

## ORGANIZED CRIME AND CORRUPTION OFFENCES IN THE FINAL VERDICTS OF BOSNIAN COURTS: WHERE IS THE LINK?

Original Scientific Paper

## ORGANIZOVANI KRIMINAL I KORUPCIJSKA KRIVIČNA DJELA U PRAVOSNAŽNIM PRESUDAMA NA BOSANSKOHERCEGOVAČKIM SUDOVIMA: GDJE JE POVEZNICA?

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### Abstract

**Inspiration and the research problem:** According to theory, as well as previous research, organized crime and corruption offences often go hand in hand. While organized crime actors use corruption to achieve their criminal acts, definitions of grand corruption, political, systematic, administrative, and corporate corruption, encompass elements of organized crime. Thus, it can be expected to find the mentioned link in the final verdicts of criminal courts.

**Objective:** The main objective of the paper is to discover and describe relations between organized crime and corruption in the final verdicts at selected Bosnian courts.

**Methodology:** Method of data gathering was document analyses. We have paid special attention to the Court of Bosnia and Herzegovina where we analysed 313 final judgments for organized crime cases, as well as to the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo, where we analysed 89 judgments of corruption offences. Method of data analyses was statistical method (method of descriptive and inferential statistics)

**Limitations:** This paper is not going to explain the link between corruption and organized crime in general, but it is limited to searching this link in judicial documents. Also, the research results are limited to three selected Bosnian courts.

**Results:** Despite the mentioned theoretical frameworks and findings, this article shows very weak ties between organized crime and corruption in judicial documents. In the end, results indicate unexpected indicators of judicial corruption with elements of organized crime. Because of such large differences between theoretical remarks and the results of this research, the article raises more questions than provides answers. These questions should be topics and inspiration for future research.

**Justification:** The research tests theoretical assumptions related to the link between two criminal behaviors. This indicates a significant scientific justification. Also, informative character of the paper could have some influence on policymakers and some policy implications could be caused.

#### **Keywords**

Organised crime, Corruption cases, Final judgments, Court's penal policy

### **Introduction**

The connection between organised crime and corruption has been well discussed in criminology. There is literature which suggests that organised criminal groups use institutional corruption to make their criminal operations possible. Other literature suggests that high levels of corruption provide fertile ground for organised crime to flourish. Thus, in accordance with Von Lampe's (2006) research results, some authors view corruption as a defining element of 'organised crime' or organised criminal groups (see e.g. Amir, 1999; Wilsing, 1996; Finckenauer, 2005; Hagan, 2006). On the other hand, some scholars disagree and view corruption not as a core feature, but rather as a factor which places a secondary or supporting role in organised crime cases (see e.g. Weigand and Büchler, 2002). However, both groups of authors have discussed organised crime together with corruption. The link between these anti-social behaviours is also recognized by the United Nations Convention against Transnational Organised Crime (2000). This convention states that corruption of public officials is a significant factor and a great challenge in the fight against organised crime. Because of this, consequently it includes several provisions related to corruption prevention, detection and punishment of public officials.

The above-mentioned assumed relations between organised crime and corruption may have consequences for the criminal justice system in Bosnia and Herzegovina. Thus, the Prosecutor's Office of Bosnia and Herzegovina has established a special department, "Department for Organised Crime, Economic Crime and Corruption". A department with the same name is also established at the Court of Bosnia and Herzegovina. A similar situation can be found in neighbouring Serbia, where the Special Prosecutor for Organised Crime is competent for serious cases of corruption too (Van Duyne, Stocco and Dimitrijević, 2013).

Empirical research with the focus on the link between organised crime and corruption are few and far in Europe (Levi and Lord, 2011). The lack of specific studies in the European Union addressing this link is caused by various circumstances relating to work or government and the work of criminologists (see Gounev and Bezlow, 2010). This is not due to a lack of organised crime: in the past 25 years Bosnia and Herzegovina had significant organised crime problems (European Commission, 2015). Nevertheless, criminologists in this country failed to pay special

attention to this type of crime. Therefore, the links between corruption and organised crime remained under-researched.

With these arguments in mind, it would be significant for the scientists, but also for practitioners, to discover whether links between organised crime and corruption exist on the base of final verdicts in the courts of Bosnia and Herzegovina,<sup>1</sup> and to describe that links. Thus, the main objective of this paper is to explore the links between proven organised crime cases and corruption, as well as the link between proven corruption offences and organised crime. We agree that this is an important limitation because there is overwhelming evidence that the 'dark number' in corruption reporting is very large, and the cliché of the 'tip of the iceberg' is in this field fully valid. However, there is no reason to neglect the research findings from judicial documents.

Since there is no generally accepted definition of organised crime across academic disciplines, for the needs of this paper we will propose a working definition which we adopt from the Criminal Code of Bosnia and Herzegovina. Organised crime is described as a criminal offence committed by a group for organised crime, i.e. "a group of three or more persons, existing for a period of time and acting in concert with the aim of perpetrating one or more criminal offences that under the law carry a punishment of imprisonment of three years or a more severe punishment, with the aim of acquiring property gain."<sup>2</sup> This legal definition includes participating, organising and/or directing criminal group with the aim of commission of crimes. Therefore, the link to other criminal offences is a substantial part of the organised crime definition. Organised crime offences carry a punishment of imprisonment of at least three years or more, considered to be a severe punishment (See Cvitanović, 1999), which may be imposed under the laws of Bosnia and Herzegovina.

In the same way, no universally accepted definition of corruption exists. As a form of criminal activity, corruption is broadly defined as the misuse of one's position in order to further private gain, and as such is also treated as a crime in the legislation of a socio-political community.<sup>3</sup> This concept covers a wide range of offences: bribery (both active and passive), illegal interceding, abuse of office or official authority, embezzlement in office, and fraud in office. Protecting the proper execution of official or other institutional duties (where official duty is defined as the rights and obligations of officials in applying their

<sup>1</sup> A verdict shall become final when it may no longer be contested by an appeal or when no appeal is admissible (see Article 178, in Criminal Procedure Code of Bosnia and Herzegovina: Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09 and 72/13).

<sup>2</sup> See Article 1 and Article 250, in the Criminal Code of Bosnia and Herzegovina: Official Gazette of Bosnia and Herzegovina, No. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15.

<sup>3</sup> A useful definition of corruption is provided by Van Duyne (2001): "Corruption is an improbity or decay in the decision-making process in which a decision-maker (in a private corporation or in a public service) consents or demands to deviate from the criterion, which should rule his decision-making, in exchange for a reward, the promise or expectation of it" (p.2).

authority), along with identifying intentional criminal acts (acts with the aim of accruing personal benefits, be they material or not), are the criteria was used in classic corruption offences in criminal codes in Bosnia and Herzegovina (Datzner and Vujović, 2013).<sup>4</sup>

The following sections of this paper will discuss proven and explained ties between organised crime and corruption, based on previous research, and well established policy facts. Then it will consider the methods to carry out the research, the findings of the research and the related discussions. Finally it will draw the conclusions of the research undertaken.

## **Expected ties between organised crime and corruption**

### ***How organised crime occurs and how it involves corruption?***

Similarly to other countries, in Bosnia and Herzegovina, organised crime is commonly associated with *illicit drug trafficking*, *smuggling of persons* and *trafficking in human beings* (Brady, 2012; European Commission, 2013), *as well as tax evasion* (Pashev, 2007; Council of European Union, 2013; Vujović, 2015). In the following text, each of above-mentioned organised crime related offences will be discussed through the prism of the link between organised crime and corruption, both on global and national level.

*Illicit drug trafficking* is the most frequent activity related to organised crime and activities of organised criminal groups. This type of criminal activity represents a large element of the global economy. In many countries, it accounts for 0.7% - 1.7% of national GDP, and, in some cases such as in Afghanistan, it accounts for a significant 13% of the country's GDP (UNODC, 2016). Corruption has significant links with the global drug problem. In general, "the drug trade flourishes where state presence is weak, where the rule of law is unevenly applied and where opportunities for corruption exist" (UNODC, 2016: 19). Moreover, according to analyses provided by Buscaglia and van Dijk (2003) levels of organised crime and corruption, in countries at all stages of development, are primarily shaped by the quality of core public state institutions, such as the police, prosecution, and the court. Thus, drug trafficking organisations have the power and sufficient funds to buy protection from politicians or business sector representatives and ensure that they are not arrested or prosecuted by public officers (e.g. law enforcement agents, customers, prosecutors, judges, etc.). Wang (2013) described the model of a "*protectable umbrella*" for drug organised criminal groups created by public officials. Also, Murataya *et al.* (2013) emphasise the relationship between Mexican drug trafficking organisations and corruption in the Mexican criminal justice and political systems. The 'Balkan route' of drug smuggling, with its three branches, was always popular for traffickers and smugglers (See UNODC, 2017). Among other countries, the Central Balkan branch include Bosnia and

<sup>4</sup> In accordance with a complex constitutional structure of Bosnia and Herzegovina, there are four criminal codes: The Criminal Code of Bosnia and Herzegovina, the Criminal Code of Federation of Bosnia and Herzegovina, the Criminal Code of Republika of Srpska and the Criminal Code of Brcko District of Bosnia and Herzegovina.

Herzegovina.<sup>5</sup> According to data provided by High Judicial and Prosecutorial Council of Bosnia and Herzegovina (2017), in the period between 2007 and 2016, there were between 1,200 and 1,500 reports of drug related crimes.

*Smuggling of persons and trafficking in human beings* are crimes usually committed by an organised criminal group (UNODC, 2013) and comprise the fastest growing transnational criminal activity. These activities were also present in the Balkans, especially during the migrant crisis (2013), when organised criminal groups committed crimes related to smuggling of persons (Shelly, 2014). According to the OECD (2016: 3) "Corruption is a key facilitator of human smuggling offences". A significant number of representatives working in public institutions are involved in the smuggling of persons, including border guards, diplomatic personnel, consular offices, travel agencies, officials responsible for issuing passports or visas, and so on (Pomfret, 2006; Holmes, 2009). According to official reports in Bosnia and Herzegovina, corruption in the police force and other officials in Bosnia and Herzegovina is a serious obstacle in the fight against trafficking in human beings and the smuggling of persons (Ministry of Security of Bosnia and Herzegovina, 2014).

*Tax evasion* is also a frequent criminal activity committed by organised groups, and is easily achieved using bribery, while their accomplices in the government sector commit abuse of office (Van Duyn and Stocco, 2012). Ivanyina, *et al.* (2010) also found a strong link between tax evasion and corruption, and they argue that this link exists in the majority of grand corruption cases.

According to authors who are experts in this field, there are two schools of thought and at least two types of links between corruption and tax evasion. The first school of thought highlights the situation when entrepreneurs give bribes to public officials in order to avoid taxation and regulations, and also to win public contracts (Shleifer and Visny, 1993; Sanyal, *et al.* 2000). The second school writes about the underground economy of entrepreneurs who pay bribes to government institutions in order to continue their businesses (Choi and Thum, 2005). Tax evasion related crimes badly affected Bosnia and Herzegovina in the period after the end of the Bosnian war (1995) at least until 2010 (Hajdinjak, 2002; Vujović, 2015). The large scale of excise good smuggling was well organised, and a significant role in that groups for organised crime were played by corrupted public officials.

The above-mentioned organised criminal activities implicitly lead to *money laundering*. Due to the extent of these criminal activities, the amount of laundered money is estimated to be between 2% and 5% of the global GDP (Schneider, 2010; UNODC, 2011). However, in the absence of a proper definition of money laundering these figures are debatable. The process of money laundering usually take place in three stages: the placement stage, the layering stage, and the integration stage (Levi and Reuter, 2006). The first stage could be described as the initial entry of the "dirty" cash or proceeds of crime into the financial system. In the layering stage, the perpe-

<sup>5</sup> The central branch runs through Bulgaria, the former Yugoslav Republic of Macedonia, Serbia, Montenegro, Bosnia and Herzegovina, Croatia and Slovenia, and into Italy or Austria.

trators try to separate the illicit money from its origin, which often requires transfers of money from one country to another. Finally, in the integration stage, the perpetrators use seemingly legitimate businesses for their income. It is hard to imagine any of the stages of money laundering without the involvement of corrupt public officials. "Money laundering is also often embedded in the offense itself when the corruption is large scale" (Levi and Reuter, 2006: 325).

### ***How corruption occurs and how it involves organised crime?***

Some cases of corruption include activities of organised crime groups. Ruggiero found that in Italy, "widespread corruption within the social, economic and political spheres attracts organised criminal groups, encouraging them to participate in corrupt exchange and indirectly boosting their other various illicit activities" (2010: 102). While Beare (1997) finds out that corruption enables criminals to buy protection from enforcement, Van Duyne and Stocco (2012) discovered cases of organised embezzlement and organised abuse of office in corruption cases in Serbia. Furthermore, there are several research projects which found elements of organised crime in analysed verdicts for serious corruption cases at courts throughout Serbia (see Stojanović and Kolarić, 2010; Van Duyne, *et al.* 2013).

Corruption in general, as well as corruption offences prescribed in criminal codes in Bosnia and Herzegovina, can occur in different forms and situations. There is no generally accepted classification of corruption. In their effort to describe corruption, authors usually mention several overlapping categories: *Grand corruption*, *Systematic corruption*, *Political corruption*, *Administrative corruption*, *Petty corruption* (Bhargava, 2006; Gounev and Belzov, 2010; Morris, 2008). Sometimes, one of these forms incorporate others.

*Grand corruption* is defined as corruption that penetrates the highest policy-making organs of government (heads of state, ministers, or other senior government officials) and serves the interests of a narrow group of business people and politicians, or criminal elements (Bhargava, 2006; UNHSP, 2007; Czap and Kanybek, 2012). Grand corruption and organised crime are therefore two sides of the same coin (Van Dijk, 2008). In these cases, public officials have established a well-organised corrupt system (Rose-Ackerman, 2002), related to tax collection, organised bribe taking (Czap and Kanybek, 2012), international business and capital investment (Rose-Ackerman, 1996), etc. The consequences of this type of corruption have the broadest negative impact on society.

*Political corruption* takes place at high levels in the political system. It can be recognized when politicians and other agents of the state who are entitled to make and enforce the laws in the name of the people, abuse this authority to sustain their power, status, and wealth (Amundsen, 1999). "Such officials engage in corruption when they seek bribes or other rewards for their own political or personal benefit, and, in return, provide political favours to their supporters at the expense of public interest" (Bhargava, 2006: 1). According to Gounev and Belzov (2010), political corruption is organised crime's most powerful tool used "to influence customs to provide protection; To act as intermediary in facilitating customs corruption; To provide protection to private sector players involved" (p. 131).

*Systematic corruption* is a situation in which the major institutions and processes of the state are routinely dominated and abused by corrupt individuals and groups, and in which most people have no alternative and are thus obligated to deal with corrupt officials (Morris, 2008). This situation provides the best base for organised crime to commit illegal activities.

*Administrative corruption* occurs within public bureaucracies. It could include the use of bribery and favouritism to allow certain individuals or businesses to lower their taxes, escape regulations, or win low-level procurement contracts (Bhargava, 2006; Gounev and Bezlov, 2012). Processes of administrative corruption are usually well established. According to Klitgaard (1988), sometimes political and bureaucratic leaders may see national interest in tolerating (or pursuing) a certain degree of administrative corruption.

*Petty corruption* (similar meaning to *street corruption*) refers to situational activities of persons usually linked with the payment of comparatively small amounts of money to “facilitate” routine official transactions, such as customs clearance or the issuing of building permits (Sačić, 1998). This type of corruption is mostly separate from organised criminal groups and their activities.

Most of these corruption categories need a fair amount of organisation, such that they may qualify as organised crime themselves. This implies that a dividing line between the organisation of corruption and organised crime becomes thin, of not erased.

Based on the literature review outlined above, two research hypotheses were set:

- (1) The majority of the final verdicts for organised crime cases considers corruption as an action which facilitates other (principal) crimes or as a primary action of organised criminal group;
- (2) Some of the final verdicts for classical corruption offences find and describe a relation with activities of organised criminal groups.

## Methodology

In order to test the stated hypotheses, final verdicts of three courts in Bosnia and Herzegovina were analysed (i.e. the verdicts from the Court of Bosnia and Herzegovina, the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo).

A majority of organised crime cases in Bosnia and Herzegovina are prosecuted at the Court of Bosnia and Herzegovina (Hogić, 2014). According to the statistics provided by High Judicial and Prosecutorial Council of Bosnia and Herzegovina (2013), in the observed period (2003-2012), about three fourth of verdicts for organised crime cases were found at the Court of Bosnia and Herzegovina, precisely within the court’s Section for Organised Crime, Economic Crime and Corruption. Due to this fact, although organised crime could be prosecuted also in other jurisdictions in Bosnia and Herzegovina (entities’ and cantonal courts), data on organised crime cases were collected in this section of the Court of Bosnia and Herzegovina, because the court generally makes all of its verdicts available on its webpage.<sup>6</sup> Thus, all verdicts posted

<sup>6</sup> The data was collected and a database was created by A. Maljević and Softić D. (2012).



online from 2003 until April 2012 were analysed - the cases brought to the court in the time period since the establishment of the Court of Bosnia and Herzegovina.

Corruption related data was collected at the municipal and cantonal courts in Sarajevo as well. The decision to limit the analysis to Sarajevo alone stems from the fact that Sarajevo is the capital of Bosnia and Herzegovina, the administrative centre, and the seat of numerous municipal, cantonal, and state institutions. Given that corruption presupposes the perpetrator to have an official position or similar position of responsibility, it is reasonable to expect that these courts, with jurisdiction in the Sarajevo area, would also be dealing with the bulk of cases in the area of corruption. This expectation is verified by the data from the High Judicial and Prosecutors' Council of Bosnia and Herzegovina (2013) as well, which states that, in the 2009-2011 period, the Cantonal Prosecutor's Office in Sarajevo initiated the largest number of indictments for criminal offences of corruption, while the corresponding courts passed the largest number of verdicts in that area of law, when compared to other prosecutors' offices and courts in Bosnia and Herzegovina (see also Datzer and Vujović, 2013). The analysis included all of the verdicts from corruption cases that had concluded been finalised in these courts and were available for the period of 1 January 2005 to 1 January 2012.

The main research method used for the purposes of this paper and its analysis is described content analysis of official documents. Content analysis is one of the most important research methods for textual data, and a successful alternative or complement to research conducted by interviews and surveys in the social sciences (Krippendorff, 2004). Its application on judicial decisions provides a basis to draw a more detailed picture of registered delinquency and the path of criminal procedures, along with a basis to initiate an arguments-based discussion on penal policies implemented by the courts.

Since a five-year period is generally considered sufficiently long for the purpose of researching and understanding phenomena in the social sciences (Zelenika, 2000), the time periods chosen here (seven and nine years respectively) are sufficient in order to draw realistic and reliable conclusions. As these sorts of cases do not appear before the courts as often as other crimes, the data was collected from all cases during this time period, and there was no need to exclude cases from the sample.

It is important to bear in mind that results of this study shows only the situation in the Court of Bosnia and Herzegovina, the Municipal Court in Sarajevo, and the Cantonal court in Sarajevo. The research does not encompass or reflect the situations in other BH courts. Another limitation of this study concerns the data collection process, as it is possible that the Court of Bosnia and Herzegovina did not make available all verdicts related to the research period and type of offence. In addition, there is a possibility that officials in the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo did not provide access to all final verdicts in the period from 2005 - 2012.



## Results and discussions

### *Where is corruption in the final verdicts for organised crime?*

At the Court of Bosnia and Herzegovina, in their Section II - Section for Organised Crime, Economic Crime and Corruption, a total of 313 cases were analysed. In that number, there are 62 cases related to organised crime.

The analysis of judicial documents related to these cases found N=103 convicted persons (M=99; F=4), who were prosecuted and punished for 125 offences. According to the legal definition of organised crime, a constitutive element of this criminal offence is/are another criminal offence/s. By keeping this in mind, Table 1 shows the criminal offences which have been committed by organised criminal groups, as a principal offence(s) in a certain organised crime case.

Table 1: *Criminal offences committed by groups for organised crime*

Criminal offence	Freq.	%
Smuggling of Persons	38	30.4
Illicit Trafficking in Narcotic Drugs	37	29.6
Tax Evasion	13	10.4
Illicit Trafficking in Arms and Military Equipment	6	4.8
Obstruction of Justice	6	4.8
Counterfeiting of Money	5	4.0
Abuse of Office or Official Authority	5	4.0
Forgery of a Document	4	3.2
Aggravated Theft	3	2.4
Money Laundering	2	1.6
Robbery	2	1.6
Aggravated Bodily Injury	1	0.8
Extortion	1	0.8
False Report	1	0.8
Concealing	1	0.8
Total offences	125	100.0

The results displayed in the table above clearly indicate that 60% of criminal offences, which were committed by the organised crime groups were related to smuggling of persons and illicit trafficking in narcotic drugs. Tax evasion was present in 10.4% of offences and all other offences participated in less than 5% of organised crime related offences. In terms of classical

corruption offences, there is only Abuse of Office or Official Authority, which has appeared in 4.0% of proven crimes.

While Table 1 refer to criminal offences committed by groups for organised crime (n=125), Table 2 contains the results of analyses of the 62 proven cases/verdicts. In a final verdict it is always possible to find a detailed description of the committed criminal offences.<sup>7</sup> Therefore, the table below shows how many of a total 62 final verdict consist description of any type of corruption in organised crime cases.

Table 2: *Corruption as a facilitator in the final verdicts for organised crime*

	Freq.	Valid %	Cumulative %
Yes	3	4.8	4.8
No	22	35.5	40.3
Unknown	37	59.7	
Total	62	100.0	100.0

According to results, there is no recorded behaviour related to corruption, except in three cases (or 4.8%) where bribery was mentioned. These verdicts explicitly describe bribery as an action of the organised crime groups, undertaken with the aim to commit other serious crimes. Nevertheless, according to the verdict descriptions, the perpetrators were not convicted for bribery, and there is no any part of verdict which indicates that the use of bribery was taken as an aggravating circumstance for the severity of the sentence. Furthermore, more than one third (or 35.5%) of analysed verdicts explicitly state that offences were committed without any corruption. However, in more than half cases (or 59.7%), the verdict descriptions do not mention a potential link between organised crime and corruption.

Against the background of the literature review, which strongly states that smuggling of persons, illicit drug trafficking and tax evasion are most frequently consist corrupt actions, there were reasons to expect findings in agreement with hypothesis 1. In contrast, the outcome of the data-analysis of the criminal files of Section II lends no support for this hypothesis. The finding that the defendants of these three corruption related cases were not sentenced for corruption looks surprising.

If we exclude a possibility of failing to write about corruption in the final verdicts, this situation has two explanations: 1) Prosecutors did not prosecute for corruption in organised crime cases, or 2) they were not able to prove corruption there. In order to support first explanation there is evidence that Bosnian prosecutors were avoiding to prosecute for hate crimes within principle offences (e.g. assaults), because hate crime is difficult to prove (see Lučić-Čatić and Bajrić, 2013), just like corruption is. That difficulties caused that almost half of indictments for corruption did not finish with conviction (See Datzer and Vujović, 2013; Van Duyne, *et al.* 2013).

<sup>7</sup> See Article 285 and Article 290 in the Criminal Procedure Code of Bosnia and Herzegovina.

**Where is organised crime in the final verdicts for corruption offences?**

At the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo a total of 89 (62 + 27) court cases were found that fit our criteria in the seven-year period researched. As several persons may have been indicted in each of these cases, the structure of the verdicts and sentences ought to be represented in relation to the total number of persons against which these proceedings were held (see Table 3).

Table 3: *Verdicts and decisions for persons indicted for criminal offences of corruption*

Final verdicts	N	%
Conviction	60	55.6
Verdict of "not guilty"	28	25.9
Process rejected	9	8.3
Process halted	4	3.7
Indictments altered	7	6.5
Total cases	108	100.0

The table above indicates that the proceedings for criminal offences in the area of corruption were concluded for 108 persons. Bearing in mind the estimated scope of corruption in Bosnia and Herzegovina (see Datzer, 2011), this number is unexpectedly small. Furthermore, slightly more than one half were found guilty (N=60). According to description in the final verdicts, none of these 60 convicted behaviors indicate organised crime. Thus, second hypothesis is not proven, as well.

We can find some explanation for this if we consider the nature of the proven corruption offences. Table 4 shows the frequency of different proven corruption offences at the Municipal and Cantonal Courts in Sarajevo.

Table 4: *Frequency of the proven corruption offences*

Proven Offences	Frequency	%
Bribery (active and passive)	8	13.3
Abuse of office	10	16.7
Embezzlement in office	40	66.7
Fraud in office	2	3.3
Total	60	100.0

According to results in the table above, it is possible to see that embezzlement in office is the most frequent corruption offence, making up more than 65% of the proven cases. This type of crime is usually committed by a person in an official capacity (Vujović, 2013), which generally excludes organised crime. Contrary, the bribery is a corruption offence which is most frequently linked to organised crime (Albanese, 2004; Levi and Lord, 2011). In the analysis of corruption convictions, bribery is present in only 13.3% of cases (or n=8). Yet most of those bribery cases

are convictions for giving or taking a bribe of 10 – 25 euros (See also Datzer, 2011). This could indicate that courts mainly prosecute petty corruption.

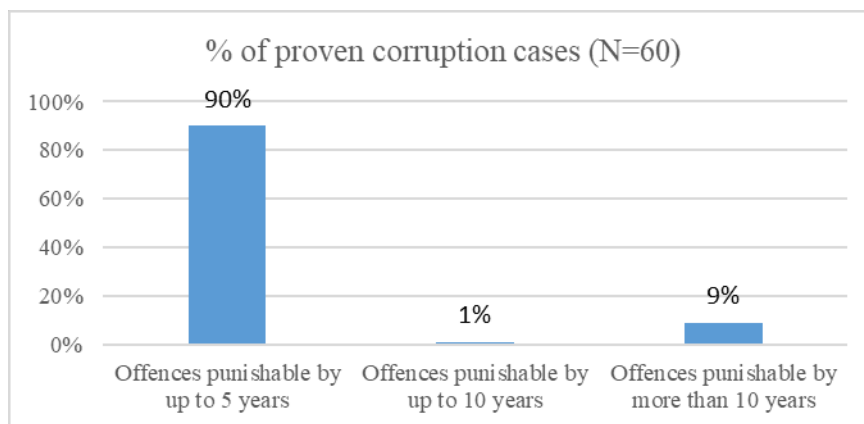
Relevant to this discussion is also the theory outlined by Cvitanović (1999), who argues that all criminal offences in criminal codes may be categorised as an minor (lesser felonies), moderate, serious, and very serious (see table 5).

Table 5: *The severity of criminal offences*

Offences' Severity	Prescribed sanction (imprisonment)
Minor	up to 3 years
Moderate	up to 5 years
Serious	up to 10 years
Very serious	More than 10 years

Minor criminal offences are those for which the maximum legal punishment does not exceed 3 years of imprisonment, while the moderate ones carry a maximum penalty of 5 years of imprisonment. The category of serious criminal offences is made up of those for which the law prescribes a maximum punishment of up to 10 years' imprisonment. Finally, the very serious criminal offences are those for which the prescribed maximum sentence is imprisonment of 10 or more years. In order to categorise our data set of proven corruption cases, we modified Cvitanović's intervals and merged the first two to better reflect penalties in Bosnia and Herzegovina. Therefore, we base our argument on three levels: offences punishable by up to 5 years, offences punishable by up to 10 years and offences punishable by more than 10 years. Figure 1 shows the distribution of proven corruption offences according to this scale.

Figure 1: *Severity of proven corruption offences*

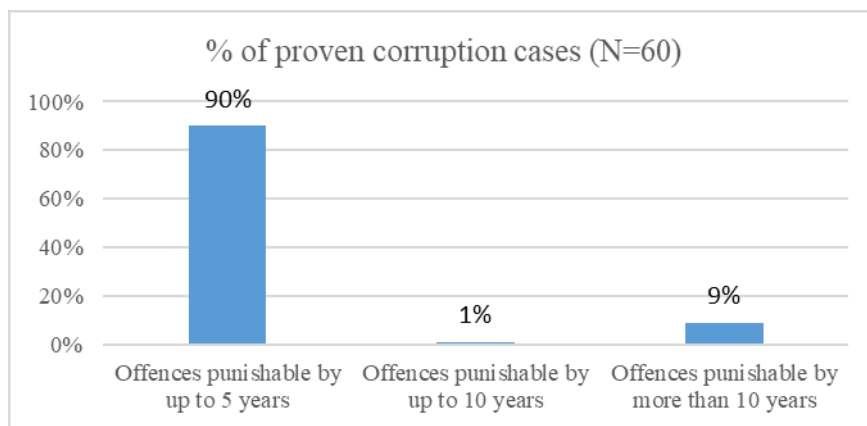


Results show that 90% of proven corruption offences are punishable by up to 5 years (lesser felonies and moderate). On the other hand, only 10 defendants (9%) are convicted for serious and most serious corruption offences.

This finding confirms the assumption that most of the proven cases are petty corruption. According to European commission progress reports to Bosnia and Herzegovina (see e.g. European Commission, 2009; 2013), there is no effective investigation, prosecution and conviction of suspects of high-level cases of corruption. Among generally known difficulties in corruption investigations, in Bosnia and Herzegovina “complex connections between political actors, business and the media are putting democratic institutions and procedures at risk and making the detection of corrupt practices more difficult” (European Commission, 2013: 14).

On the other side, there are 48 prosecuted but unproven corruption cases. Figure 2 shows a distribution of these cases with regard to Cvitanović’s matrix.

Figure 2: *Severity of unproven corruption offences*

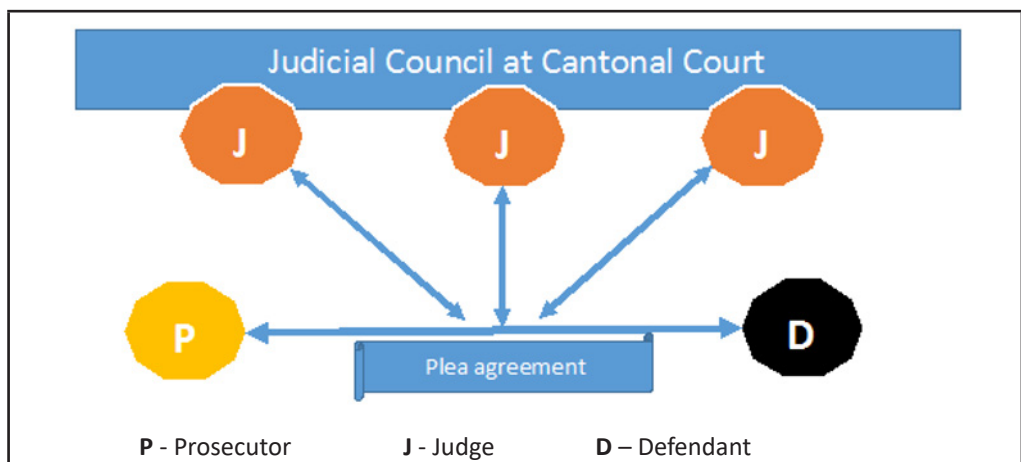


In comparison with the proven cases, here is a completely different situation. Offences punishable by up to 5 years cover just 3% of all unproven cases (see figure 2). Contrary, there are 97% of serious and the most serious crimes. There-fourths of these cases (75% or n=36 cases) indicate organised activities. In most of them, suspects were politicians or public representatives, businessmen and other powerful people. This result could find some truth in Beare’s (1997: 158) words: “the greater the ability to corrupt, the greater the ability to remain invisible, or to be seen to be legitimate – unless the entire system is blatantly corrupt and has redefined payoffs and the like as publicly recognized business procedures”.

### ***Unexpected results and a topic for the further research***

By analysing the most serious corruption offences, some unexpected results were found. Namely, the Cantonal Court in Sarajevo imposed unlawful sanctions on 7 of the 10 most serious corruption offences, which were committed by high-level Bosnian politicians and powerful business people. While related criminal code (Criminal Code of Federation of Bosnia and Herzegovina) forbids to impose a suspended sanction for the offences punishable by imprisonment for a term not less than three years, nevertheless they were frequently meted out in the most serious corruption offences.<sup>8</sup> Each suspended sanction was imposed after application of the “plea bargaining”, which is a relatively new institute in Bosnian Criminal Justice System (since 2003). Although this institute enables the prosecutor proposing an agreeing sentence of less than the minimum prescribed by the law or a milder penalty,<sup>9</sup> the comments on the criminal procedure codes in Bosnia and Herzegovina clearly define that it must be in accordance with the provisions on sanction reduction in the Criminal Code (Sijerčić-Čolić, Hadžiomerađić, Jurčević, Kaurinović, & Simović, 2005). In order to be clear in the further discussions, Figure 3 shows the actors in unlawful sentencing for corruption cases.

Figure 3: *Actors in unlawful sentencing for corruption cases*



<sup>8</sup> Criminal Code of the Federation of Bosnia and Herzegovina, Article 51, b) “If a punishment of imprisonment of three or more years is prescribed as the lowest punishment for the criminal offence, it may be reduced to one year of imprisonment” (The same in Criminal Code of Bosnia and Herzegovina, Article 50, b)) Criminal Code of the Federation of Bosnia and Herzegovina, Article 62 (5) “The suspended sentence cannot be imposed for criminal offences for which even after a reduction of the punishment, a punishment of imprisonment for a term not exceeding one year cannot be imposed”. (The same in Criminal Code of Bosnia and Herzegovina Article 59, (5))

<sup>9</sup> Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Article 246 (2) In plea bargaining with the suspect or the accused and his defense attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the prosecutor may propose an agreed sentence of less than the minimum prescribed by the law or a milder penalty against the suspect or the accused.

According to law in these cases a council of three judges leads the procedure: they are responsible to ensure procedural fairness and justice. However, it is clear that in these cases they made mistakes. What were the causes to deviate from legal procedure? Obviously, these findings require special attention and specific discussions. The intent of this research was not to explain such results, so rather we will explain possible reasons, which can be a base for further research. There are two possible and logical explanations for imposing unlawfully mild sanctions in the most serious cases: (1) Lack of knowledge of judges and prosecutors, which caused these unlawful decisions and the absence of prosecutors' reactions or (2) judicial corruption, where judges and prosecutor(s), together with suspects or their lawyers, made a deal in order to acquire private gains.

If these unexpected results are to be explained in the first way, we must agree that three judges, in every certain case where unlawful sanction was not imposed, did not have enough knowledge about the Criminal Code and Criminal Procedural Code. Moreover, it is remarkable that prosecutors accepted an unlawfully mild sanction, so if we try to explain unlawful sentencing with a "lack of knowledge", we must also accept that prosecutors in all these criminal proceedings did not have sufficient knowledge of plea bargaining.

According to European commission progress report (2015) lack of knowledge within representatives of the judicial sector may be a significant obstacle to combating organised crime and corruption. This is also proven by the empirical research which is provided within USAID justice project in Bosnia and Herzegovina. The diagnostic study of integrity of the Bosnian justice system finds out lack of knowledge among them. On the scale from 1 (lowest level) to 10 (highest level), judges have rated their knowledge with an average 6.9 (USAID, 2015). Furthermore, media in Bosnia and Herzegovina write about inadequate skills of judges in the courts (Zurnal, 28 may 2015). Obviously, there is a significant space to make a progress in this field.

The second assumption - judicial corruption – also provides a strong basis for further research. Political interference in the judicial system in Bosnia and Herzegovina, especially in the process of appointing new judges, is a cause for serious concern (European Commission, 2009). It is not a new discovery that nominating friends and clientele contributing to judicial corruption. In the US, in the early 80s, thousands of cases of judicial corruption occurred (DiBiagio, 1988). This type of corruption has been present in the Balkans for decades and has posed a challenge to democracy in the region for the past 25 years (Zahilla, 2011). There are many weak points in the criminal procedure (see Danielt, 2009), and all of them must be guarded in order to protect the integrity of the judicial system. According to USAID's diagnostic study of the integrity of Bosnian justice system, judges indicate corruption among them as well as among prosecutors. Namely, on the scale from 1 (not corrupted at all) to 10 (highly corrupted) judges rate each other on average 2.60 for corruption; prosecutors score somewhat better with 3.65 (USAID, 2015: 20). At the same time, almost a half judges (45%) perceive the plea bargaining as a process of running a high risk of corruption. Based on previous discussions, eventual judicial corruption in above-mentioned cases also has several logical explanations. While judges and a prosecutor efficiently finalised cases by imposing suspended sanction, highly positioned and powerful



people defendants/perpetrators did not go to prison. The *non bis in idem* principle will ensure that they will never be punished for these crimes. Also, it is important to keep in mind that after acceptance of a plea agreement nobody has the right to appeal.<sup>10</sup> Surely, everyone is satisfied. Additionally, in corruption cases, there are no visible victims in the commonly understood sense of the term. So, there is nobody to ask for justice. Thus, identification of new facts about these cases, or potential detection of judicial corruption, remains extremely small. Therefore, together with high level of judges' discretion, there is also a "monopoly" of the cases by judges and a prosecutor. If there was an absence of accountability, there was a suitable ground for organised judicial corruption.

## Conclusions

After reviewing the literature and analysing the results of this research, there are at least two sets of conclusions and many more questions that have arisen since the beginning of the research. Generally speaking, the results of provided analysis do not confirm previous theoretical assumptions and findings about a strong link between organised crime and corruption. In other words, the practices of the three selected Bosnian Courts do not support the results of many scientific and policy research projects around the world. Therefore, both research hypotheses remain uncorroborated as far as Bosnia and Herzegovina is concerned.

Searching for corruption in the final verdicts for organised crime cases, we found results which indicate that with three exceptions, the perpetrators convicted for organised crime (*Smuggling of Persons, Illicit Trafficking in Narcotic Drugs, Tax Evasion, Illicit Trafficking in Arms and Military Equipment, Counterfeiting of Money*) were also not convicted for corruption. In contrast, empirical research conducted elsewhere suggests that these crimes are regularly linked with corruption. This raises the question, why is the situation so different in the final verdicts of Bosnian courts? We can only assume the reasons which may be used for hypotheses construction in the future research:

- Prosecutors have proved corruption within organised crime cases, but it was not described in the verdicts, which means that the verdicts did not write in accordance with the provisions of the Criminal Procedure Code. If this is a truth, were there any consequence for breaking a role?
- Prosecutors identified corruption but they were not able to prove it during the judicial process. If that is the case, what are the causes of their inability?
- Prosecutors and investigators did not search for elements of corruption in organised crime cases. A possible reason for that could be a lack of knowledge in investigating organised crime. But was that the only reason to avoid corruption prosecution?
- Prosecutors did not have a motive to prove corruption in organised crime cases. They possibly assume that is too difficult to prove them.

<sup>10</sup> See the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Article 246 (4), c.

According to findings from the analyses of the final verdict related to corruption offences, it seems that perpetrators of corruption did not deal in organised criminal groups and there are no indicators that they have supported some organised criminal activities. There are also several conclusions, together with related questions:

- The number of proven corruption cases is unexpectedly small, especially cases of bribery which usually are assumed to be part of the activities of organised criminal groups. Bosnia and Herzegovina is broadly known with the problems of corruption, but what are the reasons for such small number of proven corruption cases?
- Among proven corruption cases, they are predominately petty corruption (street corruption or situational corruption), while prosecuted cases of grand corruption were proven in only a few cases. Exactly, majority of unproven cases, primarily represented by grand corruption cases, have consisted of elements of organised crime. It is necessary to find out reasons for such large percentage of prosecuted but unproven grand corruption cases.

Completely unexpected, the undertaken analysis of the final verdicts for corruption offences has identified harsh rule breaking trend in the Cantonal Court in Sarajevo. Namely, in the most serious corruption cases, by using a plea bargaining institute, council of three judges imposed unlawfully mild sanctions. There is always a chance that they made mistakes for some reasons. However, there is also a space to express a doubt on organised judicial corruption.

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### Sažetak

**Inspiracija za rad i problem koji se radom oslovljava:** Prema teorijskim razmatranjima i rezultatima prethodnih istraživanja organizovani kriminal i korupcija često se pojavljuju zajedno. Naime, akteri organizovanih kriminalnih aktivnosti koriste korupciju da ostvare svoje ciljeve, dok sa druge strane same definicije korupcije na visokom nivou, političke korupcije, sistemske korupcije, administrativne i korporativne korupcije najčešće uključuju elemente organizovanog kriminalnog djelovanja. Na temelju toga se može očekivati da u pravosnažnim presudama za ova krivična djela postoji njihova međusobna povezanost.

**Cilj rada:** Glavni cilj ovog rada je da se otkrije i opiše veza između organizovanog kriminaliteta i korupcijskih krivičnih djela u pravosnažnim presudama na bosanskohercegovačkim sudovima.

**Metodologija:** Metod prikupljanja podataka bio je analiza sadržaja dokumenta. Naime, posebna pažnja posvećena je analizi pravosnažnih presuda za organizovani kriminal, donijetih od strane Suda Bosne i Hercegovine (N=313), kao i analizi pravosnažnih presuda za korupcijska krivična djela, donijetih od strane Opštinskog suda u Sarajevu i Kantonalnog suda u Sarajevu (N=89). Metod obrade podataka je bio statistički metod (metod deskriptivne i metod inferencijalne statistike).

**Ograničenja:** Ovim radom se ne nastoji objasniti veza između korupcije i organizovanog kriminaliteta u generalnom smislu, nego je on ograničen na traženje ove veze u sudskim predmetima. Takođe, rezultati istraživanja su ograničeni samo na tri odabrana suda u Bosni i Hercegovini.

**Rezultati/generalni zaključak:** Nasuprot teorijskom okviru i rezultatima prethodnih istraživanja, ovaj rad naglašava vrlo slabu povezanost između organizovanog kriminala i korupcije. Na kraju, rezultati ukazuju na neočekivane indikatore korupcije na sudovima, a koji se mogu povezati sa elementima organizovanog djelovanja. Zbog toliko značajnih i neočekivanih različitosti, u ovom radu se postavlja više pitanja nego što se daje odgovora. Ova pitanja trebaju biti teme i inspiracija za buduća istraživanja.

**Opravdanost istraživanja/rada:** Istraživanje testira teorijske pretpostavke i prethodne rezultate vezane za link između dvije kriminalne pojave, na način da otkrije i opiše njihovu vezu. To indicira značajnu naučnu opravdanost istraživanja. Takođe, informativni karakter ovog rada može prouzrokovati značajne implikacije u politici suprotstavljanja ovim oblicima kriminaliteta, pa se u tome prepoznaje i društvena opravdanost ovog istraživanja.

### Ključne riječi

Organizovani kriminal, korupcijska krivična djela, pravosnažne presude, kaznena politika sudova



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