



B&H CRIMINAL MEASURES AGAINST CORRUPTION

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Criminalization of Corruption in B&H Criminal Code

Following criminal offences are recognised as a corruptive in B&H CC provisions:

- Violation of the voters choice (Art. 151. sub. 1.) - if the act of violation has been undertaken by bribe;
- Uncovering of classified informations (Art. 154. sub. 1. a) – if the motive is greed;
- Trade in human beings (Art. 186. sub. 3. and 4.) – if the criminal offence has been committed by official person who is giving or receiving payments or other benefits in the course of its work;
- People smuggling (Art. 189. sub. 3.) – if the offence has been committed by abuse of official authority;
- Receiving gifts or other form of benefits (Art. 217.);
- Giving gifts or other form of benefits (Art. 218);
- Illegal interceding (Art. 219);

- Abuse of office or official authority (Art. 220) – if the property has been gained by the perpetration of criminal offence; BY FAR THE MOST PROSECUTED CORRUPTION CRIMINAL OFFENCE IN B&H

- Office embezzlement (Art. 221.);

- Fraud in office (Art. 222);

- Unauthorized lend of assets in office (Art. 223);

- Violation of the law by judge (Art. 238.).

Investigative and evidence collecting tools to fight corruption

Crime investigative measures:

- Search of apartments other premises and persons;
- Seizure; Specifically measures such as: 1. access to suspects telecommunication data; 2. access to suspects or other person bank deposits; 3. temporary suspension of financial transactions;
- Interrogation of suspect;
- Witnesses;
- Expert witnesses; Specifically experts from the field of forensic accounting;
- Crime scene investigation; and
- Crime reconstruction.

Good sides:

- Applicable in investigation of practically every crime form;
- Lot of experience on the side of police officers and prosecutors;
- Usually result with clear and reliable evidence;

Bad side:

- Not the best choice for investigation of complex crime forms like organized crime, corruption and terrorism except in combination with special investigative measures.

Special investigative measures:

- Surveillance and technical recording of telecommunications;
- Surveillance and technical recording of premises;
- Access to computer systems and data dissemination;
- Secret surveillance and technical recording of persons, means of transport and related objects;
- Use of undercover investigators, use of informants;
- Simulated purchase, simulated bribe giving
- Supervised transportation and delivery of items in relation with criminal offence.

Principles of use:

- Can only be undertaken in circumstances where it is otherwise impossible to collect evidence or their acquisition is associated with disproportionate difficulties;
- Can only be authorized by court (pretrial judge);
- Can only be used for serious crime (usually punishable with 5 or more years in prison);
- Any illegality in its use will result with the illegality of evidence collected.

Good side:

- Extremely useful for collecting of evidence and investigation of complex crime forms;

Bad sides:

- Only applicable for investigation of serious crime;
- Intrusion to rights and freedoms of citizens specifically to right on privacy.

Witness immunity:

- Can only be granted in circumstances where witness statement is of importance for proving the criminal offence of other person;
- Not every witness can be granted immunity, just the one who would, by the means of its own testifying, expose himself to possible criminal prosecution;
- Immunity can only be granted for the criminal offence of the same or lesser seriousness than it is a criminal offence for which proving testifying is used;
- Immunity can never be granted for criminal offence punishable with 10 or more years in prison.

Protection of witnesses:

- Two categories: witness under threat and endangered witness recognised by special law;

Forms of protection:

- Provision of social, psychological and other support;
- Court controlled ways of witness testifying;
- Testifying via technical devices for picture and voice transmission;
- Testifying in the absence of defendant (defendants removal from the courtroom);
- Other measures of protection;

Criminal property forfeiture

Main principle:

-No one can retain any kind of property gain as a result of criminal offence perpetration.

Material and procedure criminal provisions related to criminal property forfeiture:

- Are part of every B&H jurisdiction/legislation;
- In addition to material and procedure criminal codes every jurisdiction except the state one adopted special laws aimed for the higher efficiency in criminal property forfeiture;

Criminal property forfeiture forms in B&H legislation:

- Ordinary forfeiture;
- Extended forfeiture – modern and efficient form of forfeiture especially in combating organised crime and corruption but still rarely exercised in B&H judiciary;
- Civil forfeiture – recognised on the state level legislation but never exercised by the judiciary.

Prosecution of corruption in B&H judiciary

Findings:

- Probably the most observed segment of B&H judiciary work and the most criticized one;
- Judging by OSCE ARC Report (2109) some of the identified problems are:
 1. In some cases inadequate identification and description of regulations and norms of public administration so called blanket norms;
 2. In some cases elements of undue gain and criminal intent were not adequately demonstrated;
 3. Generally negative prosecutor capacity related to the quality of indictment, gathering of the evidence and its presenting at trial;

4. Unclear or insufficient reasoning in judicial decisions and disharmonized judicial practice;
5. Lack of adequate sentencing policy in the cases where defendant is convicted which thwart deterrence and preventive goals of criminal justice.
6. Low rates of conviction in corruption cases comparing to other forms of crime.

Court observation in corruption cases – student findings

- Criminal proceedings in cases of corruption are lengthy, in some cases due to the number of evidence which needs to be presented at trial but often due to the defense motions and a lot of defense attorney "irrelevant" questions directed to prosecution. Sometimes the reasons are not directly related to the determination of the facts, e.g the failure of the accused to appear at trial.

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- Methods of evidence selection and presentation at trial are inadequate. This is especially true on the side of prosecutor. It happens that after presentation of one important piece of evidence such as those collected through special investigative measures the same does not in any way contributed as an argument of prosecution but made only more confusion related to facts of the case.
- In some cases, remarkably large numbers of evidence have been accepted for the presentation at a trial (between them 126 witnesses) that it is questionable whether it is appropriate way to make a correct, legitimate and fair judgment.

-Judges, members of court panel should be more actively involved in the process. In some cases we had impressions that trial has been lead by parties, prosecutor and defence attorney rather than a court. This applies to both, court discipline and determination of facts.

-Prosecutors mostly professionally and correctly performed their prosecutorial role. However, it is possible to make their activities at trial even more efficient in order to prove the crime. In this respect, prosecutors should be further educated especially related to prosecution of corruption cases.

-There is significant difference between individual cases where some of them are highly disciplined unlike the others where it is rather leisure one despite the fact all of them are cases with serious accusations.

Questions and discussion

- In fighting corruption the mentality of a citizens in one society presents serious or just marginal factor?
- Why the abuse of authority or official duty presents a prevalent form of corruption crime in B&H?
- Can the severe punishment of corruption be a good and appropriate way to prevent it?
- What role is of criminal property forfeiture in fight against corruption?
- What needs to be changed in B&H society to achieve higher level of efficiency in the fight against corruption?



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Literature

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