

CRIMINAL JUSTICE SYSTEM'S RESPONSE TO CORRUPTION – WHO IS BEING PROSECUTED AND FOR WHAT?

Original Scientific Paper

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Abstract

Reasons for writing and research problem: In addition to many variations in defining corruption crimes, corruption is most often described as any form of abuse of entrusted power for private gain. In criminal justice, corruption offences are “criminal offences related to official duty”, or the offences undermining proper and lawful performance of official duty. They also include offences perpetrated with intent or an intention to obtain any illegal gain, and therefore they are referred to as typical corruption offences. In light of the sanctions foreseen for these offences, it is obvious that they may be classified as serious criminal offences. The question is – how does the criminal justice system actually respond when such offences are committed?

Aims of the paper: This document examines the criminal justice system's response to typical corruption offences, in order to identify what types of offenders are being prosecuted and for what type of criminal offences.

Methodology design: For that purpose, document analysis method was applied, through which, using a custom-made record form, data were collected from 91 court cases involving 103 persons charged with typical corruption offences.

Limitations: This research is not based on a representative sample of cases. It serves as an exploratory study, that will provide inputs for further research.

Findings: According to the results of the analysis, prosecuted and proven cases predominantly include the so-called situational or petty corruption. Vast majority of prosecuted offences are embezzlement in office, particularly its less serious forms, under which low-ranking persons in private companies acquired gain below 10,000 BAM. As a result, the offences typically prosecuted are only the obvious ones, and those registered by individuals in the private sector.

Validity of the research: Criminal Justice System of Bosnia and Herzegovina is often criticized for having a lenient approach to fighting corruption. This paper explores the criticism.

Keywords

Corruption, bribery, abuse of office

1. Introduction¹

According to the European Commission (2015:6), despite considerable efforts invested in strengthening the fight against corruption, Bosnia and Herzegovina has achieved minimum results. Criminal justice system (encompassing primarily law enforcement agencies, prosecutor's offices and courts) is usually criticised for its reluctance to deal with large scale corruption cases and for, at best, mild response (as reflected in the sentencing policy for corruption cases) to corruption of public officials. Such findings have been corroborated by research too. According to Mujanović (2010), sanctions for corruption offences in BiH are much closer to the statutory minimum than they are to the statutory maximum. Furthermore, the most commonly imposed criminal sanction for corruption offences is suspended sentence (Datzer, 2011).

From the point of view of academic and professional community, the issue of corruption is frequently discussed and findings suggest that the situation in Bosnia and Herzegovina is not unique. For example, criminal justice response to corruption offences was analysed in Poland and results indicated discord between prescribed and pronounced criminal sanctions (Batory Foundation, 2011). In other words, their sentencing policy seems to be very mild too. Disparity between prescribed sanctions in the Criminal Code of the Republic of Serbia and imposed sanctions for corruption offences was recorded in a number of studies in Serbia too (Đorđević, 2012; Z. Stojanović & Kolarić, 2010; Tanjević, 2010).

2. Aims and Methodology

In general, this paper aims to deepen the understanding characteristics of offenders adjudicated for typical corruption offences. In particular, the aims of the paper are:

- To analyse criminal justice system's response to corruption
- To identify criminal offences that are being adjudicated
- To describe characteristics of suspects who are convicted.

For the purpose of this paper, corruption refers explicitly to a perpetrated typical corruption offence. These so-called **typical corruption offences** are:

- *Accepting Gifts and Other Forms of Benefits,*
- *Giving Gifts and Other Forms of Benefits,*
- *Accepting or Giving Reward or Other Forms of Benefit for Trading in Influence,*
- *Abuse of Office or Official Authority,*
- *Embezzlement in Office.*

Such categorisation is accepted based on the argumentation of Datzer and Vujović (2013), according to whom the criteria for the classification of an offence under the "typical corruption offences" are: a. the protected object (in this case, proper performance of official or other responsible duty, where official duty includes rights and obligations of officials to apply pre-

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scribed powers); and b. intentional perpetration of the criminal offences, so as to gain tangible or intangible benefit to own self or another by perpetrating the act

Aims set in this way considerably determine the methodological approach to the research. Ideally, reaching of the aims would mean access to all reported corruption cases, whether police or prosecution cases. Such an approach, unfortunately, for the purposes of this research was not possible, as it would imply access to cases without final verdict as yet. Therefore, in cooperation with donors and representatives of High Judicial and Prosecutorial Council it was decided to make the research only on the basis of the analysis of cases with final verdicts. At the same time, it was decided to conduct the research in the following courts:

- Basic Court of Banja Luka
- District Court of Banja Luka
- Basic Court of Brčko District of Bosnia and Herzegovina
- Municipal Court of Sarajevo
- Cantonal Court of Sarajevo.

In addition, given the limited timeframe of the research, and having in mind it was a test research, it was decided that the analysis be carried out on the total of 100 cases, bearing in mind appropriate representation of typical corruption offences. As regards the timeframe, it was decided that the analysis would cover cases with final verdict in the period between 2013 and 2015.

Key prerequisite to conduct the research is unconditioned cooperation of all selected courts, as follows:

1. To provide data on the number of cases with final verdict for the selected corruption offences;
2. Following the sampling, to allow to the researcher to access cases and collect data;
3. To provide premises where data collection would be possible.

Unfortunately, cooperation on the part of the courts was not complete, and in certain cases it was completely missing. To wit, despite several efforts, no communication whatsoever was established with the representatives of District Court of Banja Luka. The Cantonal Court of Sarajevo and Basic Court of Banja Luka provided data on the total number of cases, and after the sampling they selected cases for the analysis. However, cases were not entirely placed at disposal, while the researchers were provided only with verdicts. The Municipal Court of Sarajevo and Basic Court of Brčko District of Bosnia and Herzegovina ensured full cooperation in line with the planned methodology.

Having inspected the court files, the analysis covered the total of 91 proven corruption offences, within which the total of 103 individuals were convicted.

As the method of data collection we used the method of analysis of contents of documents, as the main and sole source of data. To wit, court files will be analysed, regarding cases with final verdicts pertaining to corruption offences. For that purpose, Analytical Sheet was used. Collected data were processed by applying statistical methods, or method of descriptive and method of inferential statistics.

3. Findings

3.1. What is prosecuted and proven?

Having inspected court files, analysis was carried out on the total of 91 court cases regarding corruption offences. Given that one case may constitute criminal proceedings against several persons, the structure of final verdicts and decisions should be shown in relation to the total number of individuals against whom the proceedings were conducted (see table 3.1.1.)

Table 3.1.1. Final verdicts and decisions for persons charged with corruption offences

Final verdict	Frequency	%
Conviction	80	77.67
Acquittal	20	19.42
Charges rejected	1	0.97
Proceeding discontinued	2	1.94
Total	103	100.0

Out of 103 persons charged with corruption offences, slightly less than 80% of them were convicted with final verdicts of having committed the total of 73 criminal offences. Almost 20% of them were acquitted due to lack of evidence, and in less than 3% of cases the proceedings were discontinued or the charges were rejected.

Structure of criminal offences in one field should guide decision makers as to the direction of action. Being aware that official statistical data do not necessarily reflect the actual situation, table 3.1.2. shows the structure of corruption offences of which 80 persons were convicted.

Table 3.1.2. Structure of proven corruption offences

	Frequency	Percent	Valid Percent	Cumul. Percent
Abuse of office	12	15.0	15.0	15.0
Embezzlement	64	80.0	80.0	95.0
Valid Accepting bribe	2	2.5	2.5	97.5
Invalid Illegal interceding / trading in influence	2	2.5	2.5	100.0
Total	80	100.0	100.0	

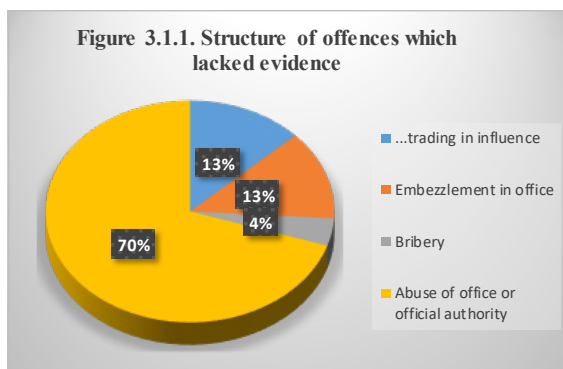
According to the results shown in the table above it may be noted that embezzlement in office is the most frequently proven corruption offence making up as much as 80% of the total number. Abuse of office appears in slightly over 15% cases, while accepting gift and other forms of benefit and accepting or giving reward or other forms of benefit for trading in influence appears in only 5% of cases.

According to official statistical data of the High Judicial and Prosecutorial Council /HJPC/ (VSTV, 2015) criminal offences of embezzlement in office and abuse of office or official authority are the most frequent forms among proven cases of corruption. On the other hand, there are least criminal offences of bribery and accepting or giving rewards or other forms of benefit for trad-

ing in influence. Criminal offence of giving gift and other forms of benefit is extremely rarely prosecuted. This does not mean, however, that such cases do not exist. To wit, the presence of the offence of accepting gift implies that there should have also been the offence of giving gift. According to findings by Vujović (2013), there occur situations where the perpetrator was not charged with criminal offence of giving gift, even though he/she reported giving bribe to a public servant, while the other one was punished for that. In addition, research conducted on 1200 citizens of BiH indicates that more than 3% of population gave gift or other forms of benefit to public servants in the last year (Maljević et al., 2017), whilst only one case was reported.

There are three possible causes for extremely small number of such a corruptive behaviour in official statistical data. First, citizens have different reasons not to report corruption offences (see more in Maljević et al., 2017). Second, investigative bodies rarely detect such offences in the course of their own work. Third, the offences that are reported do not get proven.

According to the data of HJPC for 2015, taking into account data for the Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District of BiH, there have been reported the total of 68 cases of accepting gift and other forms of benefit. In 32 cases investigation was ordered, which implies there were grounds for suspicion of the offence, while charges were rejected for the remaining 36 reports. Following the work of prosecutors and investigators grounds for suspicion were raised to grounded suspicion in only 8 cases, which was followed by issuing indictments. Throughout that year only 5 persons were convicted of having committed the offences. On the other hand, in most of the cases it is considerably easier to detect and prove the criminal offence of embezzlement in office, than other forms of corruption offences (Vujović 2013). To wit, embezzlement implies that “something that existed disappeared”. It is worth noting that embezzlement in office may most often be classified as the crime of employees, particularly low-ranking ones in their organisations (the so-called *blue-collar crime*). Frequency of such abuses contributed to the development of the private security system (Button, 2007).

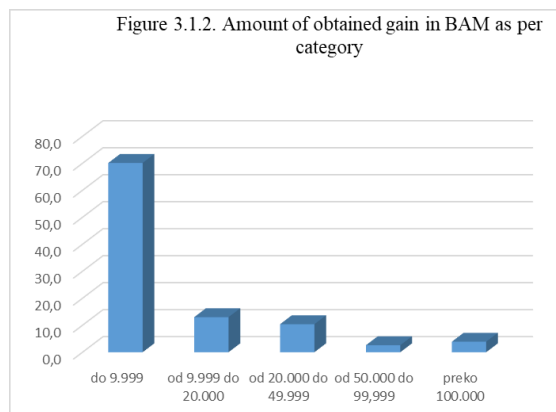


Unlike embezzlement in office, abuse of office does not have to be that obvious, and less so the offences of bribery and accepting or giving reward or other forms of benefit for trading in influence. In support of this statement there is a fact that acquittals pronounced by the court due to lack of evidence (N=20) involved as many as 70% of cases in which the accused was charged with abuse of official authority (Figure 3.1.1.). Therefore, out of 28 cases conducted for abuse

of official authority, only 12 of them (or slightly under 43%) were proven and their perpetrators were convicted. On the other hand, as regards embezzlement in office, the accused were also convicted in over 95% of cases. It appears that the cases of abuse of official authority represent considerably big challenge for investigators and prosecutors in terms of detecting and proving.

Corruptive behaviour may appear not only in public but also in private sector. Data of 39 court files where conclusions could be drawn as to the sector where corruptive behaviour had appeared, showed that in 80% or 31 cases involved private sector. Out of that number, over 90% cases involved the criminal offence of embezzlement in office.

In all but one of the analysed cases the obtained/intended illegal gain referred to money. Figure 3.1.2. indicates that it mainly involved amounts below BAM 10,000 (70.1%; N=77), and exactly this amount is the first threshold for the qualification of offences most often appearing among the proven ones – embezzlement in office and abuse of official authority. Only exceptionally did it concern amounts above BAM 50,000 (6.6%; N=77), for which the most severe punishment may be pronounced under the law.



It may be concluded that proven corruption offences, as a rule, appear in their basic form. Similar results are reached by Vujović (2013), who concluded that proven corruption offences most often might be classified as “blue collar crime”. This is further linked with the fact that situational is most often proven while the systemic corruption remains the dark figure of crime. It should also be added that proven criminal offences are rare to appear in concurrence with other offences (4.1%; N=73), and only exceptionally with similar cases (one case; N= 73).

3.2. Who is prosecuted and convicted?

Corruption offences are often well concealed, and they may be perpetrated by one or more individuals. Table 3.2.1. indicates the role of the accused in the perpetration.

Table 3.2.1. *Offence_perpetrated*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Alone	65	81.3	82.3	82.3
	Accomplice	13	16.3	16.5	98.7
	Inciter	1	1.3	1.3	100.0
	Total	79	98.8	100.0	
Missing	System	1	1.3		
Total		80	100.0		

Results show that perpetrators mainly act alone (82.3%; N= 79). They rarely act in complicity (16.5%; N= 79). This means that the proven corruption offences do not constitute or are not linked to the criminal offence of organised crime and, therefore, the perpetrators may not be pronounced more severe penalties on that ground. Theoretical postulates and results of hitherto research are not in line with this finding. To wit, corruption and organised crime are very often interrelated (Finckenauer, 2005; Hagan 2006). It therefore seems that this result also may be explained by the high dark figure of corruption crime.

Among the total of 80 persons convicted of corruption offences, slightly more than two thirds are men (73.8%), and slightly under one third are women (26.2%). Although women's criminality in official statistical data does not exceed 10%, the situation with corruption offences is somewhat different. The increase in the number of women in official and other responsible positions contributed to the increased number of criminal offences against official duty, perpetrated by that population.

As regards the nationality of the accused, except one national of Austria, all others are nationals of Bosnia and Herzegovina. This may be considered expected, given the nature of corruption offences, or the assumption that major number of the offences may be perpetrated only by a person performing certain official or responsible duty.

The accused (N=103) include 10 persons, or slightly under 10%, who previously perpetrated some criminal offences. Half of them, or approximately 5% of the total number of the accused, were previously convicted of the same corruption offence. For 4 out of 10 of the accused, who had previously perpetrated a criminal offence, there was insufficient evidence for conviction in this case. The mere fact that those who had previous convictions of corruption offence reappear in criminal proceedings may be a strong indicator that the purpose of punishment was not served.

Table 3.2.2. indicates level of education of perpetrators of the proven corruption offences.

Table 3.2.2. Level of education

		Frequency	Percent	Valid Percent	Cumul. Percent
Valid	Primary	2	2.5	2.5	2.5
	Secondary	49	61.3	62.0	64.6
	Two-year post-secondary	3	3.8	3.8	68.4
	University	12	15.0	15.2	83.5
	Master+	1	1.3	1.3	84.8
	Unknown	12	15.0	15.2	100.0
	Total	79	98.8	100.0	
Missing	System	1	1.3		
	Total	80	100.0		

The convicted of corruption offences mainly include those with secondary school qualifications (62%; N=79). That is yet another indicator that persons are most often punished for the so-called situational corruption. In addition, results indicated in the table below support those facts.

Table 3.2.3. Crosstabulation - Level of education recoded * Pronounced guilty recoded

			Pronounced guilty recoded		Total
			Convicted	Acquitted	
Level of education recoded	Below university degree	Count	54	7	61
		% within level of education recoded	88.5%	11.5%	100.0%
	University degree	Count	13	11	24
		% within level of education recoded	54.2%	45.8%	100.0%
Total		Count	67	18	85
		% within level of education recoded	78.8%	21.2%	100.0%

Results shown in table 3.2.3. indicate that the convicted persons of university degree found in almost half of the cases (45.8%; N=23) were acquitted of charges due to the lack of evidence. On the other hand, that was the case with only 11.5% cases where the accused was the person whose level of education was below university degree. A question arises whether the level of education of perpetrators affects their ability to conceal the criminal offence?

A true criminal offence related to official duty may be perpetrated only by an official or responsible person. This also implies their employment. However, employment of the convicted persons at the time of the conduct of criminal proceedings was somewhat different and is shown in table 3.2.4.

Table 3.2.4. Employment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	30	37.5	38.5	38.5
	No	38	47.5	48.7	87.2
	Unknown	10	12.5	12.8	100.0
	Total	78	97.5	100.0	
Missing	System	2	2.5		
Total		80	100.0		

Results show that almost half of the convicted persons (48.7%; N= 80) is unemployed, while for almost 13% of them the data were not available in court verdicts. However, in order for the court to decide on the adequate type and measure of criminal sanction this piece of data is very important. Actually, imposing the fine, seizure of illegally acquired property etc. should depend thereon.

As regards other characteristics of perpetrators, their family situation should be singled out as it often plays a significant role in meting out the punishment. Marital status is indicated in table 3.2.5.

Table 3.2.5. Marital status

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Single	13	16.3	16.7	16.7
	Married	46	57.5	59.0	75.6
	Widow/widower	2	2.5	2.6	78.2
	Divorced	14	17.5	17.9	96.2
	Unknown	3	3.8	3.8	100.0
	Total	78	97.5	100.0	
Missing	System	2	2.5		
Total		80	100.0		

Results indicate that almost 60% of the convicted persons are married, approximately 18% divorced and approximately 17% single (N=78). Number of children of the convicted persons is shown in table 3.2.6.

Table 3.2.6. Number of children of the convicted

	Frequency	Percent	Valid Percent	Cumulative Percent
0	21	26.3	26.3	26.3
1	20	25.0	25.0	51.2
2	29	36.3	36.3	87.5
3	9	11.3	11.3	98.8
4	1	1.3	1.3	100.0
Total	80	100.0	100.0	

It may be noted that every fourth convicted person does not have children, while 60% of them have got one or two children. Slightly above 10% of them have got 3 or more children. It is very important to underline the fact that it is unknown how the court determines family situation of the accused, except on the basis of their own statements. Analysis of the cases has not shown that evidence is collected of the fact in the form of birth certificates. It appears that during the examination the defendant states he is married with children, and this fact is considered “established” and, as a rule, taken into account as extenuating while meting out the punishment.

4. Conclusion

The main findings indicate that the most serious forms of corruption offences are very rarely detected. The majority of proven offences are those of situational corruption, particularly easily verifiable forms. Final convictions typically refer to embezzlement in office, in particular the offences in the private sector. Corruption in the public sector is almost completely absent from final verdicts. When it comes to offenders, it seems that the most corrupt individual in Bosnia and Herzegovina is uneducated, unemployed, married man with children, who almost exclusively acts alone. Having said this, and aware of the complexities inherent to corruption as a social and legal phenomenon, it seems understandable that international community is arguing that the criminal justice system of Bosnia and Herzegovina is failing to address corruption adequately.

In order to change this situation, it is necessary to shed light on the dark figure of corruption, which requires, inter alia, planned, meaningful and organised activities in order to identify, investigate and prove such criminal offences. This should result in the identifying and proving of a considerable number of most serious corruption offences. Such approach, it is hoped, would also lead to prosecution and conviction of the real actors in corruption cases.

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