal offences of corruption and criminal offences against official duty or other responsible duty (Articles 217 through 229):

- Accepting gifts and other forms of benefits
- Giving gifts and other forms of benefits
- Illegal interceding
- Abuse of office or official authority
- Embezzlement in office
- Fraud in office
- Using property of the office
- Lack of commitment in office
- Forging of official document
- Illegal collection and disbursement
- Unlawful release of a detainee
- Unlawful appropriation of objects while searching or carrying out an enforcement order

Regarding these offences, it can be stated that the legislator focused very much on the abuse of office by officials in the public administration, including the employees of the security sector. This approach is a logical result of the legal norms, keeping in mind the power and authority of those working with government institutions and the central role of government institutions in combating corruption.

The severity of these offences is proven also by a mandatory punishment of imprisonment for a term of up to 10 years for some criminal offences. The same offences are also punishable under the Criminal Code of BiH Federation, the RS Criminal Code and the Criminal Code of the Brcko District, the only difference being the names of groups of criminal offences encompassing those crimes. In the Criminal Code of the BiH Federation, these offences are under the group of criminal offences against official and other responsible duty (Chapter XXXI); in the RS Criminal Code, they are under the group of criminal offences against official duty (Chapter XXVII), and in the Criminal Code of the Brcko District, they are under the criminal offences of bribery and criminal offences against official and other responsible duty (Chapter XXXI).

It was not possible to conclude from the responses whether the present legislation has the most important role to play in deterring citizens from involving in corruption in the security sector. Out of 78.5% citizens who said they would not engage in an act of corruption, 32% mentioned morality as a reason, while 21% of respondents did not believe they should be a part of corrupt practices. Only 9% said they would not engage in corruption because they could end up in prison. Nevertheless, the preventive penal provisions had a significant impact on the views maintained by nearly four fifths of citizens who said they would not engage in corrupt practices.

In addition to the legislative framework which is solely under the jurisdiction of the judicial institutions, institutional capacities of the executive and legislative authorities are developed for the purpose of preventing the abuse of office within the security sector. In practice, this implies internal and external control and oversight mechanisms which are discussed in a greater detail below.

3.1. Internal control in the security sector

Each ministry or agency in BiH has its organizational units (inspectorates or divisions) which are responsible for controlling operations and examining irregularities in those institutions. In the military structures, these internal control bodies are typically referred to as the office of the inspector, and in law enforcement as internal control, and they are responsible

for ensuring that the security actors, i.e. those employed by security institutions, comply with the law and respect human rights. These units operate under legally defined procedures, deal with grievances and complaints raised by citizens and staff members in the security sector in an appropriate way, and issue penalties and punishments in legally defined procedures.

3.1.1. Defence sector

Generally speaking, through history, the armed forces have always enjoyed a high level of respect and reputation in the public, especially in developed countries. The culture of secrecy and impunity, which hid this sector from oversight for a long period of time, probably affected such citizen perception of guardians of national territories. But research on corruption, which, as we said above, characterizes the modern era, shed a completely new light on this issue and institutions entrusted with management of important public resources. The consequences of corruption in the defence sector have significant repercussions on the functioning and operational efficiency of the armed forces, and, in addition to undermining democratic mechanisms of management, they represent a security challenge for citizens themselves.

Following a series of successful defence reforms, Bosnia and Herzegovina formed a single defence system with a clear chain of command, civilian control and parliamentary oversight. The chain of command and control starts at the level of the BiH Presidency, and goes down to the BiH Defence Ministry, and through the Chief of the Joint Staff of the Armed Forces of BiH it reaches down to subordinate commands and units. The BiH Defence Ministry is responsible for the overall strategy and policy of the BiH defence system. The Armed Forces of BiH are a professional military force with a mission statement and tasks clearly defined in the BiH Defence Act.

As of 31 December 2013, a total number of employees of the Defence Ministry was 9,906, of which 9,648 belonged to the Armed Forces and 258 to the Ministry. The Defence Ministry is the largest beneficiary of the budget in BiH. The proportion of the 2013 Budget of the Institutions of Bosnia and Herzegovina and International Liabilities of Bosnia and

Herzegovina allocated to the Defence Ministry was 291,068,000 BAM or 32% of the total amount of the budget of the BiH institutions, which was 914,970,000 BAM. In 2013, the Defence Ministry received donations in a total amount of 1,964,618 BAM. In 2014, the Defence Ministry had a budget of 280,653,000 BAM.

Corruption in the defence sector poses a serious security threat, and under the 2011 Anti-Corruption Index, BiH scored in band D which implies high risk and insufficient efforts to prevent corruption. Having recognized this fact and with a view to taking preventive action in the fight against corruption, the BiH Defence Ministry a few years ago launched a process of actively participating in the North Atlantic Council's initiative to build integrity, transparency and accountability of all employees in the defence sector. In this regard, the BiH Defence Ministry launched the self-assessment of building integrity in the defence sector and sent a completed standardized questionnaire to the NATO HQ in Brussels. The one-year project of BiH Defence Ministry and NATO HQ resulted in a peer review report "Building Integrity Self-Assessment – Peer Review Report of Bosnia and Herzegovina".¹⁷ The report contains recommendations for improvement of efforts to build integrity and to combat and prevent corruption in the defence sector, as well as important guidance for the development of an integrity plan of the BiH Defence Ministry.

Any irregularities, including those which concern, or are related to, corruption in the defence sector may be reported directly to the Inspector-General's Office of the BiH Defence Ministry, which is an organizational unit of the Defence Ministry responsible for coordinating efforts in the implementation of the integrity concept. The Inspector-General's Office of the BiH Defence Ministry has the responsibility and mission to ensure that the military personnel behaves in compliance with the laws and regulations pertaining to the conflict of interest, professionalism and ethical behaviour. The importance of this Office is reflected also in the legal provision under which it is managed by an inspector-general who is a professional military officer who holds the rank of general.

¹⁷ <http://www.mod.gov.ba/files/file/dokumenti/21.10.%20samoprocjena%20izgradenje%20integriteta.pdf>

Regarding the activities aimed at fighting corruption, the Inspector-General of the BiH Defence Ministry established in December 2013 an official Defence Ministry's website-based "Ethics HelpLine"¹⁸ with which reports are placed of all forms of irregularities and corruption suspected within the BiH Defence Ministry. This process also implies control mechanisms which guarantee an adequate response to every, even the slightest irregularity in that institution. The "Ethics Helpline" system enables a two way communication and interaction between the reporter and the inspector of this unit, and most importantly, it demonstrates transparency of the BiH Defence Ministry and the BiH Armed Forces in eliminating irregularities and fighting corruption. In addition to the Ethics Helpline, there are other ways used to report irregularities found in the activities of the BiH Defence Ministry, including through a direct contact, by telephone, an SMS message, a letter, an e-mail or fax.

The laws which regulate the activities and responsibilities of the BiH Defence Ministry are: the Bosnia and Herzegovina Defence Act¹⁹, the Service in the BiH Armed Forces Act²⁰, and the Participation of Members of the Armed Forces of Bosnia and Herzegovina, Police Officers, Civil Servants and Other Employees in Peace Support Missions and Other Activities Abroad Act.²¹

3.1.2. Law enforcement sector

In the broadest terms, the police force is the public administration service entrusted with maintaining public peace and order. The police safeguard the fundamental rights and freedoms of citizens, as well as other values protected by the Constitution.

Law enforcement in BiH consists of a total of 22 agencies at all levels of government, of which 16 are police agencies, 5 are support agencies, and the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption which is not a classic law enforcement agency but in view of the nature of its activities, it is a part of the law

¹⁸ <https://etickalinija.ba/Home/About>

¹⁹ Official Gazette of BiH No. 88/05

²⁰ Official Gazette of BiH No. 88/05

²¹ Official Gazette of BiH No. 14/05

enforcement structure. The law enforcement system in BiH directly reflects the constitutional structure of the state and responsibilities defined by the Constitution and the laws. The law enforcement system is based on the principle of coordination and not subordination. This means that the BiH Ministry of Security and agencies at the state level do not have an executive authority over the entity Interior Ministries, the Police of the Brcko District, the Interior Ministry of the Federation, the Police Administration of the Federation, regarding operations, nor does it have an executive authority over the cantonal Interior Ministries.²²

A total number of employees in the entire police structure in BiH was 22,738²³ as of the end of 2013, while in mid-2015 that number went up to 23,146. A total budget for law enforcement sector on an annual basis is around 650 million convertible marks. The size of its force, the budgets and the nature of work of the police who are in direct contact with citizens make this sector one of the potentially highest risk sectors in regard to the possible abuses related to corruption.

Although there is extensive research on corruption in the police, it is difficult to define this phenomenon precisely because corruption in the police is closely related to other forms of unlawful activities of police officers. The presence of corruption in the police sector is more worrying than in the defence sector. The primary reason for that is that police are the first ones to respond to reports of these types of crime, document them, identify their perpetrators and share all the facts with the judicial institutions. One of the simplest and most popular definitions of police corruption is the one provided by the Centre for the Study of Democracy which describes police corruption as a very deviant, dishonest, improper, unethical or criminal behaviour by a police officer.²⁴

If the police forces are corrupt, it is highly unlikely that they will carry out these activities, which are among important tasks and purposes of the police in a democracy, impartially and fairly. Another reason for concern over corruption in the police forces is that the police are in

²² "Pregled stanja u oblasti policije", Hadžović, Kržalić i Kovačević, Centar za sigurnosne studije 2013, pp. 57 www.css.ba ("Review of Situation in the Police", Centre for Security Studies)

²³ Ibid

²⁴ "Countering Police Corruption: European Perspectives", Center for the Study of Democracy, 2013, pp.17, printed version

direct contact with citizens more than any other segment of the public security sector, and corrupt practices directly discredit their role and undermine citizen confidence in the rule of law.²⁵

Corruption in the police has been subject to research much more than corruption in other public security sectors, precisely by reason of close interaction between citizens and police officers on a daily basis. Besides, citizens are able to exercise their rights through the police more often than through other sectors and they are apprehended by police if found to have violated a law.

Unlike the defence sector that consists of only one ministry, or the intelligence sector that consists of one agency, the law enforcement sector consists of 16 police agencies at all levels of government and 6 institutions which provide them support or carry out similar activities.

Internal control units exist in all police agencies at all levels of government, usually within the professional standards units. They are responsible for conducting internal investigations (procedures) in response to citizens' complaints about improper or unlawful behaviour of police officers. An internal work-related complaints procedure is launched in response to:

- a) A grievance raised by citizens;
- b) A request by one of more employees of the police authority;
- c) A request by immediate supervisor of a police officer;
- d) A request by a manager of the complaints and grievances office.

The internal control unit is also responsible for investigating allegations about excessive use of force, fire arms, corruption and abuse of office by police officers. An internal procedure looking into minor violations of police duties must be completed within 30 days from the date of receipt of a complaint. If an internal procedure is related to a serious breach of rules, it must be completed within 3 months.

²⁵ Interviews with representatives of Interior Ministries, April 2015

If an internal investigation finds out that police duties have been violated, a disciplinary action is sought. If there are reasonable grounds to believe that a criminal offence has been committed, the case will be transferred to an organizational unit responsible for actions and operations of the crime investigation police, which will file a crime report with the prosecutor's office and carry out further actions in cooperation with the prosecutor. Investigations by internal control units are conducted by police officers. Their operations are regulated by internal rule books or instructions, issued by each police agency.

However, the effectiveness and independence of internal mechanisms can be called into question. Internal control units which carry out investigations in response to complaints and grievances by citizens and into irregularities in police operations are a part of police organizations and their managers are appointed by the managers of police agencies. The managers of internal control units report directly to the directors of the police agencies who appointed them. For all these reasons, it cannot be said that these units are fully independent.²⁶

The situation is similar in regard to disciplinary proceedings. Police officers are liable to a disciplinary action for breaking the rules. During a disciplinary procedure, the level of individual culpability of a police officer is established and a disciplinary punishment imposed. Punishments for minor violations of police duties include:

- a) A written warning;
- b) A fine in the amount of up to 15% of a basic monthly salary paid to the police officer concerned.

For serious violations of police duties, the following disciplinary punishments may be imposed:

- a) A fine;
- b) Suspension of promotion;
- c) Termination of an employment contract.

²⁶ Interviews with representatives of the Police of Brčko District of BiH, August 2014

Culpability under criminal or civil law does not preclude disciplinary liability of a police officer if the commission of a criminal offence or a misdemeanour constitutes a breach of police duties. Relief from culpability of a police officer under criminal or civil law does not imply relief from disciplinary liability. However, the chairman and members of a disciplinary panel are appointed by the manager of the police organization to whom they report. This is the reason why we cannot say of this mechanism either that it is fully independent.

Further, a police officer may be suspended for a limited period of time if a criminal or disciplinary procedure has been instituted against him/her and if, taking into consideration the nature of a criminal offence or the nature of a serious violation of police duties, as well as the circumstances under which they were committed, it can be reasonably believed that otherwise damage would be done to the interests of the organization or its internal procedure. Suspension of a police officer may last until the completion of a criminal or disciplinary procedure. While on suspension from work, the police officer does not have access to his/her firearm and ID, and may not wear a police uniform.

Ethical behaviour of the police is regulated mainly by codes of ethics which are made by every police agency separately (there is a single code of ethics for the police agencies at the state level). The prosecution and trial of police officers in connection with corruption offences are done before courts of law, while internal proceedings aimed at establishing the facts take place in internal control units in every police agency.

In documenting acts of corruption, the police officers are guided by the Criminal Codes and Criminal Procedure Codes²⁷ under which acts of corruption are punishable and which define actions to be taken by the police to document and investigate these crimes. Further, the powers of the police agencies and the basic principles of investigation and documentation of the crimes are defined in the laws governing the formation of those police organizations, the laws about police officers at all levels of government, rule books and other secondary legislation.

²⁷ Those are: Criminal Codes and Criminal Procedure Codes of BiH, FBiH, RS and BD. For police powers in BiH to apply these Codes, read the study "Pregled stanja u oblasti policije u BiH", Poglavlje IV "Strukturalna analiza nadležnosti u zakonodavstvu i praksi", www.css.ba ("Review of the Situation in the Police in BiH", Chapter IV "Structural Analysis of Powers under Legislation and in Practice")

3.1.3. Intelligence sector

The intelligence and security sector enjoys the highest level of autonomy in the execution of its duties and thereby the highest level of secrecy in relation to control mechanisms. Its broad powers under which this institution may secretly collect the data and obtain secret information on individuals and organizations leave vast room for abuse and a risk of corruption and also makes the fight against this problem very difficult. The absence of an analysis of potential corruption in the intelligence sector and inability to get insight into the corruption level or index by reason of the lack of interest or will on the part of those responsible for oversight and audit of this sector leave hardly any room for determining the real risks of corruption within the intelligence sector.

The only oversight mechanism is related to audit conducted by audit services or the relevant parliamentary committees but in practice even these bodies do not release the information despite gradual improvement of transparency of intelligence services. Some of the transparency principles are related to declassification provisions under which some periods of time are too long, which means that detection of corrupt practices after a certain period of time has elapsed will lose relevance.

The BiH Intelligence and Security Agency (OSA) is responsible for collecting, analysing and distributing intelligence for the purpose of protecting security, including sovereignty, territorial integrity and constitutional order of Bosnia and Herzegovina. These activities are conducted through prevention and removal of threats to sovereignty and territorial integrity of Bosnia and Herzegovina, its constitutional order and economic system. The OSA's operations and authority are defined by the Bosnia and Herzegovina Intelligence and Security Agency Act of 2004, when the Agency became operational.

Internal control and audit of all irregularities in the activities of the Intelligence and Security Agency are done by the inspector-general. His role is defined by the Intelligence and Security Agency Act (Article 33) and it encompasses rather broad powers and authority. The inspector-general analyses the Agency's activities in order to ensure their implementation in compliance with the present laws and regulations and the Rule Book on Internal Organization of the

Agency. The inspector-general carries out investigations in response to complaints about the OSA's activities at the request of the Chairman of the BiH Council of Ministers, the Executive Intelligence Committee, the Joint Intelligence Committee, the director general or directly, at the request of an injured party.

Also, the inspector-general, when he deems it necessary, launches an inspection, audit and investigation at his own initiative, and conducts an investigation in response to complaints filed by the persons who believe that their rights were violated by the OSA's actions or failures. Moreover, the inspector-general provides support to the BiH Ombudsmen in carrying out investigations launched either in response to complaints or ex officio. Every six months the inspector-general files a report to the parliamentary committee with the information on well-founded complaints against the OSA, as well as on their status. In case of particularly important issues, an emergency report is submitted within the shortest period of time possible.

Another important role of the inspector-general consists of giving recommendations to the director general and his deputy for addressing complaints filed against the OSA or the disputes within the OSA, and of a follow-up to see whether the recommendations have been complied with. The term of office of the inspector-general is four years and it may be extended for another four years only once. The inspector-general is appointed and dismissed by the Council of Ministers, at the proposal of the Chairman and his or her deputies.

By reason of secrecy of the OSA's operations, which makes it particularly "closed" to communication with external organizations, it was not possible to obtain the information on whether there were internal documents related to prevention of and fight against corruption within the OSA.

3.1.4. Justice sector

The justice sector is based on the principles of democracy and respect for human rights and fundamental freedoms. The rule of law is at the centre of the justice sector which consists of the Justice Ministry, judicial and prosecutorial system, the system of lawyers/attorneys or defence counsels, and the prison systems at the state and entity levels. For the purposes of this study and being aware of limited space, the study focuses on the judicial and prosecutorial system in BiH which has the most important role in investigation, prosecution and trials of corruption cases, without underestimating the importance and role of other segments of the system within this sector.

Regarding the organization of the justice system which corresponds to the specific constitutional and territorial organization, there are four parallel judicial systems in Bosnia and Herzegovina: the BiH judicial system, the judicial systems of the entities (BiH Federation and Republika Srpska) and of cantons, and the judicial system of the Brcko District of BiH. At the level of BiH are the BiH Constitutional Court and the Court of BiH. In the BiH Federation, there are the Constitutional Court of the BiH Federation, the Supreme Court of the BiH Federation and cantonal and municipal courts. In Republika Srpska, there are courts of general jurisdiction and courts of special jurisdiction. The courts of general jurisdiction are: the basic courts, district courts and the Supreme Court of Republika Srpska. The courts of special jurisdiction are the district commercial courts and the Higher Commercial Court. The Brcko District has the Basic Court and the Appeals Court.

Regarding the legislation governing the organization of prosecutors' offices in BiH, the situation is somewhat more complex. In BiH there are a total of 15 laws governing the formation, structure and functioning of the prosecutors' offices in BiH. At the level of BiH there is the BiH Prosecutor's Office, formed under the BiH Prosecutor's Office Act. In the BiH Federation there is the BiH Federation Prosecutor's Office Act and 10 cantonal Prosecutor's Office Acts under which 10 prosecutors' offices were formed at the cantonal level. In the RS there is the RS Prosecutor's Offices Act under which five district prosecutors' offices were formed (Banja Luka, Bijeljina, Doboj, East Sarajevo and Trebinje) and the RS Prosecutor's Office at the entity level. Under the Organized Crime and Most Serious Crimes

Act, a Special Prosecutor's Office for Organized Crime and Most Serious Crimes was formed within the District Prosecutor's Office Banja Luka (Special Prosecutor's Office). The Prosecutor's Office of the Brcko District was formed under the Brcko District Prosecutor's Office Act.

There are a total of 80 regular courts and 20 prosecutors' offices in BiH. According to the 2011 data in the possession of the BiH Council of Ministers, a total number of judges in BiH was 952 plus 4 international judges, and 115 reserve judges. A total number of prosecutors in BiH was 305 plus 4 international prosecutors.²⁸ The data of the HJPC from 2015 indicate that there are 983 judges and 368 prosecutors in BiH.²⁹ According to the information which the Council of Ministers obtained from the Bar Associations of the RS and BiH Federation, the current number of defence lawyers in BiH is 1,297 of which 422 in the RS and 875 in the BiH Federation. Regarding the budget allocations, over 215 million convertible marks are allocated annually for the justice sector. This is why it is grouped under major budget beneficiaries (0.82% of GDP).³⁰

The High Judicial and Prosecutorial Council (HJPC) is responsible for investigating all corrupt practices in the courts and prosecutors' offices in BiH. It receives complaints against judges and prosecutors, conducts disciplinary proceedings, determines disciplinary liability and imposes disciplinary punishments against judges, lay judges, reserve judges and prosecutors.³¹ The Office of Disciplinary Counsel, which is a part of the HJPC, performs the role of a prosecutor investigating allegations about violations of judicial and prosecutorial duties.³² The Office is responsible for assessing legal validity of complaints, investigating allegations of violations of judicial or prosecutorial duties by judges or prosecutors, instituting disciplinary proceedings and representing disciplinary cases before disciplinary panels of the HJPC. The Office opens an investigation upon its own initiative or in response to a complaint which may be filed by any individual or organization, which must be made in writing or in person at the Office of Disciplinary Counsel, with evidence corroborating the complaint (paragraph 1 of Article 41 of the HJPC's Rule Book). A complaint may be filed also by e-mail, which still satisfies the requirement for a written complaint.

²⁸ Structured Dialogue on Justice, 2011

²⁹ Source: HJPC

³⁰ Source: HJPC

³¹ Article 17, BiH HJPC Act

³² Article 64, BiH HJPC Act

3.1.5. Customs/border sector

The Indirect Taxation Authority of BiH (BiH ITA) is an independent administrative organization which reports to the BiH Council of Ministers through its Governing Board. The ITA is responsible for collecting all indirect taxes in BiH: value added tax, customs duties, excise taxes and road-tolls. The amount of around 100 million convertible marks is allocated annually from the budget for the Indirect Taxation Authority. As of 31 December 2014 a total number of its employees was 2,497, which makes it the second-largest institution by the number of employees, after the BiH Defence Ministry.

The ITA activities are regulated by a set of laws governing its activities. By reason of its specific activities and tasks, the ITA has its Head Office and four regional branches, in Banja Luka, Mostar, Sarajevo and Tuzla.

This institution developed its own Anti-Corruption Strategy for the period 2013-2014 under which every customs officer or tax inspector will be punished for criminal offences. Also, the ITA passed its Code of Conduct which defines the manner of reporting every form of unlawful conduct by an ITA officer. The Code of Conduct regulates the responsibilities of employees, their relationship with citizens, conditions under which they may receive gifts and other benefits and other issues such as criminal and civil liability of employees.

As one of larger state-level institutions, the ITA established its internal control mechanisms which are slightly different from those in other institutions by reason of the ITA's specific activities. In addition to the Professional Standards Unit and Internal Control Unit, there is also an Analysis and Risk Management Unit. The internal control structure contains also the Law Enforcement Department with its divisions for information, investigations and prevention of smuggling and offences.³³

Another institution responsible for cross-border monitoring is the Border Police of Bosnia and Herzegovina (BiH BP). This institution employs a large number of people and is almost as big

³³ <http://www.new.uino.gov.ba/show/2407?size=3>

as the ITA, because of the nature and size of their activities and since they are responsible for controlling the entire border of BiH with 89 border crossing points. Within its internal control structure, in addition to the Professional Standards and Internal Control Units, there is also a department which includes the Central Investigative Bureau and Investigation Unit, among others. As of December 31, 2014 the BiH BP employed 2,227 people out of 2,646 jobs planned under the Rule Book on Internal Organization. The annual budget of the BiH BP is around 70 million convertible marks. This institution, which became operational in the year 2000, has achieved significant results in protecting the border from illegal crossings and smuggling of goods, but is nevertheless, as every huge system, burdened with problems related to abuse of office.

The BiH Border Police is an administrative organization within the BiH Ministry of Security and is independent in its operations. Organization wise, it is organized at the central, regional and local levels in order to be able to respond to its tasks and duties, and is managed by a director who has one deputy and an assistant for organization and operations.

3.1.6. Agency for the Prevention of Corruption and Coordination of the Fight against Corruption

Although the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption is not explicitly linked to the security sector, in view of its responsibilities we nevertheless think that it is important to pay adequate attention also to this institution, knowing its role in the fight against corruption in BiH. This is supported by a requirement which the European Union set to the BiH authorities: to form an anti-corruption agency, which was the last requirement to be fulfilled prior to liberalization of the visa regime with our country.

The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption Bill was approved by the BiH House of Representatives at its 69th session, held on 30 December 2009 and by the BiH House of Peoples at its 40th session held on the same date (“Official Gazette of BiH”, No. 103/09). The purpose of the law was to prevent the impact of

corruption on the development of democracy and respect for the basic human rights and fundamental freedoms and its impact on Bosnia and Herzegovina's economic development and all other impacts on social values, and to coordinate efforts to combat corruption. The Agency has no power to investigate corruption cases nor is it a police agency.

The Agency is responsible for preventing corruption and coordinating the fight against corruption at all levels of legislative, executive and judicial authorities in BiH, in the public and private sectors at all levels and in other areas such as education, culture, health, sports, and even in the non-governmental sector. Under the Act, the Agency is an independent administrative organization which reports to the Parliamentary Assembly of Bosnia and Herzegovina.

Although the Bill was passed into law in 2009, the Agency did not begin to work before 2011, after its management was appointed. The Agency could not employ its staff before a rule book on its internal organization was developed. This is why the Agency began to build its institutional capacities first by developing the rule book and the code of conduct, the two most important by-laws of that institution. Most of actions from the Action Plan to Implement the Anti-Corruption Strategy could not be implemented on time precisely because of a delayed beginning of operations of the Agency, which is the cornerstone of its implementation.

Despite broadly defined powers of the Agency, including the development of an anti-corruption strategy and an action plan, coordination and monitoring of their implementation, coordination of activities of public institutions on corruption and conflict of interest prevention, it does not have executive powers and may not conduct investigations into corruption. Still, as said above, its role in overall efforts to combat corruption is important, which is why it is necessary that the Anti-Corruption Agency becomes fully operational and use all of its capacities in order to fulfil its purpose.

3.2. External control mechanisms

Democratic oversight of the security sector and accountability of that sector are a requirement of democracy. In order to fulfil this requirement, some important control measures have been introduced and launched in Bosnia and Herzegovina, including parliamentary oversight, executive control, judicial control and control by independent public institutions, such as the ombudsman or a national audit office.

Many authors have discussed the importance of parliamentary and democratic oversight and control, among them Hans Born who emphasizes in his handbook that “Parliament creates legal parameters for security issues, while parliamentary oversight of the security sector is crucial for ensuring that the security policy and costs are implemented in a transparent and accountable way, in accordance with national interests.”³⁴ It is undeniable that the range of these activities includes the fight against corruption, which makes the importance of this type of oversight in the institutional structure of government equally undeniable.

In order to ensure external and parliamentary oversight of the security sector, together with the reforms gradually implemented within the sector, external oversight and control mechanisms were formed at various levels of government.

3.2.1. State level

For the purpose of parliamentary oversight of the security institutions at the state level, a **Joint Defence and Security Committee of BiH** was formed as part of the BiH Parliamentary Assembly. In addition to its important engagement and powers related to the legislative framework of defence and security institutions, the Committee has an important role also in the budgeting process and the development of strategic documents relating to defence and security. The Joint Defence and Security Committee oversees 15 defence and security institutions at the state level, such as the BiH Defence Ministry, the BiH Ministry of Security, the State-level Investigation and Protection Agency, as well as many other

³⁴ Hans Born, "*Parlamentarni nadzor sigurnosnog sektora: načela, mehanizmi i praksa*", Priručnik za poslanike broj 5/03, Goragraf, Beograd, 2003. (Parliamentary oversight of the security sector: Principles, mechanisms and practices. Handbook for MPs)

institutions at the state level. The public perception about the Joint Committee is generally good, especially in view of its capacities and the circumstances under which it carries out its duties, as well as a complicated political system of the country.³⁵

Another parliamentary committee at the state level is the **Joint Committee on Oversight of the BiH Intelligence and Security Agency**, which was formed for the purpose of overseeing the legality of the OSA's operations, appointments of managers, spending the budget and giving opinions on the budget of this institution. Under the law, the Joint Committee is always chaired by someone from an opposition party, although this anti-corruption measure, which is certainly welcome, has not yielded expected results thus far. The Committee's oversight evidently lacks good quality and the reasons should be sought in the lack of political will and in poor administrative capacities.

In addition to these two specialized committees for oversight and control, it is important to mention also the Finance and Budget Committees of the House of Representatives and the House of Peoples of BiH. Their role in overseeing the security institutions is not explicitly defined, but their duties are related also to consideration of the reports of the BiH Audit Office which audits all security institutions at the state level, among other institutions.³⁶

Under the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption Act, another parliamentary body should be formed: a committee on oversight of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption and appointments to the Agency. The Committee is mandated to: oversee the Agency; launch procedures for appointment and dismissal of the Agency's director and deputy director under the law; consider the Agency's activity reports at least two times a year or when needed; and consider auditor's reports relevant for the Agency. However, the same Act defines that the Committee may not interfere in the Agency's activities and operations nor may it request from the Agency the information on individual cases.

³⁵Interviews with representatives of the academic community and the media

³⁶https://www.parlament.ba/sadrzaj/komisije/predstavnicki_dom/finansije/default.aspx?id=28438&mid=1&langTag=bs-BA&pril=b

The position of a **Parliamentary Military Commissioner of BiH** was established for the purpose of strengthening the rule of law and protecting human rights and freedoms of military personnel and cadets of the Armed Forces of BiH and the BiH Ministry of Defence. In the execution of his duties, the Military Commissioner closely cooperates with the BiH Ministry of Defence, the Inspectorate-General of the Ministry of Defence of BiH, the BiH Armed Forces and the Institution of the Human Rights Ombudsmen of BiH. The Military Commissioner submits an annual activity report to the BiH Parliamentary Assembly and may submit at any time an individual report to the BiH Parliamentary Assembly or the Joint Defence and Security Committee of the BiH Parliamentary Assembly. The Military Commissioner must perform his/her duties professionally, and without representing, protecting or undermining interests of any political party, registered organization or association or any people in BiH.

Under the BiH Constitution and the BiH Independent and Supervisory Bodies of the Police Structure Act, a **BiH Committee on Citizen Complaints against Police Officers** was formed in 2008 as an independent body of the BiH Parliamentary Assembly.³⁷ The Committee consists of seven members from the constituent peoples in BiH who may not be employed by any police body at the level of BiH. The Committee is responsible for receiving, assessing and transferring citizen complaints against police officers to the relevant police bodies. Although the Committee is not attached to any police agency, it does not have power to investigate directly citizen complaints against police officers.

In addition to the above mentioned institutions, the **BiH Office of Ombudsmen for Human Rights** has the role in the oversight of security institutions at all levels of government. Although this Office deals with the cases relating to poor performance or violations of human rights by any authority of BiH, its entities or the Brcko District, it also deals with complaints related to suspected corruption in the security institutions if it amounts to a violation of the basic human rights of citizens or employees in the security sector. The cases are formed on the basis of individual complaints filed by legal entities or individuals or by virtue of office. The legal framework defines the powers and authority of the BiH Ombudsmen, the rules of

³⁷ Official Gazette of BiH, No. 36/08

procedure for monitoring institutions and agencies in relation to citizen complaints and ex officio and other important issues related to the functioning of this state-level mechanism for the protection of the basic human rights and freedoms. However, this institution may only issue recommendations which are, unfortunately, not binding for the institutions to which they refer. The Office of the Ombudsmen most often receives complaints about selection of applicants, recruitment and employment and promotions in the law enforcement or defence structures.

The **Central Electoral Commission** of Bosnia and Herzegovina has an important role in fighting corruption. In addition to the basic activities related to ensuring free and fair elections at all levels of government in BiH, its important activities are related also to the vetting, approving and keeping records of appointed and elected officials in BiH, and to oversight and control of political party funding in Bosnia and Herzegovina. The Central Electoral Commission was responsible for background checks of officials in BiH for conflict of interest, but this authority was transferred through legal amendments to the BiH Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. This legal provision has not been implemented yet.

Audit of all institutions is done by audit offices at all levels of government. Those are: Audit Office for BiH Institutions, Audit Office for Institutions in the BiH Federation, the RS Public Sector Audit Office, and Audit Office for Public Administration and Institutions in the Brcko District of BiH. Cantonal institutions are audited by the Audit Office of the BiH Federation and all cantons must have internal audits in place.

Audit Offices are external, independent institutions which audit business operations of institutions in BiH. These Offices conduct audits of financial reports and accounts of institutions in order to assess whether financial reports are reliable and whether their balance sheets fully reflect expenditures. The Audit Offices assess whether the managers of institutions comply with all applicable laws and regulations, whether public spending and execution of duties are in compliance with the law and established accounting principles, whether the funds are used for appropriate purposes and assess financial management, functions of internal audit and internal control systems.

In addition, the Audit Offices carry out audits every year and issue opinions on annual budget execution reports of each institution. The Offices audit an institution's performance and check cost-effectiveness, efficiency and effectiveness with which an institution is spending resources to carry out its tasks and duties.

3.2.2. BiH Federation entity

Under the Home Affairs Act of the BiH Federation (Article 77), a **Committee on Citizen Complaints against Police** was formed. It is an independent body of the BiH Federation Parliament which ensures its funding. It consists of three members of whom one is a civil servant, and two represent citizens. The Committee members are appointed by the BiH Federation Parliament at the proposal of the committees of the House of Representatives and the House of Peoples in charge of selection and appointments. The Committee ensures objective and unbiased conduct of procedures in response to citizen complaints against actions and conduct of police officers, thereby ensuring the protection of human rights and freedoms. Further, the Committee has broad powers over the Professional Standards Unit of the Federation's Interior Ministry and the implementation of the punishments imposed by a disciplinary panel, which is a strong advantage in oversight compared to internal control mechanisms.

In broader terms, the parliamentary oversight of legality of the general functioning of the Federation's Interior Ministry and Police Administration is ensured also through the bodies of the Federation Parliament which are in charge of security issues. Those are: the **Security Committee of the House of Representatives** and the **Security Committee of the House of Peoples**. These Committees consider issues of the system and policy in the area of security within the scope of rights and duties of the House and, accordingly, provide opinions and proposals to the House; propose security organization, leadership and development measures for the Federation; consider issues of prevention of terrorism, inter-cantonal crime, illegal trade in drugs and organized crime; consider issues regarding purchasing, possessing and carrying firearms; consider draft bills and bills and other legal drafts and proposals relevant for

the public security in the Federation. These Committees are extremely important because they can conduct investigations and request testimonies, evidence and documents.

3.2.3. Republika Srpska entity

In broader terms, oversight of the police in the RS is done by the **Security Committee** of the RS National Assembly. The Security Committee, among other things, considers issues relevant for security institutions and agencies, provides opinions and positions, gives recommendations, and proposes actions to the National Assembly. The Security Committee consists of seven members who are elected from among the members of the National Assembly.

3.2.4. Other bodies and mechanisms

Regarding the police, in addition to the above-mentioned bodies which, in a way, have direct control over or indirect oversight of those institutions, it is important to mention that there are also **independent bodies which are responsible for the appointment of managers of police agencies** (directors at the state and entity levels, and commissioners at the entity level). These bodies are responsible for overseeing managers of the police agencies and legality of their actions and operations.

Furthermore, any suspicion of corruption in the police at all levels of government may be reported via the “Crime Hunters” hotline number 0800 20505 (anonymous calls), established by the EUPM, or via the central number 122. Citizens may call the hotline and share their information on suspected crimes. Also TI BiH made it possible for citizens to report corruption online via its website or a toll free hotline number 0800-55555.

Since February 2015, within this project, the Centre for Security Studies (CSS), in cooperation with the Interior Ministry of the Sarajevo Canton, introduced online corruption reporting. The application allows citizens to report corrupt practices via the website of the Interior Ministry of the Sarajevo Canton (<http://prijavakorupcije.mup.ks.gov.ba:8080/>) and to monitor the status of the reports. The application provides automated report processing management to officers of the Interior Ministry of the Sarajevo Canton

4. Security sector and strategic anti-corruption documents

Clearly defined national policies or strategies are a precondition for an institutional approach of the government to implementing defined policies and priorities in its activities. Combating corruption has been a high priority of all authorities in Bosnia and Herzegovina, if we consider the strategy papers adopted in this area. In the past period, Bosnia and Herzegovina adopted a number of anti-corruption strategy papers at the state, entity, cantonal and the Brcko District levels. A common conclusion is that the strategy papers have not been implemented adequately, which is regularly mentioned also in the EU Progress Reports for Bosnia and Herzegovina.³⁸

The security sector is included in the general presentation of government institutions committed to fighting corruption, although some of its segments have undertaken some activities to assess and reduce the risk of corruption. For the purposes of this study, we describe below the developments within the security sector in relation to the strategy documents for combating corruption, primarily to the implementation of the Anti-Corruption Strategy for the period 2009-2014 and the Action Plan to implement the Strategy. We shall also deal with the process of developing a new strategy and the obligations arising from its implementation for the security sector institutions.

4.1. Implementation of the National Strategy for the 2009 to 2014 period

The implementation of the Anti-Corruption Strategy and its Action Plan (2009-2014) at the state level was largely delayed. A number of measures from the Strategy referred to the formation and operations of the Agency, but due to political developments, the process began only in 2011 with the selection and appointment of the Agency's managers. Then, in the course of 2013, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption Act was amended to regulate the status and powers of the parliamentary committee responsible for oversight of the Agency. Employment of staff and a solution to the

³⁸ http://dei.gov.ba/dei/bih_eu/paket/default.aspx?id=10098&langTag=bs-BA

problem of space for the Agency created conditions for the Agency to become operational by the end of 2013 and in the early 2014. The problems regarding defining the jobs in the Agency made its operations even more difficult, which was why better conditions were created for the Agency to become fully functioning only one year prior to the expiration of the Strategy. At present, the activities of the Agency are burdened with significant operational and administrative problems. Nevertheless, under the present conditions, the Agency is carrying out numerous activities from within the scope of its powers and authority. This is proven by the findings of the survey, according to which over one third of interviewees (37.9%) heard of the Agency and its activities, which may be considered as success in terms of its publicity, in view of the short period of time since it was formed and began to operate.

Taking into consideration this development of activities at the state level, some levels of government did take some steps to fight corruption. The entities and the Brcko District, as well as three cantons, implemented their own strategies and action plans which were harmonized with and implemented the goals from the national strategy to some extent only.

During the period covered by the Anti-Corruption Strategy, non-governmental organization Transparency International carried out five quantified analyses of the implementation of the measures contained in the Action Plan (the last analysis was conducted in January 2014). The analysis indicated the level of progress made in the implementation of the measures from the Strategy. More precisely, the last analysis shows that only a very small number of measures was implemented fully, while the implementation of most of the measures is being under way. The implementation of a number of measures has not started yet.

The basic shortcomings of this Strategy and the Action Plan with concrete measures to implement the Strategy were identified during the discussions and meetings with the representatives of the security institutions responsible for the implementation. The goals defined in the Strategy were unrealistic, which made the Strategy hardly implementable.³⁹ Many measures from the Action Plan were not clear, did not contain indicators for measuring progress, which was why it was very difficult for every institution in charge of implementation

³⁹ Interviews with representatives of academic and NGO sectors, Tuzla, Banja Luka and Bihać, November 2014

of a measure to determine whether the measure was implemented or not, and if it was implemented, to what extent.⁴⁰

Apart from the non-governmental sector, no government institution was tasked with reviewing the implementation of the measures from the Strategy and the Action Plan, which clearly indicates how the government treats this important area and that it only paid lip service to fighting corruption.

Regarding the entities, Republika Srpska adopted in 2014 a new Anti-Corruption Strategy and its Action Plan for the 2013 to 2017 period. The Strategy implementation monitoring team in the BiH Federation developed action plans for the institutions at the Federation level. The Brcko District and cantons have not yet identified their implementation monitoring bodies, although they are requested to do so by the law.

The BiH Defence Ministry has probably made the biggest progress in fulfilling the obligations arising from the Strategy and Action Plan by adopting an Action Plan to Prevent and Fight Corruption in the BiH Defence Ministry and the BiH Armed Forces. The adoption of the Action Plan was one of the Partnership goals of cooperation with NATO, which additionally motivated the BiH Defence Ministry to implement these activities. The defence institutions began to implement some measures, which is certainly commendable, but a new Action Plan will have to be developed because of a new national Strategy adopted in the meantime.

In practice, this means that the implementation of the measures from the previous Strategy was much delayed, which is why additional efforts will be needed to ensure harmonization of the Defence Ministry's present Action Plan with new strategy papers. The BiH Defence Ministry made progress also in building integrity in the defence sector by joining NATO's integrity self-assessment process. The self-assessment methodology was developed by NATO and this obligation was fulfilled within Bosnia and Herzegovina's integration with NATO and the 2014 goal of Partnership within cooperation with NATO. The Ethics Hotline available on the Defence Ministry's website for reporting corruption online is another progress this

⁴⁰ Interviews with representatives of the security sector, March 2014 and January 2015

institution made in strengthening integrity and professionalism and in fighting negative phenomena.

A few more institutions at the state level have undertaken some activities to develop their own plans: among others, the BiH Border Police adopted its Action Plan to Fight Corruption for the 2010 to 2014 period; the BiH Department for Police Coordination adopted its Action Plan to Fight Corruption (2011-2014). These activities were implemented within the EU support programme in 2014. Some security institutions at the state level, including the BiH Indirect Taxation Authority and the BiH Border Police, made assessments of their institutional capacities and identified areas and positions vulnerable to corruption. It is important to mention that only the ITA's Integrity Plan is available publicly, which is very commendable and an advantage for this institution also in terms of its commitment to fighting corruption in its own ranks.⁴¹ As said above, these activities were carried out within the project of support to law enforcement and achieving EU standards, which creates a dilemma about direct correlation with the fulfilment of obligations arising from the Strategy,

Even the large judicial institutions, like the BiH Court, do not have integrity plans, although they made some progress in the area of public procurement by posting their annual public procurement plans on their websites.⁴² The courts and prosecutors' offices in smaller towns are unable to implement the measures from the Strategy and Action Plan by reason of the lack of human and financial resources.⁴³ One positive thing which is common to all security institutions at the state level, including the justice sector, is the adoption of internal rule books on reporting corruption. Most of these rulebooks were adopted during the final year of the Strategy implementation.

Regarding the police organizations at the entity level and the Police of the Brcko District, these institutions are committed to improving their capacities necessary for fighting corruption. The Federation Interior Ministry adopted in 2010 an Anti-Corruption Programme⁴⁴ under which most of corruption offences punishable under the criminal legislation concern

⁴¹ <http://www.new.uino.gov.ba/bs/O-NAMA>

⁴² <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=13&id=85&jezik=s>

⁴³ Interviews with representatives of the courts and prosecutors' offices in BiH, September 2014

⁴⁴ <http://www.fmup.gov.ba/bs/>

improper behaviour of officials and officers in the performance of their duties. The Ministry adopted in the early 2012 an Anti-Corruption Plan of the Federation Interior Ministry⁴⁵, although these two documents are not directly correlated to the national Strategy and Action Plan.

The same is true of the Republika Srpska Strategy for the 2008 to 2012 period and the new RS Strategy for the 2013 to 2017 period⁴⁶ and the Action Plan to Implement the RS Anti-Corruption Strategy in home affairs. The Strategy sets an obligation to develop integrity plans in all organizational units with identification of positions susceptible to corruption. A similar commitment was made by the Police of the Brcko District by developing an Assessment of Institutional Capacities of the Police of the Brcko District and an Integrity Plan. The Strategic Plan of the Police of the Brcko District for the 2013 to 2018 period represents the basic document which does not explicitly state the correlation with the Anti-Corruption Strategy and Action Plan.

Generally, the cantonal Interior Ministries have not taken actions foreseen in the national Strategy and Action Plan. Some organizations adopted their anti-corruption strategies, like the Interior Ministry of the Sarajevo Canton, while in practice there are no concrete results indicating important achievements. Most of the cantonal ministries are not even aware of the fact that the national Strategy sets out obligations for their institutions, and a significant number of their representatives did not have any knowledge about the Strategy.⁴⁷ Some progress in the implementation of the measures from the Strategy is noticeable on their official websites. This is related to reporting corruption via a hotline, participation in the projects implemented in the past by the European Union Police Mission (EUPM) during its mandate in BiH.

⁴⁵ Ibid

⁴⁶ <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpr/Pages/default.aspx#collapsible4>

⁴⁷ From interviews with representatives of cantonal Interior Ministries, March 2014 and April 2015

4.2. Development and adoption of an Anti-Corruption Strategy (2015-2019)

The activities on the development of a new Anti-Corruption Strategy (2015-2019) began in 2014 with the EU support. The entire process was managed by the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption. At the Agency's initiative, an inter-agency working group was formed and it participated in the strategy development process. The working group comprised the representatives of the relevant institutions responsible for fighting corruption at the state, entity and the Brcko District levels. At the Agency's initiative, the civil society organizations involved in the fight against corruption were represented in the working group. The following institutions were represented in the working group:

BiH Council of Ministers

Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (Anti-Corruption Agency)

The Anti-Corruption Agency Selection and Monitoring Committee

Central Electoral Commission (CEC)

BiH Justice Ministry

BiH Ministry of Security

BiH Ministry of Finance and Treasury

BiH High Judicial and Prosecutorial Council

BiH Prosecutor's Office

BiH Court

State Investigation and Protection Agency - SIPA

Office of the Public Administration Reform Coordinator

Audit Office for BiH Institutions

Commission for monitoring the implementation of the Anti-Corruption Strategy and Action Plan of Republika Srpska

BiH Federation Action Plan Implementation Monitoring Team

RS Interior Ministry

RS Justice Ministry

Federal Interior Ministry of the BiH Federation

Federal Justice Ministry of the BiH Federation

The Action Plan Implementation Monitoring Team of the Brcko District of BiH
Crime-investigation police of the Brcko District of BiH
Transparency International BiH
Centre for Security Studies
Centre for Investigative Journalism
Non-governmental anti-corruption network ACCOUNT

Considering the composition of the Working Group, it is easy to conclude how much the security sector is important in implementing the activities on prevention of and fight against corruption in the society and in implementing the goals and objectives of the Strategy. For practical reasons, the number of institutions represented in the Working Group was limited. Nevertheless, the Anti-Corruption Agency and the civil society made it possible for other stakeholders at all levels of government to participate indirectly in order to adapt the strategy and action plan as much as possible to those who should implement them. The Strategy and Action Plan proposed by the Working Group was adopted by the BiH Council of Ministers on May 7, 2015.

Regarding the security sector, we can conclude that some institutional progress is noticeable in some organizations, although we cannot conclude with certainty that the implementation of the measures from the Anti-Corruption Strategy and Action Plan was the motivation for improvement of their anti-corruption activities. Although the institutions call upon the Strategy and Action Plan in their activities, the period in which they adopted and implemented their activities leads to a conclusion that the institutions did not have a systematic approach to fulfilling their obligations and implementing the measures contained in the Strategy and Action Plan adopted by the BiH Council of Ministers.

5. Assessment of the situation and analysis of risk areas of anti-corruption behaviour in the security sector

The problem of corruption, along with organized crime and, as of late, also terrorism, is among the biggest threats to national security and interests of Bosnia and Herzegovina. In their efforts to fight effectively this modern plague, the states have a whole range of possibilities grouped into three categories: integrity building, increasing transparency and improving accountability. A necessary precondition for effective mechanisms and creation of a strategic framework for the fight against corruption is certainly the establishment of a strong external rule of law framework in a state.

Security policies and practices based on the rule of law, which are related to the overall justice system, can ensure that these three categories serve their purposes. There will be no transparency or accountability if the system is not based on the rule of law. Likewise, integrity building in the security sector institutions will be useless if the judiciary does not function properly.

The problem of corruption in Bosnia and Herzegovina in the past period prompted an increased number of research and analyses which were presented to the domestic public. However, it is noticeable that no special and particularly empirical research into corruption within the security sector has been conducted so far. This is why, the public does not have the information yet on how much the institutions responsible for protecting citizens against corruption are affected by this social threat.

The findings of the survey conducted for the purposes of this study show that respondents believe that out of the five areas of the security sector, corruption is most prevalent in the police – 42.8% of a total number of acts of corruption known to the respondents were committed in the police. 14% of citizens believe that corruption occurs most often in the judiciary; 10.9% believe it is the customs/border service; 4.5% say it is most prevalent in the defence sector; and nearly a negligible percentage of all respondents – 0.5% - believe it is

most prevalent in the intelligence sector. 27.5% of the total number of respondents believe that corruption occurs in the areas outside of the security sector. A high percentage of corruption offences committed in the police may be partly explained by the fact that the police, primarily the traffic police, have direct contacts with citizens far more often than other sectors. Still, we should not ignore the fact that nearly one half of corruption offences, known to citizens, is linked to the police.

We shall try to give an overview of the assessment and analysis of the situation in the security sector below. We hope this will serve as a basis for further research related to study and understanding of the risk of corruption in the security sector.

A qualitative analysis of available statistics and an insight into the practice of investigating and prosecuting corruption offences, combined with citizen perception and views of corruptive behaviour in the security sector, should provide a credible basis for identification of areas and norms which are susceptible to corruption in the security sector. Every step forward made in fighting corruption, especially in those institutions which are responsible for fighting corruption, is more than welcome, irrespective of how small it may seem under the given circumstances. Establishing causes and risks of corruption in the security sector is certainly a useful tool for permanent protection against corruption or at least for reducing corrupt practices to a tolerable level, before we reach the level at which the security institutions will create the system with strong protective and anti-corruption mechanisms the effectiveness of which will not depend on the political will of officials.

Having mentioned the political attitude to fighting corruption, we are certainly aware that a theoretical concept of a weak state places a strong emphasis on a low level of social and political cohesion of a state in studies of the nature of sources of corruption. The state of Bosnia and Herzegovina is certainly a striking example of a weak state in which the representatives of its peoples are still unable to reach the necessary consensus over the nature of political community or a system in which they live. The absence of a joint political vision certainly has a strong impact on the general resolve to fight corruption. Although the political environment is not subject of this study, we believe that reader's attention should be directed

to the latent presence of political instability which puts a heavy burden on the overall environment of fighting corruption and also on the security sector institutions.

5.1. Statistics on investigation, prosecution and trials of corruption offences

Although both police and judicial institutions claim that they are independent and impartial, the influence of politics and the ruling structures is evident.⁴⁸ It often happens that massive police operations and spectacular arrests of political leaders are conducted during election campaigns, while shortly after an election and formation of a new government, as a rule, either no investigation is conducted or cases are dismissed over a lack of evidence against the suspects.

It is stated in the Progress Reports of the European Commission for Bosnia and Herzegovina for 2013 and 2014 that “a number of criminal procedures and investigations have been launched against high-ranking public officials, while the overall level of effective investigations, criminal procedures and convictions in corruption cases remains low. Capacities for investigating crimes of economic and financial nature and the crimes related to public procurement and fraud are weak. There is no effective criminal law policy to fight corruption yet.”⁴⁹

Numerous reports of non-governmental organizations note that during the same period there were no changes in the procedures which would improve investigations with a view to prosecuting corruption offences more effectively or introducing additional procedures in the selection of candidates who have applied to positions which have an important role in detecting corruption.

In the context of a statistical approach to the issue of prosecuting corruption, statistical indicators are not the most adequate success measurement tool. However, they are, for the time being, the only parameter that this study can call upon in the context of prosecution of

⁴⁸ Interviews with representatives of academic and NGO sectors, January and February 2015

⁴⁹ http://dei.gov.ba/dei/bih_eu/paket/default.aspx?id=10098&langTag=bs-BA

corruption offences. Although the advantage of statistics is that they provide accurate data, the weaknesses of the present statistics released by the HJPC and prosecutors' offices in BiH are multi-fold. First of all, existing statistics do not allow monitoring of cases nor do they show the outcomes. The reason is that statistics provide annual data of the cases, without any information on the dates of receipt of cases or how long it took the prosecution to decide whether or not an investigation would be opened, to propose charges or how long it took the courts to start holding hearings or to reach verdicts.⁵⁰

This means that the existing statistics do not allow a case analysis. Even the BiH Progress Report of the European Commission for 2013 notes that “despite available statistical data, there is no analysis of corruption cases.” Further, statistics do not show the number of cases against high-ranking public officials involved in corruption, or the number of so-called “small” cases, because all cases are recorded together. Thirdly, a rather unequal approach to identifying and reporting on corruption cases in prosecutors' offices has been noticed. For instance, some prosecutors' offices provide statistical data on cases, and others on both cases and individuals.

Some reports provide the data as per groups of criminal offences, while others do that per type of crime, general crime, economic crime and war crimes, without showing the number of corruptive offences. This has led to an insufficiently precise statistical review of corruptive offences in BiH, and accordingly, an inadequate review of dynamics of prosecution and trials on an annual basis and a disproportion between the number of cases and perception of corruption researched by some non-governmental organizations. This is why, the HJPC launched an initiative in 2014 to draw up a single list of corruption offences for all prosecutors' offices in BiH. The members of the Standing Committee for Prosecutorial Efficiency and representatives of judicial and prosecutorial community agreed on the list which was then approved by the HJPC on May 6, 2015. The purpose of that list is to serve as guidance to all prosecutors in BiH when allocating a number to a case in TCMS as a corruption case. This will result in uniformity of statistical data on this type of crime. When discussing the proposed list of corruption cases, the members of the Standing Committee were

⁵⁰ Interviews with representatives of judicial and prosecutorial institutions

guided by definitions of corruption contained in both domestic and international legal frameworks.⁵¹

According to the BiH Progress Report of the European Commission for 2013, its chapter “Fight against Corruption”, “There is 48% increase of corruption reports filed with the prosecutors’ offices throughout Bosnia and Herzegovina in 2013, 3,174 reports were filed in 2012 compared to 2,142 from the previous year. The number of indictments confirmed is still modest and final verdicts issued remain low.”⁵²

Although the statistical data on prosecution of corruption are insufficiently harmonized, we used the statistics for 2013 available on the websites of the HJPC and judicial institutions and the Information of the Federation Prosecutor’s Office on the Application of the Criminal Code of the Federation in 2013, sent to the Federation Cabinet, which contains far more detailed data than other reports.

The Table below contains the statistical data of the HJPC on prosecution of corruption offences in prosecutors’ offices in BiH in 2013.⁵³

Prosecutors’ offices	Reports	Investigations	Indictments
BiH	154	46	9
BiH Federation	1.529	418	133
Republika Srpska	657	253	107
Brcko District	23	30	16
TOTAL	2,363	747	265

Modest statistical data, when it comes to prosecution of corruption offences in 2013, are visible also in BiH Federation. During 2013, cantonal prosecutors’ offices received reports against 3,417 individuals in connection with the crime of bribery, the crime against official and other responsible duties, and conducted investigations against 853 individuals. Within this

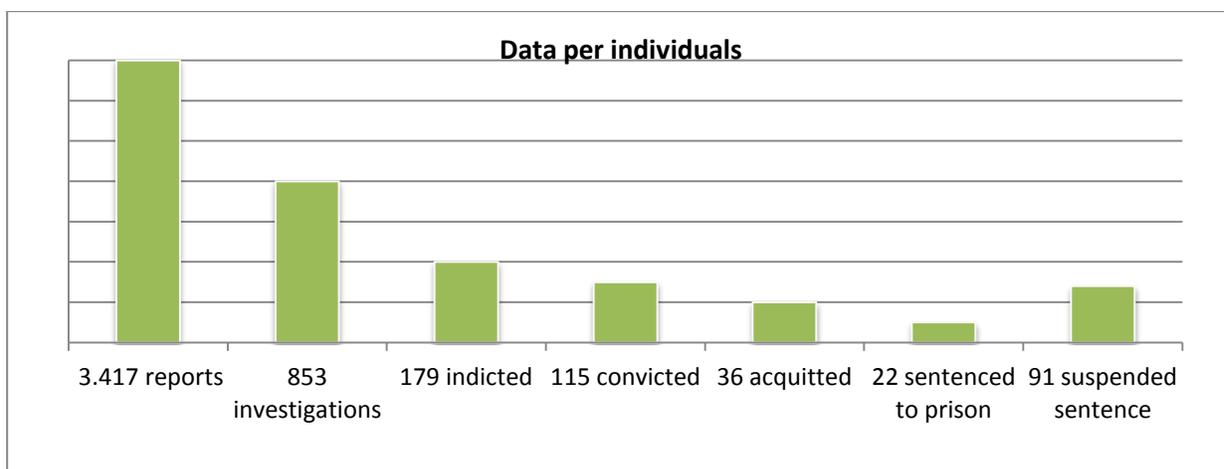
⁵¹ Interview with representatives of HJPC, November 2014

⁵² http://dei.gov.ba/dei/bih_eu/paket/default.aspx?id=10098&langTag=bs-BA

⁵³ The HJPC Annual Report for 2013, pp. 122

group of crimes, the largest number of cases were related to abuse of office or authority (Article 383 of the Criminal Code of the Federation). A total of 179 individuals were charged with the offences from this group of crimes, and the courts reached final decisions against 159 individuals: convictions against 115 individuals, verdicts of abandonment for 4 individuals, and verdicts of release for 36 individuals. Criminal procedures were dismissed in relation to 4 individuals. Prison sentences were reached against 22 individuals, fines against 2 individuals, and suspended sentences against 91 individuals.⁵⁴

CC FBiH – Chapter XXXI – Crimes of bribery and crimes against official and other responsible duties – prosecution and trials in 2013

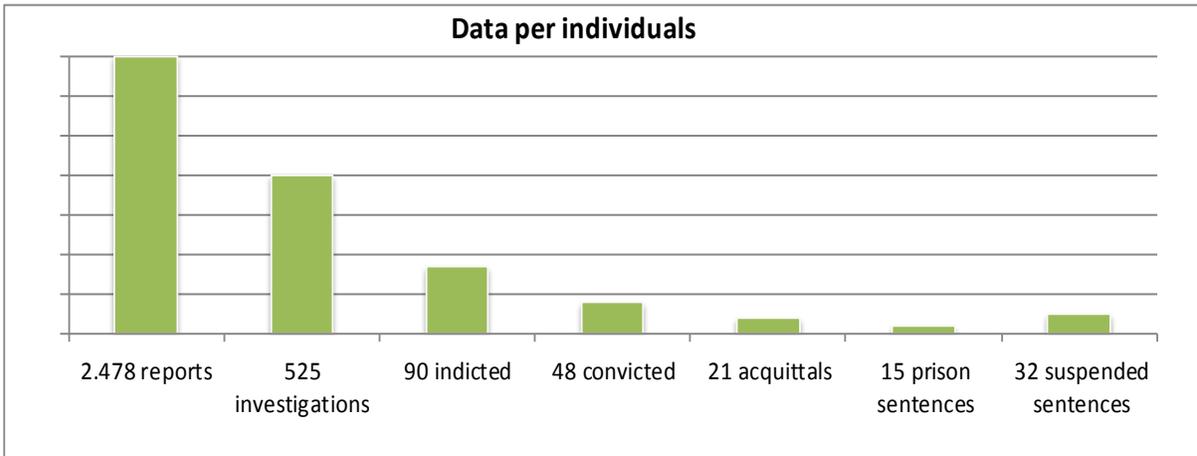


Regarding the crime of abuse of office or authority (Article 383 of CC FBiH), which accounts for the largest number of corruption offences, cantonal prosecutors' offices received reports against 2,478 individuals in 2013, and conducted investigations against 252 individuals. 90 individuals were charged, and courts reached decisions in relation to 76 individuals, of which convictions against 48 individuals, verdicts of abandonment for 3 individuals, and verdicts of release for 21 individuals, and criminal procedures were dismissed in relation to 4 individuals. 15 individuals were sentenced to prison, 1 individual was fined, and 32 individuals received suspended sentences.⁵⁵

⁵⁴ Source: Information of Federation Prosecutor's Office on Application of CC FBiH in 2013, sent to the Cabinet of FBiH

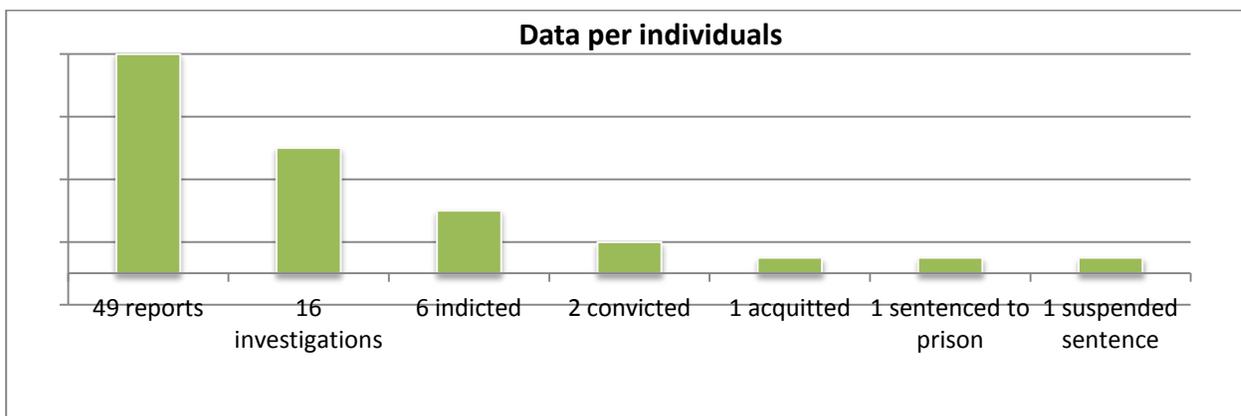
⁵⁵ Source: Ibid

CC FBiH – Article 383 Abuse of office or authority – prosecution and trials in Federation in 2013.



The situation is similar with prosecution and trials of the crime of accepting gifts and other forms of benefits (CC FBiH, Article 380). Cantonal prosecutors’ offices received reports against 49 individuals, conducted investigations against 16 individuals, issued indictments against 6 individuals, the courts reached decisions in relation to 3 individuals, of which convictions against 2 individuals, and verdicts of release in relation to 1 individual. A prison sentence was reached against 1 individual, and a suspended sentence against 1 individual.

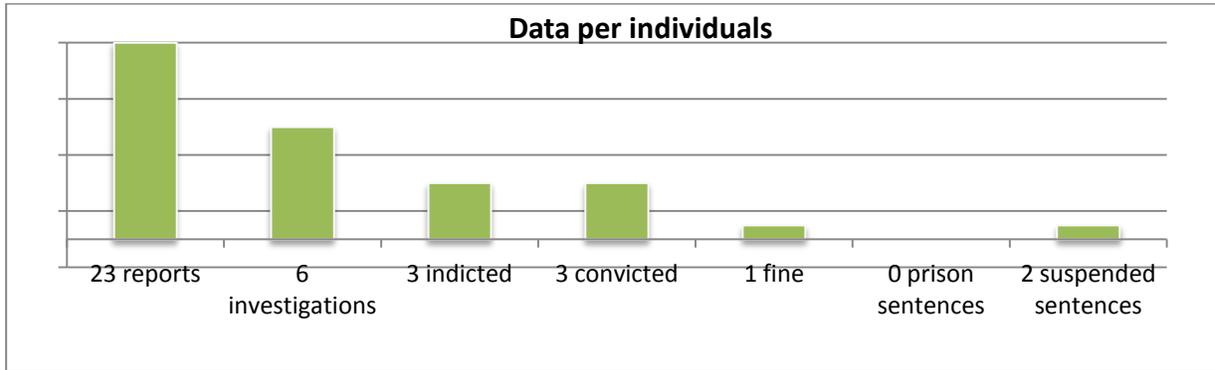
CC F BiH – Article 380 Accepting gifts and other forms of benefits – prosecution and trials in FBiH in 2013



Regarding the prosecution and trials in relation to the crime of giving gifts and other forms of benefits (CC FBiH, Article 381), in 2013 cantonal prosecutors’ offices received reports against 23 individuals and conducted investigation against 6 individuals. Indictments were issued

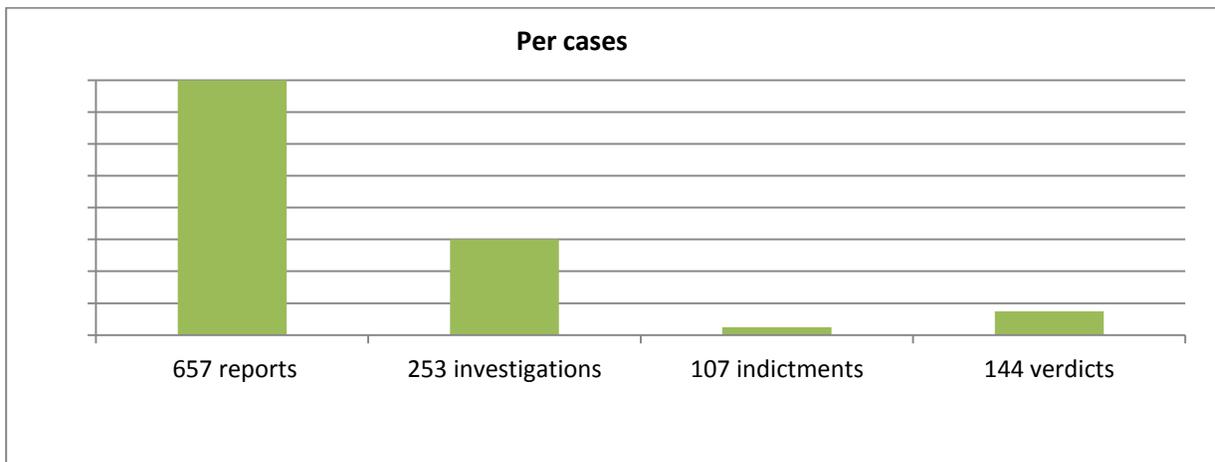
against 3 individuals, and courts reached decisions in relation to 3 individuals, guilty verdicts against all 3 individuals. No prison sentences were reached, 1 individual received a fine, and the other 2 received suspended sentences.

CC F BiH – Article 381 Giving gifts and other forms of benefits – prosecution and trials in FBiH in 2013



Regarding prosecution and trials in corruption cases in Republika Srpska, the information per cases is available for 2013. Prosecutors’ offices in the RS received 657 reports and ordered investigation in 253 cases. Courts confirmed 107 indictments and reached 144 verdicts. The information on verdicts or the number of individuals in those cases is not available.

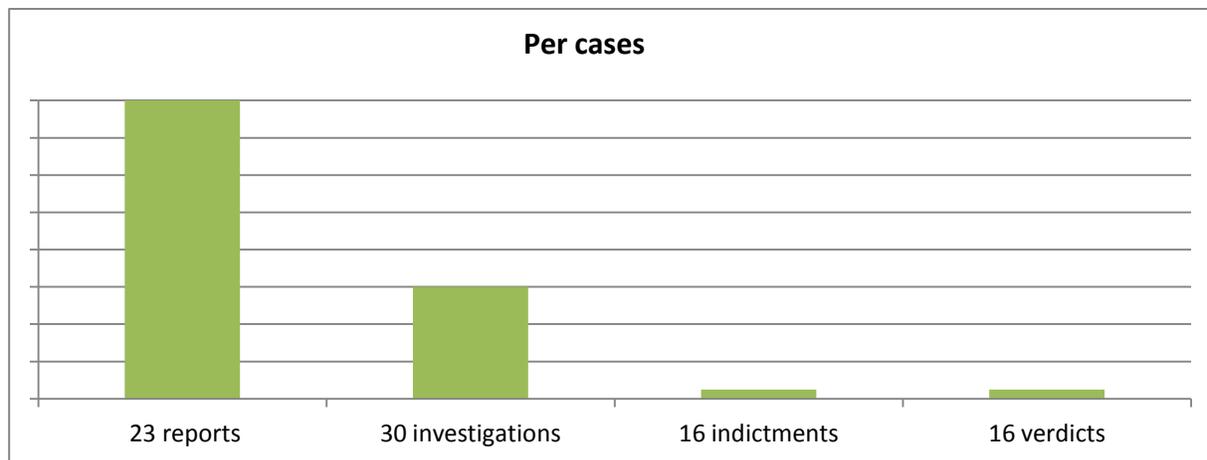
Prosecution and trial of corruption cases in the RS in 2013



Regarding prosecution and trials in corruption cases in the Brcko District of BiH, only the data on cases are available for 2013. The Prosecutor’s Office of the Brcko District received 23 reports and ordered investigation in 30 cases. During the same year, the courts confirmed 16

indictments and reached 16 verdicts. There is no information on verdicts or the number of individuals in those cases.

Prosecution and trials in corruption cases in the Brcko District in 2013



Regarding 2014, only very modest statistical data are available. The HJPC produced a document with the data on the structure of crimes in 2014, which shows the information for every crime punishable under all 4 Criminal Codes in BiH, although it is restricted only to the number of indictments per cases and individuals. The rest of the information, like the number of ordered investigations into corruption offences, number of decisions, verdicts and types of verdicts, is not available in that document or the 2014 Annual Report.

Indictments for corruption offences in BiH in 2014⁵⁶

Criminal Code (CC)	Per cases	Per individuals
CC BiH	13	22
CC FBiH	142	228
CC RS	128	156
CC BD	23	30
TOTAL	306	436

⁵⁶ Document on the structure of crimes, for 2014. www.vstv.pravosudje.ba The data on issued indictments individually for all criminal offences are available on this website.

The HJPC statistics for individual prosecutors' offices in 2014 refer to received crime reports, completed and ordered investigations, issued and confirmed indictments, but do not show the type of crime that the data refer to, which is the reason why it is not possible to extract the data on corruption offences from these statistics either. Furthermore, the RS Prosecutor's Office made a report for 2014, but it contains only the data per type of crimes such as general crime, economic crime and war crimes. Again, it is not possible to extract the data on corruptive offences. The same is true of the collective report on the performance of cantonal prosecutors' offices in the Federation in 2014. Regarding the reports by the RS Special Prosecutor's Office and the BiH Prosecutor's Office, the latest information available on their websites refers to 2012.

5.2. Statistics on the involvement of employees in the security sector in corruption and internal measures undertaken

Security institutions in BiH have a genuine need for systematically maintained records of their employees' involvement in corruption. To illustrate, police institutions have statistics on police involvement in corruption, yet these data are not consolidated but, instead, are kept in several different records or individual reports.⁵⁷

In addition to statistical data of judicial institutions on the overall investigation and prosecution of corruption, it is beneficial to also present information concerning the involvement of employees of the security sector in corrupt practices, as investigated by internal control bodies or external control mechanisms. In justified cases, following consideration within the relevant authorities and departments, these cases have been transferred to judicial authorities for follow-up actions.

Thus, through the already mentioned Ethics Hotline within the BiH Defence Ministry, "the majority of reports, in the period from 2 December 2013 until early March 2014, according to the Inspector General, had been received through the hotline, with a total of 28 reports of possible irregularities. Of these, 19 cases were completed, whereby three cases were found

⁵⁷ More information available in Mapping the Quality of Statistics on Police Corruption," Centre for Security Studies, 2014

justified, and for five cases, the General Inspectorate of the BiH Defence Ministry recommended the use of other means of settlement. Of the remaining nine cases, five were rejected due to the impossibility to inspect vague allegations, while four cases are still in the process of analysis”.⁵⁸ Also, a certain number of reports received relates to violations of internal procedures, irregularities in the accounting and finances, irregularities in public procurement, irregularities in employment, theft, abuse of office, hate speech, corrupt practices and a number of other irregularities. In 2014, the General Inspectorate had 250 pending cases, of which one-third included corruption investigation, while the remaining cases mostly related to providing assistance.⁵⁹

Complaints about the work of the judiciary are also indicative of the need to improve procedures and responsibilities of employees in this sector. In 2013, disciplinary cases in the judiciary had recorded 1,196 complaints, with a slight decrease in the number of cases to 1,129 in 2014. In 2013, 1391 complaints about cases of corruption in the judiciary had been recorded, and in 2014, the number was 1,607. Such large number of complaints and suspicions of corruption of persons who should possess the highest moral and ethical values is certainly something that judicial officials should seriously tackle. The following Tables give an overview of statistics of disciplinary cases in the judiciary and corruption cases.

Disciplinary cases in BiH

2013	2014
Number of registered complaints: 1196	Number of registered complaints: 1129
Number of cases resolved: 1205	Number of cases resolved: 1138
Disciplinary proceedings: 18	Disciplinary proceedings: 18
Completed disciplinary proceedings: 18	Completed disciplinary proceedings: 17
Number of sanctions imposed: 17 (14 judges, 3 prosecutors)	Number of sanctions imposed: 18 (13 judges, 4 prosecutors)

Source: HJPC

⁵⁸ <http://sdp-brcko.org/?p=2742>

⁵⁹ Data for 2014 obtained in the interview with the Inspector General.

Corruption cases in the judiciary in BiH

2013		2014	
Registered complaints	1391	Registered complaints	1607
Launched investigations	453	Launched investigations	635
Indictments filed	215	Indictments filed	222
Decisions	223	Decisions	299
Rulings	176	Rulings	228
Rejected	5	Rejected	8
Acquitted	42	Acquitted	63

Source: HJPC

The involvement of representatives of judicial institutions in crime and corruption is also illustrated in proceedings launched against a long-standing judge of the Court of BiH, charged before this Court with receiving bribes and other forms of benefits⁶⁰ so as to reduce the sentence in the appellate proceedings as imposed to persons convicted in the first instance.

Neither is customs/border sector immune to the abuse of power or inappropriate conduct in the performance of their duties. The most common corruption in the customs sector is criminals paying bribes to allow for completely illegal, lucrative activities, such as smuggling drugs or misuse of export incentives. The European Commission states that the “main types of corruption in the customs administration are routine and in most cases involve private operators paying bribes for routine or faster completion of customs activities. There is also false corruption where traders or agents are asked to “turn a blind eye”, while the active, agreed customs tariff treatment aims to reduce fiscal obligations or increase profits on the side”. For example, in the period from 2006 to 2010, the ITA had initiated disciplinary proceedings against 91 employees, and in the period from mid-2011 to mid-2014, it initiated 258 disciplinary proceedings, and the measure of termination of employment was pronounced for ten employees.

⁶⁰<http://www.klix.ba/vijesti/bih/sud-potvrديو-optuznicu-protiv-sutkinje-azre-miletic-te-senada-sabica-i-rame-brkica/150623038>

Furthermore, employees of the Indirect Taxation Authority (ITA) were apprehended in police operations under codenames *Mreža*, *Tref* and *Pandora*. In the last one, which was completed in June 2014, first the former director of the Indirect Taxation Authority was arrested, and then also the Assistant with the Customs Sector. In the same police operation, a number of employees were arrested, 23 were suspended due to suspicion of committing crimes related to illegal trade in textiles. The ITA initiated disciplinary proceedings against all those who have been remanded in custody following their arrest, although they were all soon released without charges filed.

Another argument in support of the absence of adequate measures of security institutions in relation to the high-ranking officials is found in the case of the Director of the State Agency for Investigation and Protection (SIPA), currently under the investigation before the Prosecutor's Office of BiH, charged with negligent performance of duties for failure to take adequate measures during the February protests in 2014.⁶¹ An investigation pending before the Prosecutor's Office of BiH was, apparently, insufficient for the suspension of the SIPA Director, while at the same time, it is known that many, although lower-ranking officials of law enforcement agencies, are either suspended or even dismissed over minor offences or a mere suspicion of negligent performance.

According to annual reports, the Committee on Citizen Complaints against the Work of Police Officers in Police Bodies in BiH with the Parliamentary Assembly of Bosnia and Herzegovina had reviewed 74 complaints in 2013, while in 2014, it reviewed 77, of which seven complaints related to corruption, all in the Border Police of BiH. Two of these seven complaints had resulted in disciplinary proceedings. A disciplinary sanction was pronounced in one of the two, and the Committee had sent a request and is expecting a response regarding the outcome of the other. It is interesting that for the remaining five complaints, it was impossible to determine whether these were justified or not, due to either absence or malfunctioning of the video surveillance at reported border crossings, hence the internal control could not document the allegations reported in complaints.⁶² That is why, one of the recommendations of this Committee was to put in operation video surveillance at all border crossings. The Committee

⁶¹ <http://www.klix.ba/vijesti/bih/pokrenuta-istraga-protiv-direktora-sipa-e-gorana-zupca/140221110>

⁶² Information obtained from representatives of the Citizens' Complaint Board on Work of the Police Officers.

had issued several recommendations to police agencies, one of which was successfully implemented, namely the one on familiarising all employees with secondary legislation on crossing of the state border.

As for the Intelligence and Security Agency, OSA BiH, it is interesting to note that the Inspectorate of the Inspector General did not take actions from their jurisdiction relating to corruption and corruption offences in the period 2013-2014. Also, the Inspectorate did not receive calls, notices or any information about corrupt activities based on which it would undertake activities.⁶³

5.3. Cooperation between institutions in investigating and prosecuting corruption offences

As a rule, criminal offences involving corruption are kept strictly confidential between two or more entities with some personal benefit from these illegal activities. Therefore, the very absence of witnesses makes it difficult to collect a sufficient number of high-quality evidence to effectively prosecute offences. Conspiratorial nature of the corruption offences indicates the need for covert investigative measures, although sometimes the application of these measures is difficult in terms of gathering evidence. Thus, the CPC envisages the following special investigative measures:

- Surveillance and technical recording of telecommunications;
- Access to computer systems and computerised data processing;
- Surveillance and technical recording of premises;
- Secret surveillance and technical recording of persons, means of transport and items associated with them,
- Use of undercover agents and informants,
- Simulated and controlled purchase of certain items and simulated bribery,
- Supervised transport and delivery of items of criminal offence.

In the process of gathering evidence for corruption offences, police agencies are in practice faced with a number of problems. Primarily, it is the time lapse from the commission of the

⁶³ Letter from the Intelligence and Security Agency OSA BiH, July 2015.

crime and the crime being reported. Therefore, even application of special investigative actions may not give the expected result. Furthermore, the classic forms of bribery are made as a rule without the presence of witnesses, where the recipient and the giver of bribes are parties with mutual interest, seeking to make the act secretive. Therefore, the person who gave the bribe almost has no willingness whatsoever to cooperate, considering that a certain benefit was thus obtained for himself.

In addition, inspectors and investigators working on documenting these cases often note that even in cases when there is a person who has given a bribe, willing to cooperate with the police and prosecutors, they are not met with the understanding of the prosecutor in charge of the case to provide incentives and encourage that person to testify by granting immunity from prosecution.⁶⁴ All these factors make the documentation of these crimes more difficult than is the case with other types of crime. Also, representatives of SIPA, the FBiH Police Administration and the RS Interior Ministry have stated that, due to the lack of human resources, prosecutors sometimes objectively cannot process all reports they receive on these crimes, including a timely analysis of documentation received from the police. It is impossible for prosecutors to timely propose and take further measures at the stage of pre-investigation or investigation measures.⁶⁵

Police agencies commonly investigate crimes of corruption as predicate offences⁶⁶ under other, more complex crimes, such as the group of criminal offences “Against the Economy and Market Integrity, and Criminal Offences in the Area of Customs” (which, among other, include the crimes of money laundering, tax evasion or fraud, tax evasion, smuggling and customs fraud), as well as within the group of criminal offenses “Collusion, Preparation, Associating and Organised Crime”. The latter offences are easier to spot, investigate and prove than corruption offences, and police investigation is usually going in the direction of

⁶⁴ Interviews with inspectors of Ministries of Interior, March and April 2014

⁶⁵ Interviews with representatives of Ministries of Interior and Prosecutor’s Offices in BiH, September 2014

⁶⁶ The term ‘predicate offence’ is used in police practice and refers to the act which the perpetrator had done to commit another offence. For example, committed giving gifts and other forms of corruption as an act to carry out the illegal transport of goods or money laundering.

solving these crimes.⁶⁷ Needless to say, the competent court is the one with the final decision on the qualification of the offence.

Problems identified among law enforcement agencies and prosecutors' offices in investigating and prosecuting offences in practice have prompted the representatives of these institutions to try to improve the existing procedures. Thus, all of the prosecutors' offices and police authorities in BiH adopted the Instruction on Actions and Cooperation between Authorised Officials - Police Officers and Prosecutors in Evidence Gathering during the Investigation in late 2013. Activities were undertaken in 2014 to ensure its more efficient implementation in practice. To this aim, a series of regional trainings were held on the content and practical application of the Instruction, gathering over 200 prosecutors and police officers.

The application of this Instruction is of paramount importance as it creates preconditions for authorised officials and prosecutors to function in solid teamwork, be proactive, well-coordinated and effective to ensure the quality of investigations, prosecution and sanctions in cases involving all forms of crimes, especially those with the gravest underlying elements. In 2014, the HJPC's project was launched on "Establishing a communication platform in order to strengthen the educational capacity of the judicial and security and defence institutions of Bosnia and Herzegovina", which is another example of a concrete contribution to improving cooperation in the field of joint training of police and prosecutors in BiH.

In order to implement measures of introducing specialised trainings for employees of law enforcement agencies involved in combating corruption, as well as for judges and prosecutors in the field of corruption and forfeiture of illegally acquired property, the entity centres for training of judges and prosecutors and the Judicial Commission of the Brcko District regularly organise specialised trainings on these topics. Also, in cooperation with the Association of Prosecutors of RS, in 2014, the HJPC organised five regional workshops for prosecutors, judges, police officers on the topic of financial investigations and forfeiture of illegally acquired assets, and the conference titled "The forfeiture of property and proceeds of crime", attended by over 100 participants - judges, prosecutors and representatives of police agencies.

⁶⁷ Interviews with representatives of the Ministry of the Interior, September 2014

In case of failure to secure evidence or to investigate and prosecute corruption offences, in practices, one can often hear about blame game between the police and courts and prosecutor's offices. In such cases, judicial institutions argue that physical evidence presented by the police agencies through prosecutors' offices is insufficient to order an investigation, prepare the indictment, conduct the proceedings or base a conviction.⁶⁸ On the other hand, police agencies claim that judicial institutions are either insufficiently interested in the prosecution of these crimes or lack sufficient capacity to seriously dedicate themselves to such cases.⁶⁹ Both sides often refer to insufficient education and training to handle complex corruption cases, and sometimes it is obvious that their necessary mutual cooperation is missing. Accordingly, there is an evident need for a continuing education of police investigators, as well as prosecutors and judges. However, bearing in mind that there are no obstacles to improve cooperation between law enforcement agencies and judicial authorities to investigate and prosecute corruption, and that moreover, their cooperation is prescribed as mandatory, it can be concluded that there is no reasonable justification for poor results in prosecution of corruption offences.

This illustration of differences between politics and profession is also indicative of certain absurdities found in the political setting of Bosnia and Herzegovina, specifically in the Federation of BiH. The subject of our attention is the political turmoil around the so-called set of anti-corruption laws, which was adopted by the FBiH Parliament in 2014. These included: the Law on Combating Corruption and Organised Crime, the Law on Forfeiture of Illegally Acquired Assets, amendments made to the Criminal Procedure Code and the Law on Courts, and the new FBiH Minor Offence Code.

The greatest concern of the profession was caused by the adoption of the Combating Organised Crime and Corruption Act of the FBiH, while the adopted Law on Amendments to the Criminal Procedure Code of FBiH creates normative preconditions for its smooth implementation. The Combating Organised Crime and Corruption Act of the FBiH, among other, provides for the establishment of special departments within prosecutors' offices and the Supreme Court of the FBiH, with material and territorial jurisdiction for prosecution and

⁶⁸ Interviews with representatives of courts and prosecutors' offices in BiH, September and October 2014

⁶⁹ Interviews with inspectors from the police agencies, 2014

trial of organised crime, corruption, inter-cantonal crime and other forms of economic and grave crimes. Considering that conditions for its implementation were not met by 1 February 2015, prescribed by the Law as the deadline for the start of its implementation, as warned by those well-informed due to lacking technical and material conditions, the starts of the implementation of the Law was extended to 1 February 2016.

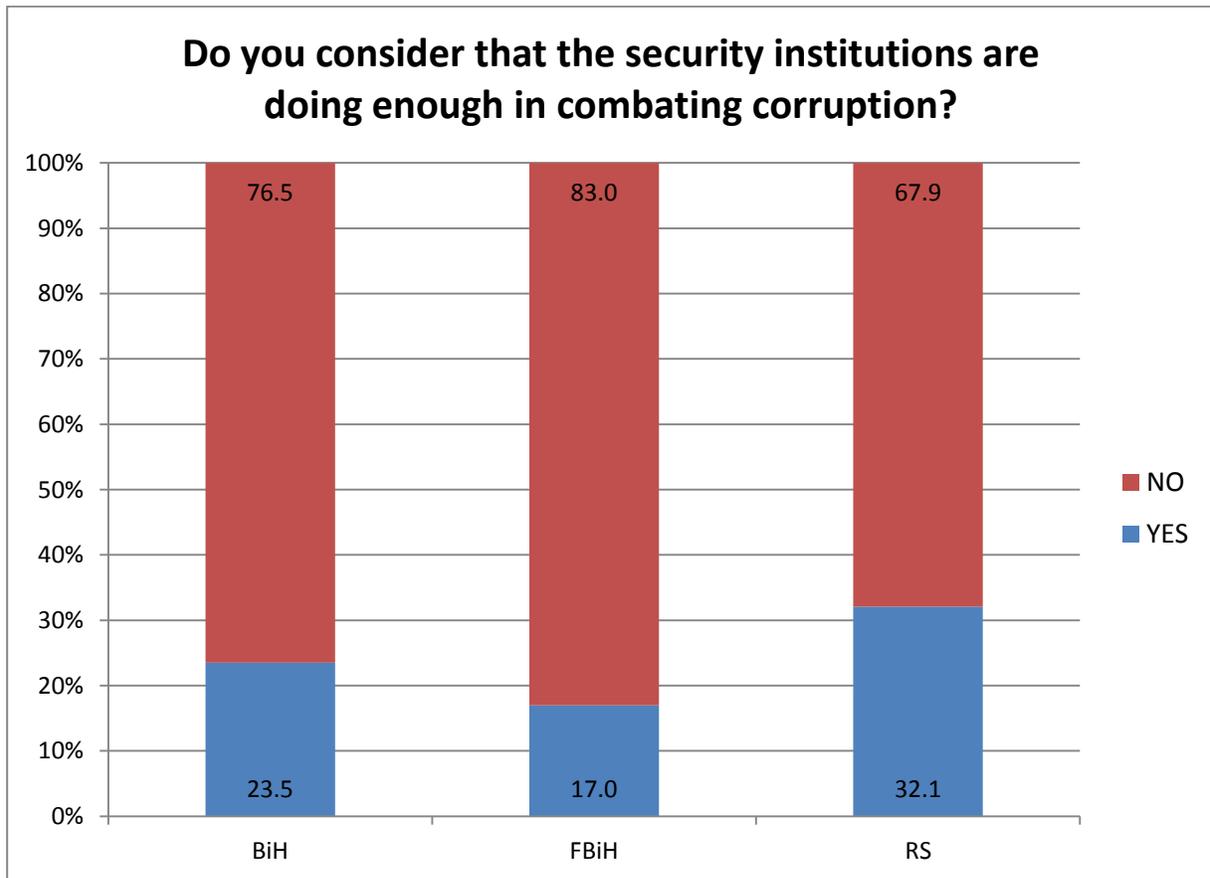
According to practitioners, the reasons behind the impossibility of a simple application of the Law are manifold. Primarily, the Law ends the jurisdiction of cantonal prosecutors' offices in these cases, which are now fully transferred to the FBiH Prosecutor's Office, which requires a thorough restructuring of the human resources of the FBiH Prosecutor's Office and takeover of all the cases from cantonal prosecutors' offices. In October 2014, cantonal prosecutors' offices had 1,923 cases in their jurisdiction, now subject to this Law and which should fall within the competence of the FBiH Prosecutor's Office.

It is realistically impossible to expect that ten new federal prosecutors, as envisaged by the organisation of positions in this Prosecutor's Office, would take over the work and achieve the expected results on such a number of cases taken over. If we add to that the problem of accommodation of new staff and administrative support, or the failure to adopt the budget to provide funds for their work, there is a legitimate question about the appropriateness of such political decisions.

In general, all of these facts suggest that the political structures that were fighting for the adoption of this Law in the FBiH were, least to say, focusing more on the form than the substance of the fight against corruption. The complexity caused by the application of this Law will disable the essential and existing possibilities of investigative authorities to act in this area. Although professional circles and representatives of judicial institutions were of the view that the adoption of the Law would cause significant problems in practice, the ruling structures in the government of the FBiH nonetheless subjected this to scoring political points in their constituencies before elections.

Therefore, the attitude of citizens when it comes to the issue of whether security institutions are doing enough in combating corruption should not come as a surprise. A large number of

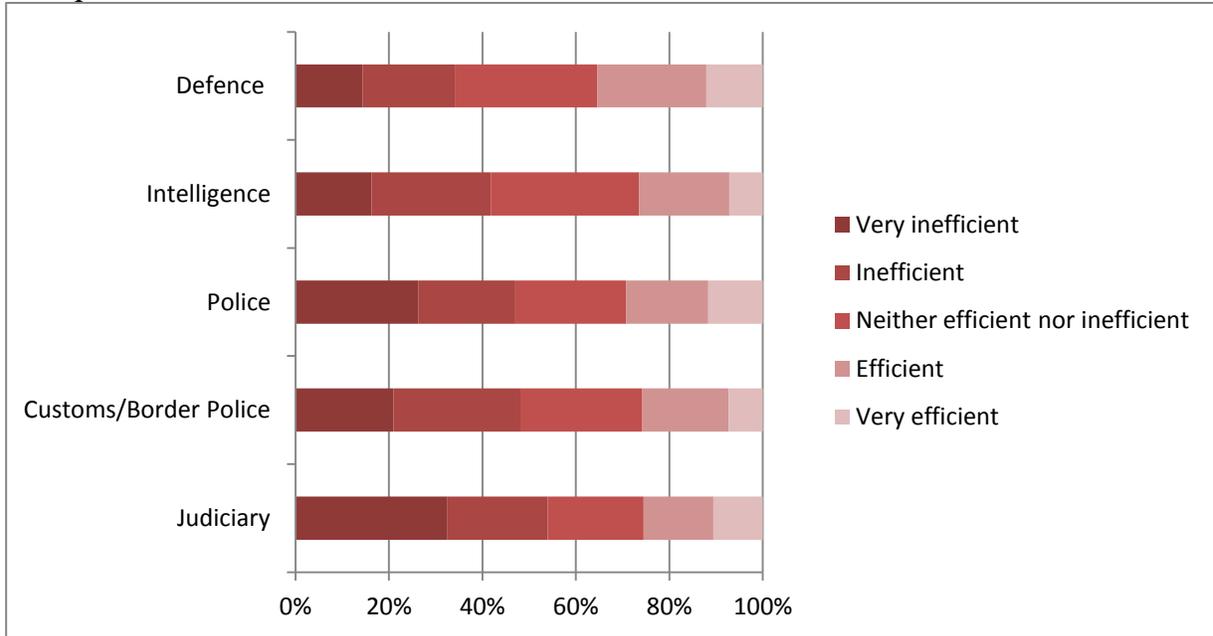
respondents or as many as 76.5% believe that security institutions are not doing enough to fight corruption, which certainly and to some extent corresponds to the official statistics as well as developments on the political agenda in relation to the commitment to reduce corruption in the society. Exposure to the months-long media saga on the adoption of the set of anti-corruption laws in the FBiH had probably influenced the attitudes of citizens in the FBiH. It is noticeable that they were significantly more dissatisfied with the relevant institutions in combating corruption. Hence, 83% compared to 67.9% of the respondents in the RS believe that the institutions are not doing enough to fight corruption.



When it comes to efficiency of the security sector institutions in combating corruption, the perception of citizens' trust and confidence is approximately aligned with the statistics on prosecuted crimes. Respondents generally assess the fight against corruption across the security sectors as very inefficient, while, according to them, the judiciary is leading when it comes to inefficiency, followed by the police. Thus, 32.5% of respondents deem judiciary as very inefficient in combating corruption, 21.5% as efficient, while only 10.6% of respondents stated that the judiciary is very efficient. As for the police, 26.3% of respondents rated it as

highly inefficient, 20.8% as efficient, while only 11.7% rated the police as very efficient in combating corruption.

In your opinion, which of the following institutions is the most efficient in combating corruption?



5.4. Financial reports of audit institutions

A full insight into the assessment of the commitment of security sector institutions to combat corruption would require becoming familiar with the findings and reports of independent institution auditing their financial operations. The analysis of reports of the existing audit offices in Bosnia and Herzegovina has shown that most complaints addressed to security sector institutions concern the public procurement procedures. This common denominator for the majority of stakeholders in the security sector has influenced our commitment to devote significant attention to these issues. Certainly, in such approach, we neither ignore nor underestimate the importance of other financial irregularities indicated in the reports of audit offices, but we are limited by objective restrictions of the study.

In Bosnia and Herzegovina, the total value of 88,579 concluded procurement contracts amounting to 2,736,346,294.96 BAM in 2013.⁷⁰ For the purposes of this study, we have

⁷⁰ http://www.javnenabavke.ba/izvjestaji/godisnji%20izvjestaj/Godisnji_izvjestaj_2013_bs.pdf

analysed reports on the financial audit of a total of 21 security institutions in BiH at all levels of government, noting that some reports, such as the one for the Intelligence and Security Agency, OSA, are not available to the public in any of its parts.

The general assessment that could be derived from the audit reports in relation to the security sector is that public procurement procedures are not done in the most efficient manner and/or in accordance with the Public Procurement Act. For example, the Audit Office for Institutions of BiH in its report on the financial audit of the Ministry of Defence of Bosnia and Herzegovina for 2013 presented a series of irregularities in the implementation of public procurement in this institution, such as: failure to comply with the internal laws on public procurement system, unclear and inadequate tender documentation, improper implementation of public procurement. Therefore, the Ministry was recommended “to carry out a detailed analysis of all public procurement procedures, identify and remedy problems in the system so that public procurement could be carried out in the prescribed manner and avoid future disputes”.⁷¹ Further, an agreement made under negotiation procedure without further publication of a notice of procurement of military equipment is also brought into question, as the Audit Office could not be satisfied that the conditions have been created to carry out an urgent negotiation procedure, that is, that goods were purchased under favourable conditions.

In the report on the financial audit of the Aliens Department in 2013,⁷² the Report on the financial audit of the Border Police of Bosnia and Herzegovina for 2013,⁷³ as well as the Report on the financial audit of the Agency for Education and Professional Training of Staff of Bosnia and Herzegovina for 2013,⁷⁴ the Audit Office for BiH institutions gave a recommendation for the procedure of preparation of tender documentation to ensure fair and active competition of all bidders, through verification of realistic possibilities of potential bidders in terms of meeting the required technical characteristics of the subject of procurement, that is, to analyse the supply on the market and set the qualification requirements.

⁷¹ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2013/?id=3593

⁷² http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2013/?id=3733

⁷³ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2013/?id=3739

⁷⁴ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2013/?id=3667

The Audit Office for Institutions in the FBiH gave a recommendation to the FBiH Ministry of the Interior to purchase goods and services in accordance with the Public Procurement Act.⁷⁵ Furthermore, the Office for Audit of Institutions in FBiH recommended the FBiH Police Administration to have the purchase of goods, services and works fully carried out in accordance with the Public Procurement Act, the Rulebook on the Direct Negotiating Procedure and the Procedures for Procurement of Goods, Provision of Services and Works. This recommendation was given on the basis of the identified irregularities in the procurement of services of a multi-purpose database interface for the use of data from IDEEA and a system of electronic exchange of data records of police authorities and prosecutors' offices.⁷⁶

The Audit Office for the Public Sector of Republika Srpska in the Audit Report of the Summary Financial Report of the Ministry of the Interior of Republika Srpska, covering the period from 1 January to 31 December 2013, noted, among other irregularities, that the Ministry failed to adopt the amended/revised procurement plan that would cover the purchase from loan instruments. Instead, on 2 August 2013, it adopted the Decision on the implementation of procurement of official vehicles and motorcycles.⁷⁷

Irregularities in the implementation of the Public Procurement Act in 2013 were observed also in cantonal ministries of the interior, particularly in the Una Sana Canton,⁷⁸ Central Bosnia Canton,⁷⁹ Sarajevo Canton,⁸⁰ Gorazde Canton,⁸¹ West Herzegovina Canton⁸² and the Herzegovina Neretva Canton.⁸³

As for 2014, audit reports had noted certain irregularities in some security institutions. Thus, the audit report notes that the Defence Ministry of BiH failed to make a detailed analysis of all public procurement procedures or to identify and eliminate problems in the system to allow for public procurement to be carried out in the prescribed manner and avoid future disputes.

⁷⁵ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7024&langTag=bs-BA>

⁷⁶ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7045&langTag=bs-BA>

⁷⁷ http://www.gsr-rs.org/static/uploads/report_attachments/2014/07/07/RI006-14_Lat.pdf

⁷⁸ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7193&langTag=bs-BA>

⁷⁹ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7155&langTag=bs-BA>

⁸⁰ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7136&langTag=bs-BA>

⁸¹ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7106&langTag=bs-BA>

⁸² <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7051&langTag=bs-BA>

⁸³ <http://www.vrifbih.ba/javni-izvj/Report.aspx?id=7048&langTag=bs-BA>

Furthermore, systemic deficiencies were noted with respect to the procedure of selection of the best supplier, presentation of the value of the procurement, application of the existing framework agreement, contracts related to the procurement of goods and services, and inability to control the invoiced price, etc.⁸⁴

As for the Ministry of Security of BiH, a sample-based audit of procurement procedures in 2014 had shown that the contracting authority did not entirely require evidence in the tender documents for certain procedures in accordance with Article 23 of the Public Procurement Act. Also, for certain procedures, there was no notice of the cancellation of the procurement procedure published.⁸⁵

Also, the 2014 financial audit of the Border Police of BiH had identified ample irregularities. It was found that there are certain shortcomings when it comes to the organisation and implementation of public procurement procedures, and implementation of agreements that were concluded after the procedures performed. Identification of needs for specific goods or services is not carried out in a way to accurately determine the subject of the procurement and explain the need for it, especially in the case of major procurements. Also, auditors noted certain problems in terms of determining the type of procedure that should be carried out with subject-related procurements. When it comes to the implementation of contracts or framework agreements, there is a discrepancy between the ordered goods and services and those required in the tender documentation.⁸⁶

The 2014 Financial Audit Report for SIPA reads, among other, that the procurement plan for goods is not comprehensive and does not include all purchases made during the year (e.g. acquisition of tactical uniforms and boots). These purchases were conducted as an emergency matter, but given that these are common and not emergency procurements necessitated by emergency situations or circumstances, the audit's position was that the purchase of such items should have been included in the plan. Also, it was noted that the Agency has purchased

⁸⁴ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2014/?id=4000

⁸⁵ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2014/?id=3925

⁸⁶ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2014/?id=4003

different kinds of goods from the same supplier, based on individual decisions made on procurement procedure through direct negotiating procedure.⁸⁷

The 2014 Financial Audit Report for the Department for Police Coordination indicates the steady presence of the same car supplier (AC Quattro Sarajevo, with contracts made in the amount of 394,400 BAM in 2012, 1,352,219 BAM in 2013, and 599,500 BAM in 2014), which could imply that there is a target market (a group consisting of an authorised importer and partner sales and service centres in BiH for the placement of the contracted Volkswagen-made products), which may ultimately have a negative impact on the basic principles of public procurement in terms of competitiveness and equality of bidders.⁸⁸

In terms of financial operations of the Court of BiH for 2014, auditors underline the pending issue of recording in the books for facilities and land used by the Court and other judicial institutions of Bosnia and Herzegovina, with the right of ownership and use established under the Decision of the High Representative but the Court has no mechanisms to implement this recommendation.

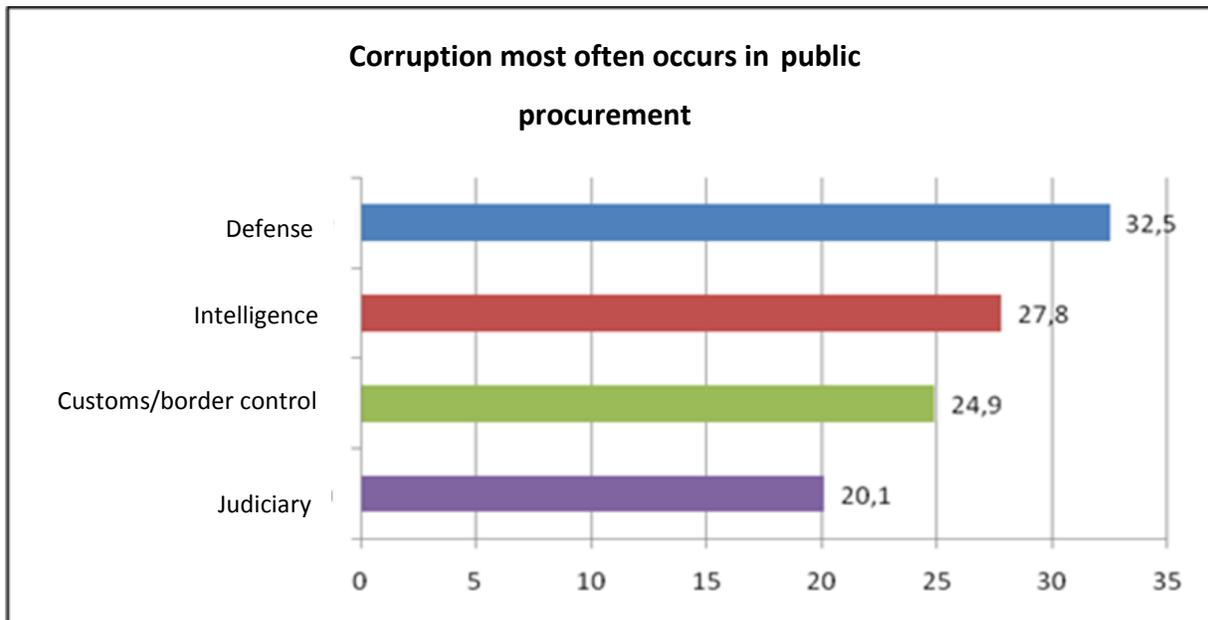
Violation of the Public Procurement Act was also observed in the financial audit of the Prosecutor's Office of BiH in 2014. The public procurement procedure was not conducted in accordance with the Law in the procurement of official badges with holsters, vehicles, printing of the annual newsletter, etc. The agreement on procurement of air tickets had significantly exceeded the contracted value (28,000 BAM above the agreed value).

Looking at the types of jobs within the security sector, a public poll showed that citizens of Bosnia and Herzegovina believe that corruption usually occurs in employment, public procurement, and ranks or promotions in service. According to citizen perception, in comparison to other jobs, corruption in public procurements is most commonly found in the defence sector (32.5%), followed by the intelligence sector (27.8%), customs and border control (24.9%), and the justice sector (20.1%). Depending on the sector, between 20.1% and

⁸⁷ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2014/?id=4081

⁸⁸ http://www.revizija.gov.ba/revizioni_izvjestaji/finansijska_revizija/Izvjestaji_2014/?id=4039

32.5% of the respondents have ranked public procurement ahead of other alternatives offered in selecting the three areas of most frequent corruption in their opinion.



In the previous part of the study, one could get an impression that the security sector, due to its own constitutional and legal structure, is a complex system to present credible attitudes on corruption and its investigation and prosecution. Add to this a specific legal and systemic position, which stems from their missions and tasks, including, among other, the legitimate right of physical coercion, deprivation of liberty, restriction of other human rights, the right to apply special investigative actions related to covert data gathering, and the right to launch an investigation and make binding court decisions, we complete the understanding and reasons for the deeply clandestine nature of possible corruption within the security sector.

The cloak of interpretation of provisions on undermining national and security interests, as well as references to the instrument of broadly defined discretion right to characterize their work as confidential or covert, all offer the leadership in the security sector a rather comfortable position to defend from democratic demands of the public to increase transparency and accountability.⁸⁹ Thus, they make the fight against corruption in the security

⁸⁹ Interviews with the representatives of the academia, January and February 2014

sector significantly more demanding than is the case with other social sectors, such as education, health or private sector.

However, such assessment of the situation related to the security sector should not discourage us in our efforts to insist on finding possible solutions to enhance the fight against corruption in this sector. Some of the solutions have already surfaced in the previous analysis of the situation in the field of statistics, that is, the need to present to the public credible and concrete judicial results in the fight against corruption and the improvement of practical cooperation between the institutions in enforcement of repressive measures in investigations and prosecution. Therefore, we have decided in the following section to identify risks within the security sector, which should be more appropriately treated by the competent bodies in the future. Some of the measures have already been identified, such as the issue of integrity, but they have to come alive in practice, that is, to be fully implemented. The issue of employment and career advancement, as well as the area of public procurement, certainly deserve special attention in consideration of the greatest risks within the security sector, and we will have to analyse these in a greater detail in the coming sections.

5.5. Integrity of institutions in the security sector and integrity plans

A study into integrity of institutions in the security sector is important because it can help us determine whether and to what extent the institutions are accountable, or whether they meet the goals and functions for which they exist, taking into account the legal, strategic and ethical rules, while at the same time being accountable for its work to citizens and other institutions. Building integrity and fight against corruption are closely related to each other, hence the need to strive towards a concept which combines mechanisms of these two concepts at the national level or a strategic plan.

The concept of integrity is often linked to national security, where the state establishes its security structure based on the assessment of risk against its sovereignty and territorial integrity. Therefore, it is most often associated with the integrity of the defence institutions whose primary mission in every country is the protection of state borders or territorial

sovereignty. Defence sector still cannot independently carry out these demanding tasks, requiring its close cooperation with other security stakeholders, primarily the intelligence sector, but also internal police structures which direct both the work and attention of the defence structures through the collection of high-quality and useful information.

In addition, to use the term of external cooperation of stakeholders in the field of integrity of the security sector, the internal integrity of public institutions is a very important segment. Each institution should develop practical models that should enable them to assess the risks of corruption and train their employees on how to solve the problems detected. Lack of transparency and accountability in the security sector certainly increases the risk of corruption. If the money intended for the security sector is spent for other purposes or persons within the security institutions abuse their position by referring to confidentiality of affairs or granting powers and jurisdiction, this leads to undermining the operational efficiency of the security sector but also a decrease in public confidence in the security sector.

The existing legal framework provides clear and relatively satisfactory provisions to ensure the integrity of the security sector. The basic rights and responsibilities of employees of the security sector are regulated by the relevant labour laws of specific security agencies (for example, the Defence Act, the Intelligence and Security Agency Act of BiH, and the laws of individual police agencies at all levels). In the case of police officials, these also include the BiH Police Officials Act, as well as entity and cantonal laws on police officers. There are ethical codes for all employees of the security institutions, such as the code of ethics for judges and prosecutors, adopted at the level of individual institutions or at the state level in the case of police agencies, namely, the code of conduct for police officials of BiH. These codes define the principles of impartial and independent work of the employees of the security sector.

Furthermore, the BiH Police Officials Act and the BiH Prosecutor's Office Act stipulate that these officials should declare their assets and income when taking office. Verifications of declarations made by the police officers are carried out by the Intelligence and Security Agency (OSA), and in case of misrepresentations found, they are subjected to disciplinary proceedings.

The access to ensuring the integrity of security institutions is only partially satisfactory. To wit, it is impossible to determine whether the rules and codes are always respected. The practice shows that investigations are made into misconduct in the event of non-compliance with the Code. Mechanisms for disciplinary treatment of employees of the security sector are being implemented as a part of the work of security agencies. According to the existing regulations, senior staff in security institutions appoints members of the disciplinary committee, and therefore it seems justified to raise the issue as to the extent to which these regulations could be considered fully independent.

The public often assesses the integrity of the institutions of the security sector through the behaviour of their employees, but also the way institutions react to unfair or even criminal behaviour of employees. The integrity of these institutions is declining in the public eye due to the media reporting on links of their employees, especially senior managers, with the criminal milieu. Particularly concerning is the fact that even after these findings as well as proceedings instigated, many officials remain untouched in their posts. In recent years, citizens have often witnessed arrests of officials of the security sector for corruption and crime, which to some extent creates the impression that it is impossible to eradicate crime from the security institutions. Legal proceedings against high-ranking officials in these institutions, as a rule, end with the termination of the proceedings for lack of evidence, which certainly adds to the negative perception of the public.

A variety of factors may have an impact on the presence of corruption in the security sector, starting with the activities of the institution, the legislative framework and norms, cultural assumptions and values in society, through organisational weaknesses, management style and personal integrity of a manager, to the mechanisms of internal and external control. These are all essential prerequisites for reducing opportunities for corrupt behaviour within the security sector, but the work environment is also a very important segment linked to the very integrity-building, of both individuals and institutions.

One of the reasons for difficulties in eradicating corruption and crime from the security sector, but also civil service in general, is the fact that among the conditions for recruitment to the

post of a civil servant, there is no condition requiring that a candidate for a specific post had no prior convictions. According to the regulations of the Civil Service Agency of BiH, the only requirement for civil servants is that there are no criminal proceedings pending against them, which differs greatly from data on prior convictions of a person and for what crimes.

This is confirmed in a case where a convicted person was hired in the Indirect Taxation Authority, when two previously convicted persons were hired in this institution, based on the submitted certificate of no proceedings pending against them. In October 2014, two persons under investigation for criminal offences were hired, and one of them was previously convicted of tax evasion with suspended sentence and had a pending new procedure for organised crime. Evidently, absence of a joint system between judicial institutions allows the recruitment of convicts or suspects for serious offences.⁹⁰

In the previous chapter, we have to some extent already addressed building institutional capacities to strengthen anti-corruption culture and enhance public confidence in security institutions. The integrity of the security sector institutions can be largely analysed and evaluated through integrity plans. Preparation of integrity plans is one of the obligations of all institutions, resulting from specific measures under the Action Plan of the 2009 – 2014 Anti-Corruption Strategy.

These plans identify the risks of corruption and other deficiencies in the integrity system of a particular institution. Integrity plan is an internal anti-corruption document, which contains a set of measures of legal and practical nature to eliminate and prevent opportunities for various forms of irregularities in the work, including corruption. This document, in practice, is the result of self-assessment of institution's susceptibility and risk to corrupt activities and irregularities. Its overall objective is reflected in the increase of transparency and publicity of work, and thus strengthened citizens' confidence in the functioning of institutions.

In the course of project activities, it was found that many security institutions in BiH, especially those at lower levels, lack these plans, but also that representatives of various

⁹⁰<http://www.klix.ba/vijesti/bih/nedodirljivi-drzavni-sluzbenici-osudjenici-na-najodgovornijim-poslovima/150520116>

security institutions were not familiar with this obligation. A certain number of security sector institutions, not necessarily guided by the provisions of the above Strategy, which had prescribed this obligation, created their individual anti-corruption action plans, that is, action plans, many of which are implemented in practice. In the previous section, we have listed institutions that had made or are in the process of developing their integrity plans, that is, risk assessment of systematised posts within the institution in relation to corruption. Some of the existing plans, somewhat surprisingly, indicate that the manager's post is the riskiest in the structure of employees.⁹¹ Evidently, these processes have started relatively late in comparison to deadlines provided under the Strategy or have been initiated by international stakeholders as well as projects related to the process and the path to the EU and NATO integration.

Evaluation of the implementation of measures from the 2009-2014 Strategy has clearly demonstrated the non-fulfilment of this important obligation by the security sector institutions. Therefore, the Anti-Corruption Agency, immediately upon being established, decided to assist the institutions to draw up their plans for producing their integrity plans, and had accordingly prepared common guidelines and methodology for these purposes. Hence, the Anti-Corruption Agency compiled and published *Guidelines for the preparation and implementation of integrity plan*, together with the *Methodology of preparation of integrity plan* and *Model of integrity plan*.⁹² Through the creation and publication of these documents, the Agency has assisted all institutions to prepare their integrity plans more easily.

Considering that the integrity plan is a result of self-assessment of susceptibility of an institution to corrupt activities, the first step of the institutions in preparation of the integrity plan is to develop and fill out the *Questionnaire for self-assessment of integrity within the institution*.⁹³ This questionnaire contains questions related to the type and level of risk for each specific position within the institution, issues related to job description, business consultation, reporting, treatment of confidential information and the like.

Certainly, it is important to bear in mind the fact that integrity plans are not the only means of fighting corruption in specific institutions, but a necessary step for strengthening of integrity

⁹¹ Interviews with representatives of agencies at the state level, 2014

⁹² Documents available at http://www.apik.ba/zakoni-i-drugi-akti/Plan_integriteta/Archive.aspx?langTag=bs-BA&template_id=196&pageIndex=1

⁹³ Ibid.

of individuals and security institutions. A genuine and successful fight against corruption requires the implementation of a series of specific and comprehensive measures, which are explicitly mentioned in the new Action Plan to implement the Anti-Corruption Strategy.⁹⁴

5.6. Recruitment and career advancement of employees in the security sector

Frequent risks of corruption in the security sector are linked to recruitment and career advancement. Any decisions on employment, salaries, promotion, remuneration, appointment to a specific post in the security sector can be a source of corruption. These risks mainly arise from the nature of security sector institutions, or from the fact that the recruitment, advancement and termination of employment are regulated, in a substantial extent, in confidential documents and take place mainly through non-transparent procedures, that is, based on the discretion of managers.

As for indicators of possible risks of corruption in this sector, especially when it comes to the police, it is possible to use data of the Office of the Ombudsman for Bosnia and Herzegovina, which has received a large number of complaints from candidates for positions in law enforcement relating to testing and selection of candidates. Here we can discuss deficiencies in the normative regulation, but also the manner in which the prescribed procedures take place.

The public has witnessed numerous examples of irregularities in employment in the security sector. One of the models used by managers who rely on certain omissions in the procedure was set out in describing the employment in the Indirect Taxation Authority. Thus, “The audit in the ITA noted hiring persons for a definite period, specifically three months, while the contracts with the same people had been renewed continuously for two or more years. The persons with such status, in accordance with Article 16 of the Labour in the Institutions of Bosnia and Herzegovina Act, would transfer to permanent employment in the ITA, meaning, without a public vacancy announced”.⁹⁵

⁹⁴ <http://www.apik.ba/zakoni-i-drugi-akti/strategije/default.aspx?id=412&langTag=bs-BA>

⁹⁵ http://www.slobodnaevropa.org/content/konkursi_stede_milione_evra_poreskih_obveznika/24207079.html

It is almost standard practice that candidates for admission to the law enforcement institutions, but also the Ministry of Defence and the Armed Forces of BiH, who are not hired, have no right to inspect the results of tests of other candidates, or as it was published by the Centre for Investigative Reporting, this is also the case within the justice sector.⁹⁶ Furthermore, commissions or panels for the selection of candidates are formed at the level of institutions, that is, following an act of a manager. This fact, in itself, suggests that managers in advance can select “suitable” candidates.

Add to this a vast discretion in the hands of heads of institutions, as regulated by internal regulations, whereby the managerial staff in security institutions has the right to select the required number of candidates from a list of candidates submitted to them by the selection panel, with names of all candidates who have successfully passed the required tests (physical ability test, written test and interview with members of the panel).

Major or “flexible” discretion of managers open up an unlimited space for corruption. In such circumstances, moral and professional codes inevitably give way to nepotism and careerism. It is in such circumstances that paradoxical consequences of the organisation of security institutions emerge, based on the principles of hierarchy, subordination, strict discipline and immediate obedience.⁹⁷ Such organisations, managed based on discretionary powers of superiors, become a strong internal barrier to the detection and elimination of corruption. With the growth of rank and power of command and control posts of management in the security sector, due to its systemic protection and inaccessibility, the chances proportionally decrease in terms of officially identifying his corrupt behaviour or nepotism, or prosecution and sanctions.

Probably, one should not be surprised with the public perception of corruption within the security sector. According to 68.1% of respondents, corruption mostly occurs in employment in the defence sector, 39.9% believe that this is the case in the police sector, 69.3% in the intelligence sector, while this form of corruption is mentioned by 62.5% in the customs/border

⁹⁶ <https://www.cin.ba/prijava-na-konkurs-i-bez-pravosudnog-ispita/>

⁹⁷ Interviews with representatives of the security sector, Sarajevo 2014

police sector, and 58.7% in the justice sector, in a multiple-choice of possible occurrence of corruption within the security sector.

In the security sector, there are also cases that, if an employee of the military, police or customs dares to publicly speak of corruption in career advancement, he is often charged with some other actions, leading to the filing of disciplinary proceedings against the applicant, and sometimes various forms of mobbing.

Since the establishment of the institution of the Military Commissioner on 31 December 2013, a total of 459 complaints have been received. The most common problem areas are found in the complaints on the process of advancement of professional military personnel, evaluation of performance of professional military personnel, conduct of disciplinary proceedings in the Armed Forces of Bosnia and Herzegovina, by-laws, allowances other than salaries, food for members of the Armed Forces of BiH and the living conditions and accommodation in barracks of the Armed Forces of BiH.⁹⁸

In 2013, the Office of the Parliamentary Military Commissioner received 117 complaints, of which almost half of the complaints related to irregularities in internal vacancies for admission and assignment of officers and non-commissioned officers in the Armed Forces of BiH. According to the report on the work of the Parliamentary Commissioner for that year, more than 50 complaints on these legal grounds were received. In two cases, the Military Commissioner drew attention of the BiH Defence Ministry to these irregularities, while asking also the Commissions for the Advancement to pay due attention to establishing the criteria for scoring, which were addressed in the majority of reports, such as calculating the time spent in a rank, previous work experience, the same or similar assignments and other. During that year, of the 117 complaints received, 97 complaints were resolved, while 20 are still pending.⁹⁹

In 2014, there was a decreasing trend in the number of complaints, as a result of the reducing the number of promotions, that is, re-categorisation, as well as discharge of professional military personnel in the Ministry of Defence of BiH, which processes are in the very heart of

⁹⁸ See Reports on the work of the Parliamentary Military Commissioner for 2010, 2011 and 2012.

⁹⁹ See Reports on the work of the Parliamentary Military Commissioner for 2013.

discontent and complaints filed by professional military personnel. Thus, in 2014, the Parliamentary Military Commissioner took actions in 98 cases, of which 68 procedures were following on complaints, 27 proceedings on requests for legal assistance, and three were initiated by the Military Commissioner on the information or anonymous reports received on violations of human rights.¹⁰⁰ In 2014, the Parliamentary Military Commissioner received 15 complaints pertaining to the advancement of professional military personnel, but in that year Ministry of Defence of BiH did not conduct the advancement procedure. However, a deficiency in this regard is still the non-disclosure of statistics by type of cases where it was necessary to conduct extensive investigative actions to determine the facts and merits of the allegations made by applicants.¹⁰¹

Reports indicate that is often the case in practice that education and professional development training, which are, as a rule, required for improvement, are not equally accessible to all members of the security sector, regardless of whether they meet or do not meet the set requirements. The head of a security institution or possibly mid-level manager (head of department, division or unit) selects candidates for training.

Citizens are also of the view that the system of career advancement in service is not placed on the appropriate basis. When it comes to the forms of corruption within the defence sector, according to 30.5% of respondents, it occurs in ranking and advancement, while 13.4% of the respondents find this form within the police sector, 26.5% in the intelligence sector. In the justice sector, 17.5% opted for this answer, compared to somewhat smaller figure in the sector of customs/border police, or 15.7% of them.

It is equally important that in their decisions, superiors can directly influence the level of the rank, the place of service, region or sector, or the type of work of the employee. These questions, of course, are the main reason for insufficient willingness of professionals in the security sector, both in the lower rank, as well as those in higher posts, to actively resist corruption, even in their immediate work environment. Moreover, these issues are the cause of dissatisfaction and sometimes become a motive for professionals to involve in corruption.

¹⁰⁰ See Activity Reports of the Parliamentary Military Commissioner for 2014.

¹⁰¹ Interview with staff of the Office of the Military Commissioner of BiH, Sarajevo, March 2015

Laws on police officials (at all levels), and the Law on Service in the Armed Forces of Bosnia and Herzegovina govern the conditions for admission to the service, as well as the requirements for advancement and ranking. The exception is the promotion of military officers in the rank of general, carried out in accordance with the Defence Act. When it comes to the military sector, the promotion of military personnel to the next higher rank is carried out by the Commission for Promotions (Article 112 of the Service in the BiH Armed Forces Act), as formed by the Minister of Defence, while Articles 116 and 117 define requirements for the promotion and required periods spent in a lower rank before obtaining a higher rank. Formally and legally, as of 1 January 2014, the process of advancement of the professional military personnel is to be conducted in accordance with the annual plan of advancement, the number and rank structure for advancement. The Minister of Defence of BiH, based on a proposal of the Chief of the Joint Staff of the Armed Forces of BiH, adopts an annual improvement plan which prescribes the number and rank structure for advancement in each branch and services.¹⁰² Nevertheless, there are still noticeable violations of the Rulebook, namely that “the best candidates within the branch or service are not nominated for promotion”.¹⁰³

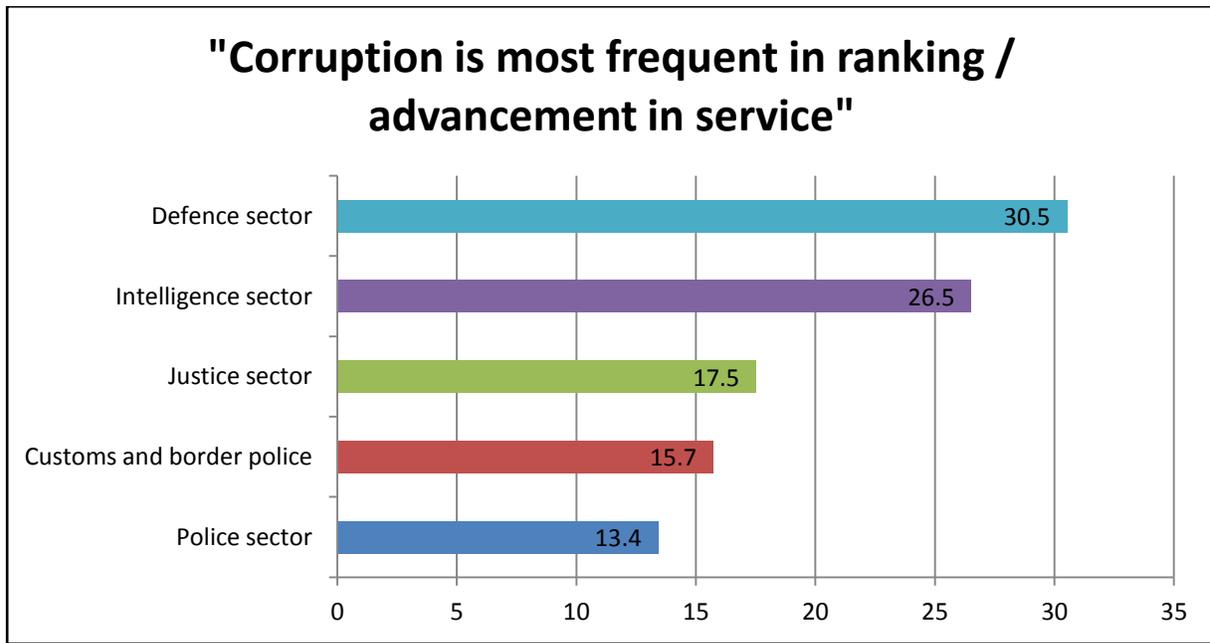
In the police sector, the advancement is carried out in accordance with the laws on police officers and the Rulebook on Promotion Procedure. However, the lack of transparency in the application of procedures for recruitment and promotion leads to a conclusion about a possible high level of corruption.

As for the procedure for advancing in the intelligence sector, the applicable regulations are general procedures and laws on the work of ordinary civil servants. In the judicial structures, the High Judicial and Prosecutorial Council is the one responsible for appointments.

When it comes to the perception of citizens about corruption in ranking/advancement in the security sector, it is believed that most corruption in this process takes place in the defence sector (30.5%), and in the intelligence sector (26.5%).

¹⁰² Article 36 and 44 of the Rulebook on Promotions.

¹⁰³ Cited from the Report of the Parliamentary Military Commissioner for 2014.



5.7. Public procurement in the security sector and the risk of corruption

There is very little research on corruption in conducting public procurement in the security sector. Such studies are typically made for the public administration in general, and do not include specific indicators for the security sector, such as confidential procurement.

Public procurement is a process in which the public sector procures various types of goods, services and works from private companies that have been selected for this purpose.¹⁰⁴ In other words, it is the use of budget funds to meet the needs of the public sector. Poor public procurement system has an impact on development and economic growth. Due to the sizable amounts of funds, public procurement is one of the areas where corruption offences can and do take place. Corruption in public procurement can occur at any time and can be initiated by an official and/or supplier. Furthermore, corruption in public procurement threatens the rationality of public spending and efficient use of EU funds, and endangers the efficiency and rationality of public procurement.

A study on corruption in public procurement in the EU, commissioned by the European Commission, showed that 13% of direct public loss in 2010 in the eight analysed EU member states can be attributed to corruption.¹⁰⁵

As reported by UNODC in 2013 for Bosnia and Herzegovina, on the impact of corruption on private business, along with other forms of crime, corruption is a major impediment to private enterprises and has a negative impact on private investment. A significant number of companies pay bribes to public officials several times during the year. Companies operating within the construction sector are involved the most in bribery, followed by companies operating in the sector of transport and storage.

Public servants with the highest risk of bribery in doing business with the companies include health care institutions, police officers, customs officers and judges and prosecutors. The report further states that the most common purpose of paying bribes is “to accelerate business procedures” (29.1% of all bribes), “enable the completion of the procedures” (17.4%) and “ensure better treatment” (14.4%). At the same time, 8.6% of bribes are given without concrete immediate benefits for companies that paid them, assuming that these “sweeteners” in future interactions would encourage public servants to take actions in the interest of the company.

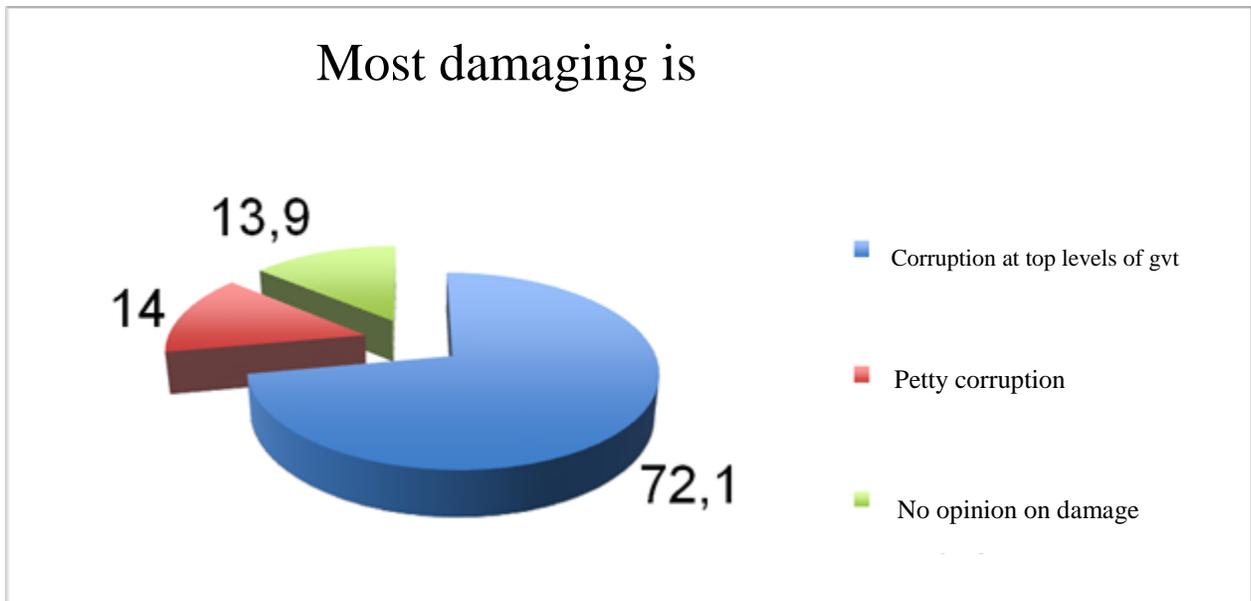
¹⁰⁴ http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/reform/fact-sheets/fact-sheet-01-overview_en.pdf

¹⁰⁵ http://ec.europa.eu/anti_fraud/documents/anti-fraud-policy/research-and-studies/pwc_olaf_study_en.pdf

In the past nine years, corruption has been continuously growing. The Citizens' Association *Tender* believes that the main reason for such growth is the lack of clear and precise legal provisions, and especially the irresponsible actions of the key competent institutions. They primarily point to the Public Procurement Agency that opened the door for non-transparency by failing to perform monitoring of the implemented procedures, and thus also to uncontrolled implementation of procedures, such as direct agreements, competitive requirements without notice, and negotiation procedures without publication. “Such secret procedures have made a black hole for legalised plunder of public funds and they reached the annual share of over 75% in the total structure of implemented public procurements”.¹⁰⁶ Furthermore, according to this Association, approximately 4 billion BAM is spent annually on the procurement of goods, services and works, of which more than billion ends up in private pockets of the most senior officials and leadership of political parties and elites from which they come. In their research for 2013, the Association *Tender* found that the open procedures, which are the only ones publicly advertised, were applied in only 24.86% of the cases, which is the worst result also on the global scale.

In the survey, citizens gave their views on the forms of corruption that leave the greatest consequences for the security sector. More than a third of respondents or 72.1% said that the systemic corruption, that is, corruption at higher levels of government, which is reflected in the trade in influence, preferential treatment or adjusting tenders, is actually the corruption that causes the greatest damage to the security sector. The invisible or corruption that is significantly more difficult to prove, in the opinion of citizens, causes much more harm than petty corruption at the lower levels of government, which is present in the process of issuance of personal documents, certificates, confirmations or evading the payment of fines. This answer was selected by 14% of respondents, while almost the same number of respondents (13.9%) did not have or did not want to express their attitude in this regard.

¹⁰⁶ <http://www.avaz.ba/clanak/139919/korupcija-ubija-bh-privredu>



5.7.1. Provisions of the BiH Public Procurement Act

Potentially high-risk and considerable setting for corruption is certainly found in the possibility of abuse in the implementation of the Public Procurement Act. One reason is that a significant portion of the budget is spent on public procurement, while the practice has seen deficiencies in application of appropriate measures and procedures related to the control of the employees of the public administration involved in these processes.

The first Public Procurement Act (PPA) was passed at the level of Bosnia and Herzegovina in 2004, with application across the entire country. It replaced regulations on public procurement at four levels of government, and regulated the system of public procurement in a uniform manner and in accordance with the EU Directives. After several amendments to the Act, a new Public Procurement Act was passed in 2014 (Official Gazette of BiH, No. 39/2014), effective as of 28 November 2014.

Some of the deficiencies following the practical application of the law and identified weaknesses of its legal framework are subject to the legal provisions of the new law. Some terms are now defined more clearly and without ambiguity; the framework agreement is now regulated to enable the conclusion of agreements with several suppliers; the conditions were

laid down for application of the negotiating procedure without publication of notice; a competitive dialogue, conditions and procedures are defined; special tools for sector contracting authorities are defined; and a special exemption for legal and natural monopolies given.

The latest Progress Report of the European Commission for Bosnia and Herzegovina in 2014 reads that in public procurement “Bosnia and Herzegovina has not taken measures to ensure competitive and transparent procedures or independent review prescribed in the acquis in the field of public-private partnerships. The same applies to concessions for services and works. Legal regulation of the system of concessions is still fragmented, while the administrative structure for the management of concessions lacks formal channels for cooperation. This leads to legal uncertainty, high administrative costs and the division of a single economic space”.

Also, the Progress Report highlights: “Overall, there was some progress in the field of public procurement, although very slow. It is necessary to implement the new Public Procurement Law and adopt by-laws, and it is still needed to harmonise legislation on concessions with the acquis. The work of authorities needs to be more transparent, internal affairs improved and to the capacity of contracting authorities strengthened across the country”.¹⁰⁷

Although some of the weaknesses of the former Law are now resolved in the new Public Procurement Act (from 2014), there are still some shortcomings. Civil society too has recognised the shortcomings of the new Public Procurement Law. Thus, the analysis of the Open Society Institute as a part of the EU project “Towards effective mechanisms of public procurement in the countries (potential) candidates for EU membership”, reads: “The new Public Procurement Law of Bosnia and Herzegovina was prepared in accordance with the basic principles and procedures of the public procurement system of the European Union (hereinafter referred to as the EU), and it can be said that it is largely in compliance with EU directives”.

¹⁰⁷http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

However, it is important to emphasise that the opportunity was missed to harmonise the BiH Public Procurement Act with the most recent EU Directives, such as the Directive of the EU Parliament and Council No. 2009/81/EC dated 13 May 2009, aligning the procurement procedures for certain contracts on works, supply contracts for goods and services contracts in the fields of defence and security, and amending the Council Directive 2004/17 /EC and 2004/18 /EC, Directive of the EU Parliament and Council No. 2014/25/EC on procurement of entities operating in the water, energy, transport and postal services which repeals the Directive 2004/17/EC, and Directive of the EU Parliament and Council No. 2014/24 /EU on public procurement which is repealed by Directive 2004/18/EC.¹⁰⁸

Anti-Corruption Network in BiH – Account - took the position that the new Public Procurement Act does not amount to progress made in combating corruption,¹⁰⁹ while members of the network of the Citizens' Association “Tender”, in their analysis of the Act, identified 16 deficiencies, especially “lack of obligations of contracting authorities to prepare annual procurement plans, which, in addition to the enumeration of required purchases, would also contain types of procedures, deadlines, procedures and the like”.¹¹⁰

5.7.2. Specificities of public procurement in the security sector

In the security sector, public procurement in the wider sense is understood as the procurement of various goods and services to carry out their tasks (furniture, vehicles, office supplies ...), and the procurement of weapons in the narrow sense. Further, there are also goods with dual purpose, meaning goods that can be used in both military and civil purposes (military medical vehicles, computer equipment ...). These goods do not fall within the narrow definition of procurement in the security sector. In application of the rules of defence and confidential procurement, the objective cannot be a malicious exclusion of public procurement from the spectrum of regulations. The fact is that this kind of procedure inevitably excludes

¹⁰⁸<http://balkantenderwatch.eu/btw-local/uploaded/BIH%20local/BLS/Update/Dopuna%20analiza%20institucionalnog%20i%20legislativnog%20okvira%20E2%80%93%20Bosna%20i%20Hercegovina.pdf>

¹⁰⁹<http://zurnal.ba/novost/18431/kecman-novi-zakon-nije-odrazio-intencije-koje-su-potrebne-da-bi-se-uspjesno-provodile-javne-nabavke-u-bih>

¹¹⁰<http://www.klix.ba/vijesti/bih/tender-identifikovao-16-nedostataka-u-zakonu-o-javnim-nabavkama-bih/141110138>

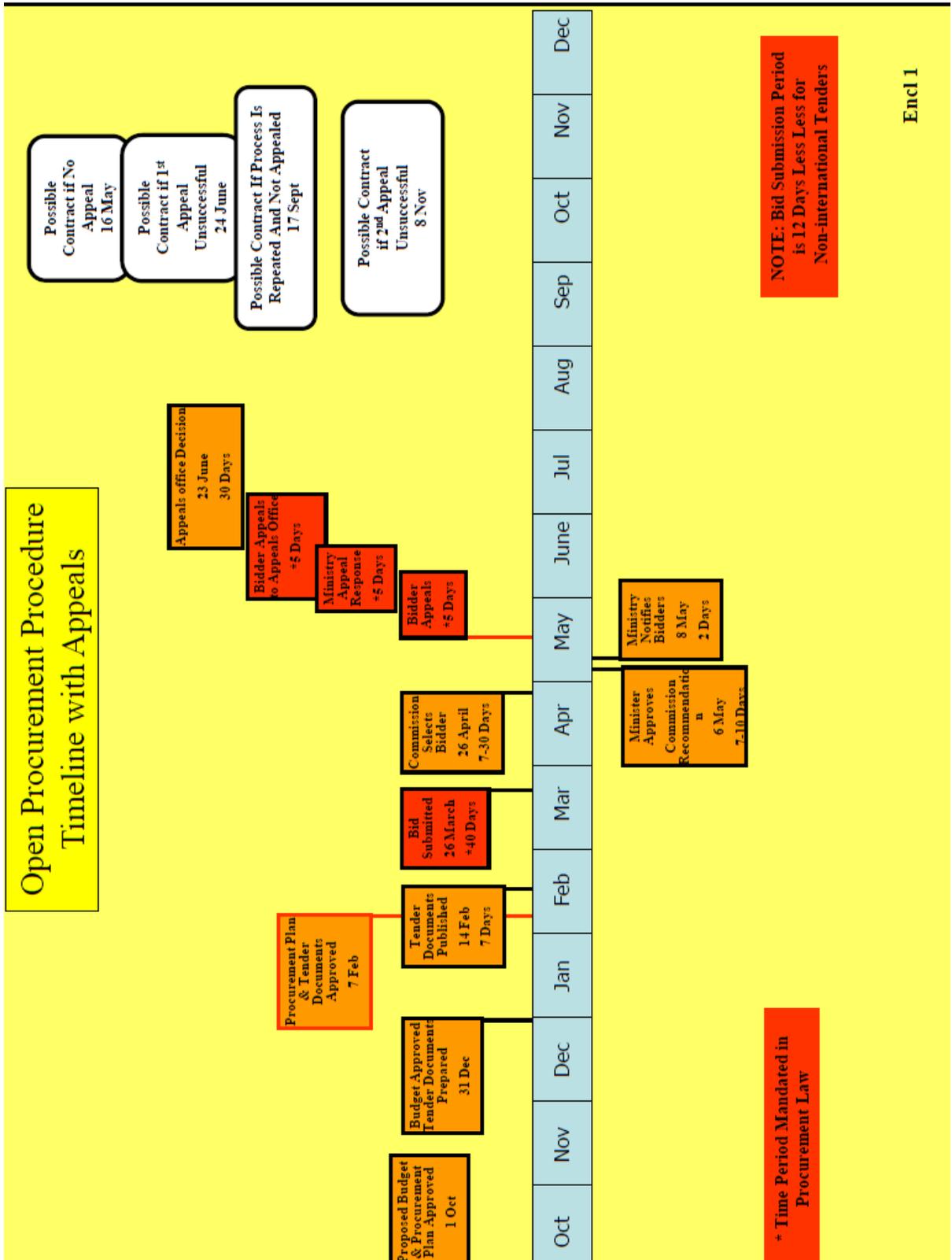
the public and thus fair competition. Therefore, equal opportunities of bidders can easily be “tricked”, thus awarding the contract to the preferred bidder.

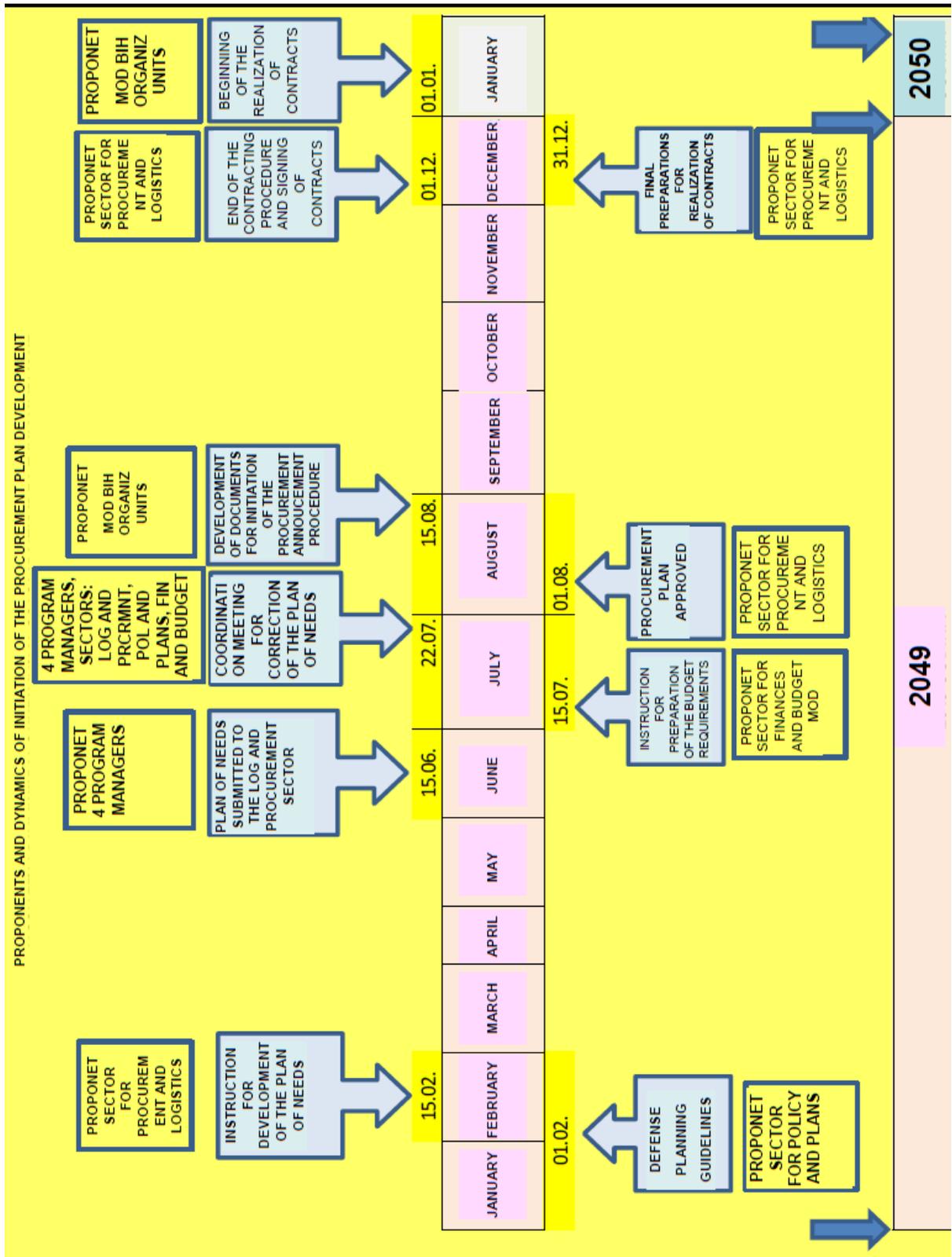
The specificity of public procurement in the security sector lies in the so-called confidential procurement or special procurement of confidential types of goods and/or services, not required in other sectors. Considering that 'national security' is often used as an excuse to avoid questioning security issues, and even beyond the legitimate need of confidentiality, public procurement in the security sector is especially vulnerable to corruption. Confidentiality in the field of security is very important, considering that the features of the equipment and weapons should not be available to potential adversaries, that is, members of criminal organisations.

However, that very same confidentiality can be used just to conceal corrupt acts due to the lack of transparency in the procurement process, and prevents the possibility of parliament, civil society and the public to seek accountability of the executive branch in ensuring that public funds are well-used. Even in highly developed democratic countries, the military can enjoy significant political influence, or at least possess the autonomy to implement its policies, including spending and public procurement. So the military can easily avoid the oversight by the parliament, audit institutions and organisation responsible for combating corruption.¹¹¹ Therefore, the procurement in the defence and security are the most exposed to debates in parliament, civil society and the public.

Below are the graphs that illustrate the entire process of public procurement in the security sector, including the identification of needs and planning of the budget, as well as appeal deadlines and procedures.

¹¹¹http://www.sipri.org/research/armaments/milex/publications/unpubl_milex/unpubl_milex_default/procurement





The possibility of corruption in public procurement in the security sector may appear already in the early stages, in the process of the identification of needs, but even more so in the stage of technical specifications. The objective of technical specification is to define the needs of contracting authorities which apply to them. Specifications define the subject of the procurement and provide relevant parameters to inform bidders. Here, it is necessary to provide for open competition, proof of equal value, as well as that the advertised tenders reflect the diversity of the market. The problem occurs because the results of a certain procedure are mainly affected by certain technical requirements. There may be a risk that a person who is involved in the preparation of technical specifications cannot be independent from manipulation of the bidders. In such a case, it might happen that the technical needs are favoured over a financial operator, that is, a specific bidder.

In Bosnia and Herzegovina, the Minister of Foreign Trade and Economic Relations of BiH, pursuant to Article 4 of the Law on Control of Foreign Trade of Goods and Services of Strategic Importance to the Security of Bosnia and Herzegovina (Official Gazette of BiH No. 103/09), publishes and updates the official translation of the *Common List of Military Equipment* and the *Dual-Use List*, and also adopts the List of Special Purpose Goods. Based on the problems identified in the practical application of this Law, its amendments are currently being prepared, related to the adoption of two laws that would separate these lists and facilitate the procedures for certain goods covered by the law in question.¹¹²

Article 8 of the Public Procurement Act, with the title of *Contracts Subject to Special Regime in Awarding Procedure*, clarifies and defines the type of procurement for contracts in the field of defence and security (paragraph 4) subject to the special regime. These contracts related to the purchase of the following:

- a) Military equipment, including any part, composition and/or assembly thereof;
- b) safety-sensitive equipment, including any part, composition and/or assembly thereof;
- c) Works, goods and services directly related to the equipment referred to in items a) and b) of this paragraph for any and all elements of its life;
- d) Works and services for specifically military purposes;

¹¹² Interview with the representative of the MoFTER BiH.

e) safety-sensitive works and safety-sensitive services.

Under the Act, the procedures, conditions, requirements, definitions of terms, exemptions and other important issues concerning the award of contracts in the field of defence and security for the purchase of the above-mentioned goods and works are regulated by a rulebook adopted by the Council of Ministers of BiH, on a proposal from the Public Procurement Agency.

Military equipment is defined as equipment specifically designed or adapted for military or police purposes and intended for use as weapons, ammunition, military and police supplies of dual or special purposes, which is defined in the aforementioned Common Military List.

Furthermore, the Public Procurement Act provided an exemption from the application of the provisions of the Act on public procurement contracts. Namely, these are contracts which, according to the laws of Bosnia and Herzegovina, were declared a state secret, as well as contracts the execution of which requires special security measures, in accordance with the laws of Bosnia and Herzegovina (regulated under Article 10 of the PPA). These special measures are in place if the application of the rules would mandate contracting authorities (all legal entities applying the Act) to disclose information which are labelled as 'top secret' and 'secret' in line with the data protection legislation.

In discussions with representatives of the institutions of the security sector, as well as during the training of officials who are involved in the public procurement process, it was found that there are common problems with objections of companies of suppliers that are consistently rejected in tenders and do not even meet the criteria.¹¹³ This problem is caused by insufficient knowledge of procedures among employees who work in public procurement, who should explicitly explain to bidders the reasons why some companies do not meet the criteria for procurement.

Additionally, a particular concern is also evident in the fact that there are some legal institutes which are not sufficiently precise or are not properly set. The term "Public Procurement

¹¹³ Interviews with representatives of the security sector, May 2015

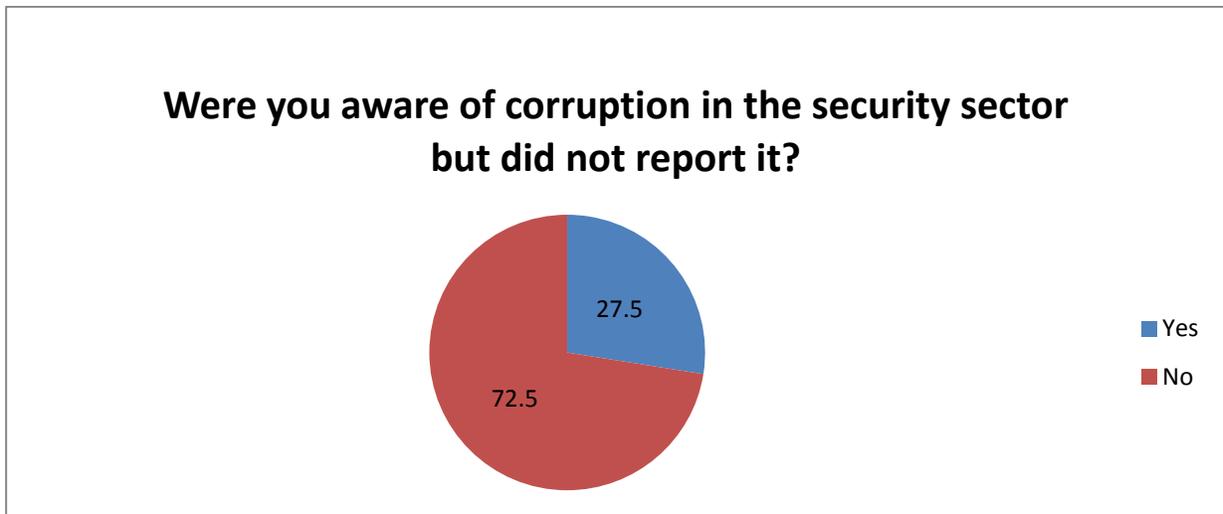
Officer” is not clearly defined, the legislation does not specify exactly which tasks the person should perform or the line of responsibility. In addition, the term “negotiated procedure” can be associated with corruption, as does the failure to post decisions of the Appeals Office on the web.

Furthermore, in individual discussions and during training within the project, representatives of the security sector pointed out that there are technical deficiencies whereby the Act is too explicit, and that may be the cause for a high quality company not to be awarded contract. It is often the case that high quality bidders are rejected only due to technical deficiencies of their bid (for example, no stamp over their signature, page numbering not done according to the instructions, etc.).

6. Perceptions and attitudes of citizens on corruption in the security sector

In addition to the attitudes of citizens set out in the previous sections of the study, this chapter provides answers to some other issues for which it is very important to present the opinions and choices of respondents.

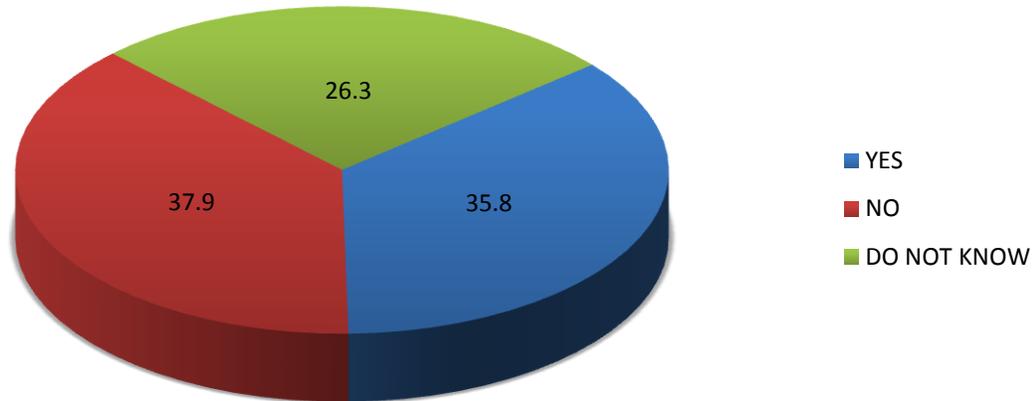
It is important to bear in mind that the employees of the security sector, just as citizens, are not always likely to report corruption provided that it is known to them. Accordingly, 27.5% of respondents said they were aware of corruption in the security sector, but did not want to report it.



More specifically, there are 22.7% of respondents in the RS who were aware of corruption in the security sector but did not report it, while this percentage in the FBiH is slightly higher, 31.2%.

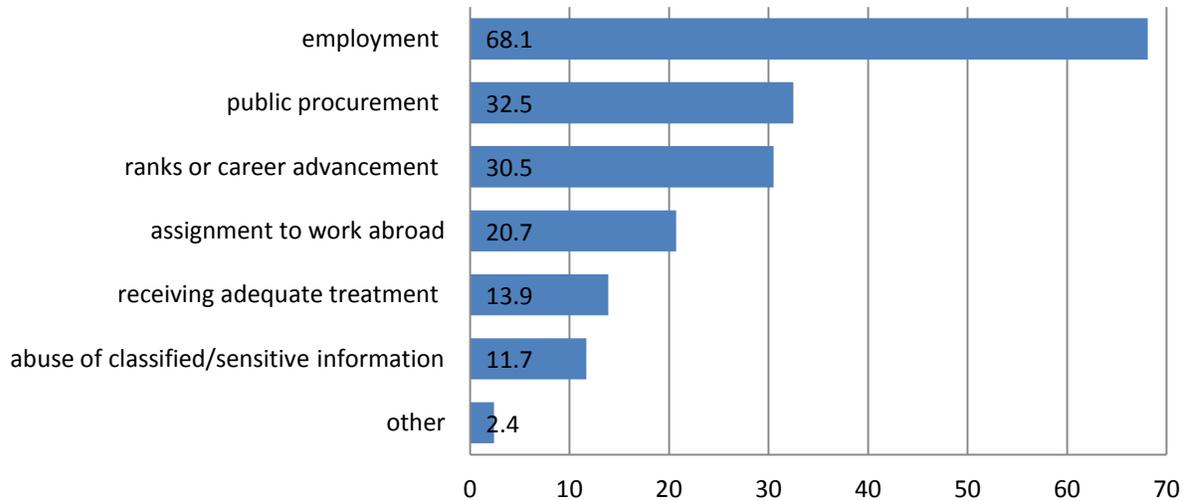
Furthermore, 35.8% of respondents would report corruption if they had knowledge about, while 37.9% of them would not report it.

In case you would learn about corruption, would you report it?

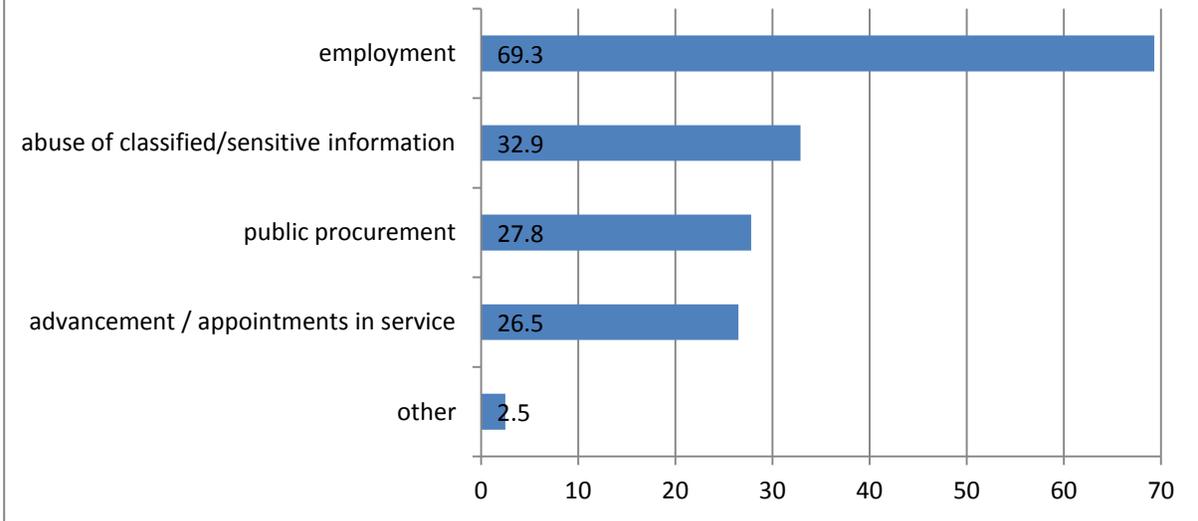


In terms of types of business activities most frequently affected by corruption, public procurement in the defence sector is immediately after recruitment; in the intelligence sector after recruitment and abuse of secret/sensitive information; and ranked fourth in the justice sector and the customs and border control sector.

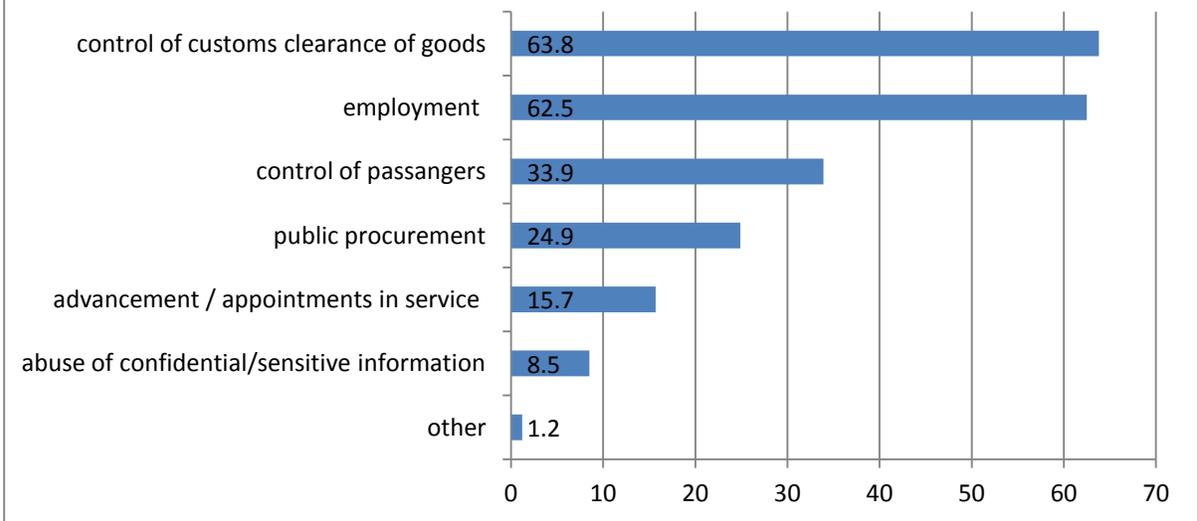
In your opinion, corruption occurs most often in the defence sector in cases of...

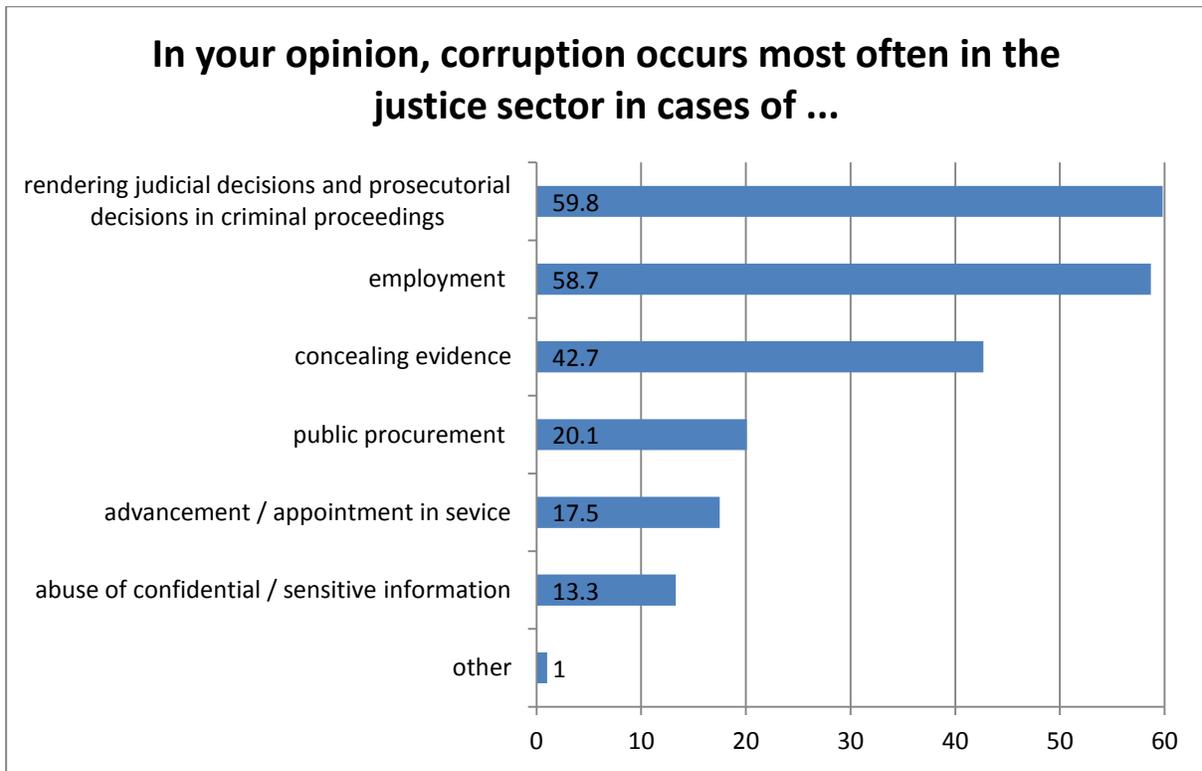


In your opinion, corruption occurs most often in the intelligence sector in cases of...

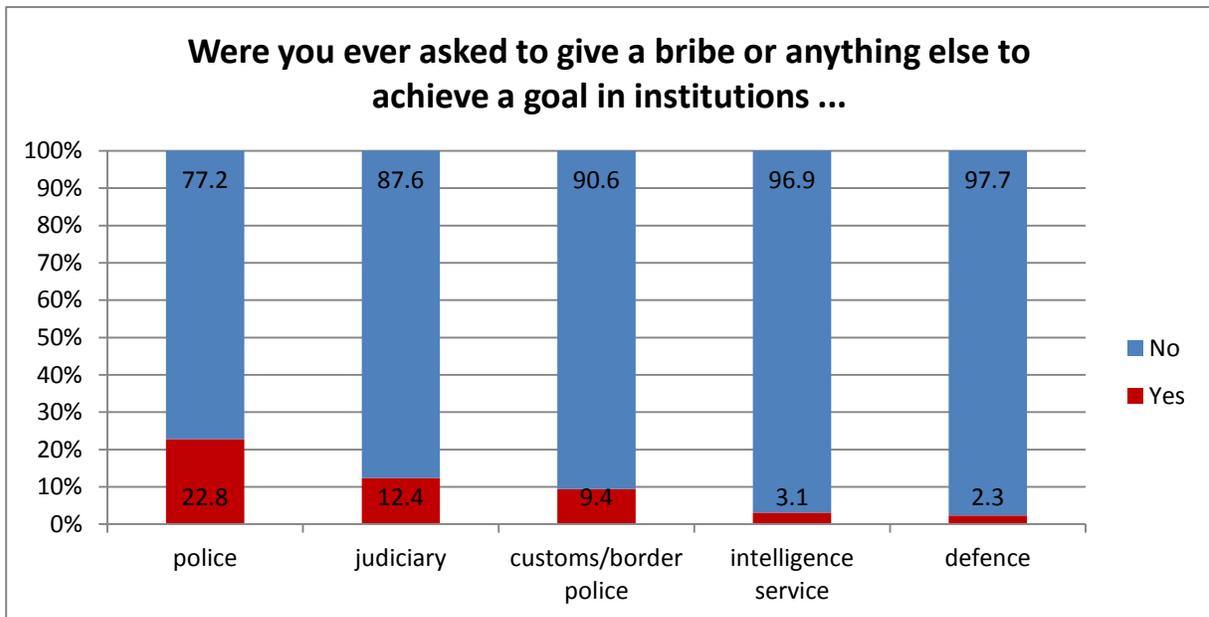


In your opinion, corruption occurs most often in customs and border police in cases of...

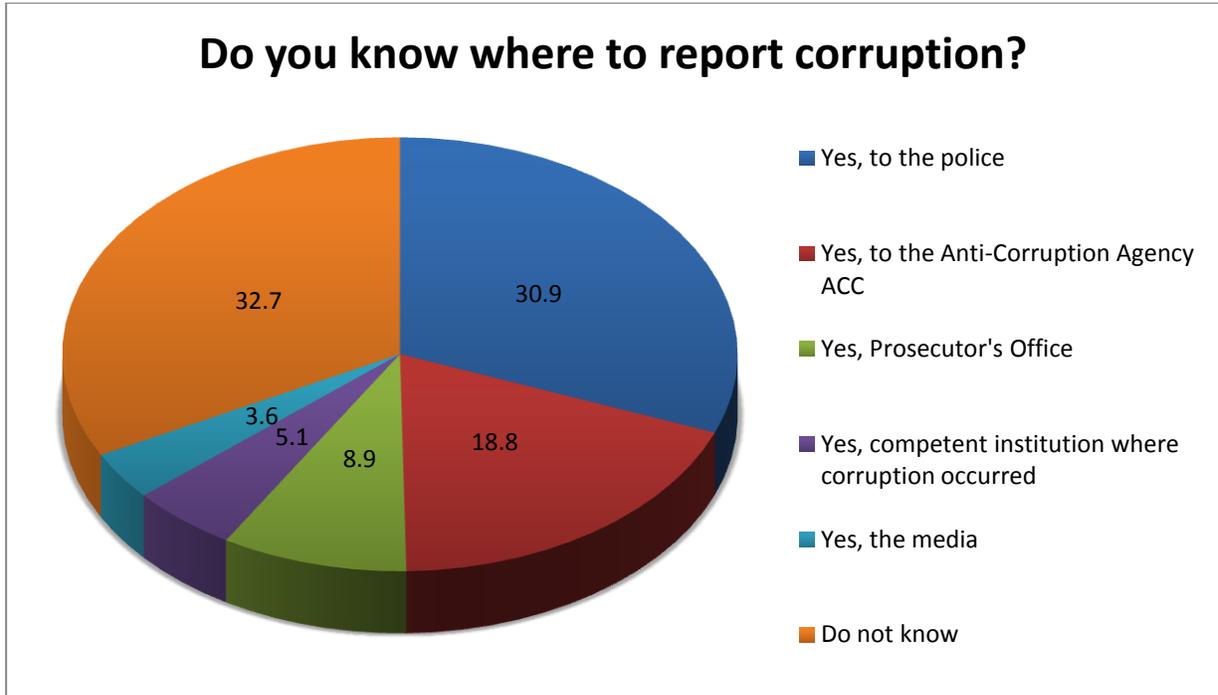




The opinions of citizens are also interesting as regards the representatives of the security sector who asked them for a bribe in contacts with them or while they were trying to exercise a right.

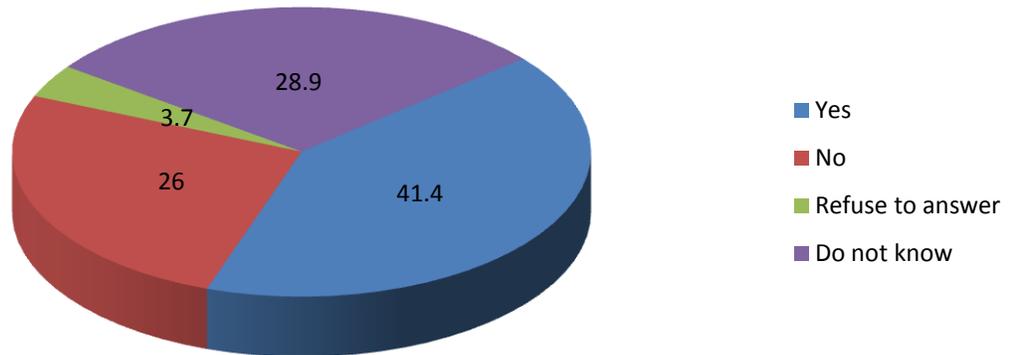


As for institutions that citizens would turn to in case of knowledge or information about corruption, the survey findings show that most of the respondents (32.7%) do not know where to report corruption. In addition, one-third (30.9%) would report corruption to the police, 18.8% of respondents to the Anti-Corruption Agency, and 8.9 to the prosecutor's office.



The citizens' opinion is quite interesting in that combating corruption would improve if bribery would not be sanctioned, while refusing bribery would remain a criminal offence. This alternative was selected by 41.4%, while 26% of respondents believe that this approach would not improve the criminal legal framework to fight corruption. Certainly, citizens' choice in favour of changes indicates that it would be useful to conduct a professional debate on a possible proposal of decriminalising bribery in criminal proceedings.

Do you think that the fight against corruption would improve if only bribery was a criminal offence, while giving bribery would not be sanctioned?



CONCLUSIONS AND RECOMMENDATIONS

The tasks and duties of the security sector institutions should, in principle, be less susceptible to corrupt practices. The principle of secrecy of operations and the natural non-publicness of the sector, which is nominally based on a clear hierarchy and strict discipline, indicate a certain barrier that protects managers and employees in the security sector but also prevents corruptive behaviour. If we add to this internal and external control mechanisms which, at least hypothetically, create an assumption that perpetrators of corruption offences would be detected faster and punished more severely, it would be reasonable to expect that the employees in the security sector do not choose to engage in the abuse of office or embezzlement in their workplaces.

The analysis of the present criminal legislation and institutional capacities reveal reasonable assumptions for fighting corruption in Bosnia and Herzegovina. Nevertheless, with everything in mind, a legitimate question is whether those mechanisms are sufficiently built and developed for the security sector to be fully protected against corruption. Since there are no credible indicators, it is a great challenge to answer a rhetoric question: “Is there really corruption in the security sector?” The inability to detect or assess the damage resulting from corruption is a methodological problem facing all researchers and authors. Despite some attempts to present either direct or indirect damage of corruption in BiH, those efforts remain at the level of populism, and only delineates contours of the general presence of corruption in our society.

It is clear that the forms of manifestation of corruption differ within various security sector institutions. Thereby, exposure of institutions to corruption is different. It can be said with a certain level of certainty that corruption occurs on individual and systemic levels. But it is quite thankless to give any assessment of the true measurable proportions of corruption, particularly in the security sector. Using a limited number of available sources, we tried to build a picture of corruption in the security sector, the forms of manifestation and risks of

corruption, including the impact of corruption on the security sector and the society as a whole.

We have seen that corruption in the security sector is not an isolated phenomenon which would be specific for this sector only. Instead, it fully reflects the situation in the whole society. Corruption penetrates the security sector as much as it is present in the civilian segments of the society or the rest of public administration. Of course, corrupt practices are adjusted to specific characteristics and the demand and supply system shaped by the specific services provided by the security sector.

What certainly can be measured in both the security sector and other public sectors like education or health are good and measurable results in detecting, investigating and prosecuting corruption offences. By using these methods, it is possible to arrive at measurable data on the proportions and levels of corruption in the security sector. Comparison of indicators and impacts during certain intervals will offer reliable data on how much corruption is deep rooted in the security sector. It is undeniable that the state with the rule of law and developed and effective mechanisms of controlling spending may largely suppress the risk of corruption in the security sector.

While analysing the above characteristics of corruption in the security sector in the context of Bosnia and Herzegovina, we tried to present the biggest challenges and risks of corruption facing this sector. One of the challenges which must not be ignored refers to the overall environment surrounding the post-conflict period of transition in BiH. Perhaps, this is why the most important achievement is that corruption is recognized as one of the biggest security challenges and threats in view of the interests of the state and its citizens. This is indicated by the attempts by government institutions to find a response to this negative social phenomenon through a series of anti-corruption strategies, policies and action plans. In practical terms, independent analyses which rank BiH low on the corruption index and the perceptions of citizens of corruption in our society shed a completely different light on proclaimed goals and genuine intentions of government institution.

If we analyse the anti-corruption criminal legislation, we can say that the legislative framework is rather good. Most of legal provisions are harmonized with international standards and commitments taken under various international instruments. The Anti-Corruption Strategy and Action Plan for the period 2009-2014 served as a good basis for analysis and development of a new national strategy. It is expected that the Anti-Corruption Strategy and its Action Plan (2015-2019) will achieve better results i.e. ensure consistent implementation of defined measures. The security sector institutions are particularly expected to take preventive and law enforcement actions within their powers in order to increase citizen trust and confidence by concrete achievements resulting from the genuine intentions and commitment of government institutions to fight crime.

The most important actors of an effective fight against corruption in the security sector are civilians who manage those institutions. Knowing that managers are appointed to their important offices solely on the basis of their political affiliation or correctness, the existence of political will on the part of the parties in government to uproot corruption from the security sector is directly correlated with these appointments. Although some progress is already noticeable, when we consider this issue through the prism of the present criminal legislation and anti-corruption strategies, the absence of credible indicators on implementation indicates that they only paid lip service to fighting corruption. Delays in the formation and creation of the conditions necessary for the full functioning of the Agency for the Prevention of Corruption and the Fight against Corruption are perhaps the best illustration.

Regarding institutional capacities, we can also say that progress has been made in creating conditions for prevention of corruption. Almost all institutions formed their internal mechanisms which provide a good framework for controlling legality of performance and professional behaviour of employees in the security sector. Nevertheless, there are some vague things in practice which require more attention. Some of them concern the issue of the real independence and objectivity of the work of managers of internal control units who are appointed by their immediate supervisors to whom they report directly. Internal audits, which focus on the form more than on substance, should be improved in the future. On the other hand, external control mechanisms established by executive and legislative branches, despite

positive steps made thus far, indicate that it is necessary to achieve higher standards in this extremely important type of oversight and control.

The problems in the building and promotion of the rule of law place a rather heavy burden also on the justice sector. This is why it does not yield expected results in fighting corruption, or other problems, like organized crime or in prosecuting war crimes. Fight against corruption – disregarding gradation of severity of the crime or offences – can be considered also as collateral damage of unregulated or insufficiently reformed justice sector in Bosnia and Herzegovina. Shifting responsibility among law enforcement institutions and prosecution services is still a very much present phenomenon in comparison to modest results in fighting corruption. The Prosecutor's Office of BiH mentions in its 2014 report poor reports of the police agencies as one of the main problems in dealing with the pending 1,114 cases. Similar observations exist in the quality assessment of prosecutors, which can be heard from the representatives of the police structures and judges.

Improvement of institutional relations and cooperation between prosecutors and law enforcement agencies is certainly the issue which should be given more attention as soon as possible. This is why the EU and US initiatives to launch programmes of support and training in order to help establish as good relations as possible are especially important. In parallel to their support, it is necessary to form an adequate system of monitoring the process of achieving concrete results in fighting corruption. The present system of keeping records in the justice sector is not satisfactory as it does not provide clear and measurable indicators for monitoring the corruption cases. Case monitoring and analysis of work on corruption cases will be used as a basis for a valid assessment of performance of judicial institutions in prosecution and trials of such crimes. A similar register should be created by the security sector institutions in order to obtain a closer insight into the situation in their institutions and establish an exact number of their employees involved in corruption offences.

Independent bodies or institutions at all levels of government, which were formed for the purpose of better oversight and control of government institutions, must increase their importance in the public eye and improve their credibility. Despite their long existence and a good position which they have built through devoted and systematic activities, such

institutions as the BiH Ombudsmen, BiH Public Procurement Agency and Audit Offices at the state and entity levels still lack the necessary support from other institutions. In view of huge importance of those independent institutions in the fight against corruption, the practice of taking action by the relevant institutions in response to the reports of these independent bodies must finally take root. From the citizen perspective, it is unacceptable that some institutions in the security sector have been receiving negative or qualified opinions in continuity over the past years, while there have been no consequences for those responsible for their management and leadership.

These procedures and practices clearly have impact on the functioning and effectiveness of the security sector in fighting corruption. The security institutions cannot have any influence on elimination of the systemic weaknesses or improvement of the genuine commitment of the highest political officials in Bosnia and Herzegovina. The general lethargy in the society, with extremely unfavourable political and socio-economic environment, and severely disrupted social value system and moral norms do not support expectations that the security sector will be successful in fighting corruption. The rules and mature thinking on the part of citizens of Bosnia and Herzegovina can be an encouragement for senior office holders in the security sector. The vast majority of respondents have clearly said that corruption and corrupt behaviour are unacceptable to their moral convictions. This is why their legitimate expectation, at least from the managers in the security sector, is that they do much more to detect, investigate and prosecute those responsible for corruption offences. This would clearly result in increased citizen confidence in the security institutions. Citizens have demonstrated their will to provide support to the institutions in fighting corruption.

The assessment of the situation in the security sector, in our opinion, laid bare the areas in which it would be necessary to improve the existing measures and procedures in order to reduce the corruption risks. We have chosen those measures, while bearing in mind the specificities of the security sector compared to other social sectors. We have taken into consideration its specific features related to its tasks and duties and also realistic possibilities in the current political and social environment. Being aware of the possible criticism that the fight against corruption in the security sector must be promoting far more widely zero

tolerance of corruption, our choice of this approach is based on the realistic possibilities and assumptions.

The first area or priority in the future work of the security sector institutions concerns building capacities for fighting corruption through the adoption of integrity plans by each security institution. The security sector is considerably specific in comparison to other sectors, knowing its tasks and duties oriented to the protection of the constitutional order and territorial sovereignty and integrity of the state. The performance of these duties often implies taking clandestine actions or exercising discretionary rights. The powers of the security institutions sometimes directly imply restrictions on some of the basic rights of citizens, when both preventive and law enforcement measures are taken, while the state has monopoly over legitimate use of force. Strengthening their integrity is aimed at removing and preventing occurrence and development of corruption through integrity plans. Integrity plans represent a modern prevention method for the purpose of establishing a legal and ethical quality of performance of the security institutions. Of course, the plans will be purposeful also in other public administration institutions. We have already said that some institutions in the security sector have already made their integrity plans and action plans. Their consistent implementation should result in the creation of a system in the institutions which will be corruption resistant. The Anti-Corruption Agency has developed a methodology and instructions for the development of integrity plans, which are a very important source of information and provide guidance to all security institutions. It is important to mention that the development of integrity plans is one of the requirements for all institutions, set in both the previous and current Anti-Corruption Strategy and Action Plan. The structure of an integrity plan refers to the management of an institution, ethics and personal integrity and cooperation and interaction between representatives of the security sector and other institutions and citizens. The institutional system built in this way will clearly indicate the powers and duties of the security institutions which can pose corruption risks. The emphasis and an increased focus on identified areas may ensure that the corruption risks will be reduced to the lowest level possible. The recent approval of new national Strategy and Action Plan for the 2015 to 2019 period provides a good timing for the launch of a process of developing integrity plans in all security institutions which have not done it before.

The next area that we believe should be improved within the security sector is the recruitment process and promotions of employees in the security sector. The public administration reform process in Bosnia and Herzegovina has been systematically implemented for more than a decade, although it has not yielded yet any satisfactory results. This conclusion is contained in numerous reports of both international and domestic organizations. Also citizens indicate similar problems in their responses. Most respondents think the recruitment process and promotions are the main source of corruption in the security sector. The specific features of some segments of the security sector, like the intelligence service and the selection of candidates for judicial and prosecutorial positions which is done beyond some legal provisions governing recruitment in public administration, make these procedures even more complicated. The degree of secrecy and broad discretionary rights of managers in the security sector in the selection process and formation of the selection and recruitment panels, compared to other sectors, create room for suspicion over corrupt practices. Similar discretionary rights, which are in some cases defined by internal rules, give the managers the possibility of having direct influence also on promotions. This possibility provokes strong jealousy among their subordinates over the behaviour and decisions of their supervisors. Internal obstacles preventing detection or at least warning of corrupt practices are very strong. A significant number of complaints filed with the Ombudsmen by some applicants who applied for jobs in the security sector, and the majority of complaints filed by the employees in the security sector pointing at some irregularities in promotions, leave the impression about a big risk of corruption in those procedures. Also, the closed security system develops its specific culture in which there is the unwritten rule that no mistakes or inappropriate actions should be reported. This is particularly true of the scandals which could leak to the public and which would mar the reputation of an institution concerned, sometimes irrespective of the severity of consequences of corruption. The risks identified in the selection and recruitment and promotions procedures characterize the whole security sector and certainly require better solutions than the existing ones.

Good assumptions, in terms of time, have been created for a third area that we believe should also be improved. Here, we mean primarily the passage of the amendments to the BiH Public Procurement Act which include changes relevant for the security sector institutions. Although some non-governmental organizations have warned of the weaknesses of the new changes of

the public procurement system, we believe that they are still an improvement of the current public procurement system. The changes should be implemented by the institutions before we will be able to judge credibly the quality of the public procurement system, and in particular by the institutions to which special legal provisions regarding confidential procurement apply. Not only is the public procurement system a challenge for Bosnia and Herzegovina and its security system, but is also a general problem facing all the countries, and developing countries in particular. The proportions of corruption are naturally defined also by the amount of money available to the security institutions for public procurement. This is precisely where we have identified an advantage of the security system in Bosnia and Herzegovina which does not have large amounts of money available for public procurement purposes. Having said this, we do not want to discuss the value or significance of the amounts of money currently spent in the security sector for public procurement, particularly in view of the current socio-economic conditions. Still, limited budgets of the security institutions, which are comparatively negligible compared to some more developed countries from the region and beyond, create a good basis for establishing as best public procurement system as possible. An average of 10% of the overall budgets of the security institutions in BiH is allocated for public procurement purposes. Improvement of the public procurement system in a way in which financial consequences would be far smaller seems to be a logical solution. It would be better to begin to improve this system as soon as possible instead of doing that when it will be necessary to allocate far larger amounts of money for modernization of equipment which is already in a very poor condition.

In the end, we can say that there are no institutions in the security sector which are facing the same problems regarding integrity and corruption. This is why there is a legitimate need to develop a better understanding of the current situation in the security sector and to map the risks of corruption. This is the only way to find the most adequate mechanisms for addressing identified weaknesses in the functioning and integrity of institutions and also for changing the positions and behaviour of employees. Results can realistically be expected from the comprehensive and well-structured assessments in which many stakeholders were consulted. These results should lead to progress in fighting corruption.

A lesson learned in Bosnia and Herzegovina, in the opinion of EU officials, is that political commitment and ownership of the reform process are a necessary condition for success. We hope that this principle of domestic ownership and political commitment of government will apply also to the implementation of measures from the new national Anti-Corruption Strategy and Action Plan to implement the Strategy.

At the same time, we hope that this study will make a modest contribution to the implementation of the common goal to reduce the level of corruption in our society. We have repeatedly emphasized how important the security sector is in calculating the corruption index in a society and also in assessing citizen perception of and confidence in government institutions. If some of the recommendations from this study are implemented, it would certainly reduce the risk and consequences of corruption in the security sector. Still, the practical utility of this study will be seen only after the security institutions have begun to define priorities and identify realistic practical measures to reduce the corruption risks.

APPENDICES

Appendix No.1 - Socio-demographic profile of the respondents and the results of the questionnaire

GENDER		AGE			ETHNICITY				EDUCATION				STATUS			
MALE	FEMALE	18-30	31-59	60+	BOSNIAK	SERB	CROAT	OTHERS	NONE	PRIMARY SCHOOL	SECONDARY	HIGHER ED / UNIVERSITY	EMPLOYED	UNEMPLOYED	STUDENT	RETIREE
54,7%	45,3%	41,1%	42,5%	16,3%	47,3%	30,9%	17,5%	4,2%	3,4%	9,3%	55,1%	32,2%	37,6%	33,4%	18%	11%

Research Area	Percentage
Federation BiH Entity	60,3%
Republika Srpska Entity	37,5%
Brcko District of BiH	2,2%

Canton / Region	Percentage	Canton/Region	Percentage	Canton / Region	Percentage
Una-Sana Canton	6,9%	ZHK	2,3%	Pale	6,3%
Posavina Canton	1,2%	KS	10,5%	Trebinje	3,4%
Tuzla Canton	12,3%	K 10	2,2%	BrckoDistrict BiH	2,2%
Zenica-Doboj Canton	10,9%	Banja Luka	13,5%		
Bosnian Podrinje Canton	0,7%	Doboj	8,5%		
Central Bosnian Canton	7,3%	Bijeljina	5,9%		

Q1. How would you rate your personal feeling of security in the place of your residence?

17,0%	Very safe	Unsafe	20,0%
52,5%	Safe	Very unsafe	10,5%
5,1%	I do not know		

Q2. Do you follow developments in the security sector?

13,4%	Yes, on a daily basis	No, I am not interested	23,9%
52,1%	Yes, occasionally	I do not want to answer	10,6%

Q3. Do you know someone who has achieved a goal by corruption?

46,5%	Yes (If yes, go to Q3a)	No	53,5%
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Q3a. In which of the following areas has the act of corruption been made?

4,5%	In the area of defense (Army and Ministry of Defence)	Customs / Border Police	10,9%
42,8%	Police sector	Judiciary sector	14,0%
0,3%	Intelligence sector	None of the above	27,5%

Q4. Have you ever been asked to give a bribe or something else to accomplish a goal?

36,2%	Yes (If yes got to Q4a)	No	63,8%
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CORRUPTION RISK ASSESSMENT IN THE SECURITY SECTOR OF BOSNIA AND HERZEGOVINA

Q4.a In which of these areas?

2,5%	Defense (Army and Ministry of Defence)	Customs / Border Police	5,3%
33,2%	Police	Intelligence	10,0%
0,7%	Intelligence	None of the above	48,4%

Q5. In your opinion, how much is the following acceptable, if it is performed by officers / employees of security institutions	Acceptable	Relatively acceptable	Not acceptable	I don't know
Accepting an invitation to a free lunch / dinner in order to solve a personal problem	13,2%	20,5%	55,3%	11,0%
Acceptance of money / gifts to resolve personal problems	4,7%	10,5%	73,6%	11,2%
Acceptance of doing a favor to solve personal problems	7,3%	16,7%	64,6%	11,4%

Q6. Do you think that security institutions are doing enough on the issues of the fight against corruption?

23,5%	Yes	No	76,5%
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Q7. In which of the following areas do you have the highest level of confidence in the fight against corruption?	No confidence		A lot of confidence		
Defence (Army and Ministry of Defence)	13,5%	19,5%	29,6%	23,3%	14,1%
Police	28,1%	19,8%	23,2%	15,9%	13,1%
Intelligence	17,1%	23,0%	30,0%	21,3%	8,7%
Customs / Border Police	20,7%	26,0%	25,7%	17,7%	10,0%
Judiciary	32,5%	18,7%	20,6%	15,0%	13,2%

Q8. In your opinion, which of the following institutions works most effectively on issues of the fight against corruption?	Highly ineffective			Highly effective	
Defence (Army and Ministry of Defence)	14,4%	19,7%	30,5%	23,3%	12,1%
Police	26,3%	20,8%	23,7%	17,6%	11,7%
Intelligence	16,3%	25,5%	31,7%	19,2%	7,2%
Customs / Border Police	20,9%	27,2%	26,1%	18,5%	7,3%
Judiciary	32,5%	21,5%	20,5%	14,9%	10,6%

Q9. Can you rank the level of corruption in the following areas	Very big problem			Very little problem	
Defence (Army and Ministry of Defence)	14,9%	21,2%	28,3%	22,1%	13,5%
Police	30,5%	24,0%	24,9%	15,7%	4,9%
Intelligence	17,5%	24,8%	35,1%	16,8%	5,9%
Customs / Border Police	26,1%	31,1%	23,3%	13,2%	6,3%
Judiciary	39,7%	22,5%	20,2%	10,3%	7,3%

Q10. Have you ever known about corruption in the mentioned areas and have not reported it?

27,5%	Yes	No	72,5%
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Q11. Compared with the period of four years ago, do you think that the general level of corruption has increased, stayed the same or decreased in the following areas	Level of corruption has increased	The level of corruption has remained the same	The level of corruption has decreased
Defence (Army and Ministry of Defence)	17,9%	66,1%	16,7%
Police	35,1%	56,2%	8,7%

CORRUPTION RISK ASSESSMENT IN THE SECURITY SECTOR OF BOSNIA AND HERZEGOVINA

Intelligence	23,3%	66,9%	9,8%
Customs / Border Police	34,6%	56,1%	9,3%
Judiciary	43,3%	47,5%	9,1%

Q12.. Do you have confidence in the authorities and their intention to successfully fight corruption?

13,3%	Yes	No	74,1%
12,6%	I don't know		

Q13. Have you ever had direct contact with the following institutions of the security sector?

	Yes	No
Defence (Army and Ministry of Defence)	14,9%	85,1%
Police	46,7%	53,3%
Intelligence	5,3%	94,8%
Customs / Border Police	30,3%	69,7%
Judiciary	27,7%	72,3%

Q14. If you had the opportunity to take part in an act of corruption in the security sector would you be willing to do so?

21,5%	Yes(Go to the filter question 14a)	No (Go to the filter question 14b)	78,5%
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Q14a. What are the reasons for your willingness to participate in corruption?

60,4%	There is no other way to finish things / business	I'd give because people working in the security sector expect / demand it	10,8%
2,2%	I'd give a gift / money in token of gratitude	It is the fastest / most efficient way to complete tasks	18,9%
3,4%	A gift is a sign of respect / tradition	None of the above	2,5%
1,9%	I don't know		

Q14b. What are your reasons for not participating in corruption? (For those who stated that they would not be willing to take part in an act of corruption)

21,9%	I should not be a part of corruption	It is a moral issue / I could not sleep / I am honest	32,0%
9,7%	I could go to jail / it is an offense	The employer is obliged to do his/her job	5,8%
8,0%	I agreed to do my job for the salary	I have no money	4,5%
		I don't know	18,1%

Q15. In your opinion, what are the motives for engaging in corruption in the security sector?

38,7%	There is no other way to finish things / business	To avoid higher administrative payments	7,4%
10,4%	To avoid penalties/ sanctions	Getting adequate treatment (services)	5,3%
15,9%	To obtain alternative sources of income	Obtaining preferential treatment-benefits	6,7%
		I don't know	15,6%

Q16. In your opinion, which is the biggest consequence of corruption in the security sector? (Multiple responses are allowed), Percentage of respondents who answered - Yes

47,1%	The abuse of public finances	Impairment of the integrity and capacity of institutions	29,0%
15,2%	Inability to exercise institutional policies	Undermining public confidence in the security institutions	30,3%

Q17. If you gave a bribe, have you accomplished a benefit?

10,6%	Yes	No	38,3%
8,5%	Partially, less then expected	I don't want to answer	42,7%

Q18. Within the defense sector, in your opinion, corruption occurs most often during: (Multiple responses are allowed), Percentage of respondents who answered - Yes

68,1%	Employment	Public procurement (tenders for the purchase of equipment, food, service ...)	32,5%
30,5%	Ranking and promotion in the service	Getting adequate treatment (services)	13,%
11,7%	The misuse of secret / sensitive information	None of the above	2,4%
20,7%	Reference to work abroad (peacekeeping missions, military attaches and other staff)	I don't know	18,9%

Q19. Within the police sector, in your opinion, corruption occurs most often in dealings with: (Multiple responses are allowed), Percentage of respondents who answered - Yes

33,1%	Police for public order	Administration (when issuing travel documents and other documents)	30,5%
62,7%	Traffic police	Contacts with the prison service	6,4%
24,1%	Criminal investigators	The misuse of secret / sensitive information	5,7%
19,5%	Managers	Promotions in the service	13,4%
39,9%	The persons in charge of recruitment	I don't know	8,6%

Q20. Within the intelligence sector, in your opinion, corruption occurs most often during: (Multiple responses are allowed), Percentage of respondents who answered - Yes

69,3%	Employment	Public procurement	27,8%
26,5%	Promotions / appointments in the service	The misuse of secret / sensitive information	32,9%
2,5%	None of the above	I don't know	14,3%

Q21. Within the customs and border control sector, in your opinion, corruption occurs the most often in dealings with: (Multiple responses are allowed), Percentage of respondents who answered - Yes

62,5%	Employment	Public procurement	24,9%
15,7%	Promotions / appointments in the service	The misuse of secret / sensitive information	8,5%
33,9%	Passenger controls	Custom controls of goods	63,8%
1,2%	None of the above	I don't know	7,9%

Q22. Within the justice sector, in your opinion, corruption occurs the most often in: (Multiple responses are allowed), Percentage of respondents who answered - Yes

58,7%	Employment	Public procurement	20,1%
17,5%	Promotions / appointments in the service	The misuse of secret / sensitive information	13,3%
59,8%	Making judicial and prosecutorial decisions in criminal proceedings	Concealing evidence	42,7%
1,0%	None of the above	I don't know	8,6%

Q23. In your opinion, are the employees in the security sector aware of the damaging effects of corruption?

35,8%	Yes	No	28,4%
20,2%	Partially	I don't know	15,6%

Q24. If an employee of the security sector institutions, sought or received bribes, in your opinion he/she did that for the reason of:

16,1%	Low salary for their work	Poor general standards of evaluation of his/her work	3,9%
3,9%	Because he/she is demoralized due the inability of promotion in the service	Because he/she wants to feel important	2,3%
51,3%	Because the system allows that and won't have consequences	I don't know	12,3%
10,1%	Criminal affiliations		

Q25. If you had knowledge about the acts of corruption, would you report it?

35,8%	Yes	No	37,9%
26,3%	I don't know		

Q26. Do you know where to report corruption?

	Yes, to the police.	30,9%
	Yes, to the competent institution of the security sector where corruption took place	5,1%
	Yes, to the anti-corruption agency	18,8%
	Yes, it should be reported to the prosecution	8,9%
	Yes, to the media.	3,6%
	I don't know	32,7%

Q27. In the last four years, have you been a witness to:

	Yes	No
Someone who paid/bribed for releasing of payment for traffic penalties	46,7%	34,2%
Someone who paid/bribed to win the tender	14,7%	66,1%
Someone who paid/bribed to get a promotion at work	25,6%	55,3%
Someone who paid/bribed in order to get a job	45,7%	31,1%
Someone who paid/bribed to stop criminal proceedings	17,5%	63,3%
I don't know	19,1%	

Q28. Have someone asked from you a bribe or similar, in order to achieve your goals in following institutions?

	Yes	No
Defence (Army and Ministry of Defence)	2,3%	97,7%
Police / administration	22,8%	77,2%
Intelligence	3,1%	96,9%
Customs / Border Police	9,4%	90,6%
Judiciary	12,4%	87,6%

Q29. Which of the following forms of corruption inflicts greater damage to security sector?

16,3%	Petty corruption - lower levels of government (issue of personal documents, certificates, confirmations, avoiding paying fines)	Systemic corruption - higher levels of government (trading in influence, privileged treatment, ownership of public goods, bid rigging)	83,7%
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Q30. Have you ever asked for a bribe from employees in security institutions?

5,9%	Yes	No	87,4%
6,7%	I don't know		

Q31. How would you report corruption?

30,9%	Anonymously	Openly/ by coming to the institution	12,7%
6,3%	By mail	Online	24,1%
12,7%	By phone call	I don't know	13,1%

Q32. Have you heard of the Agency for prevention and coordination of fight against corruption - APIK?

37,9%	Yes	No	62,1%
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Q33. Do you consider that the fight against corruption would improve if only receiving a bribery would be a criminal offense, while giving bribery would not be sanctioned?

41,4%	Yes	No	26,0%
3,7%	I don't want to answer	I don't know	29,0%

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