



REGIONAL
ANTI-CORRUPTION
INITIATIVE

Integrity challenges in the criminal justice chain

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How to draw the line between the professional mistakes and lack of quality and corruption

- ❑ deliberately manipulating with the legal qualification/fabricating/ hiding evidence.
- ❑ quick ending v.v long duration of the pre-investigation
- ❑ intimidate witnesses, unduly influence other prosecutors and even judges
- ❑ trading with information –contamination of the investigation
- ❑ selection of a particular prosecutor to handle a case to achieve a specific outcome
- ❑ even malicious but unless it is due to the exploitation of power for personal or political gain, it is not corruption.

Institutional and behavioral factors that facilitate corruption- several levels

- ❑ nepotism (appointing favored lawyers as defense counsel)
- ❑ extreme delays resulting in exceeding the statute of limitations/escape of defendants/witnesses have become unavailable
- ❑ unexplainable professional and legal mistakes, questionable sentencing practice/overestimating of the confession – queen of evidence/ lack of substantial judicial control/
- ❑ inclination to influential interest judicial groups due to their close connections with politics/business
- ❑ promotions in the career after concluding politically sensitive cases
- ❑ nor recusal in “grey zone” cases

Presidents of the criminal courts

- ❑ manipulations with the case allocation system,
- ❑ deliberately frequent changes in the composition of the chambers, usually after governmental changes
- ❑ privileging the judges having close links with the politicians/ decisions on recusal
- ❑ lack of proper investigation:
 - ❑ on revealing confidential information and statements of witnesses during the pre-investigation
 - ❑ on allegations for breaches of ethics and conflict of interests
 - ❑ on corruption among court administration/ lay judges

Councils for the Judiciary

- ❑ manipulations in the process of appointment/ promotion, circumventing of the rang list
- ❑ selective disciplinary proceedings (the ECHR cases)
- ❑ lack of transparent, justified decision-making process
- ❑ lack of internal controls to avoid escalation of the problem that will lead to dismissal
- ❑ discrepancy between the real and perceived corruption -49 dismissal/2 for bribe/

External corruption risks

- ❑ ambiguous legal norms covering the judiciary
- ❑ political pressure for re-examining politically sensitive final cases by parliamentary commissions (CCJE Opinion 18)
- ❑ amnesty-pardon- (2016) by the ex- president/ than revoked and the criminal procedures continued- procedures initiated in front of the ECtHR
- ❑ public statements by politicians/ chief prosecutors/
- ❑ waving the immunity of the MP, s; Government, judges and prosecutors which results in the impossibility for initiating or continuing the criminal procedure.
- ❑ The CPD in the case against the ex prime-minister determined a direct discrimination based on his personal and social status as president of the political party and thus denied of the right to a fair trial.

<https://www.rcc.int/pubs/141/securimeter-2022>

- corruption poses a significant threat to security and stability in the region
- **Judiciary is among the three most corrupted sector**
- 63% share the opinion that their economies lack strong and safe corruption reporting systems (57%) the prevalent reason is “ nothing would come out of reporting corruption”
- only a quarter of respondents agree that women are more affected by corruption than men, 37% claim the opposite, 30% is not sure
- Integrity crises – law level of trust in the judiciary
etiquettes - Swarovski judiciary- captured courts resulted in drastic measures/ vetting/re-election

Are there anti-corruption policies in the judiciary?

- passiveness of the judiciary
- the public opinion based on perception and experienced based surveys
- lack of internal controls
- dependency of the projects and donors focused on suppression and not on prevention
- lack of skills for monitoring and measuring the sustainability of the reforms/ performance indicators
- lack of statistics/documented information that will enable analysis
- lack of impact assessment of the technical support
- existence of some sort of obligations for reporting gifts and accessory activities, but underdeveloped in monitoring and reporting / lack of methodology/weak sanctions

Integrated sectoral anti-corruption and integrity policies

- ❑ efficient controls for the implementation of ethical standards, conflicts of interests, asset declarations (RAI Treaty)
- ❑ integrity plans (BiH-IT tool)
- ❑ effective CMS to track the progress of the case, access to the file, regular internal controls
- ❑ certification for ISO37001 standard/ policies, procedures, financial controls/internal audits/management reviews/ training/communication
- ❑ confidential counselling/ results?
- ❑ whistleblowing policies and protection of WB from prosecution
- ❑ external monitoring mechanisms- trial monitoring/results?

Engagement of CSOs

- ❑ CSOs engaged mostly in criminal justice reforms and high-profile and media attractive cases/ lack in the field of prevention and integrity, other court cases (no clear methodology)
- ❑ debates has been focused mainly on surveys based on perceptions on the confidence in the judiciary
- ❑ lack of surveys on checks and balances in the new criminal procedure/ plea bargaining/the role of experts
- ❑ lack of call for action of judicial leaders
- ❑ lack of analysis of possible corruption in the use of foreign assistance

How to move forward?

- ❑ CSOs should play a more significant role, improve regular dialogue and develop a culture of providing and receiving feedback in both directions/ building honest relations
- ❑ set forth a generalized methodology to evaluate the performance of the reforms
- ❑ financial and political support
- ❑ communicate the presentation of findings and indicators in a more visual and friendly fashion (at SC and JC sessions)
- ❑ regional research is advisable- RAI and SELDI on the role of CSOs in the assessing the judiciary reforms and their impact assessment
- ❑ prioritization of actions