

» Issue paper

Sextortion- corruption disguised

Case study
Bosnia and Herzegovina

Supported by



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» Executive Summary

Authors and acknowledgements

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Transparency International Bosnia and Herzegovina was launched on 1 December 2000 and started operations in early 2001 as a local non-governmental organisation (NGO), accredited as the National Chapter of the global movement. It grew in operations rapidly, soon to become the leading NGO in BiH for anti-corruption and good governance. Today, it operates two offices: headquarters in Banja Luka and an office in Sarajevo with the staff of 20 and a network of volunteers, members, etc. More information about its operations is available on www.ti-bih.org. This publication fully respects the privacy of users and at no time discloses any data or information that could reveal the identity of any of the users who contacted TI BiH. The victim assistance database is managed locally, offline, and is not shared with any part of global TI.

Authors

Amela Šarić – has been working at TI BiH for the last four years as a project researcher. In this capacity, she has participated in creating programmes and building the capacity of the research team. She also participates in the administrative and logistical management of project activities and is in charge of gathering and analysing data and relevant facts related to projects under implementation. She carries out these activities in the following areas: public procurement, conflict of interest, corruption prosecution, public administration, political party financing and election campaigns, and gender equality.

Ana Kočo – has been working as a researcher at TI BiH since February 2021. She is taking a PhD degree in Security Studies at the University of Sarajevo, where she previously obtained a Master's degree in Human Security. During her studies, she attended NATO "Gender Equality" training at the Peace Support Operations Training Centre (PSOTC). She was a researcher at the Agency for Primary, Secondary and Preschool Education in Sarajevo, and a teaching associate at the Sarajevo Canton Ministry of Science, Higher Education and Youth. She is a member of the Alumni Group of the Konrad Adenauer Foundation, where she was a scholar and project assistant.

Enna Zone Đonlić – holds a Master's degree in Political Science and Sociology from the International University of Sarajevo, a Master's degree in Civil Law from the University of Sarajevo, and a Master's degree in Human Rights and Democracy (ERMA programme) from the University of Sarajevo and the University of Bologna. She is currently taking a Master's degree in Criminology at the University

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Jelena Pecirep – has been working as a project researcher at TI BiH since 2020. She holds a bachelor's degree in Political Science and is currently taking a Master's degree in International Relations. As researcher at TI BiH, she is in charge of public procurement, conflict of interest, public administration, etc. Prior to TI BiH, she gained invaluable professional experience relevant to the field of human rights and gender equality in the civic association "Drvar Youth Council", working as project assistant in related projects. In this publication she provided the definition of 'sextortion' based on the publications and articles dealing with this issue.

Lejla Hodžić – holds a Master's degree in Human Rights from the Central European University in Budapest, with thesis focusing on women's reproductive rights. Prior to that, during her postgraduate studies, she was engaged in legal and social research on women's rights and the protection of minority rights. She started her engagement at TI BiH in 2016 as a volunteer trainee, subsequently advancing to researcher in the field of public procurement. Since 2019 she has been a project assistant in projects focusing on anti-corruption policies in health and monitoring corruption prosecution and the work of the judiciary in BiH. She is currently a project manager at TI BiH.

Milena Mastalo – has been with TI BiH since 2016 and currently serves as Programme Manager. As a law graduate, she started working at the Advocacy and Legal Advice Centre in TI BiH, and has in the meantime taken on advocacy research and actions in several fields, including public procurement, political party financing, conflict of interest, public finance transparency and management, etc. She is in charge of coordinating the team of researchers and implementing projects in various fields, including gender equality. Prior to her work at TI BiH, she gained professional experience in human rights organisations and legislative institutions.

Boris Divjak – holds a Master's degree in International Studies from the University of Reading, UK, and a Bachelor's degree in Management and Economics from Reading and Graz, Austria. He is the founder of Transparency International BiH and was its first chairman from 2000 to 2008. Also, he served three terms as member of the Board of Directors of the TI global movement. He authored the publication "Gender and Corruption in Failed Democracies – Case Study Bosnia and Herzegovina", published by TI BiH in 2020. He works professionally as a consultant for several international organisations, such as the World Bank, European Commission, etc., after many years of work at the World Bank in over 20 coun-

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Government of Sweden

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Civil society organisations

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» Methodology

The analysis of 'sextortion', as per the definitions given in the introductory section, was done based on the following three basic methodological approaches, i.e. data sources:

- Data obtained from public institutions, specifically those in the judiciary: the High Judicial and Prosecutorial Council of BiH and individual courts;
- Desk review of press and online articles and publications investigating the phenomenon of sextortion; and
- Sector-specific research, i.e. education sector, with a specific focus on the incidence of sextortion in higher education institutions and universities.

The research was conducted by a team of TI BiH staff.

Judicial data

With a view to conducting an in-depth survey, in early 2020 TI BiH approached the BiH High Judicial and Prosecutorial Council (HJPC) requesting access to statistical data on corruption offences (CO cases) for the period 2014–2019, disaggregated by sex of the complainant and the reported person. In February 2021 TI BiH approached HJPC again seeking access to updated statistics for the period 2014–2020. In addition to those, TI BiH specifically requested access to the statistics for the following criminal offences: Sexual Intercourse by Abuse of Position (Article 186 of the RS Criminal Code, Article 205 of the FBiH Criminal Code) and Forced Sexual Intercourse (Article 206 of FBiH Criminal Code). Seeing that the criminal legislation in BiH does not define 'sextortion' as a criminal offence in its own right in any of the jurisdictions within the country, for the purposes of this research we selected those criminal offences against sexual freedom and integrity that contain elements of sexual violence/harassment and abuse of power/position.

We requested cumulative gender-disaggregated data on reported persons through the stages of criminal proceedings for the period 2014–2019. The data sought were anonymised, i.e. shown statistically/numerically. In 2021 we sought access to the same set of data updated for 2020. The review includes all stages of the proceedings – from the moment the case has been reported, to investigation, to indictment, and finally to the judgement.

In 2021 TI BiH sought from HJPC access to additional information, specifically anonymised final judgements rendered by BiH courts in cases related to the following criminal offences: sexual intercourse by abuse of position, forced sexual intercourse and sexual blackmail. According to the HJPC statistics, in the observed period judgements for these offences were rendered by a total of eight courts in BiH, namely: Goražde Municipal Court, Tuzla Municipal Court, Mostar

Municipal Court, Orašje Municipal Court, Travnik Municipal Court, Sarajevo Municipal Court, Višegrad Basic Court, Široki Brijeg Municipal Court. All eight courts were contacted, and the information received from them was processed.

Given that the delivered judgements concern different criminal offences and vary considerably in terms of the circumstances of the events in question and the status of the accused and victims, they were analysed according to criteria focusing on the performance of the acting judicial authorities. The criteria refer to the efficiency of judicial authorities in acting on reported offences and of courts in conducting court proceedings, as well as how they treated the accused and the injured party in the proceedings. Seeing that the BiH legislation does not recognise the term sextortion, in our review of court judgements we devoted special attention to the analysis of the legal classification of the offence. The cases include offences that have been reported in various spheres of life, ranging from primary, secondary and higher education institutions, to private relations and intimate relationships.

University-level survey

Given the findings of the research and analysis, in 2020 and early 2021 TI BiH approached all public universities in the country enquiring about the number and frequency of reports of sexual harassment and corruption at these institutions in the period 2014–2020. In February 2020 TI BiH sent them a request for access to information for the period 2014–2019 on:

- a) the number of corruption reports by gender of the complainant and the reported person, as well as their outcomes, and
- b) the number of reports of sexual harassment by gender of the complainant and the reported person, as well as their outcomes.¹

Requests were sent to seven universities from throughout the country: University of Sarajevo, University of Banja Luka, “Džemal Bijedić” University in Mostar, University of Tuzla, University of Zenica, University of East Sarajevo, and University of Mostar. Decisions granting access to information were delivered in 2020 by the University of Zenica, the University of Banja Luka, the University of Bihać, the University of Tuzla, and the University of East Sarajevo, while the University of Sarajevo, “Džemal Bijedić” University in Mostar and the University of Mostar neither supplied the requested data nor delivered the decision denying access to information. With a view to updating the data, in February 2021 TI BiH sent to the universities that had submitted data a request for access to the above information updated for year 2020, while the universities that failed to respond to TI BiH’s request were sent a repeated request for access to information for the period 2014–2020. As of mid-March 2021, information had been provided by all universities, save the University of Mostar. Upon receiving the request, the Uni-

¹ Letter No. 02-115 FOI dated 12 February 2020

versity of Sarajevo sent a letter explaining that it did not keep statistics on the total number of reports for all its constituent units and referred our request to all its units, after which the requested information was supplied by all faculties and institutes except the Faculty of Health Studies, the Faculty of Veterinary Medicine, and the Academy of Fine Arts. To expedite the matter, TI BiH sent a number of reminder letters, but despite those the universities failed to provide up-to-date information, and in several cases the information supplied was incomplete in terms of the outcome of reports and the gender of the complainant and the accused.

Media monitoring

In order to gain a thorough understanding of this complex topic, the research team concentrated its efforts particularly on monitoring pertinent media reports and online groups. In January 2021, inspired by the story of the actress Milena Radulović, victims of sexual abuse came forward and shared their experiences online on a public Facebook page and, later, in the “*Nisam tražila*” group [I Didn’t Ask for It]. The stories, posted mostly by victims, and to a minor extent by witnesses, were used to further inform the conclusions of this publication.

The database of the Advocacy and Legal Advice Centre (ALAC) was also consulted for the purposes of this publication. TI BiH attaches special importance to providing legal assistance in the fight against corruption, and its ALAC has been providing legal advice to aggrieved citizens since 2003. In that period, TI BiH has been contacted by more than 20,000 citizens seeking legal advice, and to date advice has been provided in over 2,500 proven and well-founded corruption cases. However, the number of cases related to sextortion remains negligible, but the few relevant ones are presented in the publication.

Other

Drawing on the partner-based cooperation established for the purposes of this publication, invaluable information was also gathered from the CSO sector through direct talks/interviews with: Centar ženskih prava Zenica, Udružene žene Banja Luka, Fondacija CURE, Sarajevski otvoreni centar, Helsinški odbor za ljudska prava, Fondacija lokalne demokratije, Helsinški parlament građana Banja Luka and Vive žene Tuzla. These CSOs have long-standing experience in working with victims of sexual offences and are familiar with issues relevant to sextortion. The interviews provided a revealing insight into the status and vulnerability of victims and their confrontation with the judicial apparatus and the protection network, in both the public and the CSO sectors. The experiences of the interviewed individuals from these CSOs were also woven into the publication.

» Introduction

Definition of sextortion

“There are many forms of sexual abuse, harassment, exploitation, and discrimination – all of which are of serious concern to people who care about human rights and gender equality. What distinguishes sextortion from other types of sexually abusive conduct is that it has both a sexual component and a corruption component.”²

The term sextortion as a form of corruption was first coined in 2008, when members of the International Association of Women Judges (IAWJ) noticed that judges from different parts of the world reported seeing a type of corruption case seldom discussed.³ Ever since, the term has been used to denote the abuse of position or power with the aim of sexual blackmail. Hence, sextortion is a corrupt act and a form of sexual exploitation that uses non-physical coercion solely to extort sexual favours from the victim.

In order to further explain the term sextortion, it is necessary to take note of two inseparable elements contained in its definition: sexual activity, which involves an explicit or implicit request to engage in any type of sex act, including intercourse or exposing parts of the body, and corruption, which implies the existence of an authority or person who exploits their position of authority or abuses the power entrusted to them to demand sexual favours. Further, corruption, as a component of sextortion, must contain abuse of position as a key element and must detect a person abusing the entrusted power. Additionally, sextortion must contain psychological coercion or elements of pressure on an individual, rather than physical coercion, and a quid pro quo situation in which the perpetrator demands a sexual favour in exchange for a benefit. It is of consequence to note that cases of sexual harassment and other forms of sexual abuse or gender-based violence in which any of the aforementioned conditions are absent do not fall under acts of corruption and as such fail to qualify as sextortion.⁴ A deeper interpretation of the term adds the argument that sexual activity does not have to take a physical form, such as touching, but can include any form of activity such as exposing body parts, engaging in telephone sex, sending explicit content such as nude photos or videos, etc. On the other hand, the physical component such as inappropriate touching is considered sexual activity constituting an element of sextortion. Any other activity of a non-sexual nature is not sextortion.

A publication published by Transparency International in 2020 defines sextor-

² Naming, Ending and Shaming Sextortion (2012), International Association of Women Judges; https://www.unodc.org/res/ji/import/guide/naming_shaming_ending_sextortion/naming_shaming_ending_sextortion.pdf

³ Breaking the Silence Around Sextortion (2020), Transparency International; <https://www.transparency.org/en/publications/breaking-the-silence-around-sextortion>

⁴ Ibid.

tion as a form of corruption in which sex, rather than money, is the currency of the bribe. This means that sextortion is characterised by an imbalance of power between the perpetrator and the victim/survivor, whereby the latter is brought into an extremely difficult position which is alleviated by agreeing to an explicit act. The position of inferiority of the victim/survivor in relation to the perpetrator enables the manipulation of the individual, and makes blackmail a means to reaching the desired goal.

A form of sexual exploitation and corruption that occurs when people in positions of authority (whether government officials, judges, educators, law enforcement personnel, or employers) seek to extort sexual favours in exchange for something within their power to grant or withhold is called sextortion⁵. It is a common misconception that sextortion occurs mainly in the workplace, i.e. in any area and situation in which abuse of position is possible, regardless of what the perpetrator's job is. The sexual demands made by perpetrators are exclusively related to the power entrusted to them and, as a consequence, provide the victim with a certain type of benefit. Although the term benefit is wholly inappropriate from the victim's point of view, it is understood that the victim agrees to the demands if a certain benefit is to be obtained in return. What may pose problems in all processes aimed at proving sextortion is the claim that the victim agreed to the demands and consented to a *quid pro quo* arrangement.

A practice that deprives people of their dignity and human rights, when sexual favours must be provided in exchange for such public services as health care and education, is precisely what constitutes sexual extortion or 'sextortion'.⁶ Sextortion targets individuals who are vulnerable and often in dire living conditions which can be improved if they consent to providing sexual favours. Hence, it is clear that the perpetrator is well aware of their position and the position of the victim, and therefore deliberately exploits the situation which is unfavourable for the victim.

Report on the implementation of legislative and other measures prescribed under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, better known as the Istanbul Convention, implemented by Grevio⁷, notes that sextortion also includes any use of sexually oriented material often obtained under false pretences, and blackmailing the person depicted by threatening to disclose the sexually explicit content which the perpetrator extorted from the victim. By that it is meant that, on the pretext that the victim will derive a certain benefit from consenting to a sexual favour or sex act, the perpetrator prolongs the victim's unfavourable position through blackmail and deepens the inherent imbalance of power still further.

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⁵ Sextortion A crime of corruption and sexual exploitation (2019), International Bar Association; <https://www.ibanet.org/MediaHandler?id=E5E451C2-A883-4518-B0ED-5AAAEBCCDD5AA>

⁶ Global Corruption Barometer: Latin America and the Caribbean 2019 - Citizens' Views and Opinions of Corruption (2019), Transparency International; <https://www.transparency.org/en/publications/global-corruption-barometer-latin-america-and-the-caribbean-2019>

⁷ Group of Experts on Action against Violence against Women and Domestic Violence (2020), The Netherlands; <https://rm.coe.int/grevio-report-on-netherlands/1680997253>

The key problem regarding sextortion is that, while being recognised as a gendered form of corruption, in most countries the term itself is not explicitly spelled out in legislation, but is interpreted in conjunction with laws that contain elements of sextortion, mostly those on gender equality, anti-discrimination, and prevention of harassment in the workplace, or the criminal code. This is further compounded by the limited awareness of the existence of this form of corruption and the poor documentation of the practice of proving sextortion and institutional mechanisms for determining sextortion.

Although the term is of a relatively recent date, the movement led by international human rights organisations, which play a leading role in educating and informing the public about the phenomenon of sextortion, has managed to define and describe the problem to a substantial extent, as well as provide guidelines for society to approach the fight against sextortion in an organised manner. Increasing awareness and removing stigma is without a doubt a daunting task, but the last decade bears witness that the problem is receiving increasing attention and is being approached with empirical facts that provide a clear foundation for further anti-sextortion work. This social phenomenon, albeit poorly defined from a legislative point of view, is becoming increasingly recognised as a problem that calls for a decisive and irreversible response until such time as it becomes normatively consolidated and as clearly defined mechanisms for proving sextortion become available to victims. All tools available in the fight against perpetrators should be legally framed, clear and accessible to every individual for use. While a lot of countries still have a long way to go to ensure that victims have a legal foothold to prove sextortion, examples of good practice worldwide can serve as signposts showing the best way to go about this problem. Although victims, too, have a long and arduous road ahead of them, governments are still not showing sufficient maturity in addressing this problem, but it is without a doubt that they will have to take a more serious approach to it in years to come. How and when pressure should be exerted on them to embark on this process remains an open question. Until then, it is important to continue raising public awareness of the problem faced by many members of our society and providing support to victims of sextortion.

Link between sextortion and corruption

When we link the concepts of corruption and abuse of position/power with sex and harassment, the logical conclusion is that these should be encompassed under a single social phenomenon – sextortion. Corruption is present in all forms and segments of society, and is not a novel concept. However, when linked with sexual elements, a legally largely undefined form of blackmail is created which aims to exploit the unfavourable status and discriminatory position of an individual with a view to extorting sexual favours from them. In recent years corrupt practices that contain elements of sexual harassment or abuse have started to attract ever more attention. Even though this social anomaly resulting from abuse of position existed much earlier, it was only in the last 15 years that there has been a major uptick in efforts aimed at defining the abuse of power for the purpose of obtaining sexual favours and exploiting individuals who have found

themselves in unenviable situations. In an effort to eliminate non-corruption-related forms of sexual harassment and abuse from the definition, emphasis is clearly placed on the fact that the concept of sextortion has both corruption and sexual-abuse components, constituting two inseparable segments of a single phenomenon. Any other form of sexual harassment does not fall under the term sextortion, just as any other corrupt act is not part of that particular concept. As has been mentioned in previous publications, the currency of blackmail is extortion of sex, rather than money.

Gender and corruption in BiH

The 2020 TI BiH publication *Gender and Corruption* was prepared on the basis of a quantitative survey based on a public opinion poll on a representative state-wide sample of 1,300 people and a qualitative analysis of the database of legal assistance provided to victims of corruption. Owing to the high level of corruption and state capture affecting all sectors in the country, Bosnia and Herzegovina is considered a failed democracy. Against this backdrop, the gender gap remains substantial. However, this field has started to see gradual improvements as a result of empowerment of young women, in particular by increasing access to education, which used to be denied to older generations, especially in remote rural areas. Where this gap is manifestly wide, women's exposure to corruption varies: "traditional" women are less likely to come into contact with the administration, and thus with corruption, so it is even harder for them to come forward and stand up in defence of their own rights. Educated young women, notably those employed, demonstrate a greater awareness of injustice than their male counterparts and are more likely to speak up and fight against it. The view that women are on average the fairer sex (fairer in terms of justice) and that the country would fare better if headed by women does not meet with wider support in BiH – both sexes are perceived and act similarly in relation to corruption.

The survey reveals that in the conditions of the same socio-economic standing women would not insist on justice in social sectors (education, health, etc.) any more than men. The, on average, more limited ability to get actively engaged in this field due to significant gender disparities forces women to take a more selective approach and act only when they are affected personally: when they themselves become victims of corruption they initiate activities that will help them solve the problem. While at first glance it may appear that women in BiH do not act for the common good, in such demanding and corrupt environments women are very vulnerable, forced to approach problems through the lens of their own priorities and primarily engage in issues that concern them personally. Such an approach has to do with the local context in BiH, rather than individual or gendered sense of justice. Access to justice appears to be gender balanced – there is no evidence that women face discrimination in the country's courts. As regards the segment of women who are more likely to show determination in pursuing justice, their awareness of rights is quite high and they are much better able to navigate the legal system, including accessing alternative legal aid channels (e.g. TI BiH's ALAC).

» Review of the legal and institutional framework

State level

As in many other countries where criminal law does not specifically recognise sextortion, in BiH too there are other offences that may be related to sextortion, which are defined under state and entity laws. First off, the **BiH Law on Gender Equality** defines sexual harassment and sets forth the obligations of public authorities and employers in preventing and protecting against harassment.

According to the BiH Law on Gender Equality, harassment and sexual harassment are considered a form of gender-based discrimination. There are four basic elements that need to be met in order for a behaviour to be considered gender-based or sexual harassment: the subjective element, the act, the nature of the act, and the consequences. These elements stem from the legal definition of gender-based or sexual harassment and must be cumulatively met.⁸

The Law clearly defines the obligation of all employers to prevent sexual harassment. Furthermore, the Law lays down the obligation for the authorities to protect against discrimination and sexual harassment.

Under the **BiH Criminal Code**, there are the following criminal offences that may be related to sextortion: Abuse of Office or Official Authority (Article 220), Lack of Commitment in Office (Article 224), and International Trafficking in Persons (185) and International Procuring in Prostitution (187).

Law on Labour in the Institutions of Bosnia and Herzegovina also touches on offences that can be associated with sextortion. Article 86e of this Law defines and clarifies harassment and sexual harassment, and Article 86f further clarifies the rights of victims in that regard. There is also the Law on Civil Service in the Institutions of Bosnia and Herzegovina, which defines breaches of official duties that include violence based on gender or sexual orientation, gender-based harassment and sexual harassment.

The aforementioned legal provisions cover many elements of sextortion. However, it is important to note that sextortion is not recognised as a gendered form of corruption, which discourages public awareness that such acts can be considered acts of corruption. This prevents the tightening of penal provisions and downplays the severity of these acts.

⁸ <https://arsbih.gov.ba/osnovne-informacije-2/> (published on January 19th, 2014)

Filing a complaint/lawsuit with the competent authority and filing a complaint/request for initiation of disciplinary proceedings

The report is filed with the prosecutor, in writing or orally. If the prosecutor believes that there are reasonable grounds to suspect that a criminal offence has been committed, an order shall be issued to conduct investigation. The prosecutor's order specifies the circumstances to be investigated and the enquiries to be undertaken. In case a decision not to conduct investigation is taken, the prosecutor shall notify the injured party and the person who filed the report thereof, as well as provide reasoning for that decision. The injured party and the person who filed the report have the right to appeal with the prosecutor's office within eight days. (Prosecutor's Office of Bosnia and Herzegovina)

Entity levels: FBiH and RS

Entity-level criminal codes define a lot more criminal offences that have elements of sextortion, such as: lechery (lewd behaviour), maltreatment in discharge of duty, pandering (soliciting to prostitution), human trafficking, sexual intercourse by abuse of position, violation of equality in exercising right to employment, violation of rights arising from employment, accepting gifts and other forms of benefits, lack of commitment in office, etc. Given the existence of laws at multiple levels of jurisdiction in the country, for the purposes of this analysis only the most pertinent criminal offences that may be associated with sextortion have been selected for discussion.

Federation of Bosnia and Herzegovina

If we look at sextortion within institutions at the FBiH level, Article 182 of the FBiH Criminal Code (Maltreatment in Discharge of Duty) is of particular consequence.

FBiH Criminal Code also criminalises violations of equality in exercising right to employment and in Article 279 provides for imprisonment for a term between three months and three years for "Whoever denies or limits the right of citizens to free employment in the territory of the Federation, under the same conditions applicable in the place of employment". Article 280 provides as follows: "*Whoever, by violating regulations or a general act or a collective agreement on entering into or termination of work relation, on salary or other remuneration, on working hours, vacation or leave, protection of women, the young and disabled, or on ban to overtime or night work, denies or limits to an employee the right he is entitled to, shall be punished by a fine or imprisonment for a term not exceeding one year.*"

Chapter XIX of the FBiH Criminal Code defines criminal offences against sexual freedom and integrity, which include, *inter alia*, the criminal offence of Sexual Intercourse by Abuse of Position punishable by three months to five years, depending on the status of the perpetrator. Article 206 (Forced Sexual Intercourse) thus stipulates: *“Whoever forces another person to sexual intercourse or equivalent sexual act by a serious threat of serious harm, shall be punished by imprisonment for a term between six months and five years”*.

Abuse of power or influence is also mentioned in Article 210a, paragraph (1) of the FBiH Criminal Code, which defines the criminal offence of human trafficking.

Chapter XXXI of the FBiH Criminal Code deals with the criminal offences of bribery and criminal offences against official or other responsible duty. Although the criminal offence of sextortion or its equivalent in the local language(s) could, by its nature, fall under this chapter, this is not the case. Significantly, however, Article 383 provides for imprisonment from six months to five years for abuse of office or official authority.

Republika Srpska

Chapter XIV of the RS Criminal Code defines criminal offences against sexual freedom: rape, sexual extortion, sexual intercourse with helpless person, sexual intercourse by abuse of position, soliciting to prostitution, sexual harassment, and lechery (lewd behaviour). Furthermore, compared to the FBiH Criminal Code, the RS Criminal Code contains a lot more articles that specifically define criminal offences with a gender component and can therefore be said to cover most of the offences related to sextortion.

Unlike the FBiH Criminal Code, which does not have a separate article dealing with sexual harassment, the RS Criminal Code defines sexual harassment in Article 170. According to this article, *“whoever sexually harasses another person who is in a subordinate or dependent position in relation to him or who is particularly vulnerable due to person’s age, illness, disability, dependency, pregnancy, serious physical or mental disorder, shall be punished by imprisonment for a maximum term of two years.”*

Also, Article 166 (Sexual Extortion) contains elements of sextortion: *“Whoever compels another person to sexual intercourse or an equivalent sexual act by threat of disclosing some information that would harm his reputation or reputation of someone close to that person or by threat of any other serious harm, shall be punished by imprisonment for a term of between one and eight years.”*

Similar to the FBiH Criminal Code, the RS Criminal Code stipulates that *“Whoever induces into sexual intercourse or an equivalent sexual act a person who is in a subordinate or dependent position in relation to him, shall be punished by imprisonment for a term of between two and five years”* for the criminal offence of Sexual

Intercourse by Abuse of Position in Article 168.

What stands out in the RS Criminal Code is the criminal offence of Offence against Human Dignity by Abuse of Office or Official Authority prohibited under Article 329, which directly refers to abuse, bodily harm and intimidation, which are essential elements of sextortion, and is punishable by a fine and imprisonment for a term of maximum three years.

Similar to the FBiH Criminal Code, Abuse at Work is prohibited under Article 210 of the RS Criminal Code.

The Labour Laws of the Federation of Bosnia and Herzegovina and the Republika Srpska also refer to acts that may be associated with sextortion.

Brčko District

Brčko District Criminal Code is generally aligned and harmonised with the rest of the criminal legislation in the country, and offences that have elements of sextortion do not differ markedly from those in other jurisdictions in the country. For this reason, we will specifically focus on the following criminal offences:

Brčko District Criminal Code prohibits **sexual intercourse through abuse of office** in Article 202:

- „(1) A person who abuses office to compel to sexual intercourse, or a sexual act equal to it, another person who is dependent on that person due to financial, family, social, health or some other status or difficult circumstances, shall be sentenced to prison from three months to three years.
- (2) A teacher, tutor, parent, adoptive parent, guardian, stepfather, stepmother or other person who abuses his position and performs a sexual intercourse or an act equal to it, against a juvenile entrusted to him for the purpose of teaching, education, guarding or care, shall be sentenced to prison from six months to five years.”

Forced Sexual Intercourse (Article 203) „A person who forces another person to sexual intercourse by use of serious threat of revealing something which would harm the honour or reputation of that person or a person close to him by use of threat of doing some other serious harm, shall be sentenced to prison from six months to five years.”

Abuse of Office or Official Authority (Article 377) „An official or a responsible person in Brčko District of Bosnia and Herzegovina who uses his office or official authority to acquire a benefit for himself or for another, cause a damage to another or to seriously violate the rights of another by having exceeded the limits of his official authority, or having failed to perform his official duty, shall be sentenced with six months to five years in prison.”

» Practice in BiH

University-level survey

Previous research by TI BiH, as well as the data available to the organisation based on reports of corruption and violations of human rights and freedoms, show that reports of corruption in the education sector are extremely sensitive due to the unpredictable outcome of disputes and the resultantly hampered access to services. Consequently, there is a substantial number of anonymous reports of corruption in education. According to the 2020 TI BiH study on the gendered impact of corruption, which looked at the database of cases reported to the Advocacy and Legal Advice Centre (ALAC), education is the sector with the largest number of reports/complaints filed by women. Furthermore, research has shown that despite the fact that there is no apparent split between men and women in their perception of corruption in the education sector, women experience corruption in education mainly during schooling/studying. It is also quite telling that female students are a social group that is “the most critical” of corruption in education.⁹

Given these findings, in 2020 and early 2021 TI BiH conducted a survey at all public universities in BiH with a view to identifying the number and frequency of reports/complaints of sexual harassment and corruption at these higher education institutions in the period from 2014 to 2020. Requests for information were sent to eight universities from throughout the country: University of Sarajevo, University of Banja Luka, “Džemal Bijedić” University in Mostar, University of Tuzla, University of Zenica, University of East Sarajevo, University of Bihać and University of Mostar. More detail on this is provided in the methodology section of this publication.

The information collected in the survey showed that from 2014 to 2020 reports of corruption had been received by the Universities of Zenica, Tuzla, Mostar and Bihać, while reports of sexual harassment had been received only by the Universities of Banja Luka and Bihać, and the Faculty of Sciences of the University of Sarajevo. All other universities, as well as the faculties/departments and institutes of the University of Sarajevo that provided information severally, did not have a single registered report of corruption or sexual harassment during the observed period.

Between 2014 and 2020, the University of Zenica had a total of five reports of corruption, filed against four males and one female, of which four reports were filed by male complainants and one by a female complainant. There were no reports

⁹ Divjak, B. “Gender and Corruption in Failed Democracies: Case Study Bosnia and Herzegovina” TI BiH 2020; <https://ti-bih.org/wp-content/uploads/2020/06/Rod-i-korupcija-u-neuspjelim-demokratijama-april-2020.pdf>

of sexual harassment at this university. The university did not supply information on the outcomes of corruption reports.

The University of Banja Luka did not have any reports of corruption in the observed period, and there was only one report of sexual harassment, following which disciplinary proceedings were conducted against the reported person of unknown sex, who was found guilty of a serious breach of duty and against whom a disciplinary measure was imposed by way of a fine to the tune of 20 percent of the net salary for a period of three months.

The University of Bihać had 16 reports of corruption, all of which were filed anonymously, and the gender of the complainants is unknown. The reports mainly concerned the criminal offences of abuse of office or official authority and lack of commitment in office. In terms of the gender of the reported persons, 11 reports were filed against males, three against females, while two reports were against persons of unknown sex. As concerns the outcomes of the reports, four reported cases were closed by an order to terminate the investigation, and seven cases by an order not to conduct investigation. On the other hand, judgements were handed down for two reported cases, and three proceedings were not completed. During the same period, there was one complaint of sexual harassment in 2017, which was filed by a female person against a male person. The complaint was rejected.¹⁰

The University of Tuzla supplied information that in 2020 there was one anonymous report of corruption, after which the allegations from the report were examined and the report was found to be unfounded.¹¹

The Academy of Performing Arts in Sarajevo supplied information that it had had no reports of corruption during the 2014-2020 period. Without indicating whether there were any complaints of sexual harassment during the same period, the Academy submitted the following answer to TI BiH:

“The Academy has formed an advisory body to which all employees/students can turn if they experience any form of harassment. In 2021, the advisory body was approached by 16 people who stated that they had experienced some harassment. Of the 16 people, the dean of the Academy has officially received nine reports of sexual harassment. Five anonymous reports were received and four reports were submitted by women. The reported person is male. All reports were forwarded to the Sarajevo Cantonal Prosecutor’s Office and the BiH Prosecutor’s Office. Proceedings were also initiated before the Ethics Committee of the Academy of Performing Arts.”¹²

Analysis of the information supplied by the universities indicates that there are generally very few reports of corruption and sexual harassment at higher educa-

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¹⁰ Decision of University of Bihać No. 02-1081/20 of 20 February 2020

¹¹ Decision of University of Bihać No. 01-773-2/21 of 17 February 2002

¹² Decision of Academy of Performing Arts Sarajevo No. 03-5/57 of 23 February 2002

tion institutions in BiH, with the sole exception of the University of Bihać. While this information creates an illusion that there is no corruption or sexual harassment in public higher education institutions, students' testimonies, as well as reports received by TI BiH, indicate that corruption and sexual harassment are very much present in higher education institutions, but the reporting mechanisms are either ineffective or non-existent.

Formal prevention and reporting mechanisms

Some universities and their constituent units provided additional information, clarifying existing internal acts and mechanisms for reporting corruption and sexual harassment in higher education institutions. The Faculty of Law of the University of Sarajevo, which was hit by the "Diploma" affair in 2015, when professors at this Faculty were accused of sexual intercourse by abuse of position with female students in exchange for passing grades,¹³ informed TI BiH about the recently adopted internal acts in the field of prevention of corruption and sexual harassment. In 2017 the Faculty adopted the Integrity Plan and in 2018 the Guidelines for the Prevention of Sexual and Gender-Based Harassment, which show commitment to the principles of gender equality and creating an atmosphere of mutual respect in which students, academic staff and employees work and acquire knowledge. Also, the Faculty of Law regularly undertakes preventive actions by informing all students, academic staff and employees about the existence of the internal act and the reporting mechanisms. The internal procedure for resolving sexual and gender-based harassment is conducted by the Adviser for the Prevention of Sexual and Gender-Based Harassment."¹⁴

In addition to the Faculty of Law in Sarajevo, Guidelines for the Prevention of Sexual and Gender-Based Harassment exist at some faculties of the University of Sarajevo, such as the Faculty of Political Science and the Faculty of Criminology and Security Studies, as well as the University of East Sarajevo and the University of Banja Luka. The remaining higher education institutions also have internal acts that partially regulate harassment and sexual harassment, but in most institutions these provisions are contained in codes of conduct/ethics, codes of professional ethics or similar internal acts.

However, numerous testimonies of female students at higher education institutions throughout BiH in early 2021 bear witness that the existing mechanisms are not recognised as functional, effective and, most importantly, confidential for victims of sexual harassment. This is further evidenced by the findings of TI BiH's university-level research, where most institutions responded that there had been no recorded reports of sexual harassment in the last five years.

¹³ "Profesorima uslovna kazna za seks sa studentkinjama." (Published on bnportal on 9th November. 2015 at 22.45; Source Nezavisne novine) <https://www.rtvbn.com/364409/Profesorima-uslovna-kazna-za-seks-sa-studentkinjama%3E>

¹⁴ Decision of Law faculty in Sarajevo No. 01-244-1/21 of 16 February 2021

Reality as seen through the eyes of the victims

Inspired by the confession of the actress Milena Radulović, in January 2021 victims started coming forward and posting their testimonies *en masse* on a Facebook page and, later, in the “I Didn’t Ask for It” group, created by four actresses, former students of the Academy of Performing Arts in Sarajevo.¹⁵ Providing a safe public space in which sexual violence, sexual harassment and other forms of gender-based violence are openly discussed, the page and group soon turned into a movement to empower victims and break the silence through empathy, solidarity and strength in numbers. Although the testimonies and confessions shared on the page are numerous and diverse, a substantial number of them refer to events at public higher education institutions in BiH.

Shortly after the group was created, among the numerous testimonies, those given by current and former students of the Academy of Performing Arts in Sarajevo stood out in terms of both their number and content. Compilation and comparison of the testimonies showed that each testimony from the Academy of Performing Arts of the University of Sarajevo contains similar or the same elements: “During the entrance exam for acting, I and a dozen other shortlisted girls were made to sit in our knickers only and were told to get up one by one and stand, and he would circle around each girl as she stood up, touching her first with a stick, and then with his hand on her back, legs, neck and shoulders”... “At that time, I was no longer a student, but a young colleague, when a former professor told me in a coffee bar about how he had been expelled from the last faculty where he taught because a student had accused him of sexual harassment, all the while hitting on me very inappropriately, even though he was much older than me and had a family. For years, the same professor stripped students naked at entrance exams, until other professors found out about it”... “The entrance exam itself was really very painful, yes. We were made to take off our T-shirts so that the professor could inspect our spine... And after I passed the entrance exam, the said professor invited me to go to the mountain with him and said that ‘lots of girls have done that, so why wouldn’t I’. I turned him down several times and said that I didn’t want to, that it was inappropriate and that he was just my professor and I didn’t want to go to the mountain with him, after which he said ‘but we won’t be alone... so I guess it’s OK then’... I never went to the mountain, but that year he failed me in his course”... “Of the five days, which is how long it took to take the entire entrance exam, one day was dedicated to a physical aptitude test which was administered by the said professor. He told us to take off our clothes, except for our knickers. I guess there was no convincing excuse for the knickers. He said he had to check to see if we have any tattoos and if our backs are straight. He had a long stick which he was using to measure it... For three years, the same professor taught us physical fitness and used every opportunity to touch us under the pretext of ‘I have to tuck your ass in a little while you do a stand’ followed

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¹⁵ N. Aj. (2021) “Milenina ispovijest okidač za hiljade žena: Šokantna svjedočenja i studentica Akademije scenskih umjetnosti u Sarajevu” - Published on 21st January 2021 on <https://avaz.ba/vijesti/bih/625225/milenina-ispovijest-okidac-za-hiljade-zena-sokantna-svjedocjenja-i-studentica-akademije-scenskih-umjetnosti-u-sarajevu>

by countless other, even more disgusting comments. He demonstrated martial arts on us. Never on boys.” ... “I was also half-naked in that room where the other girls stood with their backs turned. I didn’t want to take off my bra and told him so, after which he said to me ‘come on, please, didn’t you come here to become an actress?’ (with a smile). At the time I was 18 19, in front of a professor who is much older than me, I just wanted to pass the entrance exam, my hand unknowingly and almost automatically removed the bra and I stood in front of him and tried at least to keep his gaze on my face by talking some nonsense, and even though I looked him in the eye, he looked into my chest and smiled.” A former student, who shared her confession in the same group, ends her testimony about the experience at the Academy of Performing Arts with the following sentence: “At 18, I didn’t ask for it ... I didn’t know different. At 35, I am demanding that a system be put in place to examine the teaching and assessment methods and pedagogical skills of lecturers, and preferably also their knowledge, so that the scandal with sexual and psychological harassment of students would not peter out in an informal FB group with anonymous confessions.”

Given the gravity of the situation, the Academy responded institutionally by forming an advisory body and calling for harassment to be reported¹⁷, promising effective sanctions, which, according to victims, they had failed to use in the past.¹⁸ The 16 reports/complaints received so far by the Commission for the Prevention of Sexual and Gender-Based Harassment of the Academy of Performing Arts in Sarajevo are all consistent in their allegations and all refer to a single person. While the Commission notes that the most recent complaint was received in 2019, they have failed to provide information on when the first complaint was received.¹⁹

The founders of the Facebook page and group “I Did Not Ask for It” hope at least that the discussion on the social media could change the social atmosphere²⁰, which, unfortunately, in 2021 remains a horrible reflection of similar confessions that reverberated in the public sphere back in 2008, with a story that marked the beginning of the “Diploma Affair”. Year 2015 saw a similar incident, when four professors at the Faculties of Law of the University of Sarajevo and the University of Tuzla were suspected of sexual intercourse by abuse of position with stu-

16 Confessions available at: <https://www.facebook.com/groups/httpswww.nisamtrazila.org>

17 Statement of the Academy of Performing Arts (18 January 2021) <https://www.asu.unsa.ba/index.php/ba/vijesti/1014-saoptenje>

18 NI BiH (2021). Bery and Muratović for NI (18th December 2021 at 18.24): Reactions after actress Radulović reports being raped; <https://ba.n1info.com/vijesti/bery-i-muratovic-za-nl-reakcije-nakon-prijave-silovanja-glumice-radulovic/>

19 Dnevni avaz - Saopćenje - L.M. (28.01. 2021). Who sexually harassed students at the Academy of Performing Arts in Sarajevo: As many as 16 reported the same employee. Dnevni avaz: <https://avaz.ba/vijesti/bih/627170/ko-je-seksualno-uznemiravao-studente-na-akademiji-scenskih-umjetnosti-u-sarajevu-cak-16-ih-prijavilo-istog-uposlenika>

20 Čilić, U. (January 22, 2021). “I Didn’t Ask for It”: Women’s Testimonies of Violence. Radio Free Europe: <https://www.slobodnaevropa.org/a/nisam-tra%C5%BEila-svjedo%C4%8Danstvo-%C5%BEena-onasilju/31052193.html>

21 “Professors receive suspended sentence for having sex with students.” (Bn portal November 9, 2015 at 22.45). Source: Nezavisne novine: <https://www.rtvbn.com/364409/Profesorima-uslovna-kazna-za-seksa-studentkinjama%3E>

dents in exchange for passing grades, and their driver of pandering and fraud.²¹ The story of A.D.Ž., who 13 years ago reported a professor after he allegedly wrote a note to her on a piece of paper when she did not pass the exam, telling her to come to Sarajevo because he liked to hang out "... with young, beautiful girls, to combine business with pleasure"²², echoes hundreds of testimonies on social media about harassment at higher education institutions. The avalanche of reports, not only about harassment and abuse of position, but also about 'exam buying' and sexual solicitation, against the same professors, which were triggered by A.D.Ž.'s testimony, saw an anticlimactic and disappointing epilogue: "The professors received suspension, but were later returned to work". In the meantime, two of the professors have passed away."²³

Research into sexual violence and sexual harassment is not entirely possible without understanding the cultural and social contexts in which these phenomena occur. The picture of reality that is painted by victim's confessions is one thing, but the reality of society is such that women's experiences are rejected, trivialised and dismissed as irrelevant, that responsibility for victimisation is placed on the victim, and that women are forcibly socialised to accept forms of violence and harassment as an everyday thing, while always at risk of being ridiculed, rejected and met by an inadequate institutional response if they decide to seek justice.²⁴ Besides the "Diploma Affair", the same can be observed in the so-called "clerk's kiss" case, namely a clerk of the student administration office at the Faculty of Technology, University of Banja Luka, who has been reported several times since 2017 for sexual harassment of female students.²⁵ A report was filed with the Banja Luka District Prosecutor's Office against the clerk for the criminal offence of "ill-treatment, torture and other inhuman and degrading treatment", after which the case was forwarded to the BiH Prosecutor's Office, and disciplinary proceedings were instituted against the clerk. Despite the very serious charges, in the end the clerk received a mere disciplinary sanction for a serious breach of duty in the form of a fine to the tune of 20 percent of the net salary for a period of three months²⁶ and was reassigned from his previous post to personal income calculation officer in the Finance Department of the University of Banja Luka.²⁷

22 Arnautović, M. (22nd January 2021). "Lavina svjedočanstava za seksualno zlostavljanje na fakultetima u BiH" Radio Slobodna Europa: <https://www.slobodnaevropa.org/a/lavina-anonimnih-svjedo%C4%8Danstava-za-sek-sualno-zlostavljanje-na-fakultetima-u-bih-%C4%8Dekaju-se-prijave/31063634.html>

23 Ibid.

24 Kamal, A. (1995). Sexual harassment: myths versus women's reality. *Personality Studies and Group Behaviour*. 15. 47-54.

25 Sex scandal at the Faculty of Technology in Banja Luka lands in BiH Prosecutor's Office. (January 31, 2018) *Dnevni Avaz*. Source - Euroblic: <https://avaz.ba/vijesti/bih/345860/seks-afera-na-tehnoloskom-fakultetu-u-banjoj-luci-zavrila-u-tuzilastvu-bih>

26 Shameful end to Balaban affair. Rectorate returns clerk to work, dean of Faculty of Technology resigns. (May 8, 2018) *Serbian Info*: <https://srpskainfo.com/afera-balaban-rektorat-vratio-referenta-na-posao-dekan-tehnoloskog-fakulteta-podnijela-ostavku/>

27 Živanić B. (June 1, 2018 at 7.18) "Kiss Clerk" calculating salaries. <https://www.nezavisne.com/novosti/drustvo/Poljubac-referent-obracunava-plate/481395>

Unlike victims' experiences, which reflect a gruesome pattern of behaviour by persons in positions of power and authority, there is certainly no consistency in the prosecution of the cases. A 2017 survey by the Sarajevo Open Centre shows that as many as 91.6 percent of rape cases do not see a court epilogue.²⁸ A court epilogue was also missing in the case of a professor at the Faculty of Law, University of Bihać. He was reported for sexual harassment in 2005 and 2008, but with no concrete outcome, verdict or sanction. In 2017 a student named E.P. alleged that the professor took her out of town against her will, took her phone, and locked her in a car, where he tried to forcibly have sex with her, threatening her "you would be wise not to go against me, it wouldn't end up well for you. You and I will be great friends, just relax and enjoy."²⁹ ZKnowing that this is "... a very serious offence which is classified as lewd behaviour in the FBiH Criminal Code and which, according to some legal experts, even contains elements of attempted rape"³⁰, E.P. proffered evidence in the form of an audio recording in which she talks to the professor about the event. The third report for the same offence ended up with the suspension of investigation for lack of evidence because the presented audio recording was rejected as evidence, given that unauthorised recording constitutes a criminal offence.³¹ While the university in question remains painfully lacking in terms of an effective sanctioning mechanism, it is also clear that, by dismissing the authentic audio recording as evidence, the prosecutor disregarded the allegations of sexual harassment relegating them to the background as a matter of lesser weight.

Fundamental misunderstanding of sexual violence leads to warped perceptions and responses of the society, which further compounds the victim's sense of shame and guilt, with her memory and reasons for non-reporting being questioned every step of the way, and her private life publicly dissected until only permanent trauma remains along with the resultant adverse consequences on her physical and mental health.³² TSuch a reality was reported by N.H., who suffered stress and trauma, when, according to the indictment, a professor at the Faculty of Sciences, University of Sarajevo, abused his position to commit a lewd

28 Krivična djela silovanja i ostalog seksualnog nasilja u Bosni i Hercegovini, 2017, Edicija Gender, <https://soc.ba/site/wp-content/uploads/2017/12/publikacija-o-silovanju-web.pdf>

29 Branića, E. (February 3, 2017 at 12.34) Brave student reports professor for sexual harassment: "He ignored my cries for help." Dnevnik avaz: <https://dnevnik.hr/vijesti/svijet/hrabra-studentica-prijavila-profesora-za-seksualno-napastovanje---465684.html>

30 Network in Bihać: Three students – same professor, they accuse, he denies. (11/22/2016). Source: federalna.ba; Moj USK: <https://mojusk.ba/mreza-tri-studentice-isti-profesor-one-optuzuju-on-negira/>

31 Investigation into sex scandal at Bihać Faculty of Law suspended: Prosecution claims there is no evidence against Professor Tmavci, students' recordings rejected. (18 April 2017) Slobodna Bosna: https://www.slobodna-bosna.ba/vijest/50517/obustavljen_istraga_o_seks_aferi_na_pravnom_fakultetu_u_bihacu_tuziteljstvo_tvrdi_da_nema_dokaza_protiv_profesora_tmavcija_odbachene_snimke_studentica.html

32 I.Š. (2018) The lasting consequences of sexual abuse and harassment on women's health. MAZ: <http://www.maz.hr/2018/10/28/trajne-posljedice-seksualnog-zlostavljanja-uznemiravanja-na-zdravljenazena/>

33 Indictment nb. T09 0 KTK 0115435 17 against Irfan Šuško and others dated 29 January 2021. Available on the website of the Sarajevo Cantonal Prosecutor's Office: https://www.pravosudje.ba/vstv/faces/docservlet;jsessionid=1ae91c701332cfe8d245c426f3733e055d058d6c3424c119d88880127469dc6c.e34TbxyRbNIRb40Pbx4LaxmTb3v0?p_id_doc=52695

act on another person's body by satisfying his sexual lust, after receiving a gift from the student's mother to arrange for her daughter to pass the exam.³³ The yarn in this case started to unravel in 2019³⁴. However, as in previous cases, there remains a hope that the reality of sexual violence, sexual harassment and other forms of gender-based violence will be recognised and sanctioned in a society that systematically discourages women and allows abuse and violence to persist.

Reality as seen through the eyes of the victims "... talks about a society that nurtures a culture of violence, about family members who know what is happening, but are silent with shame, talks about the state that did not protect them, about institutions that protected perpetrators, about perpetrators who have never been prosecuted, about their rapists that they meet every day, about a culture that is so proud of violence that it retraumatises them every day."³⁵

Sextortion in other institutions: in the workplace, in public sector (media reports)

The opening of public discussion about the painful topics of sexual violence that occurred in early 2021 and which has never been seen on such a scale in the Balkans suggests that a confrontation with a deep-rooted culture of violence and abuse might be on the horizon.

Although the space created by the Facebook page and the group "I Did Not Ask for It" was filled with anonymous testimonies, which were not originally aimed at revealing the identities of and reporting the perpetrators, the page and group had a cathartic effect on many individuals – a lot of higher education institutions initiated procedures to facilitate the reporting of these acts, protect victims, open up avenues for investigation and further prosecution of cases, and in particular ensure that those responsible are held to account. Confronted with the huge interest of the public, a lot of faculties and other institutions in the region have made efforts to facilitate the reporting of such acts, open up avenues for their investigation and ensure that those responsible are held accountable.³⁶

Regardless of the fact that the focus has shifted to sexual abuse, sexual harassment and other forms of gender-based violence in higher education institutions, it is important to note that such acts are not limited to those institutions only. They occur at various levels and perpetrators are often protected or not held to account – because of their position, power, political influence, patriarchal solidarity or a lack of understanding of the victim's trauma.

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³⁴ Indictment details: How exams at the Faculty of Medicine were manipulated. (16 April 2019) Radio Sarajevo: <https://radiosarajevo.ba/vijesti/lokalne-teme/detalji-optuznice-kako-su-se-namjestali-ispitna-medicinskom-fakultetu/333635>

³⁵ Maglajlija, V. (January 6, 2021) "I Did Not Ask for It" initiative: We demand that the authorities protect us. Al Jazeera: <https://balkans.aljazeera.net/teme/2021/2/6/inicijativa-nisam-trazila-zahitjevamo-od-vlasti-da-nas-zastite>

³⁶ Ibid.

It can be argued that, while the legal and organisational responses to sexual harassment have evolved over time, the cultural image of the harassers as persons with power has remained – consistent.³⁷

A stark example of this played out in the Sarajevo Canton Employment Office. In 2018 a series of wrongdoings in the Employment Office were reported to the SC Ministry of the Interior, the SC Prosecutor's Office and the SC Anti-Corruption Office, relating to abuse of office, misuse of powers, conclusion of harmful contracts, embezzlement and misconduct.³⁸ All reports referred to the period when the Office was headed by M.O., who resigned in 2018. According to an anonymous confession posted on the "I Did Not Ask for It" Facebook group, young women working at the Office were also allegedly exposed to pressure during that period. The confession states that she herself "...was a victim of a predator who threatened me with dismissal and physically assaulted me because I turned down his advances... it is unfortunate that this is happening in the public sector. After it became an open secret, he resigned ... Victims are being threatened, humiliated and abused ... while society keeps silent and remains unconcerned."³⁹

A similar case played out in the Student's Dormitory in Doboj, whose director was indicted by the District Prosecutor's Office on charges of abusing his position to coerce S.P., who was his subordinate, into sexual intercourse.⁴⁰

That silence is the norm in BiH is also evidenced by the video that leaked in 2018, showing a delegate to the FBiH House of Peoples, who was also the secretary general of the political party A-SDA, allegedly soliciting sex from an unknown woman in return for employment. Five years after it leaked, the video emerged online. While not denying what happened in the video, the delegate insisted that it was all misrepresented and taken out of context. He subsequently resigned from every position he held in the party and withdrew from political life.⁴¹ In an unrelated case, he was arrested in 2019 for selling diplomas.⁴²

The perpetrators of sexual harassment and sexual violence may also be those who are supposed to be in the service of protecting the victims, as evidenced by the examples that follow:

In 2008, an academy-trained painter and arts teacher at the Ivo Andrić Second-

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³⁷ McLaughlin, H., Uggen C. i Blackstone, A. *Sexual Harassment, Workplace Authority, and the Paradox of Power*. American Sociological Review. Vol. 77 Issue 4. pp. 625-647 (2012)

³⁸ Report of unlawful acts in the Public Institution "Sarajevo Canton Employment Office": <https://szks.ba/wp-content/uploads/2020/05/Prijava-nezakonitih-radnji-u-JU-SZKS.pdf> (December 18, 2019)

³⁹ Confessions available at: <https://www.facebook.com/groups/httpswww.nisamtrazila.org>

⁴⁰ Promotion in exchange for sex. BNTV (10 July 2017): <https://www.rtvbn.com/3871029/unapredjenje-u-zamjenu-za-seks>

⁴¹ Video released online five years after the fact: A parliamentarian allegedly "asks" for sex in exchange for employment. (10 May 2018) Radio Sarajevo: <https://radiosarajevo.ba/vijesti/bosna-i-hercegovina/parlamentarac-fbih-admir-hadzipasic-trazio-seks-da-namjesti-posao/299534>

⁴² Former Speaker of USC Assembly Admir Hadžipasić arrested for selling diplomas: (13 November 2019) Žurnal: <https://zumal.info/novost/22532/uhapsen-bivsi-predsjednik-skupstine-usk-admir-hadzipasic->

ary School in Višegrad was indicted on charges of human trafficking and sexual exploitation of female students at that school. Although the content of the indictment was unknown to the public, and the trial was closed to the public, in 2009 he was sentenced in the first instance to five years' imprisonment for human trafficking. According to media reports, testimonies at his trial were given by protected witnesses, including minors who were sexually exploited by him, and whom he threatened, blackmailed and forced into sexual intercourse. In 2017, a teacher at the Banja Luka Vocational School was sentenced in the first instance by the Banja Luka Basic Court to six months in prison for satisfying his sexual lust in full view of underage female students in 2011. The verdict was upheld on appeal. In late 2019, the BiH Constitutional Court referred the case back to the court of origin for retrial due to the retroactive application of the criminal code. The trial was followed by numerous controversies, a bomb was planted under his car and he was suspected of bribery in an attempt to obtain a verdict of acquittal, "... as S.Š. confirmed in court, it was done by N.B. and A.S. so that they would avoid returning BAM 30,000 that he gave them to arrange the acquittal."⁴³ Regardless of all these factors, the District Court in Banja Luka ruled that the case became time-barred and dismissed all charges against S.Š. Adding insult to injury, the court furthermore ruled that S.Š. be returned to work and ordered that he be paid outstanding wages and benefits.⁴⁴

The former director of the Tenth Primary School in Ilidža was sentenced in 2020 to eight years in prison for having sex with a pupil, using his position and authority to lure and sexually exploit a minor pupil. He abused her from the age of eight, when she attended the third grade, until the first semester of the eighth grade. Unlike S.Š., the director was barred from working as a primary school teacher and director for a period of ten years upon having served his prison sentence.⁴⁵

Despite the express provision of the Criminal Code that perpetrators of a criminal offence to the detriment of the sexual integrity of a child cannot perform a vocation, activity or duty in which they have direct contact with children, we are witnessing incredible situations, where statute of limitations is invoked in 2020 for acts of sexual abuse and exploitation of a child committed in 2011, as in S.Š.'s case, or the perpetrator is barred from working in school for a limited period of time. This practice can, no doubt, have far-reaching adverse consequences on children's mental health and psychosocial functioning.⁴⁶

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⁴³ Aničić, S. (June 22, 2020) Returning Šakota to work: What message does this send and to whom? Etrafika. [online] Available at: <https://www.etrafika.net/djeca-imaju-pravo/74479/vracanje-sakote-na-posao-kakva-je-to-poruka-i-kome-je-namijenjena/>

⁴⁴ Dž. P. (May 13, 2020) Banja Luka teacher convicted of sexual harassment of female students returned to work. Klix. [online] Available at: <https://www.klix.ba/vijesti/crna-hronika/banjalucki-profesor-osudjen-zbog-seksualnog-uznemiravanja-ucenica-vracen-na-posao/200513158>

⁴⁵ Cerić, B. (January 17, 2020) Pedophile Sudo Lavić goes to prison for eight years. Dnevni Avaz. [online] Available at: <https://avaz.ba/vijesti/crna-hronika/542623/pedofil-sudo-lavic-ide-u-zatvor-na-osam-godina>

⁴⁶ Aničić, S. (2020) Returning Šakota to work: What message does this send and to whom? Etrafika. [online] Available at: <https://www.etrafika.net/djeca-imaju-pravo/74479/vracanje-sakote-na-posao-kakva-je-to-poruka-i-kome-je-namijenjena/>

Secondary victimisation and victim blaming

Secondary victimisation is a lesser-known phenomenon in working with victims. The legal framework does not provide for special measures to protect against secondary victimisation, although victims may be exposed to it from the moment the crime is reported.

Institutionalised secondary victimisation

Institutionalised secondary victimisation is most obvious in the criminal justice system. The entire process of criminal investigation and court proceedings can give rise to secondary victimisation through decisions on whether or not to prosecute, the trial itself, the sentencing of the perpetrator and the possibility of his or her release.

Victim blaming

This is a very common response to various forms of victimisation occurring in everyday life. Typically, people's first reaction to crime or other forms of behaviour that have hurt another person is to blame the victim.

"Victim blaming follows a three-stage thought process. First, the assumption is made that there is something wrong with these individuals. They are said to differ significantly from the unaffected majority in their attitudes, their behaviors, or both. Second, these presumed differences are thought to be the source of their plight. If they were like everyone else, the reasoning goes, they would not have been targeted for attack. And third, victims are warned that if they want to avoid trouble in the future, they must change how they think and act."⁴⁷

The process of desensitisation of the public is becoming increasingly evident in our society. In order to make a criminal offence acceptable in the eyes of the public and legitimise the injury inflicted on the victim, the blame is placed on the victim. Even now in the latest case of 'I Didn't Ask for It', there have been individuals who blamed victims for taking too long to report the crimes and kept asking why they had come forward so late.

Victims experience a special form of blame, so-called **self-blame**, because they keep thinking about why they were chosen and blame themselves for what happened. In this regard, two types of self-blame are distinguished. The first is **behavioural self-blame**, where the victim believes that it was her behaviour that led to the crime. By blaming herself, the victim regains control because she can control herself, but cannot control the criminal. The other form is **characterological self-blame**, where the victim tries to explain the event's occurrence as being

⁴⁷ Karmen, A. (1989) *Crime Victims: An Introduction to Victimology*. Belmont: Wadsworth Publishing Company

caused by her own non-modifiable personal characteristics.

The role of the media

The provision of Art. 10 para 2. of the Convention for the Protection of Human Rights and Fundamental Freedoms provides a starting point for governments to encourage the media to protect the privacy and identity of victims through implementation of appropriate measures in order to prevent secondary victimisation of victims of trafficking, protect their safety, privacy, reputation, rights, etc. But victims are most likely to face secondary victimisation in their surroundings, through a subjective feeling of shame and humiliation that they experience in their neighbourhood, school, among friends, or through the reaction of the immediate and wider environment to their victimisation.

By serving information about the identities of those involved and details of the crime, **the media** can cause considerable suffering and pain to the victim's or perpetrator's (immediate and extended) family, friends, and other close persons, as well as loss of reputation or honour, etc. The media can also inflict secondary victimisation on victims by publishing unverified allegations, recordings, photographs or news reports.

The diametrically opposite situation is also possible, where the victim is rejected by the media and receives no or limited media coverage. On occasion, however, a more in-depth media coverage and increased reporting about the victim may be based on the belief that she is an 'ideal victim' and, because of that, deserves media attention. The media can very easily discredit the victim, questioning or disputing her claims and failing to recognise her plight, while paying more attention to, for example, the perpetrator or some other circumstance arising from the commission of a criminal offence.

Labelling is a process where people, knowing certain circumstances, label someone as deviant or as a victim, and project a special type of attitude towards them, such as shaming, humiliation, or pity, etc.

*"Victims of sexual and gender discrimination who have been secondarily victimised through media coverage and reporting have the right to "public apology" or "to have the verdict read out publicly" in order to publicly embarrass perpetrators of gender or sexual discrimination."*⁴⁸

Social media contribute greatly to the normalisation and spread of labelling. Comments on social media are replete with labelling and questions that can

⁴⁸ Source: prof. Azra Adžajlić-Dedović (2017) Victims of State Terror – Abuse of Position and Power in "Ambassadors of Peace in Bosnia and Herzegovina" – 2nd International Scientific Victimology Conference in Bosnia and Herzegovina

⁴⁹ <https://www.klix.ba/magazin/showbiz/i-glumica-merima-isakovic-optuzila-branislava-lecica-za-silovanje/210408021/komentari> (April 7, 2021)

cause secondary victimisation. Whether passed purposely or not, such comments affect the mental state of both the victim mentioned in the article or social media post as well as the victims who are not directly related to that article, but have survived the same or a similar situation.

People need to understand that it is wrong to ask the victim questions as “Why didn’t you report the violence earlier?”, “Why didn’t you leave the place?”, “Why did you allow it?” “How come you didn’t defend yourself?” Ordinary people are not the ones to look for and consider evidence of violence; it is the authorities such as the law enforcement agencies and prosecutors’ offices that are responsible for establishing the facts. Condemning comments, unrealistic expectations of victims and moralising contribute to further victimisation. Web portals generally do not turn off commenting on articles and media reports related to victims of violence, nor do they filter or monitor it to avoid contributing to secondary victimisation.

Below are some of the condemning comments that can be found on social media.⁴⁹

“Dear God, is there a single actress or cheap songstress that hasn’t been raped?! They are all some young, naive, inexperienced victims of evil men. Did it occur to you, ma’am, that you wouldn’t have been “raped” if you’d screamed? If you’d resisted? Let anyone say what they want, I’m sick and tired of this.”

“Not to report the rapist is to be an accomplice in a way. If he’d been punished then, he wouldn’t have had the opportunity later to rape other actresses so easily.... The crime should be reported immediately, not kept silent about.”

No time limit can be placed on when a victim should report a crime. The victim will report it when she feels ready, and her readiness depends on multiple factors. In order for victims to feel safe and ready to report, there should be a functional mechanism in place to provide them with effective protection and ensure that they are no longer victimised and labelled. The condemning attitude of society and the pattern of behaviour that is expected of the victim undermine the victim’s willingness and readiness to report the crime.

⁴⁹ <https://www.klix.ba/magazin/showbiz/i-glumica-merima-isakovic-optuzila-branislava-lecica-za-silovanje/210408021/komentari>

» Judicial data

The statistics provided by HJPC BiH at TI BiH's request for all requested offences against sexual freedom and integrity (details are provided in the methodology section of the introductory chapter) show that law enforcement agencies and courts have handled very few cases in the last six years. Specifically, in the period from 2015 to 2020, as few as nine criminal charges were brought for the criminal offence of sexual intercourse by abuse of position, of which none were brought between 2018 and 2020. In 2015, a total of five charges were filed, the same number of orders to conduct investigation were issued, and only one indictment was brought. The acting courts did not reach a single judgement for this offence that year. Particularly worrisome is the fact that only three judgements of conviction were passed during the observed period, of which one was suspended sentence and two were custodial sentences.

1. Sexual Intercourse by Abuse of Position (Article 196 of the RS Criminal Code)

Year	Orders to investigate	Indictments issued	Convictions - suspended	Convictions - custodial	Reports
2015	5	1	0	0	5
2016	2	1	1	0	3
2017	0	1	0	1	1
2018	1	1	0	1	0
2019	0	0	0	0	0
2020	0	0	0	0	0

The statistics on the handling of criminal offences of sexual intercourse by abuse of position and forced sexual intercourse, as punishable under the FBiH Criminal Code, do not differ markedly from those in RS. Specifically, from 2014 to 2020 in FBiH a total of ten reports were filed for the criminal offence of sexual intercourse by abuse of position, six orders to conduct investigation were issued, and three regular indictments and one indictment with a penalty order were brought. In the same period, two suspended sentences and four custodial sentences were passed.

For the criminal offence of forced sexual intercourse, 12 reports were filed, 12 orders to conduct investigation were issued, and four indictments were brought.

In the observed period, the courts rendered four judgements of conviction with a suspended sentence and only one custodial sentence for this offence. In general, it can be said that prosecutors do not act on all reports, seeing that there are fewer orders to conduct investigation than there are reported cases. Also, it is impossible to observe any upward or downward trends in reporting given that over the years the number of reports has remained generally very low.

2. Sexual Intercourse by Abuse of Position (Article 205 of the FBiH Criminal Code)

Year	Orders to investigate	Indictments issued	Indictments with a penalty order	Convictions - suspended sentences	Convictions - custodial sentences	Reports
2014	2	1		1	1	3
2015	1			1		1
2016	1	1				1
2017						1
2018	1		1		1	2
2019	1	1			1	1
2020					1	1

3. Forced Sexual Intercourse (Article 206 of the FBiH Criminal Code)

Godina	Orders to investigate	Indictments issued	Convictions - suspended sentences	Convictions - custodial sentences	Reports
2014	4	1			3
2015		2			3
2016			1		
2017	1		2		
2018	1				1
2019	1				3
2020	1	1	1	1	2

The information supplied by HJPC also contains statistics on corruption offences (CO cases) for the period from 2014 to 2020, disaggregated by sex of the complainant and the reported person, which relate to: 1) reports filed with prosecutors' offices, 2) investigations conducted, 3) indictments brought, 4) court judgements. These statistics are presented in detail in Table 4 – COs by Sex of the Reported Person, and the key data/findings are presented further below. In the observed period men were noticeably more likely to have been reported for corruption offences than women. The number of people reported for corruption saw a marked increase from 2014 to 2016, while in 2017 and 2018 there was a slight decline, followed by a slight increase in the number of reported both males and females in 2019 and 2020. However, for the purposes of this publication, it is worth noting that the number of reported persons whose sex is unknown or who are legal entities decreased almost continuously over the observed period.

4. COs by Sex of the Reported Person

Start year/Stages of criminal proceedings	Female	Male	Gender not recorded or legal entity
2014	320	1429	735
Orders to conduct investigation	95	445	106
Indictments brought	32	113	2
Indictments with a penalty order	4	21	0
Indictments with a plea bargain	0	1	0
Acquittals	0	1	0
Convictions – fines	1	2	0
Convictions – suspension sentences	4	16	1
Convictions – custodial sentences	1	9	0
Reports	183	821	626
2015	574	2049	1119
Orders to conduct investigation	148	578	124
Dismissals	0	3	0
Indictments brought	54	237	8
Indictments with a penalty order	11	28	5
Indictments with a plea bargain	4	3	2
Acquittals	7	17	0
Convictions - fines	1	4	1

Start year/Stages of criminal proceedings	Female	Male	Gender not recorded or legal entity
Convictions – suspended sentences	13	58	3
Convictions – custodial sentences	4	27	2
Reports minors	0	1	0
Reports	332	1093	974
2016	612	2118	1467
Orders to conduct investigation	180	534	137
Dismissals	0	4	0
Indictments brought	49	192	12
Indictments with a penalty order	4	23	2
Indictments with a plea bargain	1	3	0
Acquittals	4	18	2
Convictions – fines	3	8	0
Convictions – suspended sentences	28	106	8
Convictions – custodial sentences	7	43	2
Reports	336	1187	1304
2017	574	1901	1165
Orders to conduct investigation	128	472	117
Dismissals	1	2	0
Indictments brought	61	233	23
Indictments with a penalty order	6	21	4
Indictments with a plea bargain	1	5	0
Acquittals	8	36	1
Convictions – fines	2	12	0
Convictions – suspended sentences	33	106	4
Convictions – custodial sentences	14	45	2
Reports	320	969	1014
2018	518	1720	1381
Orders to conduct investigation	116	415	154
Dismissals	0	4	0
Indictments brought	52	205	13
Indictments with a penalty order	7	21	6

Start year/Stages of criminal proceedings	Female	Male	Gender not recorded or legal entity
Indictments with a plea bargain	1	3	0
Acquittals	11	42	8
Convictions - fine	6	14	0
Convictions – suspended sentences	36	98	12
Convictions – custodial sentences	9	39	1
Reports	280	879	1187
2019	654	2043	774
Orders to conduct investigation	124	457	126
Dismissals	1	4	0
Indictments brought	51	196	11
Indictments with a penalty order	8	24	2
Indictments with a plea bargain	8	9	0
Acquittals	11	54	2
Convictions – fines	2	15	0
Convictions – suspended sentences	47	92	7
Convictions – custodial sentences	11	53	2
Reports	391	1139	624
2020	541	1923	445
Orders to conduct investigation	95	395	67
Indictments brought	18	111	4
Indictments with a penalty order	6	14	1
Indictments with a plea bargain	1	19	1
Acquittals	8	28	2
Convictions – fines	0	10	1
Convictions – suspended sentences	21	61	2
Convictions – custodial sentences	4	44	1
Reports	388	1240	366
Judgements finding that the offence was committed under diminished capacity	0	1	0

The number of orders to conduct investigation differs widely by sex of the reported person as men are much more likely to have been reported for corruption than women. When looked at in percentage terms, however, there is no noticeable discrepancy in the number of orders to conduct investigation against reported men and women. The number of orders to conduct investigation as a percentage of the total number of reports against persons of both sexes decreased slightly since 2014, with the share of orders to conduct investigation against women dropping to 15.7 percent in 2020, which is almost half as much compared to 2014, when 29.7 percent of orders for investigation issued were against women. However, it is also worth noting that the number of corruption reports against women in 2020 almost doubled compared to 2014. A similar trend is observed in the share of orders to conduct investigation issued against men in the total number of corruption reports received, where there was a noticeable increase in the number of reports and decrease in the number of orders to conduct investigation. The analysis of the HJPC statistics reveals an increase in the number of CO reports and a steady decrease in the number of orders to conduct investigation from year to year, which accounts for the generally small number of indictments and convictions.

2014



Reports

320

1429

Orders to conduct investigation

95

445

Percentage (%)

29.7

31.1

2015



Reports

574

2049

Orders to conduct investigation

148

578

Percentage (%)

25.8

28.2

2016



Reports

612

2118

Orders to conduct investigation

180

534

Percentage (%)

29.4

25.2

2017



Reports

574

1901

Orders to conduct investigation

128

472

Percentage (%)

22.3

24.8

2018



Reports

518

1720

Orders to conduct investigation

116

415

Percentage (%)

22.4

24.1

2019



Reports

654

2043

Orders to conduct investigation

124

457

Percentage (%)

18.9

22.3

2020



Reports

541

1923

Orders to conduct investigation

95

395

Percentage (%)

15.7

20.5

Based on the above HJPC statistics, which contain data on convictions for criminal offences, TI BiH requested from the courts anonymised final court judgements in cases related to the following criminal offences: sexual intercourse by abuse of position/power, forced sexual intercourse and sexual extortion. The methodological approach is described in detail in the introductory section of this publication.

In most of the cases, there is a recognisable power relationship between the victim and the accused, where the victim is in a position subordinate to the accused, who is in a position of power or authority. Thus, in a case tried by the Goražde Municipal Court, a shift supervisor in a local shop was accused of sexual intercourse by abuse of position because he demanded sex from his female employees as a condition for signing the employment contract with them.⁵⁰ In another case, tried by the Tuzla Municipal Court, a university professor was accused of abusing his position or authority because he had given his female students passing grades without them actually sitting the exam.⁵¹

As regards the efficiency and performance of judicial authorities in case handling, it is worth noting that the acting prosecutors' offices brought indictments within different time periods after the commission or reporting of the criminal offences. Specifically, the time periods from the commission of the offence to the bringing of indictment ranged from one month⁵² up to six and nine years in a case handled by the Tuzla Municipal Court in which two offences were committed three years apart.⁵³ Hence, it can be said that there is no established practice in prosecutors' offices when it comes to efficiency in case handling and conduct of investigations. Similar is true of the length of time elapsed between the confirmation of the indictment and the passing of the verdict. Specifically, the length of the court proceedings analysed for the purposes of this publication ranged from 30 days⁵⁴ to as long as seven years, with most proceedings taking between 16 to 18 months. When analysing the performance of courts in case handling, account should be taken of both the general characteristics of the case at hand as well as how complex it is, as this may affect the length of the court proceedings. However, the verdicts analysed herein indicate that those were mostly cases with one accused and few injured parties and witnesses, with not much evidence to present and hear. Therefore, the extended duration of court proceedings in the cases analysed herein cannot be considered warranted due to their complexity.

Analysis of the verdicts reveals some serious shortcomings in the performance of the prosecutors' offices in classifying the criminal offences and securing necessary evidence. Despite the fact that there are few court judgements in this area of criminal law in BiH, and there is no common practice in the work of the prosecutors' offices, the observed shortcomings indicate the need to improve the

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50 Decision of the Goražde Municipal Court No: 45 0 K 028523 14 K of the day 7 October 2014

51 Decision of the Tuzla Municipal Court No: 32 0 K 127234 16 K 2 of the day 18 April 2019

52 Decision of the Tuzla Municipal Court No: 32 0 K 31826 17 K of the day 28 December 2017

53 Decision of the Tuzla Municipal Court No: 32 0 K 127234 16 K 2 of the day 18 April 2019

54 Decision of the Tuzla Municipal Court No: 32 0 K 31826 17 K of the day 28 December 2017

capacity and skills of prosecutors in dealing with these cases. In case no. 45 0 K 028523 14 K, tried by the Goražde Municipal Court, the Bosnia-Podrinje Cantonal Prosecutor's Office brought an indictment for sexual intercourse by abuse of position against a shift supervisor in a local shop because he demanded sex from his female employee in exchange for the employment contract, while also harassing another employee because he was trying to establish a closer relationship with her.⁵⁵ The trial ended in the acquittal of the accused, with the court arguing that the prosecutor's office had failed to prove the essential elements of this criminal offence, which included "sexual intercourse" or "equivalent sexual act", as well as "a person who is in a dependent position in relation to [the accused] due to the person's financial, familial, social, health or other condition or straitened circumstances".⁵⁶ Given the facts presented and the final outcome of the proceedings, a more appropriate legal classification of this offence would be that contained in Article 208 of the FBiH Criminal Code, which reads: "(1) *Whoever in the cases referred to in Articles 203 (Rape), 204 (Sexual Intercourse with a Helpless Person), 205 (Sexual Intercourse by Abuse of Position) and 206 (Forced Sexual Intercourse) of this Code, when even an attempt of that criminal offence is perpetrated, perpetrates only a lecherous act, shall be punished by imprisonment for a term between three months and three years.*" In addition to the prosecutors' omissions and oversights in this case, the court's arguments and assessment of the presented facts show that the court tends to be very narrow and rigid in the interpretation of facts. Furthermore, in ruling that the shop employees were not in a dependent position in relation to the accused, clearly neglecting the accused's role as their superior, the court also completely ignored the obvious elements of sexual harassment in the workplace.

In some of the cases, the means of coercion was threatened release of sexual video recordings, or threatened failure to sign or renew an employment contract. Analysis has shown that courts do not always seek the opinion of expert witnesses, primarily psychologists and psychiatrists. Those that did seek the expertise of psychologists and psychiatrists in the analysed judgements, passed judgements of conviction. In the reasoning of its judgement for the criminal offence of sexual intercourse by abuse of position, the Višegrad Basic Court⁵⁷ emphasised the importance of the opinion of expert witnesses, and also invited them to the main hearing to further clarify their opinion and answer questions. Also, with the help of expert witnesses, the Višegrad Court ruled on the credibility and importance of the opinion of an independent psychologist presented by the accused in his defence. It is precisely this case that best showcases how important it is to use the services of court-appointed expert witnesses (psychologists and psychiatrists in particular) as opposed to independent psychologists, as there is a distinct difference between clinical practice, which is known to psychologists, and court practice, which is the realm of expertise of expert witnesses.

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⁵⁵ Decision of the Goražde Municipal Court no: 45 0 K 028523 14 K of the day 7 October 2014

⁵⁶ FBiH CC, Art. 205. (Official Gazette FBiH No. 36/2003, 21/2004 – correct. 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017)

⁵⁷ Višegrad Basic Court: Judgement 91 0 K 032549 16K of the day 7 July 2017

Although the penal practice in BiH is generally such that courts tend to go for the lower limit when imposing a sanction, as is also evident in the judgements analysed for the purposes of this publication, there are also aggravating and mitigating circumstances that courts take into account when deciding a sanction. When it comes to aggravating circumstances, courts generally take account of any prior convictions on the part of the accused. Thus, for example, the Tuzla Municipal Court imposed a single sentence of seven months' imprisonment in a case in which the accused was found responsible for the criminal offences of forced sexual intercourse and violent behaviour because the accused had previously been given a suspended sentence for domestic violence.⁵⁸ Despite the clear aggravating circumstances, in particular as the accused showed repeated violent behaviour, the sanction imposed was all but minimal. The mitigating circumstances considered during the imposition of sanctions are crucial in maintaining a mild penal policy in judicial practice. Very often, courts take into account "the accused's good conduct", "his reputation", "the accused's confession", "the accused's promise not to repeat the act" and provide very little by way of reasoning for such assessment of evidence and mitigating circumstances. Particularly noteworthy in this regard is a judgement of the Bijeljina Basic Court, where the court cited as a mitigating circumstance the fact that "the very conduct of the proceedings and full elucidation of the circumstances surrounding the event were perceived by the accused as a huge disgrace that has tarnished his reputation"⁵⁹, thus putting the personality and feelings of the accused before the protection and integrity of the injured parties.

A detailed overview of the judgements is presented in the annex to this publication.

⁵⁸ Decision of the Tuzla Municipal Court No: 32 0 K 31826 17 K of the day 28 December 2017

⁵⁹ Judgement of the Bijeljina Basic Court, March 25, 2016

» International legislation

Examples from Europe

While there is no separate sextortion law in the European Union either, the EU countries have harmonised their legislation through the appropriate application of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

Sweden

The Swedish Criminal Code in Chapter 4 on crimes against liberty and peace, Section 1a states that a person who by:

1. *unlawful coercion*;
2. *deception*;
3. *exploitation of another person's vulnerable situation that severely restricts that person's alternatives*; or
4. *other such improper means that severely restrict another person's alternatives, recruits, transports, transfers, harbours or receives a person in order for that person to be exploited for sexual purposes, the removal of organs, military service, forced labour or some other activity in a situation that involves distress for that person is guilty of trafficking in human beings and is **sentenced to imprisonment for at least two and at most ten years.***⁶⁰

Also, Section 1b provides that a person who commits the acts referred to in Sections 1 and 1a *"by unlawful coercion, deception or exploitation of another person's position of dependence, defencelessness or difficult situation, exploits another person in forced labour, labour under clearly unreasonable conditions or begging, is guilty of human exploitation and is sentenced to imprisonment **for at most four years.**"*⁶¹

Further, in Chapter 10, which deals with embezzlement, other breaches of trust and corruption, Section 5a provides that *"A person who is an employee or performing a commission, and receives, accepts a promise of, or requests an undue advantage for the performance of their employment or commission is guilty of taking a bribe and is sentenced **to a fine or imprisonment for at most two years.**"*⁶²

⁶⁰ Swedish Criminal Code, 1962 – as amended in 2020, available at https://www.legislationline.org/download/id/8662/file/Sweden_criminal_code_am2020_en.pdf

⁶¹ Ibid.

⁶² Swedish Criminal Code, 1962 – as amended in 2020, available at https://www.legislationline.org/download/id/8662/file/Sweden_criminal_code_am2020_en.pdf

Section 5c further emphasises that: *“If an offence referred to in Section 5a or 5b is considered gross, the person is guilty of gross taking of a bribe or gross giving of a bribe and is **sentenced to imprisonment for at least six months and at most six years.**”*⁶³

The Netherlands

In the Criminal Code of the Kingdom of Netherlands, Section 36f provides for compensatory damages, i.e. monetary amounts that can be paid out to victims.

*“It may be stipulated by Governmental Decree that only victims of violent and sexual offences shall be eligible for this payment for a period of time to be set in this Governmental Decree. It may also be stipulated by Governmental Decree that the amounts to be paid out shall be subject to an upper limit of € 5,000 or more, on the understanding that this upper limit shall not apply to payments made to victims of violent or sexual offences.”*⁶⁴

Also, interestingly, Section 41, paragraph 1 of the Dutch Criminal Code provides that *“Any person who commits an offence where this is necessary in the defence of his or another person’s physical or sexual integrity or property against an immediate, unlawful attack shall not be criminally liable.”*⁶⁵

Section 249, paragraph 2, provides that *“the civil servant who sexually abuses a person subject to his authority or entrusted to or placed under his supervision”,* and in sub-paragraph 3 *“the person employed in the health care or social care sector who sexually abuses a person who has entrusted himself, as a patient or client, to his assistance or care”* shall be liable to a term of imprisonment **not exceeding six years or a fine of the fourth category.**⁶⁶

Germany

Under the German Criminal Code, penalties are prescribed for the commission as well as the attempt to commit the criminal offence of Abuse of Official Position.

Section 174b, paragraph 1, provides that *“whosoever in his capacity as a public official charged with participation in criminal proceedings or proceedings with the aim of imposing a custodial measure [...], by abusing the dependency caused by the proceedings, engages in sexual activity with the person against whom the*

⁶³ Ibid.

⁶⁴ Criminal Code of the Kingdom of Netherlands, 1882 – as amended in 2021, available at https://www.legislationline.org/download/id/6415/file/Netherlands_CC_am2012_en.pdf

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ German Criminal Code, 1971 – as amended in 2013, available at https://www.legislationline.org/download/id/6115/file/Germany_CC_am2013_en.pdf

proceedings are directed or allows them to engage in sexual activity with himself shall be liable to imprisonment from three months to five years." Paragraph 2 stipulates that the attempt shall also be punishable.⁶⁷

Finland

Like the Criminal Code in Switzerland, the Finnish Criminal Code does not specify or define explicit penalties for elements of sextortion, but has opted for broader provisions on the abuse of public office.

Section 7 stipulates that if a public official *"misuses his or her office in respect of a person who is under his or her command or immediate supervision, he or she shall be sentenced for abuse of public office to a fine or imprisonment for at most two years"*, and paragraph 2 provides that *"The public official may also be sentenced to **dismissal** if the offence indicates that he or she is manifestly unfit for his or her duties."*⁶⁸

Non-EU countries

Norway

In the Norwegian Criminal Code, too, elements of sextortion are defined and penalties are prescribed through provisions on abuse of office. Section 295 of the Norwegian Criminal Code provides for penalties for abuse of unequal power relationship, specifying that a penalty of **imprisonment** for a term not exceeding six years shall be applied to any person who "obtains sexual activity for himself/herself or another person, or makes a person perform acts corresponding to sexual activity on himself/herself by:

1. *abusing a position, dependent relationship or relationship of trust, or*
2. *exploiting a person's mental illness or mental disability provided the conduct does not fall within the scope of Section 291, or*
3. *exploiting a person under 18 years of age in a particularly vulnerable life situation."*

The Code further stipulates that the same penalty shall be applied to any person who makes two or more persons engage in sexual activity with each other.⁶⁹

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⁶⁸ Criminal Code of Finland, 1889 – as amended in 2015, available at https://www.legislationline.org/download/id/6375/file/Finland_CC_1889_am2015_en.pdf

⁶⁹ Norwegian Criminal Code, 2005 – as amended in 2021, available at https://www.legislationline.org/download/id/9055/file/Norway_Penal%20Code.pdf

Switzerland

Interestingly, the Swiss Criminal Code in Title Eighteen, Article 312, deals with offences against official or professional duty, but fails to indicate or explicitly establish the penalty for sexual harassment and/or elements of sextortion. The provision of this Code is broad and includes any form of abuse of public office.

Art. 312 *“Any member of an authority or a public official who abuses his official powers in order to secure an unlawful advantage for himself or another or to cause prejudice to another is liable to a **custodial sentence not exceeding five years or to a monetary penalty.**”*⁷⁰

Regional legislation

Croatia

The terms ‘harassment’ and ‘sexual harassment’ are legally defined in the Gender Equality Law and the Anti-Discrimination Law. The 2013 Criminal Code recognised sexual harassment as a criminal offence. It also prescribed a sentence of one year’s imprisonment for **sexual harassment**. “Whoever sexually harasses another person who is his or her subordinate or who is in a situation of dependence with respect to him or her or who is especially vulnerable due to age, illness, disability, addiction, pregnancy, a severe physical or mental disability, shall be punished by imprisonment not exceeding two years⁷¹.” The Criminal Procedure Code expands the rights of victims, and includes, *inter alia*, the right to access services for support to victims of criminal offences, the right to efficient psychological and other expert help and support of the authority, organisation or institution for aiding victims of criminal offences, etc.

Unlike Bosnia and Herzegovina, the laws in the Republic of Croatia are harmonised with the EU standards and provide for custodial sentences for a term of between one and ten years for criminal offences that can be identified as sextortion.

Serbia

In the Republic of Serbia, sextortion is not treated and interpreted as a unique form or concept in the legal sense. The terminology used, which can be associated with the concept of sextortion, indicates that some terms are not defined as being identical or different. Hence, some terms may be interpreted as constituting the same or similar offences, but are not legally defined as equivalent or identical, especially in the context of concepts such as sexual harassment and

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⁷⁰ Swiss Criminal Code, 1937 – as amended in 2020, available at https://www.legislationline.org/download/id/8991/file/SWITZ_Criminal%20Code_as%20of%202020-07-01.pdf

⁷¹ Kazneni zakon Republike Hrvatske as amended in 2021, available at: <https://www.zakon.hr/z/98/Kazneni-zakon>

gender harassment. In the Code, the following terms are used in connection with the concept of sextortion: Rape (Article 178), Sexual Intercourse through Abuse of Position (Article 181), Prohibited Sexual Acts (Article 182), Gender Harassment (Article 182a).⁷²

Instead of the term 'sexual harassment', the Criminal Code of the Republic of Serbia uses the term 'gender harassment'. The sentence provided under the Code for Sexual Intercourse through Abuse of Position is imprisonment for a term from three months to three years.

Montenegro

The term 'sextortion' as such is not present in the legislation of Montenegro. The Criminal Code of Montenegro contains the following criminal offences that can be associated with sextortion, i.e. criminal offences against sexual freedom: Rape (Article 204), Forced Sexual Intercourse by Abusing a Position of Authority (Article 207), Unlawful Sex Acts (Article 208); Abuse of Office (Article 416); Racial and Other Forms of Discrimination (Article 443).

Forced Sexual Intercourse by Abusing a Position of Authority – Article 207:

*"(1) Whoever abuses his position to incite another person to engage in a forced sexual intercourse or other act of equivalent nature, where that party is in a subordinate or dependent position in relation to the perpetrator shall be punished by a prison sentence for a term from three months to three years."*⁷³

Like the criminal codes in BiH, the Criminal Code of Montenegro does not identify sexual harassment as a criminal offence.

⁷² Krivični zakonik Republike Srbije as amended in 2019, available at: <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html>

⁷³ Krivični zakonik Crne Gore, as amended in 2020, available at: <https://www.paragraf.me/propisi-crnegore/krivicni-zakonik-crne-gore.html>

» Previous research (publications) on sextortion

When a society observes a new phenomenon or when a group of individuals find themselves in a same or similar situation, over time this turns into a recognisable pattern, and society begins to respond to it by defining, analysing and correcting everything related to it. This is exactly what transpired when sextortion was observed – a group of researchers began to study it in order to understand its key elements and provide guidance on how to approach and address this anomalous social phenomenon. The definition of sextortion, as well as recommendations for preventing and combatting it, can be found in three publications. Each of them makes a significant contribution to laying the legal foundations that states should be guided by, and provides useful guidance on how to identify sextortion and spread awareness of it.

Naming, shaming, and ending Sextortion

A highly important publication dealing with the issue of sextortion is “Naming, Shaming, and Ending Sextortion” published by the International Association of Women Judges who, inspired by their personal experiences in this field, decided that the publication of such a toolkit would be of great importance for combatting corrupt practices with elements of sexual extortion. As early as 2012 they started compiling and summarising known and documented experiences, and for the first time managed to break the stigma around this phenomenon, placing a special emphasis on the mechanisms through which improvements could be made in combatting sextortion.

The publication was prepared in cooperation with the women judges associations in Bosnia and Herzegovina, Tanzania and the Philippines, and therefore describes specific examples of proceedings conducted in these countries. Public opinion polls undertaken in these countries showed that the majority of those polled were not familiar with the concept of sextortion, just as they were not familiar with any mechanism to report this social phenomenon.

The principal aim of this toolkit is to raise awareness and serve as a guide through available information and resources for further prevention and fight against this pernicious form of corruption. The publication highlights the following paramount considerations:

- Need to give the problem a name and clear legal definition
- Identify and summarise existing legal provisions to combat sextortion
- Identify institutional barriers to effective prosecution
- Formulate an action plan

In order to help society be ready and mature enough to tackle and combat sextortion, the publication presents guidelines deemed to constitute necessary steps in taking over responsibility for preventing sextortion, as well as recommendations for organisations dealing with this issue:

- Initiate consultation with all stakeholders who have clout and awareness of the extent of the problem confronting society;
- Gather information and consolidate all previously known and documented knowledge about sextortion; and
- Develop a course of action to combat sextortion.

These guidelines, *inter alia*, seek to help define the strategy of any organisation that pretends to act on the basis of clear and concrete views that will contribute to the pragmatic fight against this social anomaly. Special emphasis is placed on the importance of information, or learning more about this topic and all the details that arise from the analysis of collected materials, which can serve as the basis and mechanism of action for each subsequent situation in which an individual tries to prove that she or he was a victim.

The publication places particular emphasis on referencing specific laws and legal provisions that could serve as tools in proving sextortion. The general recommendation is to rely on all legal provisions that contain a sexual component, the concepts of victim, physical injury or coercion, sexual discrimination and harassment, as well as provisions that contain a corruption component.

The publication also cites examples and concrete cases from countries as diverse as Canada, the Philippines, Tanzania, China, the United States, but also a case of sexual coercion from Bosnia and Herzegovina, specifically, a case of a girl who was sexually exploited and then blackmailed by her teacher. This is a textbook case of sextortion and, although the concept itself is not recognised by the legislation in Bosnia and Herzegovina, the most important message is that such and similar cases can be proven in court through existing legal mechanisms, and that they are not only examples of good practice, but also a sound starting point for all future cases where sextortion needs to be proven and adequate sanctions imposed.

This publication-cum-toolkit also offers guidelines and advice on how to raise public awareness of this issue. It makes it clear that for now, in most societies, this problem is on the sidelines and, as such, requires additional organisational efforts. Since sextortion is deeply entrenched and by no means a recent phenomenon arising as a consequence of the developing society, attention should be focused on educating and informing every individual, using existing evidence and examples as clear indicators of sextortion elements. What remains a challenge for any society is a change of awareness and mindset, but this task is entrusted to organisations that through advocacy efforts must identify factors that would bring about systemic change. It is therefore necessary to be engaged in finding people who are interested in this issue, their education and, most importantly, the pressure that must be exerted on institutions to start tackling sextor-

tion systematically. In this regard, the publication clearly underscores that only a change in attitude and mindset can lead to a behavioural change. Removing stigma from individuals as well as systematic support for victims are key segments in the fight against sextortion. The publication provides an accurate reflection of societies and their readiness to accept this phenomenon, and makes a constructive proposal for all further analyses and reports related to this problem.

Breaking the silence around sextortion

Transparency International, as the global CSO leading the fight against corruption, released its report called “Breaking the Silence around Sextortion” in 2020. The report defines the term sextortion and brings together global evidence on the prevalence of the phenomenon, as well as provides insight into the existing legal mechanisms, regulations and provisions to address it from selected countries and regions of the world. It is a continuation of the tendency, both globally and locally, to spread awareness of the evidence that has been gathered over the last decade and provide a clear illustration of the events surrounding sextortion. The report takes note of the considerable strides being made in recognising the importance and urgency of tackling this problem, and points out that the complexity of defining the term is not an obstacle to detecting the phenomenon, noting that the fight against abuse of power with the aim of sexual extortion varies across countries and depends on how developed a country and its legal system and legal framework are.

The report points out that sextortion is present in all sectors and is apparently most prevalent in education, the judiciary and the public service in general, and it typically affects vulnerable individuals and exploits their straitened situation. It also notes that this form of corruption is the hardest to monitor as it is massively underreported and underdocumented because the victim often faces social condemnation. In many settings this is a taboo subject, and it can be extremely difficult to prove that coercion was involved. From a legal point of view, what stands out as a major shortcoming, according to the report, is the lack of legal frameworks that clearly define and address sextortion as a criminal offence in its own right which would carry a clearly defined penalty. This is a problem confronting most societies, yet some cases may serve as examples of good practice, in particular those citing the methods used by individuals in various parts of the world to prove sextortion.

As a necessary step in the fight against sextortion, initial consultation with interested stakeholders, e.g. civil society or academia, is recommended, and this initial step is considered the most important in raising awareness of this issue. The next challenge is to develop a clear course of action, i.e. define clear action procedures for combatting this social phenomenon, such as clearly defining the concept, engaging with the public for the purposes of education and communication, gathering information on legal ways to combat sextortion, e.g. anti-corruption regulations and laws or court procedures.

Shedding much needed light on the problem and painting a clearer picture of the phenomenon itself, this publication detects the mechanisms whereby individuals would be encouraged to report sextortion. The recommendations compiled by Transparency International in its publication are considered general recommendations that should be included in all available manuals to combat sextortion, so their integration is necessary in this publication, too, as they are the result of many years of research and analysis in this field.

A crime of corruption and sexual exploitation

An equally important report called “A Crime of Corruption and Sexual Exploitation” was released in 2019 by the International Bar Association. Its contribution to the problem’s discourse is a definition of sextortion that makes no differentiation among sexual exploitation, corruption and crime. The primary reason for drawing up this report was the unquestionable need to raise awareness and approach the problem through the anti-corruption lens and to change existing perspectives that minimise the causes and consequences of the social phenomenon known as sextortion. From the point of view of this report, sextortion is by no means separated from corruption, but is viewed as an integral part of the broader anti-corruption campaign.

It highlights three legal foundations in the struggle to prove sextortion:

- Anti-corruption laws and regulations;
- Legislation on gender-based violence; and
- Anti-discrimination and harassment laws and regulations.

The above publications have played an exceptional role in defining sextortion and contributed greatly to exposing this form of corruption that is besetting modern society. Although the legal struggle is still to come, the fact remains that some societies have already laid particularly important foundations that are, over time, expected to become widespread methods in the fight against sextortion. Each of these publications is a cross-section of experiences and documentation, but most importantly they present concrete recommendations on how to proceed in this fight. An active role of international organisations and formulation of plans to substantially reduce the number of sextortion cases is therefore expected to materialise in the coming period, alongside the acceleration of legislative changes and raising public awareness of the actual threat to vulnerable groups and individuals.

» Proposed improvements to the legal framework and practice in BiH

International organisations have a crucial role to play in defining sextortion. However, many years of researching this social phenomenon has also led to conclusions concerning individual states and their legal systems in the fight against this form of corruption, which represent global guidelines and provide universal recommendations to be integrated into the legislative frameworks. The key recommendations, as presented in TI's 2020 report are as follows:

- Develop a legal definition of sextortion to enable effective prosecution of cases;
- Implement legal training programmes;
- Integrate sextortion into anti-corruption and gender-based violence policies;
- Launch public campaigns to raise awareness about sextortion as a form of corruption;
- Provide safe reporting mechanisms, and support and appropriate assistance to persons who are victims of sextortion (psychological and physical health services, etc.);
- Provide legal guidance and advice about any legal risks such as costs and other uncertainties;
- Protect victims who report cases of sextortion against retaliation;
- Train individuals how to talk to victims of sextortion;
- Train individuals how to talk to victims of sextortion;
- Gather existing data regarding sextortion;
- Analyse existing data regarding sextortion cases;
- Study the mental, physical and economic impact of sextortion on individual who report sextortion, as well as the consequences it has at societal level; and
- Conduct global research to identify commonalities and differences in how sextortion manifests itself across sectors.

The above recommendations provide general guidance as to what course of action to take and what tools and mechanisms to employ in the fight against this pernicious phenomenon, but they need to be further tweaked and elaborated to adjust them to different settings and contexts.

Necessary legal improvements

Introduce the term sextortion into the legislation of Bosnia and Herzegovina and recognise it as a form of corruption

It is important to properly define sextortion, i.e. develop a legal definition for it, to enable adequate prosecution of cases. Also, it is necessary to integrate sextortion into both anti-corruption and gender-based violence policies, programmes and regulations to ensure greater complementarity. Efforts by international organisations and civil society can play an important role promoting the adoption of appropriate sextortion legal frameworks and their integration into anti-corruption programmes.⁷⁴

Recognise sextortion as a criminal offence

As mentioned earlier, the legislation of Bosnia and Herzegovina should first recognise the term sextortion and, by extension, recognise it as a form of criminal offence, or corrupt offence, to enable adequate penalties and restrictions for the perpetrators.

Harmonise entity- and state-level legislation

Given the complexity of the legislative system in Bosnia and Herzegovina, it is important to harmonise it, primarily in terms of the offences associated with sextortion. Entity-level criminal codes are noticeably more detailed in elaboration of some terms than the state-level code. Also, the RS Criminal Code includes more offences that can be associated with sextortion, so other codes should be improved such to be aligned with the existing RS Criminal Code.

Harmonise penalties in legal frameworks

In order to ensure equal treatment for all victims of sextortion in Bosnia and Herzegovina, it is essential that penalties in criminal law frameworks at all levels are harmonised. Codes of conduct at the levels of BiH, FBiH and RS may offer other ways of sanctioning some perpetrators of sextortion, especially if other laws may not be appropriate in situations.

Bosnia and Herzegovina has its Gender Equality Law,⁷⁵ which does not cover the corruption aspect of this act, but even as such it is very rarely applied in court practice.

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⁷⁴ H. Feigenblatt, Breaking the silence around sextortion - The links between power, sex and corruption, Transparency International, 2020; https://images.transparencycdn.org/images/2020_Report_BreakingSilenceAroundSextortion_English.pdf

⁷⁵ Official Gazette of BiH, nos. 16/03 and 102/09

EXAMPLE: The Code of Conduct and Ethics for Uganda Public Service Commission forbids subjecting others to “conduct of a sexual nature affecting his or her dignity, which is unwelcome, unreasonable and offensive to the recipient”. Sanctions include suspension, compensation for the affected person and removal from public service. An official involved in a sextortion case can be considered to have engaged in such conduct and be disciplined for it, even if not prosecuted for the corrupt nature of the actions. (Breaking Silence Around Sextortion, TI)

Heavier penalties for sextortion perpetrators

Awarding damages in criminal proceedings is important in that it empowers victims, integrates them into criminal proceedings, and identifies them with criminal proceedings, and such trials have transformative potential. All international instruments insist on the existence and importance of the right of victims to compensation. Compensation can be obtained from the perpetrator or, especially when serious criminal offences are involved, from the state. Special state funds for victim compensation are especially important in cases where the perpetrator is unknown, unavailable or unable to compensate the damages due to his straitened circumstances.

Drawing on the examples of positive practice from the EU and the recommendations of the Directive 2012/29/EU, a support system should be put in place with a view to informing victims about their rights and avenues for protection.

Statute of limitations

Abolishing the statute of limitations for sextortion offences would have the primary benefit of helping victims report this offence when they feel ready (as shown by the #MeToo, #IDidn'tAskForIt, etc. movements). Another benefit is that procedural delays could not be used any more to acquit those accused on the basis of the statute of limitations, as happened in some of the cases analysed in this publication.

Disciplinary proceedings and procedural issues

In addition to criminal proceedings, it is important to conduct disciplinary proceedings against the accused and introduce adequate penalties.

It is necessary to provide adequate protection for victims during proceedings. The victim must not be forced to testify in the same room with the perpetrator, thus ensuring the protection of the victim from repeated, i.e. secondary victimisation.

In the UK, sextortion perpetrators who hold a public position may be charged with Misconduct in Public Office (MiPO). This covers a wide range of conduct, and has been used as a practical method of dealing with sexual offending by a person in public office. The consequences following a sexual offence conviction do not apply (eg, being registered on the sex offenders register, Sexual Harm Prevention Orders or Sexual Risk Orders) unless a further offence, such as rape, is charged. (Sextortion A Crime of Corruption and Sexual Exploitation, IBA)

Victim as a source of criminal information

Victims are an important source of initial information about the crime and the perpetrator. Also, they are the most likely to report the crime, in person or by phone, to the competent state authority, mainly the police. It is important how the state authorities, i.e. the police, treat the victim during reporting. Special recommendations for police officers are particularly important in that regard as they help reduce the likelihood of secondary victimisation for the victim. It is recommended that the victim's statement be included in the record of receipt of the criminal report and also kept as an audio recording. Victimologists recommend that the police officer taking the statement from the victim be female, *"primarily to prevent the victim from truncating the details of the crime, or to establish a favourable situation, visual and psychological contact between the interlocutors."*⁷⁶

*"If the report is submitted immediately following the criminal offence, the police inspector, in accordance with the principle of urgency, immediately after a preliminary interview with the person reporting the crime, first organises immediate operational and investigative actions (securing the crime scene, identification, inspection of vehicles and passengers, pursuit or other form of search for the perpetrator, inspections, etc.), and after that arranges for the victim to be taken to a health-care facility for gynaecological and other medical examinations."*⁷⁷

Protection of victims from secondary victimisation

The most important international instruments for the protection of victims from secondary victimisation are the **Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (adopted in 1986 by the UN)⁷⁸ and **Recom-**

⁷⁶ Prof. Metodija ANGELESKI PhD, Ass. Tamara Adamova MA, Ass. Ardian Islami MA, Dragan Milosheski MA, "Testimony of a Rape Victim" (Criminalistic-Victimological Aspects). Proceedings of the Second International Scientific Victimological Conference in BiH, 22 November 2017

⁷⁷ Adžajlić-Dedović, A.; Simović, M.; Angelski, M.; Butorac, K.; Čekić, E.; Topić, Ž.; Hunček, S.; Madeško, B.; Taso-Deljkić, A.; Andrić, D.; Luketić, I. (2021.) Forensic Victimology and Psychology I. Grafo-Mark. Banja Luka

⁷⁸ Available at <http://media.cgo-cce.org/2013/06/17-Deklaracija-o-osnovnim-nacelima-pravde-u-vezi-sa-zrtvama-krivicnih-djela-i-zloupotrebe-vlasti.pdf>

Recommendation No. R (85) 11 of the Committee of Ministers of the Council of Europe on the position of the victim in the framework of criminal law and procedure (adopted in 1985).⁷⁹

These instruments require Member States to:

- improve the position of victims in the process of informing them about the procedure;
- ensure that the victim's opinion is heard;
- provide assistance and support to victims throughout the criminal proceedings;
- reduce inconvenience to a minimum and maximise the safety of victims at all stages; and
- avoid unnecessary delays in the proceedings.

The 2006 Recommendation of the Committee of Ministers of the Council of Europe on Assistance to Crime Victims and Prevention of Victimisation requires Member States to define secondary victimisation in their legislation and practice *"as all negligent, unlawful and wrongful treatment of victims by institutions and individuals"*.⁸⁰

In BiH, the prevention of secondary victimisation implies the application of victim prevention measures, which include:

- a) educating the public about secondary victimisation (especially civil servants);
- b) establishing community-based models of secondary victimisation prevention; and
- c) prohibition and sanctioning, in laws and by-laws, of behaviours and activities that constitute secondary victimisation.

Employers inform employees about rights in case of sextortion or similar

When recruiting, employers, in particular all public institutions, enterprises, etc., should preferably inform the new employee about his/her rights in case of sextortion. Also, these rights should be spelled out in the documentation that accompanies the employment contract and included in on-the-job training in each institution, enterprise, etc. so that employees can know at any time what options are available to them. It is important to legally establish the above as an obligation, at least in the public sector, to begin with.

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⁷⁹ Available at <https://rm.coe.int/16804dcca>

⁸⁰ Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims of 14 June 2006; Retrieved from <https://rm.coe.int/16805afa5c>

Awareness raising

At a roundtable on sextortion in Bosnia and Herzegovina, a police official drew a comparison to the situation in his town a decade earlier, when similar discussions were held about domestic violence. He observed that, at the time, there were no cases of domestic violence, and people didn't think it was a problem in their community. Today, the community has about 20 domestic violence cases per year. It wasn't that domestic violence didn't exist 10 years ago, but only that people were not aware of the problem and didn't perceive a remedy. He expressed the hope that initiating this discussion about sextortion would achieve a similar result. (International Association of Women Judges (2017), "Naming, Shaming and Ending Sextortion: Toolkit")

In order for people to be able to recognise sextortion and essentially know how to protect themselves against it, it is necessary to include sextortion in the education system, as well as through mandatory lectures on sextortion, reporting avenues and protection mechanisms, from the beginning of the academic year. Also, it is necessary to provide information and education about secondary victimisation, why victims should be treated with due respect and consideration (see the section "Secondary Victimisation and Victim Blaming"), and how to avoid the use of labelling. Examples of the #MeToo and #IDidn'tAskForIt movements can be seen as platforms to empower victims and help them speak up. We can use these examples to promote the importance and institutionalisation of the support system, because only such a system can help victims during the reporting process and after its epilogue.

Training of judges and prosecutors

The following recommendations help to create better curricula and practice in the training of judges and prosecutors sensitised to sextortion and capable of fully performing the functions entrusted to them:

- Recognise positive practices in other countries and integrate them into the BiH system through training of judges and prosecutors. Training should include the existence and prevalence of sextortion, as well as the opportunities under existing laws in a given country to prosecute such cases.
- Train individuals (including judges and prosecutors) who interact with victims of sextortion and investigate their reports to be mindful of their language, avoid re-victimisation and prevent possible biases.⁸¹

⁸¹ H. Feigenblatt, Breaking the silence around sextortion - The links between power, sex and corruption, Transparency International, 2020; https://images.transparencycdn.org/images/2020_Report_BreakingSilenceAroundSextortion_English.pdf

- Conduct a comparative legal analysis of past cases of sextortion to identify factors that increase or decrease the chances of success in court.
- Produce a toolkit to be used to create awareness among judges, prosecutors, activists, academics and other stakeholders.⁸²
- Protection of victims during trial – it is especially important that judges and prosecutors are aware of the vulnerability of victims and take actions to enable both physical and emotional protection of victims and to avoid the situation cited as a negative example below.

Reporting mechanisms

Case: Vladimir Špoljarić

While serving as president of the Sarajevo Cantonal Court, Vladimir Špoljarić was accused of sexually harassing court secretary Enisa Pazelja. He then threatened to fire her if she went public, abusing his position. In January 2021, disciplinary proceedings were initiated against Špoljarić, and HJPC rejected the request for the employee who reported the abuse to be heard from another room.

In order to work with victims of sextortion, law enforcement officers should receive training about the primary form of protection for victims. Law enforcement officers must be trained contextually so as not to contribute to re-victimisation.

To help victims better understand the reporting mechanism and know what forms of protection the system provides, the information on how to report sextortion and the further steps to be taken should be displayed prominently on the interior ministries' communication channels. Also, telephone numbers for additional information on the reporting mechanism, the report itself and victim support should be prominently displayed on the interior ministries' communication channels, and on the bulletin boards of relevant institutions, universities, etc.

Alternatively, victims may first be referred to a legal aid centre, victim support NGO or social work centre to get the necessary care and/or support, as well as advice on the next course of action. Alternative avenues can also be used if the police fail to respond adequately, especially in terms of protection. In such cases victims can turn for help to shelters and safe houses operating in Bosnia and Herzegovina.

⁸² H. Feigenblatt, Breaking the silence around sextortion - The links between power, sex and corruption, Transparency International, 2020; https://images.transparencycdn.org/images/2020_Report_BreakingSilenceAroundSextortion_English.pdf

Legal aid

Victims who file reports should receive clear legal and procedural guidance from those who process their reports (interior ministries, prosecutors, employers), including advice on all legal risks (e.g. potential prosecution for corruption charges), the likely costs for the victim, etc. Reporting mechanisms may include a fund to assist in legal proceedings and provide support to victims who are in dire financial situation.

Also, all TI chapters have departments that provide free legal aid. However, even they require additional training on sextortion due to the sensitive nature of the issue, and have yet to be recognised as a source of legal counselling support to sextortion victims.

Employers are recommended to develop information channels on how to report sextortion, through info sessions, training or other form of information dissemination.

Victim support

In accordance with international standards, Bosnia and Herzegovina has taken upon itself the obligation to harmonise both state and entity laws governing the exercise of victims' fundamental rights. Guidelines for the **Social Work Centres**, which draw on international obligations, relevant state and entity laws, and, primarily, obligations stemming from laws governing the right to social protection, determine the content of activities and measures of competent institutions. Social Work Centres (SWCs) are public institutions founded at the municipal/city level, whose operation and beneficiaries are regulated by the social protection laws of the entities and the Brčko District. These laws also define social work services, which include the following activities:

- prevention;
- diagnostics;
- treatment and counselling-therapeutic work based on the application of professional and scientific knowledge with the aim of providing professional assistance to individuals, families and social groups in overcoming their material hardships; and
- helping to organise local and other communities to prevent problems and mitigate the consequences.

The role of SWCs

Through SWCs victims are entitled to:

- one-off cash benefit;
- psycho-social assistance;
- placement in a safe house, and
- counselling.

The rules and procedure for direct assistance to victims are laid down in the **Rules on the Protection of Victims and Witnesses**.⁸³ The Rules establish the following SWC responsibilities:

- a) Reporting (Article 6);
- b) Physical protection (Article 10): In cooperation with local police, the social protection service shall continue to implement closer supervision measures with respect to the physical security of the victim and the witness victim by setting a reasonable time period for closer supervision and the information delivery system to ensure prevention of secondary victimisation;
- c) Social protection (Article 12): SWCs shall provide the victims with protective care and housing, financial assistance, counselling and therapy, and professional assistance in terms of inclusion in a resocialisation programme; and
- d) Child protection (Article 15): Acting in its official capacity under law, the guardianship authority shall take necessary measures to protect the rights of the child and to determine the best interest of the child.

The practical application of the Law needs to be improved and the necessary resources provided to ensure the implementation of all SWC responsibilities and assist the victim support and protection system.

Victim support NGOs and women's shelters

Over recent years, these organisations have assumed an important role complementing and adding to the work of the country's official social protection authorities, but sometimes also directly to victims' social networks, which consist of friends and family. Organisations working with victims of crime provide the following forms of help and support:

- emotional support, information and referrals to other services,
- professional help (legal, psychological, medical),
- various forms of practical assistance (enrolling children in preschool or school,

⁸³ Working with Victims of Human Trafficking: Guidelines for Social Work Centres, http://www.msb.gov.ba/anti_trafficking/dokumenti/prirucnici/?id=5318 (2010/2011)

- transportation, financial assistance in emergencies),
- humanitarian aid,
- family counselling and mediation,
- housing (shelter, day centre),
- support in court and support in contacts with other institutions;
- self-help groups, raising awareness about violence and available forms of protection, and
- assistance in reintegration and social inclusion.

In Bosnia and Herzegovina there are nine safe houses operating as part of or under non-governmental and/or humanitarian organisations. Housing facilities are available to victims of domestic violence. In the Federation of BiH there are six safe houses operated by the following organisations: **Medica Zenica; Fondacija lokalne demokratije, Sarajevo; Vive Žene, Tuzla; Žene sa Une, Bihać; Žena BiH, Mostar; and Mirjam Caritas, Mostar**. The remaining three safe houses are located in the Republika Srpska and run by the following NGOs: **Budućnost, Modriča; Udružene žene, Banja Luka; and Fondacija Lara, Bijeljina**.

In addition to providing a safe haven and shelter for victims, these safe houses provide other forms of assistance depending on the capacities of their operating organisations. Furthermore, they provide counselling services, medical care and legal assistance, and some also provide economic empowerment training (e.g. Medica Zenica). **Helsinški odbor za ljudska prava** provides professional and targeted assistance to victims of human rights violations, and **UŽR "Bolja budućnost" Tuzla** works in the field of human rights protection with a special focus on the rights of Roma women.

Legal aid

Besides safe houses, victims of sextortion and/or other forms of sexual harassment can also seek legal assistance from **ALAC**, which provides legal aid to citizens affected by corruption, and **Centar ženskih prava (CZP) Zenica**, which offers legal aid for women and children, and legal aid in the field of gender rights. **Fondacija lokalne demokratije** runs a telephone hotline where citizens of Sarajevo Canton, and beyond, can report within 24 hours any form of domestic violence: physical, psychological, sexual and economic violence. In addition, the Fondacija's Centre for Women offers free legal aid, as well as psychological and socio-economic support. The **Udružene žene Banja Luka** foundation operates a 24-hour hotline where victims of domestic violence or other forms of gender-based violence can receive psychological support and information on how to protect their rights and available recourse through official institutions. The foundation also provides free legal aid, free psychological support and counselling. Other services provided by the foundation include the Safe House for Women Victims of Domestic Violence, the Service for Economic Empowerment of Women and self-help groups for women who are victims of gender-based violence. Legal assistance to women victims of violence and discrimination is also offered by the organisations **Vaša prava** and **Udruženje građana "Budućnost"**, the latter also providing psychological and medical assistance to women victims of violence.

Expanding research related to sextortion

Once sextortion is given a more precise legal definition and has been introduced into domestic legislation, it will become easier to monitor sextortion cases and how they are handled by prosecutors' offices and courts. Analysis of the cases will indicate improved treatment of victims, absence of secondary victimisation, and judgements passed against perpetrators. Also, awareness raising and training are expected to greatly curtail this phenomenon in other institutions, not least in the education sector. The amassment of material through either official channels or social media will create a better basis for the analysis of the phenomenon and the fight against sextortion, which can be one of the activities of the NGO sector, such as the Association of Women Judges and Prosecutors, TI BiH in cooperation with related NGOs, etc.

Judgement number / date	91 0 K 032549 16K	32 0 K 31826 17 K	45 0 K 028523 14 K	32 0 K 12734 16 K Z.	510K *** 15K	51 0 K *** 15 K	60 0 K 535796 16K
Time from indictment to sentencing	22/07/2015 (indictment), 25/03/2016 (judgement)	24/10/2012 (indictment confirmed), 10/03/ 2014 (judgement)	15.05.2014. (optuznica) 07.10.2014. presuda	Optuznica: 24.05.2012. Presuda: 18.04.2019.	Optuznica: 1.11.2015. Presuda: 24.11.2016.	Optuznica 25.2.2015. Presuda 26.04.2017.	Optuznica 29.01.2016. Presuda 11.07.2016.
Type of judgement: Conviction/Acquittal	Conviction	Conviction	Acquittal	Acquittal	Conviction	Conviction	Conviction
If conviction, the type of sanction	Suspends sentence – one year's imprisonment, this sentence will not be enforced unless the accused commits a new criminal offence within 3 years from the day this judgement becomes final	Six months' imprisonment	-	-	Suspended sentence to six months' imprisonment will not be enforced unless the accused commits a new criminal offence within one year and six months.	Suspended sentence to six months' imprisonment, unless he commits a new criminal offence within one year.	Three years' imprisonment

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Elements of black-mail	The accused proposed to the injured party and persuaded her to repay a BAM 5000 debt with sexual favours. The accused said that "if she does not come, he will tell people around the village what she is like and that she earns money from sex rather than work."	Yes, the accused blackmailed the victim with a recording of sexual intercourse, which is why she could not end the relationship with him.	Yes, the accused blackmailed the two victims by saying that he will not sign their employment contracts.	The injured parties were given passing grades in exams without actually sitting the exams.	Yes, the accused threatened the victim he would publish her nude photos and a video recording of their sexual intercourse, and that he would show them to her mother and on social media if she did not agree to have sex with him.	Yes, the accused threatened the injured party saying that he would publish her nude photos and that he would show them to her father, if she did not agree to have sex with him.	Yes, the accused threatened the injured parties saying that he would publish their nude photos and a video recording of their sexual intercourse if they did not agree to have sex with him.
Were mitigating circumstances taken into account?	Yes	Yes	-	Yes	-	Yes	Yes

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<p>If YES, which?</p> <p>Despite the fact that he does not consider his behaviour to constitute a criminal offence, the accused, nevertheless, honestly and soundly presented before the court everything that happened between him and the injured parties, except for certain actions which the court finds he withheld out of embarrassment for what he did." Other reasons: the accused is a family man, married... people perceive him as a good man, an exemplary social and educational worker. The very conduct of the proceedings and full elucidation of the circumstances surrounding the event was perceived by the accused as a huge disgrace that has tarnished his reputation.</p>	<p>The absence of prior convictions, the accused's age, the fact that he is a family man</p>	-	<p>The accused's admission of guilt: "The Court appreciates that the Accused pleaded guilty to the commission of the criminal offence... thus helping the Court to expedite the completion of the criminal proceedings at hand"; the accused's unemployment status, his promise not to repeat the act.</p>	-	<p>The accused's good conduct and reputable character.</p>	-	<p>The accused's admission of guilt, the fact that he is a family man, the father of a minor child, has no prior convictions and he has expressed remorse.</p>	<p>The absence of prior convictions.</p>

Judgement number / date	91 0 K 032549 16K	32 0 K 31826 17 K	45 0 K 028523 14 K	32 0 K 127234 16 K 2	510K*** 15K	51 0 K *** 15 K	60 0 K 535796 16K
Were aggravating circumstances taken into account?	-	Yes	-	-	-	Yes	No
If YES, which?	-	The accused's indecent conduct during the main hearing when, despite the court's repeated warnings, he kept interrupting and obstructing the examination of witnesses. In the commission of this criminal offence the accused exhibited a high degree of culpability, which is also an aggravating circumstance on the part of the accused.	Prethodno osudivan.	Ne	-	Težina počinjenog krivičnog djela i okolnosti pod kojima je počinjeno.	-
Was the opinion of a court witness, such as psychologist or similar, sought?	No	Yes, psychological expertise of the injured party	NO	No	No	No	No

Judgement number / date	91 0 K 032549 16K	32 0 K 31826 17 K	45 0 K 028523 14 K	32 0 K 127234 16 K Z.	510K *** 15K	51 0 K *** 15 K	60 0 K 535796 16K
Does the judgement contain reasoning/ explanation?	Yes	Yes	YES	Yes	Partly yes	Yes	Yes
Does the accused have prior convictions?	Yes, sentenced to four months' imprisonment, suspended for two years for the criminal offence of bodily harm.	No	No	No	No	No	No
Additional notes	The injured parties may pursue their property claim against the accused in civil litigation.	A plea bargained but for many items no legal basis was provided, especially for mitigating circumstances.	The described act contains elements of sexual harassment at workplace, but the competent authorities did not deal with it. The act was legally misclassified in the indictment, and perhaps the act should have been subsumed under Article 208 of FBiH CC (Lechery).	Originally, in 2015 sentenced to seven months' imprisonment with two years' probation, after which the Tuzla Canton-Prosecutor's Office appealed, and the Tuzla Canton Court overturned the verdict and returned the case for the case for retrial.	A plea bargain has been reached.	The accused pleaded guilty, and the evidence presented confirmed his guilt. The Defence for the Accused requested that the previous love affair between the victim and the Accused be taken into account, as well as his recent marital status, and the fact that his wife was not aware of this criminal proceeding.	The injured party may pursue her property claim against the accused in civil litigation.



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