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*Policy paper*

**LEGAL ASPECTS OF THE FIGHT AGAINST  
CORRUPTION IN HIGHER EDUCATION- *de lege  
lata and de lege ferenda***

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# 1. INTRODUCTION

Although corruption in higher education is only one form of manifesting this phenomenon in general, it is also a specific phenomenon, different from other forms of corruption in public sector.

The phenomenon of corruption in the academic society has only recently drawn the attention of the public. So far, this problematics has been primarily tackled by non-governmental organisations in BiH, and besides several similar studies, there is very few available literature that comprehensively and systematically elaborates on various aspects of corruption in higher education.

There is no doubt that corruption has a highly negative impact on economic, political and social development of the country. Besides distorting the integrity of the academic society, it also affects the quality of educational services and the efficiency of the educational system.

The study entitled “Legal aspects of the fight against corruption in higher education *de lege lata and de lege ferenda*“ the result of the project „Engaging graduate students in Bosnia and Herzegovina towards European integrations“. The project was participated by students of master and doctoral studies from eight public universities in Bosnia and Herzegovina, who thus have tried to contribute and offer guidelines to the fight against corruption in higher education in Bosnia and Herzegovina stressing the legal side of the surveyed problem. The projects has been supported by EUSR – Special Representative of European Union in Bosnia and Herzegovina with the aim to facilitate the engagement of young researchers in Bosnia and Herzegovina in analysing the issue of European integrations.

Besides analysing international, regional and domestic legal acts, especially autonomous university acts, this project has envisaged interviewing students of 3 and 4th year of Faculties of Law and Economics. The interview has encompassed 299 interviewees who gave their opinion about the existence of corruption, about its forms, readiness to participate in different forms of corruptive conducts, about their knowledge about anti-corruptive regulations, causes, methods of destimulation and sanctioning actors of corruption.

This study is divided into several chapters: first chapter shall deal with defining corruption in higher education and its forms. Second chapter represents a short review of legal sources, then causes, insitutional framework and mechanism of fighting corruption. Special part of this study is dedicated to effects of corruption, i.e. sanctioning methodology. Finally, instead of conclusion, proposals and recommendations for the fight against corruption are given.

## **2. THE CONCEPT OF CORRUPTION IN HIGHER EDUCATION**

### **2.1. General consideration**

Corruption (lat. corruptio – viciousness, spoilage, decomposition, bribing, corrupting)<sup>1</sup> appears in different areas of life and work and is the subject of constant legal, sociological, philosophical, political and other aspects of discussion. Notwithstanding the aforesaid, a globally accepted definition of corruption has yet to be termed.

Besides representing a social problem, since it has well incorporated into every segment of social life and practically gained the status of citizenship,<sup>2</sup> it also represents a personal problem.

Having in mind the aftermath of corruption and the place and role of higher education in every, including Bonia and Herzegovina society, the comprehension of this phenomenon and its manifesting is necessary in order to formulate recommendations for eliminating and fighting corruption in higher education. Proper understanding and appreciating of this concept is also necessary for the purpose of identifying potential causes, effects and destimulation measures, and its sanctioning.

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<sup>1</sup> Vujaklija, M., *Leksikon stranih reči i izraza*, Belgrade, 1980., p. 472.

<sup>2</sup> Also see: Bošković, M., *Organizovani kriminalitet i korupcija*, Police College, Banja Luka, 2004., p. 147.

There is a variety of definitions of corruption in modern literature, but none of them can encompass its complexity. Thus, in order to analyse corruption in higher education we shall state a series of definitions which reflect different aspects of this matter.

For a great number of people corruption represents something morally unacceptable, i.e. wrong that needs to be eradicated as being in contradiction with basic moral norms. Thus, it is best if we simply define it as „moral wrongness“.

It is actually every act which, contrary to public interest, undoubtedly violates both moral and legal norms and harms the very foundations of the rule of law.

According to the definition of *Transparency International*, corruption represents abuse of entrusted powers for personal benefit. According to this, corruption is not limited to abuse of entrusted authorities in public sector and in performance of public authorities, but also refers to all activities wherewith it is possible, considering the position, to abuse authorities and thus gain material or any other benefit.<sup>3</sup>

The World Bank defines corruption as abuse of public authorities for personal benefit.<sup>4</sup> The difference between these two definitions is visible in the area of acting in which the act of corruption is committed, since, according to the definition of the World Bank, corruption is not represented through acts committed outside the public sphere. Therefore, corruption could not exist in private sector.

According to definition of Vito Tanzi, former professor and Dean of the Department of Economics at Washington University, corruption represents intentional breach of the principle of objectivity in decision-making, with the aim to realise advantage for the offender or third party through such acting. The principle of objectivity requires no influence of personal or any other relations between participants in a transaction. Thus, it can be concluded that there are two necessary conditions for the distorting of objectivity to be qualified as corruption.

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<sup>3</sup> Ibid. p. 148.

<sup>4</sup> See: <http://www.antikorupcija.hr/Default.aspx?sec=488> (10.06.2013).

First, intention must exist. Incidental breach of objectivity due to, for instance, insufficient awareness, does not represent corruption.

Second, it is necessary to have the element of gain of certain commodity as a result of the stated objectivity, i.e. gain of personal benefit.<sup>5</sup> At the same time, it is not necessary to have the condition of temporal coherence between biased decision making and gain of personal benefit, but these two acts can be separated in time. Thus, corruption can be composed of giving i.e. receiving certain benefit prior to, during, and after performing an action that requires giving/receiving benefit.

United Nations Convention against corruption (UNCAC), explicitly lists acts which ought to be incriminated, without requiring these acts to be equated with corruption.<sup>6</sup>

Similar approach has been accepted in the Criminal Law Convention about Corruption of the Council of Europe.<sup>7</sup>

According to Civil Law Convention about Corruption, corruption represents requesting, offering, giving or receiving, express or implied, bribe or any other illegal benefit or placing it into prospect, thus, excommunicating prescribed performance of a certain activity or conduct requested from bribe receiver, illegal benefit or person who is to be exposed to such activity.<sup>8</sup>

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<sup>5</sup> *Korupcija u Srbiji*, Center for democratic – liberal studies, Belgrade, 2001., p. 12.

<sup>6</sup> *United Nations Convention against Corruption*, adopted by the General Assembly, resolution 58/4 of 31.10.2003, came into force on 14. decembra 2005. (BiH signed this Convention on 16.09.2005., ratified it on 27.03.2006., and laid down the instrument of ratification with UN Secretary General on 16.10.2006.)

<sup>7</sup> Criminal Law Convention about Corruption, adopted by Ministerial Committee of the Council of Europe on 27 January 1999, which came into force on 1 July 2002 (BiH signed this Convention on 01.03.2000., and ratified it on 30.03.2002.), *European Treaty Series*, no. 173. See: [http://www.ohr.int/ohr-dept/afd/int-ref-ef/coe-crim-lcc/default.asp?content\\_id=5257](http://www.ohr.int/ohr-dept/afd/int-ref-ef/coe-crim-lcc/default.asp?content_id=5257) (05.06.2013.).

<sup>8</sup> Article 2 of the Civil Law Convention about Corruption. This Convention was adopted by the Council of Europe in 1999. (BiH signed this Convention 01.03.2000., ratified it on 30.03.2002., and it came into force on 01.11.2003.).



In reference to article 2 of the Agency for preventing corruption and coordinating fight against corruption in Bosnia and Herzegovina Act, corruption represents every abuse of power entrusted to a civil servant or a person holding a political position at state, entity, cantonal level, then at Brčko district, city or municipality level, which can lead to private benefit.<sup>9</sup> Corruption can encompass, express or implied, requesting, offering, giving or receiving bribe or other illegal advantage or its potentials, thus distorting appropriate performance of any duty or conduct expected from a bribe receiver.

Predraft of the Protection of Corruption Reporter in BiH Federation Act<sup>10</sup> defines corruption as every abuse of position or situation that refers to selected and appointed officials and employees of legislative, executive and judicial power at all levels of government in BiH Federation, employees in legal entities regardless of ownership structure, public institutions, associations, foundations and public corporations.

Research performed among the students of public universities in Bosnia and Herzegovina has shown different understanding and defining the concept of corruption among student population. This additionally proves non-existence of a unique and comprehensive definition of this phenomenon, since it has proved that acceptability and justification of certain conducts, i.e. the perception of certain conducts as corruptive, depends on personal conception. Professor Michael Johnston, professor at University Colgate has once said: „In communities with rapid transition, the line between what is corrupted and what is not, is not always clear, thus

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See:[http://www.apik.ba/acms\\_documents%5Cgradjansko\\_pravna\\_konvencija\\_savjeta\\_e\\_vrope\\_o\\_korupciji.pdf](http://www.apik.ba/acms_documents%5Cgradjansko_pravna_konvencija_savjeta_e_vrope_o_korupciji.pdf). (04.06.2013.)

<sup>9</sup> „Official Gazette of Bosnia and Herzegovina”, no. 103/09.

<sup>10</sup> Drafted by the Centre for responsible democracy Luna – Initiative for the protection of whistle-blowers in BiH and Democratic Initiative for Europe, in co-operation with the Agency for prevention of corruption and co-ordination of the fight against corruption in BiH and Federal Ministry of Justice. See also: <http://codluna.ba/index.php?lang=bs> (04.06.2013.).

the concept of corruption can be broadly understood.<sup>11</sup> What a majority of students identifies as corruption can be defined as "buying i.e. selling exams", although the phenomenon is more complex than meets the eye. Besides conducts provided for as criminal offences, there are those not envisaged by legal regulations, and whose consequences influence the quality of educational system and the individual conception of the matter.

## **2.2. Forms of corruption in higher education**

Corruption in higher education is characterised by complexity and plurality of form.

A question should be raised as to the methods of manifesting corruption in Bosnia and Herzegovina higher education. What is the value of one exam? Should gratuity be considered corruption, i.e. should petty gifts be excluded from the concept of corruption? Should agents be included into corruption or it is a direct contact between a bribe giver and a bribe receiver? All these and similar questions are raised, to which the given definition of corruption cannot give a precise answer.

In general, corruption can be divided into high, petty and political.

High corruption is represented by acts committed at a high level of government, which undermine the rules or state functioning, enabling an official to gain benefit at the expense of a public good.

Political corruption represents manipulating policies, institutions and rules of procedure in the course of distribution of resources and funding by political decision makers, who abuse their position to preserve the power, status and wealth.

Petty corruption, also known as „low“ or „street“, would represent commonplace abuse of entrusted authorities by public officials of lower

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<sup>11</sup> Johnston, M., *Syndromes of Corruption: Wealth, Power and Democracy*, Cambridge University Press, Cambridge, 2005., p.11., cited from: *Corruption and Human Rights: establishing relations*, Open Society Fund, Belgrade, 2010., p. 15.

and middle level, through their interaction with common citizens, who often struggle to access basic goods and services in institutions such as hospitals, schools, police and other agencies. Therefore, corruption in higher education can be qualified as a form of petty corruption.<sup>12</sup>

Corruption in higher education, as a special form of corruption, is manifested in forms we can divided into two basic groups.

Broadly speaking, it encompasses corruptive activities which do not directly involve students such as distribution of assets from certain funds, circumventing criteria in the course of appointing academic staff, corruption in the accreditation of universities and faculties, corruption in procurement, absence from work of teaching staff in educational institution at the time of scheduled class in the attempt to perform activities at other institutions (double practice), etc.

Concretely, corruption in higher education means cases which directly involve students, such as corruption during enrolment process, paying exams in cash, gifts or favours, passing exams with the help of relatives/friends, privileged status during grading, binding students to buy books as a precondition to exam taking, nepotism, binding students to instructive classes as a precondition for passing the exam, charging fees for issuing reference letters for scholarships and recommendations for employers, trade in diplomas, etc.

According to results we have collected through a study on understanding the concept of corruption among students of public universities in Bosnia and Herzegovina, we have made the following classification:

- Corruption during enrolment in the faculty
- Paying exams in cash or through favours
- Passing exams through relatives/friends and gaining privileges in such manner
- Privileged position of members of certain students organisations

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<sup>12</sup> See: <http://www.antikorupcija.ba/index.php/okorupciji.html> ( 05.06.2013).

- Binding students to buy study material/books
- Paying private instructions

Since the number of students who can enrol in the faculties in BiH is limited by quotas, i.e. the number of students co-funded by the state is limited; corruption can appear in the course of selection of candidates for enrolment. The state thus suffers a great loss by failing to select students with the highest knowledge and competences, thus harming equality of individuals in the educational system.

The acts recognised by all interviewees as corruptive can be defined as those already singled out as such by Criminal Law of Bosnia and Herzegovina. Thus, the top position is reserved for receiving and giving gifts and other forms of benefits, with special attention given to paying exams in cash.

Besides material, gain can also be non-material, i.e. manifested as rendering certain services (e.g. commending someone in public, remission of debt, providing employment for family members, sexual harassment and exploitation, etc.).

Special category of corruptive activities represents passing exams with the help of relatives and friends. This means nepotism, favouring students when grading them, every form of serving a student as to pass the exam in a manner which does not require continuous work and study.

What we find highly interesting, brought about by the undertaken research, are corruptive activities within student organisations, especially student associations at the university and faculty level. According to students' opinion, members of the stated organisations enjoy privileged status in comparison to other students, so much in the course of studying and fulfilling pre-examination obligations, as through using benefits of studying in the form of seminars, study travels, etc.

One of the possible forms of implied corruption is the obligation to buy study books and other material (e.g. practicums, guides, etc.), whose authors are course lecturers or recommended authors.

Next implied form of corruption would be compulsory attending instructive classes in certain courses in cases when teachers insufficiently

interpret portions of course material that students find extremely difficult to understand. In order to successfully deal with the course material and pass the exam, students request additional explanations, and the teachers offer them in the form of charged instructive classes.

Taking into account these expressed and implied forms of corruption, we can conclude that along with corruptive acts prescribed by the existing legislation, theory and practice equally reveal acts outside these regulations. We give them special attention considering the objective of resolving the matter and proposing adequate measures in the fight against its manifestation in higher education.

### 3. SOURCES OF LAW

Sources of law which regulate the corruption in higher education can be divided into international, regional and national. Besides documents which anticipate the right to education as one of the fundamental human rights (Universal Declaration of Human Rights, European Convention about Human Rights and Fundamental Freedoms, International Pact on Economic, Social and Cultural Rights, etc.), there is a number of documents handling corruption in general, including corruption in higher education

**By accepting international acts, states fight corruption in parallel, with the same mechanisms within their national frames.**

UN Convention about fighting corruption<sup>13</sup> is one and only international instrument for the fight against corruption accessible by all states, and is unique not only for a global approach to this matter, but for its detailed and comprehensive provisions.

The Convention deals with basic and complex forms of corruption such as bribery, embezzlement, trade in authority, and other penal offences

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<sup>13</sup> See note no. 6.

committed in support of corruption such as money laundry and obstructing justice.

Recognising corruption as a serious threat to democracy, the rule of law and implementation of human rights, the Council of Europe has enacted regional documents and taken numerous corruption deterring activities.

A great step of European states in fighting this phenomenon was taken by enacting Criminal Law and Civil Law Conventions about Corruption. These Conventions are the result of long-term efforts made by the Council of Europe in order to find mechanisms for the fight against corruption in criminal and civil law, and formulated obligations represent a bare minimum of what signatory states expect to achieve.

Main objective of Criminal Law Convention<sup>14</sup> about corruption is developing joint anti-corruptive standards in the Convention signatory states.

Civil law Convention about corruption<sup>15</sup> aims at ensuring effective legal remedies for persons who have suffered injuries as a consequence of corruptive acting.

In Bosnia and Herzegovina the right to education is guaranteed by the Constitutions of Bosnia and Herzegovina, BiH Federation and the Republic of Srpska.

Higher Education Act of the Republic of Srpska and certain cantons in BiH Federation regulate relations at higher education institutions, but do not contain special provisions about corruption. Certain statutes, such as Higher Education Act of Canton Sarajevo,<sup>16</sup> prohibit certain practice which could be termed as corruptive, such as requesting purchase of literature and possession of such textbook i.e. reading material in the course of assessment of knowledge.

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<sup>14</sup> See note no. 7.

<sup>15</sup> See note no. 8.

<sup>16</sup> Article 56 section 5 of the Higher Education Act of Canton Sarajevo, „*Official Gazette of Canton Sarajevo*“, no. 43/08.

Criminal Codes in BiH <sup>17</sup> in special chapters contain provisions about corruption.

These statutes anticipate, among other things, the following criminal acts: receiving gifts (bribes) and other forms of benefits, giving gifts (bribes) and other forms of benefits, including unlawful agency. Criminal Codes of BiH, BiH Federation and Brčko District also contain provisions on seizure of material gain obtained through a criminal act. On the other hand, in the Republic of Srpska *lex specialis* has been enacted to serve the purpose.<sup>18</sup>

Agency for prevention of corruption and coordination of the fight against corruption in Bosnia and Herzegovina Act,<sup>19</sup> besides defining the concept of corruption, also regulates legal status of the Agency for prevention of corruption and coordination of the fight against corruption, including methods and forms of prevention.

Predraft of Protection of Corruption Reporters Act<sup>20</sup>, regulates protected reporting of corruption, the extent of protection and the process of protection of corruption reporter.

Protection of persons who are ready to report corruption could be, until enactment of the said Act, realised in compliance with the Witness protection in BiH Act.<sup>21</sup>

The strategy of fighting corruption in BiH (2009-2014)<sup>22</sup> and Action plan for the implementation of the strategy for the fight against

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<sup>17</sup> Criminal Code of BiH („*Official Gazette of BiH*”, nos 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07 and 8/10), Chapter XIX; Criminal Code FBiH ( „*Official Gazette of FBiH*”, no. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10 and 42/11) Chapter XXXI; Criminal Code of RS („*Official Gazette of Republic of Srpska*”, no. 49/03), Chapter XXVII; Criminal Code of BD („*Official Gazette of BD*”, 10/03, 45/04, 06/05 i 21/10, 47/11) Chapter XXXI.

<sup>18</sup> Confiscation of unlawfully gained property Act („*Official Gazette of RS*“, no. 12/10).

<sup>19</sup> See note no. 9.

<sup>20</sup> See note no. 10.

<sup>21</sup> „*Official Gazette of BiH*“, nos 3/03, 21/03, 61/04, 55/05.

corruption,<sup>23</sup> among other things, aim at reducing the level of corruption and establishing the system of corruption prevention in all structures of public institutions in BiH.

Higher education institutions by-laws are the most important sublaws which provide for the work of these institutions. Based on the by-laws, all public higher education institutions in BiH have adopted the Codes of Ethics, wherewith, academic society insists, among other things, on preventing and sanctioning corruption and other unwanted phenomena at universities. Furthermore, organisational units of the university (faculties) also possess the Codes of teaching ethics and special rulebooks on disciplinary responsibility of the employees.

#### 4. CAUSES OF CORRUPTION IN HIGHER EDUCATION

Corruption is one of the biggest problems present in all segments of the community, including higher education. In order to downsize the existence of corruption to the lowest possible measure and to enable organised fight against such phenomenon, it is foremost necessary to define its causes.

Causes of the rise of corruption in higher education can be divided into:

- **Historical and socio-cultural** (historical rootedness of various forms of corruptive conduct, the so-called corruptive mentality)
- **Structural** (rootedness of corruptive conduct in higher education due to non-existence of appropriate systemic mechanisms)

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<sup>22</sup> See: [http://www.apik.ba/acms\\_documents%5Cstrategija-za-borbu-protiv-korupcije-2009-2014.pdf](http://www.apik.ba/acms_documents%5Cstrategija-za-borbu-protiv-korupcije-2009-2014.pdf) (06.06.2013.).

<sup>23</sup> See: [http://www.apik.ba/acms\\_documents%5Cakcioni\\_plan\\_za\\_borbu\\_protiv\\_korupcije\\_2009-2014.pdf](http://www.apik.ba/acms_documents%5Cakcioni_plan_za_borbu_protiv_korupcije_2009-2014.pdf) (03.06.2013.).



- **Economic** (low salaries of the employees in higher education, poor economic situation in the state, high unemployment rate, where education is the only ticket to escaping poverty)
- **Political** (bad supervisory system of the state, among other things, judicial system, non-existence of adequate legal regulations for sanctioning corruptive conduct).

It is a fact that a large portion of assets deducted from the entity/cantonal budgets (cc. 88%) falls down on salaries for the employees. However, majority of higher education institutions are facing great difficulties with providing assets for the salaries, which can be ascribed, among other things, to inefficient higher education funding system. Such system entails dependence of university funding on the decisions of state bodies, i.e. governments. Thus, individuals who make decisions about allocating a portion of assets from the budget dispose of broad discretionary powers, which leaves space for the abuse of authority and manifestation of corruptive conduct. Namely, area characterised by the monopoly of power and shortage of responsibility and transparency, is a fruitful ground for corruption. Thus, insight into costs of public universities can be rendered only through auditing reports of the resource ministries, which more often than not, only contain data about expenditures based on staff salaries, while a clear insight into other deductions and university costs cannot be gained.<sup>24</sup> Henceforth, it is useful to point out Klitgaard's formula of corruption:  $K = M + D - O (-T)$ , where M represents monopoly of power or decision making, D discretionary rights, O responsibility, T transparency. Through this formula it is easy to establish causes of corruption, since it is apparent only in the area where the mentioned factors are (non) existent.<sup>25</sup> Non-existence of appropriate level of transparency in the consumption of allocated budget assets, including those universities collect from other sources (school fees, examination fees, research projects, etc.), reduces the

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<sup>24</sup> Korajlić, I: Higher education in BiH – open space for corruption, p. 13. See: [www.fes.ba](http://www.fes.ba).

<sup>25</sup> PALGO Centre: The concept and definition of corruption – „Introducing a new mechanism and intersector co-operation for greater responsibility of local authorities“, p. 5. See: [www.zajednoproktivkorupcije.org](http://www.zajednoproktivkorupcije.org).

knowledge of the ways the assets are consumed. Such status is further affected by a high level of autonomy of certain faculties who independently decide about the fashion of distribution of assets, although Higher Education Framework Act of 2007 has imposed the obligation of universities to start the process of integration in compliance with the reform of higher education system. However, a question should be raised whether the level of corruption would be otherwise reduced, i.e. in case of the loss of legal subjectivity by certain faculties. There is a justified fear that in case of integration of universities, higher levels could easily abuse their position since all decisions vital for the operation of the university and faculty come from a single „centre of power“.

Besides those mentioned, the most transparent cause of corruption at universities is political influence especially visible in the staff employment segment, but also in other segments such as, allocation of budget assets for education. In addition, inadequate enrolment policy and selection that lead to overcrowdedness at certain faculties automatically create space for corruption, since a large number of students cannot pass their exams, and are searching for easier ways to fulfil their obligation, which again leads to production of graduates who become competitive in the market, without having the minimum knowledge of certain study courses. All this is further supported by inadequate implementation of the Bologna process since many universities still have not satisfied either personnel or technical conditions for its efficient application.

The second division distinguishes the following causes of corruption in higher education:

- **Individual, i.e. psychological-motivational** (proof of individual power, opportunism, shortage of ethical conduct in an individual, non-existence of awareness that corruption needs to be reported, ignorance of an individual as to the possibilities and methods of contribution to the fight against corruption, etc.

Psychological causes of corruption are based on the very awareness of the offender and are expressed in the form of greed, and are linked to the decline of morality and moral values thus setting corruption as a standard mode of conduct. Taking into account the present state of

affairs of our community, i.e. crisis of morale and staggering of moral values, a parallel can be drawn between such general state and the state of matter of in higher education. Non-existence, i.e. disrespect of moral norms leads to liberalisation of conduct otherwise unacceptable in democratic, civilised world, including corruption. Furthermore, the fact that such phenomena are barely sanctioned further undermines their acceptance as something normal and commonplace. From the aspect of higher education, weakening of morale as a cause of corruption is reflected in the defaults in implementing efficient control and supervision over the work of the university (internal and external), then insufficient sanctioning of the corruptive offender, which gives the ground to potential offenders to commit the same offence.

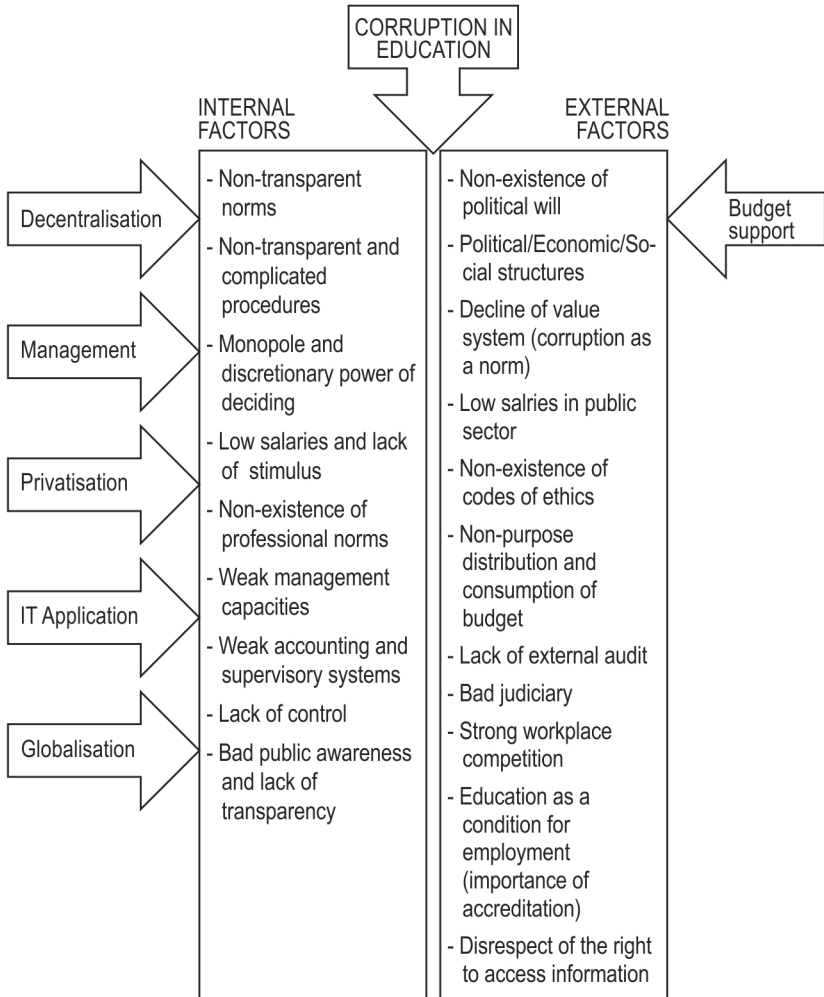
- • **Institutional** (non-existence of effective institutional mechanisms for the fight against corruption, i.e. non-existence of ethical boards and passivity of the existing ones at the universities, increased number of students and shortage of vacancies at faculties, non-existence of transparency of examination procedure, strict hierarchy at the university, wherewith professors are superior to students, instead of being equal)
- **Legal** (non-existence of effective and appropriate normative and procedural mechanisms for the fight against corruption, non-application and selective application of regulations, non-existence of a rulebook about the fight against corruption at universities, etc. )
- **Cultural-historical** (modification of the community value system, lack of professionalism, etc.).

Third division of causes of corruption classifies all the stated causes into two large groups:

- **Objective causes** (economic, historical-cultural, structural, i.e. institutional, political, legal)
- **Subjective causes** (individual).

Absence of political will to solve the existing problems, including absence of better co-operation between the present government and

educational institutions puts universities into a hard position in the sense of quality and effective functioning.



(Source: Hallak, J, Poisson, M. (2007): *Corrupt Schools, Corrupt Universities: What Can Be Done?*, International Institute for Educational Planning, p. 66.

Furthermore, there are also **internal causes of corruption at universities** that are related to normative and managing structure inside the very educational institutions.

**External factors of corruption in higher education**, refer to social and state environment, wherewith higher education system exists and functions.

Economic factors which influence the emergence of corruption in higher education mean absence of adequate system of paying university teaching staff. Namely, many studies that dealt with this problem, has shown that salaries of teaching staff are very low in comparison to GDP per capita, that being one of the main reasons for circumventing professional and ethical norms, additionally affected by general decline of value system in the society. This is additionally contributed by the fact that the assets BiH extracts for higher education fall behind world standards.

When we talk about shortfalls of efficient control and supervision, we mean non-existence of adequate mechanism of control of teaching and examination process, examination taking and publicity of examination taking procedure, including complete university management. According to the OSCE report it is evident that a number of instructors in the field of education is disproportionately smaller in comparison to the number of institutions, why an objective quality review of university and faculty management cannot be done. Likewise, the existing mechanisms of regulating any inapt conduct and corruption are inefficient, thus, we have a situation in which such conduct is sanctioned in a disciplinary procedure, while insignificant number of them end before the court. And if something similar happens, only few cases end with legally binding verdict (conviction or acquittal). Such causes of corruption concern, among other things, non-existence of sufficient institutional capacities in the higher education system which would contribute to its efficient functioning.<sup>26</sup>

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<sup>26</sup> Transparency International: „*Analysis of Perception of Corruption in Higher Education in BiH*“, 2012., p. 5. See: [www.unibl.org](http://www.unibl.org).

Causes of corruption at universities also encompass incompleteness of normative-legal framework; normative acts defining sensitive processes, such as academic appointments or liability in the system of education, are often unclear; deficiency of academic staff and many others.

We can conclude that all these causes of corruption in higher education highly influence the quality of educational services and lead towards the fall of trust in the educational system which should be the basis for the development of a democratic society.

## **5. INSTITUTIONAL FRAMEWORK OF COMBATING CORRUPTION IN HIGHER EDUCATION**

Institutional framework for the combat against corruption in higher education, can be considered, from the aspect of normative activity of the state of Bosnia and Herzegovina, as well as the aspect of the very higher education institutions in BiH, and broader, i.e. from the aspect of the EU region.

Observed from a wider territorial aspect, Civil Law Convention for the Combat Against Corruption (1999) and Criminal Law Convention for the Combat Against Corruption (1999) anticipate forming a group of states against corruption GRECO<sup>27</sup>, which would monitor implementation of the Convention provisions in the signatory states.

Oradea Declaration (2010) and Memorandum of Association of European Partners Against Corruption Network anticipate the existence of EPAC organisation, as independent, informal and apolitical network of operative bodies for monitoring the work of the police and operative anti-corruption bodies of EU and Council of Europe member states, with the

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<sup>27</sup> Bosna i Hercegovina has been a member of GRECO since 24.4.2002.

aim to preventively combat corruption. EPAC task, among other things, represents promotion of the principle of independence, impartiality, liability and transparency, enabling support to organisations which establish supervisory mechanisms for combating corruption. Furthermore, Oradea Declaration (2010) anticipates acting of the European Union Against Corruption Network (EACN).

Resolution (97)24 of twenty leading principles for combating corruption (1997) provides for the forming of Multidisciplinary group of states against corruption (GMC), whose task is to draft text, proposing adequate and efficient mechanism for monitoring and control of implementation of these principles in every state, through its agencies.

Makao Declaration (2010) regulates the work of International Association of Anti-Corruptive Agencies (IAACA).

On BiH level, i.e. its entities, provisions of their criminal legislation stipulate corruption as a criminal act, for whose processing is in the hands of prosecutors and courts, as judicial agencies of the entities.

Furthermore, BiH Strategy for combating corruption was adopted (2009-2014), including Action plan for the implementation of the Strategy, and General Plan of Combating Corruption of BiH Federation government (2012-2014) whose main aim is, while combating corruption in the state, to animate the existing state institutions, such as Parliamentary Assembly of BiH, Council of Ministers of BiH, BiH Federation Parliament, and RS National Assembly, entity governments, public companies, and institutions, political parties, universities, and other educational institutions, civil society institutions, citizens, media, including private sector. Strategy and General Plan also rely on the existence of the Agency for the Prevention of Corruption and Co-ordination of the Combat Against Corruption, whose powers are regulated by Agency for the Prevention of Corruption and Co-ordination of the Combat Against Corruption Act.

It is especially important that all cantons, except Middle Bosnia, have their Higher Education Acts whose harmonising with the Framework Act for Higher Education in BiH has started in 2007. This Act regulates basic principles, organisation, functioning of educational system, conditions and

principle of acting, rights and liabilities of the competent agencies and other issues of importance for management. However, the study of all adopted Higher Education Acts in BiH, has proved that there are no clearly defined anti-corruptive elements, but there are clearly defined legal instructions as a guide for proper work of the institutions.<sup>28</sup> It is important to emphasise that the existing Higher Education Acts only contain provisions that regulate disciplinary liability of students for lesser and heavy infringements of obligations, while such provisions referring to teaching staff do not exist. Since these Acts do not treat special cases of corruption, universities have designed by-laws which attempt to enhance liability, transparency and efficiency in combating corruption. Firstly, those are by-laws which regulate all questions of importance for university management and which contain provisions for establishing university agencies, with important role of performing procedures necessary to prevent corruption.

Higher Education institutions in BiH, through special and autonomous instruments, regulate university agencies, competent for combating corruption at public universities. For instance, although there is no clearly defined strategy for combating corruption at universities, implementation of the Code of Teachers' Ethics at the Law Faculty in Mostar is supervised by the Court of Honour of this Faculty. Rulebook on disciplinary liability of students at University in Mostar does not explicitly regulate liability cases of students for corruption, whence neither can the agencies competent to act upon this Rulebook, be observed in the context of combating corruption. The Code of Ethics of the University in Mostar regulates the concept of corruption in higher education and defines Ethical Council of the University to act in cases of corruptive conduct of the members of academic community.

University „Džemal Bijedić“ in Mostar, has established the Committee for Ethical issues of the University, which applies the Code of Teachers' Ethics of this University. Furthermore, in case of abuse of office by the

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<sup>28</sup> Transparency International, „Analiza zakona koji uređuju oblast visokog obrazovanja i analiza budžetskih izdvajanja za visoko obrazovanje“, 2011., str. 19.



faculty employee, a disciplinary action can be initiated before the Dean of the Faculty, i.e. before the Steering Board of the Faculty.

The University in Banja Luka has established the Committee for Ethical Issues, which deals with disciplinary actions for sanctioning a breach of provisions of the Code of Teachers' Ethics. Furthermore, Rulebook on Disciplinary and Material Liability of the University staff prescribes that in case of abuse of office by the University staff member, it is the Disciplinary Commission of Banja Luka University and University Rector, who are competent to act upon this matter. The Disciplinary Commission of every faculty at Banja Luka University, is authorized to act in case a student commits any offence stipulated by individual by-laws of the University as lesser or heavy breaches of rights and duties, including an act punishable by law.

Article 220 of the Tuzla University Memorandum of Association provides for the powers of the Ethical Committee as a permanent agency with the most important role in the application and respect for, i.e. provision of respect of provisions under the Code of Ethics, which refers to:

- monitoring the application/respect of principles established by the Code of Ethics
- implementing activities for establishing the existence of breach of provisions of the Code
- pronouncing appropriate measures (personal or public admonition) after establishing breach of certain provision of the Code of Ethics
- submitting proposals to the Rector for pronouncing other sanctions/measures, if a breach of principles of the Code also represents a breach of employment duties
- considering the content and meritum of the Code in application and in compliance with the needs proposing its amendments and addenda
- performing other competences in compliance with the By-laws and the Code<sup>29</sup>

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<sup>29</sup> Čl. 120.stav 1. *Statuta Univerziteta u Tuzli.*

Besides the Senate and Ethical Committee, activities aimed at protecting higher education against diverse forms of corruption are also taken by the Steering Boards. Thus, at Sarajevo University in 2008, in the course of debate about negative activities at faculties of this University, concrete conclusions were proposed as a starting point for discussing issues of corruptive character or any other immoral or indecent conduct. Such activities resulted in forming a special commission for proposing measures for preventing corruption at the University. In compliance with the programme of measures for preventing corruption in higher education universities have established appropriate mechanisms, not only in the form of internal by-law arrangement of this matter but also in the form of founding special commissions which handle corruption, cases of defamation and other unethical activities. Universities in BiH have also accepted measures for deterring corruption applied with the aim to prevent and raise awareness of the members of academic community and students. However, it is important to emphasise that the existence of ethical committees, which, although useful, are not sufficiently efficient, considering the fact that their work can be reduced to giving recommendations and proposing measures to the Senate in cases of breach of principles of the Ethical Code. Thus, article 31 of the Ethical Code of Zenica University stipulates: „If the Ethical Commission establishes the existence of breach of a principle under the Ethical Code of the University by a teacher or associate of the University, the Commission shall in its conclusion recommend to the Senate pronouncement of the following measures: written admonition or public admonition“<sup>30</sup>.

It is specific that ethical codes of universities contain the same or similar provisions that treat corruption. In essence, corruption is defined as:

- „Obligation of members of the academic community to abort every attempt of corruption“.
- „Members of the academic community must not expect gifts, instigate offering nor receiving gifts for oneself or another, if there is

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<sup>30</sup> Article 31 section 3 *Ethical Code of Zenica University*.

a threat that such act shall directly or indirectly affect their objectivity, completion of their professional duties and respect of their rights and duties.“<sup>31</sup>

## **6. MEASURES FOR PREVENTING AND COMBATING CORRUPTION**

One of fundamental human rights is the right to education. On one side, education represents to an individual an opportunity to advance in his/her career, and on the other, observed from the aspect of the state, educational system represents one of the key factors of development and advancement of the society. Educational system in Bosnia and Herzegovina is regulated by legal and sublegal regulations at all levels of power. Measures for preventing and combating corruption contained in previously cited existing legislature in the field of higher education are mostly regulated by way of disciplinary measures and ethical codes. In addition, criminal law prescribes a criminal act of corruption. However, when regulations in the field of higher education are concerned, we can openly state that they do not offer adequate solutions in the process of combating corruption.

Information and data about corruption in higher education are collected through various media reports; while on the other hand, this problem has not been sufficiently tackled in wider academic circles. Hence, corruption in higher education has rarely been the subject of scientific research.

Corruption in higher education exists in different forms, primarily through the possibility of promotion or academic appointment based on political or social membership, strong family ties, but also through practice and efforts of political parties to dominate through universities in academic management agencies. The most common form of political influence on the

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<sup>31</sup> Article 20 *Ethical Code of Zenica University*, article 18 *Ethical Code of Mostar University*.

educational system and university within one state is, certainly, positioning political peers and party colleagues to leading positions in scientific-academic circles. On the other hand, the period of accreditation of universities in Bosnia and Herzegovina is yet to follow. One of the fundamental conditions is autonomy of universities! We go back to aforesaid – educational system is one of the key factors of community and state development.

Although corruption has found its place in the educational system in Bosnia and Herzegovina, there is a question of what has been done to combat corruption and what measures for preventing and combating corruption have been the most efficient. Unfortunately, the answer to this question is yet to be found.

This answer should be searched in non-application of anti-corruptive measure, and the reason is the following: whether students and academic staff aware of the rules of disciplinary and ethical liability, and to what extent; which rulebook regulates the process of reporting and the system of protection against various forms of corruption.

This is not contributed by the fact that recently ethical boards have mostly solved interpersonal conflicts and disturbed relations in academic circles. The basic reason of passivity of ethical board, i.e. disciplinary commission we can find in insufficient and almost no initiative of reporting certain forms of corruption. Furthermore, it is extremely important to highlight that the public is not well informed about corruption in higher education. What the public knows can be reduced to basic information about a famous affair whose epilogue is to be found in a court decision.

Despite everything, it is an affirmation if we take into consideration that in the past several years corruption has not been the subject of social and scientific interest, and there is an improvement in the light of promoting campaigns aimed at combating corruption, which try to raise awareness so much of students and academic staff, as the public about acceptable ethical conduct and system of values in its entirety.

In addition, it is important to mention that this year a Strategy for combating corruption at the state level has been adopted and that all higher

education institutions are bound to harmonise their regulations with the stated strategy.

When we talk about measures for combating corruption, our study shall not put into focus measures anticipated by the existing regulations at higher education institutions in Bosnia and Herzegovina, but special attention shall be given to recommendations and guidelines in the form of further activities, i.e. *de lege ferenda* concept, and to significant studies published at higher education institutions in the form of survey samples.

The main aim of the published studies, i.e. survey samples has been to examine and establish, foremost, what students think about corruption, how much they are aware of anti-corruptive measures, what measures for preventing and combating corruption they consider the most effective.

Survey sample has contained the following questions: the concept of corruption; familiar cases of corruption; causes of corruption; methods of sanctioning corruption; the most efficient measures for preventing corruption in higher education.

Results of the processed sample of 328 surveyed students at certain higher education institutions in BiH<sup>32</sup> show more or less similar results in terms of students' awareness of measures for deterring corruption. The majority of them is aware of regulations for anti-corruptive measures (63%), against 37% students whose answer was negative.

This confirms the fact that deterring corruption is greatly helped with awareness of students about rules of ethical and disciplinary liability of teaching staff already available on official web sites of all public universities in BiH. Regarding deterring corruption, rules of ethical code of conduct of teaching staff have been set up to provide transparency and publicity during examinations, including objectivity of the very process of grading students. Likewise, teaching staff is bound to refrain from every form of conditioning students to take examinations outside provisions of the existing study curriculum (e.g. purchasing a book as a precondition for

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<sup>32</sup> The survey was carried out at the Faculties of Law of University in Banja Luka, Mostar (University «Džemal Bijedić»), Bihać, Tuzla and Zenica.

taking an exam), especially imposing such conditions which earn the teacher certain material or other benefit (e.g. taking bribe)

However, certain conducts of teaching staff have, contrary to rules of ethical codes at certain higher education institutions been placed into competence of disciplinary commission. These agencies are not prevented from acting upon not only teacher's report but also student's report of various forms of unethical conduct of teaching staff.

Although disciplinary liability is much more related to professional performance of duties of a teacher or assistant, still, other activities of teachers or assistants, such as mobbing or sexual harassment of students or commission of criminal acts at work or in relation to work, are not excluded. In relation to the established breach of working duty, disciplinary commission can pronounce to a teacher or assistant disciplinary measures ranging from admonition to termination of employment. However, significant diversions exist even at those higher education institutions which introduce wide scope of rules in the context of ethical code, but will insufficiently developed system of sanctions, since they only know about written or public admonition as a sanction for established breach of ethics by a teacher or an assistant.

What is important is highest level of awareness of students is gained through their participation in all deciding agencies at public universities, even those which treat not only ethical and disciplinary liability of teaching staff but also disciplinary actions initiated against students due to counterfeiting public documents (e.g., illegal grade inscription into student's booklet) or illegal activities during taking an exam (e.g., hidden use of examination material or illegal technical aids). Although anonymous reports at certain higher education institutions are not the subject of consideration, there is no boundary for such reporters to address the competent prosecutor's offices if they believe there is justified ground to suspect the commission of corruptive or some other criminal act. However, it does not mean some of these issue will not be dealt with by ethical commissions or prosecutors at a later stage, if there are grounds to suspect

the commission of reported criminal acts which defames higher education institution.

Furthermore, the question of corruption at higher education institutions was answered positively by 69% of total number of surveyed students. However, such indicators do not reveal the true state of affairs, since one sample questionnaire has shown that 37% of surveyed out of total number of 54% students has positively answered the question whether they are aware of a concrete criminal act of corruption.

Since corruptive activities have often been hidden ending in mutual benefit, it is very difficult to penetrate into such a relationship from the outside without introducing transparency into the very teaching process whose composite part also represents evaluation of knowledge of students at the examinations and other assessments of knowledge. This narrows the prospect of hear-say stories becoming a commonplace against placing general qualification of existence of corruption at some higher education institution. Every idea that passivity of the academic community means approval and reconciliation with such frequently random statements is dropped at the very beginning. Leaving aside the system of criminal law protection, preventive acting has proved more correct against repressive one in combating corruptive actions at higher education institutions.

As part of educational content at core or optional courses in the field of criminal law contribution can be given not only by teaching staff, but also by students for the sake of resolving phenomenology of corruption and disincensing this harmful act which undermines the values and dignity of social community as a whole.

The method of enrolment of students at some higher education institutions must be highly objective with the possibility of reviewing one's results by all concerned parties.

The process of employment and gaining academic status at higher education institutions must also be based on due implementation of high ethical norms and professional standards.

Besides evaluating teaching staff in the teaching process and taking adequate measures based on objective and publicly announced results of

such survey, it is necessary to introduce a continuous practice of carrying out a survey questionnaire about corruption at higher education institutions.

Such proposal of preventive measures represents a solid ground for the exchange of opinions and expressing proposals about how to enhance the existing system of discouraging corruptive activities at higher education institutions. In such a process teaching staff and students can be destimulated from corruptive activities if every similar even futile attempt is condemned by academic and wider social community. Personal gain although connected to certain members of academic community is not an isolated problem, but has got a multi-layer background to which it is difficult to give a one-sided answer. A number of reasons affect the decision of certain members of teaching staff and students to acquire personal gain which they do not deserve. After all, such activities not only affect the development of scientific values, but also broader social values on which certain social community lies.

Furthermore, one of the fundamental forms of preventing corruption in higher education, and the greatest influence on eradicating this outstanding issue is timely and detailed informing the public including the possibility of their participation in the very finding of potential solutions, which is best realised through non-governmental organisations and state funded projects which treat the subject matter.

Fundamental reason for insufficient affirmation of students within universities, is, first of all, fear of consequences of reporting certain forms of corruption, and insufficient knowledge of the possibilities of their influence on problem solving. Thus, it is necessary to offer information to students, through various student groups and initiatives at the university level about corruption, and to share with them the methodology of combating corruption.

It is extremely important to raise awareness about combating corruption in wider academic circles and through various projects and participation in certain social activities create a foundation for solving this problem within the respective university, i.e. by the academic and administrative staff. Since the source of this phenomenon should be looked for at a university,



no wonder that this is one of the key reasons why the problem should be tackled at the university level. Primary form of eliminating corruption at higher education is offering better opportunities for advancement of academic staff and offering full support to their future scientific research. Only then, shall the reasons for taking certain actions by the staff be reduced to minimum.

Furthermore, it is extremely important to carry out internal control, primarily at faculties, and then universities, regular surveying of students, academic and administrative staff, educating all participants in the educational system about corruption, methods of reporting and sanctioning corruptive actions. Also, to enable reporting through a uniform telephone number assigned for preventing and combating corruption.

Eventually, we believe it is very important to regulate in detail the process of reporting, and combating this problem at the university level in the form of legal and sublegal regulations, because only in this way academic, but also broader social circles shall understand seriousness and the need for solving the problem, which shall, in the long run, affect the awareness that such activities should be avoided in the future.

In order to achieve positive results in preventing and combating corruption it is necessary to engage all participants in the educational system, and on the other hand, the support of competent state agencies.

To end, we can only conclude that securing, i.e. providing legality, transparency, publicity, engagement of students in all agencies and, certainly, the quality of, among other things, teaching staff, and all other participant in the educational system, shall provide us with the grounds for ethical conduct, and the system of values, as a whole.

## **7. LIABILITY FOR CORRUPTION**

In order to emphasise the seriousness of the matter of corruption, at the final part of this study we shall address the multiple nature of liability

which originates from committing the stated offence. Liability for corruption in higher education can be observed at four levels. Firstly, we face with moral and social liability, base on which an individual led by established moral principles is liable to the community he/she has damaged by his/her conduct. Second level of liability represents disciplinary liability regulated by various university and faculty legal instruments which, on the one hand, aim at deterring and preventing corruption, and on the other, sanctioning at the level of the very institution. Finally, criminal and civil liability represent a reaction of the state which through its laws emphasises the importance to penalising such conduct, either through criminal prosecution of criminal offenders, or through civil law action in the form of claim for material and non-material damages.

## **7.1. Moral and social liability**

In the essence of every liability, including liability for corruption, there is primarily the awareness of an individual and society as a whole about immorality and wrongfulness of certain forms of conduct. Every individual has his/her internal „moral compass“ through which he/she distinguishes right from wrong actions. Based on the formed system of values, which on one side, prevents commission of prohibited conduct, and on the other condemns it, before social awareness turns into a legal norm with adequate sanction, the society performs the function of moral condemnation, and later reacts against actors of incriminated conduct.

Actors of corruption in higher education are teaching staff, other employees and students of higher education institutions. The fact that such acts occur in the educational system, as one of the foundation columns of every community, makes this problem extremely delicate one.

In the essence of social condemnation of actor in corruption in higher education lies disharmonised trust the society vested into teaching staff in charge of forming young minds, and into students as future young researchers in the fields they are specialising in, some of them representing potential future teachers. This kind of liability also inevitably draws the fall

of credibility of the faculty, i.e. university, whose employees or students are involved in committing acts which can be classified as corruptive. Thence, potential public admonition of individuals who are directly involved or act as agents in acts of corruption in higher education represents one of the most effective sanctions in the sphere of social liability.

## **7.2. Disciplinary liability**

In combating corruption, as a social evil, every individual should be engaged, without reserve. Although there are competent state agencies whose scope of activities envisages combating corruption, other agencies, institutions and individuals also must take active part in combating corruption. When corruption in higher education is concerned, universities are the first that have to take concrete measures to eliminate corruption. It is necessary to establish and regulate a system which shall not tolerate corruption and which shall be capable of resisting it. Such system should be composed of preventive and repressive elements, meaning it should prevent corruption from emerging, and if it becomes evident, then there must be mechanisms for its detection and sanctioning.

Such system universities try to firstly establish in their sovereign documents, by-laws, which declaratively prohibit corruption. Collaterally, corruption is prohibited in the form of various rulebooks which regulate issues such as study rules, appointment of teaching staff, presenting acknowledges and awards, systematisation of workplaces, etc. The most important university documents which define disciplinary liability are Codes of Ethics and rulebooks on disciplinary liability of students and teaching staff. They provide for the principles of work and conduct of university staff and students, define unlawful actions, determine the process of establishing liability and prescribing sanctions in case of breaching the code or rulebook. Basic principles to be respected in the process of work are: the principle of legality, protection of human rights and freedoms, the principle of equality and equity, professionalism, objectivity, publicity, competence, etc. Unacceptable conduct would be discrimination based on

different criteria, harassment, receiving gifts, the conflict of interest, etc. Although some of these acts represent typical acts of corruption, it could also be singled out as a type of unlawful activity, as a legal standard, covering other unlisted unlawful forms of conduct, which are considered harmful. In case of violation and non-compliance with these principles, i.e. in case of unacceptable conduct, an action is initiated to establish facts and present evidence in order to establish if there are grounds for pronouncing provided for sanctions.

The process of establishing disciplinary liability is carried out by a special agency called commission, committee or court of honour. Selection of members, tenure, working methodology and decision making of this agency are envisaged by the very code or rulebook. The process starts with filing an initiation request. A person who has filed a request is issued a written confirmation and is guaranteed maximum discretion, highly important if we bear in mind that persons who possess evidence and information about corruption do not, out of fear, easily consent to report it. Next stage is collecting documents and providing evidence. The parties must be provided to be heard and, if necessary, to engage a legal representative. If liability is established against the persons claimed, sanction shall be pronounced. Measures which can be pronounced can range from lenient, such as admonition or warning, and if it is established that the breach of duty was more serious, sanctions include fine and exclusion from a teaching process. Acts of corruption represent the most serious form of violation of basic principles of education. Thus, in case of their detection and processing, only the most severe sanctions come into matter. Certainly, the university is bound to inform competent law enforcement agencies to proceed with the matter in compliance with the law.

It is important to point out that codes of ethics and rulebooks on disciplinary liability exclusively prohibit corruption and anticipate the evidential and sanctioning procedure, but corruption can also reveal itself in the very disciplinary process. Different situations are possible for establishing a breach of disciplinary rules, but the process is not finalised

due to acts of corruption and eventually liable persons are not at all or not adequately sanctioned.

The importance of disciplinary procedure and disciplinary liability is especially evident when establishing civil law liability and the right of a third party to damages. If a disciplinary procedure has ensued and liable person sanctioned, the possibility of recovery of damages is quite simple for the third party since the relation between caused damage and liable person has been established. Injured party can realise his right through civil litigation or through rules of administrative procedure. The position of the injured party is far more difficult if the disciplinary procedure against the liable person has not been carried out. He cannot request initiating of the disciplinary procedure against the liable person. The only thing he can do is to file an action against the management of the offender, in this case the university, or to initiate a criminal proceeding against all persons, who, he believes, have participated in the commission of a criminal act.

If we take into consideration that acts of corruption are very specific and serious by nature, liability for such acts should be separated from liability for other breaches of labour relations and study rules. It is necessary to pass documents which shall thoroughly define different corruption related issues. It especially refers to establishing special agencies in charge of corruption, procedure for proper establishing liability of persons and pronouncing appropriate sanctions with must have not only repressive effects on the offender, but also preventive on all potential offenders if the commission of an act of corruption has been established.

### **7.3. Criminal liability**

A duty of every state is to protect its legal order and interests of its citizens by incriminating certain forms of conduct and prescribing adequate penalties. By incorporating into criminal legislation provisions for sanctioning persons who acquire material gain to perform their duties, or something that goes beyond its framework, and those persons who offer such gain, the state protects its moral values and its integrity.

Bosnia and Herzegovina has ratified a series of international anti-corruptive agreements, including Criminal Law Convention on Corruption of the Council of Europe. Thus, the state has taken over the obligation to harmonise its legislation and to take other measures so that national legislation would classify various forms of obtaining illicit material gain in the public service as a criminal act, including receiving and giving bribe in the private sector.

National legislation of Bosnia and Herzegovina has incriminated corruption at the state and entity levels. Such criminal offences are contained in reference chapters of the state and entity criminal codes referring to criminal offence of corruption or bribery, i.e. criminal act against office and other competent duty.<sup>33</sup>

Furthermore, in a broader sense, corruption can be connected to criminal offences against sexual freedom and morale, if it is a criminal act of sexual intercourse provided through abuse of office. Such criminal acts are incriminated at the entity level.<sup>34</sup>

Since the definition of an official is broadly set in each of these Acts, and since some criminal acts request engaging those persons who do not possess official proof of identity (within the frame of this theme, those are students or other persons who, by cash or other property gain, unlawfully stimulate higher education staff to do certain favours), corruption in higher education is subject to criminal prosecution.

The following pages shall interpret certain provisions of the Criminal Code of Bosnia and Herzegovina.

### *a. Receiving bribe and other forms of gain<sup>35</sup>*

In the theory of criminal law, receiving bribe, i.e. gift and other forms of gain, is also known as passive bribery. In the existing law of Bosnia and

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<sup>33</sup> Chapter XIX CC *BiH*, chapter XXXI CC *FBiH* and chapter XXVII CC *RS*.

<sup>34</sup> Chapter XIX CC *FBiH*, chapter XIX CC *RS* (Criminal acts against sexual integrity).

<sup>35</sup> Član 217. *KZ BiH*, član 380. *KZ FBiH* i član 351. *KZ RS* (Primanje mita).

Herzegovina, this criminal act is not related to the value of gain received by an official, which further underlines its importance.

Criminal act of receiving bribes and other forms of gain is met in three forms:

- **Real passive bribing**, when an official or officer demand or receives a bribe or other gain, or is assured to receive such bribe or gain, so that he would, within the frame of his power, do something he is not permitted to do, or fails to do something he is bound to do, for which the BiH state and BiH Federation anticipate prison sentence from one to ten years, and in the Republic of Srpska from one to eight years,
- **False passive bribing**, when an official or officer requests or receives a bribe or other gain, i.e. its assurance, in exchange for doing something under his authority, he is bound to do, or fails to do something he is not permitted to do, for which the BiH state and BiH Federation Criminal legislation prescribe imprisonment from six months to five years, and in Republic of Srpska, from one to five years, and
- **Subsequent passive bribing**, when an official or officer requests or receives a gift or other gain after committing or failing to commit the stated forms of a criminal act, with prescribed prison sentence which is according to BiH state and BiH Federation CC equivalent to false passive bribing and according to CC RS up to three years.

#### *b. Giving bribe and other forms of gain<sup>36</sup>*

This criminal act appears in two forms which represent an inversion of the first two forms of passive bribing, as **real active bribing** (with prescribed prison sentence from six months to five years, and **false active bribing** (with prescribed fine or prison sentence up to three years according to CC BiH and CC FBiH, while CC RS does not prescribe a fine as a

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<sup>36</sup> Član 218. KZ BiH, član 381. KZ FBiH i član 352. KZ RS (Davanje mita).

sanction). This criminal act encompasses not only its immediate actors, but also intermediaries in such actions.

An important aspect of this criminal act is a certain stimulation of a legislator addressed to the criminal offender in case of reporting its commission, since an offender who has given a bribe upon request of an official or officer can be spared from sanctioning, if he reports the offence prior to its disclosure or awareness that the offence has been disclosed.

### *c. Illegal mediation*<sup>37</sup>

Perpetrators of a criminal act are not only officials, but also other persons who have used their office or influence to assure the commission of a certain official activity or its omission, in which case they shall be punished by imprisonment up to three years according to CC RS, while the state and federal code envisage fine as an alternative sanction. Other form of this criminal act, taking advantage of the influence for the commission of an official activity, which, otherwise, should not be committed or for the commission of an activity which, otherwise, must be committed, shall be punished by imprisonment from six months to five years.

The element of property gain during its commission additionally tightens sanctioning of this criminal act, thus for mediating in the course of committing its second form, the state and federal code prescribe prison sentence from one to ten years, and CC RS prison sentence from two to ten years.

### *d. Abuse of office or authority*<sup>38</sup>

As qualified forms of this criminal act, whose main form occurs in a situation when an official or officer abuses his office or authority or fails to

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<sup>37</sup> Član 219. *KZ BiH*, član 382. *KZ FBiH* i član 353. *KZ RS*.

<sup>38</sup> Article 220 *CC BiH*, article 383 *CC FBiH* and article 347 *CC RS* (Abuse of office or authority).



perform his duties, thus obtaining for himself or another some gain, rendering damage to another or harms the right of another, criminal codes of Bosnia and Herzegovina prescribe cases of obtaining certain property gain through commission of the main form. Such sordid abuse of office is sanctioned within the range from 10.000 KM to 50.000 KM, and in compliance with criminal codes of Bosnia and Herzegovina even more acute prison sentences can be prescribed than for its basic form.

*e. Sexual intercourse provided through abuse of office*<sup>39</sup>

Person who abuses his office in order to allure another, who is in subordinate position against the abuser, to sexual intercourse or other similar sexual act, shall be, according to CC, punished to prison sentence from six months to five years, and according to CC RS, to prison sentence up to three years.

Qualified form of this criminal act especially protects juveniles, since both entities prescribe prison sentence from six months to five years, for persons who commit such an act through abuse of their office or relation with a juvenile entrusted to them for the purpose of education, upbringing, guardianship or care.

## **7.4. Civil Law liability**

This form of liability of the perpetrator of the act of corruption in higher education purports the question of recovery of damages to injured parties. Corruption without exception results in damage, whether material or non-material. The greatest damage is certainly suffered by the state and society as a whole, which is evident in the context of education. Corrupted and bad educational system represents a faulty basis for the state and

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<sup>39</sup> Article 205 CC *FBiH*, article 196 CC *RS* (Sexual intercourse provided through abuse of office).

society who if they do not overcome such problems cannot expect bright future. However, in almost all cases it is possible to define an individual or a group of offenders of those who suffered the injury due to the commission of the act of corruption. Henceforth, the state should and has given the opportunity for filing a claim for damages and initiating court proceedings wherewith it would be able to establish civil law liability and pronounce property sanction to actors of the act of corruption. Thus, arsenal of weapons for combating corruption and its final eliminating from higher education and all spheres of life has been expanded.

Legal framework for civil law liability represent foremost general rules of torts law<sup>40</sup>, then rules providing for civil law proceedings<sup>41</sup> wherewith it is possible to realise the right to damages, and among international documents the most important one is Civil Law Convention about Corruption of the Council of Europe of 1999. There are special Acts enacted by legislative agencies at different levels of government in BiH, which also guarantee the right to damages to persons who have been wronged through acts of corruption. Instances of such Acts are Higher Education Acts, Employment Acts, Acts regulating the work of courts, prosecutor's offices, public attorneys, police, inspection services, etc. Although such documents do not concretely regulate liability for damages caused through acts of corruption in higher education, they are as such absolutely applicable to this segment of society and life.

The right to recovery of damages is founded on the rules of torts and contract law. Furthermore, it should be mentioned that this right can be enjoyed by the university staff and persons outside the university. It is well known that damages appear in tree forms: actual damages or reduction of

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<sup>40</sup> The Law on Torts and Contracts (*Official Gazette SFRJ*, no. 29/78, 39/85, 45/89 and 57/89 „*Official Gazette RS*“ no. 17/93, 3/96, 39/03 and 74/04 , *Official Gazette F BiH* no. 2/92, 13/93, 13/94, 29/03).

<sup>41</sup> Civil Proceedings Act of BiH, („*Službeni glasnik BiH*“, br. 36/04, 84/07), Civil Proceedings Act of Republic of Srpska, („*Official Gazette of RS*“, no. 58/03, 85/03,74/05, 63/07,105/08, 45/09 and 49/09), Civil Proceedings Act BiH Federation, („*Official Gazette F BiH*“, no. 53/03, 73/05 and 19/06).

someone's property, lost gain or prevention of its increase and non-material damages, i.e. inflicting psychological or physical pain and fear. The stated form of damages can occur separately, in combination and cumulatively. In order to talk about liability of a person, there must be his guilt for caused damage (subjective liability). Legislation recognises two degrees of guilt: intent and negligence. Intent always envisages the awareness of the consequences of the committed action, while negligence such awareness does not recognise and it can be ordinary, gross and slight by nature. While ordinary negligence anticipates liability having in mind the fact of performing professional duty, it is necessary to point out that in the case of establishing only slight negligence, liability for damages should not be imposed. Another necessary condition for liability of offender is causative relation between his conduct and occurred damage. Such causative relation must be proved beyond reasonable doubt, and that would not be that easy in all circumstances.

Compensation for suffered damage, caused by the act of corruption, a third party can also claim from the university. It is necessary to prove a causative relation between acting or omitting to act by the tort-feasor, i.e. member of staff or teachers employed at the university and caused damage. Legal entity is liable for damage caused by its agent to a third party in the course of performing or in relation to performing his office, but it is also prescribed that the employer, whose employee has caused damage in the course of his work or in relation to his work to a third party, shall be liable, unless he proves the existence of reasons excluding the liability of the employee. The objective of recovery of damages is *restitutio in integrum*. Previous status, in the case of property damage, shall be established through natural reinstatement, if possible, if not, then through monetary compensation. Non-material damage is compensated through publishing the court decision or correction, or through monetary recovery of non-material damage.

Huge importance should also be rendered to norms which establish the rules of court proceedings. The right to recovery of damages for suffered damage is possible to realise in criminal and in civil litigation. The court

should be efficient so that the injured party could realise his right without delay. Special attention should be given to the protection of certain individuals, who might be endangered, intimidated or exposed to various forms of pressure. What we have in mind foremost are persons who have reported the act of corruption and persons who dispose of important information in terms of such acts.

Civil Law Convention about Corruption, also signed by Bosnia and Herzegovina, represents the most important international document which regulates this matter. It is composed of three parts: measures to be taken at national level, international co-operation and monitoring and closing provisions. The Convention is not of self-executive type, which means that it is necessary that the ratifying states must take over the principles and rules contained in the Convention into their domestic legislation, taking into consideration their special situation. Firstly, the Convention gives a broad and general definition of corruption trying to cover a wide range of forms of corruption. Thus, corruption is defined as requesting, offering, giving or receiving express or implied, a bribe or other unassociated gain or the prospect of it, which disarranges a proper performance of any office or conduct requested from a person who received a bribe, certain unlawful gain or the prospect of it. It guarantees the right to damages to all persons who suffered through the act of corruption, one of the three forms of damages and requests the signatory states to ensure mechanisms of realisation of such a right. The Convention defines three conditions that must be cumulatively fulfilled so that the right to damages could be realised: a) that the respondent has committed or approved the act of corruption, or failed to take reasonable steps to prevent the act of corruption; b) that the claimant has suffered damage; and c) that there is a causative relation between the act of corruption and damage. All respondents, liable for the same act of corruption, answer jointly and severally for caused damage so as to improve the position of the injured party. Regarding statute of limitations that arranges the right to damages, a minimal subjective period of time of three years and ultimate objective period of time of ten years must be ensured. Subjective period of time starts

to run on the day the person who suffered the injury has become aware or according to the state of the matter, should be aware, that damage occurred, that the act of corruption was committed and has become aware of the identity of the tort-feasor. For the purpose of preventing and disclosing corruption, all contracts designed as the product of corruption or which by itself anticipate corruption are to be considered null and void. The right to special protection is entrusted to persons who have reported their suspicion of corruption to the competent agencies. Signatory states are bound to ensure an effective procedure for collecting evidence in civil proceedings conducted for reasons of recovery of damages caused by the act of corruption.

When higher education is at issue, the roles of injured party and the offender can be played by students, university staff or a third party. It is highly important to point out that combating corruption must be constant, severe and unsparing and actors in corruptive activities must be adequately sanctioned. However, special attention should be given to eliminating claims and aborting processes that are not founded on clear and credible evidence. Otherwise, it is possible to bring into question, without any justified reason, the good name and reputation of an individual, university or the state.

## **8. CONCLUSIONS AND RECOMMENDATIONS**

Enacting Entity and Cantonal Higher Education Acts and their harmonising with the Framework Act for Higher Education of BiH, introducing ethical committees and commissions, adopting Codes of Ethics, introducing quality ensurance systems, work control procedures and university management, show intensive endeavours of the universities to efficiently handle the problem of corruption. However, in order to make the fight against corruption at universities more efficient, it is necessary to introduce clearer procedures and more precise definitions of the liability of

educational institutions and other entities who take part in the process of preventing corruption. Namely, recent experience has shown that liability based on the powers to initiate proceedings or to make decisions is usually being tossed from one agent to another, which results in failure to process the claims for breach of ethical principles and all other forms of unethical conduct.

Establishing a joint system for combating corruption, stronger unification of academic community and deepening co-operation with other agencies (police, prosecutor's offices, courts, etc.) represents a foundation for future acting in the context of preventing corruption in higher education.

Lastly, based on the aforementioned, we recommend the following as highly necessary:

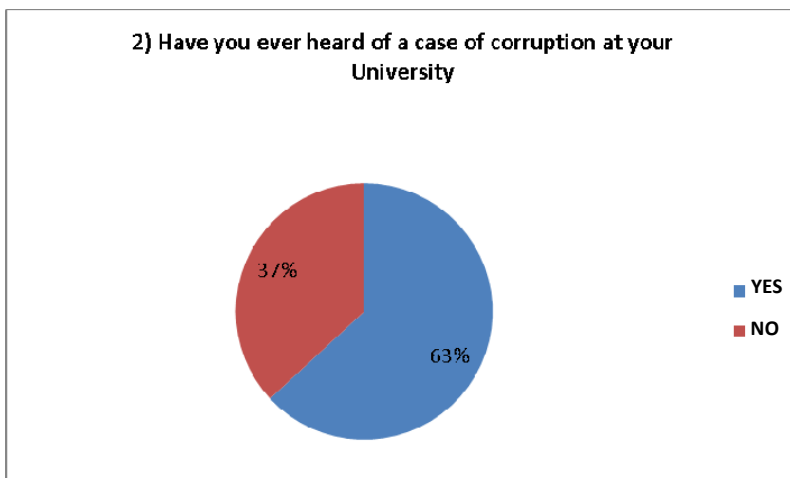
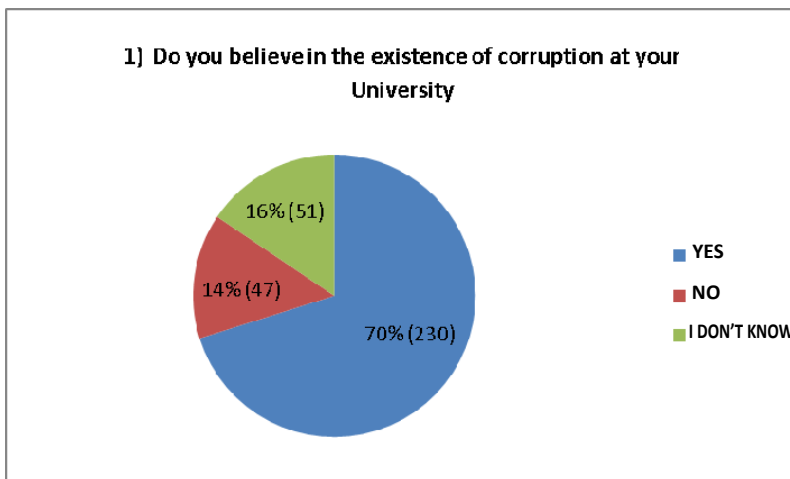
1. Implementing a joint strategy for combating corruption;
2. Enacting internal by-laws at universities (including a special rulebook) that shall regulate in detail corruption, i.e. measures for preventing and combating corruption;
3. Establishing special bodies at universities that shall exclusively deal with this matter;
4. Constant and efficient control and follow-up on the situation in the process of preventing corruption;
5. Educating all participants in the educational system about corruption;
6. Severe sanctioning of corruption to prevent its reappearance;
7. Stimulating students, academic and administrative staff for reporting corruption;
8. Offering protection to individuals who report corruption;
9. Continuously performing survey on corruption at universities;
10. Establishing a unique telephone number at universities for reporting an act of corruption;

11. Engaging competent bodies at the state and entities level in combating corruption;
12. Issuing publications about recent and future activities in terms of combating corruption;
13. Raising awareness and regularly informing the public about adversity and consequences of an act of corruption.

*„The greatest crimes are not committed  
for the sake of necessities, but  
for the sake of the superfluities.“  
(Aristotel, Politika II, 4,1)*

**EU PROJECT "Engaging graduate students in BiH towards European integrations " - "Legal aspects of the fight against corruption in higher education – de lege lata and de lege ferenda"**

**Results of survey**

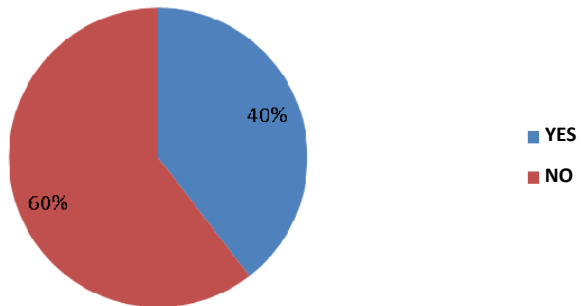




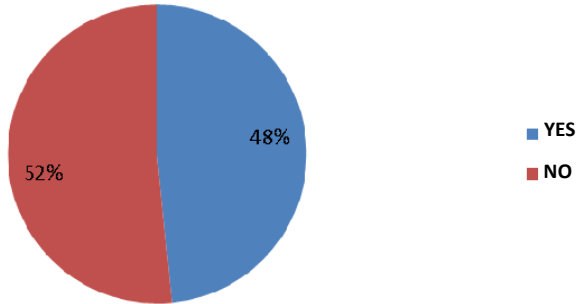
**3) Have you ever been an actor/mediator in the commission of an act of corruption**



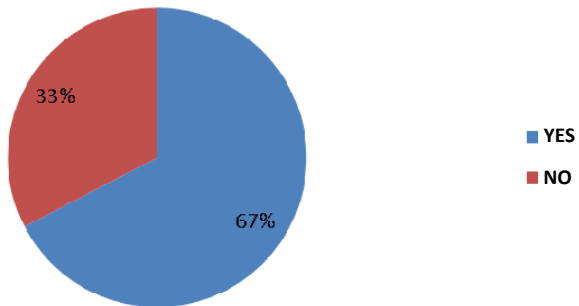
**4) Would you report an act of corruption to the University agencies if you know it has been committed**



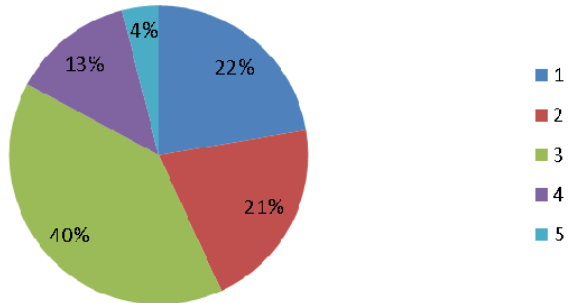
**5) Would you report an act of corruption to the University agencies if in possession of reliable evidence**



**6) Does a potential fear of consequences discourage you from reporting an act of corruption**



**7) How much do you know about anti-corruptive measures at your University (circle from 1-5)**



**8) List measures for preventing corruption that you find the most effective?**

- Increased supervision, heavy sanctions, prison sentences, fines
- Raising salaries to teaching staff
- Guaranteed anonymity to a reporter,
- Publishing data about actors of corruption,
- Taking exams before commission, written exams, not signing the test, public examination,
- More lectures on corruption ,
- Placing all students into same position,
- Discussing the issue at Teachers' Council sessions
- Application of law
- Regular and anonymous surveys
- Regular inspections
- Severe punishments for corruption
- Better selection of teachers

- Preventive measures
- „Hidden students“

**9) How do you think corruption should be sanctioned?**

- employees: termination of contract, high fines, work ban, removal of the title, confiscation of property gain, public discrediting,
- students: ban on exam taking, expulsion from faculty, ban on studying, nullification of exam, fine,