



# Criminal Justice

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# *Criminal Justice Issues* *Journal for Criminalistics, Criminology and Security Studies*

*Reasons for starting Journal are scientific, educational and social. Scientific necessities and publication justifiability of this Journal are in function of presentation of scientific accomplishments in the field of criminalistics, criminology and security studies and other disciplines that interact with these fields. The educational function of the Journal is even of greater importance from the perspective of permanent monitoring and adoption of new insights from the field of criminalistics, criminology and security studies. Social justification for the starting of the Journal is time imperative since its structure is unique in Bosnia and Herzegovina. Society must be successfully organized and opposed to rapidly growing and increasingly complex antisocial deviant and criminal occurrences. Journal objectives are the presentation of scientific and professional thought (excerpt from the Conception of the Journal of Criminal Justice Issues)*

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***Criminal Justice***

***Issues***





## **EDITORIAL**

Dear reader,

It is a great pleasure to present you the English edition of the Criminal Justice Issues for 2020. In this edition, we are introducing five interesting papers that discuss relevant and current topics from different scientific fields. Therefore, I hope you will enjoy reading these carefully selected papers.

The first is the original scientific paper titled *Deterrence through criminal confiscation? Some exploratory findings from Federation of Bosnia and Herzegovina* which addresses the deterrent effect of criminal confiscation by examining prerequisites for deterrence using aggregate data from the Federation of Bosnia and Herzegovina. The next is the original scientific paper titled *Gender effects regarding eyewitness identification performance* which examines the possible existence of gender-related effects on eyewitness identification performance in the rarely studied culture of Bosnia and Herzegovina. The other three papers are review papers, the first of which is titled *Drones as a permanent and present danger*. This paper presents significant security and operational information on drone attacks from cases detected in various surroundings. The second review paper is titled *Security aspects of cultivating the dominance of politics over education in Bosnia and Herzegovina (1945.-2019.)* which discusses the consequences of politics' domination over education upon current relations between citizens in the post-war era and unveils the impacts of this situation on national security. The last but not the least, is paper titled *Understanding the migrant crisis in Bosnia and Herzegovina* which refers to capacities of political and security system in conditions of the migrant crisis in Bosnia and Herzegovina and indicates key risk factors arising from this crisis.

Finally, I would like to express thankfulness to all the members of the Editorial board and peer-reviewers. Their efforts and suggestions have significantly contributed to the quality of this edition.

***Editor in Chief***  
***Irma Deljkić, PhD***



<b>DETERRENCE THROUGH CRIMINAL CONFISCATION? SOME EXPLORATORY FINDINGS FROM FEDERATION OF BOSNIA AND HERZEGOVINA</b> <i>DARKO DATZER</i> <i>ELDAN MUJANOVIĆ</i>	1
<b>GENDER EFFECTS REGARDING EYEWITNESS IDENTIFICATION PERFORMANCE</b> <i>ADNAN FAZLIĆ</i> <i>IRMA DELJKIĆ</i> <i>RAY BULL</i>	31
<b>DRONES AS A PERMANENT AND PRESENT DANGER</b> <i>ZVONIMIR IVANOVIĆ</i> <i>VALENTINA BAIĆ</i>	43
<b>SECURITY ASPECTS OF FOSTERING THE DOMINANCE OF POLITICS OVER EDUCATION IN BOSNIA AND HERZEGOVINA</b> <i>NERMA HALILOVIĆ-KIBRIĆ</i>	57
<b>UNDERSTANDING THE MIGRANT CRISIS IN BOSNIA AND HERZEGOVINA</b> <i>KENAN HODŽIĆ</i>	77
<b>GUIDELINES FOR AUTHORS</b>	99





## **DETERRENCE THROUGH CRIMINAL CONFISCATION? SOME EXPLORATORY FINDINGS FROM FEDERATION OF BOSNIA AND HERZEGOVINA**

**Original scientific paper**

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**Darko DATZER**  
**Eldan MUJANOVIĆ**

### **Abstract**

**Reason(s) for writing and research problem(s):** Large bulk of crime has pecuniary motives. From the criminal justice perspective, logical consequence would be to remove the profit out of crime, which would make crime pointless and reduce or remove the motivation of would-be wrongdoers to commit crime. Prior empirical research, especially in Bosnia and Herzegovina, did not sufficiently address deterrence through criminal confiscation.

**Aims of the paper (scientific and/or social):** This paper has sought to explore deterrent effect of criminal confiscation by examining prerequisites for deterrence using aggregate data from Federation of Bosnia and Herzegovina.

**Methodology/Design:** The study is exploratory and aims to provide not a definitive, thorough and comprehensive picture of confiscation landscape in Federation of Bosnia and Herzegovina, but to sketch an overall state of affairs. Data from 284 final court rulings were obtained covering years 2003-2016.

**Research/paper limitations:** Since the clear data on number of judicial cases containing confiscation order is largely unknown, the study relies completely on one source of data and is uncertain on representativeness. Furthermore, aggregate level of data in studying deterrence properties (certainty, severity and celerity) are often contested and abundant with missing values, which was indeed the case with this study.

**Results/Findings:** Findings suggest that confiscation amounts in Federation of Bosnia and Herzegovina are rather low, do not remotely match the values actually gained through crime and are far below European average for confiscation cases. It is also found that confiscation is rarely used relative to total number of typical acquisitive crimes reported each year and when used, it is in lengthy procedures for predominantly low value cases for high volume crimes such as theft, robbery and drug offences.

**General conclusion:** With non-existent prerequisites for effective deterrence, confiscation cannot reasonably be expected to have significant impact on general levels of offending.

**Research/paper validity:** Measures of certainty, severity and celerity were developed for this study. Similar research methods and measures were utilized in previous research on deterrence. Utilized methods and measures seem reasonable to examine concepts above, ensuring appropriate level of face validity.

### Keywords

illegal gain, criminal confiscation, deterrence

## 1. INTRODUCTION

It comes as no surprise that large portion of crime is motivated by economic benefit. Data from European Sourcebook of Crime and Criminal Justice Statistics (Aebi, i dr., 2014) suggest that annual crime rate per European country is in average over four thousand crimes, of which two thirds are property and drug related crimes. Property crime usually includes (legally defined) intention to directly or indirectly obtain economic advantage from the wrongdoing. In the field of drug related crimes, the bulk of committed crimes refer to illicit production and distribution of narcotic drugs and psychotropic substances, whose legal definition usually does not include an intention to obtain economic advantage, nevertheless are in practice overwhelmingly motivated by it (Reuter, 2014; Schneider, 2013). Additionally, other crime types, such as organized, economic, and corruption, although not as frequent as aforementioned types, are motivated by illegal gain and undoubtedly lead to the conclusion that vast majority of crime is indeed financially driven. United Nations Office on Drugs and Crime (UNODC, 2011) argues the value of illegally obtained proceeds to be vast. Depending on methodology, estimates suggest it ranges from between 2,0 % and 6,4 % of world's GDP -using the estimates from previous studies UNODC refers to, to 2,3 % to 5,5 % of world's GDP -using the UNODC's own estimates. It amounts in average to 3,6 % of world's GDP, or little below two trillion euro.<sup>1</sup> Two fifths of this amount refer to proceeds obtained by transnational organized crime, usually laundered and used in future criminal activities. Europol (2016) reports that portion as small as two percent

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<sup>1</sup> Estimates are from year 2009. For comparison reasons, one should take notice that such amounts of economic value equal to GDPs of some of the most developed economies, such as Italy or United Kingdom (IMF, 2019). Only a handful of world's economies are bigger than two trillion euro.

of the criminally generated sums were provisionally seized or frozen, which, unfortunately, is not the whole story: only about half of that is ultimately confiscated.

Albeit imperfect,<sup>2</sup> these estimates can serve as reasonable approximation of criminally generated profit. It is clear that potential economic benefit attracts offenders and that from criminal policy point of view everything needs to be done to deprive them from that benefit. The urge to confiscate criminal benefits Bačić (1998) summarizes by stating that it is legally inadmissible, immoral and not in the spirit of justice for offender to keep the benefit obtained through crime, including the property obtained as a reward for crime. This ideological standpoint may be characterized as **restitutive**, meaning criminal law and state endorsed activities aim at restoring the *status quo ante*. This standpoint advocates deprivation of benefits from the offender in form or value he has gained them. It further implies that only net benefit, with offender's expenses deducted, can be confiscated. There are, however, some proponents of restitutive justification of criminal confiscation that find gross approach to identification and quantification of illegal gain more appropriate, otherwise the risk to legitimize crime (it could be seen as a business activity, with the possibility to confiscate economic benefit obtained through unlawful conduct as a risk, no different than any other business risk) and to linger evidentiary procedures (offender could effectively prove the costs incurred during the commission of the crime only if he admits the crime, nevertheless leaving unspecified which exactly the costs could be deducted) would be immense (Boucht, 2017; Bowles, Faure, & Garoupa, 2005).<sup>3</sup> Deprivation of economic benefit obtained illegally serves another purpose: reducing or removing the potential to use those benefits in future crimes. For instance, United Nations Office on Drugs and Crime (UNODC, 2011) estimates that about 70% of the illegally obtained benefits may eventually have been laundered. Another study (Savona & Riccardi, 2015) estimates that, looking at the revenues from heroin illegal market, between 25% and

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<sup>2</sup> Calderoni (2014) is of opinion that criminal proceeds estimates abound with exaggerations, and labels them as „mythical numbers“. Taking Italy as an example, author argues that typical figures related to mafia proceeds are overblown and that real figures- ranging from eight to thirteen billion euro- are well below the mythical numbers of 150 billion. However, Calderoni's research proposes an estimation generated by nine criminal activities (sexual exploitation of women, illicit firearms trafficking, drug trafficking, counterfeiting, the illicit cigarette trade, illicit gambling, illicit waste disposal, loan sharking, and extortion racketeering) committed by mafia type organizations. It cannot be seen as an ultimate estimate of all crime generated profit in Italy, so the author himself labels his research as exploratory attempt and calls for caution in interpretations.

<sup>3</sup> On net and gross approach in determining the value of benefit obtained through crime, see Ivičević Karas (2010).

42% of the revenues in seven European countries may be available for money laundering. It could therefore be argued that criminal confiscation has also a **neutralizing objective** in the sense that it could deprive criminals of the assets needed to continue to be (criminally) active. Those assets can be used in different ways. One is operational costs, such as the purchase of wholesale drugs and transportation costs; another is bribe of public officials in order to facilitate future offenses; additional is investment in licit activities (purchase of various property, securities, etc.).<sup>4</sup> Finally, victims can be **compensated** for the harm done by criminal offenses, usually through special funds to resource the means for victim reimbursement. Costs of law enforcement and criminal justice agencies are in some countries (such as England and Wales) also compensated through confiscated means. In other, costs of tackling social problems (crime, prostitution, drug addiction), as well as crime prevention programmes and similar projects are directly or indirectly supported via assets confiscated in criminal proceedings (Boucht, 2017; Ligeti & Simonato, 2017; Lusty, 2002; Ryder, 2013; Smellie, 2004 ).

Beside restitution, neutralization and compensation, a straightforward reasoning on criminal confiscation suggest **deterrent (preventive)** effect on actual and potential offenders. Through deprivation of illegally obtained benefits, offenders should be persuaded crime doesn't pay, which should serve the wider purpose of disincentivising the commission of crimes making them pointless: in effective criminal justice system, criminal benefits are to be confiscated and the motivation to commit the crime would be removed (Thornton, 1990). If offenders behave rationally by weighing the potential benefits of the crime against punishment and the prospect of being deprived of any (with no deductions whatsoever) gain obtained through unlawful conduct, the decision to engage in criminal behaviour will depend on the effectiveness of the state to detect the crimes and identify offenders, swiftly proceed them and to properly punish them/discharge them of any gains. Any financial benefits the offenders might gain through crime are in this perspective annulled, which should hurt criminals the most and deter them from future crimes (Fried, 1988; Nelen, 2004). Such deterrent effect of criminal confiscation is aimed at both actual offenders (special prevention) and potential offenders (general prevention). Given that effective criminal confiscation serves the thesis that crime doesn't pay, both negative (discourage future crimes

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<sup>4</sup> Neutralizing effect of asset confiscation is argued in case *Raimondo v Italy* (App no 12954/87) before European Court of Human Rights. The Court is of opinion that the aim of confiscation is to block movements of suspect capital (para. 30). In *Phillips v. The United Kingdom* (App no 41087/98) Court justifies the need to confiscate assets in order to deprive offenders of profits and to remove the value of the proceeds from possible future use (para. 52).

through criminal law mechanisms) and positive (impact on moral sense and self-discipline of population, and strengthening its trust in legal order) general prevention aims are endorsed (Fazekas & Nanopoulos, 2016; Mrčela, 1999; Perron, 1993; Schmidt, 2019).<sup>5</sup>

Preventive (deterrent) effect of criminal sanctions and measures have long been studied. Beccaria ([1764]1995) wrote 250 years ago that sanctions need to be prompt, certain and proportionate to crimes committed. Beccaria brilliantly observed that “promptness of punishment is more useful [than severity] because the smaller the lapse of time between the misdeed and the punishment, the stronger and more lasting the association in the human mind between the two ideas *crime* and *punishment*” (p. 49), and “one of the most effective brakes on crime is not the harshness of its punishment, but the unerringness of punishment” (p. 63). Similar thoughts can be found in work of Bentham ([1781]2000), who wrote that intensity and duration (magnitude), certainty and proximity of punishment “must not less in any case than what is sufficient to outweigh that of the profit of the offense” (p. 141). In second half of twentieth century deterrence doctrine saw a revival foremost in the seminal work of Becker (1968). Becker took an economic approach to deterrence and argued that decision to offend is based on the costs and benefits of both crime and non-crime.<sup>6</sup> Deterrent line of reasoning is somewhat empirically verified by a study from Levi and Osofsky (1995). They found that some of the offenders, which was established through interviews with offenders themselves, „view the proceeds of crime as their ‘entitlement’, and removing this presumed entitlement would naturally cause resentment“ (p. 12). The study does not, however, suggest that confiscation is a panacea for fighting acquisitive crime, especially having in mind that many of habitual offenders spend their gains before arrest, leaving nothing to be confiscated, or that successful confiscation can indeed motivate them to continue with crime because that

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<sup>5</sup> Deterrent justification of criminal confiscation is explicitly stated in famous judgment from European Court of Human Rights in case *Phillips v. The United Kingdom* (see prev. footnote). The judgment reads that confiscation operates „as a weapon in the fight against the scourge of drug trafficking... in the way of a deterrent to those considering engaging in drug trafficking“ (para 52).

<sup>6</sup> Becker famously wrote that „the approach taken here follows the economists' usual analysis of choice and assumes that a person commits an offense if the expected utility to him exceeds the utility he could get by using his time and other resources at other activities. Some persons become "criminals," therefore, not because their basic motivation differs from that of other persons, but because their benefits and costs differ“ (1968, p. 178).

is the way they get their entitlement.<sup>7</sup> Pessimism on possible deterrence effect of confiscation share Freiberg and Fox (2000). They found that „the confiscation laws appear to have had a negligible effect upon the amount of serious profitable crime in the community“ (p. 260). Following reasoning of great Enlightenment era writers, modern criminological and criminal policy theory argues that several prerequisites need to be present for state-imposed repression through criminal law to be reasonably deterrent. First refers to the knowledge of potential offenders of legal rules and understanding the law’s implication for them. Second relates to thinking and behavioural pattern of offenders. In order for criminal law to have deterrent effect, offenders need to behave rationally and think about possible consequences of their deeds. Third deals with cost-benefit analysis of potential offenders: what are perceived gains and how do they relate to perceived costs of doing crime? Perceived costs are of especially interesting and complex to study. Usually “the costs” component of cost-benefit analysis is further broken into three aspects, corresponding with properties of sanctioning elaborated in works of Beccaria and Bentham: certainty, severity and celerity (Robinson & Darley, 2004). Certainty refers to chance of being detected and caught; severity to type and amount of punishment imposed; and, celerity refers to swiftness in criminal proceedings. These three dimensions can be differently measured: on individual level or on aggregate level. First usually includes survey methods to question respondents, and the latter official crime statistics (Kleck, Sever, Lee, & Gertz, 2005). While deterrence doctrine assumes perceptual effects which could be affected by a number of factors different from actual levels of punishment,<sup>8</sup> empirical studies of crime very often use aggregate data and are based on official records (Bun et al., 2020). Bowles et al. (2005) argue that properly implemented, criminal confiscation can serve important complementary role to incarceration and fines. If the offender knows *ex ante* that if caught, the benefit will be forfeited, confiscation regime can provide additional and powerful incentive to avoid crime.

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<sup>7</sup> Perron (1993) also doubts direct effects of criminal confiscation on crime reduction. Referring to an older study from the beginning of the nineties, he argues that offenders feel less deterrent by the prospect of deprivation of gains obtained unlawfully than by the prospect of detection and sanctioning through more conventional state-imposed mechanisms and consequences. He is of opinion that effective confiscation works indirectly through consolidation of social values rather than directly on individual criminal behaviour.

<sup>8</sup> There is indeed vast body of work regarding objective and subjective measures of deterrence which contest their linkage (for review, see eg. Nagin, 2013; Paternoster, 2010), but individual level data based largely on self-report are also affected by significant measurement error (Bun, Kelaher, Sarafidis, & Weatherburn, 2020).

Prior studies have sought to examine theoretical aspects of deterrent effect of criminal law and punishment in general (eg. Nagin, 2013; Paternoster, 2010; Robinson & Darley, 2004), perceived and objective levels of deterrence (eg. Bun et al., 2020; Kleck et al., 2005; Kleck & Barnes, 2013), economic, philosophical and other rationale of deterrence through confiscation (eg. Boucht, 2017; Bowles et al., 2005; Thornton, 1990), or to discuss the confiscation process and the amounts confiscated, including attrition (eg. Bullock, Mann, Street, & Coxon, 2009; Freiberg & Fox, 2000; Kilchling, 2002; Kruisbergen, Kleemans, & Kouwenberg, 2016; Levi & Osofsky, 1995; Vettori, 2006). Beside being scarce altogether (Boucht, 2017), prior empirical research, especially in Bosnia and Herzegovina, did not sufficiently address deterrence through criminal confiscation. This paper seeks to explore objective costs of crime and requirements to make offenders refrain from crime. It will do so by examining traditional aspects (certainty, severity and celerity) of specific form of criminal repression- criminal confiscation.

## 2. METHODOLOGY

The study aims to explore aggregate levels of certainty, severity and celerity of criminal confiscation proceedings. Jurisdiction on which the study is focused on is Federation of Bosnia and Herzegovina. Federation of Bosnia and Herzegovina, as an administrative entity within Bosnia and Herzegovina, shares its overall complexities: intricate constitutional, administrative and judicial composition,<sup>9</sup> growth of organised and economic crime and widespread high-level political and commercial linkages between criminals and public officials (UNODC, 2008). Additionally, recent legislative developments to tackle the issue of ill-gotten gains<sup>10</sup> make Federation of Bosnia and Herzegovina an important and interesting case-study material.

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<sup>9</sup> Federation of Bosnia and Herzegovina was established through Washington Agreement, signed in 1994 by Bosnian Government and representatives of Bosnian Croats. Federation is composed of federal units (cantons), which include lower levels of government (towns and municipalities). Municipalities have the right to establish courts, and each canton has court competent to hear appeals from municipal courts, as well as first instance jurisdiction in cases of serious crimes. There is also federal Supreme Court, which has selective appellate jurisdiction from the courts of the cantons. As a result, there are 41 (30 municipal and 10 cantonal courts, and the Supreme Court) courts in Federation of Bosnia and Herzegovina (Law on the Courts in FBiH, Official Gazette of Federation of Bosnia and Herzegovina No. 38/05, 22/06, 63/10, 52/14).

<sup>10</sup> In 2010, extended criminal confiscation was adopted in Penal code (Official Gazette of Federation of Bosnia and Herzegovina No. 42/10) and then in 2014, *lex specialis* Law on

The data for the study originate from newly established Federal agency for the management of seized property. According to the art. 30 of Law on Confiscation of Proceeds of Crime in Federation of Bosnia and Herzegovina, the Agency “conducts analyses in the field of criminal confiscation”, which includes collection of various data from competent authorities. The Agency regularly requests data on confiscation proceedings from all courts in Federation of Bosnia and Herzegovina.<sup>11</sup> This paper utilizes secondary analysis of existing data, that is reanalysis of data compiled for purposes of having an official picture on confiscation proceedings. The data of usual importance for this particular purpose were being collected, such as the date of beginning and the end of the confiscation proceedings, type and value of seized/confiscated assets, what crimes were offenders found guilty of, and offenders’ demographics (age, education, previous criminal records). Besides using as an excellent economizer of researcher time in data gathering (Hagan, 2014), any other data gathering strategy than secondary analysis would be linked with immense difficulties in time, financial resources and readiness of court officials to provide data. The study aims to provide not a definitive, thorough and comprehensive picture of confiscation landscape in Federation of Bosnia and Herzegovina, but to sketch an overall state of affairs. Since the clear data on number of judicial cases containing confiscation order is largely unknown, the study relies completely on one source of data and is uncertain on representativeness, a main feature of exploratory studies (Babbie, 2013).

Since the data originate from all courts in Federation of Bosnia and Herzegovina, the research is based on census of all final court rulings containing confiscation order, as provided by courts. Federal agency for the management of seized property contacted all courts in Federation of Bosnia and Herzegovina and asked them to manually/electronically review all final court rulings ordering confiscation. This proved to be very cumbersome, since the electronic case management system in courts was not fully functional until 2011. Even after, there was no designated module for data entry on confiscation, which was put into function just in January 2020.<sup>12</sup> First the population of cases needed to be established, and then the information for the

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Confiscation of Proceeds of Crime in Federation of Bosnia and Herzegovina (Official Gazette of Federation of Bosnia and Herzegovina No. 71/14).

<sup>11</sup> First wave of data, on which this study relies on, were gathered during 2017. Municipal court in Čitluk officially began with work later in 2017, and municipal court in Srebrenik in January 2019, respectively, so the data from these particular courts could not be requested.

<sup>12</sup> Data on functionality of special electronic module on confiscation available at <https://www.pravosudje.ba/vstv/faces/vijesti.jsp?id=89716>.



individual court on variables briefly described above needed to be compiled. The review period was from 2003 to 2016.<sup>13</sup>

Certainty of criminal confiscation was measured via proportion of cases ordering criminal confiscation in total cases where criminal confiscation could have been expected. The latter will be determined by examining the number of criminal proceedings before the courts in Federation of Bosnia and Herzegovina for the crimes in which confiscation was predominantly ordered. As addressed briefly previously, large number of offenses (eg. theft, robbery) prescribe criminal intent to obtain property or other economic gain unlawfully, so this criminal intent is part of legal definition and needs to be proven in criminal proceedings. Any benefit is liable to mandatory confiscation. Furthermore, benefit could be a powerful motivator outside the formal definition of criminal offense, so it is almost impossible to exclude it as a variable in any wrongdoing. Some crimes nevertheless carry a much larger potential to be motivated by economic gain and can be seen as typical acquisitive crimes. Identification of them through final court rulings where confiscation was imposed serves as a logical pattern to look into the data for the entire population of typical acquisitive crimes. Additional dimension of certainty will address proportion of cases in which criminal confiscation was *enforced* in total number of cases where confiscation was *imposed* by the courts, supplemented by the data on attrition amounts.<sup>14</sup> It cannot be said that criminal confiscation serves deterrent effect if confiscation orders are not implemented. Although it could reasonably be argued that this particular part of certainty aspect could also be seen through the lens of the subsequent “costs” dimension- confiscation amount, it fits more to the discussion on certainty.

Severity was measured by monetary value of assets ordered to be confiscated. Effective confiscation scheme should hit offenders analogous to criminal sanctions: just as harsh sanctions should deter from crime, higher level of confiscation sums should make crime pointless and demonstrate state’s determination to discharge

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<sup>13</sup> The baseline year was chosen because massive criminal law interventions took place in 2003 (Sijerčić-Čolić, 2019), and end year because that was full year before data were requested. In order to observe trends, in social sciences is common to cover longer, multiple-year period (Zelenika, 2000). To process a particular aspect of certainty (number of confiscation proceedings relative to total number of typical acquisitive crimes), period of analysis covered years 2013-2016, largely because of convenience related to large amounts of data.

<sup>14</sup> Attrition is the gap between estimated criminal profits and the actually recovered amount of money (Kruisbergen et al., 2016).

wrongdoers from any illegally obtained benefit. Severity aspect of “costs” calculation is difficult to measure. Criminal confiscation is in Federation of Bosnia and Herzegovina a penal measure, not a sanction, meaning its amount cannot be set by courts discretionary, but is determined by the benefit obtained through commission of a crime. One way to measure severity via this aspect would be to review court rulings and to determine whether net or gross approach was utilized. In Federation of Bosnia and Herzegovina, namely, both could be utilized, contingent on application of either penal code or *lex specialis* Law on Confiscation of Proceeds of Crime in Federation of Bosnia and Herzegovina (see footnote 10). Another would include study of whether extended criminal confiscation was utilized, which rests on a number of propositions vaguely legally defined.<sup>15</sup> Since this is exploratory study relying entirely on data from Federal agency for the management of seized property, which did not address neither of alternatives, the remaining option was to examine plain monetary value of assets ordered to be confiscated, for which the data were existent.

Celerity of confiscation proceedings was measured by: 1) range of years<sup>16</sup> from the offense commission until the beginning of criminal proceedings resulting in criminal confiscation, 2) range in months and years from the beginning of the proceedings until the passing of final court ruling. Since it is validated that the effects of punishment drop off to the great extent as the delay increases between the wrongdoing and the administration of punishment (Robinson & Darley, 2004), the greater the delay between crime commission and proceeding’s start, and consequently proceeding’s end, the lesser the deterrent effect of criminal law repressive measures.

### 3. FINDINGS

Data from 284 final court rulings from 30 courts were obtained. Nine courts reported either no criminal proceedings in which criminal confiscation was ordered or the manual examination of court archives would be too cumbersome. It makes over nine confiscation orders per court, or less than one confiscation case per court annually. Timely distribution of cases containing confiscation order, showed in figure 1, suggests

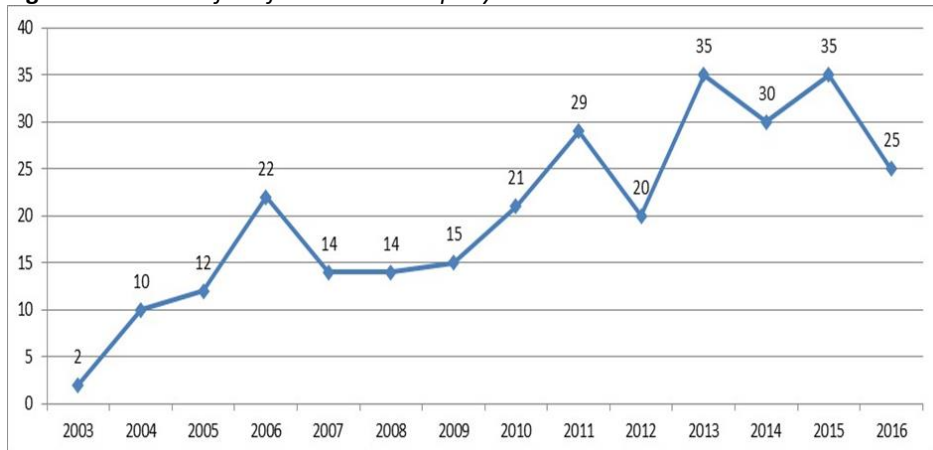
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<sup>15</sup> For criminal law review of extended confiscation regime in Federation of Bosnia and Herzegovina, see eg. Datzer & Mujanović (2020).

<sup>16</sup> Many courts data contained information only on year when crime was committed, not the exact day. Therefore, only years could be calculated.

there was consistent increase of cases containing confiscation orders, with only two years (2012 and 2016) where numbers declined to a higher degree.

**Figure 1.** Number of confiscation orders per year

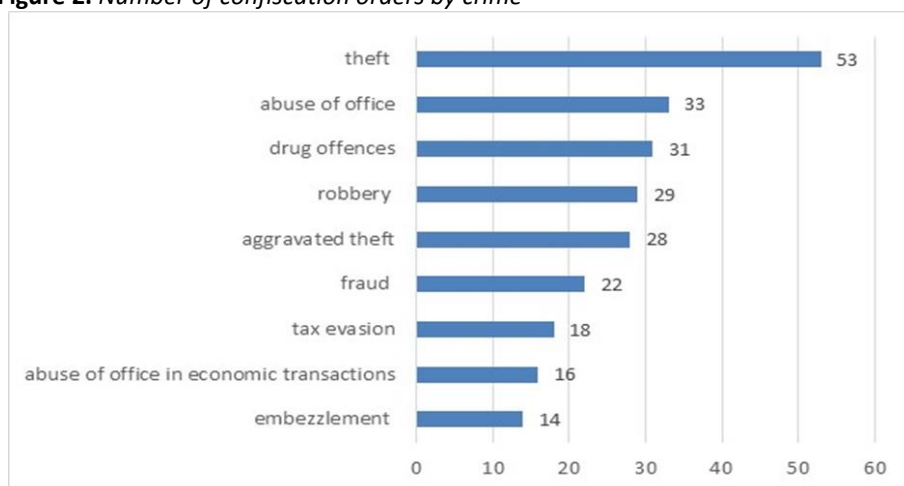


The vast majority of court rulings ordering confiscation dealt with small scope of crimes. These are: drug offences, abuse of functions in economic transactions, tax evasion, theft, aggravated theft, robbery, fraud, abuse of office by a public official and embezzlement, amounting to c. 90 % of all cases. They can be classified into four categories: corruption (abuse of office by a public official, embezzlement), economic crime (abuse of functions in economic transactions, tax evasion), property crime (theft, aggravated theft, robbery, fraud,) and drug offences. Detailed distribution, shown in figure 2, suggests close to half of all cases referring to property crimes. It is somewhat expected, since their legal definition usually contains intention to derive an unlawful benefit. Similar logic is valid for corruption and economic crime. Drug offences, as briefly discussed previously, are not legally defined by an acquisitive intent, nevertheless are frequently motivated by illegal economic gains. It is no surprise that more than one in ten cases in which confiscation was imposed refers to drug offences.

It is uncertain how representative the data are of the whole picture of criminal assets that are identified and ordered to be confiscated. There are lots of missing data across whole dataset, which is not surprising: there is a general paucity of data available on even the most essential aspects of asset confiscation even in the European Union, including total amount of confiscated assets (Fazekas & Nanopoulos, 2016). Missing data are ubiquitous challenge for criminology and criminal justice researchers (Brame, Turner, & Paternoster, 2010) and are of great importance if inferences are to be made,

including identification of relations between variables. This paper, however, relies completely on official judicial data and reflects an effort to census-wise cover data from all courts; there was no intent to examine relationships (at least using statistical tools) between variables. Despite missing data, its exploratory nature and scarcity of data alternatives makes it informative piece of research based on empirical data on a given topic.

**Figure 2.** *Number of confiscation orders by crime*



### **Certainty of criminal confiscation**

As described previously, one way of examining certainty of criminal confiscation would be to calculate the proportion of cases ordering criminal confiscation of total cases where criminal confiscation could have been ordered.<sup>17</sup> Previous finding indicates on handful of criminal offenses for which courts predominantly order confiscation, which are both in theory and in practice typical acquisitive crimes. Some of them are high volume crimes, so it would be of great interest to relate those two (the number of cases for which criminal confiscation could have been ordered and the actual number of confiscation orders) and to study how general criminal law principle prescribing that no one should benefit from his/her wrongdoing has been put into practice.<sup>18</sup> The data

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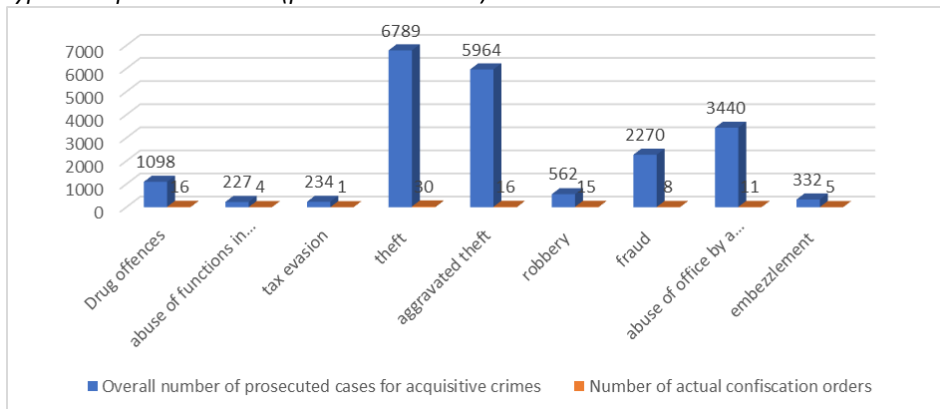
<sup>17</sup> Similar approach took Levi & Osofsky (1995).

<sup>18</sup> Criminal confiscation is in Federation of Bosnia and Herzegovina mandatory. It can be used to compensate victims.

on overall number of cases was drawn from summary report on prosecution offices' flow of cases in Federation of Bosnia and Herzegovina, gathered by Federal prosecution office.<sup>19</sup>

Figure 3 shows that in only a small portion of overall number of individual crimes susceptible by its legal definition or its nature to issuing a confiscation order, was indeed subjected to confiscation. Only 106 of 20.916 of all cases for nine typical acquisitive crimes handled by prosecutors in Federation of Bosnia and Herzegovina (less than one percent) for the period 2013-2016 resulted in ordering confiscation by courts. Put differently, only one in almost 200 crimes liable to be subject of criminal confiscation contained confiscation order. The smallest chance (relative to overall number of cases) to be subject of criminal confiscation had aggravated theft (one in 372 crimes), followed by abuse of office by a public official (one in 312 crimes) and fraud (one in 284 crimes). The greatest probability had embezzlement (one in 66 crimes) and abuse of functions in economic transactions (one in 57 crimes). Although great number of reasons and situations could be in place opposing, hindering or complicating confiscation, such great disproportion is impressive.

**Figure 3.** Comparison of overall and procedures in which confiscation was ordered for typical acquisitive crimes (period 2013-2016)



Even more somber is deduction that can be drawn if the number of overall cases (for all crimes, not just typical acquisitive ones) handled by prosecutors is put into relation with the number of actually imposed confiscations. Total number of all cases handled

<sup>19</sup> Reports are available at <https://ft-fbih.pravosudje.ba/>.

by prosecutors in Federation of Bosnia and Herzegovina for four-year period was 62.930, approximately half of which refers to property, economic and drug offences, and corruption (crime types most susceptible to confiscation). Having in mind that in covered time span in total 125 cases (not just nine individual, typical acquisitive crimes described previously) confiscation was ordered, it amounts to about two fifths of one percentage point of the number of cases which had the potential to impose confiscation.

Reliable data on recovery of assets pursuant to confiscation orders (enforcement stage of confiscation procedures) was obtained only from 72 cases. Although not explicitly defined by law, every criminal case file should also have information on the actual execution of sanctions and measures. However technical and minor may seem, this informal rule is extremely important for analytical and other purposes. Case law is unfortunately still quite uneven in this regard, so not all criminal case files contain updated information on the outcome of sanctions and measures imposed in court judgment. Since courts compiled data entirely from case files, the bulk of data were missing. In approx. half of that number the confiscation orders were indeed enforced either through voluntary or forced payment, and for 30 cases enforcement procedures were pending.<sup>20</sup> The enforcement ratio of one in eight cases in which confiscation order was imposed in not particularly convincing one, especially having in mind that the number of cases where confiscation could have been imposed is many times higher. When put together, the data suggest that merely a fifth of a percentage point of all criminal cases tried for acquisitive crimes were indeed resulting in depriving the offender of unlawfully obtained assets.

Additional concern on effectiveness of criminal justice system suggest data on financial value of orders that were enforced. Although the reliable data on actual recovery are largely missing and findings need to be examined with caution, it is highly interesting to briefly discuss what is available. Total value of assets actually recovered was 299.915 BAM, just a fraction (1, 5 %) of assets value ordered to be confiscated (see next section). For seven cases no data on assets value were recorded. The lowest amount actually recovered via confiscation order was 37 BAM, and the largest 100.000 BAM. Mean value per case was close to 10.000 BAM (9.997 BAM), with half of cases with less or just little over 1.000 BAM (1.030 BAM). Those 50 per cent of cases amount collectively to value of just 4.104 BAM, suggesting very asymmetric distribution in favour of very low value cases. Confiscation orders were most likely to be enforced for

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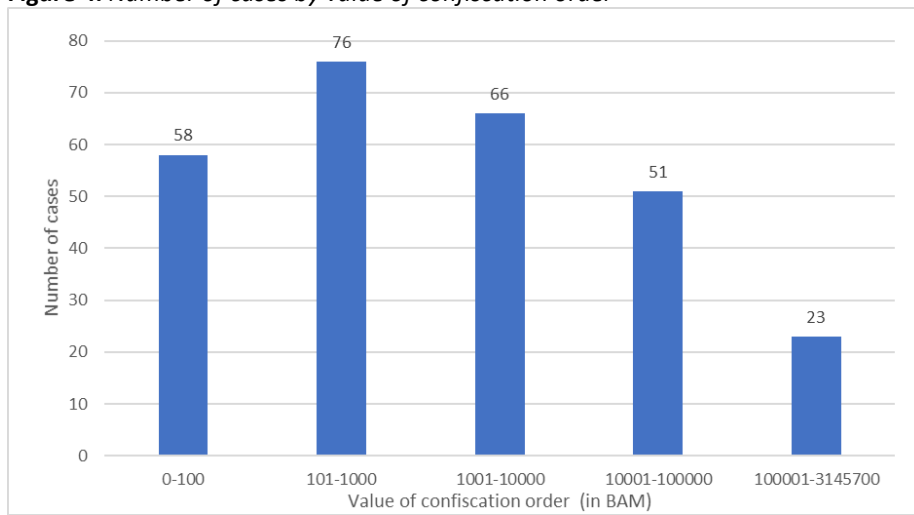
<sup>20</sup> Enforcement procedures have been pending for quite a while, ranging from one to fourteen years. Both mean and median are eight years.

drug offences (14 cases) and abuse of office by a public official (7 cases). The highest value of 100.000 BAM had one case dealing with abuse of office by a public official, which was enforced through voluntary payment, followed by two cases for criminal conspiracy (first of value of 50.000 BAM, and second of 70.000 BAM), both voluntary paid upon final court ruling ordering so. Although frequent in successful recovery numbers, drug offences had little overall value (31.302 BAM), which is mainly permanently kept following seizure of assets in previous stages of criminal procedure.

### Severity of criminal confiscation

Amount of assets to be confiscated varied hugely. The lowest amount was 10 BAM, and the highest 3.145.700 BAM. Average value of confiscation order was 69.112 BAM. Most frequent single value was 100 BAM, subject of 10 confiscation orders, followed by 50 BAM (in 8 cases). The distribution was, however, largely right skewed, suggesting larger frequency of low value cases. Almost half of cases refers to values less than 1.000 BAM, and almost three quarters less than 10.000 BAM. Approx. ten percent of cases referred to orders with a value greater than 100.000 BAM, and with five cases with value greater than 1.000.000 BAM. Figure 4 shows distribution of cases by value of confiscation order.

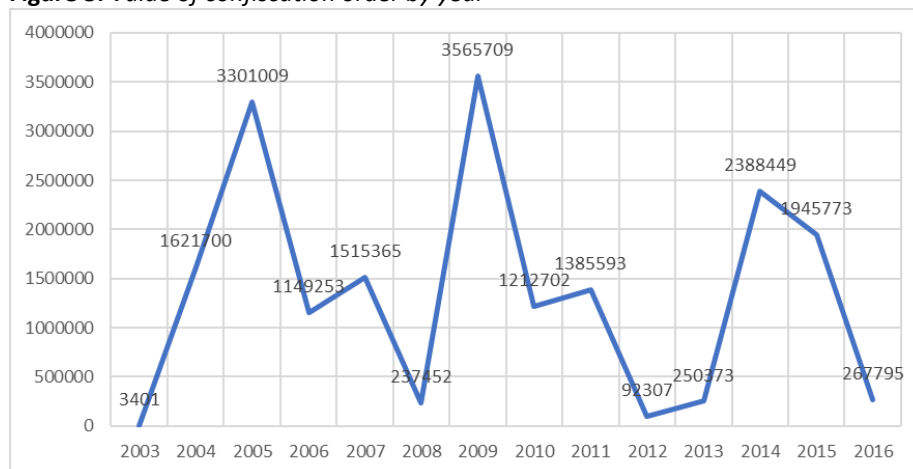
**Figure 4.** Number of cases by value of confiscation order



When examining confiscation amount annually (see figure 5), the year with highest confiscation amount ordered was 2009 (over three and a half million), followed by 2005 (3.301.009 BAM) and 2014 (2.388.449 BAM). The smallest amounts ordered to

be confiscated are from year 2012 (92.307 BAM) and one extreme case of year 2003 (just 3.401 BAM). Average value of confiscation order per year was 1.352.634 BAM. No particular pattern could be observed based on the data.

**Figure 5.** Value of confiscation order by year



Total value of assets ordered to be confiscated was 18.936.886 BAM. Half of that value (9.970.864 BAM) referred to just five cases with unusually high amounts (greater than 1.000.000 BAM). In contrast, almost half (134) of all cases with lowest values (less than 1.000 BAM) made up in total 33.941 BAM, which is less than one per cent (two tenths of a percentage point) of the total value of assets ordered to be confiscated. It is therefore safe to say that confiscation landscape in Federation of Bosnia and Herzegovina is dominated by small value cases. Most profitable individual crimes are abuse of office by a public official, with total value of confiscation orders of over six million BAM, abuse of functions in economic transactions, with the sum of assets to be confiscated amounting to 5.716.765 BAM, and tax evasion with total sum of 4.354.272. BAM. Least profitable appear to be theft, with total value of 26.815 BAM and robbery (23.367 BAM). If the mean value for every crime is taken into consideration, order changes a bit. Thus, abuse of functions in economic transactions has the highest mean value of confiscation orders (over 380.000 BAM), followed by tax evasion (close to 300.000 BAM) and abuse of office by a public official (mean close to 200.000 BAM). The lowest mean values have robbery (865 BAM) and theft (525 BAM). In general, it can be argued that high volume property crimes, such as theft and robbery, do not generate particularly high economic benefit, and that, except for abuse of office by a public official, crimes that are low in volume but committed by offenders who have the



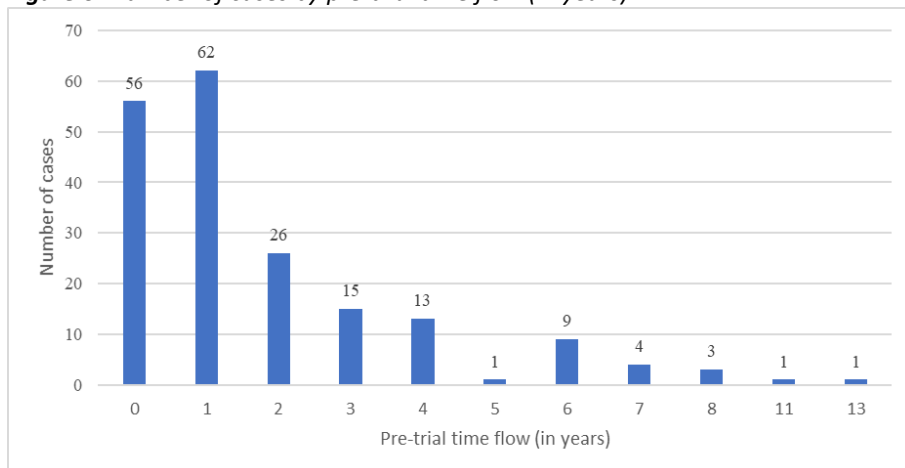
access to much greater assets than conventional offenders generate much larger profit.

### **Celerity of confiscation proceedings**

Final aspect of cost-benefit analysis of potential offenders in calculating whether crime pays refers to celerity of confiscation proceedings. As elaborated previously, it will be analysed through time range from the offense commission until the beginning of criminal proceedings resulting in criminal confiscation (pre-trial time flow), and through time range from the beginning of the proceedings until the passing of final court ruling ordering confiscation (trial time flow).

Time distribution (measured in years) of the period between the offense commission and the beginning of criminal proceedings is based on data from 191 cases (others were not reported from the courts). From the available data, it can be deduced that the range in question varied from 0 to 13 years, with the mean value of 1. 81 years (approx. 22 months). Almost two thirds of cases began within one year after the offense was committed, and almost three quarters within two years. Most frequent value of the period between offense commission and the beginning of criminal procedure was one year (see figure 6).

**Figure 6.** *Number of cases by pre-trial time flow (in years)*

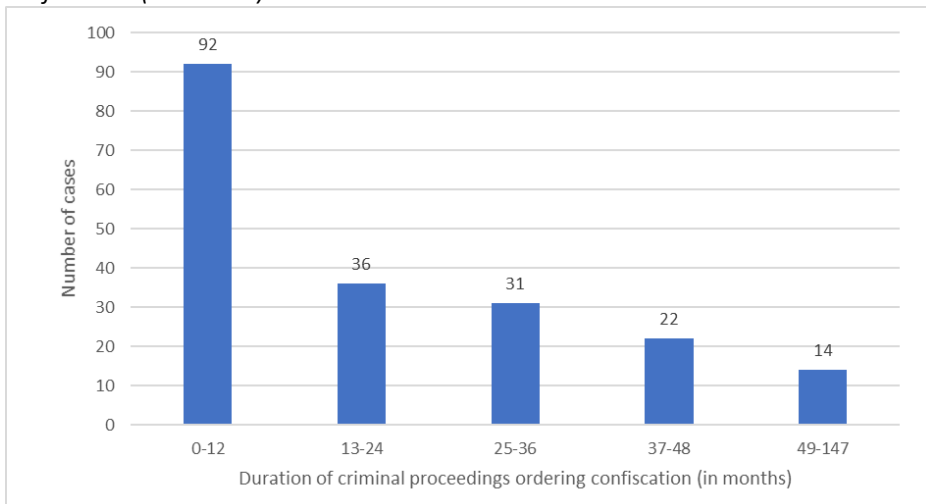


When examining the data on swiftness of criminal procedure measured via period between crime commission and the beginning of the formal procedure broken by type

of crime, it can be deduced that offenses that generate larger economic benefit, such as abuse of functions in economic transactions (mean of 6.7 years), tax evasion (5.3 years) and abuse of office by a public official (3.5 years) take rather prolonged period to be prosecuted, while low economic value/high volume offenses, such as drug offences (mean of 0.42 years), robbery (mean of 0.74), aggravated theft (mean of 0.91 years), theft (mean of 0.98 years) get investigated quite quick and criminal proceedings for vast majority of these cases begins within one year after the offense came to realisation.

The duration of formal criminal proceedings in which confiscation was ordered is shown in figure 7. Again are the data for all cases not provided, so the analysis rests on 195 cases for which data were available. Average duration of criminal proceedings is 21.3 months, almost equal to the time range, analysed previously, dealing with the period between the offense commission and the beginning of criminal proceedings. Half of cases were finalized within 15 months, and three quarters in less than three years. Taken together, the data suggest that after committing a crime, in average it takes longer three and a half years for offender to face a deprivation of whatever benefit he obtained unlawfully.

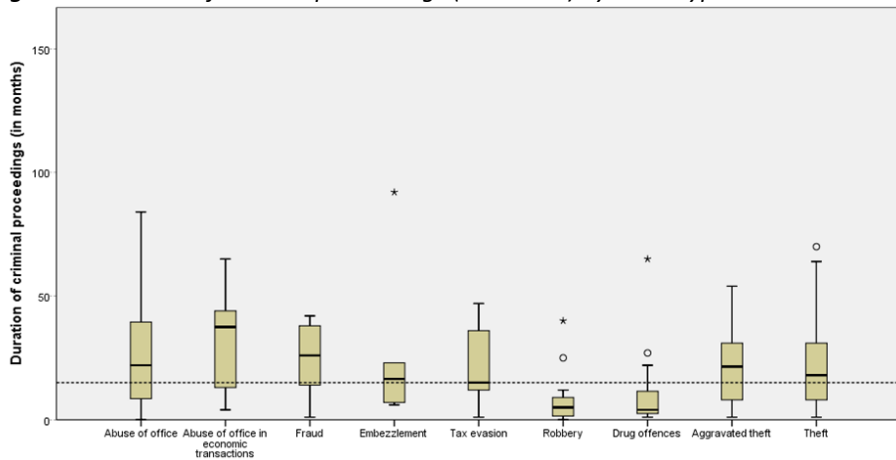
**Figure 7.** *Number of cases by duration of formal criminal proceedings ordering confiscation (in months)*



As in previous findings, the picture on duration of criminal confiscation changes when elaborated by crime type (see figure 8, with dotted line representing median for the

whole dataset). Once reaching the formal procedure, low value crimes, such as robbery and drug offences, were swiftly processed, typically in four or five months. High value crimes, such as abuse of office (both in economic transactions and in public institutions), were typically processed in two or three years. Other low value crimes, such as common or aggravated theft, had median above the value for the whole dataset, suggesting the swiftness they are investigated is not followed through the rest of formal proceedings.

**Figure 8.** Duration of criminal proceedings (in months) by crime type



#### 4. DISCUSSION

If criminals behave rationally, costs of crime make an important element in their calculation whether or not to engage in crime. “Costs” element in criminal reasoning would include three main prerequisites, addressed even hundreds of years ago in works of Enlightenment era writers: certainty, severity and celerity. Criminal confiscation is a penal measure (not a sanction) in Federation of Bosnia and Herzegovina, nevertheless serves preventive role of criminal law in general: to deter potential offenders not to engage in crime and to influence decision of those who already engaged in crime to refrain from it in future. Its deterrent potential depends on fulfilment of those prerequisites, whereby 1) certainty refers to chance of being detected and caught, and, consequently, to deprivation of any benefit gained unlawfully, and also to invariable, full enforcement of confiscation orders; 2) severity refers to confiscation amount imposed by courts; and, 3) celerity refers to swiftness in both detecting the offenders and beginning of the criminal proceedings and conducting procedure as fast as possible.

Although all crimes could be motivated by illegal benefit, some are more acquisitive than others. Brown, Esbensen and Geis (2013) are of opinion that there are typical crimes which have financial considerations at their root, such as theft, burglary, robbery and white-collar crime, but in essence many others can have them too (eg. murder can be committed to get an inheritance). This study showed that indeed corruption (abuse of office by a public official, embezzlement), economic crime (abuse of functions in economic transactions, tax evasion), property crime (theft, aggravated theft, robbery, fraud, etc.), complemented by drug offences, make vast majority of cases in which confiscation was ordered. Beside compensation claims by injured parties which are optional,<sup>21</sup> criminal confiscation is main and obligatory manner in which economic benefit generated through crime is taken out of it.<sup>22</sup> Very important aspect of criminal confiscation is its compulsory nature, rooted in an old law principle *commodum ex injuria sua non habere debet* ("no man ought to derive any benefit of his own wrong").<sup>23</sup> It is surprising to establish that in Federation of Bosnia and Herzegovina very small percentage (less than one percent) of cases susceptible to confiscation actually resulted with confiscation. One should keep in mind that these are not cases established by data gathering alternative to official statistics which implies questions of methodological nature, but relation of total number of officially recorded cases to number of (officially reported) actual confiscation proceedings. Looking at the first measure of certainty - proportion of cases ordering criminal confiscation in total cases where criminal confiscation could have been ordered - it is safe to say that criminal law cannot exert any deterrent function. Similar findings on effectiveness in identification and in criminal confiscation in Bosnia and Herzegovina can be found in an analysis conducted by the USAID Justice Project (USAID-ov Projekat pravosuđa u Bosni i Hercegovini, 2017 [a]), but in research abroad as well (Levi & Osofsky, 1995).<sup>24</sup> USAID Justice Project report reads that although authorities have

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<sup>21</sup> There are no comprehensive and reliable data on number of criminal cases in which compensation claims by injured parties have been petitioned in proceedings in Federation of Bosnia and Herzegovina. Some findings at the level of whole Bosnia and Herzegovina, however, suggest that compensation claims are regularly diverted to civil procedures (USAID-ov Projekat pravosuđa u Bosni i Hercegovini, 2017 [a]).

<sup>22</sup> Levi (1997) asserts that situation under English law was very similar, confiscation being „a more powerful technical tool than compensation for extracting payment from offender“ (p. 232).

<sup>23</sup> It is indeed explicitly stated in art. 114 of Penal code of Federation of Bosnia and Herzegovina. Furthermore, pursuant to art. 413 of the Criminal procedure code, the existence of proceeds of a criminal offence shall be established in a criminal procedure *ex officio*.

<sup>24</sup> Levi and Osofsky (1995) found that from at least £ 650 million from property and drug

invested enormous legislative effort in regulating confiscation system, there are considerable difficulties in its application, while effects of the relevant policies are at the beginning. The study suggests there are number of reasons why is confiscation system largely inefficient: inappropriate legislative norms, lack of awareness of confiscation importance and its obligatory nature, administrative (such as proper rewards for difficult prosecutors` work in high value confiscation cases) and difficulties akin to them in conducting financial investigations, lack of specialization and training for police, prosecutors and judges. With regard to pronounced role of prosecutors in identifying illegal benefit and gathering the evidence in criminal procedure, it is worth to briefly examine their capacities. There were approx. 9 prosecutors per 100 000 inhabitants in Federation of Bosnia and Herzegovina,<sup>25</sup> which is below national and European average, but far higher compared to some developed European countries (England and Wales have only approx. 4, Germany 6,5, etc.). Looking at the number of cases handled by prosecutors, it is 1,3 per 100 inhabitants in year 2016 for Federation of Bosnia and Herzegovina, while European average was 3,1 (CEPEJ, 2018). It is safe to say that at face value overall workload conditions for prosecutors in Federation of Bosnia and Herzegovina are not unfavourable or less manageable compared to those for their European colleagues. It is likely that not lower number of prosecutors *per se* was the main factor of inadequate performance in taking the profit out of crime in greater volume, but some other features of prosecutorial work. Lack of specialization, mentioned previously, could be one. Dealing with the effectiveness of criminal justice system in processing corruption offences, Organization for Security and Co-operation in Europe -Mission to Bosnia and Herzegovina (2018) identified some inadequacies in capacities of prosecutors in the gathering of evidence supporting the charges. In its report, it states that “in great number of cases, the evidence submitted for the purpose of quantifying the economic damage or gain...was poor” (p. 38-39). Lack of capacities in specialized financial investigation units is also one of the reasons recognised by the European Commission, who argues they are not systematically launched in cases of corruption and organised crime and there is no overall policy for financial investigations on a systematic basis (European Commission, 2015; 2016).

Second dimension of certainty refers to enforcement of confiscation orders. Although based on largely incomplete data, exploratory findings suggest that the enforcement ratio of one in eight cases in which confiscation order was imposed in not particularly deterrent, along with the finding that only small part (1, 5 %) of the ordered

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offences open to confiscation in 1993, only £ 14 million (two percent) was indeed confiscated.

<sup>25</sup> The rate was calculated based on data from Federal prosecution offices annual reports. See footnote 19.

confiscation sum was indeed recovered. Greater chance to be enforced had low value cases, a finding in concordance with the data from the study of Bullock et al. (2009).<sup>26</sup> There are three paths to recover illegally obtained assets judicially ordered to be permanently deprived from an offender: voluntary payment, legal and factual transfer of (previously) temporarily seized assets into public funds, and forced execution of court rulings. In Federation of Bosnia and Herzegovina, all are more precarious than certain. Since criminal confiscation in Federation of Bosnia and Herzegovina is a penal measure, it rests on willingness of the offender to follow court ruling, with no possibility of applying other coercive measures (eg. default imprisonment as in case of monetary fines) as an alternative if court orders are not carried through. Courts tend to order unusually prolonged time span for voluntary payment (within one year),<sup>27</sup> which offenders can use to conceal or otherwise make their assets untraceable and unavailable. Another way to permanently deprive offenders of their ill-gotten gains is to temporarily seize the assets and upon verdict to transfer them to state budget. Freezing of assets is in Federation of Bosnia and Herzegovina rarely applied, because of administrative issues concerning prosecutors' workload evaluation, vague legal norms governing seizure and scarce resources for seized asset management (European Commission, 2016; USAID-ov Projekat pravosuđa u Bosni i Hercegovini, 2017 [a]). Forced execution of criminal court rulings different to prison sentences is especially complex matter. In order for enforcement to start, the court judgments need to satisfy conditions of an enforceable title, meaning, *inter alia*, clear obligation and due of fulfilment, which judgments often fails to define. Forced execution is initialized by state attorneys, which are in Federation of Bosnia and Herzegovina understaffed and overwhelmed by the number of duties before them. There are also problems with clear chain of steps needed to be taken in order for forced execution to take place, as well with regular checks on offenders' assets in cases where the property is out of reach or insufficient for enforcement to be performed. It is not surprising that in another country-wide study the proportion of successful forced executions of court rulings in

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<sup>26</sup>The percentage of successful recovery are much higher in the study of Bullock et al. (2009), with close to 90 % of cases, but 38 % of value; share of cases successfully closed in the study Kruisbergen et al. (2016) was almost three quarters, but total amount paid was 41 % of the overall value. Problems with attrition during enforcement stage of confiscation proceedings are documented elsewhere (eg. Nelen, 2004; Levi & Osofsky, 1995).

<sup>27</sup> Bullock et al. (2009) report that almost 90 % of confiscation orders were paid in United Kingdom, usually by six months after court order. However, orders with greater values do not follow overall trend, so orders between £100,000 and £1 million are paid by just a third.

Bosnia and Herzegovina is only one tenth of a percentage point (USAID-ov Projekat pravosuđa u Bosni i Hercegovini, 2017 [a]).

As stated previously, effective confiscation scheme should hit offenders similar to criminal sanctions: higher level of confiscation sums should make crime pointless and demonstrate state's determination to discharge wrongdoers from any illegally obtained benefit. The study found that total value of assets ordered to be confiscated is 18.936.886 BAM, or 1.352.634 BAM per year. Half of cases made up in total 33.941 BAM, which is less than one per cent (two tenths of a percentage point) of the total value of assets ordered to be confiscated, and approx. ten percent of cases referred to orders with a value greater than 100.000 BAM. Asymmetry in favour of low value cases has been reported elsewhere (Bullock et al., 2009; Kruisbergen et al., 2016). Annual value of recovered assets is 0.31 euro for each citizen of Federation of Bosnia and Herzegovina, or 0.007 % of national GDP.<sup>28</sup> Annual confiscation amount is many times below European average, which in absolute numbers is 38.8 million euro. European average is 1.7 euro for each citizen across the EU each year, or on average 0.009% of the national GDP of each EU country (Europol, 2016).

Calculating costs of crime is enormously complex. There are no known studies in Federation of Bosnia and Herzegovina which comprehensively estimate costs of crime. Nevertheless, even when looking skin-deep at the data from the study dealing with a bribery in the country (which is considered to be all-pervasive), previously elaborated data on confiscated assets suggest little deterrent effect. In a large sample of citizens of Bosnia and Herzegovina (5.000), UNODC (2011) found substantial proportion of respondents having personal experience with bribery- over 20 %, paying bribe in average five times. Translated into absolute numbers, it means that thousands of citizens had bribery experience in average five times during one year.<sup>29</sup> Adding the average bribe value of 220 BAM into calculation, one can easily come to hundreds of millions of BAM payed only in bribes by ordinary citizens. Another study from UNODC (2013), dealing with corruption within private sector, found that 13.2 % businesses in Federation of Bosnia and Herzegovina payed bribe in average 7 times with mean value of 318 BAM, amounting to close to 15 million BAM annually. These numbers can be contested from a number of points, nevertheless suggest that the value of assets obtained through just one type of crime vastly surpass identified and confiscated monetary sums in judicial proceedings. Study based on analysis of more than 600 legal

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<sup>28</sup> Numbers calculated using data from the Federal Institute for Development Programming (Federalni zavod za programiranje razvoja, 2015; 2016).

<sup>29</sup> Numbers calculated using data from the Institute for Statistics of FBiH (2017).

cases tried in two-year period across whole Bosnia and Herzegovina found that even when economic harm is established in criminal proceedings for corruption offenses, just minor sums are ordered to be confiscated, about 5 % (USAID-ov Projekat pravosuđa u Bosni i Hercegovini, 2017 [b]). Altogether, data suggest that amounts ordered to be confiscated in criminal proceedings are far below those obtained through illegal activities and that criminal justice system struggles to exert a convincing deterrent effect.

This study found that after committing a crime, it takes in average longer than three and a half years for offender to face a deprivation of whatever benefit he obtained unlawfully. Almost equal distribution of time refers to pre-trial and formal criminal procedure period. Compared to national average reported in judicial effectiveness index (USAID-ov Projekat podrške monitoringu i evaluaciji u Bosni i Hercegovini, 2019), pre-trial activities in confiscation cases took approximately the same amount of time as for the general crime and corruption cases.<sup>30</sup> Looking at the trial phase of confiscation procedure, the duration is almost double compared to national average (639 to 342 days). Compared to data from CEPEJ (2018) report<sup>31</sup> dealing with European justice statistics, confiscation cases in Federation of Bosnia and Herzegovina take more than four times than criminal proceedings in Europe (639 to 142 days). In sum, confiscation proceedings seem to consume discernibly higher amount of time measured by duration of criminal procedure compared to average duration of criminal proceedings. Such findings are no anomaly, and other researchers (eg. Kruisbergen et al., 2016) report similar results as well.

For a criminal law tool to have deterrent impact on potential offenders, it needs to outbalance profits from crime, possibly by a low cost of enforcement. Confiscation of proceeds of crime could have such deterrent effect by removal of illegal gains making the crime pointless: if the offenders weigh benefit against costs, and costs are increased by the prospect of obligatory deprivation of all economic benefits if caught, this may *ex ante* provide additional incentives to avoid crime (Bowles et al., 2005). Confiscation represents a credible deterrent only if it is highly certain to be utilized, if

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<sup>30</sup> The data do not necessarily measure the same concept. In our study the average duration of pre-trial activities before formal trial procedure was examined, while the data from judicial effectiveness index come from the cases received by prosecutors' offices, which could be dealing with crimes committed long before they were formally reported.

<sup>31</sup> Data from CEPEJ (2018) study are „not a calculation of the average time needed to process a case but a theoretical estimate of the time needed to process pending cases“ (p. 239), but provide valuable information on case duration.



it is severe enough to send a message that crime would not be tolerated and that criminals would be stripped of any profits from crime, and if it is implemented without much delay. Based on presented aggregated data, none of these properties of credible deterrence seem to be existent in Federation of Bosnia and Herzegovina. If confiscation is sporadically operated and typically in low value cases, it cannot exert any substantial effect on deterring individual offenders, let alone criminal organisations. With non-existent prerequisites for effective deterrence, confiscation cannot reasonably be expected to have significant impact on general levels of offending.

## 5. CONCLUSION

This article has given insight into praxis of criminal confiscation in Federation of Bosnia and Herzegovina. In order to have deterrent effect, criminal confiscation, as a criminal law instrument complementary to prison and fines, needs to share same features. Namely, if offenders tend to behave calculated and rational, the criminal law policies and activities which provide high probability of detection of wrongdoing, proper amount of “repressive bite” and reaction without much delay would make future crime pointless and exert deterrent effect. Prerequisites of successful deterrence are therefore certainty, severity and celerity. Despite enormous benefits from economic and organised crime, corruption and drug trafficking, confiscation amounts in Federation of Bosnia and Herzegovina are rather low, do not remotely match the values actually gained through crime and are far below European average for confiscation cases. Findings suggest that confiscation is rarely used relative to total number of typical acquisitive crimes reported each year and when used, it is highly skewed in favour of low value cases for high volume crimes such as theft, robbery and drug offences. Enforcement of confiscation orders appears to be Achilles’ heel in confiscation proceedings already burdened with substantial shortcomings, since only a trivial portion of total assets ordered to be confiscated were actually recovered. Even successful confiscation proceedings are lengthy, thus average time needed to issue an order for criminal confiscation exceeds the average duration of criminal proceedings.

Exploratory nature of this study, with a good deal of missing data, does not provide perfect and definitive depiction of confiscation proceedings. The data are, however, one of the rare attempts in Federation of Bosnia and Herzegovina or in whole Bosnia and Herzegovina to examine confiscation proceedings and recovery of illegally obtained gains in more detail. Despite missing data issues, the findings are not completely uninformative, though have to be interpreted with great caution. Nevertheless, some implications can be drawn, especially having in mind general concurrence of findings with other studies home and abroad.

Mandatory nature of criminal confiscation appears to be ignored in practice, failing to achieve both pedagogic (symbolic) and deterrent effect. Confiscation of benefits gained through crime should therefore be put higher on criminal justice system agenda. Staffing and specialization of criminal justice practitioners involved in criminal confiscation cases is quintessential. Financial investigations need to become indispensable part of major criminal cases, and the prosecutors and investigators need to be properly rewarded for their efforts for trying to take the profit out of crime. Cooperation in financial investigations between police, prosecutors and other experts is crucial and could secure location and timely restraining of assets, substantially raising the likeliness of its future permanent deprivation. Whenever possible, assets need to be seized and properly managed, so the value stays intact irrelevant of the outcome of the proceedings, increasing the probability of successful permanent deprivation upon final court rulings. Legitimacy of legal and social order cannot be gained if the high value cases are rarely successfully processed and the illegal profit stays out of state's reach. Therefore, better targeting of major criminal cases across all phases of criminal confiscation proceedings is required. Sincere discussion needs to take place in order to analyse all feasible and proper options on legal incentives to make offenders perceive enforcement of confiscation orders more seriously than previously. In case of non-payment or fulfilment of confiscation orders on time, these could include default imprisonment, restriction of some offenders' rights (such as the right to register a property or similar) or other incentives to comply with court's orders. Finally, in line with deterrence theory, policies and activities in the area of criminal sanctions and complementary measures need to be publicized and targeted at those who are at higher risk to commit highly acquisitive crimes.

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## GENDER EFFECTS REGARDING EYEWITNESS IDENTIFICATION PERFORMANCE

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### Abstract

**Reason(s) for writing and research problem(s):** Previous research has indicated that female eyewitnesses sometimes provide more accurate identifications than male, but there remains a lack of agreement on such a female-superiority effect. The issue of own-gender bias also remains unclear.

**Aims of the paper (scientific and/or social):** This empirical research aims to further examine the possible existence of gender-related effects in eyewitness identification performance in the rarely studied culture of Bosnia and Herzegovina, and thus to determine implications for eyewitness identification in law enforcement practice there and elsewhere.

**Methodology/Design:** This experimental study involved 98 undergraduate students of the University of Sarajevo. It included several tasks - participants watched a video recording of a simulated bank robbery, undertook some written tasks, and finally attempted to provide identification of the male perpetrator in a photo lineup.

**Research/Paper limitations:** The experiment was conducted in laboratory conditions that can be different from real-life situations (usually for ethical reasons). Participants were exclusively undergraduate students. The experiment design included only the identification of a male perpetrator (though most bank robbers are male).

**Results/Findings:** No effect of gender was found in identification accuracy. An own-gender bias was not found.

**General conclusion:** Gender has no effects on facial recognition, and it is not a useful predictor of accuracy in eyewitnesses. Complete view on gender differences in eyewitness identification may be achieved if gender is considered in combination with other factors such as culture, expectations, age, race, intelligence and face recognition skill and type of crime. In future, it will be useful to explore the relationship between eyewitness identification accuracy and gender stereotypes/roles in countries across which these important factors vary.

**Research/Paper validity:** This study's design and analyses correspond to those used in relevant past research.

**Key words**

eyewitness identification, gender, eyewitness testimony, criminal investigation science

## 1. INTRODUCTION

Eyewitness identifications and testimonies are among the most controversial and least reliable methods of evidence/proof used in criminal investigations/proceedings (e.g., Swanson et al., 2019). The Innocence Project (2020) data support this in that mistaken eyewitness identifications have been associated with 69% of the more than 375 wrongful convictions in the United States (to date). Despite the many criticisms and controversies surrounding eyewitness identification/testimony, judges (and jurors) typically overestimate the reliability of eyewitness evidence (Matison Hess et al., 2017) giving it greater credibility than it is usually due.

It is thus important to emphasise that different variables significantly affect the reliability of eyewitness identification. Osterburg and Ward (2014) noted that among the important variables are: a) procedures during lineups; b) witness stress or pressure; c) racial bias; d) lighting during crime; and e) time between the criminal act and identification. Wells (1978) innovatively classified these variables into two groups: system variables and estimator variables. System variables are under the direct control of the criminal justice system (such as interrogation/interview technique, question structure, lineup structure, lineup instruction). In contrast, estimator variables (characteristics of the criminal event, of the defendant or the eyewitness) cannot be controlled in actual criminal cases and thus they have limited potential for improving eyewitness identification/testimony procedures.

One readily available estimator variable is the gender of the witness, and Memon et al. (2003) noted that in addition it is a stable witness characteristic. Thus, in criminal investigations/proceedings, this variable is available for possible utilisation by investigators, judges and so on. Indeed, Stern (1903-1904) innovatively found that females were less accurate witnesses (Butts et al., 1995). In contrast, in the 1970s and 1980s research that again explored gender differences (e.g., Clifford & Bull, 1978; Shapiro & Penrod, 1986; Loftus et al., 1987) found that females seemed better at recognising human faces they had seen before. Although such authors warned that their findings were from laboratory studies, these findings might have been taken into



account in police and judicial practice. However, Maccoby and Jacklin (1974) claimed that stable gender-related differences do not exist in most laboratory conditions. Nevertheless, some of the research that followed (e.g., Horgan et al., 2004; Rehnman & Herlitz, 2007; Areh, 2011; Vredeveldt et al. 2015; Longstaff & Belz, 2020) also found gender effects in whole or in part.

However, it is useful to highlight some of the divergences in the findings of these studies. For example, Clifford and Bull (1978) concluded that whereas females were better in recognising faces in non-emotive situations, males outperformed females in stressful situations. Furthermore, Shapiro and Penrod (1986) in their meta-analysis, claimed that although females are slightly better regarding correct eyewitness performance, they also more often provide mistaken identifications. Loftus et al. (1987) presented similar results, noting that females are better regarding verbal memory but that males are better regarding spatial memory. To complicate matters further, Deblieck & Zaidel (2003) found that females were better at remembering attractive faces (of both male and female), but that males were better at remembering unattractive faces (of both genders). However, other researchers have found female superiority regarding face recognition regardless of target gender, especially when asked to describe others' appearance (Horgan et al., 2004, Areh, 2011; Vredeveldt et al., 2015). Even more complicating is that some authors have found that female witnesses perform better only when recognising female faces (e.g., Lewin & Herlitz, 2002; Rehnman & Herlitz, 2007; Lovén et al., 2011; Westerberg et al., 2020) or that both males and females exhibit an own-gender bias (Wright & Sladden, 2003; Mukudi & Hills, 2019). Recent studies have also provided some new insights/complications, such as that female witnesses have better memory for clothes and personal artefacts (Horgan et al., 2017) or for details related to persons, whereas males are more accurate for details from the environment (Longstaff & Belz, 2020).

The authors who have found a female superiority have provided different explanations. Shapiro and Penrod (1986) hypothesised that reasons are reflected in a more apparent desire of females to be effective and to comply with a researcher. Other explanations imply that females retain their attention longer to the stranger than do males due to caution because they want to assess further potential danger (Areh, 2011; Longstaff & Belz, 2019). Loftus et al. (1987) contended that females have historically different social roles that contribute to the development of different interests between females and males. Similarly, some authors (e.g., Jobson & Watson, 1984) considered that women are more oriented toward other people in interpersonal relationships (think more about other people, show more empathy, pay more attention to nonverbal cues) than are men. On a related note, greater interest in other people and/or a more pronounced concern regarding physical appearance may

motivate females to better remember details of other people (Horgan et al., 2004, 2017). Such research has begun to highlight that 'gender' does not exist in a vacuum but is to some extent a reflection of contexts and cultures.

Even though some of the above studies have found gender differences and offered various explanations for this, other researchers did not obtain any such findings (e.g., Butts et al., 1995; Wells & Olson, 2003; Willmott & Sherretts, 2016). Therefore, it is evident that there is considerable inconsistency in previous research. This could partly be because this topic is not well-enough studied by psychologists who themselves have sensitivity and expertise in gender issues (Walker et al., 2020) and also possibly because of relevant cultural/national variations in gender roles/socialisation.

The inconsistencies in the above findings, as well as the lack of such research in the culture of Bosnia and Herzegovina (a country that rarely has been part of the body of relevant research), served as inspiration for the present study.

## 2. METHODOLOGY

*Participants.* The sample consisted of undergraduate students from the University of Sarajevo - UNSA ( $N=98$ ; 55 – male, 43 – female; mean age = 18.9 years,  $SD= .634$ ) who participated individually but in groups of up to ten (for course credit).

*Procedure:* The first task involved watching a video recording of a simulated bank robbery lasting 44 seconds. Before watching the video recording, the students were informed that they would participate in a study of memory and perception, and they signed informed consent. Also, at the beginning of the experiment, the students were given this instruction: "This experiment consists of several tasks. First, please pay close attention to the following video". After this, because the video recording was emotionally neutral, it was explained to the participants that the video recording depicts a simulated bank robbery. Following this explanation, they had five minutes in which to undertake a distractor written task that involved describing the perpetrator or listing of capital cities of the European countries. Subsequently, they had another 20 minutes to perform a distractor crossword puzzle task. Immediately after this, participants attempted to identify the perpetrator of the robbery from a set of eight male facial photographs (that did include the perpetrator, though the option to indicate his non-presence was made available).

### 3. RESULTS

Table 1 shows that (i) 56.4% (N = 31) of male participants accurately identified the perpetrator and 43.6% (N = 24) provided a misidentification, whereas for females accurate identification was provided by 44.2% (N = 19) and mistaken identification by 55.8% (N = 24). A chi-square test ( $\chi^2 = 1,43$ ,  $p > 0,05$ ) indicates that gender was not significantly associated with identification accuracy.

**Table 1.** Gender and accurate performance

	Gender	
	Male (%)	Female (%)
Accurate Identification	31 (56,4)	19 (44,2)
Mistaken Identification	24 (43,6)	24 (55,8)

Mistaken identifications were divided into the two categories of a) false identification and b) rejected identification. Table 2. shows that of the male participants 27.3% (N = 15) provided a false identification and 16.4% (N = 9) provided a rejected identification. For female participants the corresponding figures are 32.6% (N = 14) false identifications and 23.3% (N = 10) rejected identifications. A chi-square test found no significant gender differences ( $\chi^2 = 1,521$ ,  $p > 0,05$ ).

**Table 2.** Gender and incorrect identification

	Gender	
	Male (%)	Female (%)
False Identification	15 (27,3)	14 (32,6)
Rejected Identification	9 (16,4)	10 (23,3)

### 4. DISCUSSION

It is evident that the results of the current study do not support the notion that females provide more accurate identifications nor that males provide more rejected identifications. The findings of the current study corroborate the research of Butts et al. (1995), of Willmott and Sherretts (2016) and of Maccoby & Jacklin (1974). The

present findings in a new to such research country underpin the need for caution regarding sweeping generalisations/conclusions regarding gender and eyewitness identification performance (Clifford & Bull, 1979).

One of the possible explanations for why the present study did not find a female-superiority effect could be that participants watched an emotionally neutral video recording. Videos of violent crimes have been used in several studies that have found a female-superiority effect (e.g., Lindholm & Christianson, 1998; Areh, 2011). However, if we consider the findings noted by Clifford and Bull (1979), it also could be expected that emotionally neutral video recording in our study will cause a female-superiority effect. Given that a female-superiority effect was not observed, it is reasonable to assume that the nature of a video recording does not affect gender differences in eyewitness identification.

Another explanation may involve the lack of overall life experience in the current study's participants, as well as the lack of experience with the eyewitness identification lineups. The average age of the participants was 18.9 years, and none of the participants had previously participated in a similar When it comes to the impacts of this study on a law enforcement practice, it must be observed that the present experiment was conducted in the laboratory conditions. These conditions can be considered as a limitation of this study because of real-life eyewitnesses observe crimes in different environments and conditions. (Willmott & Sherretts, 2016).

The present study did not correspond with research that has found an own-gender bias in male participants (Wright & Sladden, 2003; Mukudi & Hills, 2019). The absence of a female perpetrator can also be explained as a limitation of the present study, considering that some of the previous studies (e.g., Lewin & Herlitz, 2002; Lovén et al., 2011; Westerberg et al., 2020) have shown own-gender bias in female participants. Nevertheless, a significant limitation of this study also is the lack of "target absent" set of photos, because it was not possible to determine potential gender differences in "target present" and "target absent" experimental groups.

The results indicate that the eyewitness gender may well not be a useful predictor of accurate identification. However, it should be noted that in combination with other factors such as culture, expectations, age, race, intelligence, crime type, and face recognition skill, gender may have an influence on eyewitness identification. Future research could pay attention to the combined influence of such factors.

Regarding this, it is essential to note that cultural factors can have a strong influence on the skills and interests of males and females (Burton et al., 2019). Some previous studies (e.g., Brown & Josephs, 1999) have shown that social stereotypes about gender differences in their abilities can influence task performance of males and females, especially in situations when they are told that their performance will indicate how good or weak are they in some ability or skill. This type of instruction can lead to relatively low performance and relative lack of confidence in women. On the other side, it does not affect men (Brown & Josephs, 1999). Furthermore, cultural stereotypes regarding gender roles promote and maintain the notion that women are relatively communal and men are relatively agentic (Rivera & Veysey, 2016), which is especially visible in patriarchal societies where gender roles are very significant.

Additionally, Rivera and Veysey (2016) suggest that both men and women express a tendency to behave in a manner consistent with gender stereotypes, or consistent with expectations defined by society. If society implies masculine environment in which interpersonal interactions take place, women are at particular risk of low self-confidence (Burnett et al., 1995). In this regard, it should be considered that men and women have different sources of self-esteem and self-confidence (Josephs et al., 1992).

Considering that the participants in our study were mainly students of the Faculty of Criminalistics, Criminology and Security Studies of the University of Sarajevo, and that they were aware that their final task was to identify crime perpetrator, the results should also be considered through a prism of the stereotype that law enforcement is a male-dominated profession (Davis, 2005). These factors are important because gender stereotypes and negative attitudes about women in law enforcement are present in Bosnia and Herzegovina (e.g., Muftić & Carter Collins, 2013; Gačanica, 2019), so this masculine-related environment could well have influenced the findings. Notwithstanding that the participants were not provided with explicit information about gender and task performance, or with gender cues in the labelling of law enforcement profession (Colley et al., 2002), previous experiences and insights of female participants could negatively affect their self-confidence and identification performance. On the other hand, the instructions given to the participants at the beginning of the experiment could give the female participant the impression that it was a competitive test of memory and perception. The sense of competitiveness could create a sense of anxiety and negatively affect female task performance. These findings can also be considered in terms of the fact that self-confidence and identification accuracy are strongly related (Wixted & Wells, 2017).

A masculine environment is significantly present in Bosnia and Herzegovina, where the stereotypes relating to gender roles imply that women are primary “child care providers” and “housekeepers” and that men are primary “breadwinners” (Halilović & Huhtanen, 2014). It is almost equally expressed in urban and rural areas (Hughson, 2014). In this kind of environment, society’s expectations of women and men are different, while deviations from gender roles are not encouraged (Somun-Krupalija, 2011). That our study did not confirm a female-superiority effect should be considered in terms of cultural differences between Bosnia and Herzegovina and other countries that have different attitudes towards gender roles.

## 5. CONCLUSION

This study provides an innovative account of possible gender effects regarding eyewitness identification performance. A more comprehensive view on gender differences in eyewitness identification may be achieved if gender is considered in combination with other factors such as culture, expectations, age, race, intelligence, face recognition skill and type of crime. The present study indicates the need for a more comprehensive study in Bosnia and Herzegovina, that would consist a detailed consideration of heterogeneous and larger sample of participants, the use of male and female perpetrator, as well as target-present and target-absent photosets.

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## DRONES AS A PERMANENT AND PRESENT DANGER

Review paper

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### Abstract

**Reason(s) for writing and research problem(s):** The lack of research on drone attacks in the West Balkans, but also within the European Union, has influenced our decision to conduct case study analysis of drone incidents occurring in the world, but also in our surrounding, in order to think how to prevent those in our own "backyard".

**Aims of the paper (scientific and/or social):** This article intends to present significant security and operational information on drone attacks from cases detected in various surroundings.

**Methodology/Design:** Methodology used in the paper includes case studies of drone attacks in certain countries, in order to evaluate these incidents from security and operational aspects.

**Research/paper limitations:** Limitations refer to possible unregistered activities in the form of new modus operandi of perpetrators involving drone attacks.

**Results/Findings:** The findings presented in this paper show a cross-section of attack vectors and modus operandi used by perpetrators, as well as vulnerabilities found at targeted institutions and objects. Those findings are to be considered for future prevention of perpetrators activities.

**General conclusion:** There is a real need to improve and modernize general security measures related to Unmanned Aerial Vehicles. This article points to such necessity at several different levels and aspects through the analysis of attack vectors, modus operandi, and the weaknesses of the attacked targets.

**Research/paper validity:** Findings presented in this article can be used to direct future research in this field, in order to strengthen and develop various measures to combat existing and persistent threats posed by drones.

### Key words:

drones, attacks, law enforcement, prisons, prevention

## 1. INTRODUCTION

The existing drones threats are various, especially in this rapidly changing world of digital gadgets. Nowadays, drones pose a new threat to the security of prisons, within and outside of the prison walls. Through drones, organized crime and terror-related groups can deliver various items. Those items could represent strategic and tactical advantages for the prisoners both within and outside the walls of prisons. Items delivered by drones could be (but not an exhaustive list): SIM cards, mobile phones, drugs, explosives and weapons, different materials endangering people, objects and structures. Some of the new dangers arising from drones include drones disrupting critical infrastructure and other interfering with human-crewed aircraft. In January 2019, INTERPOL reported the emergence of this new risk highlighting that individuals or organized groups are using the Unmanned Aerial Systems (UAS) devices outside of the institutions to collude with an individual(s) inside the prison system to deliver the payload of contraband. These activities are achieved by attaching a payload to the device (Unmanned Aerial Vehicle – UAV, often referred as Unmanned Aerial Systems – UAS, and we consider it synonyms for drones), and they are scheduled to deliver the payload at a previously agreed location to be collected by a recipient inside the prison system (INTERPOL, 2019). Those include different actors – from the prisoners up to personnel of the correctional facility. Often the UAV devices used are small and difficult to spot through conventional means of surveillance, as they do not follow traditionally examined trajectories to deliver their payloads. Perpetrators of these activities are very covert in their activities, cognizant of different anti-drones' activities and measures. Perpetrators that successfully deliver illegal goods into a prison system require little knowledge or training on UAV equipment. This is due to the vast majority of the market overflow of different drones offered by Chinese and other Small medium enterprises (SMEs). The offender often utilizes inexpensive commercially available multi-copter UAV devices with GPS stabilization and pre-set trajectory programs to deliver payloads of contraband to their targets within the prisons. These widely available units can be purchased easily by the public, without registration or tracking systems.

Although there are different measures tried by many countries, for example Implementing boundaries in operating of UAVs – the pilot has to be licensed the and go through some training, and similar, but not with a lot of much. Moreover, drones can be used for cyber-surveillance, to leverage drones' proximity to prison premises to turn the UAV into a jumping-off point to illegally access networks and systems, thus creating a new category of infection vector of cybercrime. One of the most simplistic but very effective tactics for targeting different institutions is using drones as rogue Wi-Fi access points (Staniforth, 2012, February 13). Finally, drones are prone to the same type of hacks as laptops or smartphones. Some of the hacking techniques include

password theft, Wireshark, Man-In-The-Middle (MITM) attacks, Trojan horse virus, Distributed denial of service (DDoS) attacks (Rani et al., 2015). Therefore, professional drones commonly used by government agencies and police forces can be remotely exploited by rogue hackers exploiting the vulnerabilities of their communication systems and protocols in case of the Internet controlled flights and point-to-point links.<sup>1</sup>

## 2. METHOD

The intention of the following case studies analysis was to determine which vectors were used by perpetrators in order to cause criminal activities, damages or abuses. Throughout carefully selected examples that are thoroughly examined in aspects of *modus operandi*, means and methods used regarding the offence, attack vectors and vulnerabilities targeted, we are trying to perceive the most exciting and most practical combination of those vectors. Examples analyzed in the case studies are those who are the most explored and researched, both by the press and authorities. Sources for research are not only publicized data and information released to the press by formal authorities, but also their public reports, as well as publicly available judgments. Cases were selected from different locations all over the world and in connections with different attacks vectors, from prison items delivered to war field engagement (especially different questions arise from different levels of engagement, that is, national, regional (EU level), and even the United Nations. The UN is not so thoroughly analyzed here but only mentioned. Therefore, war zone engagement is not the main focus of this paper, but engagement in the crime and criminal activities.

### 2.1 Case studies

Case study 1: (Case studies 1, 4-6 are extracts sourced from Markarian & Staniforth, 2020): Organized drug smuggling *via* drone into prisons (UK) - During 2017, eight members of an organized criminal gang that used drones to airlift and unlawfully deploy £500,000 (Great Britain Pounds Sterling) worth of drugs into prisons were sentenced on jail terms ranging from three to ten years. Over two years, drone pilots, drivers and lookouts had conspired with prisoners to smuggle drugs into seven jails,

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<sup>1</sup> One of the biggest stories of the year related to drone threats happened when drones attacked the world's largest oil processing facility in Saudi Arabia. This attack exposed the fragility of a significant global critical infrastructure. The attacks knocked out about 5% of global oil production immediately. Twenty-five drones and missiles were used in the attack that forced the kingdom to shut down half of its oil production (Reid, 2019, September 20).

including Her Majesty's Prison and Probation Service (HMP) Birmingham (BBC News 1, 2018, October, 26) and HMP Liverpool. Remote-controlled drones, equipped with a fishing line and hooks, were flown to cell windows where inmates, in various communication contacts with the pilot, used tools such as extendable broom handles to retrieve smuggled items. During the investigation, eleven drones, including some which had crashed, were seized during police inquiries into flights that also targeted HMP Wymott in Lancashire, HMP Hewell in Worcestershire (Wirral Globe, 2018, October 26), HMP Risley in Cheshire, and HMP Oakwood and HMP Featherstone in Staffordshire. Craig Hickinbottom, a 35-year-old prison inmate at HMP Featherstone in Staffordshire, and later HMP Hewell in Worcestershire, directed the large-scale and persistent operation from behind bars, for which he was sentenced to seven years imprisonment after admitting four counts of conspiring to bring contraband into prison, and conspiracy to supply psychoactive substances. Drone-pilot Mervyn Foster received a sentence of six years and eight months for his part in the enterprise. At a later trial of a further 13 conspirators connected to the drone-enabled supply of drugs in prisons, they were sentenced to prison terms from six months to ten years. The prosecution case also provided evidence that the increase of illegal drugs and the unauthorized mobile phone use in prisons had caused heightened levels of violence, an increase in self-harm and deaths, as well as allowing witness intimidation and illegal financial transactions.

Case study 2: Italian critical events: *Secondigliano* – April 27, 2020, at about 22:00 at Secondigliano Prison (Naples), a suspicious buzzing was heard, and a staggering drone spotted that was about to crash into the courtyard of a prison ward. The drone was broken, and officers of the Penitentiary Police seized it the same evening. It carried six mobile phones, four of the micro type and two smartphones, all correctly functioning, some SIMs and chargers (Pupia TV, 2020, April 28).

*Taranto* – October 25 2018, a thirty-two-year-old convicted in Bari, then detained in Taranto, and his organized crime group had planned to carry psychoactive substances and cell phones inside the local prison. The plan failed because the drone got stuck in a nylon thread used to lay the underwear, carrying about 280 grams of hashish, 2.5 grams of cocaine, two tiny cell phones, and the USB cable to recharge them (Pipoli, 2018, October 25). The drone had been driven from surrounding terrain by a woman who, in an attempt to make it as invisible as possible, had deactivated the flashing optical sensors, and was driven to the place of delivery through the flame of a lighter that the prisoner had lit from the window of his prison chamber. Because of this, and due to a gust of wind, the woman had not noticed the cable that caused the drone to fall inside the prison yard. The contraband substance was contained in some sausages and, along with mobile phones, was directed to a room on the third floor of the

surrounding house, in the maximum-security sector. Meanwhile, fireworks exploded in the area adjacent to the prison presumably to distract the attention of prison officers. All of the mentioned means were used to conceal and distract the attention of those looking so that the actual operation could succeed, and go unnoticed.

*Venice* – on July 2016, a tourist was trying to get aerial footage of the city, where drones are banned, but lost control of the mini aircraft, that accidentally landed near a group of police officers patrolling the area. Luckily, the 2kg drone fell in an area where there were not many people, and nobody was injured. Nevertheless, the perpetrator was prosecuted and fined for that activity (The Local, 2016, July 6).

Case study 3: Drone deliveries in Greek prisons - in Greece, on February 2, a small quadcopter drone sailed over a prison's high barbed wire fence, which is located at the city of Trikala, to make a delivery to prisoners. The prison's security personnel successfully intercepted the attempt to smuggle two packages/contraband containing mobile phones and related paraphernalia into Trikala prison using drones, Athens-Macedonian News Agency (ANA) sources revealed. The unknown perpetrators attempted to fly the drones over the prison and drop the packages during the night, but they were immediately discovered by prison staff. The items confiscated included phones, sim cards, chargers, illicit drugs. Prison staff subsequently also searched the prison cells, leading to the arrest of three inmates (The National Herald, 2020, March 2).

Case study 4: Mexican cartel drug smuggling border drone operations (United States) – During August 2017, US border patrol officers intercepted a drone-borne drug shipment when an agent in San Diego County heard the buzzing of a remotely-controlled aircraft coming over the border fence and contacted his fellow agents, who then found and arrested a 25-year-old man carrying 13 pounds of methamphetamine he had removed from the drone. Despite the best efforts of the United States law enforcement agencies to prevent the smuggling of drugs by drones through US-Mexico borders, which has included the establishment of specialized units to detect and combat all aerial drug smuggling, the use of drones as mules to transport illegal drugs continues to rise.

Case study 5: Critical national infrastructure rogue drone incursions in France (France 24, 2018, July 3). During 2014, France's state-run power firm Électricité de France (EDF) announced that unidentified drones had flown over seven nuclear powers plants during October, leading it to file a complaint with the police. EDF revealed that the uncrewed aircraft did not harm the safety or the operation of the power plants, stating that the first drone was spotted on October 5 above a plant in deconstruction in

eastern Creys-Malville. More drone activity followed at other nuclear power sites across the country between October 13 and October 20, usually at night or early in the morning (The Guardian, 2014, October 30). Greenpeace, whose activists have in the past staged protests at nuclear plants in France, denied any involvement in the mysterious pilotless flight activity. However, the environmental group expressed concern at the apparent evidence of "a large-scale operation", noting that drone activity was detected at four sites on the same day on October 19 – at Bugey in the east, Gravelines and Chooz in the north and Nogent-sur-Seine in north-central France. During July 2018, a Superman-shaped drone crashed into the EDF's Bugey nuclear plant in Bugey, near Lyon. Greenpeace said it had flown the drone - piloted by one of its activists - into the no-fly zone around utility EDF's Bugey nuclear plant and then crashed it against the wall of the plant's spent-fuel pool building to demonstrate its vulnerability to outside attack. Greenpeace stated that action demonstrated: "The extreme vulnerability of French nuclear structures designed in the 70s and not equipped for external attacks."

Case study 6: Terrorist and insurgent use of drones as Improvised Explosive Devices (IEDs) (Iraq) Islamic State (IS) first used drones to film suicide car bomb attacks which militants posted online as part of their propaganda campaigns to raise awareness of their cause and to recruit and radicalize others to their ranks. As their use of drone technology advanced, American and Iraqi military commanders revealed that Islamic State drones were employed to support direct action on the battlefield (Hambling, 2016, December 9). Throughout the summer of 2016, American troops in Iraq and Syria reported seeing small drones hovering near their bases and around the front lines in northern Iraq. The commercially available drones were being deployed for surveillance and reconnaissance by IS who also called on their followers to implant small store-bought drones with grenades or other explosives, directing recruits to use them to launch attacks on crowded places at the Rio Olympic Games. During 2016, Kurdish forces seized dozens of drones used by IS. One captured drone was thought to be able to provide intelligence on IS drone operations. Nevertheless, as they were taking it apart, the small Improvised Explosive Device (IED) contained inside detonated, killing two Kurdish fighters in what is believed to be the first time IS has successfully used a drone with explosives to kill troops on the battlefield. The drone IED attack has been recently followed by further IS drone operations, prompting American commanders in Iraq to issue a warning to forces fighting the group to treat any type of small flying aircraft as a potential explosive device (Schmidt & Scmitt, 2016, October 11). For some American military analysts and drone experts, the incidents confirmed their view that military authorities were slow to anticipate the terrorist adaption of drones as weapons. Militants of illegal armed groups attempted to stage a drone attack on the Russian airbase at Syria's Hmeymim on 22.12.2019 (TASS, 2019, December, 12).



Several swarm drones were driven to attack airfield and war technologies – military warplanes and helicopters. In this area, it is crucial to acknowledge that there has been a wide variety of UAVs implementation in counter-terrorism and counter-smuggling area. Usage of drones – UAVs in monitoring armed groups and trafficking of arms and to evaluate environmental challenges, including assessing damages from natural disasters (Better World Campaign (2013)).

Case study 7: Drone provocation on the football (soccer) match between Albania and Serbia in Tirana on Euro 2016 qualifier match held on October 2014 (BBC News 2, 2014, October, 15). This case is specific in the engagement of a few new tactics and techniques very resistant to police activities. It involved diplomatic services, untouchable due to diplomatic immunity, political influence, nationalistic background, as well as country and state agencies not being ready for such kind of attacks. Attacks were deliberately planned, and executed in order to create panic, riots and demonstrations. Carefully planning on the exploitation of rage instigated by drone bearing nationalistic and extremist symbols and maps and focusing on people mass hysteric reaction. In the end, it hit directly at the target – Serbian team was ruled out with defeat by official result 3:0 for Albania team, and the whole systematic activity was directed to produce that.

### 3. FINDINGS

Within these case studies, specificities could be observed through attack vectors, specialities' and targeted, exploited or attacked vulnerabilities. The intention is to present in one line all concerns, attack vectors and vulnerabilities that should be observed when thinking about proactive actions and preventive activities. Although these case studies did not have the same cultural, micro-social and linguistic similarities, and not even the same object of targeting; still, they have adequate similarities that can be used in abstracting the vectors while thinking about preventive countermeasures. The list of those is as follows:

Table 1. *Attack vectors - MOs – Vulnerabilities*

Attack vectors	Specialities'	Vulnerabilities attacked
Prison attack	Drugs smuggling, phone smuggling,	Inability to prevent drone attack, inability to detect and track drone, inability to intercept and engage with the drone in a manner to dismantle it or interrupt the attack

Prison attack	Drugs smuggling, phone smuggling, phone accessories smuggling, using detection avoidance techniques and measures, flashlight guidance to the target, concealing items in sausages, usage of fireworks in order to distract the attention of the authorities.	Inability to prevent drone attack, inability to detect and track drone, inability to intercept and engage with the drone in a manner to dismantle it or interrupt the attack, inability to detect and intercept various anti-detection techniques and activities,
Prison attack	Drugs smuggling, phone smuggling, SIM cards smuggling, phone accessories smuggling,	Anti-drone measures not present
Prison attack	Mobile driven UAV	Anti-drone utilities and measures absent
Cross border smuggling	Over the fence hovering, drop-off activity,	International Multi – agencies measures taken (creation of specialized units to detect and combat all aerial drug smuggling) but also exploited in order to probe the strength of those and find the weak links.
Nuclear power plant attack	Flying in the no-fly zone around utility EDF's Bugey nuclear plant and deliberately crashing against the wall of the building of spent nuclear fuel	Exploiting protective measures – in order to show their extreme vulnerabilities.
Terrorist and insurgent's usage	Support in direct action on the battlefield, Improvised Explosive Devices (IEDs) even as booby-trapped devices, drone operations	Using warfare tactics and exploiting not readiness of the targets, military authorities were slow to anticipate the terrorist adaption of drones as weapons.
Sports activity	Diplomatic services, untouchable for diplomatic immunity, political influence, nationalistic background, targeted	

	national pride, xenophobic line of people reactions	
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The above listed provides possibilities to think about different perpetrators and their thoughts on perpetrating a crime. Regarding the prisons – **most often attacked** are inner premises and means of defending the inner circle of the prison, and prisoners. Cross border smuggling is very similar in attack vectors with prison attacks in a manner of attack – the target is to cross a particular position in order to drop-off or deliver something. The following attack vectors are more warfare oriented. They are discussed here because of their inventive and already experienced attacks, and they should be further researched because of their possible future implementation in the real criminal surrounding. Nuclear power plant attack is very similar to the terrorist and insurgent exploits – in those the primary purpose is achieving some damage which could have a significant impact on the panic, terrorizing much more audiences than targeted aims. Cyber-attacks are oriented on the network intrusions, enabled by the drones, industrial exploitation. **Ways of attack – MOs**, used in the attacks are following: various means and methods of smuggling, detection avoidance techniques, flashlight guidance, means of concealment, means of distracting defences, over the fence hovering, different drop-off activities, flying in a no-fly zone of a nuclear power plant, crashing on the facility of spent nuclear fuel – nuclear waste facility, support at the warzone for the direct action on the battlefield, usage of improvised explosive devices, booby-traps for those investigating it, network intrusion exploits, new categories of cybercrime infection vectors, rogue access points, and infectious carriers of malware, remote exploits of different devices, swiping of targets data. Specific MOs also include diplomatic services that are untouchable because of diplomatic immunity, political influence, nationalistic background, targeted national pride, xenophobic line of people reactions. **Targeted vulnerabilities** are mostly as following: anti-drone measures and utilities with an inability to prevent drone attack, and to detect and track drone, or to intercept and engage with the drone in a manner to dismantle it or interrupt the attack, and inability to detect and intercept various anti-detection techniques and activities. The very interesting vulnerability addressed is multi-agency deployed measures exploitation in order to test their strength and find weak links; this is followed with deliberately probing of defence capabilities of a nuclear power plant by international non-governmental organizations, in order to expose extreme vulnerabilities. Warfare activities more than other best show the vulnerabilities in fighting different opponents with significant ingeniousness, and also a weakness of preventive measures taken. Cybercrime infection vectors are attacking insufficient security measures, confidence in employees and employers, BYOD (Bring Your Own Device) trust exploiting, Bluetooth wireless and other protocols, software, zero-day software and control vulnerabilities.

#### 4. DISCUSSION

In the literature, most of the Serbian researchers are addressing the issues of drone use from the point of observing the manner of their use, but not from a perspective of the protection from the drone attacks. In the regional context, many of our colleagues are researching the issue of UAS (even under the term drones) (Boštjan, 2016) and in the majority of cases, they are considering measures that should be taken within law enforcement agencies and their usability. The world literature review is tackling the issue of their societal and technological role (see Crotty, 2014; Finn & Wright, 2012; Perritt & Sprague, 2015; Sandbrook, 2015; Završnik, 2016a, 2016b on multiple roles that drones have in contemporary life), and further there is research on the law enforcement agencies roles and anti-forensic activities in the area of UAV implementation.

Forensic and intelligence aspects are also areas of a vast variety of research and elaboration (John & Maguire, 2007; Newburn & Reiner, 2012), but not much research is provided regarding the anti-forensic and counter-intelligence aspects. In an attempt to think about these measures and activities, it should be acknowledged that the use of UAVs by law enforcement agencies is intended to substantially enhance prevention by increasing their visibility and decreasing reaction time. Therefore, increasing prevention considers the visible presence of the UAVs in the area, but does not consider counter-drone (UAVs) capabilities. From that point of view, the following aspects should be taken into account (Skylock 2020; AARTOS, 2020): anti-drone jammers for countering any UAV threat, and drone detection systems deployed to detect and prepare for any UAV related threat and counter – UAV systems deployed to detect, prepare for and mitigate threats posed by unauthorized UAVs (like Skyforce or Dronelock – from Skylock or AARTOS Generation 6). This is important because of the displayed attack vectors and vulnerabilities attacked, and they were mentioned within presented case studies. Those can be targeted, and risk can be mitigated through the deployment of counter-drone measures and systems in order to prevent drone attacks by criminals. However, this is not the only aspect of risk mitigation measures. For correctional or penitentiary facilities (prisons) or other kinds of defended or guarded facilities or objects, it is of great importance to use existing systems – like security systems, or systems of physical security measures already deployed on the site and connect them with newest ones. In that way, mitigation measures will provide a compact and uniform system in order to counteract UAVs.

From the other aspect of the problem, there is a need to address anti-forensic activities of criminals and forensic activities of the state agencies in order to gather, secure and preserve the evidence existing in and on UAVs, since they represent digital crime scene

with enormous digital capabilities – GPS tracking evidence, photos, images, videos gathered, source code of firmware but also DIY devices source code. Anti-forensic activities used by criminals to counter forensic investigations include various online available tools, and they are not limited only to software leaning tools, even hardware tools are used. The latest and most severe anti-forensic tool includes hardware booby trapping of the UAV with explosive, in order to attack forensic staff or to destroy evidence (UAV). Therefore, the aspect of organizing effective and efficient defence from those attack vectors, and defending and solving of vulnerabilities must be discussed in the area of deployment of such system that is capable of countering all threats efficiently and effectively. That means that it must include a not only area of coverage, but must do it efficiently with countermeasures such as signals intelligence (SIGINT), communications intelligence (COMINT) and human intelligence (HUMINT) (Rohde & Schwarz, 2020; Steele, 2010). This should be done in a manner that creates a robust system capable of detecting and repelling such attacks and uses activities in order to gather evidence and prosecute masterminds and activists behind them. In that context, there are numerous commercial solutions available online, as well as in defence industries, and that should be considered when deciding how and what to deploy in countering such attacks. Areas of application should not be only limited to prison and penitentiary facilities, objects guarded and secured. Nevertheless, they should be further expanded on state agencies objects and facilities, and even human capacities in the field. This is very justifiable because of the presented attack vectors and vulnerabilities that can be exploited by perpetrators in order to attack law enforcement agencies.

## 5. CONCLUSION

Law enforcement agencies need to be prepared, equipped and fitted for actual threats of drone attacks. Whether it is an object that is protected, object area or subjects within the object, there is evident need to have a system for protection, early warning and reconning system. This system is capable of detection, apprehension, neutralization of the threat, and forensic system covering the evidence gathering. These systems have to fulfil all security and forensically sound standards. This means that they need to interconnect digital, security, and forensic measures in order to protect, repel and neutralize all threats covered by attack vectors, MOs of perpetrators and vulnerabilities targeted that are presented in our case studies. An essential part of these systems is a human factor, and these systems need to include various sensors and devices (including anti-AUV device) that cover and analyze signals in the filed.

Furthermore, the whole system should be cyber resilient to the attack vectors described earlier in the text. To be regionally friendly, we could say that it is a matter

of science fiction to think about such a system to be engaged in the area of Balkans. There are few reasons for this, such as its price for purchase and application, dependency to the different manufacturers and "spheres of influence" excluding NATO countries on the Balkans. Therefore, in a manner of covering real vulnerabilities and attack vectors, in our opinion, the objective approach must consider real capabilities of the countries in the Balkan region. Finally, bearing in mind findings from our case studies analysis, that means that particular, sectoral and partial approach should be deployed.

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## SECURITY ASPECTS OF FOSTERING THE DOMINANCE OF POLITICS OVER EDUCATION IN BOSNIA AND HERZEGOVINA

Review paper

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### Abstract

**Reason(s) for writing and research problem(s):** Bosnia and Herzegovina offers a unique opportunity to examine how education is evolving and adapting in the context of state-building and the extent of efforts made in a still ethnically divided society. It seems very important to examine the role that politics have played in education in Bosnia and Herzegovina throughout history, and the consequences that certain attitudes have had on the current security situation in the country.

**Aims of the paper (scientific and/or social):** This paper aims to determine the consequences of fostering the dominance of politics over education on current relations among citizens in post-conflict Bosnia and Herzegovina, and unveil the impacts of such relations on national security.

**Methodology/Design:** The following methods were used: analytical-synthetic methods, hypothetical-deductive methods, and also axiomatic and comparative methods and, from the data collection perspective, the method of document content analysis, as well as the case study method.

**Research/paper limitations:** The main limitation of this paper is the impossibility to provide a more detailed analysis for the period of 1992-1995. Namely, there are very few available materials that testify to the topic of education in this period.

**Results/Findings:** The results show that all authorities in the observed periods were aware that the ease of their rule and the repetition and maintenance of the ruling relationship depend to a small extent on the character of education. As a result, they carefully selected and prepared curricula and designed educational programs according to their preferences, thus proving the direct impact of politics on education.

**General conclusion:** The impact of politics on education in all three analysed periods of development of education in Bosnia and Herzegovina was confirmed. Given the persistent ethnic polarization, all countries in the region could make fair use of the Council of Europe's expertise, primarily in the areas of human rights, democratic citizenship and cultural diversity.

**Research/paper validity:** In scientific terms, the research is justified by the need to point out the consequences that the politicized, segregated, fragmented and decentralized education system in Bosnia and Herzegovina has on security issues.

**Key words:**

security, education, politics, Bosnia and Herzegovina

## 1. INTRODUCTION

Bosnia and Herzegovina, a multi-ethnic and multi-religious state, has been in the focus of peace and conflict research since its inception in the wake of the Dayton Accords that ended the Bosnian War, which lasted from April 1992 to December 1995 (Kivimaki, Kramer & Pasch, 2012). A quarter of a century after the end of the violent conflict, it seems that country itself is still unprepared to become a self-sustaining, functioning state, mostly since none of the three dominant ethnic groups (termed 'Constituent Peoples') – Bosniaks, Serbs and Croats – appear to accept Bosnia and Herzegovina (B&H) in its present form. Although the state should strive for reform processes and European Union accession, it remains paralyzed by many socio-political and economic challenges, which pose a significant hindrance to much-needed progress. The conflict narrative of B&H is concentrated on the 1992-1995 war. However, the origins of the use of education to spread intolerance are rooted in earlier historical periods.

According to Smith (2005), education concerning conflict and post-conflict areas can be viewed from several perspectives. First one is a political perspective, as a powerful tool for developing a particular ideology. Within this perspective, education can be used to develop liberal ideas, build a nation, and, in extreme cases, be a part of a process of indoctrination. Second, education can be seen as an instrument for creating and disseminating the knowledge and skills needed for economic development. Third, education is a mean by which social and cultural values are passed down from generation to generation, and, depending on the values in question, can result in the passing-on of certain negative stereotypes or attitudes that explicitly or implicitly call for hatred or violence, or even directly generate violence. Furthermore, Bush and Salterelli (2000) in their research have identified specific examples of abuse of education: education being used as a weapon in cultural repression of minorities (unequal access to education or the use of education to dissolve language, tradition, art, religious practice and cultural values); separate education systems being used to maintain inequalities among groups in society; denial of education as a weapon of war; manipulation of history and textbooks for political purposes; and education being used to instil attitudes of superiority, for example, through a description or portrayal of other people or nations as less valuable. As it will be presented in this paper, it can be

noticed that most of the above items are unfortunately evident within education in B&H.

Bosnia and Herzegovina faces a multitude of security issues, and this has been highlighted for years by numerous international institutions and organizations. What is particularly worrying and burdensome for the reality of B&H is the fact that the state has made minimal progress in post-war and social reconciliation. Such a situation gives rise to significant problems related to governance, the rule of law, and democratic accountability.<sup>1</sup> The analysis of security risks conducted by the Atlantic Initiative and the Democratization Policy Council in the period from spring to autumn 2011, assessed several factors affecting the potential for inter-ethnic violence and the resurrection of armed conflict in B&H. The analysis showed an increasingly frequent questioning of the state of B&H (Azinović, Bassuener & Weber, 2012). Some of the critical areas that could lead to the escalation of ethnic violence and the prolongation of the crisis that emerged in the 1990s highlighted by the authors include: incitement of political rhetoric and hate speech, by both political elites and the media; weak capacities of state institutions; economic crisis and polarization of the extremely rich and those on the brink of extinction, which can lead to social unrest; a security sector that lacks uniformity and coordination across all levels; a judicial system within which political influence has been proven to be exerted on several occasions; dissatisfied youth, who express their frustrations at football matches, but also through juvenile delinquency, hate speech and hate incidents; a returnee population whose exercising of their rights without the interference of security services is rare; and Islamist radicalization and terrorism. One somewhat disappointing aspect of this report is the fact that the authors referred only to Islamic radicalism, thus undeservingly ignoring other radical ideologies that undeniably also pose a threat to the security B&H and its citizens.<sup>2</sup> Also, a fascinating critical area presented by the authors is that of young people who express their frustrations at football matches, but also through juvenile delinquency, hate speech and hate crimes. This speaks in favour of the thesis that the manifestation of

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<sup>1</sup> In the 2015 OECD report entitled "States of Fragility 2015, Meeting Post-2015 Ambitions", B&H is included in the group of the 50 most unstable countries in the world. To measure instability, the OECD put forward a model consisting of five measures: violence; access to justice for all; effective, accountable and inclusive institutions; economic inclusion and instability; capacities for prevention and adaptation to economic, environmental crises, and disasters. The full report is available at <http://www.oecd.org/dac/states-of-fragility-2015-9789264227699-en.htm>, accessed 28 October 2019.

<sup>2</sup> The gathering of members of the Chetnik Ravna Gora movement in Višegrad in March every year is just one of a series of examples.

such phenomena among young people must be controlled and, if possible, prevented through the education system.

However, a study conducted by The Organisation for Economic Co-operation and Development (OECD, 2015) reported that the basic function of the curriculum in B&H is political, especially when it comes to history and mother tongue. The reality of B&H is determined by the post-conflict atmosphere, ethnonational incidents, the country's economic weakness, territorial divisions, and the coexistence of three major ethnic groups. Political leaders use this situation to propagate national ideas by which they seek to instil fear within their ethnic group to satisfy their interests through the fomenting of nationalism.

Abazović begins his book *State Security: Introduction and Basic Concepts* (2012) with a discussion of national security, stating that the security of a country is its "primary systemic activity", in essence "a state in which a balanced physical, spiritual, social and material survival of the individual and the social community with other individuals, social communities and nature". However, people in Bosnia and Herzegovina, as in other parts of South-eastern Europe, are undergoing a process of transition, within which contradictory value systems influence them. On the one hand, there are the collective and individual values that currently define them, which, together with democracy, have become an integral part of today's Bosnia-Herzegovinian society. At the same time, on the other side, there is a revival of traditional values that were discouraged during the time of the Socialist Federal Republic of Yugoslavia<sup>3</sup> Therefore, the question arises as to how to strike the balance that Abazović mentions in his definition and whether this is even possible.

The primary aim of this paper is to answer the question: *Can elements of fostering the dominance of politics over education be found throughout the history of education in Bosnia and Herzegovina, and what are the consequences of such an attitude?* Bearing in mind that in qualitative research, the subjects of study must be viewed developmentally and from the perspective of their layered historical dimension (Halimi, 1999, p. 29), this paper provides an analysis of the three phases of the development of Bosnia-Herzegovinian society, with particular reference made to education, and the impact and influence of politics upon it.

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<sup>3</sup> Also known as the Federal People's Republic of Yugoslavia in the period from its establishment in 1945. until the constitutional reforms of 1963.

## 2. ANALYSIS OF THREE PERIODS IN THE HISTORY OF BOSNIA AND HERZEGOVINA'S EDUCATION

What is very important for this analysis is that the current events and the current situation in B&H directly correlate to the turbulent past of the country, but also of the entire region. Therefore, it seems very important to analyse three crucial periods in the history of B&H 's education, in order to better and more clearly understand the current security situation and to try to find the roots of the problems facing B&H today. Davies (2004) concluded that an analysis of education in post-conflict areas before, during and after the conflict is of great importance in gaining an insight into the relationship of education to the conflict itself, and the consequences of such a relationship, as well as to determine opportunities for future action. By the above, the following table will serve as a basis for considering the three defined phases:

**Table 1.** *Recent historical phases in B&H (Kivimaki, T., Kramer, M. and Pasch, P. [2012]. The Dynamics of Conflict in the Multi-ethnic State of Bosnia and Herzegovina Country Conflict-Analysis Study Sarajevo: Friedrich-Ebert-Stiftung)*

To 1992: Pre-war society/mentality	1992-1995: Wartime society/mentality	1995-present: Post-war/Dayton society/mentality
"Brotherhood & Unity"; Focus on citizenship-based identity	Extreme nationalism; instrumentalization of religion for ethno-nationalist purposes; violence, ethnic cleansing	Focus on ethnicity/religion-based identity; segregation

### The first phase

The first phase covers the period between the two wars, from 1945. to 1992., when B&H, together with the other five republics (Slovenia, Croatia, Serbia, Montenegro, Macedonia), was a part of the Socialist Federal Republic of Yugoslavia (below Yugoslavia). "Tito's regime" was essentially a communist-socialist dictatorship, which went hand in hand with economic pluralism, freedom of travel, foreign exchange account, and relative intellectual freedoms" (Kivimaki, Kramer & Pasch, 2012). It arose from the struggle of the Partisans, the ability to provide a quality standard of living, and the position in the world as a bridge between West and East (Kaldor, 1999). The

Communist Party of Yugoslavia advocated "Brotherhood and Unity" among the Yugoslav peoples, and the notion of Yugoslavism was powerful in modern and secular B&H.

From the very beginning, i.e. since 1945, the goal of education was the promotion and development of the Socialist state. At the Third Plenum of the Communist Party of Yugoslavia held in 1949, it was defined that the goal of education should be "the formation of a universal educational system as a free construct of socialism, distanced from bureaucracy and stupidity" (Subotić, 1984, p. 112). In 1950, education was based on "scientific materialism" as a means of building a Socialist country (UNESCO, 1950, p. 247). The direct relationship between politics and education was well known and cultivated by Tito. As Filipović stated (1971, p. 512) "the dominance of politics over pedagogy is cultivated and accepted as a normal fact".

The Second World War made a lasting impact on the educational system of Yugoslavia, both in terms of the destroyed infrastructure and the loss of teaching staff. Of the 48,721 teachers throughout Yugoslavia at the beginning of the war, approximately 10,000 were killed or had left the country by the end of the war (Georgeoff, 1982). The Yugoslav government invested heavily in education's reconstruction, realizing that it was a tool for the reconstruction of the war-afflicted country, for its economic growth, improvement of general standards, and promotion of the ideological atmosphere of the time (Soljan, 1991, p. 133). By 1953, 85.5 % of the population had completed four grades of elementary school, while 36.5 % had completed eight grades (Central Intelligence Agency, 1990). By 1963, the percentage of the population with eight grades of elementary education had increased to 46 % (Jemuović, 1964). This growth was in large part due to the educational reforms of 1958, which were accompanied by the adoption of a new General Law on Education. These reforms included the precise definition of the structure and goals of education, incorporating some distinctly Western characteristics that were retained until the break-up of Yugoslavia. The mentioned law was "in line with social development to allow the system to influence new generations to participate in a creative way to the construction of a socialist society" (Živojinović & Zojica, 1959, p. 469). Through its goals of propagating socialism, social self-government and brotherhood and unity, political influence is visible. At the same time, the above-mentioned Western characteristics are visible through the treatment of students as an active factor in the educational process, and the discussion of all problems of school life and work within the classroom and school community. The new Yugoslav Constitution (1974) contained specific direct provisions on education that were to be applicable throughout Yugoslavia. All education was to be Marxist in its orientation, and serve Yugoslav economic and social objectives, as claimed by Georgeoff (1982).

The Preamble to the 1974. Constitution stated that: "The system of upbringing and education shall be based on the achievements of modern science, especially of Marxism as the foundation of scientific socialism, and shall be instrumental in training young people for work and self-management and educating them in the spirit of achievements of the Socialist Revolution, the socialist code of ethics, self-management democracy, socialist patriotism, [...] the equality of nations and nationalities and socialist internationalism" (Constitution of Yugoslavia, 1974). The 1974 Constitution also gave recognition to all languages in Yugoslavia: "The language of people and nationalities and their alphabets shall be the same throughout the territory of Yugoslavia" (Constitution of Yugoslavia, 1974, Article 246). This meant that members of all nations and nationalities had a right to instruction in their language, as defined by Article 171 of the Constitution. Accordingly, ten minority languages, in addition to the three main languages – Serbo-Croatian, Macedonian and Slovenian – were used in teaching (Farmerie, 1972). The objectives for education in Yugoslavia, in general, applied to elementary education and included the following: to increase and broaden Marxist ideology and orientation in education, to increase the relationship of education to work, partially through a more intensive program of labour education and political training, and to increase the active participation of the school in community activities, particularly in community cultural activities and sociopolitical work (Georgeoff, 1982).

As for B&H, it lagged behind other parts of Yugoslavia in terms of educational development (Tomich, 1963, cit. in Lanahan, 2017). However, economic development intensified very quickly in B&H, as a result of industrialization and the transfer of labour from farms to factories, resulting in an increased requirement for education that was accessible, compulsory and free for all citizens. The curriculum in primary schools included the social sciences, arts, physical and music education, mathematics, foreign languages, mother tongue, and vocational studies (Farmerie, 1972), while the curriculum in secondary schools varied depending on the type of school.

In June 1945, 97,116 students in Bosnia and Herzegovina attended 684 primary schools, which employed 1,288 teachers (Dizdar, 1996). By 1961, the illiteracy rate of the population of B&H had fallen to 32.5 %, but this was still considerably higher than the national average of 19.7 % (Federal Bureau of Statistics, 1961). As a way to combat such a flawed statistic, the slogan of the Bosnia-Herzegovinian government became: "A thousand new schools" (Dizdar, 1996), and by the 1960s, B&H had 2,948 schools, almost achieving the policy goal (Šušnjara, 2015). Also, in that period, B&H lacked a sufficient number of teaching staff and had to introduce teachers from other parts of Yugoslavia, mostly from Serbia and Montenegro.

After the fall of communism in the countries of Eastern Europe, Yugoslavia was economically abandoned by the United States, the economy collapsed, and ethnic tensions arose. In 1991, the independence of Slovenia, Macedonia and Croatia was declared, with Bosnia and Herzegovina following in 1992. Later, in 2006, Montenegro ended its union with Serbia, and finally, Kosovo declared independence from Serbia in 2008. As the most ethnically diverse part of Yugoslavia, upon declaring independence, Bosnia and Herzegovina almost immediately fell into a state of war (Duilović, 2004, p. 21).

To understand all the sensitivity of the conflict that befell the state, the period of war from April 1992 to December 1995 will be considered below. Although there is no intention here of explaining the war itself, the second phase that follows will identify the dividing lines within the population, and also consider the motives for the divisions that began to appear in the education system at the time immediately preceding the outbreak of war in B&H.

### **The second phase**

The second phase involves a period of war, from 1992. to 1995, that "is characterized by extreme nationalism, violence, and war incidents" (Kivimaki, Kramer & Pasch, 2012). At this stage of Bosnia and Herzegovina's existence, there was a visible explosion of nationalism; not only in B&H but also in other Central and South-eastern European countries. One attempt to explain the causes of ethnic or national violence leads to the conclusion that their roots should be sought in complex historical, religious and social factors (Clark, 2002; Skilling, 1966). Also, political leaders encouraged national discord and violence to continue to pursue their interests (Clark, 2002; Lewin, 1988). In the case of B&H, a combination of these two approaches could be applied: ethnicity is vital for people, and when the prevailing ideology of 'Yugoslavisim' faded, national political leaders very consciously introduced a 'culture of fear' to their ethnic group, using national propaganda to achieve their interests.

In March 1992, B&H, the most ethnically heterogeneous Yugoslav republic, declared independence, with international recognition following in its wake, after which war between the three dominant groups became almost inevitable. Strong ethnic instrumentalizations influenced war and crime (Nettelfield, 2010). Formally, the war in B&H began on April 6th 1992, although conflicts in some parts of the country began much earlier.



At the beginning of autumn 1992, three separate curricula were implemented. One was Serbian, adapted from the Republic of Serbia, another Croatian, which was imported from Croatia, with the third being Bosnian, and mainly a modified version of the pre-war education system of the Republic of B&H (The Bosnian Institute, 1993, pp. 4-9). In that period of the disintegration of Yugoslavia, all the countries that emerged had one goal; to create conditions for strengthening their national characteristics. This meant that the previous education system, which was unitary across all six countries, should be replaced by six new systems that would be unique to each state. According to Pašalić-Kreso (2008), the creators of such educational policies focused more on establishing differences from others than on providing the best possible education for their children. The results, as well as the holding of multi-party elections in B&H, among other things, meant the affirmation of existing processes in all areas of life, including education. Educational policies with a national slant aimed at strengthening national identity by affirming the national language and literature, national history, and religion became very desirable and highly applicable in places where one ethnic group represented a dominant majority.<sup>4</sup>

The education system in certain parts of the country depended on the army that conquered the area. Thus, in the areas conquered by the Army of Republic of Srpska, textbooks from Serbia were used, while textbooks from Croatia were widely used in those areas where the Croatian Defence Council had authority. However, what is especially characteristic for the analysis of the education system within the second phase is the fact that the newly formed ethnonational government of the territories controlled by the Army of Republic of Srpska set itself the first task of adopting the 1993 Law on Universities. By this Law, the University of Banja Luka has declared the state university of the Republic of Srpska. Such an endeavour can be understood as the desire of the then-government to use education as a fundamental means of fulfilling ethnonational goals by creating an ethnonational identity and its successful self-existence. Furthermore, the Academy of Science and Art of Republic of Srpska was also established by decree in 1993, amid the war. However, it was not officially constituted until 1996 as a physical entity financed from the public budget (Academy of Science and Art of Republic of Srpska, 2020).

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<sup>4</sup> "Overnight, the Serbo-Croatian or Croato-Serbian language and bilingual speech variants disappear and are replaced by Serbian, Croatian and Bosnian, with the corresponding Ekavian, Ijekavian speech variants, and a speech variant with accentuated use of the sound h" (Peco, 2008, p. 287).

Something similar happened at the same time upon the territories collectively known as Herceg-Bosna. Croatian flags in schools, and curricula and textbooks imported from neighbouring Croatia. An example that highlights the above is the school in Usora, near Tešanj, where Croatian teachers took all Croat children outdoors and held classes in the yard to separate them from the "others". A TV station interviewed students who attended such classes by chance immediately after the end of the war. From their answers, it can be seen that they believed that their capital was Zagreb and that their president was Franjo Tuđman (Pašalić-Kreso, 2008). This was a real proof of the consequences of the use of textbooks from neighbouring countries on education in Bosnia and Herzegovina. Immediately after the end of the war, Croatian representatives demanded separate schools, with the pretext of protecting the cultural identity and interests of Croats in Bosnia and Herzegovina (Magas, 1998, p. 20).

The territory under the control of the Army of B&H used curricula identical to those before the war, with the only difference being that affiliation with Bosnia and Herzegovina was more affirmed. Pašalić-Kreso (2008) states that the Bosnian education system also broadly promoted patriotism and introduced Islamic religious education in schools, this being found unacceptable by other ethnic groups at the time and undeniably presenting a form of discrimination.

In essence, the conclusion is that the influence of national policies and parties on education and the creation of three national education systems is highly evident. None of those mentioned above education systems paid a great deal of attention to building citizens and developing awareness of belonging to the state.

### **The third phase**

The third phase began with the signing of the Dayton Agreement,<sup>5</sup> when peace was established in 1995. Any systemic view of education in the post-war period of B&H must begin with an explanation and analysis of the structure and implementation of the peace agreement because the main challenge facing B&H in the post-war period is the structure of the Dayton Accords. This agreement was strong enough to preserve

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<sup>5</sup> The Dayton Peace Agreement, which formally ended the war upon the territory of the Republic of B&H, was initialled at the Wright-Patterson Air Force Base in Dayton, Ohio, in November 1995, and signed in December of the same year in Paris. This agreement completed the process of reintegration and disintegration of the country; society, as a supposed whole, was divided within the framework of forced unity, because the war ended without winners and losers (Kapo, 2012)

peace, while, on the other hand, it was flexible at the same time, enabling the necessary reforms of the police, defence, etc." (Office of the High Representative - OHR, 2005). However, the primary shortcoming of the agreement was the emphasis on a truce, leaving B&H in a 'frozen conflict' (Perry & Keil, 2012), where the issues that caused the conflict remained unaddressed, with the territory being divided between occupying forces (Magas, 1998). On the other hand, concerning education and other cultural policies, much room was left for discrimination and differing interpretations.

The unusual state structure created by the Dayton Peace Agreement has several adverse effects on the education sector. Pašalić-Kreso (2008) states that "from the very beginning, the Dayton Agreement created a decentralized, asymmetric and defective system of governance in education, which neglected the unity of education policy, common goals in education, common values, and positive and patriotic feelings for the country and homeland". The Constitution of B&H, which is an integral part of the Dayton Peace Agreement, i.e. its Annex IV, explicitly states that education is not the competence of the state.<sup>6</sup>

The education system of B&H, if it can be called a system at all, is highly complex, fragmented and decentralized, and lacking any fair horizontal and vertical hierarchy. Since its birth as a sovereign entity, B&H has had a decentralized, asymmetric and flawed education management system that has undermined unity in education policy, common educational goals, shared values, and positive and patriotic feelings for its country and homeland (Pašalić-Kreso, 2008). This situation is the result of a multi-layered government structure, with 13 different ministries of education; one for each of the two entities, each of the ten cantons, and a separate ministry for Brčko District. Such a structure has resulted in a "huge increase in bureaucracy in education and is a costly and inefficient system for such an impoverished country" (Pašalić-Kreso, 2008, p. 361), as B&H was, and unfortunately remains today. Thus, "Bosnia and Herzegovina – a country of about 4 million people – has a total of 13 ministries responsible for education" (Clark, 2010, p. 345). This extreme decentralization makes it impossible to

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<sup>6</sup> Article III, paragraph 1. of the Constitution of B&H defines the competencies of the institutions of B&H. The following matters are the responsibility of the institutions of Bosnia and Herzegovina: "(a) Foreign Policy; (b) Foreign trade policy; (c) Customs policy; (d) Monetary policy as provided for in Article VII; (e) Financing the institutions and international obligations of Bosnia and Herzegovina; (f) Immigration, refugee and asylum policies and regulations; (g) Enforcement of international and inter-entity criminal law, including relations with INTERPOL; (h) Installation and operation of common and international communication devices; (i) Adoption of inter-entity transport regulations; (j) Air traffic control. (OHR, 2020)

implement any policies for building a single state. Nineteen years ago, in 2001. to be precise, the Organization for Economic Cooperation and Development (2001) explained that education in B&H had become a "hostage of latent nationalism."

After seven years without coordination at the state level, in 2003, the Ministry of Civil Affairs was given the role of coordinating and supervising education in B&H (UNESCO, 2015), with the adoption of the Law on Ministries and Other Administrative Bodies of B&H (2016), which defines the competences of the state-level Ministry of Civil Affairs. Although the Ministry was given its role relating to this in 2003, the regulation of the education sector remained in the hands of the entities, cantons and Brčko District.

Such a decentralized education system poses a significant problem for the creation of uniform education policies, and thus generates many problems related to the determination of competences and responsibilities, and the coordination of activities. According to Branković and Arapović (2010), the essential characteristics of the situation in the education sector in B&H can be summarized as follows: a large number of laws regulating the education sector; the high degree of politicization present in the education system, both in management and through curricula; a high nominal share of education funds compared to GDP, but also an insufficient level of financial resources for quality education; complete neglect of scientific research work as part of the educational process; lack of adequate educational standards; curricula incongruent to the practice of EU member states; outdated equipment, lack of trained staff.

Namely, the problems present in education in B&H are multiple. Primarily during the post-war mass return, returnees in many places were faced with a ban on access to their children's schools. Temporary solutions to alleviate this included special schools for returnees being established within pre-existing school buildings. However, local authorities continuously blocked attempts to further fit into the new environment, leading to the formation of organizational units known as "two schools under one roof".

However, this type of school is only one of the indicators of problems that occur across the entire territory of B&H. Parents are forced to choose between assimilating their children in local schools or transporting them to schools in (often) distant settlements with another, national majority group. For parents who lack such an opportunity, the introduction of an alternative curriculum and textbook for the national group of subjects was made possible after the signing of the Interim Agreement on Meeting the Special Needs and Rights of Returnee Children in 2002. However, the study of subjects from the national group of subjects is, in practice, generally offered only in certain places, where large numbers of returnees and their descendants live (except Brčko

District of B&H<sup>7</sup>). Despite the Interim Agreement's insistence on finding lasting solutions for all children, education authorities have so far failed to join forces to fulfil this obligation (Organization for Security and Co-operation in Europe - OSCE, 2012).

Many international bodies have analysed this issue and made various recommendations (The European Commission against Racism and Intolerance (ECRI), the OSCE Mission to Bosnia and Herzegovina, and the UNDP, among others). However, the situation has remained unchanged, as evidenced by the findings of the latest available European Commission against Racism and Intolerance (ECRI) report on the current situation. Concerning the education sector, which should play a key role in overcoming inter-ethnic tensions, ECRI notes that none of its 2017 recommendations has been implemented and that the situation remains broadly unchanged. Except for the District of Brčko, and despite legal obligations, as well as previous commitments to integrate education, public schools in B&H are still not organized as multicultural, multilingual, open and inclusive institutions for all children. Ethnic segregation, based on the politicized notion of mother tongue education, is still present. The emergence of "two schools under one roof" is the most obvious form of this problem (Council of Europe, 2020).

Despite previous ECRI priority recommendations to resolve all remaining cases of this type of school, and the decision of the Supreme Court of the Federation of B&H in November 2014,<sup>8</sup> the authorities informed ECRI that this practice is still maintained in

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<sup>7</sup> In 1999, after previously being separated between the jurisdiction of the Federation of B&H and the Republic of Srpska, Brčko became a separate district, after arbitration finally resolved a situation that had, until that point, prevented reconciliation and prevented refugees from returning to the area. However, not everything went smoothly in the field of education in this part of B&H. Students who declared themselves as Serbs in 2000 caused significant unrest following their request for separate schools being rejected. However, the local law on education, adopted in 2001, provided for the gradual integration of schools and the harmonization of curricula. Similar to other parts of B&H, education reform had a plan to "integrate District schools, harmonize their curricula, and clean textbooks and teaching materials of offensive content" (International Crisis Group, 2003, p. 10). The model currently applied in the District includes the right of each student to choose the language by which to express themselves in school, as well as the right to choose which language is declared on their diploma transcript, and special attention is paid to the ethnic representation of teachers.

<sup>8</sup> Supreme Court of the Federation of B&H, Judgment no. 58 0 Ps 085653 13 Rev, 29 August 2014 (See more at [http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-postoC5postoA1kole-pod-jednom-krovom\\_01.pdf](http://www.vasaprava.org/wp-content/uploads/downloads/2014/11/Vrhovni-sud-Federacije-BiH-odluka-po-reviziji-dvije-postoC5postoA1kole-pod-jednom-krovom_01.pdf), accessed 4 September 2020)

many schools in the Central B&H -Neretva Cantons of the Federation. Separation of Bosniak, Croat and Serb school children into ethnically homogeneous schools remains a common practice throughout the country, both in the Republic of Srpska and the Federation, and no steps have been taken to end this, despite the European Commission against Racism and Intolerance 2017 recommendations (Council of Europe, 2017).

The possibility of establishing integrated education is shown by the example of the autonomous Brčko District. There are no longer divided in mono-ethnic schools in the District, with the joint teaching of children from different ethnic communities having been successfully implemented. Teachers in the Brčko District attend training to enable students and teaching staff to use each of the three official languages. In its report, however, the ECRI states that, already in 2014, during talks with the education authorities of the Republic of Srpska and various cantons of the Federation, a strong and politically motivated rejection of the idea that the Brčko District education system could be seen as a model for future integration was evident.

Outside the Brčko District, the positive steps taken by some schools – such as the grammar school in Mostar visited by the ECRI delegation – are primarily limited by the existing legal framework for the education sector, which upholds a separate language-based – and, by extension, ethnic-affiliation-based – classroom structure in the Federation and RS. Mostar's grammar school has made dedicated efforts to improve the situation, not only by initiating an administrative merger (one principal, a unified teaching staff, one Student Council and one Parents' Council) but also organized, as far as possible, joint activities for students, such as art projects, sports, festivities, and school trips. ECRI welcomes such initiatives but also points out that they are not sufficient in number, and that they continue to be exceptions, rather than the rule, across the state.

In 2017, the ECRI recommended the full implementation of a standard core curriculum across the country. The authorities informed ECRI that in some Cantons of the Federation of Bosnia and Herzegovina (one of the country's two entities, the other being the Republic of Srpska) activities related to the standard core curriculum have been implemented. However, these consisted of pilot projects and training activities. While such preparatory work is useful, it is not the full-scale application of the standard core curriculum that ECRI and other relevant bodies have repeatedly recommended. However, political objections to curriculum alignment remain strong, especially concerning the so-called 'national subject group', namely history, mother tongue and literature, geography, art and music.

A devastating fact is that, instead of abolishing separate schools, attempts have been made by authorities to extend discrimination to other schools. This problem was particularly pronounced in the summer of 2016 when the Central Bosnia Canton Government tried to divide students in Jajce.<sup>9</sup>

However, while schools that operate on the principle of "two schools under one roof" are seen as a problem in B&H on the one hand, on the other, an equally significant problem persists, that of ethnically homogeneous schools that do not provide opportunities for children and youths to learn about the traditions, religions and cultures of their co-citizens. Also, in most cases, returnee minority populations of any ethnic group face significant problems within the education system. The ECRI report is just one of several that addresses this topic and underlines the importance of this issue, but the authorities in B&H have taken no steps to implement recommendations addressed, and therefore no progress towards abolishing such practices has been made.

This creates a dire situation for B&H, a post-war multi-ethnic and multi-confessional state, in which everyone should be equal in terms of the opportunities provided by education. Breaking down barriers between children and eliminating discriminatory activities are essential factors for the well-being of children and youth in B&H, as well as for establishing a future in which everyone has the opportunity to attend classes with peers and be educated in a pleasant, well-meaning and safe environment.

### 3. CONCLUSION

If we summarize the current situation in the education system of Bosnia and Herzegovina, we conclude that education is not geared toward the function of social integration but, according to Perry (2015), a mere "continuation of the war by other means." The current ethnically determined and segregated education system is a consequence of the turbulent past that was created and continued with the goal of ethnic crystallization and determination. First of all, the paper shows and proves a direct relationship between politics and education at the time when Bosnia and Herzegovina was a part of Yugoslavia. Such a relationship was well known and

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<sup>9</sup> At the beginning of the summer of 2016, the government of the Central Bosnia Canton decided to build another high school in Jajce, in order to create conditions for the education of high school students to be divided along ethnic lines. However, the students rebelled against the decision of the elected politicians, with the decision eventually being reversed, showing the (occasional) success of grassroots activism in B&H as well. (Halimić, 2016, August 8).

cultivated by Tito. As Filipović stated (1971, p. 512) "the dominance of politics over pedagogy is cultivated and accepted as a normal fact". The General Law on Education of 1958 clearly defined the structure and goals of education, incorporating some distinctly Western characteristics that were in force until the break-up of Yugoslavia. This law was "in line with social development so that the system should have influenced new generations to participate in a creative way in building a socialist society" (Živojinović & Zojica, 1959, p. 469). Political influence is visible through the goals that propagated Socialism, social self-governance and brotherhood and unity. At the same time, the above-mentioned Western characteristic is visible in the treatment of students as an active factor in the educational process, and their inclusion in discussions of all problems of school life and work within the classroom and school community (Živojinović & Zojica, 1959, p. 474).

In the subsequent period, during the period of disintegration of the Socialist Federal Republic of Yugoslavia, all newly independent states had one goal: to create conditions for strengthening their national characteristics. This meant that the previous education system, which was unitary across all six countries, needed to be replaced by six new systems that would be unique to each state. According to Pašalić-Kreso (2008), the creators of such educational policies focused more on trying to achieve a difference from others than on providing the best possible education for their children. The education system in some parts of Bosnia and Herzegovina depended on the army that controlled the area. The conclusion is that, in this period, the influence of national policies and parties on education and the creation of three national education systems is evident. None of those above education systems paid a great deal of attention to developing citizens and their awareness of belonging to the state.

Regarding the final period analysed, that of post-conflict Bosnia and Herzegovina, the entire education system, as well as all the problems within it, have been subjected to more significant analysis. Many international bodies have tried for years to define and highlight the significant shortcomings of the education system, but progress in their rectification has been limited. Ethnic segregation, based on the politicized notion of mother tongue education, is still present. The emergence of "two schools under one roof" is the most obvious manifestation of this problem. However, while schools that operate on the principle of "two schools under one roof" are seen as a problem in Bosnia and Herzegovina on the one hand, on the other, an equally significant problem persists, that of ethnically homogeneous schools that do not provide opportunities for children and youths to learn about the traditions, religions and cultures of their co-citizens.



It should be concluded that all authorities and ruling governments in the periods of interest in this work, in the 20<sup>th</sup> and 21<sup>st</sup> centuries, have been acutely aware that the ease of their rule and the reproduction of the ruling relationship depends to a large extent on the nature of education, and have carefully crafted curricula and educational programs to their agendas and aims. Today's reality confirms the truth of this in Bosnia and Herzegovina, whereby national leaders wave educational programs in front of the public as being vital national interests.

Finally, education, as a vital segment of public life and civil society in post-conflict Bosnia and Herzegovina, needs reform, in order to achieve post-conflict justice and peace. Given the persistent ethnic polarization, all countries in the region could make fair use of the Council of Europe's expertise in this sector, thus improving their education systems, primarily in the fields of human rights, democratic citizenship and cultural diversity.

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## UNDERSTANDING THE MIGRANT CRISIS IN BOSNIA AND HERZEGOVINA

Review paper

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Kenan HODŽIĆ

### Abstract

**Reasons for writing and research problem(s):** The focus on migration processes has been dramatically intensified, both internationally and nationally. Often, this phenomenon undermines national and political unity. The inspiration for exploring this phenomenon was initially related to the local demarcations about the migrant crisis. People in the movement are becoming a more frequent occurrence in Bosnia and Herzegovina, and our country represents a transit destination to European countries, so it is essential to explain and shed light on the repercussions of this crisis and the (un)willingness of the state to respond to growing challenges that concern general public.

**Aims of the paper:** The scientific aim of this paper is reflected in the description of capacities in the conditions of the migrant crisis, taking into account the structure of the political and security system, and the relations and connections between these systems. The social aim of the paper is to present findings of the migrant crisis as a security and humanitarian risk with severe potential and to get acquainted with the key characteristics and risk factors arising from the migrant crisis.

**Methodology/Design:** Given the interdisciplinarity of this subject, to a greater or lesser extent, various general scientific methods are used, primarily the hypothetical-deductive method and the analytical-deductive method, the method of scientific findings, and the method of analyzing the content of documents, events and testimonies in terms of analysis coordination and readiness of relevant actors in Bosnia and Herzegovina.

**Research/paper limitation:** Tracking migratory movements requires considerable resources, infrastructure and IT/knowledge systems, therefore B&H's ability to collect, administer, analyze and report data on mobility, migration flow is often uneven and limited.

**Results/Findings:** In Bosnia and Herzegovina, different attitudes and approaches to the phenomenon of migrations are evident. In other words, authorities in Bosnia and Herzegovina do not apply harmonized migration policy.

**General conclusion:** Findings presented in this paper can contribute to a broader understanding of the framework of the dichotomy between the security (state-

centric) approach and the humanitarian (human-centric) approach of the migrant crisis in Bosnia and Herzegovina.

### Key words

migrant crisis, Bosnia and Herzegovina, institutional capacities, security approach, humanitarian approach

## 1. INTRODUCTION

The approach to researching this phenomenon will focus on two dimensions: the institutional capacity of Bosnia and Herzegovina (B&H) observed through the structure of the political and security system, and state managing migration flows of the "Balkan route" passing through B&H.

Migrations raise questions of human rights, international law and state sovereignty, and it is a hotly discussed, live and challenging issue in the contemporary politics of many states. The term "migrant" in this paper is used as a generic concept covering refugees, economic migrants and asylum seekers. Thus, the reason for which people choose to leave their countries and places of living has not been defined (war, economic conditions, coercion/voluntariness, environment degradation) (International Organization for Migration - IOM, 2016). Refugees are persons who have left their countries of origin due to a well-founded fear of persecution, conflict, generalized violence or other circumstances that have seriously disturbed public order and, as a result, in need of international protection.<sup>1</sup>

The migration wave of refugees from war-torn areas of Asia and Africa, most commonly from Syria, Afghanistan and Iraq, culminated in the biggest refugee crisis of modern times.<sup>2</sup> Generally, the use of the term crisis implies the expectation or possibility in principle of an ending, where normality is re-established. This may involve the restoration of the old status quo, or it may involve a wholesale transformation or selective reform/reorganization. Whatever their particular shape, however, crises are

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<sup>1</sup> The definition of refugees is set out in the 1951 Convention and regional instruments on refugees, as well as the UNHCR Statute.

<sup>2</sup> These so-called mass migrations of a measured type (refugees, asylum seekers and economic migrants, victims of smuggling and trafficking in human beings, women and children and other categories of vulnerable persons without valid documents) (IOM, 2016) are labelled in Europe as a "refugee/migrant crisis".

conventionally viewed as, by definition, an exceptional turn of events (Lindley, 2014, p. 2). The International Organisation for Migration, an inter-governmental organization, uses the term "migration crisis" to describe large-scale, complex migration flows due to a crisis which typically involves significant vulnerabilities for individuals and communities affected. A migration crisis may be sudden or slow in onset, can have natural or human-made causes, and can take place internally or across borders (IOM, 2012, p. 9). Also, the "Crisis Migration Project" focuses on movement in the context of humanitarian crises where there is a widespread threat to life, physical safety, health or bare subsistence that is beyond the coping capacity of individuals and the communities in which they reside (Martin et al., 2014, p. 5). In this paper, it will permeate two approaches which tend to foreground the vulnerabilities of people on the move, threats for communities and political-security systems in general.

A crisis of this type, which is still ongoing, has shown how much the process of globalization has changed the world picture in the last decade and how unprepared international institutions, whose main task is to protect human rights, are to face and solve more significant challenges, especially when it comes to a large number of human lives. Bobić and Šantić (2018) argue that Balkan region, characterized by the mass exodus of refugees in the 1990s, two decades later still retains the status of a significant "supplier" of the EU to some new migration flows, this time from more distant territories, and becomes a transit area.

It is evident that a large number of migrants, refugees and asylum seekers (people on the move) remained "stuck" in the countries of the Western Balkans at the time of writing, mainly due to restrictions on movement and other measures<sup>3</sup> to reduce the spread of the COVID-19 coronary pandemic.<sup>4</sup> The general epidemiological measures taken have closed the borders for all foreigners, including migrants, while some governments have introduced reduction measures aimed at migrants.<sup>5</sup> Previous, as the issue of sovereignty and identity, was emphasized, some countries decided to erect large fences,<sup>6</sup> which, due to the circumstances, turned the migrant route towards

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<sup>3</sup> Declaration of a state of emergency, ban on movement, curfew, ban on migrants leaving reception centres

<sup>4</sup> On March 11, 2020, the World Health Organization declared a pandemic of the Covid-19 coronavirus, which has spread to more than 180 countries around the world.

<sup>5</sup> The Belgian and German authorities, for example, have made decisions not to accept asylum applications (Mazzola and Martiniello, 2020).

<sup>6</sup> Bulgaria with Turkey in April 2015, Hungary with Serbia in September 2015, Macedonia with Greece in November 2015, Slovenia with Croatia in November 2015, Austria with Slovenia in

Bosnia and Herzegovina. A large number of migrants are housed in reception centres, a specific part of them are housed in abandoned buildings in cities where reception centres are located, and a smaller part of people on the move who have financial resources have rented apartments or rooms in which they temporarily stay. They became trapped in B&H, which is outside the Schengen area and had not been integrated into a comprehensive EU strategy. From 2018, Bosnia and Herzegovina, previously spared by the passage of migrants, has become a central crossing point on the Balkan route, due to the closure of neighbouring borders. Twenty-three thousand seven hundred fifty migrants were recorded in Bosnia and Herzegovina in 2018, compared to only 1,116 in 2017 (Terzić, 2018), told the director of Border Police of B&H.

The two key questions raised in this paper are: do we have sufficiently well-designed efficient and sufficient institutional capacities to deal with the current humanitarian and security challenges of the migrant crisis and is it necessary to further strengthen Bosnia and Herzegovina's migration policy? The answers to these problematic questions will enable us to see the capacities but also the conditions that may harm the further development of this migrant crisis.

There was a continued increase in the number of migration-related academic publications, with the largest ever academic output produced during the last two years (IOM, 2020). So far, research about B&H on the migrant and refugee crisis has been done but from the point of view of collecting statistics on the number of migrants, seeking international asylum, countries of origin of migrants, their final destinations, dealing with vulnerable categories, mostly women and children, children unaccompanied, and statistics on smuggling and trafficking in human beings, mostly by the UNHCR, IOM, OSCE, FRONTEX and others. However, in order to illustrate the framework and needs of the security and humanitarian approach of BiH migration policy, it is necessary to penetrate much deeper into the issue. It is worrying that people of unfortunate destinies have been pushed into life insecurity with a broader negative discourse that is increasingly taking on a bad connotation.

General attitudes toward immigration remain polarized, while hostile anti-immigration political rhetoric continues to take centre stage in several national elections across Europe (Diamant and Starr, 2018). A 2018 European Commission survey found that four in ten Europeans view immigration as more of a problem than an opportunity



(European Commission, 2018b). In a separate survey conducted in 10 EU countries,<sup>7</sup> by the Pew Research Centre, more than half of respondents said they want fewer immigrants in their countries (Connor and Krogstad, 2018). McAuliffe (2018) highlights that we are increasingly witnessing the harnessing of social media as a means of division and polarization, not just on migration, but at certain times we have seen the deployment of online "tribal tactics" by activists attempting to depict migration in a harmful and misleading light. Several analyzes of media reporting in B&H show that a specific part of the domestic population is prone to negative perceptions of people on the move, where they are exposed to particular media criminalization.<sup>8</sup> There are many examples of media that publish stereotypes and misinformation about migrants and refugees (UNHCR, 2018). According to Ahmetašević (2020), "the media in B&H are more megaphones of the government than tools in the service of the public, and with their reporting and transmission of messages of intolerance, they helped spread panic and fear, which resulted in violence." In this regard, special attention should be paid to the possibility of resistance of the local population towards migrants and refugees and the possible escalation of the conflict with the local population (Maksimović, 2020), which could lead to mass protests by citizens. Sure, that rise of the negative attitude towards migration in the world leads to the unsuccessful implementation of good migration policies, which would make a positive contribution to the management of migration flows.

## 2. SPECIFICS OF BOSNIA AND HERZEGOVINA IN THE STUDY OF MIGRATION MOVEMENTS

The Constitution of Bosnia and Herzegovina<sup>9</sup> is one of the most complex constitutional documents for which the international community gave its approval 25 years ago. It represents a decentralized model of how the state should be organized and transfers important jurisdictions and functions of the government to the two entities that make

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<sup>7</sup> The 10 EU countries surveyed included Greece, Hungary, Italy, Germany, Sweden, Poland, France, the Netherlands, the United Kingdom and Spain.

<sup>8</sup> Antimigrant is a radical website that publishes hate speech and misinformation about migrants and refugees in BiH and even calls for direct attacks on this population. Modus operandi is copying and transferring a member from other media about migrants and refugees with a change of title to sound provocations and discriminatory calls for direct attacks on migrants and those who help them. In addition to hate speech about migrants, antimigrant.ba publishes misinformation about specific persons, institutions and organizations that operate in BiH and help refugees and migrants (Sokol, 2019).

<sup>9</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina signed on 14.12.1995.

up B&H, ie. The Federation of B&H and the Republic of Srpska, but also leaves to state bodies administrations that are vital for the functioning of the modern state. Those two entities, ten cantons, and an autonomous region Brčko District have its governments. There is a separate government at the state level and a three-member presidency which indicate that complex political structure is one of the reasons believed to be hindering efforts to cope with the looming migrant crisis.

On the other hand, B&H is a country historically characterized by a high emigration rate, as evidenced by the latest World Migration Report (IOM, 2019) where, in addition to Lithuania and Latvia, B&H experienced the worst population decline (more than 10%). Apart from two significant waves of emigration, labour migration in the 1960s and 1970s and forced migration caused by the war of the 1990s, B&H continues to face continuous emigration of the domicile population, caused by the poor economic situation in the country (Ministry of Security BiH, 2016). In March 2016, the B&H Council of Ministers adopted a migration and asylum strategy and action plan for 2016-2020. The strategy was prepared in the light of the implementation of the stabilization and association agreement (SAA) with the EU that had entered into force in June 2015. European Union is made up of countries that have a clear foreign policy of its own but seems that Union does not have a particular political force to respond jointly to the migrant crisis.<sup>10</sup> Regarding that, Lhoumeaum (2019) thinks that crisis "placed the region high on the agenda, underlining the importance of the region strategically and security-wise" and EU showed a more profound will to engage in the region, by the re-activation of enlargement mechanisms and the implementation of cooperation mechanisms. On the other hand, migration routes are changing as migrants still want to reach European territory. The migration trends are essential since they point to broader problems involving political stabilization and the unfinished transition process in the Western Balkans (Bonifazi et al., 2014). As Vale (2018) pointed out: "the EU passes the buck to Bosnia and Herzegovina".

Further, it should be noted that the geographical position of B&H is specific because it is located at the crossroads from east to west, which makes it suitable for the transit of migrants on their way to European countries. The Migration Profile of B&H is a document that aims to provide insight into key trends in the field of migration, enable

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<sup>10</sup>Different migration policies marked the migrant policy and served as either a positive or negative example to other countries in approaching this challenge. Tatalović and Malnar (2016) state that Germany, through the policy of guaranteeing the right to asylum and humane acceptance and treatment, has become attractive to migrants, which is a positive example, while Hungary with the policy of raising the fence on external borders is the opposite example.

the development of quality policies and the adoption of appropriate regulations in the field of migration and asylum. The Ministry of Security of Bosnia and Herzegovina (2020) points out that in the fourth quarter of 2017, B&H encountered mass illegal entry of migrants into its territory, and the trend of illegal entry intensified in 2018. and 2019. In the specified period, the competent authorities for the area of migration in B&H, they identified the following routes that illegal migrants use most often to pass through B&H: a) Greece - Albania - Montenegro – B&H - Croatia and further towards other EU countries; b) Greece - Macedonia - Serbia – B&H - Croatia and further towards other EU countries; c) Greece - Bulgaria - Serbia – B&H - Croatia and further towards other EU countries. More precisely, data on illegal crossings and attempts at illegal crossings collected by the Border Police of B&H in 2018, indicate widespread reception of entry, and there are three main movement directions of migrants: a) one from Serbia to Bijeljina; b) the second from Serbia towards Višegrad and Zvornik and c) the third from Montenegro towards Trebinje, Bileća and Gacko, lately also towards Foča (Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, 2019).

### **2.1. Institutional capacities for the migrant crisis**

Within the institutional framework for the migrant crisis in B&H, we will analyze the key B&H institutions which, according to the Constitution, international law and domestic legal and by-law framework, represent responsible subjects and holders of migration policy. There are four ministries within the Council of Ministers of B&H (Ministry of Security, Ministry of Civil Affairs, Ministry of Foreign Affairs and Ministry of Human Rights and Refugees), as well as some administrative organizations within the Ministry of Security of B&H and a particular inter-ministerial body - Coordination Body for Migration in B&H.

The Decision on the Establishment of the Coordination Body for Migration Issues in Bosnia and Herzegovina<sup>11</sup> establishes an inter-ministerial body in charge of coordinating activities between competent institutions dealing with migration and asylum issues in B&H. Leading civil and police officers from the Ministry of Security (Service for Foreigners, Border Police of B&H, State Investigation and Protection Agency, Immigration Sector and Asylum Sector), Ministry of Human Rights and Refugees of B&H have been appointed to the Coordination Body for Emigration and

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<sup>11</sup> *Official Gazette of B&H*, No. 10/13, 64/13, 01/14, 20/16 and 83/17

the Sector for Refugees, Displaced Persons, Readmission and Housing Policy) and the Ministry of Foreign Affairs (Sector for International Legal and Consular Affairs).

The Ministry of Security of B&H is one of the nine ministries within the Council of Ministers of B&H as Law on the Council of Ministers prescribes (2008) in Art. 5. Its existence is not explicitly outlined in the B&H Constitution. The Ministry of Security of B&H is responsible for: (1) protection of international borders, internal border crossings and traffic regulation at &iH border crossings; (2) the prevention and detection of perpetrators of the offenses of terrorism, drug trafficking, counterfeiting of domestic and foreign currency and trafficking in human beings and other criminal offenses with an international or inter-entity element; (3) international cooperation in all areas within the jurisdiction of the Ministry; (4) protection of persons and objects; (5) collection and use of data relevant to the security of BiH; (6) organization and coordination of activities of the Entity Ministries of Interior and the Brčko District of B&H in accomplishing security tasks in the interest of B&H; (7) implementation of international obligations and cooperation in the implementation of civil protection, coordination of the activities of the entity civil protection services in B&H and harmonization of their plans in case of natural or other disasters affecting the territory of B&H and adoption of protection and rescue programs and plans; (8) creates, takes care of and implements the policy of immigration and asylum in B&H and regulates the procedures related to the movement and residency of foreigners in B&H; (9) regulate the procedures and manner of organization of the Service in connection with the movement and residency of foreigners in B&H; (10) providing support to B&H police authorities; (11) education and professional development of staff in accordance with the needs of B&H police bodies and other offices and agencies in the field of security and (12) forensic examinations and expertise, as we see in Art. 14 of Law on Ministries and Other Administrative Bodies of B&H (2009). Today, the Ministry of Security of B&H consists of seven administrative organizations: (1) Directorate for Coordination of Police Bodies of B&H; (2) B&H Border Police; (3) State Investigation and Protection Agency; (4) Agency for Forensic Examinations and Expertise; (5) Agency for Education and Professional Development of Personnel; (6) Police Support Agency and (7) Service for Foreigners. The Ministry of Security of B&H, in cooperation with other institutions and agencies, undertakes daily activities following the Action Plan of Emergency Measures and the conclusions of the Presidency of BiH, the Council of Ministers of BiH and the Coordination Body for Migration in Bosnia and Herzegovina (Atlantic Initiative, 2020). The Service for Foreigners Affairs is an administrative organization within the Ministry of Security of B&H, defined in Art. 2 of Law on Service for Foreigners Affairs (2008), with operational independence for conducting business and resolving issues within its jurisdiction. It was established to perform administratively, and inspection tasks prescribed by the Law on Asylum and more specifically deals with the activities

of the movement, residency of foreigners, and asylum which also includes inspection supervision and control of the movement and residency of foreigners; conducting administrative proceedings to resolve applications for residence permits for foreigners; placing foreigners residing illegally in B&H under surveillance; deportation/return of foreigners who have been issued a final decision on removal; security checks of foreigners when deciding on the issuance of visas, collection of information on illegal migration and migrants.

At the headquarters of the Service, in addition to the Director, Deputy, and Assistant Directors, there are three primary organizational units - sectors: Sector for Operational Support, Sector for Administration, and Sector for Readmission, Reception, and Accommodation. The basic organizational units at the headquarters of the Service also include the Service of the Director, the Service for Strategic Planning, Analysis and Statistics, and the Service for Internal Control. In addition to the headquarters of the Service, there are also field centres that represent organizational units outside the headquarters of the Service. Field centres perform inspection supervision over the implementation of legal provisions that regulate the issues of movement, residence, and employment of foreigners and administrative-administrative tasks determined by the Law on Movement and residency of foreigners and Asylum. There are a total of 16 field centres located in cities and municipalities throughout B&H: Sarajevo, Banja Luka, Mostar, Bihac, Tuzla, Trebinje, Zenica, Bijeljina, Brcko, East Sarajevo, Doboje, Travnik, Gorazde, Orasje, Livno and Ljubuski. In addition to the above structures, the Service also has an Immigration Center. The Immigration Center is a specialized institution for the reception and accommodation of foreigners who have been ordered by the decision of the competent authority in BiH to be placed under supervision under the Law.

Vranješ (2018) underlines that The Service for Foreigners has significant organizational and structural capacities for the implementation of migration and asylum policy, but only in the usual regime of migration and not in conditions of migration crises.

According to the Law on Asylum (2016), foreigners are protected by the principle of non-refoulement from returning to a country where there is a real risk of death or execution, torture, inhuman or degrading treatment or punishment. In the asylum procedure, it examines the validity of the reasons for granting refugee status in B&H to an applicant who has serious reasons to face a real risk of persecution due to race, religion, nation, political opinion, or belonging to a particular social group if he returns to the country or in or country of usual residence. Furthermore, in the asylum application procedure in B&H, special attention is paid to the examination of the existence of reasons for compliance with the principle of non-refoulement in the

context of granting supplementary protection, subsidiary protection. The conditions for granting subsidiary protection to an alien are examined by the Ministry of Security - Asylum Sector in the asylum procedure after it is determined that the foreigners do not meet the conditions for granting refugee status. In this regard, subsidiary protection is granted to a foreigner who does not qualify for refugee status if there are serious grounds for believing that returning to the country of origin or country of habitual residence will confront a real risk of severe violation of human rights and fundamental freedoms.

Furthermore, the Ministry of Human Rights and Refugees of B&H is responsible for monitoring, implementation, promotion, and protection of personal and collective human rights and, among other things, for the care of the rights and issues of refugees and persons under subsidiary protection in B&H after determining their status (Law on Ministries and Other Administrative Bodies of B&H, 2009).

## **2.2. Short observational view on the migrant crisis**

All international migrations can be divided into two categories: involuntary or forced (also called refugee movements), and voluntary or free (also called economic migrations) based on the motivation behind the migrations. Involuntary or forced migration refers essentially to refugee flows, where for reasons of natural disaster, war, civil war, ethnic, religious or political persecution people are forced to flee their homes (Bali, 2008, p. 475).

Institution of the Human Rights Ombudsman of Bosnia and Herzegovina emphasizes the fact that Bosnia and Herzegovina is facing the process of the so-called mixed migrations. Therefore, there are foreigners who are looking for better living conditions or the so-called economic migrants (citizens of Pakistan, Iran, Iraq, Morocco, Tunisia, Algeria, Libya, Afghanistan) and foreigners seeking asylum/persons under international legal protection (Syria) (Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, 2019).

Schmeidl (2016) researched the migration of 3.9 million Afghan international migrants which are displaced across borders due to the conflict and violence in Afghanistan that has grown and subsided since the 1970s. Major migration corridors include Bangladesh–India, Afghanistan–Pakistan, India–Pakistan and Nepal–India; however, it is essential to note that these corridors are all quite distinct, reflecting a range of historical and contemporary economic, security and cultural factors. There are millions of Bangladeshi and Nepalese labour migrants currently working in India, for example,

primarily in the informal sector as construction labourers and domestic workers. In contrast, the India–Pakistan corridor in part reflects the mass displacement following the 1947. Partition of India and Pakistan (Srivastava and Pandey, 2017). Regions including Europe, Northern America and Oceania are among the most preferred destinations of irregular migrants from Southern Asia (McAuliffe and Jayasuriya, 2016). For example, migrants from Southern Asia heading to Western Europe are primarily smuggled through Central Asia and the Russian Federation, as well as through the Middle East into the Western Balkans (Sengupta, 2018).

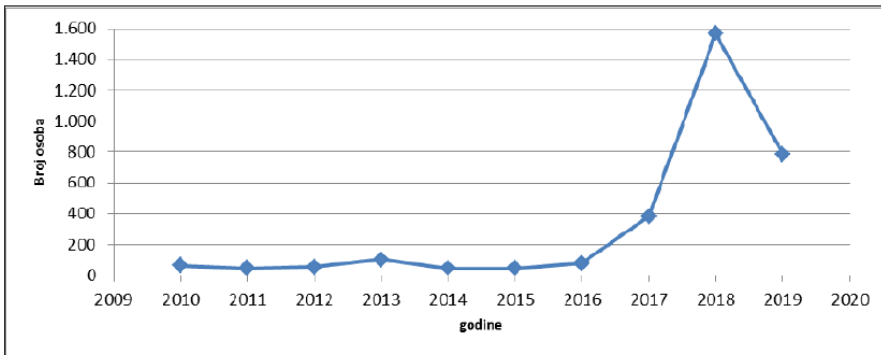
An analysis of data for the last two years shows that the largest number of illegal migrants from Pakistan, Afghanistan, Iraq, Morocco, Syria, Bangladesh, Algeria, and Iran, account for 87% of the total number of illegal migrants in 2018. and 2019. Also, in 2019. there is a significant increase in the number of citizens of Egypt, Morocco, Bangladesh, Algeria, Eritrea, Tunisia, Turkey, Nepal, Albania, Afghanistan and Pakistan, as well as a decrease in the number of citizens of Iran, Libya, Palestine, Syria, and Yemen. This indicates that most people who enter illegally the territory of B&H are mostly economic migrants and that the trend of economic migration is increasing. Taking into account that Pakistani citizens are the most represented among migrants, the Council of Ministers of B&H determined the Proposal of the Readmission Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Islamic Republic of Pakistan and the Proposal of the Protocol between the BiH Ministry of Security and the Ministry of Interior of Pakistan (Atlantic Initiative, 2020). To understand the level of complexity, we will try to illustrate what is going on when a foreigner enters the territory of B&H.

Speaking about obtaining asylum (refugee status and subsidiary protection), whose procedure is prescribed by Art. 19-51 of the Law on Asylum (2016), B&H has a relatively liberal approach, harmonized with European regulations. What eventually attracts special attention is the fact that a person who has been granted refugee status can acquire B&H citizenship without fulfilling the whole set of conditions (knowledge of language and script, renunciation of existing citizenship) if he/she has been a refugee in B&H continuously for five years before the application, according to Art. 12. Furthermore, a foreigner may acquire B&H citizenship, among other conditions, if he/she has been granted a residence permit on the territory of B&H for at least three years before applying. Vranješ (2018) believes that the conditions set in this way create exceptional opportunities for migrants to obtain B&H citizenship in a reasonably quick and easy way, which other countries do not allow even remotely, and states that this is a particular problem from the aspect of migrant crisis if migrants decide to stay in B&H.

A person who has expressed an intention to apply for asylum is issued a certificate of expressed intention to apply for asylum with a validity period of 14 days (the deadline provided by the Law on Asylum). Within the specified period, the foreigner must submit an asylum application to the Asylum Sector of the Ministry of Security of B&H. According to Art. 32 of Law on Asylum expressing the intention to apply for asylum in B&H is an instrument that enables the right to residency on the territory of B&H during its validity.

Afterwards, Bosnia and Herzegovina provides a person with certificate of intent that lasts 14 days, which presents the legalization of residency. During that period, persons are sent to an appropriate centre or institution to apply for asylum or otherwise, they need to leave the country.

Graph 1: *Asylum application trends* (Ministry of Security BiH, 2020)



In previous graph 1., in 2017, there was a sharp increase in the number of asylum seekers by 382%, where the largest number was recorded from Algeria, Pakistan, the Syrian Arab Republic, and Afghanistan (Ministry of Security BiH, 2020). In 2018, a total of 23,902 illegal migrants were reported to the Service for Foreigners. Out of a total of 23,902 registered illegal migrants, 22,499 persons expressed their intention to apply for asylum in B&H in 2018. An asylum application was submitted by 1,567 persons or 7% of the total number of expressed intentions to apply for asylum in 2018. In 2019, a total of 29,302 illegal migrants were reported to the Service for Foreigners, which is an increase compared to 2018 by 22.59%. It is also evident that the largest number of illegal migrants were recorded in the period April - October because, in that period, weather conditions are the most favourable for their movement. Out of a total of 29,302 registered illegal migrants, 27,769 persons expressed their intention to apply for asylum in &iH in 2019. Asylum applications were submitted by 784 persons or 3%



of the total number of expressed intentions to apply for asylum in 2019 as shown in Graph 1., so it means that there is a decrease in the number of asylum seekers compared to 2018 by 50%.

This trend is supported by previous secondary data showing the gap between the intention to seek asylum and the applications submitted, as well as from data indicating the number of rejected asylum applications due to the "disappearance" of asylum seekers. The search for asylum in the countries of the Western Balkans and escape after that, continues to grow as part of the well-known *modus operandi* when moving from Greece to other European Union countries (secondary migration flows) [Frontex, 2014, p. 16]. It is necessary to consider that increased powers for Frontex and further eventual tightening border controls will not stop people coming to Europe. Such measures will simply divert migrants to less well-policed entry points and increase their reliance on people smugglers, as Hampshire (2015) noticed. According to Ministry of Security B&H (2020), the difference between the number of expressed intentions to apply for asylum and submitted asylum applications presents a direct indicator of the abuse of the asylum system in B&H by legalizing illegal residency in B&H. In other words, migrants express intent to seek asylum in B&H for a certain period of time and then use that for illegal departure to EU countries.

### 3. BURDEN OF BOSNIA AND HERZEGOVINA VERSUS SECURITY THREATS AND RISKS

When some issue becomes an object of security concern, it is "presented as an existential threat to a designated referent object", which leads to the securitization and justification the use of extraordinary measures to handle them (Buzan et al., 1998, p. 21). The securitization of migration, a view of migrants as terrorists and criminals, Huysmans explains, is related to a broader politicization in which immigrants and asylum-seekers are portrayed as a challenge to the protection of national identity and welfare provisions (2000), or in the case for B&H presented as a security challenge. Due to political disagreements, B&H finds it challenging to dig up a solution to manage the crisis effectively.

The primary goal of controlling migration movements in B&H is to establish effective control over the entry, stay and movement of foreigners on state territory while ensuring all guaranteed human rights and freedoms of persons under the legal jurisdiction of Bosnia and Herzegovina (Ministry of Security of Bosnia and Herzegovina, 2016).

These are mainly foreigners who entered or are entering B&H without any identification documents, in places that are not intended for crossing the state border, and they move from one state to another in violation of the legal regulations of the state they are entering, that is, against the will of the bodies of the state whose territory they are entering. Most of these persons have expressed their intention to seek asylum, although, for them, B&H is mostly a country of transit (Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, 2019).

Given that migrants can conceal their real identity and country of origin during migratory movements, it is questionable how obvious the threat is that perpetrators of various crimes, as well as terrorists, can take advantage of such benefits and infiltrate migrants and use their routes to switch to countries where they plan to carry out terrorist attacks. Genc (2017) reveals that migrations are securitized in the EU by the use of three related themes on internal security, cultural security and the crisis of the welfare state. Further, he states that these themes have been used to depict migrants as potential contributors to terrorist activities and organized crime; as a threat to the cultural identity of society because of their different cultural background; and as people who reap the benefits of the welfare system illegitimately and who commit welfare fraud to exploit the system. EUROPOL (2016) points out that the continued immigration pressure on the EU, combined with previous terrorist attacks in Europe, raises excellent concerns that the routes of illegal migrants could be used for the return of radicalized foreign fighters to the EU. Mullins also points to the problem of terrorist infiltration among refugees and asylum seekers, who have arrived in Europe since 2011 and are responsible for carrying out at least 13 terrorist attacks in 7 European countries (2019).

Having in mind the geopolitical position of B&H, the specificity of the green border, and risk analysis, various security threats are identified: threats in the field of border checks and threats in the field of state border control (Council of Ministers of B&H, 2019). The B&H Border Police conducts border checks at 83 international and border crossings, which is why about 85% of police officers are engaged at border crossings, while the rest control the border zone. Extraordinary engagement of people also includes logistical support: providing vehicles for patrols, fuel, surveillance, and monitoring equipment, accommodation facilities, food, as well as other costs. According to the systematization, where 2,426 police officers are planned, the B&H Border Police lacks 401 police officers to perform regular activities in border control (Border Police, 2020).

Also, the challenges faced by the B&H Border Police in the field of border checks are lack of necessary infrastructure at some border crossings, an insufficient number of

police officers working on the first and second line of border checks, insufficient technical equipment with specialized technical equipment for detecting forged documents and inspection hidden spaces on vehicles, an increase in the number of misuse of documents, (travel documents, visas, identity cards), and the current migrant crisis (Council of Ministers of B&H, 2019).

The Service for Foreigners' Affairs is responsible for initiating and conducting the procedure for establishing the identity of foreigners in B&H. If the procedure for determining the identity of foreigners has been initiated by the Border Police of B&H or the police, and it cannot complete it within six hours, the Service for Foreigners should be notified. A foreigner who does not have proof of identity is obliged to give a statement of his identity to the Office for Foreigners' Affairs and to provide biometric data. Further, a foreigner whose identity cannot be determined immediately or there are grounds for doubting the veracity of his allegations or whose identity cannot be determined with certainty within six hours of being brought to the official premises, shall be placed under surveillance and expelled from B&H, which is prescribed by Art. 14 of the Law on Foreigners (2015).<sup>12</sup> If a foreigner "crosses or attempts to cross the state border outside the border crossing open for international traffic or outside the border crossing intended for traffic between B&H and neighbouring countries, it is considered that he tried to cross the state border illegally", as Art. 16 prescribes.

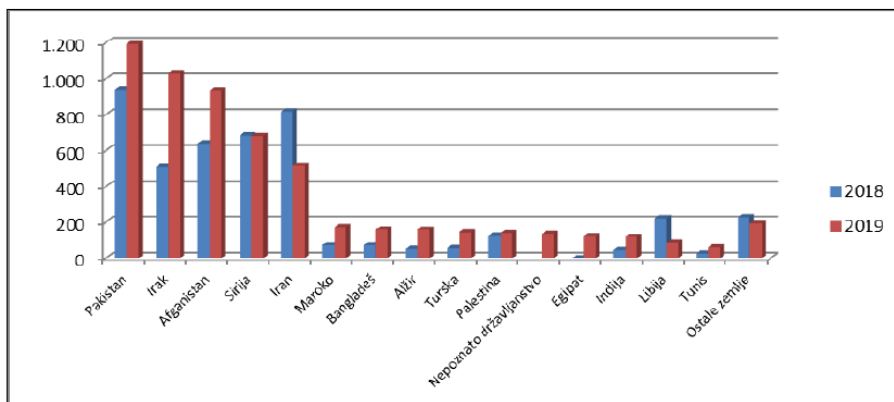
A significant number of foreigners, more precisely migrants, are in illegal residence on the territory of B&H and an effective solution must be found for them. According to the data of the Ministry of Security of B&H during 2018, a total of 4,489 persons were detected in an attempt to cross the border of B&H illegally, while in 2019, an increase of 30.52% was recorded and amounted to 5,859 persons (2020). During 2018, there were 617 (at entrance 232 + at exit 385) registered persons in illegal crossing of the state border, and outside the border crossing (border zone) 3,872 (at entrance 2,660 + at exit 1,212) persons. The following graph shows the structure of detected illegal migrants. Therefore, having this numbers in mind, it is of great importance to equip border officers with equipment for detecting illegal migrants in means of transport and to improve the fixed and portable technical surveillance system of the land border

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<sup>12</sup> The Law on Foreigners in Art. 1 regulates the conditions and procedure for entry of foreigners into B&H, visa and visa-free regime, travel documents for foreigners, a residency of foreigners in Bosnia and Herzegovina, removal from B&H, reception and supervision, as well as competencies of authorities in the application of this Law, misdemeanours, and penalties for misdemeanours committed in violation of the provisions of this Law, and other issues related to the residency of foreigners in B&H.

between border crossings, which are especially endangered from the aspect of illegal migration and human trafficking.

Graph 2: Overview of detected illegal border crossings in 2018 and 2019 classified by country (Ministry of Security of BiH, 2020)



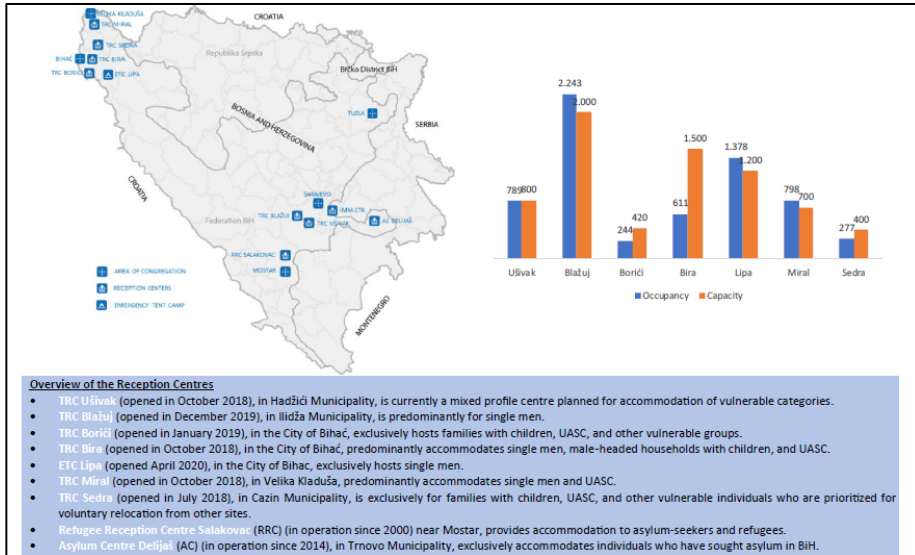
#### 4. BURDEN OF BOSNIA AND HERZEGOVINA VERSUS HUMANITARIAN THREATS AND RISKS

The accommodation of migrants and refugees is a significant challenge. B&H has a limited number of reception and transit centres, and none at entry and exit points at the border, although there are plans to open additional facilities. Generally speaking, accommodation for migrants, refugees and asylum seekers varies from place to place and includes many ad-hoc solutions involving national regulatory authorities and various international, humanitarian and non-governmental organizations led by the International Organization for Migration. Therefore, it can be stated that migration policy is not harmonized. The burden of the migrant crisis should be evenly distributed throughout Bosnia and Herzegovina, which is not the case now, given the heavy workload of Una-Sana Canton. In an interview published in October 2020, the Minister of Security, Mr Selmo Cikotić, announces an increase in accommodation capacities for migrants (Atlantic Initiative, 2020).

Based on the inter-agency report for August (UNHCR, 2020) and the offered cross-section of the situation from the previous interview, in order to determine at least approximately some of the migration trends that B&H is currently facing, we will take a look at the data on the movements of foreigners across the state border of B&H.

During August 2020, B&H authorities registered the arrival of 2,618 migrants and asylum-seekers to the country, bringing the total to almost 11,600 (UNHCR, 2020). Firstly, of that number of 6,531 persons were in formal accommodation, while 3,250 - 3,800 persons were outside.

Picture 1: Review of reception centres (UNHCR, 2020)



To take adequate measures for migrants before the brutal winter conditions arrive, the Government of the Federation of B&H, at its 145th emergency session held on November 11, 2019, decided to provide the Ministry of Security with centres for the free use of migrants (Atlantic Initiative, 2020).

The former barracks "Ušivak", in the municipality of Hadžići, was opened in October 2018. and had 800 seats, with a separate space for families, women and unaccompanied minors. The Service for Foreigners' Affairs manages the temporary reception in cooperation with the IOM. In December 2019, 1,316 people stayed in the facility, which means that there was no adequate accommodation for 516 people. By August 2020, the situation had improved in Ushivka, when 789 migrants were housed, which was in line with its capacity. However, on October 20, 2020, the stay of 938 people was recorded, which again oversaturated the facility. Given this, the question arises about the quality of the living conditions of migrants in that place.

A similar example is in the former barracks "Blažuj", which is located in the municipality of Ilidža. The capacity of the Blažuj barracks is 2,000 seats. On December 31, 2019, 427 people stayed in this facility. However, in August, 2,243 people stayed in that facility, and on October 20, 2020, the number was 2,350 people.

In the Una-Sana Canton, the Bira facility has 1,500 capacities, of which 611 have been filled. Borići can accommodate 420 people based on capacity, and in August 2020, 244 people stayed in the facility. It is similar to Sedra, which has a capacity of 400 and 277 people. The "Lipa" tent camp was formed in response to the needs arising from the emergency caused by the COVID-19 disease, in order to relocate migrants who were staying in abandoned and dilapidated buildings in the area of the city of Bihać. The total capacity of the camp is 1,200 people, and it is intended for accommodation of men. On October 20, 2020, 1,365 people stayed in the camp (Atlantic Initiative, 2020). The situation is different when it comes to the reception centres Miral and Lipa, where there are more migrants than the conditions allow. Thus, 798 people stayed in Miral in August 2020, and the capacity is 700. In Lipa, there is a capacity of 1,200, and 1,378 people are accommodated.

## 5. CONCLUSION

It is clear that human migrations are and will always be present. However, it is inevitable that their causes, manifestations, scope, directions and directions, and thus the effects on human, national and international security, will change. The United Nations special rapporteur on migration Felipe González Morales said, at the end of his visit to B&H on October 1, 2019, that 'the increased flow of migrants has exposed the significant institutional and coordination weakness of relevant authorities at different levels of BiH' (EPRS, 2019).

Migrants are not a threat to national security, but primarily a humanitarian issue. If they pose a security threat, it is in the domain of public order and peace, low-intensity crime, with the possibility of infiltrating persons prone to committing terrorist acts.

Bosnia and Herzegovina has well-designed institutional capacities to address the current humanitarian and security challenges of the migrant crisis, but a further strengthening of Bosnia and Herzegovina's migration policy is needed. The institutions of Bosnia and Herzegovina will have a much more critical, demanding and responsible role, especially in terms of establishing even more effective control over the migrations and primarily operational work to prevent irregular migration. This will require additional institutional, staffing and technical strengthening primarily of the Service for

Foreigners and B&H Border Police and other institutions dealing with these phenomena, in order to effectively respond to the challenges of new regional trends. Inadequate border protection and inadequate equipment of security services and institutions that should deal with migrant issues pose a serious threat. This can only be achieved through a clear, organizational-productive and prognostic-based migrant policy. Bosnia and Herzegovina must urgently take all necessary measures to prevent a humanitarian crisis from unfolding and ensure effective coordination, border management and capacity. A strong, constant and optimally articulated diplomatic action towards the institutions in Brussels and towards the countries from which migrants mostly arrive is an absolute priority.

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Year XX, Issue 5, 2020

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*DARKO DATZER, ELDAN MUJANOVIĆ*

**GENDER EFFECTS REGARDING EYEWITNESS IDENTIFICATION PERFORMANCE**

*ADNAN FAZLIĆ, IRMA DELJKIĆ, RAY BULL*

**DRONES AS A PERMANENT AND PRESENT DANGER**

*ZVONIMIR IVANOVIĆ, VALENTINA BAIĆ*

**SECURITY ASPECTS OF FOSTERING THE DOMINANCE OF POLITICS OVER EDUCATION IN BOSNIA AND HERZEGOVINA**

*NERMA HALILOVIĆ-KIBRIĆ*

**UNDERSTANDING THE MIGRANT CRISIS IN BOSNIA AND HERZEGOVINA**

*KENAN HODŽIĆ*



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