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## ***Criminal Justice Issues***





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## EDITORIAL

Haris HALILOVIĆ

Dear reader,

In this English edition of the *Criminal Justice Issues – the Journal of Criminal justice and Security* we are introducing you three new scientific and one review paper that discuss actual issues in the field of criminology of organized crime and drug trafficking, criminal law and justice. The first is original scientific paper titled “Criminal Justice System’s Response to Corruption-Who is Being Prosecuted and for What?” Paper examines the criminal justice system’s response to typical corruption offences in order to identify what type of the offenders are been prosecuted and for what type of corruptive offence. The next is original scientific paper titled “How Organized is Organized Crime and Drug Trafficking in Serbia”, which includes normative analysis and empirical research related to suppression of organized crime in Serbia. Third title “Organized Crime and Drug Trafficking in Italy”, also original scientific paper, discusses characteristics of organized criminal groups operating in drug business in Italy. Finally, review paper titled “Criminal Justice Systems’ Response to Drug Trafficking in Bosnia and Herzegovina”, provides an overview of B&H criminal justice systems’ response to drug trafficking discussing the legal framework around illicit production and trafficking in narcotic drugs and data related to reported, prosecuted and adjudicated persons for drug trafficking at state and entity levels.

At the end, as many times before, I would like to express my special gratitude to Editorial Board members, authors and peer reviewers who have significantly contributed to the quality of this edition.

Editor-in-chief  
Haris Halilović, LL.D.





## HOW ORGANIZED IS ORGANIZED CRIME AND DRUG TRAFFICKING IN SERBIA\*

Original Scientific Paper

Marko KMEZIĆ  
Dejan ATANASIJEVIĆ

### Abstract

**Reason for writing and research problem(s):** The production and trafficking of narcotics in Serbia is the most dominant and profitable form of organized crime. The main factor favouring the presence and development of the transnational aspect of organized drug trafficking in the country is its geographical location as well as the geopolitical situation on the external borders of the administrative EU Schengen area. As a result, the drug market today in Serbia is highly active. At the root of this inquiry is an analysis of the role of domestic criminal organizations in the international ring of drug trafficking.

**Aims of the paper (scientific and/or social):** This study scrutinizes the political, economic and social relations of those closely involved in (organized) criminal activities in Serbia, namely drug trafficking.

**Methodology/ Design:** The research includes a normative analysis of the existing legal framework for the fight against organized crime. The empirical research includes, on the one hand, an analysis of institutions dealing with the suppression of organized crime in Serbia, media, government, and other official reporting on the issues related to the work of the criminal justice system and in general on the topic of organized crime in Serbia. On the other hand, the research relies on primary sources gathered via semi-structured interviews conducted with actors at various levels of criminal organizations, politics, law enforcement agencies, and independent authorities involved in the monitoring of criminal activities in the country.

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**Results/ Findings:** In Serbia, systemic corruption has led to state capture by interwoven political and economic elites, which have in the past often either participated in organized crime activities themselves, or benefited from receiving services or financial compensations from various organized crime groups. In order to effectively combat organized crime in the Balkans, it is necessary to analyse the conditions and processes by which state capture occurs, and to link these processes to formal and informal power relations within and across states. In other words, it is important to strengthen the independence of law enforcement institutions located along the functional triangle of police, the public prosecutor's office, and the courts.

### **Keywords**

drug trafficking, organized criminal groups, fight against organized crime, Serbia

## **1. INTRODUCTION**

How 'organized' are organized crime networks operating in Serbia? What is the nature of the links between organized crime and political and state institutions and actors in the country, and across the Western Balkan region? Despite the vast body of domestic and international literature on these issues, and the millions of dollars and euros invested in developing policy and operational responses to meet the challenges posed by organized criminals, corrupt politicians and other state actors, significant challenges remain. What are the lessons to be learned from a Serbian case study?

In order to answer this critical set of questions, this study scrutinizes the political, economic and social relations of those closely involved in criminal activities in Serbia. The study on organized crime in Serbia is based on the results of research into the fight against organized crime in the Western Balkan region over the past decade. The research includes a normative analysis of the existing legal framework for the fight against organized crime. The empirical research includes, on the one hand, an analysis of institutions dealing with the suppression of organized crime in Serbia, namely the Special Department of the District Court in Belgrade (Special Court), the Special Prosecution Office, and the Ministry of Interior Affairs (MUP), which comprise the functional triangle in the fight against organized crime. Furthermore, we analyse media, government, and other official reporting – UN, EUROPOL, UNODC, INTERPOL, SELEC, European Border and Coast Guard Agency [FRONTEX], etc. – on the issues related to the work of the aforementioned branches and in general on the topic of organized crime in Serbia. On the other hand, the research relies on primary sources gathered via semi-structured interviews conducted with actors at various levels of criminal organizations, politics, law enforcement agencies, and independent authorities involved in the monitoring of criminal activities in the country.

But first we must consider how to define organized crime. Most documents investigating organized crime are limited to empirical studies focusing on individual manifestations of the phenomenon. Alternatively, theoretical and scholarly literature recognizes various forms of organized crime including, but not limited to, traditional, transnational, professional, and white collar organized crime. In order to avoid the dilemma of defining organized crime, for

the purposes of this study we rely on the normative definition provided by Serbian criminal legislation, which stipulates that organized crime constitutes criminal acts committed by organized criminal groups or their members. It further defines an organized criminal group as a group of three or more persons working jointly and for a longer period of time with the aim of committing one or more criminal offenses, for which a sentence of imprisonment of four years or more is prescribed, for the purpose of obtaining, directly or indirectly, financial gain, or other benefits (Code of Criminal Proceedings, 2011). The legislator has thus defined clear and uniform criteria for distinguishing organized crime from other similar criminal phenomena. It must be said that this definition largely resembles the 2010 United Nations Convention against Transnational Organized Crime's internationally shared definition of an organized criminal group and is in line with the EU Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime.

At the root of this inquiry is an analysis of the role of domestic criminal organizations in the international ring of drug trafficking. The focus will be placed on the activities of the so-called Šarić clan, named after the alleged leaders of the organization, Duško and Darko Šarić. The Šarić brothers are believed to have been major organized-crime figures in the Balkans for at least a decade. Both brothers are currently facing trials, in Montenegro and Serbia respectively. Darko surrendered to Serbian police after reaching an agreement with the Belgrade authorities to give himself up in March 2014, after spending four years on the run. The special prosecutor for organized crime accused him of smuggling more than five tons of cocaine and of laundering at least 22 million euros. Duško Šarić was arrested on November 16, 2010 in Pljevlja, Montenegro, after the Italian authorities issued an order for his arrest in an international action dubbed the "Balls". He stood trial for the alleged laundering of EUR 19.2 million, originating from narcotics trafficking. Despite being sentenced to five and a half years in prison by the Bjelopolje High Court, Šarić and his associate Jovica Lončar have already been acquitted four times before the Montenegro Appellate Court.

The growing amount of evidence in the ongoing trials, the apparent international prominence of the case resulting in the involvement of the United States Drug Enforcement Agency [DEA] and the size of the seized narcotics allegedly connected to the clan have, for the first time, provided a clear insight into the *modus operandi* of Serbian organized groups involved in the trafficking of narcotics. This will allow us not only to observe criminal connections between Serbian criminal groups and their counterparts based in the drugs' countries of origin and final destination, but also the methods these groups are using to launder drug-related money, and to domestically influence desired political and social outcomes. In other words, the objective of this paper is to use the Šarić case in order to analyse the possible relationship between criminality, social structure and political economies in Serbia.

## 2. ORGANIZED CRIME IN SERBIA – HISTORICAL PERSPECTIVE

Like many other countries in the world, Serbia faces the challenge of organized crime. According to numerous reports, including the European Commission's Progress Report on Serbia, organized crime in the country remains a matter of serious concern. Sources indicate that organized crime has likely laundered over a billion euros over the past decade (Vasović, 2010), affecting the development of a country that is still trying to emerge from the isolation

of the international trade embargo and armed conflicts of the 1990s and to progress towards European Union membership.

In historical perspective, the tradition of smuggling and banditry has always been present in the Balkans, and even celebrated in folk culture, as in the tales of the Hajduks and Uskoks throughout 18<sup>th</sup> and 19<sup>th</sup> century. At the beginning of the 20<sup>th</sup> century, narcotics trafficking from the poppy fields of Afghanistan through the Balkans flourished under Turkish entrepreneurs. Soon after, local agents started their own opium production in the geographical area corresponding to present-day Macedonia. Organized crime survived even in the days of strict Communist rule, although at the time it was, according to numerous reports, semi-controlled by the state leading to the establishment of a symbiotic network of criminals and state security services (see for example Nikolić-Ristanović, 1998). This setup became even more apparent during the armed conflicts in the former Yugoslavia in the 1990s, when notorious criminals, football hooligans and ordinary thugs were drafted by various para-military formations formed by the proxies of Serbian president Slobodan Milošević in order to wage wars in Croatia, BiH, and Kosovo respectively.

With the end of hostilities in 1999 and the 'second democratic revolution' in 2000, which have seen as the end of Milošević's authoritarian rule, the security system and even the central authority in Serbia virtually collapsed, paving the way for the entire region to "open up to the forces of lawlessness" (Binder, 2011). Indeed, in the years to come criminal organizations coopted not only political but also high-ranking law enforcement officials. These efforts were abetted by the simultaneous collapse of Balkan economies, the crumbling of industrial enterprises, consequent massive unemployment, and the evaporation of the social welfare system. All of these factors fed into the burgeoning underworld that culminated with the assassination of Serbian Prime Minister Zoran Djindjić in 2003. Djindjić was assassinated by members of the notorious Zemun criminal clan and renegade parts of the police Unit for Special Operations. The apparent collaboration of a criminal organization with part of the state law enforcement apparatus, which resulted in the murder of the country's Prime Minister, led to a large-scale clampdown on criminal organizations in Serbia, which had by this time already developed numerous criminal enterprises, as will be discussed in more detail below.

Today, organized crime in Serbia appears in many different forms, and here it is worth mentioning its most prominent forms, namely illegal production and trafficking of narcotics, trafficking of human beings (women, children and infants, and as of late illegal migrants), trafficking of human organs, smuggling and illicit trade of cultural goods, smuggling of endangered species of flora and fauna, sports corruption, currency counterfeiting, trafficking of firearms, illegal import of radioactive waste and other waste materials, organized prostitution, organized gambling, organized crime in the economic-financial area, racketeering and other forms of organized violent crime, cyber-crime, and other offenses. However, unlike traditional organized crime groups in the United States or in Western Europe, Balkan groups do not appear to operate under a traditional hierarchy, but rather around "ethnic associations and friendship ties" (Federal Bureau of Investigation [FBI], 2018).

None of the abovementioned forms of criminal activities are exclusively restricted to Serbia. On the contrary, it needs to be particularly asserted that, in all of the countries undergoing a process of political and economic transition, organized crime is on the constant rise. As

a consequence of this expansion, but also due to the ongoing process of globalization, technological innovation and the end of a bi-polar world, it is only natural that organized crime has expanded its scope of activity to include different types of crime and cross borders, that it exploits lawful economic activities in order to legitimize its criminal activities, and that it applies advanced technology, especially for encoding and concealing communication. This can be best observed in the area of illicit drug trafficking.

## **2. 1. Drug trafficking in Serbia**

According to the 2015 Regional Serious and Organized Crime Threat Assessment [SOCTA], the production and trafficking of narcotics in Serbia is the most dominant and profitable form of organized crime. According to the latest available data, in 2015 a total of 6,419 drug seizures resulted in the seizing of almost 1.3 tonnes of herbal cannabis, 11 kilograms of cannabis resin, 97 kilograms of heroin, 26 kilograms of amphetamines and 6 kilograms of MDMA (EMCDDA, 2017). The main factor favouring the presence and development of the transnational aspect of organized drug trafficking in the country is, on the one hand, its geographical location at the crossroads between Western Europe and the Middle and Far East, and on the other, the geopolitical situation of Serbia on the external borders of the administrative EU Schengen area. In addition, many trafficking routes and informal networks were already well established during the UN-imposed trade embargo in the 1990s for the smuggling of other types of products (excise goods, cigarettes, etc.), thus paving the way for a more lucrative drug business.

As a result, the drug market today in Serbia is highly active and may be observed mostly as a transit region, but also as the region of origin – in the case of marijuana and synthetic drugs production – and on a smaller scale as a final destination of narcotics for local consumption. In this part of the text, we will present the key features of the trafficking of the most represented drugs on the market, namely cocaine, cannabis, heroin and synthetic drugs.

### **2.1.1. Cocaine**

Serbian criminal organizations participate in the smuggling of cocaine from South America. Due to the high sales price of this drug, which sharply contrasts with the low purchasing power of Serbian citizens, home-grown organized crime groups primarily direct their cocaine-related businesses outside of the country. The presence of Serbian organized crime groups in transnational cocaine trafficking is a relatively recent occurrence. It has been only since 2009 that seizure data have suggested the use of the Balkans as an entry point, spurring talk of an emerging 'back door' Balkan route for cocaine import to the Western European market. Specifically, in October 2009, law enforcement in Uruguay seized more than two tons of cocaine from a British-flagged yacht named "Maui" close to Montevideo, leading to the arrest of one Uruguayan and one Croatian citizen. The significance of the two-ton seizure on "Maui" can better be understood in the light of estimation that approximately 91 tons of cocaine are consumed in Europe every year. It therefore came as somewhat of a surprise to learn the findings of the DEA-led operation dubbed "Balkan Warrior", which named Darko Šarić, at the time a relatively unknown Serbian and Montenegrin national, as the mastermind behind a powerful Balkan organized crime group which smuggled huge quantities of cocaine into the European drug market between 2006 and 2009 from Brazil, Argentina and Uruguay. The

subsequent section of this text will shed more light into this very prominent case. What can be concluded from the Šarić case of the nature of cocaine trafficking in Serbia is that it largely follows pre-existing global patterns. First, his group was innovative and skilled in switching and modifying both trafficking routes and methods of work in order to circumvent law enforcement activities. In so doing, it relied on modern technology to communicate and to facilitate access to maritime containers, for example a well-known rip-on/rip-off system, or incorporating liquid cocaine into materials for later extraction. Possibly the only specific aspect of Serbian organized crime groups in cocaine trafficking was their ability to capitalize on the presence of ineffective border controls in the Balkan area, where chronic instability and the lack of the efficient rule of law make for weak law enforcement. However, the data suggest (UNODC, 2015), first, that to date the use of these 'routes' appears to be sporadic, and, second, that they remain of minor importance compared with established primary routes leading to large European seaports such as Rotterdam, Hamburg, Valencia, etc.

### **2.1.2. Illicit cannabis**

Illicit cannabis trafficking varies between its two common manifestations, namely concerning herb and resin. Cannabis herb, better known as marijuana, is widely used in Serbia. This contrasts with current trends in Western and Central Europe, where the more expensive cannabis resin is predominantly consumed. Hence, although Serbia is predominantly a transit country, it is also a destination for marijuana that is traditionally produced in nearby Albania. With the recent decrease in Albanian production, but also the imposition of more efficient cross-border controls throughout the Balkans, Serbia has become a country of origin as numerous illegal laboratories for the production of marijuana under natural conditions and modified marijuana and skunk had opened – mostly for local consumption. Albanian cannabis herb has been able to penetrate European markets via the Adriatic Sea in speedboats or on ferries, and via the northern route that includes Serbia as a transit country. The impressive track record of seizures indicates the importance of the Serbian route for marijuana export to Central and Western Europe. The biggest single seizure occurred in 2013, when Serbian customs authorities discovered a 900 kilos marijuana shipment of Albanian origin that had transited Macedonia on its way to destination markets in Western Europe. The findings of the UNODC (2015) suggest that the Serbian route may be of increasing importance to marijuana traffickers in the years to come.

Meanwhile, the production of resin, or hashish, remains confined to countries in North Africa, the Middle East and Asia (UNODC, 2013). Despite the assumptions that Serbia might be used as a transit country for cannabis resin sourced in Morocco and Pakistan, currently there is no evidence of the land route being used for this purpose.

### **2.1.3. Heroin**

According to the UNODC (2015), most seizures conducted in Serbia seem to point to routes that include a trajectory from Macedonia and Bulgaria. In addition, the majority Albanian-populated southern region of Bujanovac and Preševo Valley connects two major transportation routes, namely that via Kosovo and that through Serbia. Although between 50 and 60 metric tons of heroin originating from Afghanistan transit Serbia annually according to the UNODC

(Tomović, 2016), the intensity of heroin trafficking and quantities smuggled through Serbia to Western European countries is on a decade-long decline (UNODC, 2015). Serbian authorities assess that this occurrence is a consequence of the shift towards the Bulgaria-Romania heroin route (EMCDDA, 2013). This can best be observed through the numbers: while in Serbia the biggest individual seizure in 2017 was a modest 3.1 kilos, at the Romania-Bulgaria border the police confiscated record high 423 kilos, or EUR 34 million of drug market value, in just a single day. In addition, Serbia does not have access to the open sea, and in recent years maritime routes have been dominantly used for heroin trafficking due to the possibility for smuggling larger quantities. The abovementioned signals two conclusions: first, that the larger Serbian organized crime groups are no longer associated with the heroin trade, and second, given that the market is still active, it seems that smaller groups, possibly not even linked to Serbian organized crime groups, are now running heroin trafficking routes through the country.

#### **2.1.4. Synthetic drugs**

The production of synthetic drugs and precursors, which include amphetamine, methamphetamine and ecstasy-type substances, is not dependent on the cultivation of a plant-based raw material, but rather on the establishment of improvised, so-called kitchen laboratories. Following a decrease in the number of kitchen laboratories in neighbouring Bulgaria, the production of synthetic drugs and precursors has mostly relocated to Serbia. There are even reports of several busted amphetamine laboratories in Serbia that have been established with help from Bulgarian nationals (UNODC, 2012). Local production resulted in lower prices and a greater availability of these drugs on the Serbian market, thus also increasing market demand. Serbia is also a transit country for amphetamine-type stimulants [ATS], mostly produced in the Netherlands and destined for the Turkish and Middle Eastern market. In response to strengthened controls over the main ATS precursors, traffickers have reacted and reduced their risk by acquiring pre-precursors that are currently less controlled (INCB, 2011). Another characteristic of synthetic drugs trafficking is its regional trans-border character, as observed in the 2017 arrest of Milan Zarubica, a Serbian national dubbed the 'king of synthetic drugs'. Zarubica was arrested in a coordinated action of Serbian and Macedonian police. His illegal laboratories were seized on both side of the border, and in addition the investigation is currently continuing on Turkish territory following the trail of Zarubica's business contacts (Rudić, 2017).

#### **2.2. The Šarić case: a criminal-political nexus**

Serbian organized crime flourished during the Balkan wars in the 1990s, producing complex trans-national crime networks that exploited the fluid borders of former Yugoslav states. During this time, Serbian criminals enjoyed protection by various state actors in exchange for their illegal services, most notably the politically-motivated murders of opposition leaders – Ivan Stambolić in 2000 and four Serbian Renewal Movement [SPO] party leaders in 1999. In return, members of the notorious Zemun clan were provided special training courses by the Serbian Special Police Forces, while in September 2001, 700 kilograms of heroin were recovered after it was kept illegally in a bank vault rented by the Serbian Intelligence Agency in Belgrade. As a consequence of such an arrangement, after the fall of Milošević's regime Serbian organized



crime groups reportedly had more money at their disposal than the Serbian government, and were better armed than the Serbian Army and Serbian police (BBC, 2001).

The apparent “statelessness” (Vasić, 2004) led to the establishment of a “para-state cartel” (Dimitrijević, 2003) that tried to continue offering clientilistic services to the newly-elected Serbian Government. The best illustration for this was the attempted arrest of former president Slobodan Milošević, when several masked members of the police Unit for Special Operations, connected to the Zemun organized crime group, attempted to end the negotiations that had lasted for several days and capture Milošević using the same vehicle as they had used in the kidnapping and execution of Ivan Stambolić just one year earlier. Once their services were denied by the new political elite, members of the Zemun criminal group attempted a coup d'état by assassinating Prime Minister Zoran Djindjić in March 2003. This watershed moment triggered the decisive engagement of the loyal part of the security services in the fight against organized crime. In the aftermath of a month-long state of emergency, the four strongest Serbian organized crime groups, as identified in the document titled ‘The White Book of Organized Crime’, were dismantled. Many of their members were imprisoned for longer jail sentences, while some of their leaders were killed while resisting arrest. This opened up the arena for new crime syndicates to fill in the void in the criminal underworld.

Emerging criminal groups understood that to keep operating they had to change from within and operate in a less transparent manner. They formed a syndicate, putting their resources together, stopped selling drugs in the impoverished domestic market, and moved into well-entrenched European narcotic markets. As explained by Dojčinović (2014), they started enforcing an almost military discipline internally, retreated into near-complete shadow, and created webs of offshore companies through which they laundered millions of Euros. In the meantime, the killing spree on Serbian streets had stopped, criminals – many of whom enjoyed the popularity of rock stars – ceased to appear on trendy TV talk shows, and even the tinted glass SUVs commonly associated with criminal figures and ‘shady’ businessmen inexplicably disappeared from Serbian streets. It seemed that Serbian organized crime had taken a decisive and irreversible blow.

This impression lasted until 2009, when the name of Darko Šarić, until then completely unknown to ordinary citizens, made international headlines as one of the biggest drug lords in the world. Miloš Oparnica, the head of the National Bureau of Interpol in Serbia, proclaimed in 2010 that the police had begun dealing with Šarić in 2000 for money laundering, which was probably the beginning of the crackdown on the whole case.

Šarić rose to prominence only with the beginning of his downfall – in October 2009, when a joint operation by law enforcement agencies from the United States, Uruguay, and Serbia seized more than 2 tons of cocaine aboard a British-registered yacht near Uruguay's capital, Montevideo. Another half-ton of the drug was confiscated in Argentina as part of the same operation, dubbed ‘Balkan Warrior.’

Several alleged members of Šarić's gang were immediately arrested in Latin America and the Balkans, while Šarić himself disappeared. He and 19 other suspected members of the gang were indicted in Serbia in 2010, and an estimated 20 million euros of property tied to the network has been confiscated by the law enforcement agency. After spending almost four years on the

run, after realizing the authorities were closing in on him, Darko Šarić contacted the Serbian government through his lawyer, agreeing to surrender, provided he was first allowed to see his lawyer and his mother and son in Montenegro. Ever since, he has stood trial for cocaine trafficking and money laundering. His trial offers a unique insight into the main characteristics of the contemporary Balkan narcotics trade.

Darko Šarić was born in Pljevlja, Montenegro in 1970. In his youth he was known as a local petty criminal. He was convicted six times by the Municipal Court in Pljevlja for five different criminal offenses, including the destruction of appliances in mines or other construction companies, destruction of business and residential premises, embezzlement, and illegal possession of weapons and explosive materials. He was first convicted as a juvenile in 1988, when he was sentenced to an educational measure of enhanced parenting. The next time, in 1992, he was given a suspended sentence; the third time in 1994, to four years in prison. It seems that he did not serve the sentence, as he was sentenced to an additional four months in prison again in 1996. Two years later, on 3 September 1998, he was sentenced to two months' imprisonment, and three months later, on 31 December of the same year, he was sentenced to serve another three months in prison. In 2005, Šarić received Serbian citizenship, a Serbian passport and an ID card, under shady circumstances for which he was later trialed in Serbia.

The obvious question is how it was possible for a person from a relatively low criminal ranking to become known as the Balkan crime lord who took over some of the most lucrative drug markets in Europe and transported tons of cocaine from South America into Europe.

This question has two plausible answers. According to the first theory, the smuggling of cocaine and other drugs from South America and the Middle East through the Balkans to Europe was nothing new. What is new is that, for the first time, citizens from several Balkan countries, namely Serbia, Montenegro and Croatia, have surfaced at the forefront as the main ringleaders. However, as claimed by several criminologists (see Nicović 2011; Drecun 2011), these figures are most likely just middlemen for the much bigger players in the narcotic trade business from Russia or Albania.

According to the second theory, Serbian organized crime was gaining a stronger foothold in the international drug trade by exploiting political corruption in Serbia and offering heroin and cocaine at record low prices. An important role might have been played by post-Second World War Balkan emigrants to Latin America, who might have provided initial contacts with local crime groups.

The *modus operandi* of Šarić's group does not differ significantly from other cocaine trafficking groups. According to indictments issued in Argentina, Italy, Slovenia and Serbia, Šarić's criminal clan was smuggling large quantities of the highest quality cocaine while the drug was hidden on cargo ships registered in North Korea officially carrying cement, sugar, rice and soy. Their communication relied at first on older generation mobile phones, Internet communication based on draft text in unsent email messages, and coded language.

Šarić's Montenegrin partner, Dragan Dudić, also known as Fric, played an important role in providing logistics and finances for the shipping of cocaine. Dudić owned the largest Montenegrin seaport, Perast, which he bought under suspicious circumstances with the assistance of the Kotor municipal administration. The cargo ship 'Godfather', later renamed

'Perast', made six trips to Perast port in Montenegro, supposedly carrying cement for the Greek company Volos. Each time, prior to arriving to Montenegro, the vessel made a stop in the Spanish port of Ceuta. According to documentation obtained by MANS, the vessel was owned by Dragan Dudić's company Bastion Commerce, who bought it from another Balkan national, Smiljan Samardžić. In addition to Greece, Montenegro, Suriname and the Dominican Republic, Dudić's ships travelled to numerous EU ports including Italy, Germany, United Kingdom, France, Sweden and Spain.

Dudić made his fortune using his political connections that granted him amnesty, but more importantly extremely favourable bank loans. In the middle of 2009 the President of Montenegro, Filip Vujanović, pardoned Dudić when he was sentenced for the beating of a fellow citizen. The decision came after a positive opinion by the then Minister of Justice Miraš Radović, which, interestingly, was contrary to the opinion of the Montenegrin Supreme State Prosecutor's Office. Data provided by the Serbian Organized Crime Prosecutor's Office suggest that Dudić was the one to provide the logistics and finances for the transport of cocaine seized in Uruguay in 2009. Soon after it was made public that the Serbian Prosecutor was investigating Dudić's business connection, he was assassinated in his hometown of Kotor.

Most of the money earned from drugs was practically laundered through offshore companies, mainly based in the US state of Delaware, and then returned to the Balkans. It is particularly interesting that Šarić and his group brought all their money back to the region. Of course, this should not be understood as due to patriotic motives, but rather political connections that made money laundering in the region feasible. Here it is important to mention the role of local banks, namely the Montenegrin branch of Hypo Alpe Adria Bank and the First Bank of Montenegro, which accepted large amounts of money from Šarić's offshore companies without verifying its background.

Particularly interesting is the case of the First Bank of Montenegro, controlled by the family of Prime Minister Milo Djukanović, which has allowed unusually favourable business terms to Darko Šarić, Dragan Dudić, and their third partner, Rodoljub Radulović, also known as Banana (he claimed to run a lucrative banana import business from South America). In almost all of their transactions, the First Bank failed to follow Montenegrin money laundering laws, its own business policies, and elementary good business practices. For example, when setting up accounts for Delaware-based 'Lafino Trade LLC' and Seychelles-based 'Camarilla Corporation,' the First Bank failed to obtain valid copies of registration records as well as copies of identification cards for people with access to the accounts (OCCRP, 2014). Both companies were controlled by Darko Šarić, and both were used for money laundering, according to Serbian prosecutors. In addition, contrary to its obligation to report suspicious transactions to the Anti-Money Laundering Agency of Montenegro, the First Bank never reported a single suspicious transaction from Lafino or Camarilla, as discovered at the trial of Duško Šarić, Darko's younger brother.

At the same time, Darko Šarić's offshore companies provided counter services to the First Bank and indirectly to their owners. For example, Lafino Company deposited a term payment of six million euros for five years under somewhat unusual terms. Normally, at the time, depositors were paid interest for term deposits of 5 percent. However, Lafino accepted to receive only 1.5 percent interest on their deposit. This deposit was of critical importance for the First Bank,

who at the time were struggling with received bills and depositors. Curiously, the only other clients with such a low interest rate were the bank owner, Aco Djukanović, and yet another offshore company owned by Milo Djukanović's close friend, Zoran Bećirović.

In 2013, Serbia also opened its own inquiry into suspected links between top government officials and members of Darko Šarić's organized crime group, after the media reported that the former Interior Minister and present day Minister of Foreign Affairs, Ivica Dačić, had twice met with an accomplice of Šarić in late 2008. Minister Dačić publicly said at a press conference that he met Rodoljub Radulović during November and December 2008, but claimed he did not know Radulović was a criminal. The meetings were recorded with hidden cameras by agents of the Serbian Intelligence Agency (BIA), who monitored Radulović's activities as a member of a drug trafficking clan. To this day, it remains unknown what the topic of conversation between the two was, as the videos allegedly did not have sound. It also remains unspecified who leaked the videos from their meetings, and for what purpose.

Besides Dačić, the videos show Radulović's meetings with various other police officials and local politicians. Rodoljub Radulović met Ivica Tončev, who served at the time as Dačić's advisor for national security. An internal government intelligence report shows that Ivica Tončev's ties to organized crime were known before 2008 when he entered government (CINS, 2012). The report paints a picture of Tončev as having long-term relationships with the underworld in Austria and Serbia, as he has allegedly met with at least five major organized crime figures, mostly during his time as a government official. It was particularly curious that both the American and Russian embassy officials, as well as numerous European officials, voiced their distress about Tončev holding an important position in the Serbian government. Nonetheless, Ivica Dačić seems to have ignored these concerns, while Tončev continued his meteoric rise in Serbian political life, where currently he is appointed as a State Secretary at the Ministry of Foreign Affairs.

Radulović also met with Branko Lazarević, who was then Dačić's chief of cabinet, and Vanja Vukić, the deputy chief of cabinet. At the time of these meetings, Radulović was preparing a shipment of 1.8 tons of cocaine from South America to Europe. A special task force, including Serbian police, Serbian intelligence officials and agents from the United Kingdom's Serious Organized Crime Agency, was monitoring the group and planned to seize the drugs in their port of destination in Greece. Through a leak from police, the group found out about the ongoing investigation and unloaded the cocaine on the Spanish coast instead. One of the traffickers who later become a protected witness, Draško Vuković, testified in the Šarić case that in late 2008 an insider at the Ministry of Police was informing Radulović about the international investigation into the drug shipment. Lazarević is the only one among the four high-ranking former police officials to stand trial for leaking information to the narcotics traffickers. At trial, he denied providing any sensitive information, and implied that it was Minister Dačić himself who had introduced him to Radulović. Interestingly enough, as reported by the OCCRP (2012), Dačić's Socialist Party of Serbia (SPS) rented space in their party headquarters to the Šarić brothers, where they operated a popular nightclub called Vanilla. Dačić, Vukić and Tončev have not been charged, and there is no indication that they are under investigation for their alleged contacts with the Šarić clan.

In the meantime, Darko Šarić was personally gaining a foothold for his organization in the

European drug market. At least fifteen European countries delivered information on the activities of the alleged drug lord on their territory. Media have speculated regarding Darko Šarić's legal residence in the Czech Republic, Slovenia and Switzerland. The most vivid insight of Šarić's activities comes from Italy, where in 2010 it was revealed that the Šarić gang had, starting from 2008, ousted the 'Ndrangheta from the drug market in the north of the country. With the emergence of the Šarić group's activities in Italy, it offered better quality cocaine for a lower price, effectively wiping out their competition. In the aftermath of the operation 'Balkan Warrior', over 80 people were arrested in Italy in connection with the Šarić clan. Towards the end of their activities, the clan had developed a network with operatives coming from Serbia, Montenegro, Croatia and Slovenia operating all over Europe and South America.

Through this cartel, Šarić's clan earned billions, laundered it through various offshore companies and clientilistic banks, and used it to buy political parties, police officials, and media outlets, and to purchase real estate throughout Serbia, Montenegro and other Balkan countries. This last fact led to his downfall. Namely, it could easily have happened that, despite the DEA-led operation, the head of the clan could remain intact. Theoretically, at least, it is not impossible that Šarić himself would have remained elusive to the law enforcement agencies had he stayed within the maze of investments, offshore companies, hedge funds, anonymous accounts, etc. But he slipped because of the "peasant motive," as Vasić calls it (2014), of showing off his newly-acquired wealth. At the end of the day, his obsession with purchasing real estate, night clubs, hotels, etc. had brought him to the forefront of the various security services' investigative interests, and made it possible to link him with the seized narcotics in South America. Had he not stood out in Serbia and Montenegro, the question is whether he would actually have gone down in the 'Balkan Warrior' police action at all.

On March 9, 2012, the Special Court in Belgrade officially started the trial of Šarić and his group for the smuggling of more than five tons of cocaine from Latin America to Western Europe and of laundering at least EUR 22 million. In 2015, Šarić was convicted of drug smuggling and sentenced to 20 years in prison, but an appeal court negated the verdict and sent the case back for retrial in June 2016. Meanwhile, part of the indictment against Šarić for forging personal documents had expired, and he could not be trialed for it. Following the second restart of the trial, due to the reassignment of one of the judges involved in the case, suspicions of deliberate obstruction of the case are growing (Živanović, 2017).

### **3. CRIMINALITY, SOCIAL STRUCTURE AND POLITICAL ECONOMY – THE CONCLUSION**

In Serbia, systemic corruption has led to state capture by interwoven political and economic elites, which have in the past often either participated in organized crime activities themselves, or benefited from receiving services or financial compensations from various organized crime groups. This text demonstrated in detail how, because of Darko Šarić's connections with politics and business, the state institutions failed to prevent his clan from laundering millions of euros and investing it legally in lucrative real estate and other businesses opportunities.

This setting effectively leads to a vicious circle, whereby the rule of law and constitutionalism, as fundamental democratic values, are subjected to the overall politicization of institutions dictated by the new type of predatory elites connected around the joint interests of criminals and political and economic figures to protect their vested position in power. The captured state

thus prevents ongoing EU-led democratization efforts and effectively perpetuates the country's status as a weak state, as favoured by the interests of organized crime. In other words, had Darko Šarić's activities not attracted the attention of the DEA and other international drug enforcement agencies, one cannot but wonder whether he would still be in a position to continue his illegal drug-related activities in Serbia.

Another obstacle in the effective fight against organized crime is the unreformed security structures of the Serbian Ministry of the Interior and related Security Services. Bearing in mind that members of the police and security services have a rich history of participation in the activities of organized criminal groups, it is clear that this represents a serious threat to the effective suppression of organized crime in Serbia. Their influence is evident, as demonstrated above, in cases of leaked information from the ongoing investigations, but also in still unfinished inquiries into unresolved crimes from the past, in which part of the state security services are suspected to have participated, such as the assassination of journalists Slavko Ćuruvija and Dada Vujasinović.

Meanwhile, international organizations mandated to work on preventing or mitigating organized crime at the national and transnational levels tend to focus on technical matters, avoiding the fundamentally political dimension of these issues. This approach prevents them from seeing the forest for the trees. In order to effectively combat organized crime in the Balkans, it is necessary to analyse the conditions and processes by which state capture occurs, and to link these processes to formal and informal power relations within and across states. In other words, it is important to strengthen the independence of law enforcement institutions located along the functional triangle of police, the public prosecutor's office, and the courts.

Finally, it is essential to empower more effective use of local expertise by international actors in policy and program development. As has been previously noted in Mexico and Columbia, it is often the case that investigative journalists or independent analysts are in a position to make a significant contribution in responding to these phenomena. In Serbia there are several independent actors producing increasingly sophisticated studies mapping the penetration of the state by transnational organized criminal networks. In some cases, they have proved more effective than law enforcement officials in flagging the penetration of politics by organized crime groups and pushing for accountability.

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## ORGANIZED CRIME AND DRUG TRAFFICKING IN ITALY\*

Original Scientific Paper

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### Abstract

**Reason for writing and research problem(s):** In the global drug market Italy is both a destination and a transit country. Although the main position within the drug market in Italy have the local mafias, foreign criminal organizations play an important role at all levels of the drug chain across Italy. Among the foreign actors involved in the drug trafficking there are criminal groups from the Balkans. Their relationships with local criminal organizations shows to occupy a great slide of criminal markets by merging economic and cultural elements, thereby posing significant challenges to law enforcement agencies in terms of investigations, and also to scholars in terms of theoretical understanding.

**Aims of the paper (scientific and/or social):** The aim of this paper is to explore the characteristics of organized criminal groups operating in drug business in Italy.

**Methodology/ Design:** Data on drug related organized crime in Italy will be presented through analysis of findings revealed by investigation of two criminal operations (*Loptice* and *Elefante Bianco*) presenting the most common characteristics of Western Balkan groups and Albanian groups respectively. In order to collect the data, interviews with law enforcement officers were carried out.

**Results/ Findings:** Although the legislative and investigative instruments, developed in the last forty years, have been proved to be very effective against the criminal activities carried out by organized crime, the national mafias and foreign criminal associations keep challenging Italian society. The experience acquired in the

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fight against the Sicilian mafia suggests to face these complex forms of criminality not only from a penal perspective, but also from a socio-economic and cultural one.

### Keywords

organized drug trafficking, organized criminal groups, criminal operations, Italy

## 1. INTRODUCTION

It is a common place to observe that drugs in Europe are traded through different routes. One of the most important is the Balkan route, that have three branches: the Northern (Turkey-Bulgaria-Romania-Western and Central Europe), the Southern (Turkey-Greece-Italy/Western Countries), and the Western (Macedonia-Albania-Western Europe or Macedonia-Kosovo/Serbia-Bosnia and Herzegovina [BiH]-Croatia-Western Europe or Bulgaria-Serbia-BiH-Croatia-Western Europe) (United Nations Office on Drugs and Crime [UNODC], 2014).



Figure 1. *Drug trafficking routes* (UNODC, 2014, p. 9)

The story of the Balkan route is linked to the 1990s Yugoslavia wars that influenced criminals' choices to transport illegal goods. Indeed, the conflicts in Croatia and BiH moved the route towards the Southern countries, including Kosovo, Macedonia and Albania. As a consequence, Kosovo became crucial for heroin trafficking (Racioppi, 2015, p. 37; UNODC, 2014). The Balkan route remains nowadays the main entry for the trafficking of heroin into the European Union [EU] (European Police Office [EUROPOL], 2017, p. 38; UNODC, 2014).

According to UNODC's estimates, about 170 tonnes of heroin produced in Afghanistan travel along this route towards Western European countries (total value: USD 28 billion), where about two-thirds of the drug trafficking proceeds are carried out (an annual amount of approximately USD 18 billion: Italy is placed in the fourth place, after France, United Kingdom and Germany, with 1.5 billion USD) (UNODC, 2015).

The routes of heroin crossing the Balkans are various. In Albania, the substance, introduced by the Macedonian and Greek sides, is stored mainly in the cities of Tirana and Valona while a smaller part enters Kosovo from Turkey (through Bulgaria and Macedonia or through Bulgaria and Serbia) and then it reaches consumer countries through two main routes, including by sea and by land. The first crosses the Adriatic Sea, reaching the Italian ports of Eastern coasts; the second one crosses the countries of the former Yugoslavia to reach the Western European markets. In Romania the substance is introduced by sea (Port of Constance) or by land from Moldova, as well as by air; once it enters, it is transported to Serbia, and then to the Western European market. Significant amounts of heroin from Turkey are passing through Bulgaria. Bulgarian criminal organizations have contacts with criminal groups operating in Africa and the Middle East. In recent years, there has also been an increase in the flow of heroin from Albania, managed by criminal groups of Serbian and Albanian ethnicity.

From the Balkan route cannabis herb and cannabis resin are traded as well. According to the main international drug reports, Albania is the main source of herbal cannabis trafficked to the EU (EUROPOL, 2017; UNODC, 2014). The herbs travel from the ports of Durres and Vlore (UNODC, 2014, p. 21). Even cocaine is transported through the Balkan countries. The quantity, however, is much inferior compared to the amount trafficked from South America to Europe via Spain or via the Netherlands [in 2012 around 350 kg of cocaine was seized in South-Eastern Europe (UNODC, 2014)].

The aim of this paper is to explore characteristics of organized criminal groups operating in drug business in Italy. Drug related organized crime in Italy will be presented through analysis of findings revealed by investigation of two criminal operations (*Loptice* and *Elefante Bianco*), presenting the most common characteristics of Western Balkan groups and Albanian groups respectively. In order to collect the data, interviews with law enforcement officers (policemen and magistrate that have carried out investigative operations against Balkan criminal groups) were carried out between October and November 2017.

## **2. THE ROLE OF THE BALKAN CRIMINAL GROUPS IN THE ITALIAN DRUG MARKET: THE SERBIAN AND THE ALBANIAN CASES**

In the global drug market Italy is both a destination and a transit country. Drugs arrive to Italy to satisfy the high demand and to continue towards other European countries.<sup>1</sup> Italy's role as one of the main European gateway of drugs is due to its geographical position and its 6,000 kilometres of coastline as it is in the centre of the Mediterranean Sea, near to the coasts of relevant international trafficking junctions, including North Africa and the Balkan countries - and its 6,000 kilometres of coastline (*Direzione Centrale per i servizi Antidroga* [DCSA], 2010). Accord-

<sup>1</sup> The most consumed drug is cannabis, followed by cocaine. For data on prevalence see EMCDDA, 2017. Retrieved from [http://www.emcdda.europa.eu/publications/country-drug-reports/2017/italy\\_en](http://www.emcdda.europa.eu/publications/country-drug-reports/2017/italy_en)

ing to all the law enforcement agencies interviewed<sup>2</sup> the demand of drugs tends to overcome the supply in Italy. Therefore, the market offers opportunities to many supply actors, more or less organized. The main suppliers are Italian mafias, including Cosa Nostra, 'ndrangheta, Sacra Corona Unita, and Camorra. They often work together by importing to Italy different kinds of drugs (Gratteri, 2017). The 'ndrangheta occupies the main position within the drug market in Italy at national and international level. This is due to its great financial resources and the capacity to develop contacts in countries located on the main drug routes. Even the Camorra and the Sacra Corona Unita show a good position. The latter has been able to regain a good rank in the market, since it has acquired a monopoly of the traffic of herbal cannabis from the Balkans due to its historical relationships with Albanian criminal groups (DCSA, 2016).

The analysis of all the Direzione Nazionale Antimafia [DNA] and Direzione Investigativa Antimafia [DIA]<sup>3</sup> reports from 2007 to 2016 shows clearly that in the North and Centre Italy foreign criminal organizations [FCO] have been increasingly able to insert themselves in the drug market, unlike in the Southern Region, which is monopolistically controlled by the local mafias. The relationship between Balkan criminal groups and local crime and mafia groups, have taken two different forms, including 'coexistence' and 'joint interest'. In addition, the presence of Serbian organized crime in Italian criminal markets dates back to the 1980s (Portanova, Rossi & Stefanoni, 2011). In the late 1990s-early 2000 some investigative operations also showed the presence of highly structured Serbian-Montenegrin criminal groups involved in drug trafficking (Interview M1). The paragraph will analyse two relevant investigative operations that Italian law enforcement agencies carried out between 2008 and 2012, *Loptice* and *Elefante Bianco* when dealing with Western Balkan groups. Both investigations dealt with organized drug trafficking at international level and operated in Northern Italy by supplying different local criminal groups, including mafia-type associations.

*Loptice* investigation dealt with the same group mentioned above, led by Darko Šarić. The Italian police began the investigation in February 2008 when it found 89.66 kg of cocaine, packed in balloons (in Serbian '*loptice*') in a Milan flat (DCSA, 2010, p. 45)<sup>4</sup>. This method of packaging was found during the seizures of cocaine from other Italian criminal associations, thereby giving evidence about the links between the Balkan organized crime and local organized crime. This was also confirmed by the supergrass Francesco Petrelli, whose testimony was indispensable for the investigations<sup>5</sup>. After the purchase of the substance from the Latin American sup-

<sup>2</sup> Six interviews with key informants (policemen and magistrate that have carried out investigative operations against Balkan criminal groups) were carried out between October and November 2017. For the sake of privacy, the names of the interviewees are not quoted in this article; however, a code has been attributed to each interview. The code is composed by the category to which the interviewees belong to (P for policeman and M for magistrate) and the progressive numbers of the name of interviewee (listed in alphabetic order). This method allows keeping the anonymity of interviewees and, at the same time, to make the research activity traceable and thus reliable.

<sup>3</sup> As it will be explained in the paragraph on the Italian criminal justice system the DNA and DIA are two bodies dedicated specifically to organized crime and terrorism.

<sup>4</sup> See <http://www.poliziadistato.it/statics/35/parte-seconda.pdf>

<sup>5</sup> See Tribunale di Milano (2010 November 15), Ordinanza di applicazione di Misure Cautelari, Proc n. 24894/07 R.G.N.R., p. 13.

pliers the association organized its transfer by sea to different harbours of the European coasts, including several located in Italy. Traffickers filled colourful balloons with cocaine and placed them inside mountain backpacks with GPS (loads of 70-80 kg of drugs). Once near the coast, the backpacks were thrown into the sea and, after returning to the surface, they were recovered by members of the organization who dropped off the cargo in small harbours mainly located in Tuscany and Liguria. This method aimed at avoiding attracting police attention<sup>6</sup>. The balloon packaging made the transport of loads of cocaine safe and avoided getting them wet. After the recovery cocaine was stored in safe places and subsequently transferred to Milan by cars and delivered to buyers by members of Šarić's organisation<sup>7</sup>. From the numerous wiretaps carried out during the investigation, it emerged that members of Šarić group dealt with the association led by Grifa, which was the main buyer who purchased huge amount of drug to be sold in the Milan's drug marketplace, and with subjects contiguous to mafia organizations (including 'ndrangheta and Sacra Corona Unita)<sup>8</sup>.

Šarić's activities in Italy started in 2008 and by 2010 his group ousted the 'ndrangheta from the drug market in the north of the country. His group offered better quality cocaine for a lower price, effectively wiping out their competition. In the aftermath of the operation '*Balkan Warrior*', over 80 people were arrested in Italy in connection with the Šarić clan. Towards the end of their activities, the clan had developed a network with operatives coming from Serbia, Montenegro, Croatia and Slovenia operating all over Europe and South America. Šarić's group had a rigid hierarchical structure and members showed an indisputable and vast military preparation and guerrilla experience, due to the previous belonging to military or paramilitary apparatuses such as the "*Arkan Tigers*" (UNODC, 2012)<sup>9</sup>. Furthermore, a peculiar feature of the Serbian organization was the mobility of its members. Unlike local criminal organizations, neither the promoters nor the participants have ever tried to acquire 'control of a territory'.<sup>10</sup> In fact, in order to effectively manage their criminal business, they used temporary bases and, if necessary, they were ready to move to safer places (UNODC, 2010)<sup>11</sup>. As a result of the operation activities, the Public Prosecutor charged the members of the Slav organization and the Italian one with the crime of "association aimed at illicit trafficking of drugs" (Article 74 d.P.R.309/90)<sup>12</sup>, considering

<sup>6</sup> See [http://milano.corriere.it/notizie/cronaca/14\\_marzo\\_21/fine-super-trafficante-saric-mille-chili-coca-piazzata-ogni-mese-4d2f39d6-b0d3-11e3-b958-9d24e5cd588c.shtml](http://milano.corriere.it/notizie/cronaca/14_marzo_21/fine-super-trafficante-saric-mille-chili-coca-piazzata-ogni-mese-4d2f39d6-b0d3-11e3-b958-9d24e5cd588c.shtml)

<sup>7</sup> See <https://www.ilfattoquotidiano.it/2013/04/03/coca-a-milano-su-piazza-tre-tonnellate-alla-settimana-impossibile-contare-soldi/550660/>

<sup>8</sup> See Tribunale di Milano (2010 November 15), Ordinanza di applicazione di Misure Cautelari, Proc n. 24894/07 R.G.N.R., p. 22 et seq. Retrieved from <https://www.ilfattoquotidiano.it/2014/04/02/droga-con-la-fine-dellimpero-di-darko-saric-smantellato-il-suo-cartello-a-milano/957834/> and <https://www.ilfattoquotidiano.it/2013/11/12/milano-il-giovane-re-del-gratosoglio-tra-coca-potere-e-ndrangheta/775860/>.

<sup>9</sup> The mentioned episode occurred in Zurich highlights this characteristic of Serbian Mafia groups.

<sup>10</sup> See Tribunale di Milano (2010 November 15), Ordinanza di applicazione di Misure Cautelari, Proc n. 24894/07 R.G.N.R., p. 19.

<sup>11</sup> See Tribunale di Milano (2010 November 15), Ordinanza di applicazione di Misure Cautelari, Proc n. 24894/07 R.G.N.R., p.50 et seq.

<sup>12</sup> For the definition and analysis of Article 74 d.P.R. 309/90 (Association aimed at illicit trafficking of

that their huge criminal activity could not be carried out without an articulated and structured organization.<sup>13</sup> On the one hand, with reference to the group led by Šarić, it appears ontologically evident that such activities could not be carried out without the existence of an adequate organizational and operational structure; on the other hand, with regard to the activity of the association led by Grifa, the Public Prosecutor decided to charge it with Article 74 due to the permanent material and moral contribution that was provided by at least two subjects<sup>14</sup>.

The second Balkan organized crime group was led by Garić Juro (also known as Kemo), a Croatian citizen and resident in Barcelona. Garić, in collaboration with trusted Balkan associates and thanks to operational bases and delinquent contacts both in the former Yugoslavia and in Spain, introduced a large quantity of cocaine to Italy. The organization led by Garić, after buying drugs in Spain which came from South America, provided for transportation to Northern Italy (on average 20 kg per trip) where it was sold to both Italians and foreigner wholesalers. Then, the illicit profits were moved to BiH (up to 500.000 euros per trip) and reinvested in real estate sector, luxury cars, shops and beauty centres by using figureheads linked with traffickers by family ties<sup>15</sup>.



Figure 4. DDA Brescia, Slides *Indagine "Elefante bianco"*, p. 5.

The investigative operation called *Elefante Bianco*, coordinated by the DDA of Brescia between 2008 and 2012, discovered and dismantled a multi-ethnic criminal organization dealing with international drug trafficking.

The Italian clients of the organization were both common criminals and subjects belonging to mafia type criminal organizations, such as Salvatore Muscatello, nephew and homonym of the

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drugs) see the paragraph on the Italian criminal justice system.

<sup>13</sup> See Tribunale di Milano (2010 November 15), *Ordinanza di applicazione di Misure Cautelari*, Proc n. 24894/07 R.G.N.R., p. 96 and [http://www.poliziadistato.it/statics/12/annual\\_report\\_2010.pdf](http://www.poliziadistato.it/statics/12/annual_report_2010.pdf) .

<sup>14</sup> The Judge for Preliminary Investigations (GIP) of Milan court issued 46 precautionary custody orders, of which 34 performed (DCSA, 2010, p. 45); See Tribunale di Milano (2010 November 15), *Ordinanza di applicazione di Misure Cautelari*, Proc n. 24894/07 R.G.N.R., p. 12 and 26.

<sup>15</sup> See [http://www.bresciaoggi.it/dalla-home/cos%C3%AC-%C3%A8-stata-sgominatala-multinazionale-dello-spaccio-1.4317083?refresh\\_ce#scroll=1822](http://www.bresciaoggi.it/dalla-home/cos%C3%AC-%C3%A8-stata-sgominatala-multinazionale-dello-spaccio-1.4317083?refresh_ce#scroll=1822) .

head of the 'ndrina (the basic unit of the 'ndrangheta) of "Mariano Comese" (Lombardy), who was arrested in 2010 during the investigative operation "Crimine"<sup>16</sup>. Among the wholesalers a particular position was held by Serb Safet Halitović (known as Sayo). He was the only wholesaler that had direct contacts with Garić Juro and, he was the head of a connected criminal subgroup composed by Italians<sup>17</sup>. At the beginning the Serb wholesaler was entrusted with great amounts of cocaine without being compelled to pay immediately, as far as he was guaranteed by Sinančević Izet<sup>18</sup>. Afterwards, the insolvency of the Serb deteriorated the relations with the members of Garić's organization<sup>19</sup>. However, on 19<sup>th</sup> April 2009 Safet Halitović was arrested and his arrest put in motion the well-tried and tested mechanism developed by the criminal organization into crisis: the members of the organization, fearing a possible confession of the Serb and feeling hunted by the police, decided to collect the claims towards the wholesalers and to transfer all the profits to the Balkans.

In contrast to Šarić's group this group was less hierarchical and more flexible, where Garić gave orders to his subordinates to maintain relations with wholesalers, who were almost all from Brescia (Lombardy). Sinačević, who lived in Czech Republic, managed the organization's interests in Italy through members who permanently lived in the province of Brescia and by occasionally coming to Italy.<sup>20</sup> There was overlapping between the clients at wholesale level and the members of the organizations, as the wholesalers, associated in sub-groups, did not only buy the cocaine from the leader's intermediaries, but also offered logistic support to the organization to conceal drugs and safeguard the money. This flexible structure, not composed by permanent members, but by local wholesalers, reduced the risk for the leader to be detected, as long as he did not have any direct contacts with wholesalers<sup>21</sup>. The group also had availability of large financial resources and trust in the wholesalers as they entrusted them by giving them up to 20 kg of cocaine without any payment<sup>22</sup>. This was due to the trust and long-lasting relationships that the high-level members of the organization were able to establish with the wholesalers resulting in the flexible structure above described. And finally, organisation showed great mobility, where members were able to quickly move to safer countries, when they knew that the police were hunting them.<sup>23</sup>

<sup>16</sup> See <https://drive.google.com/file/d/0B34DZOx3yww0LWZmMDRQMVzjZzg/view>

<sup>17</sup> Tribunale di Brescia (2013 May 13), Sentenza ex Article 442 c.p.p., Sent. n. 582/13, Proc n. 20874/12 R.G.G.I.P., p. 249 et seq.

<sup>18</sup> Tribunale di Brescia (2013 May 13), Sentenza ex Article 442 c.p.p., Sent. n. 582/13, Proc n. 20874/12 R.G.G.I.P., p. 254.

<sup>19</sup> Tribunale di Brescia (2012 March 29), Ordinanza di applicazione di Misure Cautelari, Proc n. 18059/08 R.G.N.R., p. 198.

<sup>20</sup> Tribunale di Brescia (2012 March 29), Ordinanza di applicazione di Misure Cautelari, Proc n. 18059/08 R.G.N.R., p. 191.

<sup>21</sup> Tribunale di Brescia (2013 May 13), Sentenza ex Article 442 c.p.p., Sent. n. 582/13, Proc n. 20874/12 R.G.G.I.P., p. 309.

<sup>22</sup> See <http://gazzettadimantova.gelocal.it/mantova/cronaca/2012/04/20/news/cocaina-dal-sudamerica-in-carcere-51-trafficienti-1.4397285> .

<sup>23</sup> See <http://gazzettadimantova.gelocal.it/mantova/cronaca/2012/04/20/news/cocaina-dal-sudamerica-in-carcere-51-trafficienti-1.4397285> .



In conclusion, the described criminal organisations, emerging from Loptice and Elefante Bianco investigations, suggest an interesting element for analysing the presence of Western Balkans organized crime in Italy. On one side, they showed different forms of association and modus operandi, and on the other side they avoided establishing themselves permanently in the country, because their aim was economically oriented by drug business, and not focussed on the control of territory. For this reason, they were perceived by local organized crime just as suppliers, and not as competitors. Therefore, their relationship with the local organized crime became a 'joint interest' relationship grounded in drug trafficking.

### **3. THE ITALIAN CRIMINAL JUSTICE RESPONSE TO MAFIA-TYPE ORGANIZED CRIME, DRUG TRAFFICKING AND FOREIGN ORGANIZED CRIME**

This paragraph will present a general overview of the Italian legal framework to tackle mafia-type organized crime, drug trafficking and foreign organized crime. Although the legislative and investigative instruments, developed in the last forty years, have been proved to be very effective against the criminal activities carried out by organized crime, the national mafias and foreign criminal associations keep challenging Italian society. As maintained in the conclusion, the experience acquired in the fight against the Sicilian mafia suggests to face these complex forms of criminality not only from a penal perspective, but also from a socio-economic and cultural one.

#### **3.1. Fighting mafia-type organized crime and drug trafficking**

The Italian criminal justice system has developed an extensive legislation and administrative measures against organized crime, since it has to address historically the mafia issue.

In 1965, three years after the establishment of the Italian Parliament's Antimafia Committee, the national law for the first time made reference to the term mafia. The Italian legislator, with the L. 575/65, made possible to extent the prevention measures to the suspects to belong to mafia-type organized crime. These measures performed a special-preventive function and were directed to avoid the commission of crimes by subjects considered socially dangerous, regardless of the commission of a previous offense.

Since then the Italian antimafia legislation has produced effective instruments for law enforcement agencies and Judiciary authorities,<sup>24</sup> thus becoming a model for other criminal justice systems at international level<sup>25</sup>.

The core of the penal measures is the crime of mafia association, whose definition was anticipated by the Court of Cassation in 1974:

<sup>24</sup> For a history of the legislative measures against the Mafia see Cardamone (2016).

<sup>25</sup> See for example in the area of Balkans: Albania-Albanian Law No. 9284 / 2004 on Preventing and Striking at Organized Crime. Retrieved from <https://www.balcanicaucaso.org/eng/layout/set/print/Areas/Albania/Mafia-e-antimafia-in-Albania-26903>

Serbia - legislation on confiscation of property, a policy of strict imprisonment of mafia members (similar to Italy's "41 Bis" prison restrictions for particular inmates, introduced in 1986), witness protection, coordination between prosecutor offices, as well as international and regional cooperation. Retrieved from <https://www.balcanicaucaso.org/eng/layout/set/print/content/view/print/56068>

The mafia Association is any grouping of people who by criminal means propose to take or maintain control of zones, groups or productive activities through systematic intimidation and infiltration of their members to create a situation of subjection and omnipresence that makes the normal forms of punitive action of the State impossible or very difficult.

In 1982 the legislator introduced in the Italian penal code (c.p.) the Article 416 bis (Law 13 September 1982 no.646 - known as Rognoni-La Torre Law) which in its current form States:

Anyone who is part of a mafia-type association made up of three or more people, is punished with imprisonment from ten to fifteen years. Those who promote, direct or organize the association are punished, for this alone, with imprisonment from twelve to eighteen years [112 n. 2]. The association is of the mafia type when those who are part of it make use of the intimidation force of the associative bond and of the condition of subjection and of silence that results from committing crimes, to acquire in a direct or indirect way the management or in any case the control economic activities, concessions, authorizations, public procurement and services or to make unfair profits or advantages for themselves or for others, or in order to prevent or hinder the free exercise of the vote or to obtain votes for themselves or others on the occasion of electoral consultations. If the association is armed, the sentence of imprisonment from twelve to twenty years applies in the cases provided for in the first paragraph and from fifteen to twenty-six years in the cases provided for in the second paragraph. The association is considered armed when the participants have the availability, for the achievement of the purpose of the association, of weapons or explosive materials, even if concealed or kept in place of deposit. If the economic activities of which the members intend to assume or maintain control are financed in whole or in part with the price, the product, or the profit of crimes, the penalties established in the previous paragraphs have increased from one third to half. The confiscation of the things that served or was destined to commit the crime and of the things that are the price, the product, the profit or that constitute its use is always obligatory towards the convict [240]. The provisions of this article also apply to the Camorra, the 'Ndrangheta and other associations, however locally known also as foreign, which using the intimidating force of the association bond pursue aims corresponding to those of the mafia-type associations [32quater].

The same law introduced the confiscation of criminal assets, which has been a very effective instrument against mafia-type organization (see also Articles 240 of the Penal Code; Article 12-sexies of the Law no. 356 of 1992, modified by the Law No. 501 of 1994). In 2010 a National Authority for administration and destination of assets seized and confiscated from organized crime was established (Legislative decree of 4 February 2010 No. 4 converted by Law of 31 March 2010 No. 50).

In September 2011 the *Codice Unico Antimafia* (Antimafia Code) entered into force and in September 2017 it was reformed (Legislative Decree No. 159, 6 September 2011- Article 4 comma 1 lett. i) bis). It regulates the measures of prevention, both personal (Article 1 et seq.) and patrimonial (Article 16 et seq.), that can be applied also to those suspected to be members



of mafia association.<sup>26</sup> Within the category of personal measures of prevention it is possible to distinguish those that can be enforced by the Quaestor (Article 1 et seq.) and those that can be enforced exclusively by the Judicial Authority JA (Article 4 et seq.).

The first category includes expulsion order (*ordine di espulsione*) and oral advice (*avviso orale*). The second one, listed in Article 6 of the Antimafia Code, sets out different measures, including the special surveillance of public security (*sorveglianza speciale di pubblica sicurezza*) which can be paired, if necessary, with the residence prohibition in one or more municipalities, different from the place of residence or usual place of abode, or in one or more Regions; the obligation to sojourn in the place of residence or usual place of abode (*obbligo di soggiorno nel comune di residenza o di dimora abituale*) can be enforced just if the other personal measures are incapable of ensuring the public security. In order to guarantee the aim, in addition to the special surveillance, the application of the electronic monitoring device can be ordered<sup>27</sup>.

The patrimonial measures of prevention, which are crucial to contrast the mafia enrichment include: seizure of assets<sup>28</sup> (*sequestro* - Article 20 Antimafia Code) and confiscation<sup>29</sup> (*confisca* - Article 24 Antimafia Code), both available per equivalent (Article 25). The provision concerning the confiscation was enriched by the 2017 novel with an explicit reference to the impossibility for the proposed to justify the legitimate origin of the goods, considering that the money used to purchase them is either income or reuse of tax evasion.

Furthermore, when the conditions for the application of prevention seizures and confiscation are not met, Article 34 allows submitting assets related to economic activities and companies to a judicial administration (*amministrazione giudiziaria*). The requirement for the application of the measure is the existence of sufficient grounds to believe that the free exercise of certain economic activities, either directly or indirectly subjected to intimidation or subjection (Article 416 bis c.p.), may otherwise facilitate the activity of persons against whom it has been proposed or applied one of the personal prevention measures (Article 6 and Article 24 of Antimafia Code) or persons subjected to a criminal proceeding for any of the crimes referred to in Article 4 of the Code [paragraph 1, letters a), b) and i-bis)].

<sup>26</sup> For a detailed explanation of what the code envisages in terms of preventive measures see Cardamone (2016).

<sup>27</sup> Article 275 bis c.p.p..

<sup>28</sup> *Il sequestro viene applicato sui "beni dei quali la persona nei cui confronti è iniziato il procedimento risulta poter disporre, direttamente o indirettamente, quando il loro valore risulta sproporzionato al reddito dichiarato o all'attività economica svolta ovvero quando, sulla base di sufficienti indizi, si ha motivo di ritenere che gli stessi siano il frutto di attività illecite o ne costituiscono il reimpiego"*.

<sup>29</sup> *Il tribunale dispone la confisca dei beni sequestrati di cui la persona nei cui confronti è instaurato il procedimento non possa giustificare la legittima provenienza e di cui, anche per interposta persona fisica o giuridica, risulti essere titolare o avere la disponibilità a qualsiasi titolo in valore sproporzionato al proprio reddito, dichiarato ai fini delle imposte sul reddito, o alla propria attività economica, nonché dei beni che risultino essere frutto di attività illecite o ne costituiscano il reimpiego. In ogni caso il proposto non può giustificare la legittima provenienza dei beni adducendo che il denaro utilizzato per acquistarli sia provento o reimpiego nell'evasione fiscale. Se il tribunale non dispone la confisca, può applicare anche d'ufficio le misure di cui agli articoli 34 e 34-bis ove ricorrano i presupposti ivi previsti.*

The aforementioned 2017 reform introduced a new provision in the Code, Article 34 bis, which established that even companies can be subjected to judicial control, when the facilitation provided for in paragraph 1 of Article 34 is occasional and there are factual circumstances from which it is possible to deduce the concrete danger of mafia infiltration capable of affecting its activity.

In the fight against mafia-type organized crime law enforcement agencies and Prosecutors have the possibility to collect internal information from people who turned State evidence. In 1991 the Italian Parliament approved a legislation (Law No. 82 1991 reformed in 2001) regulating the protection of those subjects who collaborate with justice (both people that have not committed any crime- witnesses - and those who have committed crimes – defectors).

Along with the so called *pentiti* law, the extension of the possibility to apply the prison restrictions to members of mafia organizations provided by Article 41 bis (Decree-Law 8 June 1992, No. 306)<sup>30</sup> was a very important step in advancing the method of fighting the mafia. This penitentiary regime has proved to be particularly effective in reducing the possibility to mafia boss to communicate with people outside the prison.

In relation to drug trafficking, the Italian criminal legislation foresees two different provisions:

- Article 73 d.P.R. n. 309/90: this mono-subjective incriminating provision punishes the subject that cultivates, manufactures, produces, extracts, refines, sells, provides or offers for sale, assigns, distributes, trades, transports, procures to others, sends, passes or ships in transit, delivers for any purpose narcotic or psychotropic substances listed in the table I of article 14. Penal sanctions envisage imprisonment from six to twenty years, and a fine from EUR 26,000 to EUR 260,000.
- Article 74 d.P.R. n. 309/90: *Associazione finalizzata al traffico illecito di sostanze stupefacenti o psicotrope* (Association aimed at illicit trafficking of drugs). For the existence of this association crime, due to the genus of multiple-subjective crimes, it is required the existence of a stable and permanent bond between three or more persons for the realization of a specific criminal program, that in this case is drug trafficking. The penalty provided for the leaders of the association is not less than twenty years, while for participants not less than ten years. National legislator has considerably anticipated the punishment threshold, in order to protect public order, public safety and public health in a more effectively way, by setting the case as a crime of danger. Basically, the high negative value of the *pactum sceleris* requires the possibility of punishing the participants in the criminal association, regardless of the realization of criminal intentions. Regarding the interpretation of this provision there are two distinct doctrinal reconstructions that face each other: for the traditional doctrine Article 74 would be a crime of presumed danger (Fiandaca-Musco, 1988); for the most recent one a crime of danger in concrete that, not to violate the principle of offensiveness, requires the ascertainment of the suitability to carry out the criminal program.

Article 416 c.p. (*associazione per delinquere*, association for committing crimes), like Article 74 d.P.R. 309/90, is a multi-subjective crime of danger that punishes the promoters of the

<sup>30</sup> Converted into the Law of 7 August 1992, n. 356.

criminal association with imprisonment from three to seven years, the participants from one to five years. The specific criminal program (drug trafficking) of Article 74, compared to the generic one of Article 416, justifies a harsher and more severe sanctioning response.

With reference to the relationships existing between Article 416 c.p. and Article 74 d.P.R. 309/90, it is important to clarify that if the criminal organization, abstractly subsumable under both the provisions, has drug trafficking as unique purpose its members must be punished, on the basis of the criterion of specialty (Article 15 c.p.), only with the penalty provided by provision containing the element of specialty (Article 74 d.P.R. 309/90)<sup>31</sup>.

With regard to Article 416 bis c.p., existing a bilateral specialty relationship with Article 74 d.P.R. 309/90, the Cassation Court affirmed the possibility of applying both those provisions<sup>32</sup>. In this case it must be applied the regulation of the legal cumulation of the criminal penalties (Article 81 par. 2 c.p.). This provision allows to impose the highest penalty increased up to three times.

The main Prosecutors and law enforcement agencies special bodies that are in charge with the fight of organized crime and drug trafficking are the following:

- DNA, *Direzione Nazionale Antimafia* (National Antimafia Department)<sup>33</sup>. This body is directed by the antimafia and counter-terrorism Prosecutor, appointed directly by the Superior Council of Magistracy following an agreement with the Minister of Justice, and it is composed by 20 Prosecutors. The function of the DNA is to coordinate the activity of the 26 DDA (*Direzione Distrettuale Antimafia* - District Antimafia Directorate) through powers of surveillance and control. The DNA does not have any power to carry out investigations directly and cannot give binding directives on the district attorney's offices. However, in the case that a district attorney has shown serious inertia or has not coordinated with the others, it can call-back the inquiries. The main subjects of his activity are: mafia, camorra, 'ndrangheta, drug trafficking, human trafficking, recycling, public procurement, asset prevention measures, eco-mafia, trademark counterfeiting, suspicious financial transactions, foreign criminal organizations.
- DIA, *Direzione investigativa antimafia* (Anti-mafia investigative directorate)<sup>34</sup>. It is made up of members coming from different Italian police bodies. It is located within the departments of public security, and it consists of a central structure based in Rome (three departments and seven offices) and a peripheral structure (twelve operational centres and nine operating sections). The purpose of the DIA is not only to carry out investigations relating to mafia-type association crimes, but also to perform preventive investigations. Regarding to its activity the DIA is subject to the direction of DNA and DDA and its Director has the prerogative to propose to the competent Courts for the territory the imposition of preventive measures, both personal and patrimonial.

<sup>31</sup> Cass. Pen. Sez. VI, (1995 June 14), n. 11413, in *Cass. Pen.* 1997, p.398.

<sup>32</sup> Cass. Pen. Sez. I, (2010 January 21), n. 17702, in *Cass. Pen.* 2011, p. 581; Sez. V, 22 November 2002, ABBRESCIA, in *Dir. giust.* 2003, 10, p. 104 and Cass. Pen. Sez. II, (2012 September 24), n. 36992.

<sup>33</sup> Decree Law No. 367/1991 converted by Act No. 8/1992.

<sup>34</sup> Decree Law No. 345/1991 converted by act No. 410/1991.

- DCSA, *Direzione Centrale per i Servizi Antidroga* (Central Directorate for anti-drug services)<sup>35</sup>. Such as the DIA, the DCSA is made up of members coming from the different Italian police bodies. The organism is articulated into three services:
  - The “*Affari generali ed internazionali*” (General and foreign affairs) service: it is also the point of reference for foreign governments operating in Italy in the fight against drug trafficking and it is in charge of maintaining relations with international organizations. Moreover, the DCSA is called to express opinions on draft laws and bilateral agreements on anti-drug cooperation for the institutions called for their approval.
  - The “*Studi, ricerche e informazioni*” (Studies, research and information) service, is established to carry out an analysis activity, at national and international level, concerning the phenomenon of drug trafficking.
  - The “*Operazioni antidroga*” (Anti-drug operations) service, through an accurate activity of intelligence, is responsible for coordinating the anti-drug operations. At the supranational level, at the crossroads of traffic, production and transit of drugs, the DCSA through the work of twenty security experts and a liaison officer manages and develops relations with the corresponding services of foreign police and with national bodies and international organizations responsible for preventing the phenomenon. Currently, several branch offices are located in the Americas, Africa, Asia and Europe (e.g. Skopje).

Other important special bodies involved in talking the mafia that support DNA and DDA prosecutors activities are:

- ROS (*Raggruppamento Operativo Speciale della Arma dei Carabinieri*- Special Operative Grouping of the Carabinieri)
- SCICO (*Servizio Centrale di Investigazione sulla Criminalità Organizzata della Guardia di Finanza*- Central Service of Investigation on Organized Crime of the Guardia di Finanza).

### **3.2. Fighting foreign criminal organizations [FCO]**

The significant experience developed by law enforcement agencies and Judicial Authority in fighting the national mafias has been an advantaged also in tackling FCO, including the Balkan criminal groups.

At investigative level, there is a great attention to FCO, unlike at judiciary level. Many investigative operations have been carried out in the last ten years, as emerged from the DIA, DNA, and DCSA reports.

Very effective instruments used by law enforcement agencies and Prosecutors are intercepted conversations. In order to use this very useful mean of researching the proof (Article 267 c.p.p.), it is required the existence of certain conditions according to the type of crime concerned by the proceeding. In particular, regarding the crime of drug trafficking, wiretapping

<sup>35</sup> Article 1 law No. 16/1991.

may be arranged, followed the Public Prosecutor's request, with a motivated decree of the Judge for preliminary investigations (*Giudice per le Indagini Preliminari [GIP]*), when there are serious signs of crime ("*gravi indizi di reato*") and it is indispensable for the prosecution of investigations ("*indispensabili per la prosecuzione delle indagini*"). In 1991 the national legislator<sup>36</sup> has mitigated these assumptions in the event that wiretapping is arranged in the field of organized crime: in this case, to authorize the wiretap, the GIP has to verify the existence of sufficient evidence of crime ("*sufficienti indizi di reato*") and that these are necessary for the investigation ("*necessarie per la prosecuzione delle indagini*").

In 2008 the Italian Parliament modified the Article 416 bis putting in the eighth paragraph the reference to foreign mafias (Amato, 2015, p. 268). However, at judiciary level – from the stage of the charge to the stage of the sentence<sup>37</sup> – there is a great hesitancy to subsume the FCO under the Article 416 bis c.p. The tendency is to charge and condemn the members of the FCO with simple association (Article 416 c.p.) and for the single crimes they have committed, like for example drug trafficking (Article 73-74 d.P.R. 309/90) or trafficking in human beings (Article 600 et seq. c.p.). In the rare case in which 416bis is contested by the Public Prosecutor, it is almost never recognized by the Judges called to decide (Giammarinaro & Carchedi, 2016).

There is a wide debate on the possibility to apply 416 bis c.p. to criminal groups that are not original Mafias operating in their traditional territories (mafia in Sicily, 'ndrangheta in Calabria, Camorra in Campania, and Sacra Corona Unita in Puglia).

The reasons why the FCO are not considered mafia-type association by Prosecutors and Judges are connected to the fact that they do not seem to have the power to influence the institutions and control the territory by intimidating and subjugating the population, as the Italian mafias do. Indeed, a central question that influences the interpretation of 416 bis c.p. is the concept of *controllo del territorio* (control of territory), which is related to controlling people through racketeering public and private goods. Recently the Court of Cassation has broadened the concept of control of territory beyond a specific given geographical area, pointing out that it can be also considered as such when the control is exercised on economic activities (Prestipino, 2017).

To what concern FCO, often the control of territory, meant as the traditional interpretation of 416 bis c.p., is carried out in their countries of origin, and also in Italy by subjugating compatriots, that are extorted. As reported in the Court of Cassation in 2003, the intimidation towards compatriots can be so strong and threatening that the victims became silent and totally subjugated, as much as it occurs in the territories controlled by the Italian mafias (Giammarinaro & Carchedi, 2016, p. 161). This situation has been registered, for example, in relation to some

<sup>36</sup> Article 13 d.l. 13 maggio 1991 n. 152 converted in l. 12 luglio 1991, n. 203.

<sup>37</sup> The Italian penal system is divided into three levels of judgment. In the first instance, according to the type of crime in question, the jurisdiction is attributed to the *Giudice di Pace* (Justice of the Peace-GDP), the *Tribunale in composizione monocratica or collegiale* (Court in monocratic or collegiate composition) or the *Corte d'Assise* (Court of Assizes); in the second instance, according to the judge who issued the sentence under appeal, to the *Tribunale monocratico* (in monocratic composition), the *Corte d'Appello* (Court of Appeal-CDA) or the *Corte d'Assise d'Appello* (Court of Assizes of Appeal); in the third instance, the *Corte di Cassazione* (Court of Cassation) will have jurisdiction. The first two means of redress are available for reasons of merit and legitimacy, the third only for reasons of legitimacy.

Ukrainian criminal groups, that at the early 2000s were charged with 416 bis (Mingone & Ingrasci, 2016).

In the period from July 2011 to June 2012 two Slovenian citizens and six Albanians were charged with mafia association (Article 416 bis c.p.), since however they were members of various Italian mafias and, in fact, their cases regarded different proceedings managed by different DDAs (DNA, 2012, p. 177). This data emphasized, that when Albanians foreign criminals are charge with mafia association is because they participate individually in different types of partnerships with local mafia and do not create a criminal group of ethnic Albanian prevalence with the characteristics typically identified by the article 416 bis c.p.

Concluding, Article 416 bis c.p. is rarely applied to cases of FCO although often they show some characteristics that are typical of mafia-type associations. However, in some circumstances, when the mafia method (intimidation) and the control of territory (understood extensively) are proved it is likely that the criminal groups, even if it is foreign, are charged with 416 bis c.p. In this case to apply 416 bis c.p. to FCO it is requested a wider interpretation of the law.

The main problems faced by law enforcement agencies and Judicial Authority to tackle FCO are linked to the transnational nature of the crimes carried out by FCO resulting in a great segmentation of criminal activities. First of all, an evident obstacle to the investigations led by the Judicial Authority is the language used by subjects belonging to foreign criminal organizations. This problem regards not only the preliminary investigation phase, but also the trial one. In particular during the preliminary investigation stage, aimed at collecting evidences against the subjects under investigation, Prosecutors frequently intercept communications. At this point the recorded conversations have to be transcribed accurately and translated by mother tongue interpreters. A further obstacle is the fact that often foreign criminals do not use regional dialects. In this case it will be necessary for the interpreter to know the dialect in question. Furthermore, the activity of the interpreters is necessary in the case in which the investigated/accused person intends to make statements or submit to the means of proof called "*esame delle parti*" (examination of the parties, Article 209 c.p.p.). The examination of the parts usually takes place during the contradictory trial between the parties. When the subject under investigation requests it, without the necessity to verify the existence of the "non-repeatability" requirement, the same can take place during the preliminary investigation phase in the forms of the "*incidente probatorio*" (probative incident, Article 392 c.p.p.).

The transnational character of the FCO makes international cooperation indispensable. In this regards the problems are many, as underlined during the *Stati Generali dell'Antimafia* organized by the Ministry of Justice on the 23th- 24<sup>th</sup> November in Milan. It is beyond the scope of this essay to explore them.

Here it is noteworthy to underline that Italy has developed an important collaboration with Balkan countries, as shown by the following projects:

- IPA Project 2013-Western Balkans, "Fight against organized crime: international cooperation in criminal justice": the aim of the project, started in July 2014, is to fight trans-border criminal organizations and to disrupt criminal organizations dealing with illicit trafficking for the EU. The project involves, in addition to Italy, six Balkan countries and in particular: Serbia, BiH, the former Yugoslav Republic of Macedonia, Albania and Kosovo. The

three-year project guide has been entrusted by the European Commission to Department of Public Security of the Italian Ministry of the Interior whose great experience in the fight against criminal organizations is widely recognized. Since the IPA project has been launched, there have been 55 joint investigations on arms, drugs and terrorism, three of which have been awarded as the best by the Southeast European Law Enforcement Centre [SELEC] in Bucharest. In addition, there were 383 criminals arrested, over EUR 4 million the value of assets and money seized, together with USD 100 million in false banknotes. With regard to drug trafficking, more than three tons of substances were confiscated between heroin, cocaine, marijuana, hashish and synthetic drugs, as well as 1,600 cannabis plants (subsequently destroyed). The Prefecture of Trieste also reports that 50 guns and rifles were seized, of which seven were warring with ammunition and 380 kilograms of explosives. There were also 3,561 archaeological finds recovered, an element that led to the discovery of one of the important contacts between the fight against organized crime and the phenomenon of foreign fighters who often spread stolen cultural heritage in Europe<sup>38</sup>.

- OSCE Mission in favour of the Serbian judicial system: thanks to this project, which sees Italy as the main contributor, the Serbian Special Prosecutor for the fight against organized crime has been provided with the Italian software SIDDA/SIDNA for the management of investigative data. This tool, created and developed by the National Anti-Mafia and Counter-Terrorism Directorate (DNA), was donated to Serbia by the Italian Justice Ministry with the financial support of the Ministry of Foreign Affairs and International Cooperation (Maeci).

According to the judges interviewed, these two projects are particularly promising, as long as international cooperation is the only path for contrasting seriously the international activities carried out by foreign organized crime in Italy.

#### **4. CONCLUSION: LESSONS FROM THE PAST (THE CASE OF COSA NOSTRA)**

The history of the fight against the Sicilian mafia, Cosa Nostra, offers an important lesson: the mafia has been hit many times by the State, yet it has not eradicated permanently. This is because the Italian State's response to the repeating challenges of the mafia to Italian society has been launched mainly in emergency periods and in a repressive way. By giving a brief outline of the history of the Sicilian mafia and the history of the State's attempt to tackle it, this paragraph suggests that contrasting the mafia only with legislative instruments is not sufficient. Indeed, the mafia has shown good capabilities in adjusting its methods and strategy to the State's countermeasures thereby evolving and surviving over the time. It is not possible here to enter into a detailed discussion of the development of the mafia in terms of structure, business, and mentality, yet it will be dealt briefly with those historical turning points enabling us to chart an historical pattern of the relationship between the mafia and the way the State addressed the mafia issue. First, the pattern will be illustrated and then some examples of this pattern, taken from the history of the mafia from 1920s to 2006, will be given.

<sup>38</sup> See SANSA, (24 October 2017). Retrieved from [http://www.ansa.it/nuova\\_europa/it/notizie/ru-briche/altrenews/2017/10/24/sicurezza-vertice-bis-balcani-a-trieste\\_27b99eb0-ad4e-4d99-a0eb-743a29f1d773.html](http://www.ansa.it/nuova_europa/it/notizie/ru-briche/altrenews/2017/10/24/sicurezza-vertice-bis-balcani-a-trieste_27b99eb0-ad4e-4d99-a0eb-743a29f1d773.html)



Although the mafia's threat to Italian society is permanent, the State reacts to such threat only in emergency periods, including mafia warfare and mafia frontal attack to the State. State's response tends to be mostly "military", which means confining the intervention to police and judiciary operations, while overlooking questions related to social, economic and cultural condition of the areas where the mafia flourishes. In turn, the mafia faces the State repression through different ways, including by upsurging its violence and by reorganising itself. From the past the mafia has learnt that the first kind of reaction –violence- backfires because it inevitably provokes harsh counteractions of the State, while the second one brings profitable and long-term results. Eventually both strategies led the mafia and the State to negotiate, either because the State wants to stop the violent attack against public officials, or because the mafia wants to reform the organisation without encountering inconveniences. As a result, the mafia has not been defeated definitively. The following examples will give evidence of this pattern.

One of the clearest instance of the losing strategy of facing the mafia only as a problem of criminality occurred during Fascism, when dictator Mussolini in 1925 sent chief of police Mori to Sicily in order to stamp out the mafia. His campaign was military by using only sieges and round up without facing the social roots of the mafia. Not surprisingly the mafia flourished again after the Second World War. Between the 1950s and 1960s the mafia expanded its business until the first mafia warfare broke out in Palermo in the early 1960s. There is no space here for dwelling upon details of this war. However, what is important to observe is the presence of the usual pattern: the reaction of the State occurred after a bloody event and was by and large repressive. The explosion, in Ciaculli territory, of a car bomb that was meant to strike a mafia family (Greco) but instead killed seven policemen forced the Italian authorities to face the matter. The government set up an Antimafia Parliamentary Commission which was supposed to study the phenomenon from different perspectives. Yet eventually it reduced its task to suggest the government special measures. These consisted in *misure di prevenzione* (Preventive measures), above mentioned applied to people who had not been convicted but were seriously suspected, based on large quantities of circumstantial evidence. The preventive measures, including the *vigilanza speciale* (special surveillance) and the *soggiorno obbligato cautelativo* (a sort of internal exile compelling suspected mafiosi to reside in Central and Northern Italy) helped to stop the bloodshed temporarily and thus to defeat the mafia superficially.

The period of fragmentation undergone by mafia Families and their coordinating body was not only due to the above special measures, but also due to the investigations carried out by judge Cesare Terranova. However, although in the mid-late 1960s the mafia was in trouble, as usual in the following years it regained strength and power by using the strategy of collusion/intimidation and adaptation/reorganisation.

The rulings of the trials in Catanzaro (1968) and Bari (1969), subsequent to Terranova's accusations, acquitted many mafia bosses thus making Terranova's hard work vain. Thereby the mafia showed its influence and power to corrupt and intimidate the Court.

The spreading of the mafia in new areas, such as Northern Italy, because of the exile of mafiosi is a good illustrative example of mafia ability in taking advantages from the State countermeasures.



At the same time the State's concern vanished thus showing once again its typical characteristic, namely being temporary. Indeed, the Parliamentary Commission concluded its investigation since public concern in the historical context of the 1970s was concentrated on terrorism, which had replaced the mafia as the greatest social problem.

Not surprisingly, therefore, in the 1970s the mafia had space to act. Again, it is beyond the scope of this essay to give you details on the mafia expansion. What is necessary to stress here is the fact that the common pattern reemerged. Indeed, the mafia reorganised itself, this time by employing a centralised and hierarchical structure. This was to avoid risks of investigation such as the Terranova's one, and to organise the drug trafficking, which in the 1970s became the main mafia business. Therefore, in 1973, Stefano Bontade and Gaetano Badalamenti, representatives of the Palermo families, and Totò Riina, representative of the Corleone Family, set up a triumvirate, leading to the constitution of a provincial commission, called the *Cupola*. This central body set strict rules to prevent mafia Families from making important decisions, such as murdering a public official, without first consulting Cupola members.

The State lack of interest in fighting the mafia, which as we have seen marked the 1970s, lasted until the coming into being of another emergency period. This started in the late 1970s with the intensification of competition between mafia clans resulting from the sudden increase in wealth caused by the drug trade which destroyed the balance between mafia Families. More precisely, the 'peaceful management' of the organisation ceased with the rising in power of the Corleone faction, which challenged the rules of the Cupola. Corleonesi's boss Totò Riina built his power by boundless use of violence and the art of introducing spies and allies into other mafia Families.

The result of his forced dictatorship was the eruption of the second mafia warfare. There is no space here to account details of this war. However, to have an idea of the extent of this feud sufficient is to know that between 1981 and 1983 almost 700 people lost their lives.

As a consequence of the conflict, the compact mafia structure started to weaken, giving criminal investigations more room for action. At the same time, many representatives of State institutions (the list is impressive) were murdered because of their commitment against the mafia. This situation led the State to counteract. Once again in another historical conjuncture the State intervened out of an emergency.

In 1982 the alarm brought the parliament to approve the La Torre-Rognoni law, that as explained above, introduced the crime of association for criminal purposes of a specifically mafia nature into the Italian penal code. In other words, being member of a mafia association was now considered a crime, whether or not one had committed any particular offence. Moreover, the law gave magistrates the power to overcome bank secrecy, enabling them to investigate the financial aspects of mafia activities. Indeed, this law was the central instrument for the huge investigation carried out by the Palermo court in the early 1980s. Particularly effective were the investigations undertaken by public prosecutors Giovanni Falcone and Paolo Borsellino which relied on a scientific approach, involving bank and travel records, seized heroin shipments, fingerprint and handwriting analysis, and wiretapped phone conversations. Moreover, as soon as Falcone understood that the Sicilian mafia was part of an international trafficking network, established contacts with foreign investigators.

By discovering the existence of a broad and structured criminal organisation, called Cosa Nostra, and also revealing the reasons and dynamics of the second mafia war confirmed by the testimony given by the first official defector Tommaso Buscetta, these investigations led to the famous 'maxi-trial' which begun in Palermo in 1986. What was new in the antimafia in the 1980s was the involvement of civil society. People participation in the antimafia through street demonstrations was the result of the increasing political consciousness, which was the legacy of the late 1960s movements –students, workers, women. This new aspect of the antimafia is worth of mention because it represented an important sign of discontinuity within the regular pattern observed so far.

Unfortunately, the antimafia struggle from below and the judicial action did not receive political support. As a consequence, the mafia defeat was temporary.

However, in the late 1980s the mafia started to show signs of vulnerability due to the 'maxi-trial' and the loss of political protection. The latter was not the result of a 'redemption' of politics rather it was caused by the grave crisis undergone by major Italian political parties as a result of what the media called the 'collapse of the First Republic,' followed by criminal investigations by the Milan Public Prosecutor's Office into the corrupt system of public contract management.

Moreover, magistrates gained strong support from civil society in demonstrating that politicians could be charged. This climate favouring legality stimulated the government to improve its operations against organised crime. What's more in the early 1992 the Court of Cassation confirmed the convictions of the maxi-trial.

The mafia was obviously not pleased with this climate thus it decided to show its power by organising a series of murders of people, including judges and businessmen, deeply involved in the struggle against it. Furthermore, as the government proved capable of arresting important bosses, Cosa Nostra strategy of terror continued by murdering Giovanni Falcone on 23 May 1992, and Paolo Borsellino on 19 July 1992. These magistrates were not only symbols of the antimafia struggle, but also caretakers of immense knowledge concerning Cosa Nostra.

Falcone and Borsellino murders stunned the entire country and incurred both the massive indignation of the Italian people, resulting in marches and protests, and State reaction leading to harsh legislative measures. For an idea of the atmosphere, sufficient is to know that the Italian government sent military troops to Sicily.

As already described, in the 1990s there were two crucial main pieces of legislation against the mafia: the witness protection program and Article 41 bis related to maximum-security prisons.

The combination of the two proved particularly effective. Indeed, prison conditions required by Article 41 bis were so harsh they often led some mafiosi to collaborate with justice. At the same time, the decision to collaborate was also encouraged by the many benefits and guarantees provided by the witness protection program. Thanks to testimonies by *pentiti*, many mafia bosses were imprisoned and others went underground.

Once again, the mafia reaction was at first violent, yet later when the strategy of terror failed and Totò Riina was arrested, the mafia understood that it was better shifting its strategy. Therefore, it reorganised itself by taking into account the changes in the State's countermeasures, and resuming the link with the political power.

The head of the reform of Cosa Nostra was Bernardo Provenzano, who adopted the 'philosophy of caution' based on bringing back the organisation to its traditional role of mediation (i.e. vote of exchange), and the strategy of dealing with the State. In fact, since the late 1990s State has started to lower the guard by modifying the witness law thus discouraging people from collaborating with Public prosecutors, and by eliminating restrictions in Article 41bis. Provenzano was then arrested in 2006.

In conclusion, despite the State's numerous investigative successes both against Cosa nostra and the other national mafias, due to the its effective investigative and legislative apparatus and the capacity of some investigators and Prosecutors, the Italian mafias are still present and some of them have become very powerful. This means that the fight against the mafia is not only a matter of legislative and investigative means. In this regard, the head of Rome Public Prosecution Office, Giuseppe Pignatone, who have developed a great experience in the fight against the Mafia, has maintained that Italy has got enough and effective laws against mafia crime and mafia-related crimes and therefore there is no necessity to implement new legislations (Pignatone, 2017). What is necessary is to contrast these organization not only in their military capacity, but also focussing on their socio-economic, political and cultural dimensions. This is a lesson that must be keep in mind, even in the perspective of fighting foreign organized crime, that resemble mafia traits. They are a problem not only referred to security, but also to questions linked on the one side to social integration of immigrants, and on the other side to the high demand of services and goods posed by the Italian population (prostitution, drugs and arms). Therefore, the response cannot be limited to repressive interventions, otherwise, foreign organized crime will keep expanding, despite of law enforcement agencies and Judiciary Authority's efforts.

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# CRIMINAL JUSTICE SYSTEM'S RESPONSE TO CORRUPTION – WHO IS BEING PROSECUTED AND FOR WHAT?

Original Scientific Paper

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## Abstract

**Reasons for writing and research problem:** In addition to many variations in defining corruption crimes, corruption is most often described as any form of abuse of entrusted power for private gain. In criminal justice, corruption offences are “criminal offences related to official duty”, or the offences undermining proper and lawful performance of official duty. They also include offences perpetrated with intent or an intention to obtain any illegal gain, and therefore they are referred to as typical corruption offences. In light of the sanctions foreseen for these offences, it is obvious that they may be classified as serious criminal offences. The question is – how does the criminal justice system actually respond when such offences are committed?

**Aims of the paper:** This document examines the criminal justice system's response to typical corruption offences, in order to identify what types of offenders are being prosecuted and for what type of criminal offences.

**Methodology design:** For that purpose, document analysis method was applied, through which, using a custom-made record form, data were collected from 91 court cases involving 103 persons charged with typical corruption offences.

**Limitations:** This research is not based on a representative sample of cases. It serves as an exploratory study, that will provide inputs for further research.

**Findings:** According to the results of the analysis, prosecuted and proven cases predominantly include the so-called situational or petty corruption. Vast majority of prosecuted offences are embezzlement in office, particularly its less serious forms, under which low-ranking persons in private companies acquired gain below 10,000 BAM. As a result, the offences typically prosecuted are only the obvious ones, and those registered by individuals in the private sector.

**Validity of the research:** Criminal Justice System of Bosnia and Herzegovina is often criticized for having a lenient approach to fighting corruption. This paper explores the criticism.

## Keywords

Corruption, bribery, abuse of office



## 1. Introduction<sup>1</sup>

According to the European Commission (2015:6), despite considerable efforts invested in strengthening the fight against corruption, Bosnia and Herzegovina has achieved minimum results. Criminal justice system (encompassing primarily law enforcement agencies, prosecutor's offices and courts) is usually criticised for its reluctance to deal with large scale corruption cases and for, at best, mild response (as reflected in the sentencing policy for corruption cases) to corruption of public officials. Such findings have been corroborated by research too. According to Mujanović (2010), sanctions for corruption offences in BiH are much closer to the statutory minimum than they are to the statutory maximum. Furthermore, the most commonly imposed criminal sanction for corruption offences is suspended sentence (Datzer, 2011).

From the point of view of academic and professional community, the issue of corruption is frequently discussed and findings suggest that the situation in Bosnia and Herzegovina is not unique. For example, criminal justice response to corruption offences was analysed in Poland and results indicated discord between prescribed and pronounced criminal sanctions (Batory Foundation, 2011). In other words, their sentencing policy seems to be very mild too. Disparity between prescribed sanctions in the Criminal Code of the Republic of Serbia and imposed sanctions for corruption offences was recorded in a number of studies in Serbia too (Đorđević, 2012; Z. Stojanović & Kolarić, 2010; Tanjević, 2010).

## 2. Aims and Methodology

In general, this paper aims to deepen the understanding characteristics of offenders adjudicated for typical corruption offences. In particular, the aims of the paper are:

- To analyse criminal justice system's response to corruption
- To identify criminal offences that are being adjudicated
- To describe characteristics of suspects who are convicted.

For the purpose of this paper, corruption refers explicitly to a perpetrated typical corruption offence. These so-called **typical corruption offences** are:

- *Accepting Gifts and Other Forms of Benefits,*
- *Giving Gifts and Other Forms of Benefits,*
- *Accepting or Giving Reward or Other Forms of Benefit for Trading in Influence,*
- *Abuse of Office or Official Authority,*
- *Embezzlement in Office.*

Such categorisation is accepted based on the argumentation of Datzer and Vujović (2013), according to whom the criteria for the classification of an offence under the "typical corruption offences" are: a. the protected object (in this case, proper performance of official or other responsible duty, where official duty includes rights and obligations of officials to apply pre-

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<sup>1</sup> This research has been produced with the assistance of the European Union and implemented through the Criminal Policy Research Center (Sarajevo). The contents of this paper are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union or CPRC.

scribed powers); and b. intentional perpetration of the criminal offences, so as to gain tangible or intangible benefit to own self or another by perpetrating the act

Aims set in this way considerably determine the methodological approach to the research. Ideally, reaching of the aims would mean access to all reported corruption cases, whether police or prosecution cases. Such an approach, unfortunately, for the purposes of this research was not possible, as it would imply access to cases without final verdict as yet. Therefore, in cooperation with donors and representatives of High Judicial and Prosecutorial Council it was decided to make the research only on the basis of the analysis of cases with final verdicts. At the same time, it was decided to conduct the research in the following courts:

- Basic Court of Banja Luka
- District Court of Banja Luka
- Basic Court of Brčko District of Bosnia and Herzegovina
- Municipal Court of Sarajevo
- Cantonal Court of Sarajevo.

In addition, given the limited timeframe of the research, and having in mind it was a test research, it was decided that the analysis be carried out on the total of 100 cases, bearing in mind appropriate representation of typical corruption offences. As regards the timeframe, it was decided that the analysis would cover cases with final verdict in the period between 2013 and 2015.

Key prerequisite to conduct the research is unconditioned cooperation of all selected courts, as follows:

1. To provide data on the number of cases with final verdict for the selected corruption offences;
2. Following the sampling, to allow to the researcher to access cases and collect data;
3. To provide premises where data collection would be possible.

Unfortunately, cooperation on the part of the courts was not complete, and in certain cases it was completely missing. To wit, despite several efforts, no communication whatsoever was established with the representatives of District Court of Banja Luka. The Cantonal Court of Sarajevo and Basic Court of Banja Luka provided data on the total number of cases, and after the sampling they selected cases for the analysis. However, cases were not entirely placed at disposal, while the researchers were provided only with verdicts. The Municipal Court of Sarajevo and Basic Court of Brčko District of Bosnia and Herzegovina ensured full cooperation in line with the planned methodology.

Having inspected the court files, the analysis covered the total of 91 proven corruption offences, within which the total of 103 individuals were convicted.

As the method of data collection we used the method of analysis of contents of documents, as the main and sole source of data. To wit, court files will be analysed, regarding cases with final verdicts pertaining to corruption offences. For that purpose, Analytical Sheet was used. Collected data were processed by applying statistical methods, or method of descriptive and method of inferential statistics.

### 3. Findings

#### 3.1. What is prosecuted and proven?

Having inspected court files, analysis was carried out on the total of 91 court cases regarding corruption offences. Given that one case may constitute criminal proceedings against several persons, the structure of final verdicts and decisions should be shown in relation to the total number of individuals against whom the proceedings were conducted (see table 3.1.1.)

*Table 3.1.1. Final verdicts and decisions for persons charged with corruption offences*

Final verdict	Frequency	%
Conviction	80	77.67
Acquittal	20	19.42
Charges rejected	1	0.97
Proceeding discontinued	2	1.94
Total	103	100.0

Out of 103 persons charged with corruption offences, slightly less than 80% of them were convicted with final verdicts of having committed the total of 73 criminal offences. Almost 20% of them were acquitted due to lack of evidence, and in less than 3% of cases the proceedings were discontinued or the charges were rejected.

Structure of criminal offences in one field should guide decision makers as to the direction of action. Being aware that official statistical data do not necessarily reflect the actual situation, table 3.1.2. shows the structure of corruption offences of which 80 persons were convicted.

*Table 3.1.2. Structure of proven corruption offences*

	Frequency	Percent	Valid Percent	Cumul. Percent
Abuse of office	12	15.0	15.0	15.0
Embezzlement	64	80.0	80.0	95.0
Valid Accepting bribe	2	2.5	2.5	97.5
Invalid Illegal interceding / trading in influence	2	2.5	2.5	100.0
Total	80	100.0	100.0	

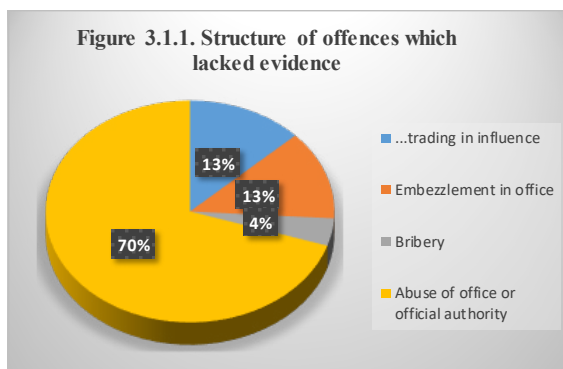
According to the results shown in the table above it may be noted that embezzlement in office is the most frequently proven corruption offence making up as much as 80% of the total number. Abuse of office appears in slightly over 15% cases, while accepting gift and other forms of benefit and accepting or giving reward or other forms of benefit for trading in influence appears in only 5% of cases.

According to official statistical data of the High Judicial and Prosecutorial Council /HJPC/ (VSTV, 2015) criminal offences of embezzlement in office and abuse of office or official authority are the most frequent forms among proven cases of corruption. On the other hand, there are least criminal offences of bribery and accepting or giving rewards or other forms of benefit for trad-

ing in influence. Criminal offence of giving gift and other forms of benefit is extremely rarely prosecuted. This does not mean, however, that such cases do not exist. To wit, the presence of the offence of accepting gift implies that there should have also been the offence of giving gift. According to findings by Vujović (2013), there occur situations where the perpetrator was not charged with criminal offence of giving gift, even though he/she reported giving bribe to a public servant, while the other one was punished for that. In addition, research conducted on 1200 citizens of BiH indicates that more than 3% of population gave gift or other forms of benefit to public servants in the last year (Maljević et al., 2017), whilst only one case was reported.

There are three possible causes for extremely small number of such a corruptive behaviour in official statistical data. First, citizens have different reasons not to report corruption offences (see more in Maljević et al., 2017). Second, investigative bodies rarely detect such offences in the course of their own work. Third, the offences that are reported do not get proven.

According to the data of HJPC for 2015, taking into account data for the Republika Srpska, Federation of Bosnia and Herzegovina and Brčko District of BiH, there have been reported the total of 68 cases of accepting gift and other forms of benefit. In 32 cases investigation was ordered, which implies there were grounds for suspicion of the offence, while charges were rejected for the remaining 36 reports. Following the work of prosecutors and investigators grounds for suspicion were raised to grounded suspicion in only 8 cases, which was followed by issuing indictments. Throughout that year only 5 persons were convicted of having committed the offences. On the other hand, in most of the cases it is considerably easier to detect and prove the criminal offence of embezzlement in office, than other forms of corruption offences (Vujović 2013). To wit, embezzlement implies that “something that existed disappeared”. It is worth noting that embezzlement in office may most often be classified as the crime of employees, particularly low-ranking ones in their organisations (the so-called *blue-collar crime*). Frequency of such abuses contributed to the development of the private security system (Button, 2007).

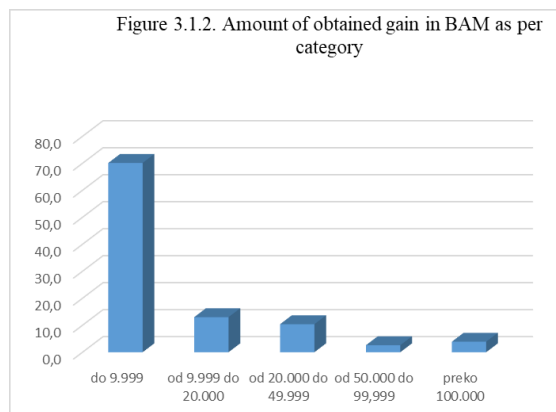


Unlike embezzlement in office, abuse of office does not have to be that obvious, and less so the offences of bribery and accepting or giving reward or other forms of benefit for trading in influence. In support of this statement there is a fact that acquittals pronounced by the court due to lack of evidence (N=20) involved as many as 70% of cases in which the accused was charged with abuse of official authority (Figure 3.1.1.). Therefore, out of 28 cases conducted for abuse

of official authority, only 12 of them (or slightly under 43%) were proven and their perpetrators were convicted. On the other hand, as regards embezzlement in office, the accused were also convicted in over 95% of cases. It appears that the cases of abuse of official authority represent considerably big challenge for investigators and prosecutors in terms of detecting and proving.

Corruptive behaviour may appear not only in public but also in private sector. Data of 39 court files where conclusions could be drawn as to the sector where corruptive behaviour had appeared, showed that in 80% or 31 cases involved private sector. Out of that number, over 90% cases involved the criminal offence of embezzlement in office.

In all but one of the analysed cases the obtained/intended illegal gain referred to money. Figure 3.1.2. indicates that it mainly involved amounts below BAM 10,000 (70.1%; N=77), and exactly this amount is the first threshold for the qualification of offences most often appearing among the proven ones – embezzlement in office and abuse of official authority. Only exceptionally did it concern amounts above BAM 50,000 (6.6%; N=77), for which the most severe punishment may be pronounced under the law.



It may be concluded that proven corruption offences, as a rule, appear in their basic form. Similar results are reached by Vujović (2013), who concluded that proven corruption offences most often might be classified as “blue collar crime”. This is further linked with the fact that situational is most often proven while the systemic corruption remains the dark figure of crime. It should also be added that proven criminal offences are rare to appear in concurrence with other offences (4.1%; N=73), and only exceptionally with similar cases (one case; N= 73).

### 3.2. Who is prosecuted and convicted?

Corruption offences are often well concealed, and they may be perpetrated by one or more individuals. Table 3.2.1. indicates the role of the accused in the perpetration.

Table 3.2.1. *Offence\_perpetrated*

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Alone	65	81.3	82.3	82.3
	Accomplice	13	16.3	16.5	98.7
	Inciter	1	1.3	1.3	100.0
	Total	79	98.8	100.0	
Missing	System	1	1.3		
Total		80	100.0		

Results show that perpetrators mainly act alone (82.3%; N= 79). They rarely act in complicity (16.5%; N= 79). This means that the proven corruption offences do not constitute or are not linked to the criminal offence of organised crime and, therefore, the perpetrators may not be pronounced more severe penalties on that ground. Theoretical postulates and results of hitherto research are not in line with this finding. To wit, corruption and organised crime are very often interrelated (Finckenauer, 2005; Hagan 2006). It therefore seems that this result also may be explained by the high dark figure of corruption crime.

Among the total of 80 persons convicted of corruption offences, slightly more than two thirds are men (73.8%), and slightly under one third are women (26.2%). Although women's criminality in official statistical data does not exceed 10%, the situation with corruption offences is somewhat different. The increase in the number of women in official and other responsible positions contributed to the increased number of criminal offences against official duty, perpetrated by that population.

As regards the nationality of the accused, except one national of Austria, all others are nationals of Bosnia and Herzegovina. This may be considered expected, given the nature of corruption offences, or the assumption that major number of the offences may be perpetrated only by a person performing certain official or responsible duty.

The accused (N=103) include 10 persons, or slightly under 10%, who previously perpetrated some criminal offences. Half of them, or approximately 5% of the total number of the accused, were previously convicted of the same corruption offence. For 4 out of 10 of the accused, who had previously perpetrated a criminal offence, there was insufficient evidence for conviction in this case. The mere fact that those who had previous convictions of corruption offence reappear in criminal proceedings may be a strong indicator that the purpose of punishment was not served.

Table 3.2.2. indicates level of education of perpetrators of the proven corruption offences.

Table 3.2.2. Level of education

		Frequency	Percent	Valid Percent	Cumul. Percent
Valid	Primary	2	2.5	2.5	2.5
	Secondary	49	61.3	62.0	64.6
	Two-year post-secondary	3	3.8	3.8	68.4
	University	12	15.0	15.2	83.5
	Master+	1	1.3	1.3	84.8
	Unknown	12	15.0	15.2	100.0
	Total	79	98.8	100.0	
Missing	System	1	1.3		
	Total	80	100.0		

The convicted of corruption offences mainly include those with secondary school qualifications (62%; N=79). That is yet another indicator that persons are most often punished for the so-called situational corruption. In addition, results indicated in the table below support those facts.

Table 3.2.3. Crosstabulation - Level of education recoded \* Pronounced guilty recoded

			Pronounced guilty recoded		Total
			Convicted	Acquitted	
Level of education recoded	Below university degree	Count	54	7	61
		% within level of education recoded	88.5%	11.5%	100.0%
	University degree	Count	13	11	24
		% within level of education recoded	54.2%	45.8%	100.0%
Total		Count	67	18	85
		% within level of education recoded	78.8%	21.2%	100.0%

Results shown in table 3.2.3. indicate that the convicted persons of university degree found in almost half of the cases (45.8%; N=23) were acquitted of charges due to the lack of evidence. On the other hand, that was the case with only 11.5% cases where the accused was the person whose level of education was below university degree. A question arises whether the level of education of perpetrators affects their ability to conceal the criminal offence?

A true criminal offence related to official duty may be perpetrated only by an official or responsible person. This also implies their employment. However, employment of the convicted persons at the time of the conduct of criminal proceedings was somewhat different and is shown in table 3.2.4.

Table 3.2.4. Employment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	30	37.5	38.5	38.5
	No	38	47.5	48.7	87.2
	Unknown	10	12.5	12.8	100.0
	Total	78	97.5	100.0	
Missing	System	2	2.5		
Total		80	100.0		

Results show that almost half of the convicted persons (48.7%; N= 80) is unemployed, while for almost 13% of them the data were not available in court verdicts. However, in order for the court to decide on the adequate type and measure of criminal sanction this piece of data is very important. Actually, imposing the fine, seizure of illegally acquired property etc. should depend thereon.

As regards other characteristics of perpetrators, their family situation should be singled out as it often plays a significant role in meting out the punishment. Marital status is indicated in table 3.2.5.

Table 3.2.5. Marital status

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Single	13	16.3	16.7	16.7
	Married	46	57.5	59.0	75.6
	Widow/widower	2	2.5	2.6	78.2
	Divorced	14	17.5	17.9	96.2
	Unknown	3	3.8	3.8	100.0
	Total	78	97.5	100.0	
Missing	System	2	2.5		
Total		80	100.0		

Results indicate that almost 60% of the convicted persons are married, approximately 18% divorced and approximately 17% single (N=78). Number of children of the convicted persons is shown in table 3.2.6.



Table 3.2.6. Number of children of the convicted

	Frequency	Percent	Valid Percent	Cumulative Percent
0	21	26.3	26.3	26.3
1	20	25.0	25.0	51.2
2	29	36.3	36.3	87.5
Valid 3	9	11.3	11.3	98.8
4	1	1.3	1.3	100.0
Total	80	100.0	100.0	

It may be noted that every fourth convicted person does not have children, while 60% of them have got one or two children. Slightly above 10% of them have got 3 or more children. It is very important to underline the fact that it is unknown how the court determines family situation of the accused, except on the basis of their own statements. Analysis of the cases has not shown that evidence is collected of the fact in the form of birth certificates. It appears that during the examination the defendant states he is married with children, and this fact is considered “established” and, as a rule, taken into account as extenuating while meting out the punishment.

#### 4. Conclusion

The main findings indicate that the most serious forms of corruption offences are very rarely detected. The majority of proven offences are those of situational corruption, particularly easily verifiable forms. Final convictions typically refer to embezzlement in office, in particular the offences in the private sector. Corruption in the public sector is almost completely absent from final verdicts. When it comes to offenders, it seems that the most corrupt individual in Bosnia and Herzegovina is uneducated, unemployed, married man with children, who almost exclusively acts alone. Having said this, and aware of the complexities inherent to corruption as a social and legal phenomenon, it seems understandable that international community is arguing that the criminal justice system of Bosnia and Herzegovina is failing to address corruption adequately.

In order to change this situation, it is necessary to shed light on the dark figure of corruption, which requires, inter alia, planned, meaningful and organised activities in order to identify, investigate and prove such criminal offences. This should result in the identifying and proving of a considerable number of most serious corruption offences. Such approach, it is hoped, would also lead to prosecution and conviction of the real actors in corruption cases.

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## CRIMINAL JUSTICE SYSTEMS' RESPONSE TO DRUG TRAFFICKING IN BOSNIA AND HERZEGOVINA\*

Review Paper

Almir MALJEVIĆ  
Sandra KOBAJICA

### Abstract

**Reason for writing and research problem(s):** The illicit trafficking in narcotic drugs remains to be one of the most prevailing and profitable activities of organized criminal groups in Bosnia and Herzegovina [BiH]. BiH is mainly a country of transit or final destination of narcotics drugs, while organized criminal groups operating in the country are interlinked to organized criminal groups from the 'Balkan route', with the regional ties in neighbouring countries.

**Aims of the paper (scientific and/or social):** This study provides an overview of criminal justice systems' response to drug trafficking in Bosnia and Herzegovina

**Methodology/ Design:** Data on drug trafficking in BiH will be presented through the quantitative statistical analysis of the criminal justice systems' response to the phenomenon. Therefore, the method of secondary data analysis (official statistics and the case law) on drug related crime will be used.

**Research/ Paper limitation:** The study limitations relates to the use of official data. Analysis has shown that the very basic information on drug related organized criminal groups can be collected from administrative sources.

**Results/ Findings:** The findings suggest that drug trafficking in BiH is a criminal activity with cross-border elements, predominantly committed by unemployed, uneducated, married men with children. They rarely use violence, corruption or services of experts.

### Keywords

drug trafficking, , criminal groups, Bosnia and Herzegovina

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## 1. INTRODUCTION

In the past 20 years a lot has been said about BiH as 'transitional society' and organized crime as a sub product of its weak governance and institutions, and lack of political, economic and social reforms in post-Dayton period. Andreas (2004, p. 31) stated that the criminalized side of the war in BiH left a powerful legacy, evident in an expansive post-war smuggling economy based on political protections and informal trading networks built up during wartime. Smuggling and trafficking of people, arms, drugs, timber, fuel, or cigarettes were part and parcel of the war, and partly even increased after the war (Friesendorf, Schroeder, & Deljković, 2010). These organized crime activities have been taking place in certain time continuity, to a greater or lesser extent due to various conditioning factors. The most common identified factors by the Council of Ministers of BiH (2016) are the extent of corruption<sup>1</sup>, the success of law enforcement agencies' operations, economic trends in global and local markets affecting the price change of certain goods or services, changes in legislation, as well as international political relations that have an impact on certain forms of crimes in terms of their cost-effectiveness etc.

Due to its strategic geographic position, BiH lies on the main path of the so-called 'Balkan route' of drug trafficking and experiences the spectrum of problems related to growth of organized crime. The latest Council of Ministers of BiH report (2016) indicates that the largest number of organized criminal groups in BiH is engaged in illicit trafficking in narcotic drugs and human trafficking, as these are the most lucrative criminal activities. Additionally, there are cases of smuggling of firearms and ammunition and their sale on the black market, as well as crimes related to motor vehicle thefts and resales (Ministry of Security of BiH, 2017). A number of members of these groups engage in violent crimes such as contract killing, blackmailing, kidnapping and extortion<sup>2</sup>. Over past year's increasing vulnerability of BiH to such new forms

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<sup>1</sup> According to the European Commission Progress Report for 2018, BiH has some level of preparation in the fight against corruption. Corruption continues to be widespread and the political commitment on this issue has not translated into concrete results. The legal and institutional framework remained weak and inadequate. Corruption in the judiciary still needs to be more forcefully addressed. Health and education sectors, especially in higher education, remain a high-risk area for corruption and political interference. There is no policy in place to prevent corruption in the private sector (European Commission, 2018). The situation has not changed in the progress report for 2019, where it is stated: The legislative framework on preventing and combatting corruption presents significant gaps due to the non-harmonisation of legislation, strategies and action plans. Enforcement capacity is weak, notably due to the fragmentation of law enforcement agencies. Corruption is widespread and remains an issue of concern. All levels of government show signs of political capture, directly affecting the daily life of citizens, notably in health, education, employment and public procurement matters (European Commission, 2019).

<sup>2</sup> The most recent is the Zijad Turković et al. case (S1 2 K 006087 14 Kzk) before the Court of BiH (The Court of Bosnia and Herzegovina, 2017). As members of organized criminal group, they were found guilty for several crimes instilling fear, distrust and insecurity among the country's residents (i.e. drug trafficking, aggravated robbery, extortion, murder, endangering the public, possession of weapons and explosives, money laundering and other crimes). Zijad Turković and four of his associates were sentenced of imprisonment for a term of in total 95 years in the single largest BiH organized crime case since the end of the 1992-1995 war. For more information visit: <http://www.sudbih.gov.ba/predmet/2818/show>.

of organized crime was anticipated to be a consequence of the global financial crisis (Council of Ministers of BiH, 2013; 2009) coupled with rising power and influence of criminal groups in the region of South-Eastern Europe. In addition, it is evident that the number of organized crime groups in BiH is changing since the degree of recovery of prosecuted groups and chains is rather high due to increasing percentage of habitual offenders. These are criminal groups that are part of international chains whose level of organization is extremely high, and which have clearly defined organizational structure: organizers, executors, helpers, etc. (Council of Ministers of BiH, 2017). To address these problems, the Ministry of Security of BiH (2017) has labelled the fight against cross-border crime, economic crimes and corruption along with terrorism as top challenges and priorities in the period 2016–2017.

## **2. METHODOLOGY**

The aim of this paper is to provide an overview of the criminal justice systems' response to drug trafficking in BiH. To that end, a number of sources will be used. Official statistical data on the number of persons prosecuted and adjudicated by the prosecutors' offices and courts in the Federation of BiH and the Republika Srpska provided by the statistical offices of the respective entities for the period 2011–2016 is used. Case law analysis for drug trafficking is performed on all online available verdicts issued by the Court of BiH (Section II for Organized Crime, Economic Crime and Corruption) for the period 2007–2017. The data was extracted from the verdicts, inserted into IBM-SPSS database and analyzed. The analysis is based on verdicts against total of 58 persons adjudicated for drug related crime. Unit of analysis was a person.

## **3. DRUG TRAFFICKING IN BIH: AT A GLANCE**

The vast body of literature constantly indicates that the Balkan route is still the main narcotic, and in particular heroine conduit to Europe (UNODC, 2014; Kemp, 2017). BiH has a strategic location on the central part of this path, which connects drug production centres in Asia and the markets in Western Europe (Ministry of Security of BiH, 2014). BiH is considered to be one of the regional hubs for narcotics shipments (Council of the European Union [Council of the EU], 2016). Based on the analysis of the organized criminal groups' that have been investigated and prosecuted before the judicial authorities of BiH, as well as gathered intelligence, international trends, and pathways of movement of drugs, it could be concluded that BiH is a country of transit and destination of illicit drugs (Council of Ministers of BiH, 2017). It has problems similar to other countries on the Balkan route and is a transit country for synthetic drugs and cocaine from the West and heroin and cannabis from the East. Thus, heroin and herbal cannabis are still the most common illicit drugs in BiH, in terms of both smuggling and use, while other illicit drugs are distributed to a lesser extent (European Monitoring Centre for Drugs and Drug Addiction [EMCDDA], 2018). Heroin is mostly illegally shipped from Turkey and Albania through Montenegro to BiH and onward to Western Europe along the Route (Council of Ministers of BiH, 2016; EMCDDA, 2018). The involvement of Serbian and Montenegrin citizens in the organization of these illegal activities is increased, since some of these persons had permanent residence in BiH (Council of Ministers of BiH, 2016). Herbal cannabis available on

BiH market originates in Albania<sup>3</sup> (EMCDDA, 2018) and enters via the south route from Montenegro and Herzegovina, whereas one part is distributed in BiH and the rest is smuggled into Croatia and other European countries<sup>4</sup> (Council of Ministers of BiH, 2016; Ministry of Security of BiH, 2017; UN, 2015). Synthetic narcotic drugs ecstasy and amphetamine speed come mainly by land routes from The Netherlands to the countries of Eastern Europe, however, a small part, depending on market needs ends up in BiH (Council of Ministers of BiH, 2016; EMCDDA, 2018). According to EUROPOL (2011), an increasing amount of cocaine from Latin America enters the EU via the Western Balkans and South-Eastern Europe. The liberalization of trade in the region and the presence of established transnational criminal networks have facilitated this expansion. Equally, criminals from the Western Balkans have established operational bases in Latin America, maximizing their profits by sourcing cocaine directly from producers. The trend that started in previous years has continued, which means that there are more citizens of BiH involved in international smuggling channels of cocaine (Council of Ministers of BiH, 2016). Mostly, it is about persons residing in the countries of South America and persons residing in 'first' destinations of the shipments in Europe, usually The Netherlands, Spain, Germany, Belgium and other countries where they have seaports. It was observed that cocaine traffickers from South America increasingly use ports in some Mediterranean countries, and there are already well-established land routes, partly through BiH and further to Western Europe (Council of the EU, 2016). Parallel with these physical drug markets, the last decade has seen the development of online marketplaces, which has been facilitated by the emergence of new internet technologies (EMCDDA, 2017).

The domestic market for and production of drugs has slightly increased but remains small compared to European average.<sup>5</sup> The slow change from a predominantly drug trafficking country to a drug consuming country is of concern not only in BiH but in the whole region (Council of the EU, 2016). According to the Council of Ministers of BiH (2016) rough estimates, consumption in BiH is increasing but it is still relatively low compared to other European countries.<sup>6</sup> As Deljkić, Datzer & Matković (2015) noted, there is no reliable data about the prevalence of drug use

<sup>3</sup> Albania remains the main source of herbal cannabis trafficked to the EU (EUROPOL, 2017).

<sup>4</sup> Most of this trafficking is assumed to target Italy, although the Netherlands may also be seeing attempts at market penetration by Albanian cannabis herb (UNODC, 2014).

<sup>5</sup> In the global context, Europe is an important market for drugs, supplied with both domestically produced drugs and drugs trafficked from other world regions. South America, West Asia and North Africa are important source areas for illicit drugs entering Europe, while China is a source country for new psychoactive substances. In addition, some drugs and precursors are transited through Europe en route to other continents. Europe is also a producing region for cannabis and synthetic drugs, with cannabis mostly produced for local consumption, while some of the synthetic drugs are manufactured for export to other parts of the world (EMCDDA, 2017).

<sup>6</sup> Drug use in Europe now encompasses a wider range of substances than in the past. Among drug users, polydrug consumption is common. More than 93 million or just over a quarter of 15- to 64-year-olds in the EU are estimated to have tried illicit drugs during their lives. The most commonly tried drug is cannabis (87.9 million adults), with much lower estimates reported for the lifetime use of cocaine (17.5 million adults), MDMA (14 million adults) and amphetamines (12.6 million adults). Levels of lifetime use of cannabis differ considerably between countries, ranging from around 8 in 20 adults in France to less than 1 in 20 in Malta and Romania (EMCDDA, 2017).

in the country, due to the fact that this data is not comprehensively collected by government institutions, and research in this area is very poor.<sup>7</sup>

Some data on drug use among the general population are available from household surveys conducted separately in the Federation of BiH and in the Republika Srpska in 2011 (EMCDDA, 2018). The lifetime prevalence of the use of any illicit substance in Federation of BiH was reported at 3.8% among all respondents within the UN Children's Fund 'Multiple indicator cluster survey' [UNICEF MICS]. Cannabis was the most commonly used substance, reported by 3% of respondents, while all other illicit substances showed lifetime prevalence rates of below 1% (EMCDDA, 2018). According to the survey organized by the Republika Srpska Ministry of Health and Social Welfare and the Public Health Institute, the lifetime prevalence of any psychoactive substance used among individuals age 18 and over was 4.8%. Psychoactive pills were the most popular substances reported (2.8%), followed by cannabis (0.8%), inhalants (0.7%), and heroin (0.2%) (Ministry of Security of BiH, 2014). Both entities conducted the European School Survey Project on Alcohol and Other Drugs [ESPAD] in 2008 and 2011. The most common used substance by students aged 15–16 in both years was cannabis, followed by sedatives in the Federation of BiH and inhalants in the Republika Srpska (Ministry of Security of BiH, 2014). Based on the survey instruments, among others, utilized by ESPAD, recent study conducted among the students of the University of Sarajevo on recreational use of illicit drugs found that recreational drug use is present, but not to a large extent. Drug of choice was cannabis, solely or in combination with alcohol, while heavier drugs were used extremely rarely (Deljkić, Datzler & Matković, 2015). Most recently, within the framework of the ISRD study in Bosnia and Herzegovina, it was found that drug related delinquency is increasing. Whereas in 2005, a total of 0,4% of 7<sup>th</sup> and 8<sup>th</sup> grade in primary schools in Bosnia and Herzegovina have been reporting involvement in drug dealine, in 2015 this number went up to 0,9% (Maljević, 2020).

According to the EMCDDA (2015) there are no marked differences in the lifetime prevalence of drug use among students' population between the Western Balkan countries (Albania, BiH, North Macedonia, Kosovo, Montenegro and Serbia) in 2011, with all estimates hovering between 4% and 8%, approximately 2.5 times lower than the estimated European average. As elsewhere in Europe and globally, cannabis is the primary drug of use, with between 2% (Kosovo) and 8% (Federation of BiH) reporting lifetime use which is considerably lower than the 17% European average (EMCDDA, 2015). While synthetic drugs continue to be the most dynamic drug in the EU market (EUROPOL, 2017), its consumption in BiH is slowly growing (such as amphetamine-type stimulants, UN, 2015), partly due to the fact that these are often used as a currency in drug smuggling (Council of the EU, 2016; Council of Ministers of BiH, 2016). Production of drugs in the country is mostly limited to herbal cannabis cultivation with increasing indoor cultivation of genetically modified potent strains of the cannabis plant (Council of the EU, 2016; EMCDDA, 2011; UN, 2015).

Persons involved in the narcotics trade are collaborating across ethnic lines within BiH as well as across international borders with other nationalities (Council of the EU, 2016), particularly

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<sup>7</sup> To date, no national general population surveys on drug use among 15- to 64-year-olds in BiH have been conducted (EMCDDA, 2018).



with criminal groups operating in the countries of former Yugoslavia<sup>8</sup> (EMCDDA, 2014; Ministry of Security of BiH, 2017). As Koturović & Knepper (2014) argued, an important role in the establishment of strong organized crime groups in the region played the contextual environment in former Yugoslavian states including the ongoing conflicts, embargo and associated state-led criminal activities. In line with the technological progress, the criminal groups from BiH communicate via modern and sophisticated equipment and communication means, but they also frequently use social networks<sup>9</sup> making them difficult to detect (Council of Ministers of BiH, 2016; Ministry of Security of BiH, 2017). Some rough estimates indicate that organized criminal groups involved in drug trafficking in BiH have up to twelve members with different tasks based on their needs, while permanent groups have approximately three to five members (Centre for Security Studies, 2014). During the period 2013–2015, 13 criminal groups dealing with unauthorized import and distribution of narcotic drugs were identified, and seven organized criminal groups were processed before the judicial authorities in BiH (Council of Ministers of BiH, 2016). United States Department of State (2019) stressed that criminal organizations from BiH often operate outside of the Balkans, though leaders of these organizations reside within the country. That is one of the reasons why the law enforcement and security institutions remain limited, and require further enhancements to effectively deter trafficking through the country (United States Department of State, 2019).

#### **4. OVERVIEW OF THE RELEVANT LEGAL FRAMEWORK AROUND ILLICIT PRODUCTION AND TRAFFICKING IN NARCOTIC DRUGS IN BIH**

In accordance with the Dayton Peace Agreement (1995), administratively BiH consists of two entities (Federation of BiH and Republika Srpska), and the Brčko District of BiH. Due to the fact that these political units have a high degree of autonomy there are some important issues related to the harmonization of BiH's legal and institutional frameworks. To perceive an overall picture about drug (trafficking) policy, beside the implication of social, economic and political outcomes of the transition process, it is necessary to review the current legislation for prevention of narcotic drug abuse at all levels of governance in BiH.

BiH set forth provisions concerning illicit production and trafficking in narcotic drugs in its criminal legislation. Pursuant to Article 1, paragraph 33, of the Criminal Code of BiH<sup>10</sup>, narcotic drug involves any medical drug or hazardous substance with addictive and psychotropic characteristics, or any substance that can easily be converted into such substances, if it is subject to control under the international convention ratified by BiH<sup>11</sup>, or any substances declared as narcotic

<sup>8</sup> Except the countries of former Yugoslavia (i.e. Macedonia, Serbia, Montenegro, Croatia and Slovenia), organized crime groups operating in BiH are linked to groups in Turkey, Albania, Hungary, Austria, Italy, Germany, Switzerland, The Netherlands and Scandinavian countries (Council of Ministers of BiH, 2016).

<sup>9</sup> Lavorgna (2016) indicates that Internet phone services, such as Skype, are used to avoid detection through the interception of communications.

<sup>10</sup> Official Gazette of BiH, Nos. 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 and 35/18.

<sup>11</sup> With a notification of succession in 1993, BiH became a member of the UN drug Conventions, and its Protocols: the 1961 Single Convention on Narcotic Drugs as well as the Protocol of 1972 amending it, the 1971 UN Convention on Psychotropic Substances, and the 1988 UN Convention against the Illicit

drug by a competent institution of BiH or of the Entities. The Criminal Code of BiH<sup>12</sup> stipulates the criminalization of certain forms of drug trafficking that have an international character, while the integrity of legal protection from different forms of drug abuse has been ensured through enactment of criminal offences in Criminal Codes of the Entities<sup>13</sup> and the Brčko District of BiH<sup>14</sup> (Ministry of Security of BiH, 2011). It has to be emphasized that Criminal Codes of the Entities have different legal qualifications and therefore criminal sanctions for each drug related crime (i.e. Unauthorized Production and Sale of Narcotic Drugs and Possessing and Enabling Enjoyment of Narcotic Drugs). In addition, the unauthorized possession of narcotic drugs in Federation of BiH is prescribed as a criminal offence, unlike in Republika Srpska and Brčko District of BiH where it is defined as a misdemeanour. Furthermore, the Criminal Codes do not contain some specific provisions which would allow courts to assess the offender's drug addiction as only a mitigating or aggravating circumstance, nor provide different penalties depending on whether the offender is a drug addict or not. Deljkić (2015) is stated that there is no difference in the law between small and big drug dealers. The only provisions which refer to the 'type' of dealer are between those, who are involved in organizing a network of dealers or becoming a member of such a network, or using a child or a minor for the commission of the criminal offence, and those who are not. According to the Mini-Dublin Group assessment of needs for BiH (Council of the EU, 2016), harmonization of the criminal codes between entity and state level as well as the adoption of the new Law on the Prevention and Suppression of Drug Abuse are urgent steps for further improving and strengthening of the fight against drug related crimes in BiH.

In accordance with international standards on narcotic drugs control, the very first *lex specialis* to come into force in BiH was the Law on the Prevention and Suppression of Drug Abuse in BiH<sup>15</sup>. This Law serves as the foundation of all laws and regulations on drugs in Entities and Brčko District of BiH on issues of growing plants, manufacturing, possession and trafficking of drugs, other substances used for making drugs, precursors, and the cultivation of plants used

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Traffic in Narcotic Drugs and Psychotropic Substances. In 2002, BiH ratified the UN Convention against Transnational Organized Crime and its supplementing protocols against migrant smuggling, trafficking in persons, and trafficking in illicit firearms as well as the UN Convention against Corruption in 2006. The European Convention on the Suppression of Terrorism ratified in 2004 following the Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds of Crime in 2008.

<sup>12</sup> Article 195 (Illicit Trafficking in Narcotic Drugs).

<sup>13</sup> Article 238 (Unauthorized Production and Sale of Narcotic Drugs) and Article 239 (Possessing and Enabling Enjoyment of Narcotic Drugs) of the Criminal Code of the Federation of BiH, Official Gazette of Federation of Bosnia and Herzegovina Nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 and 75/17; Article 207 (Unauthorized Production and Sale of Narcotic Drugs) and Article 208 (Enabling Another to Use Narcotic Drugs) of the Criminal Code of the Republika Srpska, Official Gazette of Republika Srpska, Nos. 64/17 and 104/18.

<sup>14</sup> Article 232 (Unauthorized Production and Sale of Narcotic Drugs) and Article 233 (Enabling Enjoyment of Narcotic Drugs) of the Criminal Code of Brčko District of BiH, Official Gazette of Brčko District of Bosnia and Herzegovina, Nos. 10/03, 45/04, 06/05, 21/10, 9/13, 52/11, 33/13, 47/14, 26/16, 13/17 and 50/18.

<sup>15</sup> Official Gazette of BiH, No. 08/06.

for drug manufacturing (Deljić, 2015). The Law's adoption in 2006 has significantly improved the coordination of drug-related law enforcement and demand-reduction measures in BiH (Ministry of Security of BiH, 2011).

In accordance with the Law provisions, as well as EU antidrug policies<sup>16</sup> the National Strategy on Supervision of Narcotic Drugs, Prevention and Suppression of the Abuse of Narcotic Drugs for the period 2009–2013<sup>17</sup>, and the following Action Plan for Combating Drug Abuse in BiH (2009–2013)<sup>18</sup> were adopted. Its main goal was to make a systematic effort to engage all stakeholders in tackling drug abuse in BiH. In accordance with the provisions of the National Action Plan 2009–2013, Entity governments and the Brčko District government of BiH were obligated to adopt their action plans.<sup>19</sup> In January 2018 a National Strategy on Supervision over Narcotic Drugs, Prevention and Suppression of the Abuse of Narcotic Drugs for the period 2018–2023 was adopted by Council of Ministers of BiH and endorsed by the Parliament. However, there is no corresponding action plan to make the strategy fully operational (European Commission, 2019). On the other hand, Republika Srpska National Assembly adopted a 2016–2021 Strategy for Supervision and Suppression of Narcotic Drugs in July of 2016, with an action plan in place.

Furthermore, the Council of Ministers of BiH in 2007 established the Commission for the Suppression of Abuse of Narcotic Drugs as the main inter-ministerial coordination body in the field of narcotic drugs. The Department for the Suppression of Abuse of Narcotic Drugs of the Ministry of Security of BiH is in charge of the policy on drugs and cooperation between various authorities and is entrusted with the overall coordinating role in the country (European Commission, 2019). The Commission for the Destruction of Confiscated Narcotic Drugs reappointed in December of 2016 has started functioning<sup>20</sup>, while the safe storage of seized drugs remains an issue (European Commission, 2018). On the other hand, BiH does not have a National Drugs Observatory and a National Early Warning System on psychoactive substances (European Commission, 2019).

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<sup>16</sup> In the European Partnership for BiH, EU Integration Strategy of BiH as well as in the Roadmap Towards a Visa Free Regime with BiH, among others, the fight against narcotic drugs was identified as a priority for BiH, including the adoption and implementation of relevant drug related policies in line with EU standards, with special emphasis on national law, strategy and action plan for supervision and suppression of narcotic drugs.

<sup>17</sup> Official Gazette of BiH, No. 31/09.

<sup>18</sup> Official Gazette of BiH, No. 08/10.

<sup>19</sup> The National Assembly of the Federation of BiH adopted Action Plan for Combating Drug Abuse for the period 2012–2013. The National Assembly of the Republika Srpska adopted Strategy for Supervision and Suppression of Narcotic Drugs in Republika Srpska for the period 2008–2012 and following Action Plan (2010–2012).

<sup>20</sup> The first organized destruction of confiscated narcotic drugs in BiH was in 2012. The decision on destruction of narcotic drugs was issued by the Commission for the Destruction of Confiscated Narcotic Drugs with the Ministry of Security based on the Rulebook on Storage and Destruction of Seized Narcotics, Psychotropic Substances, Plants Used for Producing Narcotics and Precursors (Official Gazette of BiH, No. 28/12), and the Order by the Court of BiH. In the period 2012-2019 destruction of seized narcotic drugs was organized four times (European Commission, 2019).

## 5. CRIMINAL JUSTICE SYSTEM'S RESPONSE TO DRUG TRAFFICKING IN BIH

### 5.1. Reported and adjudicated persons for drug trafficking at the entity level (2011–2016)

Statistical data on the number of persons prosecuted and adjudicated by the prosecutors' offices and courts in the Federation of BiH and the Republika Srpska in the period 2011–2016 are provided by the statistical offices of the respective entities. These figures do not include data on drug trafficking dealt with by the Prosecutor's office of BiH and the Court of BiH (see 5.2. below).

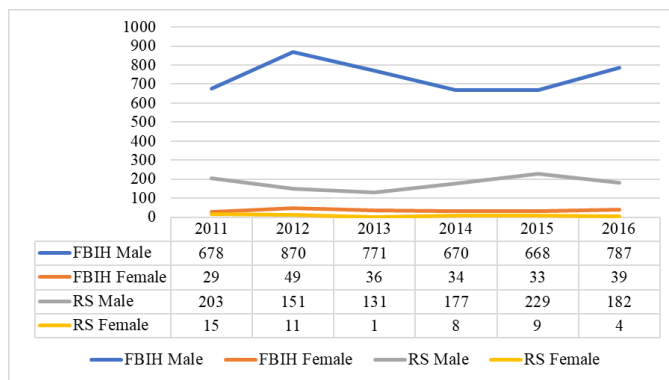


Figure 1. Total number of persons reported for drugs related crime - by gender

Looking at the data on reported perpetrators, drug related crime at the entity level, like other crimes in BiH, is predominantly a man's business. Overall, women do not represent more than 5% of all reported perpetrators of drug related crime. Also (Figure 2), it is clear that drug related crime prosecuted by the entity institutions is mostly committed by citizens of BiH.

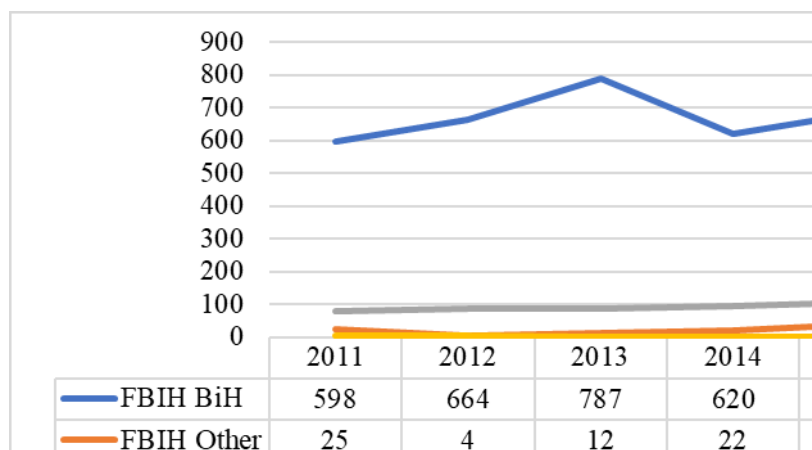


Figure 2. Adjudicated persons for drugs related crime - by citizenship

## 5.2. Drug related crime prosecuted and adjudicated by the state level institutions (2007–2017)

Contrary to the cases at the entity level, drug and organized related crime prosecuted and adjudicated at the state level<sup>21</sup>, with the exception of gender of the perpetrator (5,2% female), resembles quite different characteristics. First of all, based on the verdicts where it was possible to identify the citizenship of the perpetrator, 85% are the citizens of BiH. This means that 15% of the perpetrators were citizens of the neighbouring countries (Croatia – 4,3%, Serbia – 6,4%, other – 4,3%). On average, they are 34,9 years old (the youngest being 21, the oldest 54). Very few of them (4.5%) have university degree. They are mostly (60,4%) married and have kids (half of them have at least one kid). Unemployment rate amongst prosecuted organized criminals is 59,3%. Total of 41,5% of them have already been convicted (recidivists) for other offences.

Table 1. *Citizenship*

Citizenship	Frequency	%	Valid %	Cumulative %
BiH	40	69.0	85.1	85.1
Croatia	2	3.4	4.3	89.4
Serbia	3	5.2	6.4	95.7
Other	2	3.4	4.3	100.0
Total	47	81.0	100.0	98.0
Missing data	11	19.0		
TOTAL	58	100.0		

Although almost all cases were not identified at the border crossing, and as such do not indicate a cross-border operation per se, the fact that nationals of other countries are involved suggests that drug related crime in BiH is a criminal activity with cross-border elements.

Table 2. *Route*

Route	Frequency	%	Valid %	Cumulative %
Transit	25	43.1	43.9	43.9
Destination BiH	23	39.7	40.4	84.2
BiH starting point	9	15.5	15.8	100.0
Total	57	98.3	100.0	
Missing data	1	1.7		
TOTAL	58	100.0		

<sup>21</sup> Analysis performed on all online available verdicts issued by the Court of BiH, the Section II for Organized Crime, Economic Crime and Corruption, that are published on the Court's website. Verdicts against total of 58 persons were analysed for drug related crime.

A confirmation for such statement is to be found in the fact that in somewhat more than 4 out of 10 cases, BiH was in fact a transit country. At the same time, in 4 out of 10 cases drugs were intended for the market in the country, and only 15,8% of cases indicate that the drugs were actually originating from BiH and were destined for markets in other countries. Looking into the modus operandi, it was found that, with the exception of the ICT (64,9%), these criminals rarely resort to violence (1,8%), bribes (5,6%), experts (12,3%) or upper-world ties (1,8%).

Table 3. *Structure*

Structure	Frequency	%	Valid %	Cumulative %
Hierarchy	4	6.9	7.0	7.0
Cells	6	10.3	10.5	17.5
Network	39	67.2	68.4	86
Unknown	8	13.8	14.0	100.0
Total	57	98.3	100.0	
Missing data	1	1.7		
TOTAL	58	100.0		

The analysis is showing that 7 out of 10 persons prosecuted and adjudicated for drug related crime have committed crimes in a group setting resembling characteristics of a network. In a very small portion of cases, persons have committed offences within the framework of a hierarchical group.

In terms of size, a bit more than one third (35,1%) of prosecuted and adjudicated persons belong to small groups (3 members), almost 60% belong to medium size groups (4-10 members) and only 5,3% belong to bigger groups (11 members or more).

## 6. DISCUSSION

It is a common place to observe that the globalization of drug-related crime and its multidimensional forms create security risks that require adequate response by the relevant authorities. In tackling these issues BiH is actively cooperating with other countries and institutions on several levels. Nevertheless, BiH is struggling with the implementation of its legal and institutional framework for countering drug related crime. According to Deljić (2015), one of the main reasons for this situation seems to be the political will, followed further by the fact that policy implementation has been significantly shaped by domestic institutional delays and by the diverging political interests within the two Entities. If lack of political will is combined with the decentralization of the police and judiciary it is not surprising that controlling illicit drug-related activities remains challenging.

From a legislative point of view, adoption of the new national law against narcotic drugs, as well as following strategic documents is urgently needed, while criminal codes provisions need to be continually harmonized. Furthermore, this will require law enforcement and security

sectors to enhance human and technical capabilities, including the strengthening of inter-institutional and interagency cooperation in joint investigations, better data exchange and information system efficiency in addressing emerging challenges.

Analysis of verdicts, as it was shown above, has revealed some very interesting findings when it comes to both the persons involved in drug-related offences and the criminal activities themselves. Firstly, thinking about drug dealers, one usually get a very particular imagery in one's head. One thinks of dangerous guys, ready to use violence, completely detached from society, usually repeated offenders. However, the data from the verdicts suggests that drug dealers in Bosnia and Herzegovina are more or less normal guys. They are not young, but they are not old. With an average age of about 35 years, they are entering the peak of their productivity. Their basic characteristic is that they have a very low level of education. At the same time, more often than not they are married, meaning they have families. Whereas it does not come as a surprise that they are usually unemployed, it is somewhat surprising that rather small portion of them is recidivists. In the 80-ties, recidivism rate for drug offenders in the US was 49% (Bureau of Justice Statistics, 1992). More recently (Langan/Levin, 2002), recidivism rates for drug related offences in the US goes as high as 68% within 3 years after the first conviction. Such low recidivism rate in Bosnia and Herzegovina can be explained in two different ways. Either the criminal justice system is not capturing persons who are more frequently engaged in criminal activities. Alternatively, the criminal justice system is dealing with first time offenders most of the time, and it is expected that these, mostly first time offenders, will be arrested, prosecuted and convicted in the near future again.

Based on the United Nations World Drug Report (UNODC, 2020) illicit drug trade is widely known and accepted as a global criminal phenomenon. Globalisation is seen in the connection of criminals across the globe, caused by the fact that certain types of drugs can be better produced in one part of the world, yet the demand for illicit use of those drugs is larger in some other part of the world. As the result, drugs are being moved around, crossing borders, forcing criminals to cooperate. The numbers in Bosnia and Herzegovina are suggesting that the illicit trade in drugs is a cross-border activity indeed. The analysis has shown that in almost all cases, the drugs were either only transiting through the country or were destined for use in Bosnia and Herzegovina. In small portion of cases, BiH seems to be a starting point for illicit drug trade. However, as very little is known about production of drugs in BiH, it is more plausible to assume that the cases where BiH was found to be a starting point for drugs destined for other, mostly Western European countries' markets, actually represent the cases where BiH is a transit country, yet it was not discovered where the drugs came from in the first place.

Furthermore, it is commonly assumed that criminals involved in drug related crime often use force, bribery, information-communication technologies [ICT], experts, and ties with the upper-world in order to be able to operate on a daily basis, either to shield their practices or to be more efficient in how they run their business. These assumptions have been explored and the data extracted from the verdicts seems to paint a different picture. Namely, with the exception of extensive use of ICT (mostly cell phones), drug criminals in BiH do not use violence. Even more interesting, they are rarely involved in bribing of officials, or links with the representatives of the so-called "upper-world". Only occasionally do they use experts (predominantly lawyers and financial experts).

The fact that most of the criminal collectives engaged in drug trafficking in BiH are resembling the structure of a network, does not come as a surprise. It is a general trend (UNODC, 2002), that criminal organisations are refraining from rigid, hierarchical structures governed by strict rules and division of roles of their members. Nowadays, these organisations are actually represented by a small number of closely connected individuals, who cooperate with other groups or individuals on a project-to-project basis. Very rarely, one finds a large group, bringing together more than 10 persons. The situation, when it comes to the size of the criminal organisations, is similar in BiH.

## 7. CONCLUSION

Based on the discussion of the collected and analysed data, it seems that more questions can be posed, than answers provided. Nevertheless, looking into the data obtained from statistical offices and verdicts, several conclusions can be made:

*Firstly*, percentage of foreigners at entity level of prosecution does not go over 5%. At the same time, this percentage adds up to about 15% at the national level of prosecution. This finding is somewhat in contradiction with the usual assumption that drug related crime is a typical cross-border activity which involves persons of different citizenships cooperating in trafficking drugs. Alternatively, it can be assumed that cases prosecuted at the entity level represent the low level cases, where retailers, street level dealers are being caught.

*Secondly*, it does not come as a surprise that drug related crime is usually committed by men. What does surprise is that when basic socio-demographic characteristics of these men are analysed, these men are actually average citizens (unemployed, uneducated, married, with kids). Potentially, such men are tempted to make living, therefore resorting to lucrative criminal activities, such as drug related crime. However, it is just as plausible that the criminal justice system is not capturing the width of perpetrators, yet only managing to detect, prosecute and adjudicate low level criminals.

*Thirdly*, it seems that BiH is predominantly a transit or a destination for illicit drugs. This is fully understandable, considering the fact that illicit production of drugs requires resources and abilities that are probably not available to local criminals.

*Fourthly*, when drugs are being trafficked, it is usually done by groups that resemble characteristics of loosely organized criminal networks. Very rarely hierarchical structures are being found. Such organisations enables criminal organisations to be more efficient, and better protected.

*Fifthly*, in terms of their *modus operandi*, it seems that with the exception of the use of ICT devices (most often cell phones), drug criminals in BiH rarely resort to violence, bribery or use of experts' services. This seems to suggest that either drug related criminals operate completely differently to what is usually assumed, or that the criminal justice system is not managing to detect, prosecute and adjudicate cases that would be in line with what is usually assumed.

In the end, it must be concluded that either drug related crime in BiH is different than elsewhere in the world, or that prosecutors do not explore drug related crime cases to the extent that would be expected. However, it must be noted here that the research undertaken here



is not without limitations. It is based on the official statistics and the analysis of the verdicts available to the researchers. Maybe the results would be somewhat or even significantly more different had the data collection been extended so as to include larger number of verdicts. Furthermore, it is very possible that a series of interviews with specialised criminal justice officials (investigators and prosecutors in particular) would shed some light on these findings and provide grounds for more solid conclusions. Therefore, it is hoped that this research will serve as a stimulus for some further research projects and publications, where this topic would be further discussed and elaborated.

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# Criminal Justice Issues

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