

PETTY CORRUPTION AND HUMAN RIGHTS IMPLICATIONS

- THE CASE OF BOSNIA AND HERZEGOVINA

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ABSTRACT

Corruption in Bosnia and Herzegovina still significantly affects the functionality of the state and the quality of everyday life of its citizens. When it comes to everyday life of ordinary citizens, it is the ‘petty/everyday corruption’ that affects it more directly and more frequently than the so called ‘grand corruption’, as petty corruption takes place in everyday interactions between citizens and the public service sector. The aim of this paper is to point out to human rights implications, particularly the inequality and discrimination-like effects that occur as a consequence of petty corruption. The recommendation upheld in this paper is that both anti-corruption and human rights advocates evoke international human rights instruments to force accountability on the part of the state or state/public organs and so create disincentives for corruption. While this approach is not meant to replace traditional anti-corruption mechanisms – primarily

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the criminal law – (but only supplement it) it can give cases prominence, may force a state to take preventive action, or may deter corrupt officials from misusing their powers.

Introduction

Corruption is a global phenomenon. However, it is the scope in which corruption affects an average or non-privileged citizen in her/his everyday life that makes the difference for these people from state to state. It is precisely petty corruption that directly affects the everyday life of so many ordinary people in underdeveloped and/or transitional countries such as Bosnia and Herzegovina.

Unlike grand corruption, which impacts a country by taking large sums of money away from the public purse, petty corruption directly impacts individuals, particularly the poor and vulnerable. It is often just as damaging to the poor, and more immediate and tangible than the bigger corruption cases which make breaking news and scandals.¹

This everyday corruption occurs most frequently in interactions between ordinary citizens and the public services providers, such as public health institutions, educational institutions and the like, and it is in the public sector service delivery where petty corruption restricts citizens' access to public services and causes inequality and indirect institutional discrimination². So far, little attention has been paid to the role public sector service delivery plays in enforcing or violating the rights and civil liberties of Bosnia and

¹ U4, Anti-corruption Resource Centre. <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=72>. 16 July 2011.

² Indirect institutionalized discrimination occurs when sanctioned actions unintentionally discriminate against a subordinate group. Institutional discrimination is built into the structure itself. Thus it is more covert and more tenacious. It can occur regardless of the desires or intentions of the people perpetuating it. Much institutional discrimination results from judgments made on secondary rather than primary characteristics. Race and sex may be consciously eliminated as concerns, but criteria such as educational background, employment history, supervisory experience, age, income, etc, which have been effected by group membership, can be effective substitutes. Freeman, J., Institutional Discrimination. <http://www.uic.edu/orgs/cwluherstory/jofreeman/womensociety/institidiscrim.htm>. 16 July 2011.

Herzegovina's citizens. Instead, much effort is concentrated on reforming the court system, in spite of the fact that the justice system in Bosnia and Herzegovina (BiH) comprises far more than the court system. It also consists of public sector service delivery, which exercises a huge influence on the lives and legal rights of ordinary citizens.³

Furthermore, the issue of discrimination, including the indirect institutional discrimination that occurs as a consequence of petty corruption, inevitably touches on connection between corruption and some fundamental human rights principles, namely the principles of equality and non-discrimination, and the potential of using human rights instruments as an anti-corruption mechanism. This is certainly the field that has not been tackled by anti-corruption and human rights advocates and institutions in Bosnia and Herzegovina (hereinafter: BiH) so far.

The pioneering work connecting corruption with human rights violations (including the principle of equality and non-discrimination that is most directly relevant to petty corruption) is contained in two comprehensive reports, 'Corruption and Human Rights: Making the Connection', and 'Integrating Human Rights in the Anti-Corruption Agenda', written by the International Council on Human Rights Policy and Transparency International.⁴ Because they are among those very few to address the connection between corruption and human rights, the views contained in these reports will be largely reflected in this paper, upholding the position that fighting corruption has a potential to improve human rights protection, and vice versa, the protection of human rights can serve as an anti-corruption mechanism.

³ International Crisis Group, Rule of Law in Public Administration, Confusion and Discrimination in a Post-Communist Bureaucracy, 1999. <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/084-rule-of-law-in-public-administration-confusion-and-discrimination-in-a-post-communist-bureaucracy.aspx>. 16 July 2011.

⁴ International Council on Human Rights Policy and Transparency International. http://www.ichrp.org/files/reports/40/131_web.pdf, and http://www.ichrp.org/files/reports/58/131b_report.pdf. 16 July 2011.

Definition

Corruption may be defined in philosophical, legal, criminological, sociological and cultural sense, to name a few. As regards ethical notion of corruption, there seems to be a universally agreed general definition in wider terms, whereby corruption is “an impairment of integrity, virtue, or moral principle...” and more specifically, “the act of doing something with intent to give some advantage inconsistent with official duty and the rights of others”.⁵

Sociologically, corruption is any process in which at least two persons act to the detriment of public interest by means of unlawful transactions for the purpose of personal gain. By means of violation of moral and legal norms, any such person is violating the foundations of Democratic development and the Rule of Law. In legal sense there is no single definition of corruption, but a whole range of criminal acts described as 'criminal offence of corruption'.⁶

As regards the scale and nature, corruption is generally divided into grand corruption and petty corruption. Grand corruption refers to the corruption of more senior officials and significant amounts of money and involves two main activities: bribe payments and the embezzlement and misappropriation of state assets.⁷

⁵ The word ‘corrupt’ etymologically stems from mid 14th century Old French ‘*corrupt*’-“unhealthy, uncouth” (in reference to language), which in turn stems from Latin ‘*corrumpere*’-“to destroy; spoil”, composed of prefix ‘com’ and ‘rumpere’-“to break”, Online Etymology Dictionary. <http://www.etymonline.com/index.php?term=corrupt>. 16 July 2011. *Black's Law Dictionary, Eight Edition*, p.371

⁶ *Pravni Leksikon*, Leksikografski zavod Miroslav Krleža, pp.623-624.

⁷ C. QC Nicholls, T. Daniel, M. Polaine and J. Hatchard, (eds.), *Corruption and Misuse of Public Office*, Oxford: Oxford University Press, 2006, pp. 2-3. <http://www.u4.no/themes/pfm/Revenueissue/revenue1.cfm>. 16 July 2011.

Petty corruption, which is sometimes referred to as 'routine corruption', is the everyday corruption that takes place at the implementation end of politics, where public officials meet the public. It is the kind of corruption that people can experience in their frequent encounters with public administration and services like hospitals, schools, local licensing authorities, police, taxing authorities and so on.⁸ It is precisely this kind of corruption that occurs most frequently and the one that this paper will mainly focus on.

For the purpose of this paper, it is also necessary to stress that in reality the 'reward' for those that facilitate both grand and the petty corruption is not limited to payments, but very often involves a wide variety of non-financial transactions (the so called 'favours', e.g. nepotism, cronyism, and other forms of trading in favours and influence), the fact grossly overlooked by those who reduce the term 'corruption' to 'bribery' alone. Hence, the Oxford Unabridged Dictionary distinguishes bribery from favour by defining corruption as "pervasion or destruction of integrity in the discharge of public duties by bribery or favour".⁹

Corruption in the public sector service delivery – the 'everyday' corruption

The public sector service delivery is the largest employer in any country and its associated job security and accompanying benefits are highly coveted. However, resources in this sector in Bosnia and Herzegovina are scarce and the supply of experienced and qualified staff is limited. When coupled with the woeful under-funding, arbitrariness, inertia, and corruption are endemic. So too is the arrogance inherited from officials in the old communist era bureaucracy.¹⁰

⁸ U4, Anti-Corruption Resource Centre: *Revenue Administration and Corruption*. <http://www.u4.no/themes/pfm/Revenueissue/revenue1.cfm>. 17 July 2011.

⁹ Civil Society Against Corruption, <http://www.againstcorruption.eu/diagnosis-tool>. 18 July 2011. In addition to bribery and favouritism/clientelism/connections, some other forms of corruption include embezzlement, trading in influence, and abuse of function or position, illicit enrichment etc.

¹⁰ International Crisis Group, *Rule of Law in Public Administration, Confusion and Discrimination in a Post-Communist Bureaucracy*, 1999, p.19. <http://www.crisisgroup.org/~media/Files/europe/Bosnia%2033.pdf>. 16 July 2011.

It is in this sector that the largest amount of corruption in Bosnia and Herzegovina takes place, the petty corruption in particular, where the infringements of the principles of equality and non-discrimination are most visible.

While most reports and analyses on corruption in BiH focus on grand corruption and legal/judicial dealing with corruption, they ignore the fact that in BiH relatively few people come into contact with judiciary. In contrast, the system of public services in BiH sees a constant flow of individuals through its various layers. It is there that vast majority of legal abuses occur, as public servants intimidate and discriminate ordinary people.¹¹

A large number of households in BiH encounter corruption when dealing with the employees of public sector service delivery: twenty percent of respondents in a World Bank survey who received services in health care, education, police, and some other institutions, paid bribes (money, gifts, or counter-services). These informal payments shrink household budgets, distort the structure of household budgets and make budget spending less predictable.¹²

Widespread corruption in public health and educational services, to name a few, deter the poor from seeking healthcare and education, and depresses living standards and opportunities for poorer people in particular.¹³

¹¹ *Ibidem*, p.1

¹² When asked about the main consequences of corruption, 60 percent of respondents in the general public indicated “the poor get poorer and the rich get richer.” This perception is supported by the actual experiences with corruption reported in the surveys, World Bank, *Bosnia and Herzegovina - Diagnostic Surveys of Corruption*, 2000. <http://www1.worldbank.org/publicsector/anticorrupt/Bosniananticorruption.pdf>. 17 July 2011.

¹³ Article 14 of the European Convention on Human Rights, for example, provides that: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” http://www.hrcr.org/docs/Eur_Convention/euroconv4.html. 17 July 2011.

Kahvedžić and Lošić accordingly observe in their investigative report on corruption in BiH: “The poor have neither money nor connections. It is not even granted that when they actually get an appointment that they will receive the best or proper help. When there is a distinct line between the poor and the wealthy, as the case seems to be in BiH, corrupt acts are about to occur in the health sector.” Further more, the background of the patient is often investigated by medical professionals, and only if it shows that the patient is coming from a wealthy family or has good connections i.e. he or she is able to pay, then will they receive proper health care.¹⁴

As regards the corruption in the educational institutions, the report of Kahvedžić and Lošić indicates that the biggest and most important type of corruption in the education system in Bosnia and Herzegovina is the payment for passing exams. The students apprehend this phenomenon as normal, where they openly talk about it and pay the professors without questions. In their survey, Kahvedžić and Lošić often encounter students who had to do the exam several times before finally passing it; an incident often linked to the fact that they do not have the economical possibility to pay the professors. This has led to a polarization where there are rich students and poor students. The rich students pay and pass exams easily without any adequate knowledge.¹⁵

The employment sector is yet another area where large quantities of corrupt acts occur and create discrimination and inequality on a daily basis, restricting the right to employment of the regular, non-bribing or non-privileged citizens. The recruitment process is heavily distorted by corruption. This comes as no surprise since a major problem for citizens in BiH today is to find a job.¹⁶

¹⁴ Kahvedžić N., Lošić S., Corruption in Bosnia and Herzegovina-Causes, Consequences and Cures, Master thesis in Economics Department of Management and Engineering The University of Linköping 2010, p.34. <http://liu.diva-portal.org/smash/get/diva2:309905/FULLTEXT01>. 18 July 2011.

¹⁵ *Ibid.* pp. 34-35.

¹⁶ 95% of survey respondents in the survey conducted by the UNDP in 2009 reported that having *štela* (a Bosnian colloquial word for favouritism/personal connections) is always or sometimes useful for access to basic social services, including access to education, employment and health care. More than one third of employed respondents said they had found their job through personal connections; UNDP Bosnia and Herzegovina, Human Development Report 2009; *The Ties that Bind – Social capital in BH*, pp.12-13, <http://www.undp.ba/index.aspx?PID=36&RID=90>. 18 July 2011. In Bosnia and Herzegovina bribes were particularly common in the health sector with surveys of officials and citizens reporting that 75 percent

Human Rights implications of petty corruption

Every individual is entitled to be treated equally by public officials. If a person bribes a public official, that person acquires a privileged status in relation to other similarly placed individuals who have not partaken in bribery. Individuals or groups of people are left without access to a service because they cannot or refuse to pay a bribe or do not belong to a given client network. It is precisely in this sense that discrimination and inequality are defined in this paper.

When a person obtains privileged treatment by means of a bribe or favors (“connections”), no other human right is necessarily directly affected except the right to equality.¹⁷

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and its application is not limited to those rights which are provided for in the ICCPR.¹⁸

Additionally, while the principles of equality and non-discrimination stand independently from other human rights, it is likely that privileged treatment of the abovementioned kinds could indirectly affect some specific human rights. When for example a person bribes a medical practitioner or provides him/her a counter-favor in exchange for a privileged treatment, or even just a regular proper treatment that is often

thought bribes were required for obtaining positions and for promotion, Center for Global Development, Governance and Corruption in Public Health Care Systems p.20.

http://www.u4.no/pdf/?file=/document/literature/file_WP_78.pdf. 18 July 2011.

¹⁷ *Ibid.*, p.1.

¹⁸ *Ibid.*

made impossible due to unfavorable circumstances in public health institutions¹⁹, the regular, non-privileged patients are not only discriminated, but their access to health is severely restricted.²⁰

In dealings with hospitals, schools, police and other basic public services, poor citizens tend to suffer more discrimination than the rich and see a larger share of their resources eaten away. Those with the least influence are left with little recourse against corruption, as mentioned earlier.²¹

Therefore, in addition to creating distinction between those who use bribes or connections to obtain regular or privileged treatments in the public sector service delivery on the one hand, and those who do not on the other, petty corruption discriminates against people with poor economic or social status, which represents a violation of the principle of equality and non-discrimination, the fundamental principles of human rights affirmed in all the main human rights treaties.²²

¹⁹ Many medical practitioners that work in public hospitals also have their own medical clinic. Public hospitals are used to pick up clients and send them to their own private clinic, where the doctors will be paid for their service. It is not due to the mere fact that public hospitals do not have adequate equipment and knowledge to help these patients, but rather an opportunity for doctors to extract more money. An additional complication of the problem is the principal agent problem, where the patients do not know what kind of treatment they need, making it easier for the doctors to deceive and extract money; Kahvedžić N., Lošić S., Corruption in Bosnia and Herzegovina-Causes, Consequences and Cures, Master thesis in Economics Department of Management and Engineering The University of Linköping 2010, p.34. <http://liu.diva-portal.org/smash/get/diva2:309905/FULLTEXT01>. 18 July 2011.

²⁰ International Council on Human Rights Policy and Transparency International, p.33. http://www.ichrp.org/files/reports/40/131_web.pdf. 16 July 2011.

²¹ Article 26 of the International Covenant on Civil and Political Rights(hereinafter: ICCPR) prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and its application is not limited to those rights which are provided for in the ICCPR, International Council on Human Rights Policy and Transparency International, Corruption and Human Rights-making the Connection, http://www.ichrp.org/files/reports/40/131_web.pdf. 16 July 2011.

²² UN Charter (Articles 1(3), 13(1)(b), 55(c), and 76); the Universal Declaration of Human Rights (UDHR) (Articles 2 and 7); the International Covenant on Civil and Political Rights (ICCPR) (Articles 2(1) and 26); and the Convention on the Rights of the Child (CRC) (Article 2). Sometimes the references to discrimination make clear that prohibition is not limited to the rights set out in the instrument concerned. For example, Article 26 of the ICCPR, Article 3 of the ACHPR, Article 24 of the ACHR, and Protocol No. 12 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) establish freestanding rights to equality; their application is not confined to the rights contained in those Conventions; International Council on Human Rights Policy and Transparency International, p.34. http://www.ichrp.org/files/reports/40/131_web.pdf. 16 July 2011.

In such cases, when acts of corruption are linked to violations of the principle of equality and non-discrimination or even some specific human rights indirectly, evoking international human rights instruments could act to force accountability on the part of the state or a state/public organ and so create disincentives for corruption. While they do not replace traditional anti-corruption mechanisms – primarily the criminal law – they can give cases prominence, may force a state to take preventive action, or may deter corrupt officials from misusing their powers. They can therefore both raise awareness and have a deterrent effect.²³

Human rights obligations on the part of a state that signed human rights treaties and conventions apply to all branches of government (executive, legislative and judicial) at all levels (national, regional and local). According to human rights jurisprudence, an act (or omission) is attributable to the state when committed, instigated, incited, encouraged or acquiesced in by any public authority or any other person acting in an official capacity.²⁴

In terms of human rights instruments available, Bosnia and Herzegovina ratified/signed most existing International Human Rights treaties and they are all contained in its constitution, certainly including the fundamental human rights principles, the principles of equality and non-discrimination violated by acts of corruption mentioned above.²⁵

In addition to international human rights treaties/conventions, there are human rights institutions in BiH. One such institution is the Institution of Human Rights

²³ *Ibid.* p.6.

²⁴ *Ibid.* p.24.

²⁵ Article II of the Constitution of Bosnia and Herzegovina, contains provisions of Human Rights and Fundamental Freedoms, <http://www.ccbh.ba/eng/article.php?pid=827&kat=518&pkat=500>. 18 July 2011. Article II, Paragraph 4 of the Constitution of Bosnia and Herzegovina contains a provision on Non-Discrimination: “The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. <http://www.ccbh.ba/eng/article.php?pid=827&kat=518&pkat=500>. 18 July 2011.

Ombudsman of Bosnia and Herzegovina (hereinafter IHROBH), an independent institution dealing with protection of rights of natural persons and legal entities in accordance with the Constitution of BiH and international human rights instruments appended thereto. It handles complaints related to poor functioning or to human rights violations committed by any organ of Bosnia and Herzegovina. The cases are opened upon individual complaints filed by natural person or legal entities, or ex officio.

However, IHROBH is limited in the sense that it is only authorized to issue recommendations to competent organs to undertake measures to restore human rights violations or poor functioning of the administration, and it does not have a mandate to deal specifically with corruption. The few references to corruption in the IHROBH statements or cases pertain to corruption in general, in spite of the fact that maladministration or poor functioning of any public organ or employee might be indirectly linked to corruption.²⁶

Secondly, it is difficult to prove discrimination as a consequence of a petty corruption in legal sense. This is largely due to the lack of general consensus on whether or not it is sufficient for a person to be neglected, or “skipped” when waiting to receive a public service, while the privileged ones “skip the queue” and receive the regular service, in order for a discrimination to exist in such cases, without the necessity for the neglected person to fit into one of the grounds of discrimination (e.g. race, gender, social or financial background etc), as suggested by the International Council on Human Rights Policy and Transparency International.²⁷

²⁶ “The purpose of the Law is to ensure qualitative, multiethnic appointment of members of managing bodies of the state-owned public enterprises, i.e. to eliminate the practice resulting in appointment of insufficiently qualified persons in managing bodies of public enterprises, persons with conflict of interests, and to eliminate existing nepotism and corruption, and to ensure representation principles in all aspects.”; The Institution of Human Rights Ombudsman of Bosnia and Herzegovina, Annual Report on Results of the Activities by the Human Rights Ombudsman of Bosnia And Herzegovina 2010. http://www.ombudsmen.gov.ba/materijali/publikacije/GI2010/Annual_Report2010.pdf. 21 July 2011.

²⁷The UN Human Rights Committee has defined discrimination as “*any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*”. Four features of this definition are relevant with respect to corruption. First, acts of discrimination are defined widely (“*any distinction, exclusion, restriction or preference*”), and corrupt acts intrinsically distinguish, exclude or prefer. Second, the definition lists a number of “grounds” for

Discrimination caused by petty corruption is particularly difficult to prove in countries where there is very little case law in this field, such as Bosnia and Herzegovina, where the definition of discrimination is still limited to ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, and the phrasing “other status”, which may include any person neglected or ignored by public official due to the letter enabling someone else to “skip the queue”, is generally ignored. This is the case in many other countries, as the connection between corruption and Human Rights, or the principle of non-discrimination and equality in this particular case is fairly new approach.

In this sense, it is important to stress here that definition of discrimination prohibits acts that have a discriminatory “purpose or effect”. Therefore, by definition, corruption has both a discriminatory purpose and a discriminatory effect. Furthermore, discrimination must bring about the specific result of nullifying or impairing the equal recognition, enjoyment or exercise of a human right, such as the right to life, right to education or right to health. Many corruption cases have such effects; they create distinctions, or exclude, restrict or prefer, in ways that impede individuals from exercising one or more rights.²⁸

However, these effects that corruption creates - distinctions, exclusion, restriction or preference, are not necessarily understood as discrimination by many jurists and legal systems, including those of Bosnia and Herzegovina, as mentioned before.

It is obvious from its reports that the IHROBH too hasn't so far used much of its capacity to address the connection between petty corruption and discrimination, or

discrimination (race, religion, color, sex, etc.) **but those grounds are not exclusive**; inclusion of the term “*or other status*” shows this. http://www.ichrp.org/files/reports/40/131_web.pdf, p.35.

Article 26 of the International Covenant on Civil and Political Rights(hereinafter: ICCPR) prohibits discrimination in law or in fact in any field regulated and protected by public authorities, and its application is not limited to those rights which are provided for in the ICCPR, , Corruption and Human Rights-making the Connection, http://www.ichrp.org/files/reports/40/131_web.pdf. 16 July 2011;

²⁸ *Ibid.*

potentially violations of some concrete human rights. One such capacity would entail that the IHROBH encourages citizens to file complaints in which the latter believe they were the victim of discrimination peculiar to the public service providers and the restricted access to a public service due to some petty corruption act/s in a given public service institution.

As regards the anti-corruption instruments, as a potential mechanism to increase the protection from the indirect institutional discrimination, inequality and the restricted access to a public service, Bosnia and Herzegovina has anti-corruption legal framework, anti-corruption institutions and the anti-corruption strategy. The Criminal Code of Bosnia and Herzegovina, for example, foresees sanctions for a wide range of criminal offences of corruption, such as Accepting Gifts and Other Forms of Benefits, Giving Gifts and Other Forms of Benefits, Illegal Interceding, Abuse of Office or Official Authority, Embezzlement in Office, and the like. Apart from the Criminal Code, the Law on Conflict of Interest in governmental institutions of Bosnia and Herzegovina is available too, as an instrument fighting corruption, and implicitly an instrument fostering a better protection of human rights violations made by means of corruption.²⁹

More recently, the appointment of the top management staff of the Anti-corruption agency of BiH has been finally completed, after years of delays.

²⁹ The Prosecutor's Office of BiH: The Criminal Code of BiH, Chapter nineteen -Criminal Offences of Corruption and Criminal Offences against Official Duty or Other Responsible Duty; Ministry of Justice of Bosnia and Herzegovina: Law on Conflict of Interest, Law on Freedom of Access to Information; In terms of fighting corruption forms peculiar to the public sector service delivery, especially the non-financial, favouritism-based forms of corruption (nepotism, cronyism, etc.), the provision of Illegal Interceding in the Criminal Code of Bosnia and Herzegovina is particularly useful, as it is not bound by particular amount of money as a benefit sought by a wrongdoer, but sanctions anyone who "accepts a reward or any other benefit for interceding that an official act be or not be performed, taking advantage of his official or influential position in the institutions of Bosnia and Herzegovina".

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=41&jezik=e> and

<http://www.mpr.gov.ba/en/str.asp?id=253>. 16 July 2011. UNDP, Anti-Corruption in Eastern Europe and CIS, Bosnia and Herzegovina, <http://europeandcis.undp.org/anticorruption/show/5DFCF132-F203-1EE9-B8338074D57C2E1C>. 22 July 2011.

Unfortunately, the long awaited start of the functioning of the Anti-corruption agency has been seriously overshadowed by reports of alleged political appointments.³⁰

In terms of specific areas in which the abovementioned human rights and anti-corruption instruments could apply in such cases, theoretically there seem to be two main ways to addressing this issue: a.) litigate individual cases of corruption-made discrimination through judiciary, Human Rights Ombudsman, or specific institution in which the abovementioned kind of discrimination occurred, where the focus is to prove the connection between a corrupt act and discrimination in legal sense, and/or b.) take a more systematic (institutional) approach, such as the enforcement of internal rules/regulations based on anti-discrimination³¹(human rights) and anti-corruption principles in public service institutions and the sanctioning of those that breach them, by which the decrease in the level of discrimination and potentially some specific human rights violations caused by corruption in this sector is naturally expected to occur.

A particular limitation of individual case litigation is the problem of evidence, as mentioned earlier. By definition corruption is covert and leaves no paper trail. Collecting evidence is therefore a major challenge. First of all there are the limits of judicial redress, and the judiciary itself may be inefficient for a number of reasons, including political pressure and corruption that affect judicial impartiality, as is reportedly the case with judiciary in BiH, for the most part.³²

³⁰ TI BiH, *The administration Agency for the Prevention of Corruption, appointed by political lines.* <http://ti-bih.org/en/4279/uprava-agencije-za-prevenciju-korupcije-imenovana-po-politickoj-liniji-2/>. 18 July 2011.

³¹ In this particular context, the anti-discrimination rules and regulation would particularly be applicable to the low-income citizens, as a category most vulnerable to corruption and discrimination, and discrimination in this sense primarily implies a privileged status of those who pay bribes, a personal favour or counter-favour, or simply belong to a favoured client-network, as opposed to other similarly placed individuals who have not partaken in bribery or favouritism..

³² European Commission, Commission Staff Working Document Bosnia And Herzegovina 2010 *Progress Report* accompanying the Communication from The Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2010-2011, p. 14. <http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf>. 18 July 2011.

Secondly, if litigation is to have effect, for victims or perpetrators, advocates also need to identify victims, secure their consent to a prosecution and perhaps recruit them as witnesses, all of which can prove difficult.³³

In any case, the petty (everyday) corruption seems to be of such nature that it is highly unlikely it would be best addressed through individual cases, be it through litigation at judiciary, through the intervention of Human Rights Ombudsman Offices in BiH, or addressed by specific public service institution. This is so because of the frequency of the occurrence of petty corruption (it takes place on a daily basis), and the tendency of individuals not to file such complaints or report cases of petty corruption in general.³⁴

The other approach is the systematic (institutional) one, such as, for example, the enforcement of internal rules and regulations based on the above-mentioned human rights instruments (specifically anti-discrimination ones), anti-corruption, and ethical rules and regulations in given public institutions, coupled with a more intense and through monitoring for potential petty corruption activities. In Bosnia and Herzegovina most public service institutions do have internal rules, regulations and ethical codes, but these are obviously not sufficiently enforced in reality, as indicated in the abovementioned and any other report on corruption in the public sector service delivery.³⁵

³³ International Council on Human Rights Policy and Transparency International, p.74. http://www.ichrp.org/files/reports/40/131_web.pdf. 16 July 2011.

³⁴ Sullivan, Drew, 'Where Western Perceptions Clash with Eastern European Realities' Nieman Reports, Spring 2011, Online Exclusives, available at: <http://www.nieman.harvard.edu/reports/article/102593/Where-Western-Perceptions-Clash-With-Eastern-European-Realities.aspx>. 18 July 2011.

³⁵ The International Crisis Group made a report on the rule of law in public administration in BiH back in 1999, with specific recommendations to strengthen the functioning of public services. By and large these build on already-existing civil service procedures on the books and include: enforcing existing civil service laws, enforcing existing hiring procedures, increasing the degree of governmental "user-friendliness," increasing public access to records and documents, de-linking the public administration financing from political party control; International Crisis Group, Rule of Law in Public Administration, Confusion and Discrimination in a Post-Communist Bureaucracy, 1999. <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/084-rule-of-law-in-public-administration-confusion-and-discrimination-in-a-post-communist-bureaucracy.aspx>. 16 July 2011.

Public service sector employees involved in petty corruption activity are very rarely reported or sanctioned by the institution in which they are employed. One potential reason to this is the prevalence of the so called exclusive social network culture, where employees and their superiors protect each other in instances where one of few of them commits a corrupt activity, such as bribery or favouritism-based forms of petty corruption (e.g. Illicit Interceding from the Criminal Code of BiH and the like), the most frequent forms of corruption in everyday life in BiH.³⁶

Such is the case in the public health sector, and this is due to the poor quality of records and the absence of an internal audit function within the health insurance funds and health care institutions themselves make it impossible for auditors to establish in which manner and to what purposes the money that is being allocated to the 13 health insurance funds, 13 Ministries of Health and 264 health institutions with 36.500 medical and non-medical staff is actually spent. The system's fragmentation hinders the collection of data, as does the absence of a common system of controlling expenses. Each fund and each health center or institution has its own records and there is no exchange of information between them. It is therefore impossible to establish where leakages and abuse occur.³⁷

Additionally, as mentioned above, there seems to be a tendency of people in general not to report many instances of petty corruption, as many would not even many petty corruption forms to be unethical or unlawful, among other reasons.³⁸

³⁶ In 2010, the Clinical centre of the University of Sarajevo reported they received 1673 praises from citizens, 52 complaints and one case of bribery reported, but no cases of corruption.; Clinical Centre, University of Sarajevo, Memorandum o saradnji CCI – KCUS, 11 April 2011. http://www.kcus.ba/index.php?option=com_content&task=view&id=669. 24 July 2011. These idealistic and unrealistic figures are certainly very different from figures and perceptions of corruption in the public health sector contained in any and/or all reputable local and international reports, according to which corruption is not only present in the public health sector of BiH to a much greater degree than reported by the Clinical Centre of the Sarajevo University, but in fact it is one of the greatest obstacle to building a good-quality and non-discriminatory public health services. Finally, such reports reveal the strong presence of exclusive social networks/close client networks within the institution; UNDP Bosnia and Herzegovina, Human Development Report 2009; *The Ties that Bind – Social capital in BH*, pp. 6, 12-13. <http://www.undp.ba/index.aspx?PID=36&RID=90>. 18 July 2011.

³⁷ CMI, Corruption in Bosnia and Herzegovina –2005, <http://www.cmi.no/publications/file/?2003=corruption-in-bosnia-and-herzegovina-2005>. 17 July 2011.

³⁸ Sullivan, Drew, 'Where Western Perceptions Clash with Eastern European Realities' Nieman Reports, Spring 2011, Online Exclusives, available at: <http://www.nieman.harvard.edu/reports/article/102593/Where-Western-Perceptions-Clash-With-Eastern-European-Realities.aspx>, 18 July 2011.

Under such circumstances, one commonsensical approach to dealing with this issue on the part of human rights and anti-corruption agencies would be to create external monitoring bodies (e.g. external audits), independent of any influence of the monitored institutions, which would receive complaints directly from citizens.

Conclusion

Any comparative analysis of all available reports on corruption in BiH, including the latest, 2010 European Commission Progress Report, the annual Transparency International Corruption Perception Indexes for the past few years, to name only a few, still undoubtedly shows that BiH has made limited progress in tackling corruption, especially the everyday or petty corruption, since the time the anti-corruption mechanisms were made available, and these findings certainly apply to the corruption in the public sector service delivery.³⁹

Nevertheless, in terms of instruments available for the protection of human rights as a mechanism to fight petty corruption, there are both international and domestic human rights and anti-corruption instruments available in Bosnia and Herzegovina, as indicated above.

In terms of a systematic institutional, non-individual approach to addressing the petty corruption as a discrimination, one may comfortably conclude that the above

³⁹ European Commission, Commission Staff Working Document Bosnia And Herzegovina 2010 *Progress Report* accompanying the Communication from The Commission to the European Parliament and the Council Enlargement Strategy and Main Challenges 2010-2011, pp. 14-15. <http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf>. 18 July 2011. Transparency International Corruption Perception Index (CPI), 2010. http://www.transparency.org/policy_research/surveys_indices/cpi. 15 July 2011.

mentioned ICG recommendations (enforcement of the existing civil service laws, hiring procedures, increasing the degree of governmental “user-friendliness,” increasing public access to records and documents, de-linking the public administration financing from political party control) still apply, given what all report on corruption in BiH show, and the fact that the ICG made no observation of any significant progress of the rule of law in the public sector service delivery since 1999.

Additionally, this set of recommendations should certainly be expanded to include clause pertaining to the connection between corruption and human rights violation, which is nowhere as visible and felt daily as it is in the public sector service delivery.

When it comes to individual approach to cases involving inequality and discrimination caused by petty corruption, these pertain mainly to the work of judiciary and the Institution of Human Rights Ombudsman. The anti-corruption and human rights advocates should advocate that the judiciary and the Institution of Human Rights Ombudsman pay more attention to the connection between petty corruption and discrimination, and start processing such cases (no matter how insignificant and small in number they might be).

Additionally, they should address the existing obstacles to the work of judiciary in Bosnia and Herzegovina (political pressure on the judicial system, the fragmented legal framework across the country, the backlog of case, etc.) at all administrative levels, in order to push for a higher level of judicial fairness and impartiality (fair trial and legal remedy) for themselves or any other individual in judicial proceedings.⁴⁰

Furthermore, it is necessary to continue with promotion and the addressing of obstacles to a better use of Freedom of Access to Information Act as a strong

⁴⁰ *Ibid.* ; One potential example is to evoke the international human rights instruments mentioned above, according to which governments are entitled in law to deprive individuals of their liberty, but they cannot do so in an illegal or arbitrary manner and the use of that power must comply with legal standards of due process that are designed to prevent its abuse and misuse, International Council on Human Rights Policy and Transparency International, p.64. http://www.ichrp.org/files/reports/40/131_web.pdf, 16 July 2011.

anticorruption tool in the hands of the citizens, with the aim of increased transparency of the work of public organs.⁴¹

Finally, the field of intervention is certainly far greater than recommendations in this paper, depending on capacities and creativity of all those genuinely interested in addressing petty corruption as a form of discrimination and a potential violation of human rights in everyday life in Bosnia and Herzegovina. No doubt that interdisciplinary and multidisciplinary approach, which should include sociological and cultural analysis of corruption, among many other disciplines, is naturally expected to yield better understanding of the prevalence of corruption in a society and its connection to human rights and human dignity than the legal domain alone.

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⁴¹ The Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, Annual Report on the Results of the Activities by Human Rights Ombudsman of B&H in 2009, http://www.ombudsmen.gov.ba/materijali/publikacije/GI2009/Annual_Report2009.pdf, p.32.

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