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PENAL POLICY FOR CORRUPTION OFFENSES IN CANTON SARAJEVO

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SUMMARY

The purpose of the paper is to describe the practice of courts in Canton Sarajevo (Bosnia and Herzegovina) with respect to the sanctions for corruption offenses, and to compare it to the relevant legislature. The research encompassed 89 cases (with 108 defendants) of trials for corruption at the Municipal and Cantonal court in Sarajevo, in the 2005- 2011 period. The whole population of cases was analyzed, and Sarajevo, being a big administrative center, was selected due to the nature of crimes and territorial jurisdiction of courts. Research suggests that in more than a half of analyzed cases the defendants were found guilty (N=60). In the vast majority of cases (87 %), a suspended sentence was adjudged. Unsuspended imprisonment, which was applied in eight cases, was predominantly imposed in duration of six months. In each case, the punishment was determined in duration equal to the lower bound of the sentence range, and in three (of eight) cases, punishment was mitigated. Only in four cases the security measure of prohibition to engage in a profession, activity or duty, was applied. Community service was applied in none of cases. Therefore, it seems plausible to deduce that when rendering a penalty, courts tended to be lenient. Bearing in mind that criminal law is separated from other law branches by accentuated punitivity, and that by inadequate application of punishment, the decisiveness of the whole criminal justice system declines, it is no surprise that, in the field of criminal and legal response to corruption, Bosnia and Herzegovina does not make good progress. Although criminal law is just a portion of the system of social control, it is its important and necessary part, and if not applied appropriately, may imply inadequate overall outcomes in the field of anti-corruption activities.

Keywords: *corruption offenses, criminal sanctions, penal policy, purpose of punishment.*

INRODUCTION

The relevance of study of the problem of penal policy in the area of corruption-related criminal offenses

The issues of penal responses and sanctioning of offenses have been of great interest to the scholarly public, the experts, and the general public, accompanied by intense media attention. This topic appears commonly as object of debate in gatherings of scholars and experts, with a special focus of discussions on the purpose, implementation and effects of penal responses and sanctioning of corruption-related criminal offenses. Special attention is paid to the policy of penal responses to serious criminal offenses, including corruption, and all of that resulted in numerous international conventions aimed at preventing corruption.

Penal policy, or the policy of punishment, represents a set of measures that the state is using in order to effectively and efficiently confronts crime and provide satisfactory compensation to the victims of crime, by means of applying and threatening to apply penal sanctions. These measures are realized on three levels: legislative, judicial, and executive (Ancel 1959, in Milutinović, 1984). Since the judicial level has the highest level of subjectivity, it most commonly finds itself at the focus of attention of both the experts and the laypersons. Even though the judicial level of penal policy consists of multiple independent bodies, the focus is on courts, i.e. on penal policy of the courts, which may be referred to as penal policy in the strict sense. Stojanović and Kolarić (2010) thus point out that penal policy represents rational and practical activity of courts in the areas of application of sentences and other available penal sanctions aimed at criminal offend-

ers. The purpose of such penal policy is reflected in the attempts to make application of penal codes as efficient as possible (Zlatarić and Damaška, 1966). This means that an adequate sanction must be applied to the offender in each particular case, with the expectation that the sanction will fulfill its purpose to the maximum possible extent.

As its title suggests, this paper is focused on the penal policy in the area of corruption. Understood as a form of criminal activity, corruption is a misuse of one's position in order to further private interests, which is also defined as a crime in the positive legislation of a socio-political community. Defined thusly, the concept of corruption can cover a large number of incriminating behaviors, but in this paper we are only focusing on the "classical" corruption offenses, which include (both active and passive) bribery, illegal mediation, abuse of position or power, embezzlement while in office, and fraud while in office. The protected object (in this case, that is the proper conduct of official or other duty, where official duty is defined as rights and obligations of officials that are aimed at applying their authority, as it is defined) and the intentional criminal act with the aim of accruing benefits, be they material or not, are the criteria that make these the classical corruption offenses

Bosnia and Herzegovina is a country with a tumultuous past. The war that took place in the last century's final decade, the economic underdevelopment that is related to it, along with the absence of democratic traditions and political stability, turned Bosnia and Herzegovina into perfect soil for corrupt practices to flourish. Since the war period (1992-1995), constant problems with the widespread corruptive practices in all segments of the society have been noted. A series of studies conducted in Bosnia and Herzegovina note that its level of corruption is higher than in other Central and Eastern European countries, making corruption one of the most serious societal problems, and an issue that makes the top of the penal and political agenda. Along with these general problems of corruption and corruption-related crime, penal policy with regard to corruption is a particularly unexplored area of research in the Sarajevo Canton, which is most certainly an additional problem this paper deals with, and yet another argument in favor of a need to conduct research in penal policy.

A general view at the legislator's policy towards corruption-related criminal offenses

A crime-fighting policy consists of a totality of preventive and repressive activities which are initiated, implemented and/or supported by the state and its institutions, with the aim of purposeful action against delinquency.[1] This policy can be said to represent a historical constant, as it is clearly discernible in all forms of communities. It has had different manifestations in different time periods. As its special sub-area, the policy of punishment has had a dominant role throughout the history of its development (Milutinović, 1984; Singer, Kovčo Vukadin and Cajner Mraović 2002). Penal policy has thus always been present, but has also always been changing, depending on the socio-economic and cultural development of a society, and on the extent on class oppositions and class struggle (Srzentić, Stajić i Lazarević, 1998).

The definition of a criminal offense depends on attitudes in a society, more precisely, on the attitudes of the ruling class. Additionally, their attitudes define the extent of threatened legal sanctions aimed at the offenders of particular criminal acts, as defined in penal codes. All criminal offenses or felonies may be categorized as lesser, moderate, serious, and very serious (Cvitanović, 1999). Lesser felonies are those for which the maximum legal punishment does not exceed 3 years of imprisonment, while the moderate ones carry a maximum penalty of 5 years of imprisonment. The category of serious criminal offenses is made up of those for which the law prescribes a maximum punishment of up to 10 years' imprisonment. Finally, the very serious criminal offenses are those for which the prescribed maximum sentence is imprisonment of 10 or more years. By placing a criminal act into one of these categories, the significance of a protected good or value is expressed, and the static function of the penal code is realized (Jovašević, 2012).

The current legislation in the Federation of Bosnia and Herzegovina prescribes imprisonment for nearly all criminal offenses in the area of corruption. This is also the case in neighboring Croatia and in Serbia. Currently, imprisonment is, at least in Europe, the punishment that carries the highest level of repression (Cvitanović, 1999). With the aim of providing a better overview of the threat of punishment for the criminal offenses of corruption, their weight is pre-

1 Most authors agree that the term penal policy was first used by A. Feuerbach back in 1804 (though the famous von Liszt [1970] points out that the term, in a somewhat broader sense, was first used by Henke, in 1823), who had thus set the basis for it as an independent discipline (Horvatić and Cvitanović, 1999). Over time, various terms have been used as synonyms for penal policy, such as penal sociology, preventive hygiene, anti-crime policy, and similar (Milutinović, 1984). Though some authors still use the above terms, the term "crime-fighting policy" appears most appropriate and will thus be used in the remainder of this paper.

Table 1 *The weight of criminal offenses of corruption, as prescribed in the Penal Code of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, issues 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11)*

Felony as defined in Art.	380. Par. 1	380. Par. 2	380. Par. 3	381. Par. 1	381. Par. 2	382. Par. 1	382. Par. 2	382. Par. 3	383. Par. 1	383. Par. 2	383. Par. 3	384. Par. 1	384. Par. 2	384. Par. 3	385. Par. 1	385. Par. 2	385. Par. 3
Lesser felonies (up to 3 years.)					×	×											
Moderate felonies (up to 5 years)		×	×	×			×		×			×			×		
Serious felonies (up to 10 years)	×							×		×			×			×	
Very serious felonies (more than 10 years)											×			×			×

Description: Art. 380, Par. 1 – True passive bribery; Art. 380, Par.2 – Non-true passive bribery; Art. 380, Par. 3 – Subsequent bribery; Art. 381, Par. 1 – True active bribery; Art. 381, Par. 2 – Non-true active bribery; Art. 382, Par. 1 – Illegal mediation (basic form); Art. 382, Par. 2 – Illegal mediation (serious form); Art. 382, Par. 3 – Illegal mediation (particularly serious form); Art. 383, Par. 1 – Abuse of position or authority (basic form); Art. 383, Par. 2 – Abuse of position or authority (serious form); Art. 383, Par. 3 – Abuse of position or authority (particularly serious form); Art. 384, Par. 1 – Embezzlement in office (basic form); Art. 384, Par. 2 – Embezzlement in office (serious form); Art. 384, Par. 3 – Embezzlement in office (particularly serious form); Art. 385, Par. 1 – Fraud in office (basic form); Art. 385, Par. 2 – Fraud in office (serious form); Art. 385, Par. 3 – Fraud in office (particularly serious form)

sented in Table 1, by classification as lesser, moderate, serious, or very serious criminal offenses.

Table 1 makes it clear that the offenses of corruption only appear as lesser felonies in just two cases, while there are seven types that appear as moderate felonies, five as serious, and as many as three appear in the category of very serious. If this four-degree categorization is simplified, and the types of felonies divided in two categories, lesser or moderate on the one hand, and serious on the other, 9 acts fall in the former, while 8 fall in the latter category. The lesser and the serious felonies thus appear in similar proportions. However, for the entirety of the penal code, the proportions are 80 and 20%, respectively (Cvitanović, 1999). The disproportion of the (abstract) weight or seriousness of criminal acts of corruption is more than obvious in relation to all criminal offenses.

Along with the provisions concerning the threat of imprisonment, the provisions concerning fines in the penal code are also worthy of comment. Thus article 41 of the Penal Code of Federation of Bosnia and Herzegovina (until the 2010 changes) foresaw that offenses committed for personal gain, which corruption most commonly is, could also be punishable by a fine, as an additional punishment, and even in cases when it is not directly prescribed for a particular offense. Additionally, acts of corruption are singled out by the legislation insofar as they carry a potential of fines much higher (up to 1 000 000 BAM, or more in exceptional cases) than in other cases (where the fine cannot exceed 100 000 BAM).

With all of these factors taken into account, the conclusion that the legislator considers harsh punishments for acts of corruption is not at all problematic, indicating thusly a strong societal condemnation of potential offenders. This is also noted by Stojanović and Kolarić (2010), who point out that such an attitude of the legislator is indeed justified.

In order to keep the penal policy efficient and appropriate for the society, the legislative and judicial policies must "keep up the pace" and function in a synchronized manner (Ignjatović, 2005; Stojanović, 2012). Related to that Ancel (1960) notes that the purpose of crime-fighting policy is not the establishment of an abstract legal order, but a concrete protection of society from crime. Even though the problem of abstract weight or seriousness of criminal offenses is discussed by numerous authors, who state that the issue of legislative penal policy is contentious (Ashworth, 2007, Cvitanović, 1999, Johnstone, 2000, Milutinović, 1981), the thesis that the courts primarily apply the norms of criminal law and are guided by the purpose of the punishment for a particular offense and the purpose of the penal code in general, rather than somehow correcting the intentions of the legislator, seems plausible.

RESULTS OF RESEARCH ON PENAL POLICY IN THE AREA OF CRIMINAL OFFENCES OF CORRUPTION

Bearing in mind the fact that crimes of corruption are similar across countries, a specific reaction to these crimes may be expected from various judicial institutions. This is confirmed by empirical research in Western Europe, in our region, and in Bosnia and Herzegovina as well.

A report by Aebi et al. (2010) in the European Crime and Judicial Statistics Review states that sus-

pended sentences are the most common sanction for the criminal acts of corruption (appearing in around a half of the cases), while unsuspended imprisonment and fines were chosen in one fifth of the cases. In England and Wales, typically not characterized by high levels of corruption, and where corruption is not a serious problem, not acting in accordance with the rules of the office has traditionally been severely punished. Alldridge (2002) thus gives the example of a sentence of 11 years in prison for a person that accepted £ 18 500 in exchange for leaking confidential information to a defendant in a court case, and for destruction of records of illegal spying. He also provides an example of a bureaucrat who received £ 500 to illegally place a seal on the bribe-giver's travel document. The Bannenberg research project in Federal Republic of Germany showed that, out of a total of 436 defendants in 208 criminal processes, about one fifth were found guilty (1.8% were fined, and 16% of all defendants were sentenced to prison). In nearly 30% of cases, however, there was no information about the outcome of the process, while a further 8% of cases were in waiting for the court to convene after the charges had been officially raised. Most of the processes had been abolished, for various reasons. Out of the total number of cases in which there had been verdicts, imprisonment was by far the most common sanction (in nine out of 10 cases). In a bit more than half of the cases a prison sentence under two years had been issues, while the longest prison sentence was in duration of six years and three months. In nearly all cases of prison sentences of up to two years, the sentence was commuted and turned into a suspended one. Nevertheless, unsuspended imprisonment features highly in the total number of sanctions, as it appears in more than one third of the cases. Similar results were found in earlier research by Schönherra (1985). His analyses, based on 300 court cases with about 750 defendants, all in the area of bribery in the business community and outside it, thus found that unsuspended prison sentences were issued in 27% of the cases in the area of the economy, but only in 5% of cases outside the economy. The most common sentence for bribery in the economic sector was suspended imprisonment, while for bribery outside the economic sector fines were most common, as they were prescribed in 67% of cases, in the amount equaling 31 to 90 daily pays. The most common unsuspended sentence was between three and twelve months, while sentences in duration of more than two years were handed in about one quarter of cases.

Đorđević (2012), Stojanović and Kolarić (2010), and Tanjević (2010) report on the disproportions between the prescribed sentences in the Republic of Serbia's Penal Code, and the actually handed sentences to the offenders, in cases of corruption. Đorđević (2012) finds that the prison sentences in these cases are often below the legal minimum, that the fines for offenders are exceptions, as are security measures, which only appear in about 5% of the cases. Ignjatović (2005) points out that, even though it is extremely important for prevention of crimes of corruption committed by officials, the measure of ban of working in a profession, activity, or function is only applied in exceptional cases, and is the least applied measure of all. In a somewhat older piece Peković (2001) states that, in the Republic of Serbia, suspended sentencing is the dominant response to criminal offenses of corruption committed by officials, as it was prescribed in 77% of the cases, while imprisonment was the result of less than one quarter of all cases. Mrčela, Novosel and Rogić-Hadžalić (2012) reported that, in the Republic of Croatia, in the 2008-2010 period, suspended sentences had been issued for slightly less than two thirds of the cases, while the sentence to prison was applied in slightly more than one third of the cases. In one in three cases, the benefit gained by corruption was confiscated from the persons found guilty.

Mujanović (2011) states that in Bosnia and Herzegovina, the sentences for criminal offenses of corruption are being issued much closer to the legal minimum. Datzer (2012) reports that for criminal offense of bribery are punished by suspended sentences (for about two thirds of perpetrators, with the average length of monitoring of 1.8 years), while the unsuspended prison sentences are issues in 14% of cases (every seventh perpetrator), with the average length of the prison term of 6.5 months. The rare application of the prison sentence can be justified by the situational character of corruption transactions, with very low monetary value of bribes (the most common value of the bribe was just 20 BAM), where courts concluded that applying an unsuspended prison sentence would not be appropriate or purposeful. A fine was issued as the dominant punishment for one perpetrator in eight (with the average fine at 3 000 BAM), while one in ten were issued a fine as a secondary punishment, with the fines in these cases averaging at 7 100 BAM. The measure of confiscation of illegal gains was issued to nearly three fifths of the perpetrators, which can probably be attributed to the fact that many cases were those of offering bribe to police officials, where the other side immediately reported the offense and demanded that the offered money be temporarily removed from the person. The latter is particularly important, as objects gained through bribery or which served in order to

bribe are obligatorily and permanently confiscated, thus providing a reasonable explanation for the large proportion of the measure of confiscation of gains/objects used for bribery. In two cases (about 4%), the punishment was mollified by applying the legal provisions on extenuating circumstances.

Even though the conclusions are at the level of impressions, especially given the heterogeneity and lack of temporal overlap which make any comparison difficult, it does appear that European countries and some of the countries in the region respond to corruption with stricter sanctions. Primarily, this means that the courts are more likely to issue sentences than in Bosnia and Herzegovina, and that the sanctions were more strict. Sanctions and measures that aimed to rectify the damage or materially fine the perpetrator have also been issued more commonly in those countries.

AIMS NAD HYPOTHESES OF THE PAPER

Since our paper is aimed at conducting an empirical test of the congruence of the legislator's penal policy and the courts' penal policy, the scientific aims of the project are primarily heuristic and descriptive. We are trying to find out what types of sanctions are foreseen by the legislator for criminal offenses or felonies in the area of corruption, and to compare these abstract aims with the sanctions actually issued in particular criminal cases. The data encompass the type and extent of sanctions, the circumstances that guided the court in the decision-making process, and the level of gains achieved by the criminal act. Finally, a good impression of the level of punitivity exhibited towards the criminal offenders will be had. The paper only deals with the Canton Sarajevo, a territorial unit in the administrative system of the Federation of Bosnia and Herzegovina. One of the broader goals is also the raising of awareness of all segments of society about the penal policy towards criminal offenses in the area of corruption, which should also contribute to a strengthening of the will to act against corruption crimes.

With an appreciation of the work discussed above, this paper is based on the assumption that, **when choosing the type and extent of sanction in the area of criminal offenses of corruption, the courts are characterized by application of low levels of repression**. This essentially means that courts tend to hand lighter (by type) sentences, and to a lesser extent (i.e. those at or below the legal minimum for the offenses in question). This assumption will be concluded upon after testing a series of detailed hypotheses that stem from it. One of the basic suppositions that will be tested concerns judicial practice, and it states that the perpetrators of criminal offenses of corruption are rarely facing major penal sanctions (punishments), and that even when these are issues, they are closer to the legal minimum, or when provisions concerning extenuating circumstances are applies, they are often below the legal minimum. It is further hypothesized that fines, as additional punishment, are rarely issued to the perpetrators of criminal offenses of corruption, and that the courts are trying to fulfill the purpose of punishment by issuing warning measures, typically suspended sentences. Along with the already stated, the testing of the basic hypothesis will be contributed to by a test of the claim that security measures which the courts have available as options when deciding on sanctions are rarely issued to the offenders in the area of corruption.

METHODS

The main research method for the purposes of this paper has been content analysis of official documents. In the social sciences, content analysis is considered one of the most important research methods, and a successful alternative to research by conducting interviews and surveys (Krippendorff, 2004). Application of content analysis of judicial decisions provides a basis for a detailed image of the registered delinquency and the path of the criminal procedures, along with a basis for an arguments-based discussion on penal policy implemented by the courts.

The paper analyzes the decisions of the Municipal and Cantonal courts in Sarajevo. The decision to limit the analysis to Sarajevo alone stems from the fact that Sarajevo is the capital of Bosnia and Herzegovina, a city which is the administrative center, and the seat of numerous municipal, cantonal, entity and state institutions. Given that corruption presupposes the perpetrator to have an official position or similar position of responsibility, it is reasonable to expect that these courts, with jurisdiction for the Sarajevo area, would also be dealing with the bulk of cases in the area of corruption. This is indicated by the data from the High Judicial and Prosecutors' Council of Bosnia and Herzegovina as well, which state that, in the 2009-2011 period, the Cantonal Prosecutor's Office in Sarajevo initiated the largest number of indictments for criminal offenses of corruption, while the corresponding courts passed the largest number of verdicts in that area of law, when compared to the other prosecutors' offices and courts in Bosnia and Herzegovina.

The data presented and discussed here were acquired as part of a wider research project, con-

ducted as one of the co-authors' Master's thesis project, entitled "Penal policy in the area of criminal offenses of corruption". Before the project was initiated, the researcher asked for, and acquired access to the judicial documents of the relevant bodies of both the courts that the project was conducted in. After the access to files was granted, the list of the lawfully concluded cases decided before the respective courts was delivered. Though rather improbable, it is possible that the courts have not, for various reasons, delivered the full list of cases. For that reason, the data were compared with the list of lawfully concluded cases from the Case Management System of the High Judicial and Prosecutors' Council of Bosnia and Herzegovina. For the period of 2008-2011 (the CMS database did not exist before 2008), the numbers have matched, indicating that the researcher could commence the analysis of individual cases.

Since this paper is aimed at the penal policy in the area of corruption-related criminal offenses in the Sarajevo Canton, the analysis included all of the lawfully concluded corruption cases that were available in the courts that had the jurisdiction in the area, for the period starting January 1st 2005, and ending on December 31st 2011. Since a five-year period is generally considered a sufficiently long one for the purpose of grasping and researching phenomena in the social sciences (Zelenika, 2000), the period chosen here is sufficient in order for sensible and reliable conclusions to be drawn. As these sorts of cases do not appear often before the courts, the data were gathered for all cases on the list, and there was no need to draw their sample.[2] Insight into the cases was partly drawn from the CMS, while a part of the verdicts was available in physical form. For the purpose of data acquisition, the original database form was used, created especially for the purposes of the project at hand.

The unit of analysis is a verdict, meaning a judicial decision that discusses the penal demand as expressed in the indictment. Data referring to 50 categories were analyzed in each of the verdicts, and these categories were grouped into 11 areas, listed here as follows: information regarding the particular offense that the process is about, information about the offender, chronology of the court proceedings, form of penal process and consensuality, the way in which the criminal act was revealed, activities of provision of evidence in the process, the sanctioning, the determined penal sanction, procedure for legal remedies. Coding and noting of the data were not a problem, since the decisions of the courts are precise and clear, in content and structure, utilizing established institutes and concepts of the area of law they are dealing with. It is possible to easily determine information such as the identity of the defendant, their demographic characteristics, offense they are charged with, the amount of the intended/realized illegal gain, how harsh the sanction was, etc. Precisely because the texts were so clear and because the content was so manifest, there was no need to hire additional researchers for the purpose of assessment of consistency of coding. These procedures are standard in content analysis of other materials (e.g. media content, newspaper articles, and similar) (Bachman and Schutt, 2007), but this is not the case in analysis of adjudication. Hagan (2005) takes the position that the coding of data ought to be split among several coders if the analyzed materials are bulky, which was not the case in our project.

We used the analysis of frequencies as method for analyzing data. The data are given in absolute and relative frequencies, in tables and in graphs.

RESULTS

General information

A total of 89 court cases were found that fit our criteria in the seven-year period we researched. Of those, 62 cases came from the Municipal Court in Sarajevo, and 27 from the Cantonal Court in Sarajevo. As several persons may be indicted in each of the cases, the structure of the verdicts and sentences ought to be represented in relation to the total number of persons against which these proceedings were held (Table 2).

Table 2 *Lawful verdicts and decisions for persons indicted for criminal offenses of corruption*

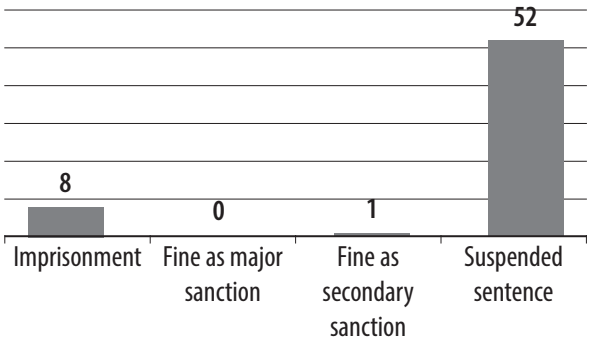
Lawful decision	**N**	**%**
Conviction	60	55.6
Verdict of "not guilty"	28	25.9
Process rejected	9	8.3
Process halted	4	3.7
Indictment altered	7	6.5
Total	108	100.0

Table 2 indicated that the proceedings for criminal offenses in the area of corruption were concluded for 108 persons. Slightly more than one half of those were found guilty, while the cases against 8% of them were rejected. For slightly more than 10%

2 The appendix provides a detailed list of all the analyzed, lawfully concluded cases.

of indicted persons the cases were halted, or the indictments were altered. When it comes to altered indictments, we should point out that those have been, with no exceptions, reclassifications of the offenses into the lesser categories (but all offenses were still classified as felonies/criminal offenses).

One of the hypotheses was that the courts are trying to fulfill the purpose of punishment by measures of warning, utilizing mostly suspended sentencing. Our findings in this regard can be seen in Graph 1.



Graph 1. *The frequency of penal sanctions*

The results show that the courts have issued a suspended sentence in 52 (a little less than 87%) of the cases. Graph 1 shows that this measure is by far the dominant one among sanctions towards the perpetrators of criminal offenses in the area of corruption.

Bearing in mind that the intent of the perpetrator is to acquire some sort of gain, most commonly material gain, we shall provide data regarding the amounts of money that were involved in the cases. It ought to be added that money is the most common form of gain acquired by corruption (in 9 out of 10 cases). The average value of these illegal gains is more than 25 000 BAM. The minimal amount of illegal gain was around 600 BAM, while the highest recorded amount was slightly more than 120 000 BAM, if the outlying case, where the illegal gains amounted to nearly 2 000 000 BAM, is not considered. In nearly half of the cases, illegal gains were higher than 10 000 BAM.

Though similar, each of the acts of corruption bears its own specificities. Thus it makes sense to consider the data from the previous passages with regard to particular crimes (Table 3).

Table 3 indicates that the lowest overall gains were acquired by means of illegal mediation, while the largest came from embezzlement. Besides, the average value gained through embezzlement (as the most common illegal act in the population of cases) is ten times the size of that gained by passive bribery, and twenty times that realized by means of fraud. The largest mean value of illegal gains is seen in the category of abuse of position or authority, and this value is nearly three times that of average illegal gains from embezzlement.

Data on punishment

Graph 1 clearly indicates that the perpetrators of crimes of corruption were sentenced to prison in slightly more than one eighth of the cases, while in others (nearly 87%) this major penal sanction was not applied.

Table 4 provides the results concerning the weight of the applied prison sentences for perpetrators of crimes of corruption.

It is evident that the courts have applied a prison sentence for a mere eight perpetrators, and for four types of acts of corruption. Additionally, when the data are compared to the legal framework for sen-

Table 3 *The amounts of illegally acquired gains*

	Accepting a gift and other types of gain (N=2)	Illegal mediation (N=1)	Abuse of office or authority (N=10)	Embezzlement in office (N=38)	Fraud in office (N=2)
Mean	2.100,00	700,00	59.108,89	20.551,28	1.252,01
Minimum	2.000,00	700,00	1.871,92	600,88	908,39
Maximum	2.200,00	700,00	119.921,23	120.075,30	1.595,70

Table 4 *Length of threatened and applied sentence of imprisonment*

Offense in Art.	Threat of punishment (in months)	Applied sentence of imprisonment (in months)				Total
		6	12	18	36	
380. Par.1	12-120	1*	-	-	-	1
380. Par.2	6-60	1	-	-	-	1
383. Par.3	At least 36	-	-	1*	1	2
384. Par.2	12-120	1*	3	-	-	4
Total		3	3	1	1	8

*Sentences applied by the courts which are under legal minimum

tencing, it is clear that all the sentences of imprisonment applied by the courts in these cases have been at the legal minimum or below it. More precisely, three out of eight applied sentences have been set below the legal minimum, and that the minimal sentence was applied in all the remaining cases of unsuspended imprisonment.

Furthermore, it is important to point out that not even the corruption acts committed in concurrence with other criminal offenses had seen an application of sentences that approach half of the foreseen range of sentences, and much less the legal maximum.

As a secondary punishment, a fine was issued to a single perpetrator. No fines were issued as primary means of punishment.

In their discussion of the sentences for criminal acts of corruption, the courts listed the following as extenuating circumstances: no prior offenses (in 6 cases), family situation (in 4 cases), remorse and length of time since the offense took place (in two cases each). The courts listed inculpatory circumstances in just three verdicts, with each one being applied to a different perpetrator, all concerning the means of acquiring illegal gains, and the intent with which the acts were committed. These data are based on seven verdicts only, since one of them does not list any special circumstances that were taken into consideration during the measuring of the type and extent of the applied sentence.

Data on other penal sanctions

As stated above, courts in the Canton Sarajevo have most commonly applied suspended sentences to the perpetrators of acts of corruption. For the purpose of completeness of information in this paper, we are also providing information on the length of the prison terms applied in sentences for corrupt behaviors, but for whom this sentence was merely conditional. The extent of these sentences is displayed in Table 5.

As in the cases of unsuspended prison sentences, Table 5 shows that the courts have applied the minimal legal sanction, or have even gone below it, in all the cases of suspended prison sentences. In 15 cases (or 29%) the courts applied a sentence that was below the legal minimum. It should also be particularly noted that a suspended sentence was applied even in some cases that were inadmissible for it under the Penal Code. The provisions on reduction of sentences for felonies that carry a minimal prison sentence of three years, the reduction cannot be more than one year. The same law states that for felonies that carry a prison sentence that cannot be reduced to under a year cannot be commuted to suspended prison sentences. Nevertheless, this happens in 7 cases, 4 times when the perpetrators had committed the crime of abuse of official position, and 3 times in sentences for perpetrators of embezzlement. All of these cases concerned acts classified as very serious criminal acts.

When selecting a legal sanction (in cases of suspended sentences), the following extenuating circumstances were most commonly considered: no prior convictions (in 30 cases, or 75%), confession (21 cases, or 52%), circumstances of the family (19 cases or 47%), attitude towards the court (13 cases, or 32%), relative youth or old age of the perpetrator (12 cases, or 30%), material circumstances of the perpetrator (in 7 cases, or 17%), remorse (6 cases, or 15%), and restitution of the illegally acquired gains (6 cases, or 15%). On the other hand, the courts found inculpating circumstances in two cases only, and on both

Table 5 *The extent of threatened and applied sentence of imprisonment in cases where suspended sentence was applied*

Offense in Art.	Threat of punishment (in months)	Applied sentence of imprisonment (in months)												Total
			3	4	6	7	8	10	12	16	18	24	36	
381. Par.1.	6-60	-	-	-	2	-	1	-	1	-	-	-	-	4
381. Par.2.	Do 36	-	1	1	-	-	-	-	-	-	-	-	-	2
383. Par.1.	6-60	-	-	-	1	-	-	-	-	-	-	-	-	1
383. Par.2.	12-120	-	-	-	1*	-	-	1*	1	-	-	-	-	3
383. Par.3.	At least 36	-	-	-	-	-	-	-	1*	-	-	3*	-	4
384. Par.1.	6-60	1*	3*	1*	5	4	3	-	3	-	1	-	-	21
384. Par.2.	12-120	-	-	-	-	-	-	1*	7	1	2	-	-	11
384. Par.3.	At least 36	-	-	-	-	-	-	-	1*	-	2*	-	1	4
385. Par.1.	6-60	-	-	-	1	-	-	-	1	-	-	-	-	2
Ukupno		1	4	2	10	4	4	2	15	1	5	3	1	52

Description: Art. 381, Par. 1 – True active bribery; Art. 381, Par. 2 – Non-true active bribery; Art. 383, Par. 1 – Abuse of position or authority (basic form); Art. 383, Par. 2 – Abuse of position or authority (serious form); Art. 383, Par. 3 – Abuse of position or authority (particularly serious form); Art. 384, Par. 1 – Embezzlement in office (basic form); Art. 384, Par. 2 – Embezzlement in office (serious form); Art. 384, Par. 3 – Embezzlement in office (particularly serious form); Art. 385, Par. 1 – Fraud in office (basic form)
*Sentences applied by the courts which are under legal minimum

occasions the circumstance was that of the perpetrator's prior criminal conviction. These findings are drawn from 40 cases, as the courts listed no extenuating or inculpating circumstances in the remaining 12.

These results on the extent of the unsuspended prison sentences and the threatened prison sentences clearly show that nearly one in three sentences had been commuted below the legally prescribed lower threshold. In all the cases that included an explanation of the sentence, the courts listed the existence of extenuating circumstances. These circumstances, however, have typically been "regular" circumstances as prescribed in the provisions on sentencing, which have been interpreted by courts as "extraordinary", i.e. extenuating. Typical examples of these are the "no prior convictions" and "good attitude towards the court" circumstances, which were supposed to be these extenuating circumstances that the courts based their commuted sentences on.

Our results show that security measures were applied in just 4 of the 60 cases, i.e. less than 7%. It ought to be noted that the measure of ban on taking part in a profession, activity, or function was the applied measure in all 4 cases. This measure was applied to one person convicted of the criminal offense of accepting a gift or other gain, and to three persons convicted of abuse of office or authority.

According to our results, the courts had not issued a single sentence of community service in the researched period.

The courts only applied the sentence of confiscation of property in a single case, and applied fines in further four cases.

DISCUSSION

Penal policy is an extremely important social factor, one that is more commonly debated by representative bodies and bodies of social and political organizations than any other issue of criminal law (Horvatić, 1980). The impact of these bodies has been formative of judicial penal policy for more than a century, guiding it mostly towards a more lenient approach (Ignjatović, 2005). These general circumstances, along with a series of those that relate to the issues of discovery and proof of corruption criminality, justify the hypothesis that the judicial policy of punishment for acts of corruption is characterized by an application of a small measure of repression. The results of our research confirm this hypothesis.

First of all, the previous section shows that the **perpetrators of criminal offenses of corruption are rarely handed major (unsuspended) penal sanctions** (imprisonment and fines). The extent of avoidance of such sanctions can best be seen in the fact that similar sanctions are being applied to perpetrators of the lesser and the most serious acts of corruption, even though the latter is strictly banned by the penal code. Our results confirm those of Datzer (2012), Maljević (2011), but also those of Đorđević (2012), and Stojanović and Kolarić (2010). This could lead to the conclusion that the courts consider cases of crimes of corruption as those where the purpose of punishment can rarely be achieved by means of application of the major penal sanctions, and could be brought about by the facts of the cases of these felonies, e.g. the facts could point to the cases being those of lesser felonies. However, bearing in mind that the acts committed in the cases seen by the courts have nearly all been committed with direct intent, were motivated by personal gain, along with rather large average gains that were realized by means of corruption (average value of 25 000 BAM, as above), this potential explanation is not grounded in fact, or at least not firmly grounded in fact. Another reason for the rare application of punishments could be the knowledge of their effects. Namely, Kovčo (2001) discusses the negative effects of imprisonment, and arguing in favor of their replacement with alternative sanctions. Additionally, the courts may have also had the issue of overcrowding of prisons in Bosnia and Herzegovina in mind. On the other hand, fines are often not easily remunerated, possibly because of numerous issues regarding determination of the extent of a fine, its effect, and the possibility that the perpetrator is unable to pay the fine. For these reasons, fines are often not the sentences that fulfill the purpose of punishment (Nadrljanski, Milić Žabljan and Gazivoda, 2012), and are thus avoided by courts. It should also be noted that the legislator has only foreseen this type of punishment for two crimes of corruption, and only when they appear in their lesser forms. This circumstance must surely have an impact on the frequency with which this punishment is applied, and therefore has to be taken into consideration.

Even if our results cannot provide a basis for unequivocal conclusions about the adequacy of sanctions as special prevention, they can surely provide a basis for conclusions about the adequacy of these sanctions in the sense of general prevention, which cannot and must not be underestimated (Zipf, 1980; Zorica, 2001). Bačić (1998) points out that in the case of those offenses that are approached

by the perpetrators with a calculated risk of punishment, which are common in a particular community, and which may be connected to organized crime, all of which are criteria that may be applied to corruption, the demands of general prevention should be particularly, and to a greater extent, considered. We can conclude that the aim of general prevention is not completely fulfilled in this case,[3] which is noticed by the representatives of the judiciary themselves (Barašin, 2009, in Matijević, 2012). General prevention is primarily based on punishment (Milutinović, 1981). A rare application of punishments for those crimes of corruption for which the law foresees harsh punishment also means a lenient penal policy, i.e. minimal levels of general prevention. If the application of sanctions is aimed to show to the potential perpetrators what follows after a crime is committed, failing to apply these sanctions is also a failure to fulfill a general function of prevention that criminal law is supposed to have. Related to that, Stojanović (2012) states that the punishments that are not applied have no general-preventive effect, and are making the harshness of the legally prescribed sanction rather pointless.

Avoidance of custodial measures can have a justification in the economic, penal, political, and other senses, but it should not be forgotten that their alternatives, primarily the suspended sentence, are not meant to be their own purpose, and ought not be taken lightly. To this we should add the position expressed by Cvitanović and Glavić (2011), who warn that an "ordinary" suspended conviction (without other obligations that go along with it) often carries with it the risk of being understood as the court's plea to the perpetrator to abstain from such behavior in the future, rather than as a punishment for the committed deeds. That is why these authors advocate the revitalization of the suspended sentence by adding to it some new obligations and other repressive content, all with the aim of the greater likelihood of individualization of sanctions. When it comes to crimes of corruption, this would primarily include the restitution of illegally acquired economic gains, and a restitution of damages caused by criminal behavior.

Our results also confirm the hypothesis that **sentencing for criminal offenses of corruption is applied with punishments close to the legal minimum**, and thus substantiate the findings by Đorđević (2012), Maljević (2011), Stojanović and Kolarić (2010). It appears that the latter two thirds of the range of punishments is not used at all for the said felonies. Though this should be judged on the basis of a more detailed analysis of the facts of the cases, it is difficult to believe, in the words of Jakulin (2012), that all corruption crimes discussed by the courts fall into the category of lesser crimes whose perpetrators deserve a punishment at or below the legal minimum. This is particularly obvious when taking into account the extent of guilt, the motivations of offenders, and the extent to which the protected goods and values are threatened.

If we think of guilt as a subjective relation of the perpetration towards the felony which consists of three key elements, 1) legal sanity, 2) intention or negligence and 3) awareness of illegality, we may conclude that the level of guilt is generally high among offenders in this area of criminality. The felonies that are the object of this paper can only be committed willfully, with intent, which also implies a consciousness of illegality of the behavior. Additionally, the data that show that the perpetrators are of decreased accountability only in rare cases (Vujović, 2013) lead use to conclude that there is, in principle, a high level of guilt among the perpetrators of corruption. The offenses discussed here are typically motivated by personal gain, one of the basest motivations, while the extent to which protected goods and values are threatened is very significant.[4]

The courts have justified their decisions with numerous extenuating circumstances, but also with near-nonexistence of inculpating circumstances. In a number of cases they used "ordinary" extenuating circumstances as arguments for non-mandatory judicial reduction of punishment, as was discussed by Kos (2003), who warns of an existence of a nearly independent, isolated penal policy as practiced by the courts, which ignores the legal boundaries of punishment. Such practices are criticized by Horvatić (2004) as well, who notes that circumstances that are by no means extraordinary are often taken into account as such and used as a basis for a reduction of applied punishment. These are indeed just ordinary circumstances that should be taken into account when deciding on punishment, and not exceptional extenuating circumstances, which Horvatić (2004, 423) states ought to be "different from those that have been conceived of on the basis of abstract risk of a behavior, when the legislation was being passed and punishments for a particular

3 This is partly confirmed by the public attitudes. Thus the media reports on crimes of corruption include headlines such as "Crime that does pay" (RTRS, 2013), and similar.

4 For more on this matter, see Vujović, 2013, p. 76-77.

crime had been prescribed." In this case, we may state that the penal policy of the relevant courts in Sarajevo is not *contra legem* when it comes to selection of sanctions, but is most certainly *praeter legem*. In relation to that, Horvatić (1979) points out that such sentences are only legal at a first glance, because they have been determined within the boundaries of law, but are only fully legal if they are individualized in a manner that ensures the fulfillment of the purpose of punishment.

It is clear that the penal policy of the courts depends on numerous and various factors. The question of the reasons for a lack of congruence between the legislator's and the courts' penal policy ought to be considered: e.g. is it the case that the legislator caused the conflict with the judicial policy by stimulating the judicial practice to act as it does, as a result of overly flexible and broad boundaries of penal legislation (Stojanović, 2012). As was expected, the responsibility is constantly being transferred from one to the other, as suggested by the various proposals for the solution of the problem. With the aim of neutralizing the disconnection between the legislative and judicial penal policy, Kos (2003) recommends that the legislator prescribes such punishments that would fit the average already applied by the courts. On the other hand, there are attempts at solving the problem which suggest a ban on reductions of punishments for particular criminal offenses (Tanjević, 2010).

Datzer (2012) and Đorđević (2012) both find that **fines (as auxiliary or secondary punishments) are only rarely or never adjudged to the perpetrators of criminal acts of corruption**, and this finding is confirmed in this paper as well. The fact that personal gain is the most common motivation for these acts could lead us to expect that fines would be applied as appropriate punishments in some cases. Nonetheless, the courts have found, unequivocally, that this sort of punishment does not contribute to the fulfillment of the aims of punitive measures.

For comparison's sake, Bannenberg (2002) reports that one tenth (of the 79 cases in which there was a conviction) of cases in her sample carried a sentence that included a fine as primary punishment. A further six cases applied fines as auxiliary. Even though this information alone leads us to conclude that German courts had been more strict than the courts discussed in this paper, we should add that, on top of that, in five more cases the economic gains of the illegal act of corruption were confiscated, and in two the object used in the act of corruption itself was confiscated. Additionally, the courts posed additional obligations along with suspended prison sentences in 18 cases, primarily the obligation to pay a certain sum of money to institutions of general interest, as well as restitution. Bannenberg warns that the number of these additional conditions may be greater, as many of the cases were concluded in negotiations on guilt, where one of the conditions was restitution in civil processes, or through voluntary donations. In sum, we may conclude that the German courts have given special attention to the essence of what corruption most commonly is about: material gain. Though their nature and purpose is not the same (e.g. fines cannot become a way of ridding the perpetrator of his/her illegally acquired gains), all of those sanctions and measures can be effective means of preventing crimes of corruption, in which sense Bačić (1998) notes that, in a consumer society, where money plays a decisive role, such measures may contribute to the restitution of damage and can hit the living standards of the offender, thus fulfilling both the general and particular preventive function. *A contrario*, if the perpetrators are allowed to enjoy the fruits of their criminal activities, and if the total reaction of society is reduced to a warning, the message sent to the offender, and to the rest of the community, can hardly be appropriate for the fulfillment of (social and ethical) functions of criminal law.

A suspended sentence, as a warning measure, is the most commonly adjudged to the perpetrators of crimes of corruption. This is shown not just in our research, but in the works of Datzer (2012), Maljević (2011), Mujanović (2011), Đorđević (2012), and Stojanović and Kolarić (2010) as well. Apparently, the courts consider this sort of response to be the one that achieves the maximum effect when it comes to the purpose of punishing the offenders. This also indicates a belief in the courts that a prison sentence is too harsh for those who commit acts of corruption, so that they consider a warning with a threat of punishment a sufficient sanction, in spite of the fact that the legislator has disabled the option of alternation for imprisonment in the most serious cases of corruption. Nonetheless, regardless of the courts' own views on the matter, the courts ought to follow the provisions of material criminal law, which has not happened in a number of cases. Two explanations of the situation are possible, both of which stem from the verdicts in which the courts refer to particular provisions of the law concerning the selection of type and extent of the penal sanction. The first explanation is that the courts have misinterpreted the provisions on reduction of punishments

prescribed in the Penal Code of the Federation of Bosnia and Herzegovina. Namely, the law forbids a meting out of a suspended sentence for felonies that cannot be commuted, by means of extenuating circumstances, to less than one year of imprisonment. However, for the most serious forms of criminal acts of corruption, the punishment may be reduced to one year of imprisonment. Taking into consideration the fact that a sentence of imprisonment that is longer than 6 months is cited in full months, it becomes clear that there is a month's difference between the aforementioned cases. The second explanation could be that the courts have been misinterpreting the provisions on the determination of punishment for cases in which there is an agreement on the confession of guilt, which are prescribed in the Law on Criminal Procedure of the Federation of Bosnia and Herzegovina. In cases where an agreement on the confession of guilt is made, this law allows for a reduction of the prescribed sentence, in both type and extent, without explicitly noting the already notorious fact, stated by Sijerčić-Čolić et al. (2005), that the provisions of material penal legislation must also be respected. Should these not be respected, a situation in which the provisions concerning process derogate the provisions of material law. That situation can hardly be justified by ignorance, mistake, or similar, because the judicial bodies must know the regulations they are enforcing.

It is also important to point out that these are felonies in which we often see a sort of collective victimization, which makes the courts less likely to provide much attention to the purpose of punishment as it relates to providing the victim with satisfaction. It is well known that these sorts of offenses do not cause strong public condemnation, making the judicial bodies more inclined towards the perpetrators. This does not appear a correct attitude, because there is a serious risk that the criminal act could be taken lightly, and an impression that there is no victim made. When adjudging of suspended sentences without additional obligations (e.g. restitution) is added to the mix, a space is opened for the creation of a general impression that crime pays. What has already been stated therefore bears repeating: a revitalization of the suspended prison sentence ought to be considered, primarily by addition of repressive content to its current form, in the shape of obligations placed upon those convicted of a crime. Only then can its application not be considered lightly and can become a serious challenge whose aim cannot just be a reduction in the prison population, as stated by Cvitanović and Glavić (2011).

Security measures have only been applied in exceptional cases of criminal offenses of corruption. This information, found as a result of this research project, seems worrying at a first glance because it appears logical that these measures ought to be applied to those who had been entrusted with the performance of an official or authoritative duty. A good reason for it can be seen in the purpose of security measures, which is reflected in the removal of conditions that enable or encourage recidivism. Of course, the measure of ban of conducting business in the profession, activity, or function is the measure expected for the types of felonies discussed here, along with the measure of confiscation of the object utilized as means of corruption. Nevertheless, when the true situation is surveyed, it becomes obvious that the persons committing the offense have been in the lower ranks of the organizational hierarchy (Vujović, 2013), which reduces the purposefulness of the measures. Additionally, most of the persons involved had already lost their employment upon the uncovering of corrupt practice, which can also be a factor in the court's decision not to mete out the aforementioned measures. It should also be added that the monetary gain from corruption is most commonly already spent, thus making the measures of confiscation of the object of corruption moot.

Community service, a measure that represents an alternative to imprisonment and fines, **has not been used at all when sentencing the perpetrators of crimes of corruption.** Even though it could have been expected that the application of that measure would lead to a decrease of suspended sentences (Zorica, 2001), its application never took hold. It ought to be noted that, up until 2010, this measure could only be used to replace a prison sentence of up to 6 months, and after 2010, it could replace a sentence of up to a year's imprisonment. Thus a number of applied sentences, which were longer than six months (or a year, after 2010), could not have been replaced by community service. It also appears that the particular regulatory solutions concerning the measure of community service made the courts unable to apply it in a certain number of cases. Nonetheless, a significant number of sentences could have been altered. It can thus be said that the courts often find no justification for community service (without imprisonment) for persons who have committed crimes of corruption, and choose to apply suspended sentences. Another issue that ought to be taken into account here is that community service cannot be applied without the offender's consent, which is fully justified from the point of view of relevant international law (Tomić

and Manojlović, 2012). Furthermore, there are no adequate conditions for applying this measure, and the courts have thus shied away from prescribing it in their sentences. Finally there is also the issue of the judges' lack of sensitivities with regard to the application of this measure, as discussed by Bumči and Tomašić (2006), and Škorić and Kokić - Puce (2009), indicating that there is a need for judges to receive further education on the matter.

Based on all that was stated above, it is not hard to conclude that the initial hypothesis regarding the extent of harshness of the judicial penal policy has indeed been confirmed. It has been shown that the penal policy with regard to corruption has been moving towards less repression, both in qualitative and quantitative terms. More than anything, the conclusion is drawn from the fact that the perpetrators of acts of corruption are rarely facing the major penal sanctions, i.e. imprisonment and fines. On the other hand, the courts in the Canton Sarajevo area have found that the fulfillment of the purpose of punishment is best served by suspended sentences, which were applied even in cases where it is explicitly forbidden by the Penal Code. Even though the option was there, the courts failed to issue fines, even as secondary or auxiliary measures, while security measures were only applied in exceptional cases. The latter is true for the punishment of confiscation of material gains that stem from corruption. It is certain that, based on the choices of these types of sanctions (qualitatively), we may speak of a penal policy in the area of corruption that tends towards less repression. The whole picture becomes clear when the extent of adjudged sanctions (quantitative aspect) is taken into account. That too has been close to, or even below, the legally stated minimal punishment.

Political will is a necessary precondition for a successful fight against corruption, and it is precisely its absence that has been troubling Bosnia and Herzegovina for many years now (European Commission, 2012). Unfortunately, politics and politicians are now interfering with ever more spheres of social life, often utilizing corruption as means of fulfillment of their aims (Tanjević, 2011). Thus the names of current political leaders of Bosnia and Herzegovina have been found on the lists of defendants in the most serious criminal cases of corruption, though these cases have concluded with decisions that found the defendants not guilty. It cannot be claimed that there had been political pressures on the operation of the judiciary, but this influence is also impossible to exclude. This topic deserves to be researched separately.

CONCLUSION

By analyzing the provisions of the penal legislation in the Federation of Bosnia and Herzegovina and comparing them to the practice of courts in the Canton Sarajevo, this paper has tried to consider and question the congruity of legal and judicial penal policies in the area of corruption. The hypothesis, as found in the relevant literature, that courts tend to apply low levels of repression when choosing the type and extent of penal sanctions has been the paper's starting point. This primarily implies that: 1) in cases when the defendants are found guilty, the courts rarely decide to apply punishments, and sanctions are dominated by alternatives to punishment; 2) courts are inclined to issue sanctions that are closer to the legal minimum, and when applying punishments, they are reducing them below the legally prescribed minimum; 3) security measures are only rarely issued.

The legislator has strongly condemned acts of corruption, expressing this attitude through the legal provisions containing harsh punishments for those who commit such acts. The courts have, however, used only the very minimum of repression that was placed at their disposal by the legislator. It was thus determined that the the courts have rarely issued punishments (imprisonment and fines) as dominant penal sanctions. These sanctions had not been applied even in cases when the law mandated that a sentence of imprisonment be adjudged. It can thus be said that the penal policy of the courts in Canton Sarajevo has partially been *contra legem*. By observing the mentioned judicial policy from the point of view determining the extent of the penal sanction, we can conclude that it has been characterized by a low level of punitivity. The latter conclusion has been drawn from the fact that all penal sanctions which include some temporal limitation on the rights of the offender were applied in the first third of the foreseen range, and often even below the legal minimum.

In spite of the fact that the legislator dedicated much attention to fines for perpetrators of criminal acts, carried out with the aim of personal gain, the courts have been reluctant to apply fines to those who were found guilty of crimes of corruption, and whose motivation was clearly that of personal gain. Additionally, the courts have only exceptionally applied the security measures and community service. Quite the contrary: the courts had most commonly used the sanction of suspended sentence as a warning, a sanction that is by its nature one of the mildest alternative sanctions.

All of the above points to a single possible conclusion on the harshness of the penal policy in the space and time that the research project is aimed at: the penal policy of the courts is characterized by an inclination towards less repressive measures. In principle, the reasons for this may be found on the legislator's end, if it is the case that the legislator had foreseen sanctions which are too harsh, thus "compelling" the judicial body to make "corrections" by utilizing exceptional measures that mollify the punishment for the perpetrators. Alternatively, it could also be the case that the fault is on the courts' end, if they had found that the facts of the cases are such that harsher sanctions would be unnecessary or inadequate. Though more serious conclusions can only be drawn after a wider and more detailed study (e.g. research on the criteria that guided the courts in determining the offender's wealth, which is a criterion for applying a fine), it nevertheless appears, on the basis of presented data, that the above conclusion about the overall low level of punitivity is plausible. This follows from both the comparison of legal aims as stated in the legislation and the legal practice of courts, and from the comparison with the penal policy in the same topic area in other countries. The facts that additionally point to the correctness of the stated conclusion are as follows: a) the acts of corruption were committed with intent, and had been motivated by personal material gain, with non-negligible illegal gains (with an average value of over 25 000 BAM); b) in general, the courts were very willing to take extenuating circumstances into account, while the same cannot be said for inculpating circumstances; these extenuating circumstances were truly ordinary, and not exceptional, and as such did not warrant such reduction in punishment; c) the courts neglected some aspects of penal sanctions, primarily the preventive effect towards potential offenders. If the purpose of criminal law is to utilize the threat of punishment and its implementation in order to have an impact on the perpetrator, and on the other members of the society, then an adequate message to society, that crime does not pay, has in these cases been absent. When it comes to conspirative criminal offenses, which are crimes of corruption by nature, where the risk of discovery and criminal persecution is small, making sure that an adequate penal policy acts as deterrent becomes very important. Here, a certain decisiveness, and even a harshness in sanctioning, can have a strong preventive effect. These characteristics are not necessarily fulfilled by applying sanctions which are more harsh, but by a selection of such measures and sanctions that send a clear and sufficient message about unacceptability of criminal behavior that stems from the desire for (illegal) material gains. These measures and sanctions include, in particular, fines, community service, and certain obligations that accompany suspended sentences. Apart from that, in conditions of widespread corruption, a characteristic displayed by Bosnia and Herzegovina, it becomes more likely that techniques of neutralization ("everyone does it") make it impossible for one to perceive that his/her behavior is wrong. It is precisely in those conditions that judicial bodies acting *ad exemplum legis* need to send a message that corruption will be punished, and that being involved in it carries numerous risks.

The contemporary penal thought does not hold a dominant view on the purpose of punishment. That attitude is temporally and geographically determined, as it is determined by the will for an adequate response. How adequate a response is can be seen through a prism of the purpose of penal sanctions: special and general prevention, and provision of satisfactory compensation to the victims of crime. Both levels of prevention largely consist of expressing contempt for the offender's act, and in the case of general prevention, the aim is to select such a type and extent of sanction that would psychologically coerce future offenders into not committing the same crime. The selection of an adequate type and extent of the sanction is possible in the balance of attitudes held by the legislator, and attitudes held by the court. It this balance is tilted, either in the direction of general prevention, or in the direction of special prevention (even at the expense of legality), the psychological effect of penal sanctions is lost, and law remains no more than a set of words on a piece of paper. This is where the problem of lenient sanctioning lies, not in the lenient sentences as such. This imbalance may have a further consequence for legal norms: a situation where there is no appreciation for legal norms may arise, creating an environment which potential offenders may see as favorable for committing new crimes. Since the Canton Sarajevo, along with the rest of Bosnia and Herzegovina, is in a period of transition, and is an area with a distinguished problem of corruption, aided by the lack of will and determination for its resolution, directing an "appropriate dose" of odium and reproach and eliminating the state or conditions that support the existence of corruption by means of an adequate penal policy can play a crucial role in the defense of already eroded social values, and in the strengthening of consciousness and responsibility. Along with a certitude of discovery and perse-

cution of offenders, finding the most appropriate types and extents of sanctions for crimes committed, where a special role may be played by special obligations (restitution, payment of damages) added to suspended sentences, community service, or a wider application of fines, becomes an indicator of the state's serious commitment to the fight against corruption. It is precisely this will, exhibited by all societal units, and professional and impartial judicial bodies in particular, that can be key in the success of the fight against corruption. This is why the findings of this paper should not be understood as arguments in favor of a more punitive approach in sanctioning crimes of corruption, or similar, but as contributions to our information about the need to create this truly necessary will to act.

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Appendix: A LIST OF ALL ANALYZED, LAWFULLY CONCLUDED COURT CASES

Municipal Court in Sarajevo
1. K61 05
2. K 4 05
3. K 33 07
4. K 83 07
5. K 86 05
6. K 136 08
7. K 217 05
8. K 217 07
9. K 305 06
10. K 360 05
11. K 404 06
12. K 405 05
13. K 425 07
14. K 469 04
15. K 476 07
16. K 537 05
17. K 700 05
18. K 719 07
19. K 900 04
20. K 931 07
21. K 984 04
22. K 984 07
23. K 991 04
24. K 997 07
25. K 1132 05
26. K 1175 05
27. K 1279 05
28. K 1300 07
29. K 1434 06
30. K 1482 06
31. K 1583 05
32. K 1602 06
33. K 1682 07
34. K 1830 07
35. K 54366 07
36. K 54729 08
37. K 55155 08
38. K 58739 07
39. K 61443 08
40. K 67358 07
41. K 67645 08
42. K 69600 08
43. K 70615 09
44. K 72541 09
45. K 78040 09
46. K 83187 07
47. K 88661 09
48. K 95778 09
49. K 99769 09
50. K 113871 09
51. K 114752 09
52. K 118424 10
53. K 127075 05
54. K 128723 10
55. K 138127 10
56. K 139251 10
57. K 161795 10
58. K 162009 10
59. K 179370 10
60. K 188017 11
61. K 199233 11
62. K 211924 11

Cantonal Court in Sarajevo
63. K 427 06
64. K 841 07
65. K 1 05
66. K 2 06
67. K 9 05
68. K 10 02
69. K 14 07
70. K 15 07
71. K 16 05
72. K 18 07
73. K 31 05
74. K 44 05
75. K 62 02
76. K 70 06
77. K 72 06
78. K 76 05
79. K 82 06
80. K 84 05
81. K 123 08
82. K 210 07
83. K 276 08
84. K 328 06
85. K 511 07
86. K 2471 08
87. K 2496 08
88. K 3594 09
89. K 3752 09