

Trial monitoring of corruption cases

Second Report

Banja Luka, October 2021





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Norwegian Embassy

Introductory Remarks: On the Project and Methodology

The report in front of you was created as a part of the Monitoring of Corruption Prosecution and Legal Aid project, which is supported by the government of the Kingdom of Norway. In the first year of monitoring, law students throughout BiH monitored trials in 50 corruption cases in front of 8 courts, and in August 2020, the Report on Monitoring Trials in Corruption Cases was published. In the second year of monitoring, due to the outbreak of the epidemic and security measures, students were unable to follow the live trials, and Transparency International in BiH (TI BiH) conducted passive monitoring following the continuation and outcome of trials in cases monitored in the first year. Passive monitoring was performed by sending requests for information access related to the ongoing or (legally) completed proceedings. TI BiH primarily requested information on the stage of the procedure that was monitored ending with June 31, 2021, and the following information: information on the number and date of hearings held in the period from April 2020 to June 2021; whether the public was present at the hearings, and whether the public was possibly excluded; information on whether and for how long the main trial in the respective case was postponed in the period from April 2020 until June 2021, and on what basis and at whose request, if any, or a copy of the decision to postpone the main trial (if the same was passed in the indicated period); information on whether the main trial was interrupted or postponed and on what grounds (in the marked period April 2020 - Jun 2021); a copy of the first-instance and final judgment, if they have been rendered, and a copy of the appeal of the competent Prosecutor's Office against the first-instance judgment, if the same has been stated.

Based on the achieved access to information, a tabular overview (Table 1) and accompanying analysis of trends in 28 cases regarding the duration and management of court proceedings in corruption cases, as well as a tabular overview (Table 2) in 13 cases in which criminal sanctions were imposed (first instance or final court decisions), with an analysis of observed trends in criminal policy were created. It is important to note that these are cases that have been monitored since September 2019, and that the main final reference point for monitoring is June 31, 2021, as stated in the requests for access to information. Passive monitoring or the second year of monitoring trials in corruption cases took place in extremely difficult conditions due to objective circumstances such as the epidemic, but also because monitoring relied largely on access to information primarily held by the courts. The courts themselves worked in a modified mode of operation in the circumstances of the epidemic, so the research team had to take this into account when collecting data. Individual data from the cases or court decision were submitted to the research team too late, or at a time when the data could no longer be processed and further analyzed, so they were not taken into account. Here we would like to especially thank the individual courts, which were monitored through access to information in their possession, and which showed enviable transparency and zeal in their work by submitting all requested information in a timely manner.

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These are the following courts:

- Cantonal Court in Bihac;
- Court of Bosnia and Herzegovina;
- Basic Court in Banja Luka;
- Municipal Court in Zenica.

Based on the collected information from the proceedings, in addition to tabular displays and presented trends in criminal policy and management of corruption cases, the research team made analyzes of individual cases, pointing out possible corruption factors, controversial points that deserve attention or examples of good practice. The report also provides an analysis of two decisions of the Constitutional Court of Bosnia and Herzegovina in two cases that were part of the sample, where the accused filed appeals for violations of fundamental human rights and freedoms, and in this regard draws interesting conclusions about the possible repercussions of poor management of proceedings and the organization of trials for the enjoyment of basic human rights, such as the right to a trial within a reasonable time. The report presents findings regarding the prosecution of corruption offenses on a sample that is significant and whose greatest value is monitoring of the proceedings conducted before eight courts throughout BiH, in relation to a larger number of accused persons, as well as in relation to a wider range of crimes that can be classified as corrupt.

The report primarily serves the professional community, but also the wider community, in order to gain insight into the actions of courts and all other actors in criminal proceedings in corruption cases. Scores and findings from individual cases are given as a template for an expert hearing, and should be read as such, and should not be viewed as a re-valorization of court decisions, but as an expert opinion or analysis to contribute to an expert and public hearing.

Introductory overview of findings from relevant reports on the judiciary in BiH: Corruption and missing mechanisms of integrity

There is no doubt that corruption is present in all pores of society in Bosnia and Herzegovina (BiH), as indicated by the Corruption Perceptions Index published by Transparency International for 2020, placing BiH among the countries in which corruption is the most deteriorating. Namely, BiH has the worst position in the Western Balkans region and shares 111th position with the North Macedonia. According to the Corruption Index BiH has fallen by 11 places during the reporting period, and is now ranked 111th out of 180 countries, with the total score of 35, which is the worst score it had ever since 2012, when BiH occupied 72nd position with the score of 42.¹ The fight against corruption is a challenge even for the most developed countries and therefore it was expected that BiH, considering the complexity of its social and political system and underdeveloped economy, will have a huge problem in solving this issue. Corruption has great impact on the government and takes a form of an inappropriate political influence and interference, clientelism and patronage, bribery and abuse of public office and human trafficking. Even four, out of five people, believe that government is not doing enough to fight corruption.²

Based on the Bosnia and Herzegovina 2020 Report *accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; 2020 Communication on EU Enlargement Policy (the Report)* BiH is at an early stage/has some level of preparation in the prevention and fight against corruption and organised crime. It was concluded that there was no progress in addressing the Opinion key priorities and 2019 recommendations in this area, as well as the findings of the Expert Report on Rule of Law Issues in BiH. Adequate prosecution of corruption is one of the essential conditions for prevention of corruption, i.e. the failure of the judicial system leads to *de facto* impunity for the perpetrators of those crimes. The Report states that BiH has reached a certain level of preparation to implement the EU *acquis* and European standards in the field of judiciary and fundamental rights, but no progress was made during the reporting period. Obstruction of judicial reform has been continued from inside the judiciary by the political actors, while poor functioning of the judicial system still prevents the citizens from exercising their rights and undermines the fight against corruption and organised crime. The authorities and the judiciary has taken no measures concerning the findings of the Expert Report on Rule of Law. Corruption is widespread and there is no progress in anti-corruption fight.³

1 See: <https://www.paragraf.ba/dnevne-vijesti/05022021/05022021-vijest6.html>, accessed on 03/09/2021

2 See: USAID/BiH, *National Survey of Citizens' Perceptions*, 2019, accessed on 03/09/2021

3 See *The Report European Commission*, available at https://europa.ba/wpcontent/uploads/2020/10/Iz-vjestaj_za_BiH_za_2020_godinu.pdf, accessed on 03/09/2021

The Third Annual Report on Judicial Response to Corruption: The Impunity Syndrome, November 2020, by OSCE Mission to Bosnia and Herzegovina (**the OSCE Report**) indicates that *the general picture offered by the monitoring of serious cases of corruption (i.e. those categorized as high and medium level) can simply be described as a failure of the criminal justice system, resulting in de facto impunity for the perpetrators of many serious offences.*⁴ The OSCE Report states that there has been a negative trend in the prosecution of corruption cases and this is reflected in the dramatic drop in the number of new indictments in high and medium level cases, filed by prosecutors in 2019. Then, in the steep fall in the conviction rate, which dropped from 80% in 2017 to 57% in 2019 for medium level cases, and from 100% in 2017 to devastating 12% in 2019 for high level cases. In numbers, only 13 defendants were declared guilty, while 23 were acquitted in high and medium level cases finalized in 2019. Based on this it can be concluded that existing shortcoming in the judicial system and the identified omissions to enforce the law in regard to those who hold power and influence in society lead to low level of convictions in high and medium level cases, i.e. in difficult and complex cases. One cluster of problems relates to deficiencies in case preparation by the prosecution, while another points to the unclear or unpredictable application of the law by the courts. One of important factors influencing the corruption case processing is the duration of proceeding. This has also been confirmed by the Transparency International BiH 2020 first Report on Trial Monitoring of Corruption Cases, which found a lack of procedural discipline reflected in the existence of unreasonably time gaps between the dates of the hearings. The findings precisely state that during the period analyzed in the Report only one-third of hearings were held once a week, and even longer time gaps of at least two weeks to more than a month were very frequent.⁵ The lack of procedural discipline as the biggest obstacle to the efficient management of court proceedings has been also determined as such in the Expert Report on Rule of Law Issues in Bosnia and Herzegovina (Priebe Report), stating that the courts completely ignored the possibility of successive, day-to-day scheduling of hearings until the proceedings are completed.⁶ In its 2019 Opinion on BiH, the European Commission states that corruption *is widespread... and that all government levels show signs of being controlled by politics, which has a direct impact on everyday life of its citizens, particularly in the field of healthcare, education, employment service and public procurement.* Furthermore, the Mission of OSCE believes that increasing access to information for the media and the public concerning the activities of the prosecutors' offices, especially in the investigation phase, would be a good spot to start addressing this accountability gap. The High Judicial and Prosecutorial Council of BiH (HJPC), prosecutors' offices and courts should make meaningful and detailed information on investigations, prosecutions and trials available to the public, especially when there is a prominent

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⁴ OSCE mission to BiH, *The Report*, available at: <https://www.osce.org/files/f/documents/1/9/471006.pdf>, accessed on 03/09/2021

⁵ Transparency International BiH, „Trial dynamics“, str.8, https://ti-bih.org/wp-content/uploads/2015/06/Izvjestaj-Sudjenja_bhs.pdf, accessed on 27/10/2021

⁶ The Expert Report on Rule of Law Issues in Bosnia and Herzegovina (Priebe Report), Brussels, 05/12/2019 http://www.fcjp.ba/analize/PRIEBE_Izvjestaj.pdf, accessed on 27/10/2021

public interest.

The previous two Project Reports on Assessing Needs of Judicial Response to Corruption through Monitoring of Criminal Cases identified several possible causes for the weakness of the judicial response to corruption:

- a) A lack of harmonization of substantive and procedural criminal legislation undermining the principles of legal certainty and equality before the law;
- b) The fragmentation of the judicial system resulting in frequent conflicts of jurisdiction and a general lack of coordination;
- c) The inadequate capacity of prosecutors in the drafting of indictments and the gathering of evidence supporting the charges; and
- d) The fact that many judges do not properly reason their decisions, with many of them applying the law inconsistently and unpredictably.

Based on this, it can be concluded that the causes of „the impunity syndrome“ affecting the processing of corruption cases can be found predominantly in institutional or legal flaws, or the insufficient competence of individual judges and prosecutors.⁷

Transparency International 2020 Report on Monitoring the Prosecution of Corruption in Courts and Prosecutors' Offices in BiH indicates that the share of complaints for corruption offences compared to the total number of complaints has been decreased from 5.2% in 2019 to 4.6% in 2020, and presents the lowest share in the last four years. The decrease in number of complaints for corruption offences in 2020, compared to 2019, has been reported by all prosecutors' offices. In 2020 Bosnia and Herzegovina experienced a decrease of 29.9% in the number of convictions for corruption offences in comparison with 2019, or a fall from 224 convictions in 2019 to 157 convictions in 2020. If we observe this through different prosecutorial jurisdictions, the number of convictions for corruption offences in 2020, compared to 2019, increased only in the Prosecutor's Office of BiH. On the other hand, in the Brcko District Prosecutor's Office, the number of convictions for corruption offences decreased by as much as 64.7%, in the RS Prosecutor's Office by 45.1% and in the FBiH Prosecutor's Office by 26.4%. Along with the decrease in the number of convictions for corruption offences, the number of acquittals has also decreased. In 2020, there was a decrease of 54.8% in acquittals, compared to 2019.⁸

The concerning situation about all segments defining the presumed independence and neutrality in the conduct of the judiciary is something that further complicates the providing of response in a form of efficient and meaningful processing of corruption cases. In this regard a certain shortcoming was noted,

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⁷ OSCE Mission to BiH, *Report*, available at: <https://www.osce.org/files/f/documents/1/9/471006.pdf>, accessed on 04/09/2021

⁸ *Transparency International 2020 Report on Monitoring the Prosecution of Corruption in Courts and Prosecutors' Offices in BiH*, available at: https://ti-bih.org/wp-content/uploads/2021/08/Monitoring-procesuiranja-2020_draft.pdf, accessed on 04/09/2021

and confirmed as such by the European Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union. This shortcoming is related to the functioning of mechanisms representing a prerequisite for strengthening prevention and fight against corruption and organised crime.⁹ The indicated document specifically emphasizes need of adopting new Law on High Judicial and Prosecutorial Council of Bosnia and Herzegovina in line with the European standards, particularly in regard to providing guarantee for the integrity of judicial function holders.¹⁰ Despite clearly specified goal reflecting the required content of a new legal framework that should harmonize the work of judiciary with the highest standards of the guarantee providing the independence in the conduct, a proposal (Draft) of Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH is currently going through the legislative procedure. The Draft has been evaluated by the Venice Commission as a law *which is not, nor is ever meant to be, a comprehensive legal act on High Judicial and Prosecutorial Council that Bosnia and Herzegovina intends to adopt in the context of EU integration.*¹¹ Following the indicated, the Venice Commission provided its Opinion on the Draft Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH in which it presented the following observed shortcomings of the Law, repeatedly emphasized in previous opinions of the Venice Commission and other expert reports; this primarily refers to the areas of conflicts of interests and transparency in the conduct of HJPC, procedures for establishing disciplinary accountability of judicial function holders, judicial review of HJPC decisions and removal of members of the HJPC.¹²

More precisely, in the part of the Draft Law regulating the issues of conflicts of interests and transparency the Venice Commission clearly identified the need to¹³:

- prevent members of the HJPC of BiH from applying or being elected, during the mandate and one year after its end, to certain positions in the judiciary and in the state service;
- define situations in which members of the HJPC have conflicts of interests, as the current provisions have been vaguely defined;
- prohibit judges and prosecutors from holding incompatible mandates and set up a procedure to assess the incompatibility;
- introduce the obligation for judges and prosecutors to submit to the HJPC

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⁹ Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, key priority number 7, <http://europa.ba/wp-content/uploads/2019/06/Misljenje-Komisije-o-zahjevnu-Bosne-i-Hercegovina-za-%C4%8Dlanstvo-u-Evropskoj-uniji.pdf>; accessed on 08/09/2021

¹⁰ Ibid.

¹¹ Recommendations of the Venice Commission regarding the Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH, 23/03/2021, European Council, https://pjp-eu.coe.int/en/web/horizontal-facility/news/-/asset_publisher/bty4yBhLu21t/content/bosnia-and-herzegovina-venice-commission-recommendations-on-draft-amendments-to-the-law-on-the-high-judicial-and-prosecutorial-council?_101_INSTANCE_bty4yBhLu21t_viewMode=view%2F&fbclid=IwAR0n3Y3hN_o9okIz2WieiGihjKd-croKUXjpKHd9scAK6Wkww4PInwcrBQs, accessed on 08/09/2021

¹² Ibid.

¹³ Ibid.

annual declarations of assets and interests for the purpose of its checking and publication, set up a new integrity unit within the HJPC responsible for this area and establish new offences related to this area.

The Venice Commission believes that all above stated would significantly reduce space for potential manipulations conducted by judicial functions holders.

Transparency International BiH has previously dealt with the practically proven inefficiency and inexpediency of the procedure for establishing disciplinary accountability of judicial function holders, prescribed by the Law on High Judicial and Prosecutorial Council of BiH.¹⁴ In the above analysis Transparency International BiH has found shortcomings in terms of the current procedure for establishing disciplinary accountability of judicial function holders reflected in the lack of transparency in the conduct of disciplinary commissions; this particularly refers to the lack of possibility for the public to inspect the final decisions of the disciplinary commissions, and the necessary limitations to the discretionary powers of the HJPC in determining the appropriate disciplinary measure.¹⁵ The latter is also recognized in the Opinion of the Venice Commission on the Draft Law.¹⁶ The fact provided by the analysis of Transparency International BiH that only 38% of the imposed disciplinary measures can satisfy the preventive-repressive character of the disciplinary sanction is particularly concerning.¹⁷

Previously identified shortcomings in regard to the system of appointment and career advancement of judicial function holders, particularly in terms of the need to avoid judiciary organization solely on ethnic grounds, have been re-confirmed by the cited Opinion of the Venice Commission.¹⁸ In its Opinion, the Venice Commission also emphasized the fact that prescribed conditions for the removal of members of the HJPC cannot be related to the international standards, and that court councils must adhere to high ethical standards, which requires clear accountability mechanisms to be established.¹⁹

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¹⁴ Transparency International BiH, mr.sc Pedja Djurasovic, *Analiza disciplinske odgovornosti nosilaca pravosudnih funkcija u Bosni i Hercegovini*, https://ti-bih.org/wp-content/uploads/2020/03/Analiza-disciplinske-odgovornosti-nosilaca-pravosudnih-funkcija-u-BiH_2020.pdf, accessed on 09/09/2021

¹⁵ Ibid.

¹⁶ Recommendations of the Venice Commission regarding the Law on Amendments to the Law on High Judicial and Prosecutorial Council of BiH, 23/03/2021, European Council, https://pjp-eu.coe.int/en/web/horizontal-facility/news/-/asset_publisher/bty4yBhLu21t/content/bosnia-and-herzegovina-venice-commission-recommendations-on-draft-amendments-to-the-law-on-the-high-judicial-and-prosecutorial-council?_101_INSTANCE_bty4yBhLu21t_viewMode=view%2F&fbclid=IwAR0n3Y3hN_o9okIz2WieiGihjKd-croKUXjpKHd9scAK6Wkww4PInwcrBQs, accessed on 08/09/2021

¹⁷ Transparency International BiH, mr.sc Pedja Djurasovic, *Analiza disciplinske odgovornosti nosilaca pravosudnih funkcija u Bosni i Hercegovini*, https://ti-bih.org/wp-content/uploads/2020/03/Analiza-disciplinske-odgovornosti-nosilaca-pravosudnih-funkcija-u-BiH_2020.pdf, accessed on 09/09/2021

¹⁸ Ibid.

¹⁹ Ibid.

A fact that the existing system of financing judiciary offers opportunities for the undue influence by the legislative and the executive government, since there is no procedural guarantee for financial independence of the judiciary, is of particular concern.²⁰ This is reflected in the legal assumption that budgets of the judicial institutions present an integral part of the budget of administrative levels of public administration, within whose jurisdiction the courts operate. In this way their funding is largely conditioned by the budget proposal made by executive bodies, finally confirmed by representatives in representative bodies coming from the same political parties, while the representatives of the judicial institutions do not have at their disposal procedural guarantees that would protect the (future) financial survival and independence.

The indicated poor results in processing corruption cases in Bosnia and Herzegovina, observed in correlation with the lack of mechanism to guarantee the survival of independence of judiciary in exercising its powers, certainly lead to a conclusion that the state is facing necessary judicial consolidation to achieve more significant result in prevention and fight against corruption.

²⁰ Bosnia and Herzegovina Open Society Foundation, Izvještaj o zarobljenom pravosuđu u Bosni i Hercegovini, "Je li pravda u Bosni i Hercegovini zaista slijepa", January 2021, p. 22, https://osfbih.org.ba/images/Progs/17+/LP/Pubs/Je_li_pravda_u_BiH_zaista_slijepa.pdf, accessed on 09/09/2021

Table 1:
Review of monitored cases by procedural stages

Type of criminal offence	Defendant/ Informal case name	Number of defendants in the case	Court before which the proceeding is conducted	The Prosecutor's Office which filed the charges	Time of commission of a criminal offence	Date of filing criminal charges /Date of opening formal file in the Prosecutor's Office	Date of issuing order to conduct investigation	The undertaking of special investigative actions	Date of filing the indictment	Date of indictment confirmation	Date of passing the first instance verdict	Date of passing the second instance verdict
1. Associating for the purpose of demanding and/or accepting a gift or any other benefit in order to omit to perform within the scope of his official powers an act of customs control over the goods (Art. 249 para. 2, Art. 217 para. 1, referring to Art. 29 and Art. 53 of the CC of BiH).	Obrad Radovanovic and others	3	Court of BiH	The Prosecutor's Office of BiH	February 2019	Information not available	15/02/2019	Yes	25/12/2019	30/12/2019	25/05/2021	Ongoing proceeding.
2. Continued criminal offence Abuse of office or official authority for acquiring a property (Art. 220 para. 1 and 3, in relation to Art. 54 and Art. 29 of the CC of BiH)	Dragan Mekic and others	4	Court of BiH	The Prosecutor's Office of BiH	2015 – 2018	Information not available	Information not available	Information not available	30/12/2019	17/01/2020	Ongoing proceeding.	Ongoing proceeding.
3. Organized criminal offence in connection with the abuse of office or official authority (Art. 383a para. 2 and 3, in relation to Art. 347 para. 3 and 4, and Art. 280 para. 2 of the CC of RS)	Darko Jeremic and others/ „Bobar Bank“	Initially 16 / 14 after severance of proceedings	Court of BiH	The Prosecutor's Office of BiH	10/07/2009 – 27/11/2014	December 2014	Information not available	Information not available	28/02/2017	10/03/2017	Ongoing proceeding.	Ongoing proceeding.
4. Organized criminal offence in connection with the abuse of office or official authority (Art. 383a para. 2 and 3, in relation to Art. 347 para. 3 and 4 of the CC of RS)	Slavica Injac / „Bobar Bank“	16 / 1 after severance of proceedings	Court of BiH / District Court in Banja Luka	The Prosecutor's Office of BiH / The Republic Public Prosecutor's Office of RS	10/07/2009 – 27/11/2014	December 2014	Information not available	Information not available	28/02/2017	10/03/2017	Ongoing proceeding.	Ongoing proceeding.
5. Organized criminal offence in connection with the abuse of office or official authority (Art. 250 para. 2 and 3, in relation to Art. 220 of the CC of BiH)	Boris Kordic and others	6 (1 legal entity)	Court of BiH	The Prosecutor's Office of BiH	2012 – 2014	Information not available	Information not available	Yes	11/07/2016	29/07/2016	Ongoing proceeding.	Ongoing proceeding.

Type of criminal offence	Defendant/ Informal case name	Number of defendants in the case	Court before which the proceeding is conducted	The Prosecutor's Office which filed the charges	Time of commission of a criminal offence	Date of filing criminal charges / Date of opening formal file in the Prosecutor's Office	Date of issuing order to conduct the investigation	The undertaking of special investigative actions	Date of filing the indictment	Date of indictment confirmation	Date of passing the first instance verdict	Date of passing the second instance verdict
6. Organized crime, tax evasion and money laundering (Art. 250, in relation to Art. 210 and Art. 209 of the CC of BiH)	Anes Sadikovic and others/ „Pandora“	13/15 after joinder of proceedings	Court of BiH	The Prosecutor's Office of BiH	2007 – 2011	Information not available	Information not available	Yes	Information not available	20/01/2017	Ongoing proceeding.	Ongoing proceeding.
7. Fraud, abuse of trust and forging documents (Art. 239 para. 3, Art. 377 para. 1 and Art. 244 of the CC of RS)	Dragan Radetic	1	Basic Court in Banja Luka	The District Public Prosecutor's Office in Banja Luka	2012 – 2013	Information not available	Information not available	No	Information not available	Information not available	Ongoing proceeding.	Ongoing proceeding.
8. Abuse of office or official authority for the purpose of acquiring for himself or another a material gain and theft (Art. 347 para. 3 and Art. 231, para. 1 of the CC of RS)	Darko Bajic and Zlatko Martihovic	2	Basic Court in Banja Luka	The District Public Prosecutor's Office in Banja Luka	30/12/2012 – 14/02/2013	Information not available	Information not available	No	01/11/2016	Information not available	Ongoing proceeding.	Ongoing proceeding.
9. Accepting bribe in the course of his official duties (Art. 351 para. 2 of the CC of RS)	Budimir Popovic	1	Basic Court in Banja Luka	The Republic Public Prosecutor's Office of RS	06/05/2011	15/05/2011	16/05/2011	Yes	11/12/2012	Information not available	08/07/2020	12/02/2021
10. Complicity in continued criminal offence of Accepting gifts and other forms of benefits and continued criminal offence of Abuse of office or official authority (Art. 380 para. 1 and Art. 383 para. 1, in relation to Art. 55. of the CC of FBiH)	Akif Smalhodzic	1	Municipal Court in Zenica	The Cantonal Prosecutor's Office of Zenica-Doboj Canton	19/05/2017 – 06/07/2017	Information not available	Information not available	Yes	05/10/2017	Information not available	04/11/2019	14/05/2020
11. Abuse of office or official authority and continued criminal offence of forging documents (Art. 383 para. 1 and Art. 373 para. 1 in relation to Art. 55 of the CC of FBiH)	Ivica Curic and Blanka Pauric	2	Municipal Court in Zenica	The Cantonal Prosecutor's Office of Zenica-Doboj Canton	23/01/2015, 24/11/2014, 16/02/2015 and 10/12/2014	Information not available	Information not available	No	19/12/2018	Information not available	16/03/2020	16/03/2020 – the acting Prosecutor's Office did not appeal to the first instance verdict.

Type of criminal offence	Defendant/ Informal case name	Number of defendants in the case	Court before which the proceeding is conducted	The Prosecutor's Office which filed the charges	Time of commission of a criminal offence	Date of filing criminal charges / Date of opening formal file in the Prosecutor's Office	Date of issuing order to conduct the investigation	The undertaking of special investigative actions	Date of filing the indictment	Date of indictment confirmation	Date of passing the first instance verdict	Date of passing the second instance verdict
12. Accepting reward or any other benefit for interceding (Art. 382 of the CC of FBiH)	Mirsad Kulic / „Illegal employments in public enterprise Elektroprivreda BiH“	9 / 1 after severance of proceedings	Municipal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	May 2016 – 26/08/2016	Information not available	Information not available	Yes	10/03/2017	13/03/2017	22/10/2020	22/10/2020 – the acting Prosecutor's Office did not appeal to the first instance verdict.
13. Accepting gifts and other forms of benefits (Art. 380 and para. 2 of the CC of FBiH)	Anenar Murtagic	2 / 1 after severance of proceedings	Municipal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	July 2014 – January 2015	Information not available	Information not available	No	26/01/2018	Information not available	08/06/2021	Ongoing proceeding.
14. Giving gifts and other forms of benefits (Art. 381 para. 2 of the CC of FBiH)	Naser Memcaj	2 / 1 after severance of proceedings	Municipal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	July 2014 – January 2015	Information not available	Information not available	No	26/01/2018	Information not available	23/04/2018 – final judgment rendered on the basis of a plea bargaining	23/08/2021 – final judgment rendered on the basis of a plea bargaining.
15. Accepting gifts and other forms of benefits, Embezzlement in office, Abuse of office or official authority (Art. 380 para. 2, Art. 383 para. 1 in relation to Art. 28 and Art. 384 para. 2 in relation to Art. 32 para. 2 of the CC of FBiH)	Ermin Mujic / „Agrokomerc“	1	Municipal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	June 2016 – December 2017	Information not available	07/11/2007 and 13/11/2017	Yes	08/03/2018	Information not available	16/01/2020 – proceeding still ongoing	Ongoing proceeding – a Decision which partially upheld the appeal of the defendant, cancelled the verdict and returned the case to the first instance court for retrial was issued on 12/10/2020

Type of criminal offence	Defendant/ Informal case name	Number of defendants in the case	Court before which the proceeding is conducted	The Prosecutor's Office which filed the charges	Time of commission of a criminal offence	Date of filing criminal charges / Date of opening formal file in the Prosecutor's Office	Date of issuing order to conduct the investigation	The undertaking of special investigative actions	Date of filing the indictment	Date of indictment confirmation	Date of passing the first instance verdict	Date of passing the second instance verdict
16. Accepting gifts and other forms of benefits, illegal mediation, Abuse of office or official authority, Forging documents (Art. 380 para. 1 and 2, Art. 382 para. 1, Art. 383 para. 1 and Art. 373 para. 2, all referring to Art. 54 of the CC of FBiH)	Boško Tubić	1	Municipal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	July 2005 – August 2014	Information not available	Information not available	Yes	11/03/2016	Information not available	Ongoing proceeding.	Ongoing proceeding.
17. Continued criminal offence Abuse of office or official authority (Art. 383 para. 3 and 1, in relation to Art. 55 of the CC of FBiH)	Eldin Brcanić	1	Cantonal Court in Tuzla	The Cantonal Prosecutor's Office of Tuzla Canton	30/11/2007 – May 2010	Information not available	Information not available	Yes	30/11/2018	Information not available	11/01/2021	Ongoing proceeding.
18. Abuse of office or official authority (Art. 383 para. 3 in relation to para. 1 and Art. 33 para. 1 of the CC of FBiH)	Adil Karavdić and Salko Avdić	2	Cantonal Court in Tuzla	The Cantonal Prosecutor's Office of Tuzla Canton	2003 – 2014	Information not available	Information not available	No	27/04/2017	Information not available	31/10/2019 – proceeding still ongoing	Proceeding is ongoing – 08/04/2021 The Supreme Court of the FBiH issued a decision partially upholding the appeal and returned the case to the first instance court for retrial.
19. Abuse of office or official authority (continued criminal offence in reference to one of the defendants), Concluding a prejudicial contract, Forging of official documents (in relation to two of the defendants) (Art. 383 para. 3 and para. 1, in relation to Art. 31 and Art. 389 para. 1, all in relation to Art. 33 and Art. 55 and Art. 252 para. 2 of the CC of FBiH)	Džumhur Narcis and others/ „Zeljeznice FBiH“	8	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	February 2008 – 26/04/2010	Information not available	Information not available	Information not available	26/02/2016	11/03/2016	23/12/2020	Proceeding is ongoing – The Prosecution and the Defense filed an appeal with the Supreme Court of the FBiH.

Type of criminal offence	Defendant/ Informal case name	Number of defendants in the case	Court before which the proceeding is conducted	The Prosecutor's Office which filed the charges	Time of commission of a criminal offence	Date of filing criminal charges / Date of opening formal file in the Prosecutor's Office	Date of issuing order to conduct the investigation	The undertaking of special investigative actions	Date of filing the indictment	Date of indictment confirmation	Date of passing the first instance verdict	Date of passing the second instance verdict
20. Concluding a prejudicial contract, Organized crime, Abuse of office or official authority, Money laundering, tax evasion (Art. 252 para. 2, Art. 342 para. 2 and 3, Art. 383 para. 3, Art. 272 para. 2 and Art. 273 para. 3 of the CC of FBiH)	Edin Arslanović and others/ „Besmaljlek“	5	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	2002 – 2012	Information not available	Information not available	Information not available	16/12/2015	25/12/2015	Ongoing proceeding.	Ongoing proceeding.
21. Organized crime, Abuse of office or official authority, Forging documents, Fraud, Money laundering, Giving false statement, Accessory after the fact (Art. 342 para. 3 in relation to Art. 383, Art. 294 para. 2, Art. 272 para. 1 and 2, Art. 348 para. 3 and Art. 346 para. 1 and 2 of the CC of FBiH)	Alija Delić / „Pravda“	46 (8 legal entities)	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	2009 – 2016	Information not available	Information not available	Yes	06/10/2017	12/10/2017	Ongoing proceeding.	Ongoing proceeding.
22. Organized crime related to the Abuse of office or official authority, Forging documents, Fraud, Money laundering, Giving false statement and Accessory after the fact (Art. 383, Art. 373, Art. 294, Art. 272 and Art. 348 of the CC of FBiH)	Abid Hodžić / „Pravda“	46 (8 legal entities)	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	2009 – 2016	Information not available	Information not available	Yes	06/10/2017	12/10/2017	Ongoing proceeding.	Ongoing proceeding.
23. Money laundering and accessory in abusing the office or official authority and acquiring the material gain for himself or another which exceeds BAM 50,000 (€ 272 para. 2 in relation to Art. 54 and Art. 383 para. 3 in relation to Art. 33 para. 2 – qualified criminal offence the CC of FBiH)	Ratko Dikić and others/ „Pravda“	46 (8 legal entities) / 4 after severance of proceedings	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	2013 – 2016	Information not available	Information not available	Information not available	Information not available	16/10/2017	Ongoing proceeding.	Ongoing proceeding.
24. Organized crime, Forging documents, Unauthorized use of personal data, Abuse of office or official authority, Money laundering (Art. 342, Art. 373 para. 2, Art. 193, Art. 383 para. 3 and 1 and Art. 272 para. 1 and 2 of the CC of FBiH)	Sanel Džalić (and Enisa Džalić) and others/ „Zadruga“	36 (4 legal entities)	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	2010 – 2018	Information not available	Information not available	Yes	Information not available	01/02/2019	Ongoing proceeding.	Ongoing proceeding.

Duration of court proceedings in corruption cases and management of proceedings – trends and findings

Table 1 represents an overall result of the determined methodological approach used for the selection of cases which were focus of the corruption prosecution monitoring in Bosnia and Herzegovina, implemented as part of the Transparency International BiH M-ALAC project.²¹ This Table also provides a timeline of key stages in proceedings which contain confirmed indictments against persons for criminal offences in which circumstances and the nature of the protected good indicate the occurrence of corruption. The previously indicated, along with the responses to the requests for access to information related to the stage of the proceedings, including the schedule and number of hearings Transparency International BiH received from the acting courts, and observed in the context of Article 6, paragraph 1 of the European Convention on Human Rights, provides a sufficient factual basis for analyzing the conduct of courts in regard to requests for trial within a reasonable time.²²

Through the analysis of the duration of proceedings in all cases indicated in the Table 1, including the cases which have not been completed yet, counting from the date the indictment was filed or confirmed until 30th June, 2021, as specified in the request for access to information Transparency International BiH (TI BiH) submitted to the acting courts in August 2021, it was determined that proceedings lasted on average 3 years and 3 months.²³ Please have in mind that most of the proceedings related to cases indicated in the Table 1, or more precisely 81% of the presented sample, has not been completed until 30th June 2021.

If we analyze only duration of first instance proceedings and proceedings in which the cases were completed, we come to the average duration of proceedings of around **3 years and 4 months** for the first category, and approximately **3 years and 7 months** of proceeding duration in completed cases. However, the case of „Budimir Popovic“ which belongs to the group of terminated cases, should be emphasized for the duration of its proceeding which lasted for 8 years and 2 months. The difference in average duration of proceedings of barely three months, when those two categories are compared, is rather indicative in terms of (justification) the average duration of first instance proceedings.

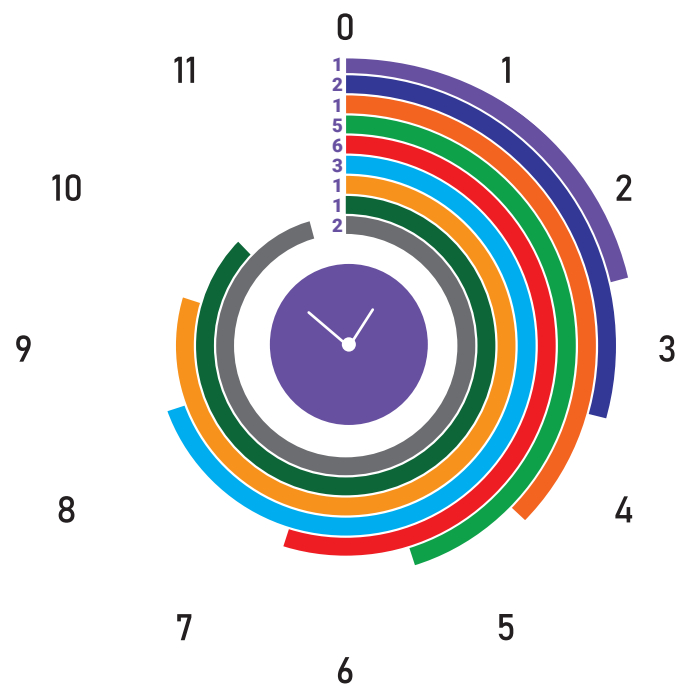
²¹ See p.6, „Monitoring subject“, definition of corruption by Transparency International „Abuse of entrusted powers for the purpose of acquiring private gain“, „Report on monitoring trials in corruption cases“, Banja Luka, August 2020, https://ti-bih.org/wp-content/uploads/2015/06/lzvjestaj-Sudjenja_bhs.pdf, accessed on 30/09/2021

²² Article 6, paragraph 1 of the Convention „1. In the determination [...] of any criminal charge against him, everyone is entitled to a fair and public hearing **within a reasonable time** by an independent and impartial tribunal established by law. [...]“, https://www.echr.coe.int/Documents/Convention_BOS.pdf, accessed on 30/09/2021

²³ The presented calculation of the average duration of proceedings has encompassed all cases except the case of „Dragan Radetic“ for which Transparency International BiH was never given a valid information on the date of filing and/or confirming indictment which should have been provided by the acting court.

Type of criminal offence	Defendant/ Informal case name	Number of defendants in the case	Court before which the proceeding is conducted	The Prosecutor's Office which filed the charges	Time of commission of a criminal offence	Date of filing criminal charges /Date of formal opening file in the Prosecutor's Office	Date of issuing order to conduct the investigation	The undertaking of special investigative actions	Date of filing the indictment	Date of indictment confirmation	Date of passing the first instance verdict	Date of passing the second instance verdict
25. Associating for the purpose of perpetrating criminal offences, Organized crime, Violation of law by a judge, Forging documents, Accepting gifts and other forms of benefits, Abuse of office or official authority, Forging of official document (Art. 340, Art. 342 para. 2 and 3, Art. 357 in relation to Art. 55, Art. 373 para. 2, Art. 380 para. 1, Art. 383 para. 1 and 3 and Art. 389 para. 1 of the CC of FBiH)	Ismet Hamzic and others	8	Cantonal Court in Sarajevo	The Cantonal Prosecutor's Office of Sarajevo Canton	2013 – 2016	Information not available	Information not available	No	18/05/2019	Information not available	Ongoing proceeding.	Ongoing proceeding.
26. Embezzlement in office (Art. 384 para. 3 and para. 1 of the CC of FBiH)	Edita Alagic	1	Cantonal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	6 th November, 2015 – 6th November, 2016	Information not available	Information not available	No	22/10/2018	09/11/2018	16/12/2019	Ongoing proceeding.
27. Associating for the purpose of perpetrating criminal offences – Abuse of appraisals, Concluding a prejudicial contract, Abuse of office or official authority, Accepting gifts and other forms of benefits (Art. 340 para. 1 and 2, Art. 250 para. 3, Art. 252 para. 2, Art. 383 para. 3 and Art. 380 para. 1 of the CC of FBiH)	Endzad Galjasevic and others	5	Cantonal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	March, 2013 – December 2013	Information not available	Information not available	Information not available	28/12/2018	17/01/2019	02/04/2021	02/04/2021 Cantonal Court in Bihać issued a decision to suspend a proceeding against the accused Emdzad Galjasevic. The proceeding is ongoing for the other defendants.
28. Organized crime, Accepting gifts and other forms of benefits, Abuse of office or official authority (Art. 342 para. 3, Art. 380 para. 1 and Art. 383 para. 1 of the CC of FBiH)	Djevad Muslimovic and others	6	Cantonal Court in Bihać	The Cantonal Prosecutor's Office of Una-Sana Canton	2006 – 2014	24/12/2013	25/12/2013	Yes	28/12/2015	Information not available	19/03/2021	Ongoing proceeding.

By reviewing the number of cases from the Table 1 which are still ongoing, i.e. their positioning in regard to the time of committing the criminal offence, all in accordance with the above indicated period for which TI BiH requested free access to information, it can be concluded that there is still ongoing proceeding in one case in which criminal offences the defendants are charged with were committed approximately 2 years and 5 months ago, then in two cases in which criminal offenses were committed 3 years and 5 months ago, **while in one case the criminal offence was committed approximately 4 years and 5 months ago. Furthermore, in five cases the criminal offences the accused were charged with were committed approximately 5 years and 6 months ago, in one case the offence was committed 6 years and 6 months ago, and in 6 cases the criminal offences were committed 6 years and 6 months ago. An indicator attracting special attention and concern related to the time of offence committing and the fact that the proceedings are still ongoing is the fact that in three cases the criminal offences were committed 8 years and 6 months ago, in one case almost 9 years and 6 months ago, also there is a case in which the offences were committed 10 years and 6 months ago, while in two cases the offences were committed 11 years and 6 months ago.**



DURATION OF COURT PROCEEDINGS AGAINST THE CRIMINAL OFFENCE COMMITTING TIME

The analysis of the most frequently prosecuted criminal offences included in the monitoring (as presented in Table 1) shows that the criminal offences the Abuse of office or official authority (25,67%), Organized crime (13,51%), Accepting bribe/reward or other forms of benefits (10,81%), Money laundering (9,45%) and Forging of official documents (8,10%) make the largest share of prosecuted criminal offences from the presented sample. The criminal offence Fraud makes 4,05%, while Forging documents, Concluding a prejudicial contract, Accessory after the fact, Giving false statement and Embezzlement in office have a share of 2,7%. The criminal offences Offering reward and other forms of benefits, Tax evasion, Abuse of trust, Theft, Illegal interceding, Illegal mediation, Embezzlement in office, Tax evasion, Unauthorised use of personal data, Violation of law by a judge, Misuse of assessment and Concluding a prejudicial contract make 1,35% of all criminal offences implied by indictments from the sample presented in the Table 1.

As a sample for the analysis of procedural discipline of the acting courts in terms of time periods in which the hearings were scheduled, all in accordance with the indicated period for which the Transparency International BiH submitted a request for free access to information (April 2020 – June 2021), a group of cases in which proceedings were taking place before the Court of Bosnia and Herzegovina and the Cantonal Court in Sarajevo was selected. Those cases were selected for a sample since TI BiH received from the acting courts the precise information related to those cases and the dates of (non)holding hearings within the indicated timeline.²⁴ Following the above, the analysis of the cases before the Court of BiH showed that hearings within the indicated period were scheduled on **every 22 days** approximately. Such hearing schedule represents extremely negative trend in terms of managing the proceedings by the acting judges. In two, out of four analyzed cases, the hearings were not scheduled at all, and the courts in those specific proceedings did not concern the fact that the intensity of objective circumstances, caused by the COVID-19 pandemic, and leading to the postponement of proceedings indefinitely, has been changed during the observed period. The state of emergency was even cancelled on 29th May, 2020, due to the improved epidemiological situation.²⁵ Even when the objective circumstances allowed, the courts in other two cases, completely ignored the possibility of successive, or consecutive scheduling of hearings, day after day until the proceedings are completed, which is a proof of completely neglecting the expected procedural discipline in terms of managing the proceedings. Described negative trend, which has been recognized as such in the findings of the first Report on trial monitoring of corruption cases prepared

²⁴ Cases before the Court of BiH: Anes Sadikovic and others/"Pandora", Boris Kordic, Darko Jeremic and others/"Bobar Bank", Dragan Mektic and others; Cases on the Cantonal Court in Sarajevo: Abid Hodzic/"Pravda", Edin Arslanagic and others/"Bosnalijek", Ismet Hamzic and others, Ratko Djokic and others/"Pravda".

²⁵ Constitutional Court of BiH, Decision on admissibility and merits, as of 21st April, 2021, AP 534/21, p.20, <http://www.sluzbenovine.ba/page/akt/JiNAtI5uxSk=>, accessed on 02/10/2021; Cases without scheduled hearings during the observed period: Anes Sadikovic and others/ „Pandora” and, Darko Jeremic and others/ „Bobar Bank”.

by Transparency International BiH in August 2020, is the biggest barrier for the efficient management of court proceedings. This is also stated in the Report of Experts on the Rule of Law Issues in Bosnia and Herzegovina (Priebe Report).²⁶ Inefficient management of court proceedings, particularly in corruption cases, undermines public trust in the judicial system. The Cantonal Court in Sarajevo scheduled hearings on **every 11 days** during the observed period, which made it more active in this regard than the Court of BiH. Here, just like in case of the Court of BiH, it should be recognized that the procedural discipline was analyzed in four cases that provided the data, while in one case, due to the COVID-19 pandemic, hearings were not scheduled at all within the analyzed period.²⁷ This, as well as the case of analyzing the conduct of the Court of BiH, leads to the conclusion that the procedural discipline related to the dynamics of scheduling hearings before the Cantonal Court in Sarajevo is still far from the expected, and also contrary to the above described international standards and demands for efficient management of criminal procedures.²⁸

Following the application of definitions „grand corruption“ and „petty corruption“ specified by Transparency International²⁹, which can also be related to the selection of cases as complex and less complex performed according to the factor of „case complexity“³⁰ and „the way of proceeding of the relevant judicial bodies in resolving cases“ as the key criteria established by the European Court of Human Rights in order to evaluate whether the duration of proceedings was reasonable, further division of cases from the Table into two categories was made. This also includes the analysis of justification of the lack of activity in the conduct of the courts in some cases during longer periods of time.³¹ In relation to this, analysis of the average duration of proceedings in both categories was performed, and it was concluded that the average duration of proceedings in grand corruption cases, i.e. complex cases, from the moment the indictment was filed or confirmed until 30th June as the date specified in the request for free access to information filed by TI BiH in August 2021, or the date of passing the second instance verdict, was 4 years and 1 month. The same analysis of the sample presented in Table 1, showed that the average duration of proceedings in petty corruption cases, i.e. less complex cases, was around 3 years and 5

²⁶ See p. 8, Report on Trial Monitoring of Corruption Cases, Banja Luka, August 2020, https://ti-bih.org/wp-content/uploads/2015/06/Izvjestaj-Sudjenja_bhs.pdf; See paragraphs 36 and 51 of the Report of Experts on the Rule of Law Issues in Bosnia and Herzegovina (Priebe Report), Brussels, 05/12/2019, http://www.fcjp.ba/analize/PRIEBE_Izvjestaj.pdf, accessed on 18/10/2021

²⁷ Case in which hearings were not scheduled at all during the observed period is Abid Hodzic/„Pravda“
²⁸ Ibid.

²⁹ Transparency International, Definition of grand corruption, see <https://www.transparency.org/en/corruptionary/grand-corruption>„ Definition of petty corruption, see <https://www.transparency.org/en/corruptionary/petty-corruption>, accessed on 07/10/2021

³⁰ „Case complexity“ as a parameter evaluated in the analysis of reasonableness of the time frame within which the court acted upon certain case implies, among other things, the number of charges, the number of persons participating in the proceeding, the complexity of committed crime(s) and its(their) consequences, as well as its(their) spatial (and time) dimension, e.g. see paragraph 20, verdict Neumeister v Austria, Ap. No. 1936/63, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57544%22%5D%7D>}, accessed on 04/10/2021

³¹ Paragraph 99, verdict *König v Germany*, Ap. no. 6232/73, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57512%22%5D%7D>}, accessed on 30/09/2021

months. The difference of 8 months longer acting of courts in more complex cases was expected, considering the difference in factual and legal complexity of such cases. However, if this is observed from the aspect of the average acting of courts in less complex cases, it is legitimate to expect that the acting courts should be significantly faster with less complex cases. i.e. in processing petty corruption cases.

Complexity of cases	Average duration of proceeding
Grand corruption	4 years and 1 month
Petty corruption	3 years and 5 months

The observed lack of diligence of courts in managing the proceedings related to complex cases was reflected in the fact that the courts frequently decided to cancel hearings based on the requests of parties without sufficient explanations, i.e. they lacked the necessary argumentation and justification. This had a significant impact on extension of proceedings in certain cases, questioning the reasonableness of duration of proceedings at the same time. Regarding this, it is important to note that in cases with a large number of defendants, and due to the occurrence of the COVID-19 pandemic, the courts often decided to postpone the trials indefinitely since they were unable to ensure imposed epidemiological measures referring to the limited number of people in one room. The analysis of the cases indicated in the Table determined that the **acting courts did not harmonize their work with changes in the intensity of objective circumstances caused by the pandemic. This was confirmed by the Constitutional Court of BiH in its decision of 21st April 2021.**³² To be more specific, **the acting courts failed to consider the possibility of holding hearings with large number of defendants when the orders of the crisis headquarters allowed it following the improved epidemiological situation.** In addition to this, it was noticed that the courts lacked necessary initiative to overcome the spatial restrictions set up by the orders of the relevant crisis headquarters. All of this led in some cases to the situation in which certain phases of the proceeding lasted unreasonably long. The unjustifiably long duration of certain phases of proceedings resulted in impermissibly long duration of the defendants detention, which finally led to **the Constitutional Court of BiH finding in two appeals (more closely explained in the Report) the violation of the right to freedom and security as prescribed by the European Convention on Human Rights under Article 5, para-**

³² Constitutional Court of BiH, Decision on admissibility and merits, issued on 21/04/2021, AP 534/21, p. 22, <http://www.sluzbenovine.ba/page/akt/JiNAtf5uxSk=>, accessed on 02/10/2021

graph 3.³³ This essentially emphasizes once again that the defendants must not bear the consequences of the courts' failure to organize their work.

The same type of lack of discipline with the acting courts (and Prosecutors' Offices), resulting in the delay of hearings without valid explanation, was observed in less complex cases. Here it must be emphasized that in some cases even the acting judges missed the scheduled hearings, and there were situations when the prosecutors used the insufficient number of prosecutors as a reason for not being able to attend the hearing. Such identified defects in resolving cases caused by the way the judiciary organizes its work, in accordance with the well established practice of the European Court of Human Rights, cannot be assigned to the defendants.³⁴ If we observe the timeline between key phases of proceedings in certain cases, referring to the time of filing indictment and the fact that in some case the verdict has not been rendered even after 5 years, it can be clearly concluded that the right of defendants to have trial within a reasonable time was violated. The fact that can additionally increase the responsibility of a state for unreasonably long duration of certain (phases of) proceedings can be found in well established practice of the European Court which states that the time of reasonable deadline for acting of competent state bodies and courts in resolving cases, i.e. the lack of the same, is often calculated starting not from the day the indictment is filed or confirmed, **but from the moment the person has become aware of his incrimination (the moment of arrest or the moment when the suspect/accused has become significantly affected by the measures undertaken in the context of criminal investigation or proceeding).**³⁵ Following all the above indicated defects in the organization of work by the acting courts, and the observed lack of using all procedural mechanisms prescribed by laws on criminal procedure in Bosnia and Herzegovina by the acting courts in case resolving, the question arises whether the judiciary can meet all demands established by the obligation to act in a reasonable time prescribed by Article 6, paragraph 1 of the European Convention on Human Rights.

³³ Article 6, paragraph 1 of the European Convention on Human Rights: „Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial”, https://www.echr.coe.int/documents/convention_bos.pdf, accessed on 02/10/2021; See also Article 5 of the European Convention, https://www.echr.coe.int/documents/convention_bos.pdf, accessed on 02/10/2021

³⁴ Paragraph 18, verdict *Milasi v Italy*, Ap. no. 10527/83, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Milasi%22%22itemid%22:%5B%22001-57539%22%5D%7D>, accessed on 03/10/2021

³⁵ Paragraph 19, verdict *Wemhoff v Germany*, Ap. No. 2122/64, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Wemhoff%22%22itemid%22:%5B%22001-57595%22%5D%7D>, accessed on 03/10/2021; Paragraph 19, verdict *Liblik and others v Estonia*, Ap. No. 173/15, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Liblik%22%22itemid%22:%5B%22001-193251%22%5D%7D>, accessed on 03/10/2021

Table 2:
Review of monitored cases by imposed sanctions

Defendant / Informal case name	Acting court	Acting prosecution	Crime name	Sanction threatened for the criminal offense in question in accordance with the criminal law	Type and amount of the sanction imposed / whether the sanction was reduced below the legal minimum	Whether the judgement imposed a security measure prohibiting performance of work, activities or functions	Whether the measure imposed is confiscation of proceeds of crime	Did the Prosecution appeal the first instance verdict / whether the judgment is final
1. Obrad Radovanovic and the others	Court of BiH	The Prosecutor's Office of BiH	Association to request and /or receive gifts or other forms of benefits in order to fail to carry out customs supervision activities over the goods within the scope of their powers (Article 249, paragraph 2, Article 217, paragraph 1, in connection with Article 29 and Article 53 of the Criminal Code of BiH).	Association for the purpose of committing criminal offenses: a fine or imprisonment for up to three years. Receiving gifts and other forms of benefits - imprisonment from one to ten years.	The first defendant Obrad Radovanovic: Association for the purpose of committing criminal offenses, a fine in the amount of 5000 BAM was imposed; Receiving gifts or other forms of benefits a prison sentence of one year and six months was imposed. A single prison sentence of 1 (one) year and 6 (six) months was imposed and a fine of 5000 BAM. Second defendant, Zehid Delic: Association for the purpose of committing criminal offenses, a fine in the amount of 3000 BAM was imposed; Receiving gifts or other forms of benefits imprisonment of one year. A single sentence of one year in prison and a fine of 3,000 BAM were imposed. The third defendant Mato Delic: Association for the purpose of committing criminal offenses, a fine in the amount of 1000 BAM was imposed; Receiving gifts or other forms of benefits a prison sentence of ten months was imposed. A single prison sentence of ten months and a fine of 1,000 BAM were imposed.	No information available.	Yes, confiscation of EUR 100 from the first accused was ordered.	Yes, in terms of the amount of the fine. Information on the finality of the judgment is not available.
2. Budimir Popovic	Basic Court in Banja Luka	Republic Public Prosecutor's Office of RS	Accepting bribes in the exercise of official authority (Article 351, paragraph 2 of the RS Criminal Code)	Imprisonment from one to eight years.	Acquittal.	Acquittal.	Acquittal.	Yes, a prosecution appeal has been filed. The verdict is final.

Defendant / Informal case name	Acting court	Acting prosecution	Crime name	Sanction threatened for the criminal offense in question in accordance with the criminal law	Type and amount of the sanction imposed / whether the sanction was reduced below the legal minimum	Whether the judgement imposed a security measure prohibiting performance of work, activities or functions	Whether the measure imposed is confiscation of proceeds of crime	Did the Prosecution appeal the first instance verdict / whether the judgment is final
3. Akif Smalhodzic	Municipal Court in Zenica	Cantonal Prosecutor's Office of Zenica-Doboj Canton	Complicity in the extended criminal offense of receiving gifts and other forms of benefits within the performance of official functions (Article 380, paragraph 1, in conjunction with Article 31 and Article 55 of the FBiH Criminal Code). Abuse of office or authorization (Article 383, paragraph 1)	Receiving gifts and other forms of benefits - imprisonment from one to ten years. Abuse of office or authority - imprisonment from six months to five years.	Receiving gifts and other forms of benefits - a prison sentence of two years and three months is determined Abuse of office or authority - a prison sentence of one year and four months is imposed. Imposed is a single prison sentence - three years and six months.	Imposed work ban in state bodies, public institutions and public enterprises for a period of 3 years.	The proceeds of crime were confiscated.	Yes. The final judgment.
4. Ivica Curic and Blanka Pauric	Municipal Court in Zenica	Cantonal Prosecutor's Office of Zenica-Doboj Canton	Abuse of office and authority and prolonged criminal offense of forgery of a document (Article 373, paragraph 1 in conjunction with Article 55 of the FBiH Criminal Code)	Abuse of office or authority - imprisonment from six months to five years. Forgery of a document - a fine or imprisonment for up to three years.	Acquittal.	Acquittal.	Acquittal.	No appeal was filed. According to the data available, the verdict is final.
5. Mirsad Kukić / "Illegal employment in the Public Company Elektroprivreda BiH"	Municipal Court in Sarajevo	Cantonal Prosecutor's Office of Sarajevo Canton	Receiving rewards or other forms of benefits for trading in influence (Article 382, paragraph 2 of the FBiH Criminal Code)	Receiving a reward or other form of benefit for influence trade - a prison sentence of one to eight years.	Imprisonment for one year.	No information available.	No information available.	No appeal was filed. According to the available data, the verdict is final.
6. Naser Memcaj	Municipal Court in Bihać	Cantonal Prosecutor's Office of Una-Sana Canton	Giving gifts or other forms of benefits (Article 381, paragraph 2 of the FBiH Criminal Code)	Giving gifts and other forms of benefits - a fine or sentenced to imprisonment for up to three years.	Probation - Imprisonment for three months, provided that he does not commit a new criminal offense within one year of the verdict becoming final.	No.	No.	No. According to the available information the verdict is final.

Defendant / Informal case name	Acting court	Acting prosecution	Crime name	Sanction threatened for the criminal offense in question in accordance with the criminal law	Type and amount of the sanction imposed / whether the sanction was reduced below the legal minimum	Whether the judgement imposed a security measure prohibiting performance of work, activities or functions	Whether the measure imposed is confiscation of proceeds of crime	Did the Prosecution appeal the first instance verdict / whether the judgment is final
7. Amemar Murtagic	Municipal Court in Bihać	Cantonal Prosecutor's Office of Una-Sana Canton	Receiving gifts and other forms of benefits and giving gifts and other forms of benefits (Article 380, paragraph 2 of the FBiH Criminal Code)	Receiving gifts and other forms of benefits - imprisonment from six months to five years.	Probation - six months, provided that he does not commit a new criminal offense within two years from the day the verdict becomes final.	No.	Yes.	Yes. Information on the finality of the verdict is not available.
8. Ermin Mujic / "Agrokomec"	Municipal Court in Bihać	Cantonal Prosecutor's Office of Una-Sana Canton	Receiving gifts or other forms of benefits. Embezzlement in the service. Abuse of office and authority (Article 380, paragraph 2, Article 383, paragraph 1 and Article 384, paragraph 2 in conjunction with Article 54, paragraphs 1 and 2 of the FBiH Criminal Code)	Receiving gifts and other forms of benefits - imprisonment from one to ten years. Abuse of office or authority - imprisonment from six months to five years. Embezzlement in the service - imprisonment for at least three years.	Receiving gifts or other form of benefit imposed prison sentence of 1 year in conjunction with a criminal offense embezzlement in the service for which he was sentenced to imprisonment for 1 (one) year and a criminal offense. Abuse of position or authority in an attempt for which he was sentenced to imprisonment for 6 (six) months. A single sentence of 2 (two) years and 2 (months) was imposed - the case was returned for retrial.	Information not available - the case returned for retrial.	Information not available - the case returned for retrial.	The case returned for retrial. Information on the finality of the verdict is not available.
9. Eidin Brcaninovic	Cantonal Court in Tuzla	Cantonal Prosecutor's Office of Tuzla Canton	Abuse of office or authority (Article 383, paragraph 3 Article 55 of the FBiH Criminal Code)	Imprisonment for at least three years.	Imprisonment of 5 years.	Prohibition to perform work, activity or function for a period of 5 years.	No information available.	No appeal was filed by the prosecution, but it was filed by the defense. Information on the finality of the verdict is not available.
10. Adil Karavdic	Cantonal Court in Tuzla	Cantonal Prosecutor's Office of Tuzla Canton	Abuse of office or authority (Article 383, paragraph 3 in conjunction with paragraph 1)	Imprisonment for at least three years.	The first defendant: Imprisonment of one year and six months. Second defendant - 10 months imprisonment. - Note * The case was returned for retrial.	The case was returned for retrial.	The proceeds of crime were confiscated. Note* The case was returned for retrial.	Yes. The case was returned for retrial. Information on the finality of the verdict is not available.

Defendant / Informal case name	Acting court	Acting prosecution	Crime name	Sanction threatened for the criminal offense in question in accordance with the criminal law	Type and amount of the sanction imposed / whether the sanction was reduced below the legal minimum	Whether the judgement imposed a security measure prohibiting performance of work, activities or functions	Whether the measure imposed is confiscation of proceeds of crime	Did the Prosecution appeal the first instance verdict / whether the judgment is final
11. Dzumhur Nar- cis and others / „Zeljznice FBH“	Cantonal Court in Sarajevo	Cantonal Prosecutor's Office of Sarajevo Canton	Abuse of position of authority, concluding a harmful contract, forging an official document (Article 383, paragraph 3 and paragraph 1 in con- nection with Article 31 and Article 389, FBiH Criminal Code)	Abuse of office or authority - imprison- ment for not less than three years. Forgery of an official document - imprisonment from six months to five years.	Dzumhur Nardis, found guilty of the crime. Abuse of office or authority, and the accused was sen- tenced to 1 year in prison; the accused Dzumhur Nardis was also found guilty of the criminal offense. Forgery of an official document, and the accused was given a suspended sentence; which determines his imprisonment for a term of 6 months and at the same time determines that this sentence will not be executed if the accused does not commit a new criminal offense within 2 (two) years from the day the verdict becomes final. The accused Ramic, Sejo was found guilty of the criminal offense. Abuse of office or author- ity and the accused was sentenced to 1 year in prison. Ramic Sejo was also found guilty of the crime. Forgery of an official document, and the accused was given a suspended sentence, which sets him a prison sentence of 6 months and at the same time stipulates that this sentence will not be executed if the accused does not commit a new criminal offense within 2 (two) years from the day the verdict becomes final. The accused Mujanovic Svetlana was found guilty of a criminal offense. Abuse of office or authority, and the accused was given a suspended sentence, which is punishable by imprisonment for a term of 1 year and at the same time it is determined that this sentence will not be executed if the accused does not commit a new criminal offense within 2 (two) years from the day the verdict becomes final. The accused Vljadic Zulfir was found guilty of a criminal offense. Abuse of office or authority and the accused was given a suspended sentence, which sets him a prison sentence of 1 year and at the same time deter- mines that this sentence will not be executed if the accused does not commit a new crime within 2 years from the day the verdict becomes final. The Accused Slijadzic Nasir was found guilty of the criminal offense. Abuse of office or authority assisting and the accused was sentenced to 1 (one) year in prison. The accused legal entity TZV Gredelj d.o.o. Sarajevo was found responsible for the crime. Abuse of office or authority and the accused legal entity was fined in the amount of 2,500,000.00 BAM.	No information available.	The accused Slijadzic Nasir was deprived of his business premises as proceeds of crime.	Yes. Information on the finality of the verdict is not available.

Defendant / Informal case name	Acting court	Acting prosecution	Crime name	Sanction threatened for the criminal offense in question in accordance with the criminal law	Type and amount of the sanction imposed / whether the sanction was reduced below the legal minimum	Whether the judgement imposed a security measure prohibiting performance of work, activities or functions	Whether the measure imposed is confiscation of proceeds of crime	Did the Prosecution appeal the first instance verdict / whether the judgment is final
12. Edita Alagic	Cantonal Court in Bihac	Cantonal Prosecutor's Office of Una-Sana Canton	Embezzlement in the service Article 384, paragraph 3 in conjunction with paragraph 1 of the FBiH Criminal Code)	Imprisonment for at least three years.	Imprisonment of one (1) year.	Imposed security measure prohibiting the performance of the activities of sellers and other duties related to the disposal and handling of entrusted property in companies or in general in the institutions of the Federation of BiH, for a period of 2 (two) years from the finality of the verdict.	To the damaged company d.o.o. „Bingo“ Turza compensate the damage in the amount of 40,715,20 BAM	Yes. Information on the finality of the verdict is not available.
13. Devad Muslimović and the others	Cantonal Court in Bihac	Cantonal Prosecutor's Office of Una-Sana Canton	Organized crime, receiving gifts and other forms of ben- efit, abuse of office or authority (Article 342, paragraph 3, Article 380, para- graph 1 and Article 383, paragraph 1 of the FBiH Criminal Code). Convicted of a criminal offense under Article 382, paragraph 2 of the FBiH Criminal Code.	Receiving gifts and other forms of ben- efits: Imprisonment from six months to five years. Receiving a reward or other trading in influence - imprisonment for one to eight years.	Convicted for the extended criminal offense of receiving gifts and other forms of benefits: The first defendant Muslimovic Devad – 3 years and 6 months. Second defendant SEHIC FADIL - 2 years. The third defendant SOLAKOVIC SABAHUDIN – 10 months. Fourth defendant KARIC ENES: 2 years. The fifth defendant ME- HMEDOVIC RASIM: 1 year and 2 months. Sixth defendant SIRCO FAHIR: 1 year and 1 month. The accused were acquitted of the following charges: Muslimovic Devad was acquitted of the criminal offense - Organized crime in connection with criminal offenses - Receiving gifts and other forms of benefits and abuse of office or authority; and The accused Sehic Fadil, Solakovic Sabahudin, Karic Enes, Mehmedovic Rasim and Sirco Fahir for the criminal offense of - Organized crime in relation to Criminal offenses - Receiving gifts and other forms of benefit and abuse of office or authority. The accusation against Sehic Fadil was rejected in which he as a member of an organized group committed a criminal offense. Organized in connection with the crime of receiv- ing gifts and other forms of benefits.	The accused Devad Muslimovic was banned from performing the work, activity or duty of the Director of Administra- tion in the Forest Company d.o.o. Bosanska Krupa.	Yes and from: 1. Ac- cused MUSLIMOVIC DEVADA property gain in the amount of 273,898.44 BAM; 2. The accused SEHIC FADIL property gain in the amount of 102,500.00 BAM; 3. The accused SOLAKOVIC SABAHU- DIN property gain in the amount of 9,250.00 BAM; 4. The accused KARIC ENES property gain in the amount of 21,600.00 BAM; 5. The accused MEHMEDOVIC RASIM property gain in the amount of 46,000.00 BAM; 6. The accused SIRCO FAHIR property benefit in the amount of 16,300.00 BAM in which amount is included 300,00 BAM that were used when conducting a special investigative ac- tion giving a simulated bribe.	Yes. Information on the finality of the verdict is not available.

Criminal Policy in Corruption Cases - Trends and Findings (Table 2)

The Report on Monitoring the Proceeding of Corruption Before the Courts and Prosecutor's Offices of Bosnia and Herzegovina 2020 of Transparency International³⁶ stated in the context of the structure of convictions that the criminal policy for corruption crimes is very low and not discouraging for potential perpetrators. The share of prison sentences in the total number of convictions for corruption offenses during 2020 is as high as 33.7%, while the share of suspended sentences in the total number of court decisions is a worrying 62.3%, which once again confirms that in BiH mostly petty corruption is prosecuted, while serious cases of corruption are very rarely or not prosecuted at all. This trend continued in 2021, especially taking into account the situation related to the COVID-19 pandemic.

Substantive criminal legislation in BiH contains provisions incriminating criminal offenses against official and other responsible duties. More precisely, these are criminal offenses prescribed by the Criminal Code of BiH (hereinafter: **CC BiH**) (Chapter XIX - criminal offenses of corruption and criminal offenses against official and other responsible duty), Criminal Code of FBiH (hereinafter: **CC FBiH**) (Chapter XXXI - Criminal offenses of bribery and criminal offenses against official and other responsible duty), the Criminal Code of RS (hereinafter: **CC RS**) (Chapter XXVII - Criminal offenses against official duty) and the Criminal Code of Brčko District of BiH (hereinafter: **CC BD**) (Chapter XXXI - Criminal offenses of bribery and criminal offenses against official and other responsible duty).

The analysis and sample in question show that the criminal offenses for which the suspects are accused relate mostly to the criminal offenses of receiving/giving gifts and other forms of benefits within the performance of official function (8), and abuse of position or authority (7), and embezzlement in the service. From the 13 cases analyzed in terms of the amount of the sanction, we can conclude that two ended with acquittals (in one of the cases an appeal was filed by the prosecution), and an additional three cases ended with a suspended sentence in the case of Naser Memcaj (who gave gift to USC inspector Amemar Muratagic) a plea agreement was even concluded. Suspended sentence is prescribed by Criminal Law in BiH as a warning measure. Namely, with a suspended sentence, the court determines the punishment for the perpetrator of the criminal offense and at the same time determines that it will not be executed if the convicted person does not commit a new criminal offense for a period determined by the court, which may not be shorter than one nor longer than five years (verification time). Thus, a suspended sentence is a measure of warning

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³⁶ Transparency International report on monitoring the processing of corruption before courts and prosecutor's offices in BiH 2020, available at https://ti-bih.org/wp-content/uploads/2021/08/Monitoring-procesuiranje-2020_draft.pdf, accessed October 7, 2021

imposed on the perpetrator of a criminal offense when it can be reasonably expected that the warning with the threat of punishment will be able to achieve the purpose of the criminal sanction. It is a sanction that does not have a repressive character such as an effective punishment (e.g. imprisonment). It does not imply deprivation and restriction of personal rights and freedoms inherent in punishment. In view of the above, it is clear that the court, when deciding whether to impose a suspended sentence in a particular case, must assess whether it will be able to achieve the purpose of criminal sanctions, and within it the purpose of punishment. We note that the purpose of criminal sanctions is to have a preventive effect on others to respect the legal system and not commit criminal offenses, and to prevent the perpetrator from committing criminal offenses and encouraging his re-education, while the purpose of punishment is to express social condemnation of the committed criminal offense, to influence the perpetrator not to commit criminal offenses in the future, to influence others not to commit criminal offenses and to influence the awareness of citizens about the danger of criminal offenses and about the fairness of punishing the perpetrators. Thus, it is obvious that the purpose of suspended sentence is both general and special crime prevention.³⁷

It is interesting that in one of the analyzed cases, against Amemar Muratagic, imposed is suspended sentence - six months, provided that he does not commit a new criminal offense within two years from the day the verdict becomes final. We note that the above-mentioned as an official of the Cantonal Administration for Inspection Affairs of the USC received a gift from Naser Memcaj (concrete pillars) and was convicted of the crime of receiving gifts or other forms of benefits. For this criminal offense the FBiH CC threatens with imprisonment from six months to five years. In the explanation, the first instance court appreciated the mitigating circumstances and stated that the above-mentioned is a family man, that he had not been previously convicted, his attitude towards colleagues and their respect, and, among the other things, that the value of the obtained property gain was not great. The Cantonal Prosecutor's Office of the USC appealed the verdict and pointed out that the court had not adequately assessed the sentence, nor imposed a security measure given the circumstances of the commission of the criminal offense. The Prosecution pointed out that the criminal offense seriously violated the official duty and undermined public confidence in the performance of the official duty of inspection, especially bearing in mind that the official duty and obligation of the accused was that the subjects of control work properly and legally and that in that direction he performs control, and in which the legislator also gave great powers through the possibility of imposing misdemeanor sanctions. Furthermore, the Prosecution stated that the court had to impose a sanction, a ban on re-performing the official function of inspector, especially taking into account the position of the accused in the cantonal inspection of the USC.

In both cases of Naser Memcaj and Amemar Muratagic, when imposing a sus-

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³⁷ See *Comments on Criminal Laws in Bosnia and Herzegovina, Part I, Joint Project of the Council of Europe and the European Commission, Sarajevo 2005, Book I*

pending sentence, the court particularly appreciated the personal circumstances and personality of the accused as family members and their correct conduct before the court. However, although the assessment of the personality of a particular perpetrator is of great importance in deciding whether to impose a suspended sentence, this significance is not absolute because when the purpose of a suspended sentence is taken into account, it follows that there is no place for a suspended sentence if its imposition could not achieve the goals of general and special prevention.³⁸

The amount of the sanction was in most cases imposed within the legal framework (i.e. in most cases the minimum penalties prescribed in the applicable criminal laws were imposed). Most of the imposed sentences are in the lower-down quadrant in relation to the general scope provided by legal solutions, and precise expression in arithmetic terms is not possible for several reasons, primarily due to different applications of provisions related to sanctions at different levels, and taking into account the fact that a certain part of the sanctions was imposed in conjunction with other criminal offenses, and therefore it is not possible to determine which part of the sanction precisely refers to individual corrupt acts. However, it follows from the above that the penal policy for corruption offenses is very low and not at all discouraging for potential perpetrators. For example, if we look in the observed sample at only one classic crime of corruption - Receiving gifts and other forms of benefits, and where the range of imprisonment, taking into account all forms of crime, ranges from one to ten years in prison, the average established prison sentence (as the criminal offense was most often committed in conjunction with other offenses) in relation to the ten convicted persons was less than two years imprisonment. Of course, each sanction and punishment imposed must be individualized, and all the circumstances of the case must be taken into account, so when observing the penal policy, it should be paid attention that it depends on what is being processed. Whether the criminal offenses of petty, medium or high-level corruption are prosecuted, which is also determined according to all factual circumstances and the position/function performed by the accused, regardless of the criminal offense under which the act of execution was committed.

Receiving gifts and other forms of benefits

Imprisonment threatened	From 1 to 10 years
Average penalty found on the sample	Less than two years

It should be noted that in a total of 12 cases, in the sample shown here, out of 23 accused persons who performed official functions and authorities, the largest number of them is of medium rank (10) in terms of official capacity/function.

³⁸ See *Comments on Criminal Laws in Bosnia and Herzegovina, Part I, Joint Project of the Council of Europe and the European Commission, Sarajevo 2005, Book I*

Accused by rank of official capacity

High rank	7
Middle rank	10
Low rank	6

It is indicative that no differences can be observed in the penal policy regarding the amount of sentences imposed in relation to the official rank of convicted persons, so the penal policy is equally mild towards all perpetrators of criminal offenses. Only in relation to one of the seven convicted persons of higher official rank, a medium-high prison sentence was imposed.

Security measures prohibiting the performance of work, activities or functions are prescribed by the FBiH CC and the RS CC, and ban on performing certain tasks or functions in government bodies, companies, or other legal entities is prescribed by the BiH CC. Measures prohibiting the performance of a certain work, activity or duty may be imposed on a perpetrator who has committed a criminal offense related to his work, activity or duty, if there is a danger that such performance could have an incentive to committing a new criminal offense related to his work, activity or duty. The system of the above security measures was originally designed to supplement penalties that were not sufficient to eliminate the risk of re-offending in the future. Therefore, this security measure enables the protection of society from perpetrators of criminal offenses for which the court has determined that their further performance of work, activity or duty in a certain period would carry the danger of re-offending. These security measures certainly belong to the group of those who hit the perpetrator of the crime as much as possible. Furthermore, they very often affect the family members of the perpetrator of the criminal offense and other persons who he/she supports. In particular, measures prohibiting work, activities or functions were imposed in four cases which are the subject of analysis.

Particularly interesting is the case against Mirsad Kukic in which he was convicted of the criminal offense of receiving rewards or other forms of benefits for trading in influence in connection with employment under Article 382, paragraph 2 of the FBiH CC with a threatened sentence of one to eight years. Mirsad Kukic was a longtime member of the political party SDA, who during the incrimination served as a president of the cantonal board of the SDA party in Tuzla Canton, member of the SDA party presidency as vice president of the SDA political party, member of the Federal Parliament and assistant director for investment, development and market at the mine Banovici. The convicted Mirsad Kukic participated in the illegal employment of Amel Skalja, son of Omer Skalja, also a member of the SDA political party. It should be noted that he was previously charged with Amir Zukic, Safet Bibic, Nedžad and Senad Trak, Ramiz Karavdic, Džananovic and Asim Sarajlic, who are being tried for illegal mediation in employment in public companies, but his case is separated.

Mirsad Kukic was sentenced to one year in prison. When determining the criminal sanction, the court had in mind the basic criteria from Article 48 of

the FBiH CC and assessed mitigating circumstances, namely: his previous non-conviction, older age (58 years of age at the time of the crime), family circumstances (married and a father of two children), health condition (advanced heart and blood vessel disease), the passage of time (act committed more than four years ago) and his correct conduct during the criminal proceedings, while the court assessed as aggravating circumstances that trade in influence was carried out in the sphere of employment in a public company, as well as in the sphere of social relations that are under special scrutiny of the public and citizens, taking into account the overall social situation in BiH, and a large number of unemployed persons. We note that Kukic was sentenced to one and a half year in prison in 2006, because as the general manager of "Banovici" mine exceeded the limits of his official position, enabling the illegal acquisition of benefits to other persons, including his mother. At Kukic's request in 2014, the Cantonal Court in Tuzla deleted this verdict from the criminal records.³⁹ It is especially indicative that the acting prosecutor's office did not appeal the court's decision. Therefore, Mirsad Kukic, who has been convicted of high corruption cases, has the right to replace a prison sentence with a fine under Article 43a of the FBiH CC. This is one of the glaring examples that have a stimulating effect on the perpetrators of such or similar crimes.

The analysis of these cases shows that the courts primarily assess the statutory framework of punishment for these crimes, but also all the circumstances of the case, and especially the gravity of the crimes for which the accused were found guilty, the degree of guilt of the accused, their personalities, previous life and behavior after the crime was committed, and in particular the contribution of the accused in the commission of the criminal offense, as well as all other circumstances under which the criminal offenses were committed and which may influence the penalties to be higher or lower. The provisions contained in the state and entity criminal laws, however, do not explain in more detail what circumstances may be so used. In addition to imposing sentences closer to the legal minimum based on the marital or parental status of the accused, the courts reduced the sentences due to the general personal circumstances of the accused, either at the time of the crime or during the court proceedings, such as the age of the accused, his/her physical condition, employment, previous or later non-conviction, etc. The courts assessed that the sentences imposed could achieve the purpose of sentencing, and that the imposition of a longer prison sentence and fines in a larger amount were not necessary for criminal protection, given all the established circumstances. Also, the courts took into account the fact that the accused had not been previously convicted and that the sentence imposed or its amount would have a sufficient effect on the accused not to commit criminal offenses. At the same time, it was determined that the sentences imposed will have an impact on general prevention in such a way that each potential perpetrator will think carefully about what awaits him/her if he/she commits the commission of this or a similar criminal offense.

³⁹ See CiN <http://imovinapoliticara.cin.ba/profil.php?profil=201#!biography.php?id=201>

Inefficient management of court proceedings and consequences for fundamental human rights and freedoms

Below we present an overview and analyses of two cases in which defendants filed appeals to the Constitutional Court of Bosnia and Herzegovina due to the length of court proceedings, and following this the Court determined violations of fundamental human rights and freedoms, such as right to fair trial or right to liberty and security. As these were proceedings monitored by this Monitoring, we provide the most important conclusions and findings from the Decision of the Constitutional Court of Bosnia and Herzegovina.

The case: "Zadruga" (defendant Sanel Djalic and others)
Criminal offences (according to the indictment): Organised Crime, Forging Documents, Unauthorised Use of Personal Data, Abuse of Office or Official Authority, Money Laundering (Art. 342, Art. 373 para. 2, Art. 193, Art. 383 para. 3 and 1 and Art. 272 para. 1 and 2 of the CC of FBiH)
Date of indictment confirmation: 01/02/2019
 Time of criminal offence commission (according to the indictment): 2010-2018

Resolving the appeal filed by the appellant Sanel Djalic challenging decision to extend the detention, the Constitutional Court of Bosnia and Herzegovina (the Constitutional Court of BiH) issued a decision on admissibility and merits based on which the appeal was partially upheld, and confirmed violation of the appellant's right to liberty and security prescribed by Article II/3.d) of the Constitution of Bosnia and Herzegovina and Article 5 paragraph 3 of the European Convention on Human Rights and Fundamental Freedoms (the European Convention); this also in relation to the appellant's right to have a trial within a reasonable time guaranteed by Article II/3.e) of the Constitution of BiH and Article 6 paragraph 1 of the European Convention.⁴⁰

Considering the allegations from the appeal related to the excessive duration of detention referring to the violation of Article II/3.d) of the Constitution of BiH and Article 5 para.3, and violation of right to have a trial within reasonable time prescribed by Article 6 para. 1 of the European Convention, and bringing those into connection with the specific circumstances of the case, the Constitutional Court concluded that the acting Cantonal Court in Sarajevo in this specific case did not ensure efficient management of the proceeding by applying relevant provisions of the Law on Criminal Code of the Federation of BiH in order to

⁴⁰ See Decision of the Constitutional Court of BiH, AP 534/21, <http://www.sluzbenenovine.ba/page/akt/JiNA-tI5uxSk=>, accessed on 08/10/2021; See Constitution of Bosnia and Herzegovina, https://www.ustavnisud.ba/public/download/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf, accessed on 08/10/2021; see the European Convention on Human Rights and Fundamental Freedoms, https://www.echr.coe.int/documents/convention_bos.pdf, accessed on 08/10/2021

limit duration of detention to minimum.⁴¹ Also, based on the same Decision, the Constitutional Court of BiH ordered to the Cantonal Court in Sarajevo to take measures to efficiently continue the proceedings and to ensure guarantees to have a trial within a reasonable time.

Resolving the indicated appeal in terms of assessing the reasonable duration of proceeding, specifically in regard to the duration of detention as a particularly important issue for the appellant, the Constitutional Court of BiH emphasized the consistent practice of the European Court of Human Rights in terms of requesting specific attention to be paid by the courts when assessing the reasonable duration of defendant's detention.⁴² Namely, according to the well established practice of the European Court of Human Rights the main obligation when deciding on the detention is not to make the duration of detention exceed reasonable time, which otherwise can lead to the violation of his right to liberty and security.⁴³ Concerning this, the justification of any period of detention determined by the court for the defendant must be reasoned and convincingly justified.⁴⁴ Pursuant to the above, and considering the specific circumstances of the case, the Constitutional Court of BiH found that, although a state of emergency caused by the COVID-19 pandemic was declared during the controversial period of detention of the defendant which according to the acting court had crucial impact on stopping the proceeding and preventing a hearing with large number of people to be held, the acting Cantonal Court in Sarajevo failed to consider the change in intensity of objective circumstances in timely manner during the pandemic from March 2020 to March 2021, and to reduce the detention of the defendant/appellant to a minimum. More specifically, having in mind that at the time the Constitutional Court was deciding upon the appeal, the defendant had been in detention for three years already, and since the criminal proceeding was in the phase of indictment reading, the Constitutional Court of BiH also determined that the Cantonal Court in Sarajevo has not considered all the modes of establishing effective control over the conduct of proceedings contained in the presumed application of the Law on Criminal Procedure Code of FBiH. All above indicated led to the violation of the appellant's right to liberty and security prescribed by Article 5 para. 3, in connection with the right to trial within a reasonable time guaranteed by Article 6 para.1 of the European Convention. In addition to this, the Court also emphasized in its Decision that the defendant must not bear any consequences resulting from the failure of the acting court to organize its work related to the case.

According to the Constitutional Court of BiH, the acting court in this specific case failed to show the necessary readiness to organize its work as the objec-

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⁴¹ See item 46 of the Decision of the Constitutional Court of BiH, AP 534/21, <http://www.sluzbenovine.ba/page/akt/JiNAtI5uxSk->, accessed on 08/10/2021

⁴² Paragraph 140, Judgment of the Grand Chamber of the European Court for Human Rights in case *Idalov v Russia*, ap. No. 5826/03, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-110986%22%5D%7D>], accessed on 08/10/2021

⁴³ Ibid.

⁴⁴ Ibid.

tive circumstances required, and it failed to use all procedural mechanisms provided by the Law on Criminal Procedure Code of FBiH, which finally led to unreasonably long duration of certain phases of proceeding. At the same time, all of this places huge burden on the defendant. The indicated shortcomings in the conduct of the Cantonal Court in Sarajevo related to the efficient management of the case, including other potential flaws in the organization of the judiciary which is always the responsibility of a state, all in accordance with the practice in implementation of Article 6 of the European Convention, cannot constitute by any means the legal ground for justifying the unreasonably long duration of determining phases of the proceeding, or the proceedings in general.

The case: "Pravda" (defendant Alija Delimustafic and others)

Criminal offences (according to the indictment): Organised Crime, Abuse of Office or Official Authority, Forging Documents, Fraud, Money Laundering, Giving False Statement, Accessory after the Fact (Art. 342 para. 3 in relation to Art. 383, Art. 294 para. 2, Art. 272 para. 1 and 2, Art. 348 para. 3 and Art. 346 para. 1 and 2 of the CC of FBiH)

Date of indictment confirmation: 11/10/2017

Time of criminal offence commission (according to the indictment): 2009-2016

According to the information from the media, Alija Delimustafic is charged with organizing a criminal group in the period 2009-2016 which, inter alia, illegally registered and re-sold property belonging to the deceased people mostly from the Canton of Sarajevo. So, in court proceedings conducted by the Judge Lejla Fazlagic Pasic, the property of the deceased people was registered to the members of the organization and family members, and afterwards the property was resold to third parties by concluding contracts with them. The suspects are charged with the criminal offences of Organised crime, Abuse of office or official authority, Violation of the law by a judge, Money laundering, Forging documents, Fraud. By committing the above stated criminal offences they acquired the illegal property gain worth more than 10 million BAM.

WHAT DID THE APPEAL REFER TO?

The appellant filed an appeal with the Constitutional Court of BiH claiming that he was deprived of his rights to personal freedom and security under Article II/3.d) of the Constitution of BiH and Article 5 of the European Convention, as well as the right to fair trial under Article II/3.e) of the Constitution of BiH and Article 6 of the European Convention, and the right to effective legal remedy under Article II/2 of the Constitution of BiH and Article 13 of the European Convention.

The appeal disputes the justification of the pronounced measures imposed on the appellant, whereby the item 1 pronounced the ban to leave the residence and travel ban in a way that the appellant is forbidden to leave the residence, the residential address (as specified) without prior court approval unless he leaves it in order to appear before the court in the criminal proceeding or upon

the invitation of the Prosecution. The appellant must not change his place of residence unless previously approved by the court. It was further stated that the check of the ban to leave his/her residence and the travel ban would be done by the authorized officials of the police station Centar, by checking once a day, in a period from 8 a.m. to 10 p.m., if the appellant stayed at the indicated address, and in case the appellant was not found at the specified address they would inform the court in written form. It was also indicated that the appellant is forbidden from being issued a new passport, and using ID card to cross the state border. The Decision brought by the Cantonal Court stated that the imposed measures would be effective as long as necessary, and the longest until the appellant was sent to serve the prison sentence. The appellant was specifically warned that he could be placed in detention if he rejected to follow the imposed measures. The appellant believes that this measure of forbidding him to leave his residence (house arrest) deprived him of his freedom, particularly taking into account the length of his stay in prison, and the fact that the main trial has not yet begun, although the indictment was confirmed on 11th October, 2017. In his appeal, the appellant points that, despite the given bail, and in connection with that, the obligation to release him, he is still being kept under „house arrest“. Furthermore, the appellant indicates that he has been in detention since 11th November 2016, with some short interruptions, and that he has been „imprisoned“ for more than three and a half years although the trial has not even started.

Thus, the main point is that the appellant was given bail, and instead of being released, the imposed measure (ban to leave the residence, residential address) the appellant is still deprived of liberty (considering he is under house arrest).

WHAT WAS THE CONCLUSION OF THE CONSTITUTIONAL COURT?

The Constitutional Court of Bosnia and Herzegovina concluded that the measure of prohibition in the way imposed on the appellant, implemented and controlled constituted „deprivation of liberty“. So, although it is not a serious measure (easier than detention in detention centre), it is still deprivation of liberty. On the other hand, the appellant points he was granted bail, and the Constitutional Court notes that the travel ban was also imposed on the appellant. Therefore, the mere fact that the court showed no „diligence“ in the conduct of the proceeding against the applicant is sufficient to conclude that the appellant's right to liberty and security had been violated. Under the circumstances of the specific case, and having in mind the fact that the indictment was confirmed on 11th October, 2017, which means more than three years ago, with no further development in the appellant's case, **the Constitutional Court notes that the judicial authorities showed no diligence in the conduct of the criminal proceeding**, while the detention for the appellant was being extended in the same period, and he was continuously banned from leaving his residence (home) which represents deprivation of liberty and which finally caused the violation of the appellant's right to liberty and security.

WHY IS DECISION ON THIS APPEAL IMPORTANT?

The Decision is important for the harmonization with the practice of the European Court in the context of the position that the ban to leave his/her residence (home) represents deprivation of liberty, i.e. that the „house arrest“ has been equated with the detention.

WHAT IS THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS?

According to the practice of the European Court of Human Rights (hereinafter: the European Court), deprivation of liberty implies the measure imposed by the authorities to keep the individual within a restricted place for a certain period of time, against or without his/her free will (see the European Court, *Guzzardi v Italy*, Judgment of 06/11/1980, Series A, section 92). In the cases of the European Court of *Buzadji v The Republic of Moldova* (see the European Court, Judgment of 05/07/2016, application no 23755/07) the European Court equated „house arrest“ with detention.

The below stated presents selected cases of corruption observed within the Monitoring. A qualitative analysis was made based on the available information and insights into the indictments and/or court decisions, and other publicly available information. The analysis points to the observed procedural flaws, penal policy or the course of the proceeding. It does not pretend to re-evaluate the court decisions by providing final verdict, but only to indicate trends or findings of interest to the professional and general public, according to the available information. In this context, the analysis is of a particular significance to the professional community and should be observed as a template for reflection and further evaluation.

Analysis of the Verdict of the Municipal Court in Zenica, no.: 43 0 K 127337 19 K of 16/07/2020, based on which the Accused Ivica Curic and Pauric Blanka were acquitted

Criminal Offence: Abuse of Office or Official Authority

Ivica Curic was acquitted of accusation that, in his capacity as the Minister of Labor, Social Policy and Refugees of Zenica-Doboj Canton, abused his position and powers, to gain a benefit in the form of employment for an indefinite period on behalf of Pauric Blanka, **committing thus the criminal offence „Abuse of Office or Official Authority“ under Article 383 paragraph 1 of the CC of FBiH. Pauric Blanka was acquitted of the charges** that she committed criminal offence of „Forging Documents“ under Article 373 paragraph 1 in relation to Article 55 of the CC of FBiH.

The verdict was passed and publicly announced on March 6, 2020, and a written copy was made by another judge on July 16, 2020 (4 months later). The reasoning of the verdict states the acting judge in this case was suspended from the position of a judge during the time of making the written copy of a verdict, due to the criminal proceeding being conducted against her, which is why the court president authorized another judge to make the written copy of the announced verdict. It is interesting that the prosecutor did not appeal the verdict.

On December 21, 2018, the Cantonal Prosecutor's Office in Zenica filed an indictment with the Municipal Court in Zenica no.: T 04 0 KTPO 0023885 16 dated December 12, 2018, against the accused Curic Ivica and Pauric Blanka. The indictment was confirmed on December 25, 2018 based on the decision issued by this court. The main trial began on June 19, 2019 and continued on September 9, 2019, November 4, 2019, February 17, 2020 and February 28, 2020. The cantonal prosecutor, the accused and the defense attorneys were present at all hearings.

Considering that the subject of the analysis is a corruptive criminal offence, i.e. *Abuse of Office or Official Authority*, the further analysis will be focused only on the actions of the court related to the accused Curic Ivica, against whom **the indictment** was filed indicating „that on January 23, 2015 in Zenica, in the capacity as the Minister for Labor, Social Policy and Refugees of Zenica-Doboj Canton, by abusing his position and powers, in order to gain a benefit in the form of employment for an indefinite period on behalf of Pauric Blanka, brought

a Conclusion no:09-34-19960-4-6/14 dated January 23, 2015, to continue the procedure for the Public announcement of December 11, 2014, to fill the vacancy „Technical Secretary“ by repeating the public announcement, although the Commission for conducting public announcement in order to fill the vacancy, whose member, among others, was also K.P. on behalf of the Trade Union, made a record which indicated 8 candidates who met all requirements of the public announcement and 5 candidates who did not meet the requirements, among which was Blanka Pauric who did not meet a requirement related to the length of service after obtaining education degree, since she obtained her 4th degree of professional school on September 10, 2014, everything was done contrary to Article 25 of the Law on Employees in Civil Service Bodies of the FBiH (Official Gazette No. 49/05) for Curic failed to bring a decision on hiring employees from the list of 8 successful candidates who met all requirements of the public announcement, but instead, on January 21, 2015, contrary to Article 23, paragraph 3 and 5 in relation to Article 22 of the Law on Employees in Civil Service Bodies of the FBiH, within the regular procedure of conducting the initial public announcement, amended the Rulebook on Internal Organization of the Ministry in a way that he amended the specific requirement concerning the degree of education, by adding the 3rd degree of vocational school, to the previously required 4th degree, knowing that Blanka Pauric can meet the requirement related to the length of service with the obtained 3rd degree of vocational school only, but also knowing that candidates who meet all requirements could file appeals, and the candidates B.M., Z.H. and K.E. did so, and upon their appeals, on March 3, 2015, the Civil Service Appeal Board brought a Decision approving their appeals and annulling the Notice of the Minister for Labor, Social Policy and Refugees of Zenica-Doboj Canton no 09-34-19960-4-6-6/14 of January 23, 2015, and returning the case to the first instance body for retrial, with the explanation that the first instance body incorrectly concluded that the selection of any of the candidates would not meet the requirement related to the work experience in the same or similar positions, since the appellants indisputably had the length of service longer than 12 months, as requested by the public announcement, and that the fact that they did not have experience in the same or similar positions was unacceptable and that such opinion was wrong, since Article 15 of the Decree on Supplemental and Ancillary Activities Added to Principal Activity from the scope of the state bodies carried out by employees prescribed what is considered under the length of service, and that the head of the first instance body would decide in the repeated proceeding on the selection of candidates based on Article 25 of the indicated Law, in terms of prominent legal views in the decisions issued by the Civil Service Appeal Board based on which the appeals were approved, but contrary to this, on March 6, 2015, the public announcement was cancelled, and the candidates, whose appeals had already been approved, were informed by the Notice no. 09-34-19960-4-7-1/14 of March 6, 2015, which made K.P., the representative of the Trade Union, and the member of the Commission, submit a written statement indicating she was aware that the deadline for appeals against the first public announcement was not met and request an exemption from the Commission, but despite this, the procedure after the repeated public announcement was continued, opposite to Article 22 of the Law on Employees in Civil Service Bodies of the FBiH, since the Commission, with-

out the representative of the Trade union, composed of D.D., J.J. and V.M., made a list of candidates meeting the requirements of the public announcement (14 of them in total, including Blanka Pauric) on March 10, 2015, after which Curic issued a Decision on the admission of Blanka Pauric to the position of „Technical Secretary“ no. 09-34-19960-4-7/14 of March 10, 2015, in which way he acquired a gain on behalf of Blanka Pauric in the form of establishing an employment for the indefinite period of time“.

The reasoning of the verdict states that in the final statement the prosecution indicated that „it was proven that the accused committed the criminal offences charged with, and therefore suggested to be found guilty and to be punished in accordance with the law“.

The reasoning of the verdict lists all material evidence presented to the court, including the statements of the witnesses, and states that the court accepted the statements provided by the witnesses, considering there are no contradictions between them, i.e. they are consistent in regard to important elements, and are not contrary to the material evidence.

Based on that the court determined that „on November 3, 2014, an internal announcement was delivered to all Ministries of Zenica-Doboj Canton and to all relevant departments, in relation to the position of senior technical secretary, and that on December 5 and 8, 2014, the Commission (composed of the same members as for the public announcement) held meetings and concluded that only one candidate reacted upon the internal announcement and submitted his application in time, with all requested documents, that he was interviewed and there were no objections to his answers, but the Commission still concluded that the internal announcement was not successful since only one candidate applied and that larger number of candidates would provide opportunity to select the appropriate candidate“.

The court determined that „a public announcement for the admission of an employee to the indicated Ministry and to the position of „Senior Officer – Technical Secretary“, 1 executor, to an indefinite period of time, was published on December 9, 2014. Based on the insight into the Minutes on the conducted procedure related to the Public announcement for filling the vacancy in the Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton „Senior Officer – Technical Secretary“, 1 executor for indefinite time, no. 09-34-19960-4-5/14 of January 23, 2015, prepared by the Commission for conducting public announcement to fill the vacancy, the court concluded that the Commission in the indicated composition, noted that 13 applications had been received, and that 8 candidates met the requirements while 5 candidates did not meet the requirements of the announcement. It was also stated that 8 candidates meeting the requirements failed to submit the documents proving the work experience in the same or similar jobs.“

Having had the insight into the Conclusion of the Ministry for Labor, Social Policy and Refugees of Zenica-Doboj Canton no. 09-34-19960-4-6/14 dated January

23, 2015, the court determined that the accused decided to continue the procedure to filling the vacancy through the repeated public announcement on the same day the Commission provided its conclusion.

Based on the insight into the Notice of annulment of public announcement by the Ministry sent to B.M. no. 09-34-19960-4-7-1/14 of March 6, 2015, and the annulment of public announcement published in „Oslobodjenje“, the court found that the accused issued a decision on the annulment of the public announcement for filling the position at the Ministry published on December 12, 2014.

Based on the insight into the Decision brought by the Civil Service Appeal Board of March 3, 2015, the court determined that H.Z., B.M. and K.E. filed appeals against the Notice of the Ministry dated January 23, 2015, and that the Civil Service Appeal Board acted upon those appeals and brought identical decisions based on which it annulled the mentioned Notice and *returned the case for retrial*.

Based on the insight into the Rulebook on internal organization of the Ministry of Labor, Social Policy and Refugees of August 17, 2012, the Rulebook on Amendments to the Rulebook on internal organization of the Ministry of Labor, Social Policy and Refugees of December 3, 2014, and the Rulebook on Amendments to the Rulebook on internal organization of the Ministry of Labor, Social Policy and Refugees of January 21, 2015, „the court determined that the requirements related to the position of Senior Officer – Technical Secretary with the Ministry had been changed compared to the requirements from 2012. The change referred to required education degree for this position and it happened during the ongoing competition procedure, in a way that the it required 3rd/4th degree of high school education, instead of previously required 4th degree of professional school. All Rulebooks and Amendments to the same were approved by the Government of Zenica-Doboj Canton.“

Based on the insight into the Notice of the Joint Affairs Service of the Zenica-Doboj Canton no. 14-34-19960-5-2/14 of February 5, 2015, with the attached repeated public announcement in daily newspaper „Oslobodjenje“ of February 5, 2015, **daily newspaper and „Dnevni avaz“, the repeated public announcement for the position with the Ministry for Labor, Social Policy and Refugees** of Zenica-Doboj Canton no. 09-34-19960-5/14 of February, 3, 2015, the court found that a new competition for the indicated position was announced on February 5, 2015.

Based on the insight into the Application to the repeated public announcement placed by Pauric Blanka on February 16, 2015, providing short biography, diploma obtained after completing economics professional school, diploma obtained after completing vocational school, a certificate of passing professional exam, proof of computer skills, a certificate of BiH citizenship, a certificate of work experience, a verified statement that she has not been dismissed from the civil service in the last two years and a verified statement that Article IX I of the BiH Constitution could not be applied to her, the court determined that on February 16, 2015, Pauric Blanka filed her application upon the repeated public announce-

ment published in Dnevni avaz on February 3, 2015.

Based on the insight into the Minutes of the employment procedure conducted upon the **Repeated Public announcement to fill the position of an employee with the Ministry for Labor, Social Policy and Refugees** of Zenica-Doboj Canton, „Senior Officer – Technical Secretary“, one executor for the indefinite time, composed by the Commission for conducting the public announcement in order to fill the vacancy no. 09-34-19960-4-6/14 of March 10, 2015, the court determined that 18 applications were received, 14 of which met the job requirements, and 4 did not meet the necessary conditions. This time Blanka Pauric was not listed among those meeting the requirements.

Based on the insight into the Decision on hiring employee Pauric Blanka issued by the Ministry for Labor, Social Policy and Refugees no. 09-34-19960-4-7/14 of March 10, 2015, with a return receipt for delivery of Decision containing the name of Pauric Blanka on March 13, 2015, and additional Decision of the Ministry for Labor, Social Policy and Refugees no. 09-34-19960-4-8/14 of May 11, 2015, with the return receipt confirming delivery to Pauric Blanka on May 11, 2015, Decision on confirmation of the employment of an senior officer with the Ministry for Labor, Social Policy and Refugees of Zenica-Doboj Canton no. 09-34-19960-4-11/14 of August 13, 2015 with the return receipt confirming the receipt of the Decision on confirmation of employment of Pauric Blanka, the court determined that Pauric Blanka was hired to the position of the Senior Officer – Technical Secretary, starting as of May 12, 2015, and that after the probationary period of 3 months her admission to the indicated position was confirmed.

Furthermore, the reasoning of the verdict states that the court found that „on three occasions the accused Curic Ivica requested and obtained the consent of the Office of the Prime Minister of Zenica-Doboj Canton to hire a person with high school degree to conclude a contract for the position of Senior Officer – Technical Secretary, and that three contracts were concluded between the Ministry represented by the accused Curic Ivica and Pauric Blanka, each of them with a duration of 60 days, which finally covered the period from **November 3, 2014, to May 9, 2015.**

After indicating the individual evidence and conclusions made by the court based on the evidence provided, it is stated in the reasoning of the verdict that „the accused Curic Ivica was charged with the criminal offence Abuse of Office or Official Authority pursuant to Article 383 para. I, in relation to Article 55 of the CC of FBiH.“

The provision of Article 383 paragraph I of the CC of FBiH prescribes that an official or responsible person in the Federation who, by taking advantage of his office or official authority and by exceeding the limits of his official authority or by failing to perform his official duty, acquires a benefit to himself or to another person or causes damage to another person or seriously violates the rights of another, shall be punished by imprisonment for a term between six months and five years.

According to this, the characteristics of this criminal offence are the following:

1. The indicated criminal offence may be committed only by an official or responsible person.
2. This criminal offence may result from committing three alternative acts: taking abuse of office or official authority, exceeding the limits of official authority and failing to perform official duty.
3. This criminal offence may be committed only with a direct intent, i.e. with the aim to perform the above stated acts in order to acquire a benefit to oneself or another person or cause damage to another person or seriously violate the rights of another.

A fact that the accused during the proceeding held the position of the Minister for Labor, Social Policy and Refugees of Zenica-Doboj Canton, and thus had the status of an official, was indisputable. Concerning the committed act the prosecution considers that the accused Curic Ivica abused his official authority and his office to gain the benefit to Pauric Blanka in the form of an employment.

The court finds this claim unproven, considering that, at the time of employment competition, the accused Curic Ivica was the head of a body – Minister of the Ministry for Labor, Social Policy and Refugees of Zenica-Doboj Canton, and had the authority to decide on the need to hire new employees, following which he implemented legally prescribed procedure, i.e. the internal announcement first, and then the public announcement, all pursuant to the provisions of Articles 20-26 of the Law on Employees in Civil Service Bodies of the FBiH („Official Gazette of FBiH“, no. 49/05).

The court also found that during the first public announcement, 3 of the candidates filed appeals against the notice on the unsuccessful selection of candidates, as well as that those appeals were approved by the Civil Service Appeal Board and that the accused Curic Ivica, acting as the Minister, issued a Decision based on which the first public announcement was annulled, considering such conduct as the act following the decision of the second instance body.

The court also determined that during the procedure of hiring employees, the job classification was amended and that the repeated public announcement contained amended text related to the degree of school education. However, such conduct of the Minister – the accused Curic Ivica, was legally valid since he obtained the consent of the Government to do so.

In the second public competition, the accused decided to hire Pauric Blanka, by selecting her from the list of candidates who met all the requirements for the job, which was his authority and right under the Article 25 of the Law on Employees in Civil Service Bodies of the FBiH.

No one disputed such decision and selection in a civil procedure (labour dis-

pute), which was also pointed out by the defense.

Consequently the court found that it was not proven that the accused Curic Ivica abused his office and official authority due to which, and following the provision of Article 299 paragraph 1, Item c) of the CC of FBiH, the court decided as in disposition:

Having in mind the above indicated, the court did not explain subjective attitude towards the crime, since it has not found the accused guilty of a crime he was charged with."

COMMENT:

Based on the above, it can be concluded that the indictment was filed against the act committed in **January 2015**, while the indictment itself was filed on December 19, 2018, or almost four years later, although the prosecution was in possession of all material evidence and statements of the witnesses. It is still unclear why it took so much time to file the indictment. The only logical explanation implies the political influence on the judicial system since the accused was holding the executive power function, i.e. he was the Minister. It is interesting that the indictment against the accused, based on the material evidence which was available to the prosecution the entire time, was filed after the general elections in BiH, in December 2018. There was no long time gap between the filing of indictment and the guilty plea. Still, the main trial was scheduled five months later, but it was divided into several phases and the time between phases was nearly three months in the beginning, then it reduced to two months, while only 11 days passed between the second-last and the last phase. Considering that the prosecution had submitted all material evidence and that the witnesses (except for one) had been available to the court, and since the case was related to grand corruption because the accused was holding the position of the Minister at the time, or in other words a member of the cantonal executive power, we believe that this proceeding should have been completed in a shorter time for the perception of the public.

The verdict contains all material evidence and statements of the witnesses, as well as the facts found determined by the court. These are the following:

1. the fact that the Ministry provided the internal announcement for filling the position of „Senior Officer – Technical Secretary“ on November 3, 2014. Only one candidate applied, and she met all prescribed requirements for the job, but the Minister – **the accused Curic Ivica concluded that the public competition should be open, since he lacked the possibility of choice;**
2. that public competition for filling this vacancy was announced on December 9, 2014. The Commission prepared the Minutes on January 23, 2015, in which it noted that 13 applicants filed their application, and that 8 candidates met the requirements while 5 candidates did not meet the requirements of the announcement, with Pauric Blanka as one of them. It was also stated by the Commission that 8 candidates meeting the requirements, failed to submit the

documents proving the work experience in the same or similar jobs;

3. that candidates filed the appeal against the Decision of the Commission within the legal deadline, and it resulted in the Decision of the Civil Service Appeal Board no. 01-34- 220/15 of March 3, 2015, by which the stated Notice of the Ministry was annulled and the **case was returned for retrial;**

4. that based on the insight into the Conclusion issued by the Ministry for Labor, Social Policy and Refugees of Zenica-Doboj Canton no. 09-34-19960-4-6/14 of January 23, 2015, the court found that the same day the Commission issued its Conclusion the accused Curic Ivica decided to continue the procedure for hiring an employee through repeated public announcement based on the amended Rulebook on internal organization of the Ministry for Labor, Social Policy and Refugees;

5. that the Rulebook on internal organization of the Ministry for Labor, Social Policy and Refugees was amended in terms of the required professional school degree needed for this position, by changing the previously requested 4th degree of professional school into 3rd/4th degree of high school education. All rulebooks and amendments were approved by the Government of Zenica-Doboj Canton;

6. **that the repeated public announcement for filling the positions with the Ministry of Labor, Social Policy and Refugees of Zenica-Doboj Canton**, no. 09-34-19960-5/14 of February 3, 2015, was published on February 5, 2015. There were 18 applications submitted, 14 candidates met the prescribed requirements, while 4 of them did not meet the requirements. This time Blanka Pauric was listed among the candidates who met the requirements. Pauric Blanka was hired for the position of Senior Officer Technical Secretary, starting of May 12, 2015, and after three months of probationary period, her appointment to the indicated position was confirmed;

7. that, on three occasions, the accused Curic Ivica requested and obtained the consent of the Office of the Prime Minister of Zenica-Doboj Canton to hire a person with high school degree to conclude a contract for the position of Senior Officer – Technical Secretary, and three contracts were concluded between the Ministry represented by the accused Curic Ivica and Pauric Blanka, each of them with a duration of 60 days, which finally covered the period from November 3, 2014, to May 9, 2015.

If all the facts and circumstances are taken into consideration, the only possible conclusion would be that the competition procedure had been implemented in a way to benefit only one candidate, Blanka Pauric, and to violate the rights of all other candidates who met all the requirements of the annulled competitions. The main role in this belonged to the accused, Ivica Curic, who holding a position of the Minister for Labor, Social Policy and Refugees of Zenica-Doboj Canton, annulled the first internal announcement, and then public competition, although there were candidates who applied to both since they met all compe-

tition conditions. It is unacceptable to provide such explanation for the annulment of the internal announcement, announced by the Ministry for the position of „Senior Officer - Technical Secretary”, to which only one person who met all the conditions applied and who was interviewed, and the Commission had no objections to her answers. Still, the Commission concluded that the internal announcement was not successful since only one candidate applied, and in their opinion the larger number of candidates could provide better opportunity for the selection of the appropriate candidate. *Based on this explanation of the Commission, which is illegal since one employee only was requested by the internal announcement, whereby the internal announcement did not require more candidates to apply, the accused Curic Ivica decided to annul the internal announcement „due to the lack of possibility to chose among more candidates”.* In this way, the right of candidate who sent the application to the internal announcement and who met all required conditions, was violated. Additionally, this also violates the Law on Employees in Civil Service Bodies of the FBiH, which prescribes the way of selecting candidates who applied for an internal announcement pursuant to Article 22, and according to which the Commission was obliged to make a list of candidates who applied and who meet all the requirements. Considering that only one candidate applied for the internal announcement and who met the requirements, the Commission was obliged to make a list with the name of this candidate on it. The opinion of the Commission that the internal announcement was not successful since only one candidate who meets the conditions applied, is contrary to this Law.

According to the provision of Article 23 of the indicated Law, if the vacant civil service position cannot be filled through the internal announcement, then public competition must be announced. Since the internal announcement was illegally annulled (due to the lack of possibility of choice), the announcement of public competition was also illegal. Still, even if we ignore this fact, we are left with another fact which says that 13 candidates applied for the public announcement, 8 of them met the requirements, and 5 did not, and Blanka Pauric was among the second group of candidates. Although the Commission stated in the Minutes that 8 candidates met the conditions, the same Commission concluded that 8 candidates who met the conditions failed to submit documents based on which it could be determined they met the requirement related to the work experience in the same or similar positions. *Such conclusion of the Commission is contradictory. Namely, if the candidates failed to provide necessary documents then their application is not complete and should have been rejected as such. The Commission did not do it but instead it confirmed they met the requirements from the announcement, and then denied such claim by indicating they failed to provide documents that prove they meet one of the prescribed requirements.* This conclusion of the Commission raises doubts about the legality of its work, particularly if we have in mind that one member of the Commission, the representative of the Trade Union, refused to continue working as part of this Commission. It should be noted here that the job requirements in the announcement were indicated according to the Rulebook on internal organization of the Ministry for Labor, Social Policy and Refugees as of August 17, 2012, the Rulebook on Amendments to the Rulebook on internal organization of the Ministry for Labor, Social Policy

and Refugees of December 3, 2014, according to which one requirement related to the work experience after obtaining 4th degree of professional school (which Blanka Pauric did not meet).

Based on the conclusion of the Commission, the same day, the accused Ivica Curic, who should have been aware that pursuant to Article 26 of the Law on Employees on Civil Service Bodies of the FBiH, candidates had the right to appeal within 8 days from receiving the notice, and that the Decision of the Civil Service Appeal Board was final, brought a Conclusion that the procedure for filling vacancy should be continued through the repeated public announcement. The repeated competition was announced in accordance with the Rulebook on Amendments to the Rulebook on internal organization of the Ministry for Labor, Social Policy and Refugees of January 21, 2015, based on which the requirement for the position of the Senior Officer – Technical Secretary was amended in terms of the necessary degree of education for this position, by adding the 3rd degree of vocational school, to the previously required 4th degree (Blanka Pauric had a 3rd degree diploma). Therefore, during the competition procedure, the Rulebook was adjusted to the skills and the obtained degree of high school education of Blanka Pauric and new competition was announced prior to the Decision brought by the Civil Service Appeal Board. New competition was announced on February 3, 2015, while the Civil Service Appeals Board delivered its Decision, based on which the Notice of the Ministry was annulled and the case returned for retrial, to the appellants on March 3, 2015.

However, the court finds that it has not been proven that the accused abused his office or official authority to gain the benefit for Pauric Blanka in the form of employment, and provides explanation that „at the time of competition procedure the accused was a head of the body – a Minister of the Ministry for Labor, Social Policy and Refugees of Zenica-Doboj Canton, and therefore was authorized to decide on the need for new employees, and that this was the direction in which he conducted legally prescribed procedure, i.e. the first internal announcement, and the public announcement after that, all pursuant to the provisions of Articles 20-26 of the Law on Employees in Civil Service Bodies of the FBiH („Official Gazette of the FBiH”, no. 49/05).”

The fact is that the indictment never disputed this, i.e. the fact that he was the head of the civil service body - a Minister of the Ministry for Labor, Social Policy and Refugees of Zenica-Doboj Canton, and that he was authorized to decide on the necessity to hire new employees. The fact is that the procedure for the selection of the employee was only formally in accordance with the Law on Employees in Civil Service Bodies of the FBiH, since the indicated facts show that the Commission made decisions of dubious character, in order to enable the accused to annul the internal announcement first, and then the first public competition, and to repeat the public competition with the amended conditions aimed at hiring Blanka Pauric, who was already working at this position based on the temporary service contract.

The explanation of the court that „the accused Curic Ivica, as a Minister, decid-

ed to to annul the first public announcement, considering this conduct pursuant to the decision of the second instance body” is also unacceptable, since the evidence show that the decision on annulment of the first public announcement was made prior to the decision of the second instance body to repeat the procedure. If such explanation of the court was accepted, the question would be how it was possible to repeat the procedure under the amended requirements. Namely, if it is decided that a certain procedure is repeated, then the procedure must be repeated under the same conditions applied to the previous procedure. However, the repeated procedure of public announcement contained the amended requirements for hiring employee due to the amendments to the Rulebook, which makes the indicated statement of the court unacceptable. Furthermore, the court emphasizes that the amendment is legally valid since the accused obtained the consent of the Government for it, which is irrelevant in this case since the consent of the Government referred to the amendments to the Rulebook, not the change of conditions in the competition.

There were 18 applications received for the repeated public competition, 14 of which met the requirements for the position, while 4 failed to do so. This time Blanka Pauric was among those who met the requirements and the Minister selected her from the list of candidates. It is correct that, pursuant to Article 25 of the Law on Employees in Civil Service Bodies of the FBiH, the head of the body decides on the admission of employees from the list of candidates meeting all requirements from the public announcement, which the court states in its explanation, but it should not be ignored that during the entire employment procedure, from the internal announcement until the repeated public competition, three temporary service contracts were concluded between the Ministry represented by the accused Curic Ivica and Pauric Blanka, each of them with a duration of 60 days, covering a period from November 3, 2014, to May 9, 2015. Blanka Pauric started working on May 12, 2015, and after the probationary period of 3 months her admission to the indicated position was confirmed.

All above stated leads to a conclusion that the accused Ivica Curic committed a criminal offence Abuse of Office or Official Authority.

As indicated by the court in the reasoning of the verdict, this criminal offence may result from committing three alternative acts: „taking abuse of office or official authority“, „exceeding the limits of official authority“ and „failing to perform official duty“. **However, the court forgets that the abuse of office or official authority exists when an official undertakes actions which are formally within the limits of his/her authority, but are illegal in the material sense, since they are contrary to the interests and tasks of the service. Typical example of such abuse of office is the abuse of the so-called discretionary powers which implies that the official is authorized to chose from several options the one which is most expedient when passing some act or resolving some case. If in doing so, the official's decision is based on gaining benefit for himself/herself or another person, then the official abuse his/her official authority although acting within the scope of his/her official duties.** All the facts and circumstances of the indicated case lead to the conclusion that the accused abused his office and official authority in order to enable Blanka Pauric to establish employment with the

Ministry, and that in addition, caused damage to candidates who met all the requirements by annulling the internal announcement and the public competition.

When it comes to the subjective state of mind in regard to the offence, i.e. the existence of the intent, it can be proven based on the objective facts and circumstances, which in this specific case point to the conclusion that the accused was aware of the actions undertaken, and that precisely those actions were aimed at acquiring benefit, i.e. enabling Blanka Pauric to establish employment, while in doing so other persons were damaged.

It is interesting that the prosecution did not appeal the decision of the court, although in its final statement it indicated that „it was proven that the accused committed the offences he had been charged with, and suggested to be found guilty and punished in accordance with the law“.

At the end of the qualitative analysis of this verdict it can be concluded that by bringing such and similar verdicts, the judicial community in BiH „legalized illegal actions“ in civil service employment procedures, which occur daily in government bodies and institutions.

Analysis of the Verdict of the Basic Court in Banjaluka, no.: 71 0 K 158482 13 IX of July 5, 2020 / The Accused: Budimir Popovic (B.P.)

Criminal Offence: Accepting Bribe

The subject of the qualitative analysis is the verdict **acquitting the accused B.P., a police officer, of charges for the criminal offence of „Accepting Bribe“ as specified under Article 351, paragraph 2 of the Criminal Code of the Republic of Srpska („Official Gazette of the Republic of Srpska“ no. 49/03, 108/04, 37/06, 70/06, 73/10).**

The qualitative analysis of this verdict was performed due to the fact that almost 8 years passed from the moment of filing the indictment until passing the verdict. Namely, a particular case for which the verdict was passed took place on May 14, 2011, and the indictment was filed on December 11, 2012. However, prior to filing the indictment, an order on suspension of the investigation against the accused was issued on October 5, 2012, but the Ministry of Interior of RS filed an appeal against the order to suspend the investigation on November 2, 2012. After that, on November 16, 2012, the Chief Prosecutor issued an order to exempt the Prosecutor who issued the order on the suspension of the investigation from the further work on this case, and reassigned the case to the Department of Economic Crime, i.e. to another Prosecutor. The indictment was confirmed by the decision of the judge for the preliminary hearing on February 21, 2013, and at the plea hearing held on March 21, 2013, the accused pleaded not guilty.

The main hearing consisted of several hearings. At the hearing held on December 6, 2019, the court refused to accept the evidence provided by the plaintiff in the form of the Report revealing the perpetrator of a criminal offence no KU-565/11 of May 16, 2011, for the evidence was not collected according to the provision of the Criminal Procedure Code of the Republic of Srpska. During the main trial, held on February 12, 2020, the court rejected as illegal the attached file of this court no. 71 0 K 158482 11 Kpp which contained 100 EUR with a serial number U 29023286216, deposited on December 11, 2012, in the court's register for deposited items under no. 174/12, and a copy of EVP's banknote of 100 with serial number Y29023286216, since this evidence was not collected according to Article 129 of the Criminal Procedure Code. The main trial, scheduled for July 1, 2020, was postponed, and rescheduled for July 6, 2020, since the defense attorney of the accused did not appear at the hearing, and filed a submission requesting a postponement of the hearing. The main hearing was held on July 6, 2020, at which the judge stated that he would announce the verdict on July 8, 2020.

The verdict states that the accused:

“Pursuant to Article 298, paragraph 1, Item V) of the Law on Criminal Procedure Code of the Republic of Srpska („Official Gazette of the Republic of Srpska”, no. 53/12, 91/17 i 66/18)

IS ACQUITTED OF CRIMINAL CHARGES that:

On May 14, 2011, in Banjaluka, acting as an official – police officer in police station Banjaluka – Centar, during the period between 5.30 and 6.30 p.m., in the official police car, requested EUR 100 from the person M.N from D., in order to arrange that M.N. is not reported for the criminal offence which he allegedly had committed, and then, on May 15 and 16, 2011, he contacted M.N. via phone related to this arrival to Banjaluka, and later on the same day, May, 16, 2011, around 4.15 p.m., when M.N. arrived to Banjaluka, they met in front of the shopping centre „Merkator“ and took from the indicated person, a banknote of EUR 100 with a serial number 329023286216, after which he was arrested by the members of the Special Investigation Unit.

Therefore, that he required a benefit to perform, as an official and within his official duties, an act which ought not to be performed by him, which would mean that he committed a criminal offence of Accepting Bribe pursuant to Article 351, paragraph 2 of the Criminal Code of the Republic of Srpska.

COMMENT:

From the data indicated in the verdict, it is obvious that the accused is a police officer, that there was 8 years from the moment of the offence until the verdict

was passed (therefore, a large period of time passed by without a justification that could be found in the objective facts, e.g. unavailability of the accused and similar, except it raises doubts in the legality of the judicial authorities actions), that at the time of rendering this verdict, two more criminal proceedings were being conducted against the accused before this court due to the criminal offences Violation of Human Dignity through Abuse of Office or Official Authority pursuant to Article 359, paragraph 1 of the CC of RS and Domestic Violence pursuant to Article 208, paragraph 1 of the CC of RS, and that court failed to provide evidence based on which it decided as stated in the disposition of the verdict.

The reasoning of the verdict indicates all the actions undertaken by the involved parties, including the evidence presented at the main trial. Based on this information it is obvious that, in this specific case, special investigative actions were conducted: secret surveillance and technical recording of persons, means of transports and objects; undercover investigator and informant; simulated and controlled buy off the items and simulated bribery. **In our opinion, the special investigative actions often represent the only possible way of collecting evidence on the crime committed and the perpetrator in corruption cases, since such acts are usually kept very secret and conspirative by all participants.**

Still, in this particular case the court determined that the applied special investigative actions had not been undertaken according to the provisions of the Criminal Procedure Code (CPC), and that evidence collected in such manner are illegal and no verdict can be based on it. Exactly due to the importance of the indicated actions for the conduct of criminal proceedings in corruption cases, we will use this part of the qualitative analysis to present the order of the court to conduct special investigative actions and the opinion of the court, in order to influence thus the holders of judicial functions to be highly professional and responsible while performing those actions and not to allow their incorrect decisions to disable the punishment of the perpetrators.

From the verdict reasoning:

„After that, and upon the request filed by the Ministry of Interior, the Crime Police Directorate, the Special Investigation Unit no. 02/1-5044/11 of May 16, 2011, this court issued a Search Order no. 71 0 K 118331 11 Kpp dated May 16, 2011, stating that in order to provide evidence for the criminal offence of Abuse of Office or Official Authority pursuant to Article 347, paragraph 3 of the RS CC, the following has been ordered:

1. Search of persons, vehicles and other movable property owned by the unidentified person with last name Popovic, employed as a police officer in PC Banjaluka 1, who was working a day shift on May 14, 2011, as well as an unidentified person employed as a police officer in PC Banjaluka 1, who was also working a day shift on May 14, 2011.
2. Temporary seizure of items for providing evidence that can be related to committing the above indicated criminal offence. To confiscate mobile phones and SIM cards during the search.
3. Search and seizure of items will be performed by the authorized officials of the Spe-

cial Investigation Unit of the RS MOI.

4. The executors of the order may enter the premises which should be searched without prior notice.

7. The suspect has the right to inform the defense attorney, but the order can be executed without the presence of the defense attorney, considering the circumstances of the urgent proceeding.

8. The order will be executed at any time, within legally defined deadline, with no prior notice according to the law.

9. After the expiration of the deadline, the executors of the order are obliged to submit a report on the conducted search, confiscated items, and a written confirmation on confiscated items to the judge for pre-trial."

In terms of special investigative actions the reasoning of the verdict further states:

„In addition to this order, and upon the proposal of the District Prosecutor's Office of Banjaluka no. OT 253/11 of May 16, 2011, this court issued an Order on application of special investigative actions of the Basic Court in Banjaluka no. 71 0 K 118334 11 Kpp of May 16, 2011, by which the following was ordered:

„In order to provide the evidence on committing the criminal offence of Abuse of Office or Official Authority pursuant to Article 347, paragraph 3, in relation to the criminal offence of Accepting bribe under Article 351, paragraph 1 of the RS CC, the officials of the Crime Police Administration (CPA), Special Investigation Unit (SIU) and Department for Special Operational Affairs of the RS MOI are being ordered to conduct special investigative actions over the following person persons:

1. A person with the last name Popovic, employed as a police officer in PS Banjaluka 1, working a day shift on May 14, 2011
2. An unidentified person employed as a police officer in PS Banjaluka 1 as well, who was working in a day shift along with the person stated under 1.

The authorized officials of the CPA, SIU and the Department for Special Operational Affairs of the RS MOI need to perform the secret surveillance and technical recording of the persons, means of transport and items, use undercover investigator and informant, simulated and controlled buy off the items and simulated bribery.

A report on the conducted special investigative actions should be submitted to the preliminary proceeding judge upon the completion of the actions."

In regard to this Order, the court indicates the following:

„However, this court believes that the order for the application of special investigative actions issued by this court under no. 71 0 K 118334 11 Kpp on May 16, 2011, has not been well explained, meaning it has not offered sufficient existence of grounds for suspicion that the accused participated in conducting the criminal offence he was charged with, then, it failed to provide the reasons for conducting special investigative actions,

i.e. explanation that there was no other way to provide the evidence or it would be rather difficult, such as the lack of information on the person against whom the actions are undertaken although he is a police officer or a co-worker of all witnesses heard. Also, this Order of the court does not specify sufficiently the particular investigative action, in this case more actions whose specification was requested and obtained, just like it fails to define the manner of its execution, and just indicated the legal term of the special investigative actions according to Articles 234, para.2, Item g), d) and dj) of the CPC, i.e. secret surveillance and technical recording of persons, means of transports and objects; undercover investigator and informant; simulated and controlled buy off the items and simulated bribery. Also, the scope and duration of each of those special investigative actions have not been determined either.

Therefore, this court Order based on which the key evidence of the prosecution was collected is not in accordance with the provision of Article 236, para. 1 of the CPC."

The court further states:

„It is important to note that legal provisions do not specify the manner for conducting special investigative actions, but only conditions for their implementation, but based on the legal provisions it is obvious that the role of the preliminary proceeding judge is not limited to giving orders only, but it also has a certain control role, according to which the preliminary proceeding judge checks, based on the written report of the Prosecutor, whether the actions were upon his/her order. After having conducted special investigative actions upon the order, the police bodies are obliged to submit all materials (e.g. recordings, reports, items) resulting from the conduct of special investigative actions to the Prosecutor, who forwards them to the preliminary proceeding judge in order to deposit them in court, which was not done in this case. The preliminary proceeding judge in this case only received a written report of the Prosecutor no. T13 0 KT 00064404 11 of December 12, 2011, on the special investigative actions undertaken, which was determined based on the insight into the file of this court no. 71 0 K 118334 11 Kpp attached upon the request of the defense...

.....In this case, no duration or scope of special investigative actions was determined by the court Order, nor, after the written report of the Prosecutor dated December 12, 2011, did the judge pass any act suspending the special investigative actions as prescribed under the provision of Article 236, para. 5 of the CPC. For reasons of secrecy and efficiency, the preliminary proceeding judge's Order approving the conduct of special investigative action, as well as the proposal of the Prosecutor, should be kept in special envelope, pursuant to Article 236, para. 4 of the CPC. Still, this was not done in this specific case, but the file for special investigative action had regular number and envelope, just like any other KPP case number."

Provision of Article 236 of the CPC states:

„Responsibility for determining and duration of investigative actions

Article 236

(1) Investigative actions under Article 234, paragraph 2 of this Law shall be

determined by an order of the preliminary proceeding judge, upon the reasoned proposal of the Prosecutor, which shall contain: data on a person against whom the action is taken, grounds for suspicion pursuant to Article 234, para. 1 or 3 of this Law, the reasons for its undertaking and other important circumstances that require the undertaking of the actions, the indication of the action that is required and the manner of its performance, the scope and duration of the action. The order contains the same information as the Prosecutor's proposal, as well as determining the duration of the ordered action.

(2) Exceptionally, if the written order cannot be obtained in timely manner and if there is a danger to be delayed, the investigative action referred to in Article 234 of this Law may be initiated based on the oral order of the preliminary proceeding judge. The written order of the preliminary proceeding judge must be obtained within 24 hours of the oral order issuance.

(3) Investigative actions under Article 234, para 2, item a), b), v), g) and e) of this Law may last for a maximum of one month, and if they provide result and there is a reason to continue with their performance in order to collect evidence, they may be extended for another month, upon the reasoned proposal of the Prosecutor, provided that measures under Article 234, para. 2, item a), b), v), g) and e) of this Law may last for a maximum of six months in total. The request for action under Article 234, para. 2, item dj) of this Law may refer only to a one-time act, and the request for each subsequent action against the same person must provide reasons that justify its use.

(4) The order of the preliminary proceeding judge, as well as the proposal of the Prosecutor referred to in paragraph 1 of this Article, shall be kept in a special envelope. The Prosecutor and the preliminary proceeding judge shall prevent the unauthorized persons, the suspect and the defense attorney from revealing the identity of the undercover investigator and informant by compiling or transcribing the minutes without stating the personal data of the undercover investigator and informant, or in any other appropriate way.

(5) The preliminary proceeding judge must, on the basis of a written order, without delay, suspend the execution of the undertaken actions if the reasons for which the actions were determined ceased.

(6) The order referred to in paragraph 1 of this Article shall be executed by the police authority. The companies transferring information are obliged to enable the Prosecutor and police authorities to carry out actions under Article 234, para. 2, item a) of this Law."

If we compare the relevant provision of the CPC with the allegations of the court, in the reasoning of the verdict we come to a conclusion that, based on such established facts, the first instance court could not have rendered a different verdict. The concerning part, resulting from the verdict, refers to the fact that the application of the special investigative actions, whose importance in discovering and proving criminal offences had been previously emphasized,

includes "professional errors" or "professional negligence" of the judicial community representatives. Since the CPC contains specific provision providing actions in relation to special investigative actions, it is unclear how the court failed to undertake them. Such obvious failure in undertaking actions following the CPC, in such sensitive cases, makes the public developing a feeling of mistrust in the judicial system and raises doubts in the legality and impartiality of their conduct.

The observed verdict was appealed by the District Public Prosecutor's Office in Banjaluka on August 20, 2020, but it was rejected as the unfounded. The verdict was confirmed by the District Court Banjaluka on February 12, 2021, and from this day the verdict is to be considered final.

Analysis of the Verdict no.: 17 0 K 089010 18 Kps of the Municipal Court in Bihac, of April 23, 2018 / the Accused: Naser Memcaj (N.M.)

Criminal Offence: Giving Gifts and Other Forms of Benefit

The subject of the qualitative analysis is the final verdict by which N.M., **based on the concluded plea agreement**, was declared guilty for the criminal offence – Giving Gifts and Other Forms of Benefit pursuant to Article 381, para 2 of the CC of the FBiH, and the same imposed a suspended sentence of imprisonment for a term of 3 (three) months, but which shall not be executed unless the accused commits another criminal offence within 1 (one) year from the date the verdict became final.

Concerning the observed case, it should be said that the indictment of the Cantonal Prosecutor's Office of the Una-Sana Canton, Bihac, no.: T01 KTK 0029959 17 dated January 26, 2018, charges the accused A.M. with committing the criminal offence - Accepting Gifts and Other Forms of Benefit under Article 380, para. 2 of the CC of the FBiH, while N.M. was charged with committing criminal offence – Giving Gifts and Other Forms of Benefit pursuant to Article 381, para. 2 of the CC of the FBiH. After confirming the indictment and scheduling hearing to plea guilty, the court was submitted the plea agreement, negotiated between the accused N.M. and the Cantonal Prosecutor's Office. A.M. pleaded not guilty at the plea hearing, so his case was severed from this one.

At the hearing held on April 23, 2018, the court reviewed the plea agreement concluded between the accused N.M. and the prosecution for the criminal offence – Giving Gifts and Other Forms of Benefit under Article 381, para. 2 of the CC of the FBiH, which proposed a suspended sentence of imprisonment for a term of 3 (three) months and a probation period of 1 year.

The court found that the agreement was concluded according to the provisions of the CPC and that the prosecution provided sufficient evidence of the guilt of the accused, and therefore decided to found N.M. guilty of giving gift", „*concern-*

ing that he, as the responsible person of the bakery V... – founder and procurator of the company, in the period from July 2014 to January 2015 in B..., with the aim of obtaining a benefit to the official of the Cantonal Administration for the Inspection Affairs of the Una-Sana Canton in the form of giving gift to perform official act within the scope of the official duties, gave a gift in the form of 40-50 concrete pillars for the orchard to A.M., the cantonal labour inspector of the Cantonal Administration for the Inspection Affairs of the USC, for the official action of conducting inspection supervision in the subject of supervision d.o.o. V... the official actions were recorded in the Records on Inspection Supervision no. UP-1-17-34-07367/14-1016-001 of July 21, 2014, and the Records on Inspection Supervision no. UP-1-17-34-00599/145-1016-001 of January 21, 2015, although the cantonal inspector A.M. was obliged to perform those actions without any gift or benefit as prescribed under Article 15, item 4.2. of the Rulebook on internal organization of the Cantonal Administration for the Inspection Affairs no. 17-05-0642/12-1036-004 of June 19, 2012, in a way that he paid M.M., an employee in the bakery V..., to make the indicated pillars, and then he told, and paid, M.M. and A.B. from B....., to go to area K..... in B.... to the property registered under c.p....., property owned by A.M., to deliver to A.M.'s orchard the concrete pillars and to install them there.

Therefore, he gave gift or other form of benefit to the official of the FBiH to perform within the scope of his authority what he ought to perform.

Thus he committed criminal offence – Giving Gifts and Other Forms of Benefits under Article 381, para. 2 of the CC of the FBiH.

The court imposed a sanction negotiated by the plea agreement, i.e. suspended sentence determining the imprisonment sentence for a term of three months and a probation period of up to 1 year.

The reasoning of the verdict states: „In regard to the kind and scope of criminal sanction provided by the concluded agreement, the court considered all circumstances that should be taken into consideration in this context. So, the court took into consideration the degree of responsibility of the perpetrator speaking of the aggravating circumstances, while the confession of committing the criminal offence, the personal circumstances of the accused, the fact that the accused is a family man and a father of three, as well as the fact he has not been convicted previously, were all considered by the court as mitigating circumstances.

The court believes that the imposed criminal sanction was adjusted to the personality of the perpetrator (individualization of the sentence) and that the imposed suspended sentence establishing the imprisonment sentence for a term of 3 (three) months, which shall not be executed unless the accused commits another criminal offence within 1 (one) year from the date of finalization of the verdict (probation period), will enable to achieve the purpose of the conviction, which is primarily special, but also general prevention.“

COMMENT:

A qualitative analysis of the verdict leads to a conclusion that the court accepted the plea agreement, based on which it pronounced a suspended sentence to N.M. The suspended sentence is a special type of alternative criminal sentence, i.e. a warning measure primarily aimed at special prevention, and during its imposition a perpetrator's personality, his life until the moment of crime, his behaviour after the committed crime, the degree of guilt and other circumstances under which the crime was committed, are taken into account.

In this regard, the verdict indicates: „The court believes that the imposed criminal sanction was adjusted to the personality of the perpetrator (individualization of the sentence) and that the imposed suspended sentence establishing the imprisonment sentence for a term of 3 (three) months, which shall not be executed unless the accused commits another criminal offence within 1 (one) year from the date of finalization of the verdict (probation period), will enable to achieve the purpose of the conviction, which is primarily special, but also general.“

However, the court unjustifiably ignores the fact that this specific case refers to a corruption case which has become a „common phenomenon“ or „code of conduct in dealing with officials and responsible persons“ in our society. If we relate such character of this act to the purpose of the punishment, as prescribed by the Criminal Code, we must observe that such criminal sanction will not achieve goals proclaimed by law. This primarily refers to the goals of general prevention, but also to the request that the imposed sentence shall „increase the consciousness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators“ (Art. 42 of the CC of the FBiH). In our opinion, imposing a suspended sentence for this offence will not send an adequate message to BiH citizens, particularly at the moment when the corruption has entered all pores of our society. The penal policy of the courts for corruption cases is too mild, and the explanations of the imposed criminal sanctions are vague, generalized, with no detailed explanation of mitigating or aggravating circumstances. This is the case with the observed verdict.

Namely, in this specific case the court only states that „in regard to mitigating circumstances it took into consideration the confession of committing the criminal offence, the personal circumstances of the accused, the fact that the accused is a family man and a father of three, as well as the fact he has not been convicted previously“. However, the court did not offer the explanation why it had taken the personal circumstances of the accused into consideration, i.e. the fact that he was a family man and a father of three, as the mitigating circumstances in this specific case. Additionally, the previous lack of conviction is regularly considered mitigating circumstance in all criminal offences, although, in our opinion it should be a common characteristic of a socially adjusted person.

The explanation states that „in regard to aggravating circumstances the court

took into account the degree of responsibility of the perpetrator-the intent“, with no additional explanation of this circumstance and its impact on the selection of the type and amount of the criminal sanction. Namely, the degree of responsibility or as the legislator indicates „the degree of criminal responsibility“ (Art. 49 – General Principles of Meting out Punishments – the CC of the FBiH) includes the sanity and the guilt of the perpetrator, and the guilt is manifested through its special forms, intent and negligence. Considering that the essence of one criminal offence (like in this case) can be related to only one type of guilt, i.e. intent or negligence, then in the procedure of meting out punishment their special forms, i.e. direct or indirect intent, or advertent or inadvertent negligence, can be taken into consideration. When defining a certain criminal offence, the legislator does not determine the form of intent, or negligence, which means that the offence can be committed with both forms of intent or negligence, and in such cases, usually direct intent is taken as the aggravating circumstance, and indirect intent as mitigating circumstance. However, there are such criminal offences which, by its nature, indicate that the perpetrator could act with one form of intent only, direct or indirect.

A careful analysis of the provision of Article 381, para. 2 of the CC of the FBiH stating: „*whoever gives or promises a gift or any other other benefit to an official or responsible person in the FBiH, including also a foreign official person, in order that he performs within the scope of his authority something which he ought not to perform, or that he omits something which he ought to perform, or whoever mediates in such bribing of an official or responsible person, shall be punished by a fine or imprisonment for a term not exceeding three years*“, provides that this criminal offence can be conducted only by direct intent.

However, in this specific case, the court only indicates the term intent as the aggravating circumstance, which is contrary to the provision of Art. 49 of the CC of the FBiH, since the intent is a constitutive element of this criminal offence which otherwise would not exist. The Criminal Code of the Republic of Srpska, under Article 52, explicitly states: „*A circumstance representing the characteristics of a particular criminal offence may not be taken into consideration also as an aggravating or extenuating circumstance, unless it surpasses the measure that is necessary for the existence of a criminal offence or a particular form of criminal offence, or if there are two or more such circumstances but only one is sufficient for the existence of a more serious or less serious criminal offence.*“ Although the CC of the FBiH does not contain such provision, this has been accepted by the court practice. Even the court indicated that it was a direct intent as the more serious type of intent, such opinion would not be accepted since, as we previously stated, such offence could be conducted based on direct intent only.

The criminal offence „Giving Gifts and Other Forms of Benefits“ is functionally connected with the criminal offence „Accepting Gifts and Other Forms of Benefits“. Basically, this offence represents the induction of the official or other responsible person on the violation of the lawful performance of official duty. Unlike the criminal offence „Accepting Gifts and Other Forms of Benefits“, rep-

resenting a real official criminal offence since only official and other responsible persons can perform it, the criminal offence „Giving Gifts and Other Forms of Benefits“ is committed by persons who do not hold official positions. Therefore, this offence jeopardizes the service externally, and not internally which is done by the offence „Accepting Gifts and Other Forms of Benefits“.

Paragraph 2 provides for the so-called *false active bribery* and it consists in giving or promising a gift (reward) or other form of benefit to an official or responsible person in order that he performs within the scope of his authority something which he could or should perform, or not to perform something which he should not perform. Therefore, it is a corrupt behaviour that is punishable by all modern criminal codes. There is no single definition of corruption, and according to some beliefs, this notion refers to a relationship between two persons at least, in which they act in a non-allowed and illegal way, violating legal and moral norms, and thus violate public interest and cause destruction of trust in the functioning of the rule of law and its bodies. Regardless of the way it is defined, corruption is always a generic term for a series of corruption criminal offences in today's criminal legislation. Accepting Bribery, actually Accepting Gifts and Other Forms of Benefits, represents the basic criminal offence from a set of corruption offences. In the observed case, there is a confession of the perpetrator who committed criminal offence Giving Gifts and Other Forms of Benefits and a denial of guilt, i.e. the commission of the criminal offence Accepting Gifts and Other Forms of Benefits by person A.M. who received the gift according to N.M.'s confession. We will continue this qualitative analysis by representing a verdict based on which A.M. was declared guilty for the criminal offence Accepting Gifts or Other Forms of Benefits.

Analysis of the Verdict no.: 17 0 K 089010 18 K of June 8, 2021, of the Municipal Court in Bihac / the Accused: Amemar Muratagic (A.M.)

Criminal Offence: Accepting Gifts or Other Forms of Benefits

The subject of the qualitative analysis is the final verdict based on which the accused A.M. was found guilty for

„*In the period from July 2014 to January 2015 in B....., acting as the official person of the Cantonal Administration for the Inspection Affairs of the Una-Sana Canton – cantonal labour inspector, in order to acquire the illegal material gain for himself by performing his official duty, accepted gift from the person N.M. responsible for the bakery V.... in the form of 40-50 concrete pillars for the orchard, for conducting the official duty of inspection supervision in the subject of supervision inspection d.o.o. V....., which actions he recorded in the Records on Inspection Supervision no. UP-1-17-34-07367/14-1016-001 of July 21, 2014, and the Records on Inspection Supervision no. UP-1-17-34-00599/145-1016-001 of January 21, 2015, which he had to conduct without accepting any gifts or benefits as stated under Article 15, item 4.2. of the Rulebook on Internal*

Organization of the Cantonal Administration for the Inspection Supervision of the USC no. 17-05- 0642/12-1036-004 of June 19, 2012, in a way that M.M., an employee in the bakery V..., made the indicated pillars, upon the order of N.M. who paid him for it, and who then upon N.M.'s oral order went to B....., to the area K..... in B.... to the property registered under c.p....., property owned by A.M., and delivered on his orchard the concrete pillars and set them up there with the help of A.B. from B....K.....

Therefore, as the official in the FBIH he accepted gift or other benefit to perform what he ought to perform within the scope of his authority.

Committing thus the criminal offence of Accepting Gift or Other Forms of Benefits under Article 380, para. 2 of the CC of the FBIH, so based on the same legal regulation, and applying the provisions of Articles 59 and 62 of the CC of the FBIH, the court pronounces

SUSPENDED PRISON SENTENCE

The accused A.M. is sentenced to imprisonment for a term of 6 /six/ months, which shall not be executed unless the accused commits another criminal offence within 2 /two/ years from the date the verdict becomes final."

In this particular case, the indictment was filed on January 26, 2018 and confirmed on February 9, 2018, and the verdict was rendered on June 8, 2021. At the main hearing (there were several hearings but the verdict does not provide the exact dates of holding them) 13 prosecution witnesses and five defense witnesses testified, including the accused who was heard as a witness, and the material evidence (Acts on the internal organization of the Cantonal Administration for the Inspection Affairs and record on inspection, record of recognizing the fact, record on inspection supervision) was inspected.

The reasoning of the verdict indicates:

„The Cantonal Prosecutor's Office of the Una-Sana Canton Bihac filed the indictment number TOI KTK 0029959 17 of January 26, 2018 against the accused A.M. for the criminal offence Accepting Gifts or Other Forms of Benefits under Article 380, para. 2 of the CC of the FBIH, while N.M. from B..... K.... was charged with the criminal offence – Giving Gifts or Other Forms of Benefits pursuant to Article 381, para. 2 of the CC of the FBIH.

The indictment was confirmed on February 9, 2018 and since at the scheduled plea hearing the accused A.M. pleaded not guilty, so the main hearing was scheduled. In the meantime the proceeding against the accused N.M. was separated and completed independently.

At the main hearing, the Cantonal Prosecutor stated that he would relate the results of the inspection at the accused's property, where the identified described pillars received as a gift were found, to the direct witnesses who installed those pillars, including a

number of other witnesses who would confirm what is clearly and unambiguously indicated by the factual background, referring to the fact that M.M. made those pillars upon the request of his boss N.M. and delivered them to his property, and the witnesses should present that all of this was directly related to the official position and duties of the accused.

During the proceeding the defense attorney stated that, based on the factual background of the indictment, the accused was charged with having received 40 to 50 concrete pillars as a gift, in order to perform something he ought to perform within the scope of his authority, namely compiling the report on inspection supervision, as indicated in the indictment on July 21, 2014 and January 21, 2015. What is vague is the contradiction between first and second part of the factual background stating that he received 40 to 50 concrete pillars in order to compile those records. He compiled the record within the scope of his duties regardless of receiving a gift or not, and the defense will unquestionably prove it during the proceeding. The matter is not at all related to the fact that he received something as a gift, as prosecution states. Namely, the accused, and now convicted N.M., was included in the same indictment and he confessed committing the crime after the indictment was confirmed, as well as the fact that the two of them were friends for years.

In his closing arguments, the defense indicated that the essence of this criminal offence, based on the evidence presented by the prosecution, is still unclear to him, i.e. what the accused requested from the other person, what benefit he required for himself or another person, in order to perform what he ought to or not to perform what he was not allowed within the scope of work he performed in the period July 2014 – January 2015, as the incriminated period indicated in the indictment. What evidence exactly was used by the prosecution to prove that the accused in this case requested a gift or received a gift from M.N., in order to do what he ought to do or not perform what he ought not to perform within the scope of his service. What M.A. failed to perform within his service in relation to M.?

After the evidence hearing, it is not clear what part indicated in the records should not have been indicated, i.e. which part of the indicated record is not consistent with the results of the inspection supervision, and finally, it is also unclear, how the records have been related to the concrete pillars and whether they can and in what way be related to the subject pillars placed on the accused M.'s property."

The verdict contains the testimonies of all witnesses, and in this regard the verdict indicates:

„The court took into consideration the testimonies of the witnesses of the defense who, among other things, also testified about the accused's work, his behaviour, how he treated his colleagues, and accepted the allegations of the witnesses that the accused was efficient, active, that there were no complaints about his work etc.

Also, the court accepted the fact that the defense witnesses unanimously stated, that they were not familiar with the private relationship between the owner of the bakery „V" and A.M.

The accused himself testified that no one knew that N. was his friend, that N. came when invited, although he showed up twice uninvited and the accused was upset because of that, since his family was present.

Based on this statement it can be concluded that the accused did not tell his co-workers nor his family about his relationship with N., they had no idea about it. The nature of such relationship, unknown to the co-workers of the accused, implies that there was a reason, or the goal, for keeping this relationship secret.

The court determined that the accused committed the criminal offence in a manner, time and place as stated in the disposition of the verdict, on the basis of the following: It is indisputable that the accused performed the duties of an official in the Cantonal Administration for the Inspection Affairs of the Una-Sana Canton – working as the Cantonal labour inspector, in the period from July 2014 to January 2015. The accused confirmed this fact in his testimony, stating that he has been working in the Cantonal Administration for the Inspection Affairs, as the labour inspector, since 2005.

It is indisputable that M.M. an employee of the bakery „V.....“, upon the request of N.M., made the concrete pillars, and that he was paid for it by M.N., and that later, following the oral order of N.M., M.M. and A.B. from B.K. delivered those pillars to B. in the area K....., to the property with cadastral plot....., owned by A.M.

These facts were confirmed by the witness B.A. who stated in his testimony that he worked one day in K.... for 4-5 hours, during which he placed 5-6 pillars and poured concrete around them, and that this was all he had done. He was hired by M.M. from K..., who came with him, helped him put the pillars in the ground and pour concrete around them, and then he left, after 5-6 hours which he spent in K..... M.M. said that he made those pillars and that he was paid by N.M.V. for that, V. is the bakery owner. The pillars were made of concrete, 2,5-3 meters high, of dimensions 10x10x12, of square shape. Witness Z.M. testified that her husband M. was making pillars for the Mr. Inspector from B...., she did not know his name. This was what her husband told her. The husband was making pillars in their yard. There were 40-50 of them, she is not sure about the exact number. Their son, M.H. was helping him. After her husband made the pillars, he took the truck from Dz... the butcher, loaded the pillars into the truck and drove to B...., to Mr., to some meadows, a ranch.

She knows B.A. who went with her husband to install these pillars for this gentleman for a daily wage, N. was paying him a daily wage. Her husband already worked for N., so this work was covered by his salary, he did not get a daily wage for it. N.M., the owner of the bakery V..., bought the material for the pillars.

Witness M.M. testified that he made the concrete pillars in his yard, near his house in K. He made the mold which was 2,5m long, there were around 50 pillars.

After he made the pillars, he took them by truck to B... to the property of A.M., to the area K... next to U..., where they unloaded the pillars, Mr. A. brought some machine he borrowed from his friend, the one that drills the ground, so they dug the holes, put the pillars in, placed the wire on them and finished the work that was requested from the

witness.

A. M. did not pay for the pillars, since the witness was ordered by N.M., who was the witness' employer, to make those pillars for Mr. A.M.

These facts were also confirmed by the accused A.M., indicating that he placed the pillars and that M. helped him, and that B. was sick. The accused confirms that he borrowed a drilling machine for digging the holes from his friend Z., and that they worked with this machine, and that they dug the holes in 20-30 minutes and then placed the pillars.

Witness M.M., who made the pillars, testified that M.N. paid him for making those pillars. He said that A.M. did not pay him for the pillars, but he made the pillars upon the order of M.N. who was his employer at the bakery V....

Witness N.M testified that he paid M.M. to make those pillars, he could not remember the exact number of the pillars, 4–50, concrete pillars of 2m height.

The accused indicated in his statement that it was not disputable that he accepted that M. would make those pillars, he knows M.M. since he used to come with M.N. during the establishment, he was a manual worker during the object installation phase, auxiliary worker.

The defense of the accused disputes that the accused received the disputed concrete pillars as a gift for the performance of official duties of inspection supervision in the subject of supervision d.o.o. V....

That the disputed concrete pillars were received as a gift for the official duty of performing inspection supervision in the subject of supervision d.o.o. V....., can be concluded on the basis of the testimony provided by the witness M.N. who stated that A. Made some records when he performed inspection in 2014, there were no irregularities, but that he could always find some irregularity, there was always something to be found in the bakery.

He did not know A. very well, at that time he had big problems in K....., there used to be three-four inspections per week, it was not normal, there was no chance that somebody entered K...., and failed to visit him, speaking of inspections. He gave those pillars to A. as a gift because he was inspector then, and still is, and he was looking for some inspector to get close to, to protect himself, to have someone familiar in the inspection. After that they started hanging out a bit more.

He paid for the pillars because he believed he had to, that he should have someone, that he had to have someone to rely on, to protect himself. He was afraid of fines, since there were so many inspections and control at the time that it was unbelievable. He saw protection for himself in A. at the time. Before he made the pillars the inspection visited him very often, and after that only regular control visits, but not as often as before. When N. paid for the pillars, and said he would pay, A. did not refuse it.

Witness S.D., a Chief Cantonal Inspector for Labour, Occupational Safety and Social Welfare, testified that the inspection supervision over the bakery V... was intensified, indicating she was familiar with the legal entity „V...“, a bakery. They performed intensified inspection supervisions for this legal entity, and this type of business in general, particularly in the part related to the issuance of the fiscal bills, and large number of them in this business had employees with no employment contract concluded.

The testimony of the witness M.M. implies that N.M. was trying to find an inspector who could help him with the bills, fines. This inspector was introduced to N.M. by O., who is like a godfather to N.M. Inspector A.M. performed his duties of inspection supervision in the bakery in B.K., and the witness even brought drinks from the cafe when they were in N.M.'s office, when they sat there doing their job, N. ordered drinks, the witness went to get them, N. paid for the drinks of course.

In his testimony the accused indicated that he met N. in the business facility of the friend O.B. They met through the establishment of the branch V..... in B.

The allegations of the defense that the accused naively believed that N. was his friend and that the whole issue related to the pillars was not controversial because the two of them were friends since 2010, were unfounded.

Namely, based on the statement given by M.N. it is clear that only after A. gave the pillars as a gift, after the inspections, they started socializing a bit more. Before that, they met only for 4-5 times. That the indicated socializing lacked the character of friendly socializing can be proved on the basis of the nature of such socializing which had a secret character unknown to public, in which the accused testified that no one knew that he was friend with N., that N. came when invited and that N. came twice uninvited and the accused was then very upset since his family was present as well.

In his testimony the accused states that he organized a barbecue as a return favour for the pillars, that the barbecue cost more than the pillars, that M.N. was present and 10 others.

However, M.N. did not indicate in his testimony that the accused had done any return favour for the pillars, he stated that he paid for the pillars, and A. did not refuse.

Witness M.M. also failed to confirm that the accused organized a barbecue as a return favour for the pillars, he indicated there were few private gatherings for which N. bought lambs and prepared them at the A.M.'s weekend house. The witness knew this since he personally ordered lamb, and loaded it into N.M.'s trunk, the lamb was cooked at A.'s, he had a place for it in K.... where this was organized.

Also, the witness testified that they used to stop by for a few times. They did not hang out, the two of them A. and N. used to socialize, and the witness said he stayed aside because N. said he should not hear some things. When he came to the Mr.'s property he always stayed aside, and when they went to his property, the witness and N. went alone.

Pursuant to Article 380, para. 2 of the CC of the FBiH, an official or responsible person in the Federation, including also a foreign official person, who demands or accepts a gift or any other benefit, or who accepts a promise of a gift or a benefit, in order to perform within the scope of his authority something which he ought to perform, or for omitting something which he ought not to perform, or who mediates in such bribery of an official or responsible person, shall be punished by imprisonment for a term between six months and five years.

The accused is charged with having received a gift to perform within the scope of his authority something which he ought to perform without receiving any gift.

The act of committing the criminal offence of Accepting Gifts or Other Forms of Benefits, consists of demanding or accepting gifts or some other benefits or accepting a promise of gifts or some other benefits, whereby it is irrelevant who started the bribery initiative, the giver or the recipient of the bribe, it is not necessary for the person providing gift to explicitly emphasize the purpose of this act, because it is sufficient if pursuant to the circumstances of the case and the manner in which the gift is given, and the relations between the giver of the gift and the official, a conclusion can be made on the type of favour the giver of gift requires from the official to perform for him within the scope of his authority and that the official can understand the purpose for which the gift is given.

In this specific case, it is not disputed that the accused and M.N. knew each other at the time of committing the crime, that they met only for 4-5 times as N.M. stated, that A. gave those pillars as gift to the inspector because he was looking for the one to get close to, to find someone in the inspectorate, to have someone who would protect him. They started socializing more after that.

The fact that the indicated socializing at the critical period was not friendly socializing can be also concluded based on the testimony of the accused who stated that he was hanging out with friend O. in a cafe „F...“ on C....., where N.M. also came to have a coffee, alone or with some friends, and that is how their socializing started seamlessly. The court does not accept the allegations of the defense that the accused and N. were friends based on the fact that they used to meet at the same cafe at „F...“ where they used to sit alone or with their friends, even sometimes at the same table, and had coffee. Such circumstances do not imply they were friends. On the other hand, N. would usually come alone to M.'s property, which was also confirmed by the witness M.M. indicating he was at A.M.'s property for five-six times, not counting the day when he installed those pillars. He came with N. to this property, upon the invitation of A., so they sat there, looked around, they stopped by for a few times. The witness always stayed aside since N. said that some things should not be listened to, and only in those situations when he visited Mr.'s property, he would keep aside. When they were going to his property, only N. and the witness would go. A. was not always there, sometimes they waited for him there until he arrived. The accused also testified that N. came upon the invitation, and that he came twice uninvited and that the accused was very upset then because his family was there as well.

Therefore, N.M. was aware of the fact that A.M. was the inspector performing the

inspection in his bakery, and the accused A. was aware that N.M. was the owner of the bakery „V...“ in which he was performing the inspection supervision, and they made contact upon the invitation of the accused, at his property, mostly alone, as testified by the witness M.M.

Receiving gifts in this specific case is related to the function of the inspector which the accused performed at the critical time. The criminal offence was committed by only accepting gift regardless of the fact whether the official duty for which the gift was received, had been performed or not. Also, the existence of criminal offence does not depend on how valuable the gift was.

The circumstances under which their contact took place, and the circumstances under which the controversial records were made, imply that there was an exchange of services, or what appears to be a favour in return, between the accused and N.M.

In fact, the accused stated in his testimony that the inspection controls were always performed in a team, with some of the colleagues, that the practice involved two inspectors at the spot together, that very rarely the second inspector would be present shortly, because he had nothing to do there or it was out of his duty, so he would go and sometimes came back later, because the order and the Rulebook usually prescribe the presence of two inspectors during inspection control, even up to three in the present. The inspection supervision at V... d.o.o. was not performed by one inspector. The accused admits that he prepared the Records on Inspection Supervision dated July 21, 2014 and January 21, 2015, indicating that one was regular inspection, while the other one was performed upon the requests, and that he was accompanied by I.A. during the first control, and by V.T. in the second.

However, the insight into the disputed Records on Inspection Supervision: the Record on Inspection Supervision no. UP-1-17-34-07367/14-1016-001 of July 21, 2014, and the Record on Inspection Supervision no. UP-1-17-34-00599/15-1016-001 of January 21, 2015, it was determined that the same were made in the presence of the accused M.A., the Cantonal Labour Inspector, and M.N. – procurator, owner-founder.

These Records do not contain the information that other inspectors were present, as the accused indicated, although the colleagues he stated, I.A. and V.T., performed the inspection supervision in some other cases as confirmed by Records on Inspection Supervision no. UP-1-17-34-00277/15-1016-P-1016-001-P of December 8, 2015, made in the presence of M.A. as the Cantonal Labour Inspector, V.T., Cantonal Market Inspector and M.N. -procurator and the Record on Inspection Supervision no. UP-1-17-34-0028/12-1016-P dated April 12, 2012, made in the presence of M.A, Cantonal Labour Inspector and I.A., Cantonal Market Inspector.

The listed material evidence indicates that the accused gave false statement in regard to the performed inspection supervision in the bakery „V...“, i.e. it proves that the accused performed the inspection supervision by himself, which points to the existence of the accused's intent to exchange favours with the owner of the bakery.

Therefore, the allegations of the defense that the accused was not aware that the received concrete pillars were a gift for the service of conducting inspection supervision which he ought to do without the gift, were unfounded.

Having in mind the frequency of repeating the acts, N. used to buy lambs that were prepared at A.M.'s weekend house, then concrete pillars, then the testimonies of the witnesses M.M., M.N., N.N., who confirmed that the accused accepted the indicated gifts he was given by M.N., a conclusion on the awareness and will of the accused, i.e. his intent to acquire illegal property gain, can be undoubtedly made.

The stated facts point to the conclusion that socializing of the accused and N. was exclusively aimed at acquiring personal interest, so in this specific case it can be concluded that the accused tacitly accepted concrete pillars as a gift for performing the service of inspection supervision, specifically since N.M. returned favours previously in the form of lambs, boats.

This particular case refers to an illegal passive bribery containing a tacit settlement in which bribe is accepted in order to act within the limits of official authority, i.e. to take legal official action which should be taken.

Based on the above stated, the court found that the accused committed a criminal offence Accepting Gifts or Other Forms of Benefits pursuant to Article 380, para. 2 of the CC of the FBiH, in a way thoroughly described in the disposition of the verdict, and that both, the objective and subjective elements of the stated criminal offence were realized in the actions of the accused.

While working on selection and decision of the type and the degree of the sanction imposed, the court took into consideration the mitigating circumstance such as the earlier life of the accused, the fact he had not been charged with any crime until now, his relationship with his co-workers and their respect, good behaviour before the court during the proceeding, the fact he was a family man and that the acquired property gain was of no great value.

Having in mind that the imprisonment sentence for a term of 6 (six) months up to 5 (five) years is prescribed for the indicated criminal offence, the court sentenced the accused to imprisonment for a term of 6 (six) months and at the same time determined that the sentence shall not be executed unless the accused commits another criminal offence within 2 (two) years from the date the verdict becomes final.

The court believes that in the specific case, and considering the above stated circumstances, the unconditional penalty is not necessary and that the imposed suspended sentence will achieve the purpose of both, special and general prevention, as indicated under the provisions of Art. 7 and Art.42 of the CC of the FBiH.

Pursuant to the provision of Article 380, para. 4 of the CC of the FBiH, the accepted gift in the form of concrete pillars is confiscated."

COMMENT:

As described earlier, the corruption offences almost always involve more participants. The same applies to cases of giving and accepting bribery, i.e. gifts and other forms of benefits. The one side always gives, and the other one accepts the bribe. In this specific case, it is a situation in which one participant conducts the corruption act, i.e. N.M. who confessed to have given a bribe to another participant A.M. in the form of concrete pillars which were installed at the property owned by A.M. After the verdict became final on the basis of the plea agreement of N.M., the proceeding for establishing A.M.'s criminal responsibility for the criminal offence of accepting bribe, lasted for more than two years. Namely, the indictment was confirmed on February 9, 2018, and N.M. was convicted of Giving Gifts and Other Forms of Benefits on March 3, 2018. The indictment based on which A.M. was pronounced guilty of Accepting Gifts and Other Forms of Benefits was rendered on June 8, 2021.

However, regardless of the duration of the proceeding, it can be stated that this verdict constitutes an example of good court practice in corruption cases, since based on all facts and circumstance the court managed **to determine the existence of a functional connection between the action of placing pillars at the property owned by A.M. which was organized and paid by N.M., the owner of the bakery in which A.M. performed the inspection supervision, although it was determined during the proceeding that A.M. had not requested the placement of the pillars, and that he had offered money for this purpose but N.M. refused to accept it.** The court properly made a conclusion that says, since A.M. allowed the installation of the pillars on his property free of charge, he committed a criminal offence Accepting Gifts or Other Forms of Benefits by „accepting gift“ from a person who is the owner of the legal entity in which he performed his inspection, and who several times said, during the proceeding, that he was looking for someone to offer him protection as he frequently was controlled by inspections.

During the proceeding, the defense emphasized for several times that an important element of the corruption cases is the existence of agreement between the parties who perform corruptive actions. In this regard, the reasoning of the verdict indicates that the defense stated „*The accused, as confirmed by the prosecution's main, and now convicted, witness, has never requested from the same absolutely nothing, particularly not the subject pillars which he delivered to him and installed on his property in the area K.... municipality of B....*“. The defense further indicates that the legal science „undoubtedly decided that the agreement was an important element of this criminal offence, which is evident from the bulletin of the court of BiH published in Sarajevo 2017, in which the following was stated: „*Accepting and giving gifts, or other forms of benefits implies the conclusion of an explicit or tacit agreement, known as corruption alliance in legal practice related to the unlawful exchange between the giver and the recipient. This kind of agreement is an important element for the determination of the indicated corruption offences, the corruption intent as a characteristic of this criminal offence must be present on both sides, the giver's and the recipient's side.*“

The defense attorney further indicated: *“Perhaps the giver had the intent to provide a gift to the accused, but the accused considered it was nothing controversial, based on his naive belief that the giver was his friend since 2010. With the lack of such awareness, there cannot be the indicated agreement which represents the essence of this criminal offence...”*

In this particular case, we can talk about the existence of the **tacit agreement or corruption alliance** on the unlawful exchange between the giver and the recipient of the gift, established by the court on the basis of all circumstances related to the case, including both kinds, those referring to the previous relation between the accused A.M. and N.M. (gifts in the forms of boat, lambs, gatherings at the weekend house, joint socializing the family was not aware of, performance of inspection supervision without the obligatory presence of the second inspector), and those referring to the specific event (installation of the concrete pillars at A.M.'s property). Based on this the court made a proper decision that the criminal offence Accepting Gifts and Other Forms of Benefits was committed in a way that A.M. received a gift from N.M. and that „*the reception of the gift in this specific case was related to the function of inspector the accused was holding at the time of the offence. The criminal offence was conducted by the act of accepting the gift regardless of whether the official duty for which the gift was given had been performed or not. Also, the existence of the offence does not depend on the value of the gift.*“

In this particular case the acceptance of the gift was reflected through providing permit to install the concrete pillars at the property of the accused, all in relation to his function of inspector, which undoubtedly arises from all indicated circumstances of this offence. That the acceptance of the gift is functionally related to the performance of the official duty of the accused A.M. is evident from the testimonies of witnesses who confirmed that A.M., used to come as the inspector to the bakery owned by N.M, and that N.M. talked about different gifts he was providing (lambs, drinks, boat) in order to become friend with someone who could protect him since he was often the subject of inspections. A.M. informed him about the scheduled visits of other inspectors, he also helped him with some other legal issues, but he hid his „friendship“ with N.M. from his friends and family.

The court pronounced a suspended sentence to the accused establishing thus the imprisonment sentence for a term of 6 months with the probation period of 1 year.

In regard to the type and the length of the criminal sanction, the reasoning of the verdict indicates the following: „*When deciding on the type and the length of the imposed sanction, the court took into consideration the mitigating circumstance such as the earlier life of the accused, the fact he had not been charged with any crime until now, his relationship with his co-workers and their respect towards him, stable appearance before the court during the proceeding, the fact he was a family man and that the acquired property gain was of no great value.*“

Having in mind that the prescribed sanction for the indicated criminal offence is impris-

onment for a term of 6 (six) months to 5 (five) years, the court sentenced the accused to imprisonment for a term of 6 (six) months and at the same time determined that the imprisonment shall not be executed unless the accused commits a new criminal offence within 2 (two) years from the moment the verdict became final.

The court believes that in this specific case, taking into consideration the above stated circumstances, the unconditional penalty is not necessary and that the imposed suspended sentence shall achieve the purpose of special and general prevention, prescribed by the provisions of Article 7 and Article 42 of the Criminal Code of FBiH."

The court observes the *earlier life of the accused* as one of the mitigating circumstances, but in our opinion it should be one of the aggravating due to the fact that it was proven that even prior to this specific event which is the subject to this verdict, the accused had received gifts from N.M. which were functionally related to performing his official duties.

In fact, in the reasoning of the verdict (p.35) the court states: „Having in mind the frequency of the repeated acts, first boat, then N. bought lambs that were prepared at A.M.'s weekend house, after that concrete pillars, the testimonies of the witnesses M.M., M.N. and Nj.N. who confirmed that the accused received the indicated gifts provided to him by M.N., it can clearly be concluded about the accused's awareness and will, i.e. intention to acquire the illegal property gain."

Therefore, this case is not the first case of illegal behaviour of the accused A.M. but the continuation of his regular activities, i.e. receipt of various gifts provided by N.M. that were functionally related to his performance of the function of inspector. Thus, „*the earlier life of the accused*“ could be assessed as the aggravating circumstance, and in the context of already stated facts it should not be evaluated as the mitigating one by any means. The fact that the accused „*was not previously convicted*“ results from the fact that his illegal behaviour was not disclosed earlier, which again, in the context of the above circumstance, should not be taken as the mitigating circumstance.

The court assessed „*his relation to his co-workers and their respect towards him*“ as the mitigating circumstance. The indicated circumstance could not be assessed as the mitigating in this criminal offence, since it is not functionally related to the offence itself. The indictment against A.M. was not charging him with a criminal offence against one of his co-workers, in which case it should be taken into consideration for meting out punishment, but with the criminal offence against the official duty. Furthermore, *the good behaviour before the court during the proceeding* is the circumstance the court almost always use in the absence of other circumstances, and it implies the obligation of the accused because otherwise he could be punished for the contempt of court. The question arises in relation to the fact that the accused is „*a family man*“ and the reason for which this should be considered the mitigating circumstance in committing a criminal offence.

The court indicated the fact „*that the acquired property gain is not of great value*“ as the mitigating circumstance. This statement of the court is unacceptable because it is generally accepted that the value of the benefit achieved by this criminal offence is not of importance for the existence of the offence but it is only important that the obtained gain is functionally related to the performance of his official duties. However, in our opinion, the willingness of the official or responsible person to endanger or violate the rules of the service he performs, i.e. to abuse his official authority in order to gain low-value benefit for himself, indicates a higher degree of social danger of the perpetrator.

Based on the stated circumstances, the court issued a warning measure, i.e. a suspended sentence determining thus the imprisonment sentence equal to the special minimum sentence prescribed for this form of the offence and probation period of two years, indicating that the suspended sentence shall achieve the purpose of special and general prevention. In our opinion, the imposed criminal sanction does not correspond to the nature of the offence and the degree of criminal responsibility, since it is a criminal offence by which the official service is attacked from inside, by persons who are obliged to protect the regularity and legality of the function they perform (unlike the criminal offence Giving Gifts and Other Forms of Benefits for which N.M. was sentenced to probation). On the other hand, **such penalty policy does not achieve the purpose of general prevention, because it does not have frightening effect on potential future perpetrators of this criminal offence.** In addition to this, it is important to emphasize that the court did not impose a security measure „Ban on Carrying Out a Certain Occupation, Activity or Duty“ (Article 76) that can be imposed on a perpetrator who perpetrates a criminal offence with regard to property entrusted or accessible to him by virtue of his occupation, activity or duty, if there is a danger that such role could induce the perpetrator to perpetrate another criminal offence related to his occupation, activity or duty. Considering that it was determined that the accused A.M. had the tendency to abuse his official office (receiving various gifts from N.M. during a long period of time), we believe that imposing such security measure in this case would be justified. The imposed sanction does not correspond to the purpose of the punishment as defined by the law, and according to which the penalty should affect the awareness of the citizens about the danger of criminal offences and the fairness of punishing the perpetrators. Namely, it is well known that corruption in BiH reached enormous proportions and that many citizens consider it a common way of functioning of many state bodies and institutions. Therefore, the judicial community is obliged to make such penalty policy to change the awareness of the citizens of corruption, and to send a message with every imposed sanction in each specific case indicating that corruption criminal offences are extremely dangerous for every society and that everyone who commits such act shall be punished with an appropriate sanction. By imposing the suspended sentence and not imposing the security measure *Ban on Carrying Out a Certain Occupation, Activity or Duty* in such cases, the citizens of BiH are sent quite the opposite message.

It is important to note that, based on Article 380, para. 4 of the CC of the FBiH,

the court decided that the gift received in the form of concrete pillars should be confiscated.

The Prosecutor filed an appeal against this verdict due to the decision on criminal sanction. WE do not have information about the second instance verdict upon the appeal.

Analysis of the Verdict 65 0 K 673595 17 K of January 20, of the Municipal Court in Sarajevo / the Accused Mirsad Kukic

Criminal Offence: Accepting Reward or Other Form of Benefit for Illegal Interceding

The subject of the qualitative analysis is the first instance verdict based on which the accused M.K. was found guilty

„For performing the following along with A.Z., A.S. and E.Dz.:

In period from May 2016 to August 26, 2016 in Sarajevo, A.Z., a longtime member of the political party SDA, who during the indicated period was holding the high-ranked positions of SDA, the General Secretary, a member of SDA Presidency and the representative in the Parliament of FBiH, and A.S., as a longtime member of the political party SDA, who during the stated period was holding the positions of the Head of the Personnel Commission of SDA, a member of SDA Presidency at the position of the Vice President of SDA party and a representative in the Parliament of FBiH at the position of the SDA Club President and the President of the Cantonal Board of SDA Sarajevo, after being asked by O.S., representative in the Parliament of FBiH and a Member of the Main Board of SDA, about the vacancies in order to find the employment for his son A.S., informed him that all branches of the public enterprise Elektrodistribucija should announce public competitions, so O.S., knowing that A.Z. and A.S. have significant political influence considering the positions they were holding, asked the two of them to help him find a position for his son A.S., a jurist by profession, in some of the branches of Elektrodistribucija BiH, and after his father informed him that there should be vacancies in branches of Elektrodistribucija, A.S. filed an application for employment with the Branch of Elektrodistribucija Tuzla on May 11, 2016, without waiting for the issuance of the Decision on the necessity to hire new employees in the the Branch of Elektrodistribucija Tuzla which happened on June 3, 2016, in mid-May 2016, A.Z. and A.S. called E.Dz., well aware that E.Dz. was familiar with their party function and real positions within the party, and that they could use their influence to help his career, and knowing that E.Dz. would act upon their request and use his influential position to hire someone regardless of the fact he/she meets the job requirements, so E.Dz., knowing that A.Z. and A.S. were at some of the highest functions within the party and considering that his decisions must be implemented since the above mentioned helped him with his promotion to the position of the Executive Director for Distribution with the PE „Elektroprivreda BiH“ d.d. Sarajevo, and after the issuance of the Decision on the necessity to hire new employees with the

Branch of Elektrodistribucija Tuzla due to the unplanned circumstances on June 3, 2016, acted contrary to the provision of Article 95 of the Statue of the PE „Elektroprivreda BiH“ d.d. Sarajevo no. SD-5211/16-38/2 dated March 29, 2016, which prescribes that the executive director in performing his function is obliged to legally operate in the affairs and within the scope determined by the Rulebook on the organization of the company and Decision on determining and distributing the authority adopted by the company management, by exceeding his powers prescribed by Article 40 of the Rulebook on organization of the PE „Elektroprivreda BiH“ d.d. Sarajevo (published on the notice board on February 17, 2010) and based on which he was not provided the powers to perform the selection of new employees, but only in accordance with Article 4 of the Decision on determining the way of hiring new employees and trainees with the PE „Elektroprivreda BiH“ d.d. Sarajevo no. U-01-11880/13-107./6 of April 23, 2013, to provide his consent to the proposal of the Branch of Elektrodistribucija Tuzla director, and the branch director is the only person who can bring the final decision on the selection of candidates and conclude the service contract, so, upon the request of A.Z. and A.S., knowing that he had no powers to perform the selection of new employees, he used his influential position of the Executive Director for Distribution with PE „Elektroprivreda BiH“ d.d. Sarajevo and the position of superior to the branch director, and requested from the director of the Branch of Elektrodistribucija Tuzla, M.N., to hire S.A. to the vacant position of the Expert Associate for Health and Safety at Work in the Sector for System Management in the Branch of Elektrodistribucija Tuzla, regardless of whether A.S. was meeting the requirements of this position, after M.N. expressed his disagreement, E.Dz. told him to inform the members of the Commission for the admission of employees to propose A.S. for this position and to tell them this was the order of the Executive Director fro Distribution E.Dz., which was what M.N. said to the president of the Commission for the admission of employees M.T. who informed other members of the Commission, so the members of the Commission well aware of their subordinate positions and the fact that E.Dz. was insisting on the employment of A.S., invited only A.S. to the interview, not even considering other applications of other 13 candidates who met all requirements for the indicated position, on June 9, 2016, the Commission made a Report on the results of considering the applications with the proposal for the candidate no. 03-5-52-11980/2016, and proposed S.A. for the position of the Expert Associate for Health and Safety at Work in the Sector for System Management, after which M.N. submitted to E.Dz. a proposal of the Decision on providing consent to hire an employee for the indefinite time at the Branch of Elektrodistribucija Tuzla no. 03-5-52-13318/2016 of June 24, 2016, and then on June 28, 2016, he signed the Decision no. 03-20152/16 on providing consent to hire A.S. to the position of the Expert Associate for Health and Safety at Work in the Sector for System Management in the Branch of Elektrodistribucija Tuzla, knowing that this Decision was made by violating the above described employment procedure, as a result of his request to find the employment for A.S. with this branch in Tuzla, and finally delivered his Decision to M.N. who was supposed to make the Decision on the selection of the given candidate and to conclude the employment contract with him, after receiving the Decision, M.N. again analyzed the biography, application and the entire file of the proposed candidate A.S., and by realizing it was „a poor biography“ since the candidate needed 14 years to graduate from the faculty, and that his place of residence was within another canton, he refused to implement the above indicated Decision, at the same time, M.K., as a longtime member of SDA political party who at that time was

holding a position of the President of the Cantonal Board of SDA of Tuzla Canton, a member of the SDA Presidency acting as the Vice-President of SDA, a representative in the Parliament of FBiH and Assistant Director for Investment, Development and Market at Banovici Coal Mine, after discovering the existence of the Decision based on which S.A., the son of O.S., was supposed to become an employee with the Tuzla branch of Elektro distribucija, objected to the implementation of this Decision by using his high-ranked party positions in the area of Tuzla Canton, although he had no authority to influence the admission of employees in Elektro distribucija Tuzla, considering he was not performing any function within Elektro distribucija Tuzla, he informed M.N. about his objections and requested that A.S. was not hired since he lived in another canton, after M.N. failed to implement the decision on employment of A.S. due to the objections of M.K., E.Dz. contacted M.N. on several occasions in July and August, by phone or personally, and requested from him to conclude the employment contract with A.S., when he found out that M.K. is against the A.S.'s employment with the Branch of Elektro distribucija Tuzla, and that the director of the Branch of Elektro distribucija Tuzla M.N. did not issue decision on the admission of A.S., E.Dz. invited M.N. to his office for a meeting, on the unknown day in August 2016, and asked him „why the employment procedure for A.S. was not completed yet” and then he told him „how did you dare not to hire A.S. after I gave the consent”, and M.N. explained the reasons by indicating that the biography of the candidate was poor, so E.Dz. knowing that the consent of M.K. would be needed to finalize the employment of A.S., asked N.I., the Executive Director for Production in PE Elektroprivreda d.d. Sarajevo, who was in good relations with K.M., to talk to the later so that he stopped objecting the admission of A.S. to the position in the Branch of Elektro distribucija Tuzla, which N.I. did and informed E.Dz. about it. However, as the employment contract was still pending, on August 15, 2016 at the premises of SDA HQ in Sarajevo, Mehmeda Spahe St., before the meeting of SDA Presidency started, A.Z., A.S., M.K. and O.S. sat together in a separate room to discuss this matter, O.S. informed the others that his son did not start working yet, after which A.Z. used his mobile phone number 061/160-111 to call E.Dz.'s mobile phone number 061/786-030 and told him „I am sitting with A.S., K. and O., finalize this matter for O., it is up to you, the four of us is listening, if there are any difficulties, call M.K.”, then A.S. took the phone from A.Z., and replied to E.Dz.'s question „did K. give green light” by saying „yes, yes, he is here with me”, and then M.K. took the phone from A.S., and E.Dz. explained to him that he had talked to two executive directors, and that they agreed to resolve this matter, which was followed with K.M.'s words „...well, yes...”, so after M.K. approved it and stopped objecting the admission of A.S. to the position with the Branch of Elektro distribucija Tuzla, which was told to M.N. as well, E.Dz. again requested from M.N. to conclude the employment contract with A.S., which M.N. did on August 26, 2016 and concluded with A.S. the Employment Contract for the Indefinite Period no. 03-5-52-17176/2016, starting as of September 1, 2016.

And thus committing the criminal offence Accepting Reward or Other Form of Benefit for Illegal Interceding pursuant to Article 382, para. 2 in relation to Article 31 of the CC of the FBiH.“

With the observed verdict, the accused M.K. was pronounced guilty of committing criminal offence Accepting Reward or Other Form of Benefit for Illegal Interceding pursuant to Article 382, para. 2 in relation to Article 31 of the CC of

the FBiH, and by application of the stated legal provisions and Articles 41, 42, 42 and 49 of the CC of the FBiH, sentenced the accused to imprisonment of one year.

The verdict indicates that the Cantonal Prosecutor's Office in Sarajevo filed the indictment no. T09 0 KTK 0104948 16 of March 10, 2017 by which several persons were accused for committing several criminal offences, and one of the accused was **M.K.** who was charged under count 5, for committing criminal offence of Accepting Reward or Other Form of Benefit for Illegal Interceding pursuant to Article 382, para. 2 of the CC of the FBiH.

The indictment was confirmed by the decision of the judge for the preliminary hearing on March 13, 2017. At the main hearing held on October 23, 2017, following the provision of Article 33 of the CPC of the FBiH, the court issued a Decision based on which the proceeding against M.K. for committing criminal offence of Accepting Reward or Other Form of Benefit for Illegal Interceding pursuant to Article 382, para. 2 of the CC of the FBiH was separated from the proceeding conducted against other accused persons.

The verdict states: „The court made the stated Decision for the purpose of expedient criminal proceeding and other important reasons, which include the implementation of the efficient proceedings for all the accused, the implementation which, as the court believes according to the opinion of the expert witness Dr.N.D., would be uncertain in the future taking into account the unstable health conditions of the accused K. Therefore, the court finds, that it would not be efficient, economical or even fair to question the efficient conduct of the proceeding in regard to seven other accused due to the health reasons of one of the accused, so the case was submitted to another judge.

The main hearing in separated proceeding against the accused M.K. was held on April 12, 2018, at which in accordance with the provisions of Article 255 of the CPC of the FBiH, the order of presenting evidence was changed, and the expert witness Dr. N.D. was heard related to the health status of the accused, after which the indictment was read and parties and their defense attorneys gave introductory remarks.“

The reasoning of the verdict indicates that the prosecution's evidence was presented during the evidence hearing procedure, at the main hearing, first it was the hearing of witnesses and then the inspection and reading of the material evidence of the Prosecutor's Office which contained the acts of the Cantonal Prosecutor's Office in Sarajevo no T09 0 KTK 0104948 16 of September 23, 2019, including the Report on implementation of order on special investigative actions in a photocopy, along with the act of the Cantonal Prosecutor's Office of Sarajevo Canton addressed to the Municipality Court in Sarajevo dated September 23, 2016 in a photocopy with 6 CDs, the Report on the conducted special investigative actions of the Federal Ministry of Interior Affairs, the Federal Police Administration Sarajevo no.: 09-12/3-04-3-5591/16 of March 8, 2017 in a photocopy on 174 pages. After this, all allegations of the defense, testimonies of witnesses and material evidence provided by the defense, were indicated.

Due to the health conditions of the accused and based on the opinion of the

medical expert witness, N.D. who stated that „he believes that the accused K.M. is of limited ability to participate in the trial before the Municipal Court in S., which means that in the end it is ultimately possible to perform procedural actions in the following capacity: once a month, with the duration of maximum 60 minutes per hearing, starting as of April 1, 2018, until when he is obliged to finish his rehabilitation“, the main hearing was conducted through several hearings, which were held on the following dates: June 5, 2018; July 4, 2018; September 20, 2018; October 9, 2018; November 8, 2018; December 26, 2018; March 21, 2019; April 12, 2019; May 10, 2019; June 6, 2019; September 26, 2019; November 7, 2019 and December 26, 2020.

In the reasoning of the verdict it is indicated that: „Essentially, on one side, the accused A.Z., A.S. and E.Dz. are charged with having influenced the implementation of the legal employment procedure in Elektro distribucija Tuzla, to hire A.S. to this position, while on the other hand, the accused used his influence to object the implementation of the legal employment procedure for A.S., who was hired to the indicated position only after the accused provided his consent. Evaluating the presented evidence, the court determined that without any doubt the official, social and influential position in the political party SDA (Party of Democratic Action) and in the Sarajevo Canton was held by the accused A.Z. and A.S., who performed official duties stated in the factual allegations of the indictment. Those were confirmed by witnesses H.T. and A.O.

The fact that the accused A.Z. and A.S. helped O.S. to find an employment for his son A.S. through the influence they had on E.Dz., having in mind their subordinate position within SDA hierarchical structure, Canton Sarajevo and the Federation of BiH in general, is also evident from the testimonies of the witness O.S. who clearly stated at the main hearing that he asked help from A.S. and A.Z. to hire his son, both when obtaining information about the vacant position in the Branch of Elektro distribucija Tuzla, and during the implementation of employment itself.

The accused informed O.S. that there would be a vacant position in the Branch of Elektro distribucija Tuzla, after which A.S. submitted his application for the employment addressed to Elektroprivreda d.d. Sarajevo, to the attention of the Executive Director for Distribution E.Dz. and to the Branch of Elektro distribucija Tuzla. So, the court emphasizes here that this was a case of internal recruitment procedure through the selection of a direct candidate for the Branch of Elektro distribucija Tuzla, i.e. without announcing the public competition, and the accused A.Z. and A.S. who are not employees of Elektroprivreda dd Sarajevo, could have known this only thanks to the accused E.Dz. to whom A.S. addressed his application.

The verdict states that all members of the Commission for the Admission of Employees „unanimously stated that they „were instructed from the top“ referring to the Executive Director E.Dz., and they were directly informed about the instructions from the President of Commission M.T., and he got the instructions from the Branch Director M.N.“

Based on the statements provided by the members of the Commission the court concluded the following: „Therefore, those witnesses, the members of the

Commission for the Admission of Employees, have not admitted with one word in their testimonies that they were under a certain kind of pressure or in a subordinate position considering the intervention of the Executive Director E.Dz. related to the candidate A.S., that they did not only formally conduct the recruitment procedure but considered applications of all candidates and finally proposed, as the Commission, to hire A.S. for the position considered. At the main hearing, all members of the Commission and the Secretary stated they did not make a mistake when they recruited this candidate, i.e. that the legal employment procedure was followed, which is an indisputable fact, as well as that this candidate was not proposed for the position since they were „aware of their subordinate positions“ but for other reasons. Also, a fact that only candidate A.S. was invited for the interview, while the other 13 candidates were not invited although all of them met the requirements, is also stated as one of the circumstances confirming the allegations of the indictment, but this cannot be taken as a relevant circumstance since the Commission acted in accordance with the by-laws, i.e. the Rules of Procedure and that such practice of inviting only one candidate to be admitted was common when selecting employees for Elektroprivreda BiH d.d. Sarajevo if they were hired directly by the known candidate.

However, the court assessed that these witnesses, as the members of the Commission, were in a subordinate position in regard to M.N., their immediate supervisor and E.Dz. as the Executive Director for Distribution, and this subordination does not have to be proved specifically considering they were in formally subordinate positions (as lower-ranking employees of Elektroprivreda BiH compared to M.N. and E.Dz. – author’s comment). They just formally conducted the recruitment procedure since at they were informed during the first working meeting by the President of the Commission M.T. that the superiors had intervened to hire candidate A.S., who was selected as the best candidate at the same meeting and invited for the interview. The members of the Commission made a Report on the results of considering applications, providing also the proposal for the selection of candidate no. 03-5-52-11980/2016. of June 9, 2016, and on page 2 they described reasons for which they believe the proposed candidate would be the best choice, indicating he has the best recommendations from previous employer, that he has been trained in legal, financial and commercial services, has large experience in preparation and development of marketing contracts, and in development of and participation in scientific research.“

In regard to the accused M.K. the court states:

„This court determined that the accused indisputably had official, social and influential position in the SDA party and the Tuzla Canton. It was established that the accused indisputably was holding several public functions during the incriminated period, and that he was performing other functions as indicated in the factual allegations of the indictment. Furthermore, the influence of the accused in the Tuzla Canton, and on the employment procedure conducted in the Branch of Elektro distribucija Tuzla, was confirmed primarily by the testimony of the witness O.S. who discussed the employment of his son A.S. with the accused during the procedure of employment, based on the information he obtained that the accused „obstructed“ the employment of his son with the

Branch of Elektrodistribucija Tuzla, since he was a resident of another canton. This influence was confirmed by the testimonies of the witnesses A.O., Dz.M. (telephone conversation no. 221), N.I. (telephone conversation no. 365) and the testimony of A.A.

The fact that the accused influenced the employment of A.S. is confirmed by the communication between M.N. and the accused related to the realized employment. Namely, according to the testimony of the witness, the contact between the witness M.N. and the accused in regard to this matter took place at iftar in July 2016, when the witness publicly, during the informal conversation, complained to the present of having doubts and interventions related to the employment of A.S., providing the reasons, and when, according to this understanding, he got the approval based on the gestures from those present, including M.K. Therefore, this court determined that the prosecution proved, beyond a reasonable doubt, that the accused objected to the implementation of the indicated decision and that he informed M.N. about his objections. The determined direct communication in the company of many other persons is not sufficient in qualitative sense to support the factual allegations of the indictment, and the witness himself tried to minimize this contact by testifying at the main hearing that he could not have influenced it in any way.

However, the further communication between the witness M.N. and other witnesses in this criminal proceeding S.S., Dz.M., N.I. and the accused E.Dz. confirms the claim of the prosecution that the accused opposed the employment of A.S. at that moment, and this was the reason why M.N. did not want to finish the controversial employment procedure, although according to his statement, he shared the opinion of the accused in regard to this employment. Therefore, the influence of the accused was visible through the actions of the witness M.N., Director of the Branch of Elektrodistribucija Tuzla, who turned the admission of A.S. to the position with the Branch of Elektrodistribucija Tuzla into an issue after the conversation with the accused, and, although minimizing the influence of the accused on him as stated at the main hearing, he confirmed his statement from the investigation, while other witnesses such as S.S., Dz.M. and N.I. confirmed that during the incriminated period they were told by M.N. that the accused „was obstructing” the employment of A.S. with the Branch of Elektrodistribucija Tuzla.”

In the verdict the court thoroughly indicates and explains all the evidence, including the recordings of telephone conversations between the accused, and concerning this it states the following:

„So, the previously presented and evaluated evidence, i.e. the opinion of M.N. about the employment of A.S. expressed at the iftar in July 2016 in the presence of the accused, the conversation between the accused and N.I. related to the controversial employment, the conversation between the accused and Dz.M. about the employment of A.S., including the conversation between the accused and O.S. about the disputed employment, mutual conversations of witnesses on this specific employment below interpreted and evaluated in details, as well as the documented telephone conversation

no. 76 in which the accused participated directly, lead this court to the logical conclusion that the accused committed the criminal offence in a manner stated in the factual allegations of the indictment.

The fact is that based on the testimonies of the witnesses provided at the main hearing, and the documented telephone conversation, it is not possible to find the proof that the accused in all above interpreted and evaluated communication stated that he opposed the employment of A.S., nor did he clearly and explicitly communicated his consent for the employment, still, in this court’s opinion, it was proven that such kind and manner of communication could lead to the conclusion beyond reasonable doubt that the accused was against the employment of A.S., i.e. that he provided his consent subsequently which resulted in the employment, as indicated in details by the factual allegations of the indictment.

Also, during the main hearing, the following witnesses who were in direct contact with the accused: M.N., N.I., O.S. and Dz.M. stated that they did not realize during the conversation with the accused that he was the obstacle, i.e. a barrier for the employment of A.S., and that his opinion was relevant since he had the dominant influence in the Tuzla Canton considering the Party of Democratic Action and public enterprises, still their mutual communication documented on the basis of the special investigative actions, and communication with other witnesses proves quite the opposite, that the approval of the accused was necessary i.e. that those witnesses at the main hearing provided testimonies with which they tried to minimize the actions of the accused with the purpose of mitigating or releasing from criminal liability.

Thus, this evidence, evaluating each individual piece of evidence and all evidence in their entirety, beyond a reasonable doubt, confirmed the factual allegations in the indictment and excluded any other possibility of events other than what the indictment stated. The above emphasized evidence, mutually connected, confirmed that the critical event happened in a way described in the disposition of the verdict and do not leave any room for doubts that it could have happened differently.

The fact that the accused was aware of the crucial role his influence had for the employment of A.S. was confirmed by the testimonies of the witnesses who directly talked to him about this topic: O.S., Dz.M., N.I. and M.N. Also, the accused was aware of the essential features of this criminal offence and was looking for a consequence, which means that he committed the criminal offence with the intent as a form of guilt. Namely, the accused was previously a member of the FBiH legislative body, which in 2016 adopted the amendments to the FBiH Criminal Code that incriminate the actions of the accused. Furthermore, the accused was aware that regardless of the functions he performed, he did not have de jure jurisdiction to oppose or not to oppose the employment with the PE Elektroprivreda d.d. Sarajevo, the Branch of Elektrodistribucija Tuzla in this specific case, but he de facto interfered in the process of employing A.S., first by opposing the employment, which the witness M.N. emphasized as a problem on several occasions, and then by providing his consent for the employment to E.Dz. via telephone, which was later confirmed by E.Dz.’s telephone conversations and time-line dynamics of the subsequent events described in details above, which all together indicates that the accused was acting with the direct intent as the form of guilt in

committing this criminal offence.”

Explaining the type and extent of the criminal sanction, the court states:

„After the evaluation of each individual piece of evidence and their mutual connection, the court found that the accused M.K., by performing the actions indicated in the disposition of the verdict, committed a criminal offence *Accepting Reward or Other Form of Benefit for Illegal Interceding* pursuant to Article 382, para. 2 in relation to Article 31 of the Criminal Code of the FBiH, so the court found him guilty and sentenced him to imprisonment for a term of one (1) year.

In ruling on the criminal sanction and the proper sentence, the court took into account the basic criteria prescribed by law, such as the limits of the sentence prescribed for a certain criminal offence, the purpose of punishment, and the circumstances that characterize the criminal offence committed and the perpetrator (mitigating and aggravating circumstances) including: the degree of culpability, the motives for committing the offence, the degree of danger or injury to person, property or thing, the circumstances in which the offence was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal offence, as well as other circumstances related to the offender (in accordance with Article 49 of the FBiH CC).

In ruling on the criminal sanction, the court had in mind the basic criteria under Article 48 of the FBiH CC and evaluated the mitigating circumstances such as: his previous non-conviction, older age (58 years old at the time of committing the offence), family situation (married, father of two), health condition (advanced heart and blood vessel disease), the passage of time (the crime committed more than four years ago) and his correct conduct during the criminal proceeding, while the aggravating circumstances which were taken into consideration were that the subject influence trade was performed in regard to the employment with the public enterprise, as the area of social relations which are under special inspection of the public and the citizens taking into account the social situation in BiH, and the large number of the unemployed.

After evaluating the indicated circumstances, and after considering the specific crime gravity, the court punished the accused to imprisonment **of one (1) year**, representing thus the sentence in which the above indicated aggravating circumstance is expressed, as well as the gravity of the specific criminal offence.”

COMMENT:

The observed verdict found the accused M.K. guilty for committing the criminal offence *Accepting Award or Other Form of Benefit for Illegal Interceding* pursuant to Article 382, para. 2 in relation to Article 31 of the Criminal Code of the Federation of BiH.

The provision of Article 382, para. 2 of the FBiH CC states:

„Whoever intercedes by using his/her official or social or influential position or other status so that an official or responsible person in the institutions of the

Federation of Bosnia and Herzegovina or a foreign official person or an arbitrator or a lay judge performs or abstains from performing an official or any other action, shall be punished by imprisonment of one to eight years.”

Article 31 of the FBiH CC indicates: „If several persons who, by participating in the commission of a criminal offence or by taking some other act by which a decisive contribution has been made to its commission, have jointly committed a criminal offence, shall each be punished as prescribed for the criminal offence.”

Thus, the accused M.K. was found guilty of having committed the criminal offence as a co-perpetrator, along with other persons against whom the separate proceedings are being conducted. The criminal offence *Accepting Reward or Other Form of Benefit for Illegal Interceding* incriminates the prohibited actions (known as interventions in our country) with the official bodies, i.e. certain officials to perform or abstain from performing some actions for the benefit of some third parties. The essential feature of this offence is *interceding by using his/her official or social position*, i.e. acting from that position by using the official authority or position in the society. This leads to a conclusion that the perpetrator of such crime may only be a person with specific official or social or influential position (actual or presumed). Social position is quite broad and rather vague term and can be very different. It is essentially related to performing specific social or political functions in state bodies, public institutions or organizations or enterprises, but this offence may be conducted by persons who do not hold such functions, but have certain social reputation such as prominent scientists, humanists, writers, businessmen, athletes, etc. In any case, it must be such social position or influence that is relevant in interceding to perform or abstain from performing certain official action. For this particular form (paragraph 2) it is not necessary to have received a reward or some other form of benefit or that interceding has been performed with this purpose. The offence is committed by influencing the official person to perform or not to perform some action.

Based on the evaluated evidence the court found that M.K. had influence on the employment of A.S. by using mainly his political influence and position he had been holding at the time of the crime, first by opposing the employment of A.S., and later by providing his consent for the mentioned employment. Actually, this specific case is a typical political employment which has become normal in public enterprises and institutions in which positions are allocated based on the prey share of the political parties. It is a public secret that in BiH the candidates for the vacant positions with the public enterprises and institutions are selected based on the political suitability, not the qualifications for the job. The holders of political functions, as in this specific case, mutually agree on the division of jobs between the members of their parties, whereby certain positions are treated as a kind of reward for supporting specific political option. The observed verdict represents a sample of a good case law, since it shows that a good and well planned investigation and the use of special investigative actions can prove such activities. Although the conversations recorded be-

tween the participants of this case were often encrypted and without mentioning individual names, the court correctly concluded, by logically connecting all the facts and circumstances, the time continuity between certain actions and finally the employment of A.S., that M.K. influenced an official to conclude the employment contract with A.S.

The court sentenced the accused to imprisonment for a term of one year, which represents a legal minimum penalty for this type of criminal offence. In presenting the reasons for the chosen type of criminal sanction, the court states that „in ruling on the criminal sanction and the proper sentence, the court took into account the basic criteria prescribed by law, such as the limits of the sentence prescribed for a certain criminal offence, the purpose of punishment, and the circumstances that characterize the criminal offence committed and the perpetrator (mitigating and aggravating circumstances) including: the degree of culpability, the motives for committing the offence, the degree of danger or injury to person, property or thing, the circumstances in which the offence was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal offence, as well as other circumstances related to the offender (in accordance with Article 49 of the FBiH CC)“.

However, in the following paragraph of the reasoning of the verdict, the court offers only some of the circumstances that were previously indicated and emphasizes that, as mitigating circumstances, it evaluated *his previous non-conviction, older age (58 years old at the time of committing the offence), family situation (married, father of two), health condition (advanced heart and blood vessel disease), the passage of time (the crime committed more than four years ago) and his correct conduct during the criminal proceeding, while the aggravating circumstances which were taken into consideration were that the subject influence trade was performed in regard to the employment with the public enterprise, as the area of social relations which are under special inspection of the public and the citizens taking into account the social situation in BiH, and the large number of the unemployed.*

In this specific case the court evaluates the older age, i.e. 58 years of age at the time of the commission of the offence as a mitigating circumstance, not providing explanation of such evaluation, or why would the years of life be considered mitigating circumstance in this case. It is not clear either why the court takes the family situation (married, father of two) as the mitigating circumstance, and the *correct conduct during the criminal proceeding* is the expected conduct of the accused for otherwise the court has the possibility to punish him for the contempt of court. Therefore, this should not be taken as the mitigating circumstance (although the courts often present this as mitigating circumstances). It seems that the court only listed as mitigating circumstances those stated in most criminal offences, without providing reasons for which these circumstances are considered mitigating in this specific case.

Health condition (advanced heart and blood vessel disease) represents the circumstance that can be treated as mitigating in this criminal offence, while the passage of time (the crime committed more than four years ago) is a circumstance that is a

consequence of the health condition of the accused. We believe that the court's indication of the passage of time as the mitigating circumstance could have been explained by the fact that he did not commit another criminal offence during this time period.

„As the aggravating circumstances“ the court „evaluated the fact that the influence trade in subject was performed in regard to the employment with the public enterprise, as the area of social relations which are under special inspection of the public and the citizens taking into account the social situation in BiH, and the large number of the unemployed“. Having in mind that the court imposed a punishment of imprisonment of one year, which represents the legal minimum of penalty prescribed for this criminal offence, we cannot find how the impact of this aggravating circumstance was reflected on the imposition of punishment. Namely, the court correctly concluded that the influence trade in subject took place within the sphere of employment with public enterprise, that those were the social relations under special examination of the public and citizens due to the overall social situation in BiH and high unemployment, and that those facts represented aggravating circumstances in the particular case. However, this statement is only declaratory since it had no impact on the punishment imposed. If the court had actually considered those circumstances aggravating, then the imposed punishment would not have been equal to the legal minimum punishment prescribed for this type of criminal offence, but it would have been more severe. By imposing a sentence of imprisonment of one year, the court (if this verdict becomes final) leaves a possibility to the accused, in accordance with the Code, to substitute this sentence by a fine since the imprisonment penalty up to one year is allowed to be substituted by a fine. Courts often impose the imprisonment sentence of this duration knowing in advance that the accused will ask to substitute it by a fine.

The sentence imposed in this way, in case of „high corruption“, i.e. political corruption which is extremely widespread in BiH, will not influence the reduction of this socially unacceptable phenomenon, since the imprisonment for a term of one year (which can be substituted by a fine) will certainly fail to achieve the goal of general prevention in terms of deterring the potential perpetrators, holders of „political power“, from the corrupt conduct.



