

Interview with Ambassador Brian Aggeler

Head of the OSCE Mission to Bosnia and Herzegovina

Oslobodenje

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- 1. Despite the support of your Mission and many other international partners, domestic judiciary is still struggling with passing convictions for organized crime and corruption. To what extent can this situation be attributed to the politicians and to what extent to the prosecutors and judges themselves?**

Corruption in Bosnia and Herzegovina remains one of the most serious issues facing the country, and it touches all segments of society. Effective efforts to fight corruption have declined over the past decade. In addition to reports issued by the OSCE Mission to Bosnia and Herzegovina (Mission) on the judicial response to corruption, Transparency International's Corruption Perception Index, the latest evaluation by the Council of Europe's Group of States against Corruption (GRECO), the Expert Report on the Rule of Law Issues in BiH (Priebe Report), and the EU Opinion on BiH's EU Membership Application all highlight the severity of the situation.

BiH currently lacks two essential mechanisms for the prevention of corruption: meaningful State-level conflict of interest legislation and a State-level Anti-corruption Strategy covering the period 2024 to 2028.

As described in the Mission's 2020 report on the processing of organized crime and corruption cases in BiH, entitled, *Third Annual Report on Judicial Response to Corruption: The Impunity Syndrome*, a lack of willingness or capacity to process high-level corruption cases in an impartial, professional, and efficient manner has created an environment of *de facto* impunity for those who enjoy power and influence in BiH society. Contributing to this sense of impunity are trends identified through the Mission's comprehensive trial monitoring, including a scarcity of indictments, lenient sentences, low conviction rates, and a lack of confiscation of criminal proceeds. Political influence can pose a significant hurdle, as undue interference in legal proceedings can impede the pursuit of justice.

BiH's complex system of governance creates overlapping responsibilities at different authority levels. This, along with excessively complex, inconsistent and ineffective regulatory and legal frameworks, makes co-ordination of the fight against corruption inefficient and hinders investigations and prosecutions.

Despite the challenges presented in this context, the Mission has helped facilitate significant achievements in fighting corruption. We assist stakeholders across all levels of authority to improve the legislative framework, providing expert legal and technical support to the development of essential anti-corruption legislation, including on conflict of interest at the State- and Brcko District-levels, ensuring that – with Mission support – the latter now aligns with international standards. At the cantonal level, the Mission supports efforts to improve asset declaration and establish anti-corruption offices. Mission engagement resulted in breakthroughs in the use of digital tools in corruption prevention and facilitated co-ordination

between anti-corruption stakeholders while investing in their capacity. We provide technical and co-ordination support to judicial actors and institutions across all jurisdictions to improve the processing of corruption cases, including in relation to the drafting of legal acts, investigative and evidentiary best practices, and the location and seizure of assets.

The issues regularly highlighted by the Mission, along with GRECO, Transparency International, and the EU, among others, can be attributed to a clear lack of political will to combat corruption. Although BiH authorities often voice concerns over the dangers of corruption, they fail to pair this rhetoric with concrete actions that would directly address this issue. The Mission sees this as a true cause for concern and, again, calls on BiH authorities to institute these mechanisms as a matter of priority to ensure the country's progress in fighting corruption. Moreover, political leaders must ensure that society moves away from nepotism, patronage networks, and outright corrupt behaviour, while the judiciary, from law enforcement to prosecutors to the courts, ensures accountability.

The Mission remains committed to assisting BiH authorities in fighting corruption. For our efforts to bear fruit, political figures must also demonstrate their commitment to curbing corruption by ensuring that BiH has a robust legal framework compliant with international standards, by efficiently prosecuting corruption cases, and by establishing a solid institutional framework of independent and professional anti-corruption prevention bodies that have the capacity and means to detect and prevent corruption.

2. President of the High Judicial and Prosecutorial Council of BiH (HJPC BiH) recently stated: “corruption, unfortunately, is a prominent model of behaviour in our society”, adding that the judiciary was unable to deal with this problem on its own. If we have suspended prosecutors, suspected of abuse of office and organized crime, who have still not been sanctioned, who are kept on the payroll, receiving substantial salaries, is the expectation of progress just an illusion?

Despite extensive judicial reforms, BiH continues to struggle with ensuring an efficient and independent justice sector, the lack of which seriously impedes the proper administration of justice. In particular, the judiciary suffers from a lack of accountability and transparency. The Mission's ongoing and extensive monitoring of the prosecution and adjudication of criminal cases, as well as of the High Judicial and Prosecutorial Council (HJPC) BiH itself supports this conclusion. Namely, the Mission's analysis suggests that the HJPC BiH does not meet its obligations to uphold ethical standards and ensure accountability within the judiciary.

The acknowledgment by the President of the HJPC BiH regarding the prevalence of corruption in BiH underscores the challenges faced by the judiciary in addressing this issue independently and effectively and raises serious questions about the effectiveness of current measures. And the longer this situation persists, the more the public will lose trust in the judiciary, even as scepticism about the capacity of authorities to combat corruption grows.

To address these challenges, BiH authorities must take a systematic and inclusive approach that will require amending or adopting relevant policies and improving relevant legal and institutional frameworks. More effort must also be made to strengthen technical capacities to respond adequately and efficiently to serious and complex crimes.

The HJPC BiH, as the body charged not only with appointing judges and prosecutors but also with the creation, review, and dissemination of judicial policy in BiH, must lead the judicial

reform efforts and ensure the highest levels of professionalism, transparency, and accountability. Both the individual members of the HJPC BiH and the institution as a whole should act, and be seen to act, in accordance with the highest ethical standards.

Regarding the overall integrity of the HJPC BiH, the Mission closely monitored the adoption of the integrity amendments to the existing Law on the HJPC BiH. Based on this monitoring, the Mission has consistently raised concerns over challenges in the practical operationalization of these provisions, especially in terms of asset verification and conflicts of interest. These amendments should elevate the standards of integrity and accountability within the judicial sector, thereby inspiring increased public trust in judiciary, but – to do so – they must be implemented effectively and consistently.

When it comes to transparency and public accountability, let me highlight that the Mission recently supported a series of consultations across BiH on the implementation of the HJCP BiH Communication Strategy and the accompanying Media Action Plan.

In sum, the HJPC BiH should be a trustworthy and independent institution that serves as watchdog and protector of the rule of law in BiH. Unfortunately, current practices show that this goal remains elusive.

- 3. The only prosecutor's office that has successfully prosecuted election fraud is the Prosecutor's Office of Brčko District of BiH. The model is simple, investigations are short and efficient. What about the others? Are they unqualified, reluctant to engage due to political influence, or simply determined to do nothing, because doing nothing pays well here?**

The successful prosecution of election fraud by the Prosecutor's Office of Brčko District of BiH underscores the importance and efficacy of a streamlined and efficient investigative model. The Mission has observed similar progress made in other prosecutor's offices, such as Doboj, where a number of prosecutions were initiated promptly.

However, the practice is not consistent across the country. There are several factors affecting the efficiency of the judicial response to election fraud, such as capacities of the police and prosecutor's offices, as well as the number of reported cases. For example, if reports are assessed more efficiently, the backlog will be similarly dealt with more efficiently and investigative actions will improve.

It is essential to use the existing data to analyse the practice and identify the shortfalls. Understanding the root causes is crucial to improving the overall effectiveness of prosecutorial efforts in combating election fraud. Addressing these challenges may involve enhancing the training and qualifications of prosecutors, ensuring their independence from political influence, and fostering a commitment to addressing election irregularities. Transparency and accountability in the judicial system are vital components in building public trust and upholding the integrity of the electoral process. As citizens, the electoral system should serve you, which means you play a critical role in advocating for robust measures to ensure that election fraud is consistently prosecuted across all prosecutor's offices, promoting a fair and just electoral system.

- 4. For years now we are having debates that revolve around the improvement of the electoral process, among other things, by introducing new technologies. After the**

citizens witnessed repetitive discussions and claims that not all locations in our country meet the conditions for introduction of ballot scanners, now the second person in command of SNSD, Nebojša Radmanović, claims that conditions do exist for introduction of electronic voting, but before that happens, “we have to get rid of the foreigners in the Constitutional Court of BiH”. Can we expect the new instance of abuse of the will of the citizens in 2024 elections?

The OSCE Mission deeply regrets the lack of progress in delivering crucial amendments to the BiH Election Law, despite years of negotiations and numerous rounds of discussions. The Mission's survey on citizen perceptions of elections in BiH, published last year,¹ revealed that 60% of respondents consider it essential to amend the Election Law in order to improve integrity, transparency and fairness of elections in BiH. The citizens of BiH clearly desire these significant changes, yet the responsible authorities have failed to fulfil their duty in engaging in electoral reform.

In 2022, the Mission supported the *Pod Lupom* Coalition of NGOs to strengthen their capacity to monitor the elections and report detected irregularities effectively. To further improve the integrity of the election process, the Mission supported the training of five lawyers to research and analyse the judgments on electoral fraud cases and provide recommendations for improvement, so that similar irregularities can be prevented in the future. This too has the potential to improve the trust of citizens in the election process.

It is concerning to witness the neglect of such an important responsibility in a democratic society. The perception of the electoral process as prone to fraud discourages citizens from participating in elections. Citizens do not trust that the relevant institutions will ensure that the process will be implemented according to the democratic standards and that fraud will be prevented, or processed if it does occur. The Mission will continue to call for further improvements that will increase the transparency, integrity, and fairness of elections.

- 5. Rather than focusing on the adoption of the laws specified in the 14 priorities of the European Commission, in the RS we have seen the Defamation Law introduced, and the Law on Foreign Agents is about to be introduced as well. We've seen similar initiatives and even attempts in the FBiH. Rather than really engaging to open the process of negotiations, what the politicians want is to silence the media and activists who refuse to keep quiet about the crimes. How can the journalists and civic organisations be helped to prevent such situation?**

Following recent regressive actions that undermine the enjoyment of fundamental freedoms in the Republika Srpska (RS), including the recent re-criminalization of defamation through amendments to the RS Criminal Code, the Mission views the so-called draft “Foreign Agents Law“ as yet another serious step backwards from the full enjoyment of human rights and fundamental freedoms. Per international human rights standards, elected officials should refrain from taking any action that would undermine and restrict these rights. We, as well as the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's Venice Commission have repeatedly called for immediate withdrawal of this draft law from parliamentary procedure because of its stark collision with international human rights standards on freedoms of association and expression. In addition, all future legislation must

¹ [Citizens' perceptions, experiences and opinions of elections in Bosnia and Herzegovina | OSCE](#)

comply with the international and domestic human rights standards to which BiH has obligated itself.

The engagement of diverse individuals, associations, groups, organizations and institutions in public life is vital in ensuring the fulfilment of and respect for fundamental human rights. Thriving functional democracies rest on the protection of these rights, including the freedom of media and freedom of association. In turn, this enables citizens to come together to realize and enjoy many other rights.

To address the restrictive legislative initiatives in the RS, a comprehensive strategy is needed to support journalists, human rights defenders and civic organizations. International support and advocacy efforts can raise awareness and garner diplomatic backing, while legal assistance and capacity-building initiatives empower those facing legal challenges. Collaboration among media outlets and civic organizations amplifies their collective voice, and public awareness campaigns educate citizens about the potential threats to media freedom and civic engagement. These should be further encouraged and supported. Engaging stakeholders through dialogues contributes to more open and transparent legislative processes, while monitoring and documentation efforts provide evidence for advocacy action. By adopting a multifaceted approach, stakeholders can work collaboratively to protect the rights of journalists and human rights defenders especially in RS.

The Mission shares the concerns and further remains committed to support the work of civil society organizations, human rights defenders and the independent media under attack by this and related legislation. We will continue to closely follow the effects of the retrograde legislative initiatives on fundamental freedoms in BiH and we welcome continued engagement on this and other issues of mutual concern.

6. The project titled: “Informed citizens and efficient mechanisms to prevent and fight corruption funded by the US Bureau of International Narcotics and Law Enforcement Affairs (INL) is implemented by the OSCE Mission to BiH. How satisfied are you with its implementation?”

The implementation of the aforementioned project, funded by the US Bureau of International Narcotics and Law Enforcement Affairs (INL) and implemented by the Mission, officially commenced in March 2021, with an aim of supporting endeavours to curb corruption in BiH. This involves increasing awareness among BiH citizens about the repercussions of corruption and enhancing the capacity of anti-corruption bodies in corruption prevention. The project encompasses various activities, including the implementation of a baseline study on BiH citizens’ understanding of corruption and associated response mechanisms through a comprehensive nationwide public survey.

Additionally, the Mission has organized numerous workshops across BiH, reaching over 140 young people. These workshops focused on educating participants about the benefits of good governance, with an emphasis on transparency and accountability. By imparting knowledge, we aim to empower the BiH youth to play a pivotal role in grassroots corruption prevention. As part of this project, we are actively engaged in building the technical capacity of anti-corruption bodies, focusing on the introduction of innovative ICT tools such as public registries, thereby reinforcing the preventive dimension of the country's anti-corruption efforts. This effort includes intensifying their public outreach and improving their ability to communicate anti-corruption messages.

In the next phase, we are preparing for the official launch of a comprehensive awareness-raising campaign. This campaign aims to discourage BiH citizens from engaging in corruption-related behaviour, utilising insights derived from the public survey.

Citizens, as agents of change, play crucial roles in democratic societies, including in the prevention of corruption. We trust that this project, once fully implemented, will have a significant impact, influencing the future behaviour of BiH citizens when confronted with corruption or contemplating corruptive actions.