

## RECOMMENDATIONS:

The OSCE Mission's full set of recommendations can be found in the report. In summary, the recommendations are as follows:

- Criminal legislation relevant for the processing of corruption cases should be harmonized across all jurisdictions in BiH. In this regard, the short-term priority should be the adoption of harmonized amendments to the four criminal procedural codes in accordance with the requirements set under the Decision of the Constitutional Court of BiH of June 2017.
- The procedure for raising and deciding upon conflicts of jurisdiction between the state and entity levels should be further clarified through judicial interpretation or legal amendments if necessary.

The capacity of the prosecution and of law enforcement agencies with specific regard to the investigation of financial aspects of corruption should be strengthened. The prosecution, in particular, should use forensic accountants and other financial experts during the investigation.

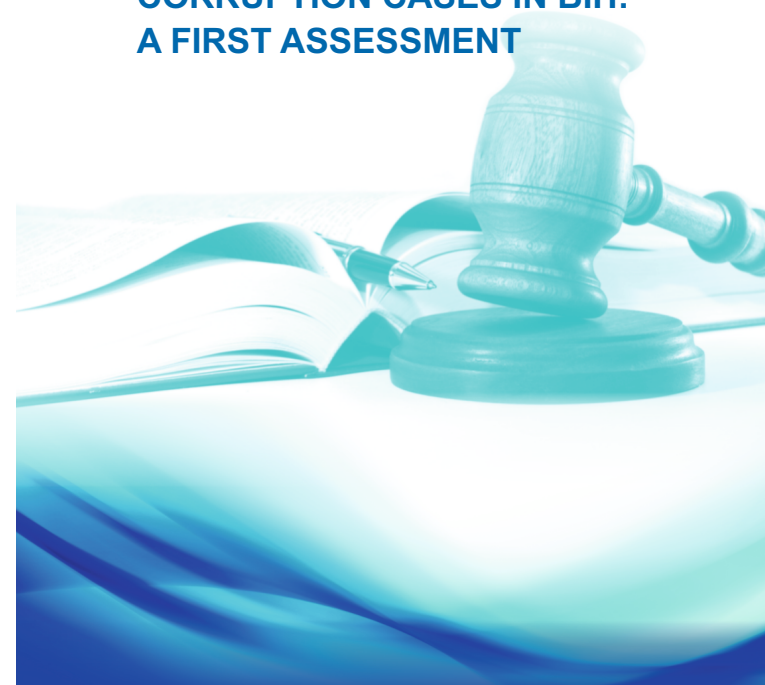
- Prosecutors should improve the quality of indictments in corruption cases. The High Judicial and Prosecutorial Council should develop specific guidelines and training materials on drafting indictments in corruption cases. Chief prosecutors should exercise proper oversight on the drafting and finalization of indictments in corruption cases.



- Judges at the preliminary phase of the proceedings should ensure that indictments which do not comply with the necessary legal requirements are not confirmed.
- Judges should strengthen the quality of their reasoning in corruption cases. In particular, inconsistencies in the application of material or procedural criminal provisions specifically relevant for the processing of corruption cases should be identified and resolved with a view to improving the clarity and predictability of the law.
- Courts throughout the BiH judicial system should adopt a harmonized sentencing policy in high level corruption cases, which would take due account of the gravity of the crime and ensure the deterring function of punishment.
- With a view to harmonizing the interpretation of corruption-related legislation, the High Judicial and Prosecutorial Council should ensure that relevant jurisprudence is systematically gathered and disseminated to all relevant courts.

## ARC PROJECT REPORT

### TRIAL MONITORING OF CORRUPTION CASES IN BIH: A FIRST ASSESSMENT



## KEY FINDINGS AND SUMMARY OF RECOMMENDATIONS

This is the first report by the OSCE Mission to Bosnia and Herzegovina on the judicial processing of corruption cases at all levels throughout BiH. The Mission has examined criminal legislation as well as the judicial and prosecutorial institutional framework and functioning of its practitioners. The report provides a first assessment of issues negatively impacting the quality and effectiveness of the judicial response to corruption. The Mission recommends a number of feasible measures to address these problems. This report constitutes one of the main outputs of the Mission's Project "*Assessing Needs of Judicial Response to Corruption through Monitoring of Criminal Cases*" (ARC Project) which commenced in 2016 with the support of the US Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL).

The full report can be downloaded at the OSCE Mission's web page:



## KEY FINDINGS

The core findings of this report are based on the monitoring of 67 corruption cases completed by the BiH judicial system in the period between January 2010 and September 2017. The findings point to four critical areas which have impaired the prosecution of corruption in BiH:

- Criminal legislation (including provisions which are key for the processing of corruption cases) applicable in the four relevant jurisdictions in BiH is not sufficiently harmonized; this situation continues to undermine domestic efforts to address the challenge of corruption in a systematic and coherent manner.
- The establishment of specialized judicial bodies at the state and entity level has resulted in a three-tiered jurisdictional system in which conflicts of jurisdiction and a lack of co-ordination have negatively affected the processing of high-profile corruption cases.
- A significant number of cases analysed were ineffectively prosecuted due to the inadequate capacity of prosecutors to draft indictments and to gather evidence that properly supports the charges. Among other issues, the Mission found that in some high-profile cases, the evidence submitted for the purpose of establishing the financial aspects of the crimes was poor.

- Judicial decisions in the analysed cases were often based upon unclear or insufficient reasoning. In particular, the report points to several concerning examples of unclear or inconsistent interpretation of the applicable law as well as a systematic failure by courts to take into account and refer to relevant jurisprudence in their decisions. This problem, together with the absence of a supreme court at the state level with the role of ensuring consistency in case law, represents a major obstacle to legal certainty and equality before the law in BiH.

