

NATIONAL INTEGRITY WORKSHOP “INSTITUTIONAL COOPERATION AND COORDINATION MECHANISMS”

National integrity workshop is an integral part of the National Integrity System (NIS) study. The NIS study was drafted in 2012 and it included key institutions, sectors or certain activities (“pillars”) that contribute to integrity, transparency and accountability in the society. The purpose of the NIS study is to conduct a detailed assessment of the national integrity system in theory (legal framework) and practice.

The main objective of the workshop is to identify key problems in mutual cooperation between government institutions and cooperation between government institutions and other segments of the society (such as the media, civil society and business sector) based on key findings of the NIS study and to make relevant recommendations for the purpose of improving the cooperation, which will serve as the basis of advocacy activities conducted by TI BiH and other civil society organizations.

Key NIS findings:

- The national integrity system in Bosnia and Herzegovina is based on very fragile political, social and economic foundations
- **Key finding: there is an enormous gap between the legal framework and practice**
- The most important change since 2007 lies in the character of the international engagement, namely, considerable increase in the engagement of the EU and a significantly less important role of the OHR
- Non-functioning legislative and executive branch
- Political parties have an extremely negative impact on other pillars
- The overall national integrity system in Bosnia and Herzegovina is very weak - unsustainable institutions, insufficient capacities of the institutions
- Efficient management is rendered impossible by veto mechanisms, insufficient coordination among different government and institution levels
- Enormous, inefficient state apparatus divided along the ethnic lines
- Low level of public trust in the executive branch, political leaders and public institutions
- Conflict of interest between the political elites and formal institutions and their legal basis constitute an obstacle to the improvement of democratic norms and practices throughout the country.

The outspread of corruption in the whole post-conflict period in Bosnia and Herzegovina does not have a decreasing tendency. Intensive, but rather inconsistent efforts of the international community have led to the establishment of an anti-corruption legal infrastructure, but true progress has mostly not come about. According to Daniel Kaufmann, corruption is a symptom of a larger disease, the failure of institutions, resulting in poor management of revenues and resources or even a complete absence of delivery of services to citizens. The response to corruption as a multi-dimensional and complex issue therefore has to be comprehensive. Well-functioning and independent institutions are the first prerequisite for a successful fight against the corruption, but their mutual cooperation and good relations with the media and civil society are equally important.¹

Consistent and full inter-institutional cooperation is necessary during all phases of functioning of the national integrity system, from the drafting and preparation of the legal framework, strategies and policies, to their final implementation.

When it comes to the inter-institutional cooperation and cooperation between government institutions with the private sector, the situation is far from being satisfactory. Several basic causes may be identified in case of the unsatisfactory cooperation:

- Complexity of the constitutional structure of the country;
- Insufficient capacities of the institutions;
- Political pressures and subordination of individual institutions and processes to centers of power outside the institutions;
- Social capital deficit.

¹ Daniel Kaufmann, Rethinking the Fight Against Corruption, November 29, 2012 <http://www.brookings.edu/research/opinions/2012/11/28-fight-against-corruption-kaufmann>

I INSTITUTIONAL COOPERATION FOR THE IMPLEMENTATION OF LAWS

The cooperation between the judiciary and law enforcement agencies is far from being satisfactory, which eventually results in the absence of any progress in processing of corruption and organized crime. Part of the problem results from the fragmented legal system of the country and existence of basically four separate judicial systems and a large number of law enforcement agencies. The absence of any progress in strengthening the capacities of the Directorate for Coordination of the Police Bodies and other police agencies at the state level (Agency for Forensic Examinations and Expertise, Agency for Education and Professional Training and Police Support Agency) also makes strengthening of institutional cooperation in relation to law enforcement more difficult.²

A special obstacle for consistent cooperation between the institutions is the political influence on law enforcement agencies and the judiciary, which is primarily exercised through the process of appointment of heads of the mentioned institutions. Clear political loyalty is thus an obstacle for consistent law enforcement and inter-institutional cooperation.

A good illustration of the inadequacy of cooperation between the police and prosecutor's offices is what occurred during the activities against the car mafia and investigations on the attempted murder of the police commissioner of West Herzegovina Canton.³ After the suspects had been arrested during the activity, the prosecutor failed to order detention, misleading the police officers with whom he worked on the case, in spite of the requests made by the police and the risk that the police commissioner might really be killed. Only after the police had contacted the High Judicial and Prosecutorial Council, another prosecutor was appointed to lead the mentioned case.

II COORDINATION AND MONITORING OF IMPLEMENTATION OF STRATEGIC DOCUMENTS AND POLICIES

Four strategies addressing the fight against corruption have been adopted over the past fifteen years in Bosnia and Herzegovina. After the OHR Strategy Paper in 1999 and the Poverty Reduction Strategy Paper (PRSP) dealing also with the issue of corruption, the Council of Ministers adopted a Strategy for Fighting Organized Crime and Corrup-

tion in 2006, and the last strategy was adopted in 2009, for the period 2009-2014. A common problem of all the mentioned documents was an inadequate implementation. Key comments related to previous strategies were related to the non-existence of adequate coordination, monitoring and implementation mechanisms. The Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, established in 2009, was supposed to eliminate this crucial lack of all previous strategic documents or their implementation. Although the establishment of the Agency was one of the requirements from the visa regime liberalization road map, since the very adoption of the Law on the Agency it was visible that there is no political will to ensure its full functionality. Since the adoption of the Law on the Agency, every step taken to make it functional resulted in obstructions, starting with the fact that the appointment of the staff was implemented after two years, to the fact that there were continuous attempts to limit its originally planned capacities as much as possible by not allocating sufficient funds for its operations and an adequate number of employees. Four years after the adoption of the law, the Agency still has almost no capacities to play the role for which it was established. The results related to the implementation of the Strategy could thus not be much better than the results of the previous strategic documents. Only around 20% of measures provided for by the action plan have been implemented so far. Although the Strategy clearly provides that lower government levels should adopt their own strategies and action plans based on the state-level strategy, both Republika Srpska and Federation of Bosnia and Herzegovina approached the drafting of their strategic documents fully autonomously.⁴ It is thus clear that coordinated and harmonized activities for the implementation of anti-corruption measures will be impossible. Considering also the chronic lack of political will and support to anti-corruption reforms, it is difficult to expect important results in the fight against corruption over the coming period.

III SUPERVISION AND MONITORING OF THE WORK OF INSTITUTIONS

The EU Progress Report for Bosnia and Herzegovina assesses the cooperation between the Parliament and Council of Ministers in general as insufficient and dissatisfactory.⁵ In this respect, the supervisory role of parliaments over the performance of the executive branch and independent agencies and institutions is particularly weak. Although the law provides differently, in practice, the executive branch dominates over the legislative branch.⁶ The true political power is concentrated in the hands of the leaders of political parties, who effectively direct and control resources through the executive branch, whereas the function of the parliaments is fully marginalized. In spite of the fact that there is the possibility for MPs to request answers from the representatives of the executive branch, what happens in practice is that some ministries ignore this kind of obligation or that the responses are frequently incomplete. Also, reporting on the work of the executive branch and independent agencies is reduced to pure formality, without any true intention to ensure responsibility for the omissions. This is particularly the case with audit reports by SAIs, which point out serious omissions in the use of budget funds from year to year, and the heads of these institutions have never been called to account for this. An example of the marginalized role of the parliament is also visible based on several

² Progress report

³ <http://www.cin.ba/pravosude-na-popravnom-u-slucaju-automafije/>

⁴ TI BiH Strategy Implementation Monitoring

⁵ Progress Report

⁶ Article 34, Paragraphs 1 and 2 of the Law on the Council of Ministers of Bosnia and Herzegovina, Article 35, Paragraph 1 and 2 of the Law on the Government of Republika Srpska, Article 36 of the Law on the Government of the Federation of Bosnia and Herzegovina clearly specify that the executive branch reports to parliaments.

⁷ http://pressrs.ba/sr/vesti/vesti_dana/story/13684/Potraga+za+10+milijardi+KM+je+ne+moгу%20C4%87a+misija.html

attempts to specify the amount and use of donations received in the period of post-conflict reconstruction. In spite of the fact that parliamentary committees requested data on the donations from all competent institutions, a large number of institutions have never complied with their request and no committee has completed its task.⁷

The relationship between parliaments and institutions that should be supervised by parliaments in compliance with law and the Constitution is illustrated in the best way by the case that occurred at the end of 2012, when during a discussion on the operations of the Intelligence and Security Agency (OSA) the Director of the Intelligence and Security Agency threatened MPs by stating that he would publish "inappropriate communication" that they participated in and that is in the possession of the Intelligence and Security Agency. This was followed by public expressions of concern by some MPs for their security and the Director of the Intelligence and Security Agency has not been subject to any procedure for the purpose of determining his responsibility.⁸

IV COOPERATION BETWEEN INSTITUTIONS AND THE CIVIL SOCIETY, MEDIA AND BUSINESS SECTOR

The cooperation between government institutions and the civil society, media and business sector is far from being satisfactory. The mutual relations are burdened by numerous problems, from insufficient transparency of government institutions, which renders the watchdog activities of the civil society more difficult, to open hostility towards the media and civil society organizations, which considerably complicates their overall activities and impact. Formal prerequisites for the cooperation between government institutions and the civil society, media and business sector are fully present, but their implementation is sporadic and is rather an exception than a rule.

As regards the impact on the decision-making process, the civil society, media and business sector have mainly the role of mere observers. In spite of the fact that the rules of proceeding of the state and entity parliament do include the concept of public discussion, they are not obliged to organize public discussions. And even when public discussions are organized, the opinions and proposals that are expressed almost never have any impact on the final legal solutions.

A good illustration of the way how the decision-making process or law adoption process functions in practice is the recent SNSD-SDP agreement that provides for amendments to several laws of crucial importance for the prevention of corruption (laws such as the Law on the Prevention of Conflict of Interest, Public Procurement Law, Law on the High Judicial and Prosecutorial Council, etc.). After having reached the agreement far away from the eyes of the public, legal drafts were sent to the Parliament in compliance with the urgent parliamentary procedure, without even informing the institutions competent for the implementation of individual laws and without any willingness to open a public discussion on the planned solutions. The strong opposition of the civil society organizations and experts only resulted in cynical

comments by individual representatives of political parties. Strategies and policies are also adopted in a similar way, without any communication with the public and very limited participation of the public in their drafting.

Although there are numerous and continuous advocating and watchdog activities of the civil society organizations, their outreach remains to inform the public, without any significant impact on decision making or change of practice of government institutions.

There are numerous examples of cases in which government institutions and political elites tried to prevent the media and civil society organizations from acting. The most recent such example is the prohibition to the representative of the Center for Civil Initiatives to attend the meetings of the Parliamentary Assembly of Bosnia and Herzegovina, which is an unprecedented case. On the other hand, there is the interest-based cooperation between the parties in power and civil society organizations that are used by the parties for propaganda purposes or allocation of budget funds through different funding programs for these organizations. Another specific issue in Bosnia and Herzegovina involves considerably high budget funds that are regularly allocated to organizations collaborating based on religious and ethnic basis, since the nationalistic and religious rhetoric is still a propaganda means.

The legal framework related to the existence and actions of independent media is very favorable. However, in practice, there is a selective approach in this segment, too, "which manifests itself in the form of selective provision of information only to some media, which is used by politicians and public officials as a means of manipulation with the public or weapon for fighting the political opposition. Due to the existence of a saturated media market, numerous commercial media that are unable to maintain themselves in the market are forced to turn to political sources of financing, which, again, results in a control of contents and silencing of different and critical reporting."⁹

Although there are legal provisions, they do not cover all aspects related to transparency of work and ownership of the media. According to the 2011 Media Self-Sustainability Index, there has been a significant deterioration of transparency of media ownership over the past year.¹⁰ Data on ownership structure may be obtained only at the institutions at which the media are legally registered, upon a complex procedure, and in case of some of the media, this piece of information cannot be obtained.

On the other hand, many ownership relations are connected to political relations, there is a strong clientelistic relationship between individual politicians, government structures and the owners of some of the media, which is the exact reason for the insufficient transparency in relation to the relevant media activities or print run/viewing figures.

⁸ <http://www.oslobodjenje.ba/vijesti/bih/dzuvo-prijetio-objavom-neprijemljenih-komunikacija>

⁹ Speech of H.E. Patrick S. Moon, the US Ambassador during the meeting of the Association of Independent Intellectuals Krug 99: http://bosnian.sarajevo.usembassy.gov/govori_20110605.html [date of access: June 20, 2012].

¹⁰ <http://www.irex.org/resource/bosnia-and-herzegovina-media-sustainability-index-ansi> [date of access: June 18, 2012].

A good illustration is also the case when the Government of Republika Srpska sent official letters to all public institutions requesting them to deny information to journalists of the Federal Television of the Federation of Bosnia and Herzegovina (FTV). Journalists of Alternativna televizija (ATV) were prohibited from entering the election headquarters of the governing Association of Independent Social Democrats during the election night, on October 5, 2010.

The recent case of brutal threats of the Prime Minister of Republika Srpska against the owner of BN TV, which has not resulted in opening of investigations, also illustrates the relationship of the government authorities towards the media.

Establishing cooperation between government institutions and civil society organizations, media and business sector remains a significant challenge, the resolution of which will be crucial for further democratization of the society of Bosnia and Herzegovina and enhancing the accountability of the government authorities towards the citizens.

CONCLUSIONS

A comprehensive approach to the fight against corruption, which would lead to sustainable results in the field of fight against corruption, implies the participation of all pillars of the society. Full transparency of the work of government institutions is an important prerequisite for the participation of citizens and civil society in the decision-making process and strengthening of the accountability of institutions. Strengthening the capacity of institutions and their independence and ensuring clear accountability mechanisms requires strong political will. The process of EU accession, based on clearly outlined obligations and with the pressure of the public for the introduction of anti-corruption reforms in the medium term should result in considerably improved institutional mechanisms of cooperation, strengthening of the supervisory role of parliaments and openness of the institutions towards the public and civil society. In such a context, concrete results in fighting corruption will not fail to materialize.



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