

**CRIMINAL GROUPS –
CRIMINOLOGY AND SECURITY PERSPECTIVES
(CASE STUDY: BOSNIA AND HERZEGOVINA) ^a**

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Abstract

This paper analyses court cases which qualified as organised crime in Bosnia and Herzegovina (B&H). The final judgments were analysed according to the following criteria: the number of defendants; the continuity of membership within the crime organisation; the existence of criminal structure; the existence of a developed plan of activities; the type and number of the offences committed; influence on public authorities, the judiciary, and citizens; and sentences imposed on the defendants. This paper seeks to identify the extent to which court judgments are based on these criteria. A secondary analysis of the data related to the organised crime cases heard in the Court of Bosnia and Herzegovina in the period between 2015 and 2018 was conducted. This analysis encompassed 21 organised crime cases in which 27 judgments were pronounced. In the observed period (2015-2018), we identified two organised criminal groups that meet the criteria analysed. The identified number of organised criminal groups is minimal in relation to the total number of organised crime cases processed. Our findings contradict the prevailing view in public discourse that organised crime is a widespread security threat in B&H. The findings of our research demonstrated the existence of legal gaps, reflected in the lack of clear criteria on the basis of which OCGs can be distinguish from other forms of criminal activity. Legal and institutional weaknesses create opportunities for OCGs to operate and create a sense of insecurity among citizens in the already complex security environment in B&H.

Key words: organised crime, organised criminal groups, Bosnia and Herzegovina, security

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**ОРГАНИЗОВАНЕ КРИМИНАЛНЕ ГРУПЕ –
КРИМИНОЛОШКИ КОНТЕКСТ И БЕЗБЕДНОСНЕ
ПЕРСПЕКТИВЕ (СТУДИЈА СЛУЧАЈА:
БОСНА И ХЕРЦЕГОВИНА)**

Апстракт

У овом раду анализирају се судски предмети квалификовани као организовани криминал у Босни и Херцеговини (БиХ). Правоснажне пресуде анализирани су према следећим критеријумима: број окривљених, континуитет чланства, постојање криминалне структуре, постојање израженог плана активности, врста и број почињених кривичних дела, утицај на органе власти, судство и грађани, казне изречене оптуженима. Овај рад настоји да идентификује у којој мери су судске пресуде засноване на овим критеријумима. Извршена је секундарна анализа података у предметима организованог криминала који су се водили пред Судом Босне и Херцеговине између 2015. и 2018. године. Овом анализом обухваћен је 21 предмет организованог криминала у оквиру којих је донето 27 пресуда. У посматраном периоду (2015–2018.) идентификовали смо две организоване криминалне групе које испуњавају анализирани критеријуми. Идентификовани број организованих криминалних група је минималан у односу на укупан број процесуираних предмета организованог криминала. Наши налази су у супротности са преовлађујућим ставом у јавном дискурсу да је организовани криминал широко распрострањена претња безбедности у БиХ. Налази нашег истраживања су показали да постоје правне празнине у погледу јасних критеријума на основу којих се организоване криминалне групе могу разликовати од других облика криминалне делатности. Правне и институционалне слабости стварају могућности за рад организованих криминалних група и стварају осећај несигурности међу грађанима у ионако сложеном сигурносном окружењу у БиХ.

Кључне речи: организовани криминал, организоване криминалне групе, Босна и Херцеговина, сигурност

INTRODUCTION

Organised crime in Bosnia and Herzegovina [B&H] has a decades-long genesis. The first period encompasses the years preceding the beginning of the Bosnian War in 1992, and is characterised by the crime situation of the former joint state, especially as concerns the attitudes toward the criminal phenomenon of organised crime¹. The second period can be observed during the span of the Bosnian War, in the period between 1992 and 1995 (Griffiths, 1999; Andreas, 2004), and it includes various forms of war profiteering, the grey economy, and the illicit trafficking of excise

¹ Available research indicates that although the forms of organised crime (though not all forms) manifested themselves in the pre-war SFRY (Petrović & Dobovšek, 2007; Petrović & Meško, 2008), the authorities did not recognise the existence of this criminal phenomenon, which was in fact a reflection of the then crime policies (Cf. Marinković, 2010, p. 68; Ignjatović & Škulić, 2012, pp. 80-95).

goods, military equipment, weapons or ammunition². It is worth mentioning that the sanctions and embargoes imposed by the international community during the Bosnian War led, albeit unintentionally, to the spread of organised crime in B&H, which also had an impact on the period following the lifting of those sanctions (Bradly, 2012, p. 16; Andreas, 2005, p. 335). Afterwards, organised crime erupted in the period between 1995 and 2000, characterised by criminal activities related to reconstruction, and the transfer of public capital to the private sector, or the so-called privatisation³. During this period, criminal activities related to arms trafficking intensified and the routes used for drug trafficking, illicit cigarette trade, and human trafficking, which had previously been disrupted, were re-established. Finally, the period between the year 2000 and the present moment is characterised by ‘traditional’ organised crime and the formation of typical organised criminal groups, including the commission of criminal acts inherent in this criminal phenomenon such as drug trafficking, human trafficking, arms trafficking, organised violent crime, and so on (Šikman, 2011). The legal and institutional framework against organised crime in B&H developed alongside organised crime. International documents dealing with this issue were ratified,⁴ key legal provisions were adopted⁵ and government bodies⁶ responsible for detecting and prosecuting the perpetrators of organised crime were established.

Previous research on organised crime in B&H had a different goal and purpose, which conditioned the available research results. In this regard, Bradley (2012) points out that the extent of organised crime in B&H

² Previous studies indicate that there are a total of 1,244,142 weapons in B&H, of which 1,098,762 (or 88.31%) are held by civilians, while there are 144,378 firearms (11.61%) within government institutions at the state and entity levels, and the level of the Brcko District of B&H. Agencies which provide property and people protection services possess 1,002 weapons (0.08%) (Hadžović, Kržalić & Mihajlović, 2011, p. 4).

³ Fragmented legal and economic space and regional economic connections established in the war economy provided a unique set of opportunities for organised crime (Vijeće Evrope & Evropska unija, 2006, p. 80).

⁴ For example, B&H adopted and ratified: the Convention against Transnational Organized Crime Palermo, 15.11.2000.), which came into effect internationally and internally on September 29, 2003 (Službeni glasnik BiH broj: 03/2002); the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime, which came into effect internationally and internally on January 28, 2004 (Službeni glasnik BiH, broj: 03/2002); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime came into effect internationally and internally on December 25, 2003 (Službeni glasnik BiH broj: 03/2002).

⁵ The Criminal Code of B&H was adopted in 2003, and it systematised provisions on organised crime (Krivični zakon BiH, 2003).

⁶ We primarily mean specialization within the judicial bodies and the police agencies in B&H.

cannot be fully determined due to the complexity of the state system (p. 4). According to the “Study on Organized Crime in Bosnia and Herzegovina”, numerous criminal associations involved in various organised criminal activities were formed in B&H in a relatively short time (Centar za sigurnosne studije [CSS], 2014). Additionally, as a part of the UNODC (2020) project entitled “Measuring and assessing organized crime in the Western Balkans”, a study using statistical data and an analytical framework to measure and assess organised crime in six Western Balkan countries was conducted (p. 5). Also, it is important to point out the judicial practice regarding organised crime cases in B&H (Marković, 2008; Smajić, 2010; Maljević, 2020; Jamaković, 2019). It should also be noted that the USAID (2019) published the “Universal Benchbook on How to Prosecute and Adjudicate Corruption, Economic Crime, and Organized Crime Cases”, dealing with important issues in prosecuting and adjudicating those criminal offences. Finally, two studies, which were the starting point of our research, were published (Šikman, 2019, Simović & Šikman, 2019). What was concluded is that judicial practice in criminal cases is quite unequal and different (Šikman, 2019), which certainly had an impact on the appropriateness of the penal policy in these cases (Simović & Šikman, 2019).

Given the existing social circumstances in B&H and the possible security implications, it seems that this phenomenon does not attract much interest among professionals or scholars. Of particular concern is the rather broad approach to the criminal prosecution of offences regarded as organised crime. This inevitably reflects upon specific criminal proceedings before the competent authorities, and the image of the prevalence of this criminal phenomenon. This does not mean that organised crime does not exist in B&H. Rather, indictments are more often brought forth for the forms of criminal organisation that do not have elements of organised crime. And precisely because of that, in theory and in practice, a distinction is made between organised crime and other forms of criminal activity.

The aim of this paper is to analyse court cases in B&H which qualified as organised crime based on the criteria for differentiating organised crime from other criminal offences established in scholarly literature. This paper seeks to identify the extent to which court judgments are based on these criteria. Such an approach is important for an objective view of the situation of organised crime, and thus for an appropriate response to the same problem.

ORGANISED CRIME IN B&H

A review of previous studies indicates that organised crime has been present in B&H for more than 30 years (Brady, 2012; Smajić, 2010; Petrović & Dobovšek, 2007; Petrović & Meško, 2008), manifesting itself in various forms (Šikman, 2011). So far, various assessments of the situa-

tion of organised crime have been conducted in B&H. The official position on organised crime in B&H indicates that it is a very dangerous and harmful phenomenon, which directly affects the stability and security of the country, undermines the rule of law, and harms economic growth (Savjet ministara B&H [SM B&H], 2017, p. 7). In this regard, the document entitled “Organized crime threat assessment in B&H“ and adopted by the Council of Ministers of Bosnia and Herzegovina (Savjet Ministara B&H [SM B&H], 2016), states that all hitherto differentiated forms of organised crime are still present in B&H (p. 4). It also points to the tendency in criminal groups in B&H and countries in the region, which relates to the emergence of young perpetrators and their gradual introduction as increasingly important perpetrators of various types of organised crime offences (Ministarstvo bezbjednosti B&H, [MB B&H], 2018, p. 27). At the same time, according to the UNODC (2020) data collected in B&H for the period between 2012 and 2017, the majority of convictions for organised crime offences were related to arms trafficking, which accounted for as much as 76% of all convictions, while convictions for drug trafficking accounted for 17%. The Council of Ministers noted that “According to available data, the largest number of organized criminal groups in B&H are engaged in illicit trafficking in narcotics and human trafficking, as these are the most lucrative criminal activities” (SM B&H, 2016, p. 7). However, it seems that the Western Balkans, including B&H, is no longer just a ‘transit region’, because local drug consumption is also increasing (Amerhauzer & Kemp, 2021, p. 13). An increasing number of B&H citizens participating in international drug smuggling and trafficking chains (Šikman, 2019), including residents of other countries who are staying (hiding) in B&H⁷, should be added to this. This is a cause for serious concern, which could lead to a sudden expansion of organised crime in B&H.

Additionally, a number of studies addressing organised crime in B&H indicate that this criminal phenomenon has a huge impact on citizens’ perceptions of security. Thus, the “Study on Organized Crime in B&H” reports that:

respondents believe that corruption and organized crime contribute to their feeling of being unsafe (69%), followed by violence with the use of weapons 49.3% (bank robberies, shopping malls robberies, cash-in-transit robberies...), and street crime (theft, shoplifting, pickpocketing) with 46.3%.

(CSS, 2014, p. 7)

⁷ The conflict between two criminal clans from Montenegro, the so-called “Kavački” and “Škaljarski” clans, is well known in the Western Balkans, and a number of members of the two clans have their helpers in the neighboring countries, primarily Serbia and B&H. Numerous murders, kidnappings and other violent offences are connected to this perennial conflict.

However, this is not reflected in judicial practice regarding organised crime cases⁸. It could even be said that this data is contradicting. If we add to this the lengths of the sentences imposed, which are mainly below the statutory minimum, it is clear that such a penal policy is not in line with the purpose of punishment in regards to these offences (see more: Šikman, 2019).

CRIMINAL LAW FRAMEWORK

The Criminal Code of B&H (2003) defines a structured group (Article 1, para. 21) and an organised criminal group (Article 1, para. 22) in the General Part. This may be regarded as a reflection of modern criminal policy and harmonisation with the United Nations Convention against Transnational Organized Crime (2000). Specifically, the definitions of key terms in the Convention (Article 2), such as “organized criminal group” (para. a), “serious crime” (para. b) and “structured group” (para. c) make a clear distinction between organised crime and other criminal offences. In this sense, the criminal offence of organised crime (Article 250) has two forms. The first form refers to an individual who commits a criminal offence provided for in the B&H Criminal Code as a member of an organised criminal group, unless a more severe penalty is prescribed for a particular criminal offence (paragraph 1), or an individual who, as a member of an organised criminal group, commits a criminal offence provided for in the B&H Criminal Code, which is punishable by three years in prison or a more severe penalty if one is prescribed for a specific criminal offence (paragraph 2). In the first case, a sentence of imprisonment of no less than three years is prescribed, while in the second case, a sentence of imprisonment of no less than five years is prescribed. The second form refers to an individual who organises or in any way directs and manages an organised criminal group which by joint action commits or attempts to commit a criminal offence provided for in the B&H Criminal Code. A sentence of imprisonment of no less than ten years, or a long-term sentence, is passed for this form of offence (paragraph 3). Less serious forms of this offence occur when an individual becomes a member of an organised criminal group which by joint action commits or attempts to commit a criminal offence provided for in the B&H Criminal Code, unless a more severe punishment is prescribed for a particular criminal offence. A sentence of imprisonment of at least one year (paragraph 4) is prescribed. Fi-

⁸ This problem may be regarded as particularly pronounced, given that there is extensive judicial practice regarding organised crime in B&H, because criminal proceedings have been conducted for these crimes before the courts of all instances and jurisdictions since 2003 (Simović & Šikman, 2019).

nally, for criminal and political reasons, it is prescribed that a member of an organised criminal group who exposes that group may be released from punishment (paragraph 5). Thus, it is essential to determine the existence of the basic elements of an organised criminal group in a specific criminal event.

Accordingly, it is necessary to prove the connection (objective and subjective in nature) of three or more persons who, for a certain period of time, act in agreement with the aim of committing one or more criminal offences, which carry the sentence of imprisonment of over three years or a more serious sentence, in order to acquire material gain (Article 1, paragraph 22). In this sense, the main elements of an organised criminal group are the following (USAID, 2019, p. 88): systematic (the existence of a specific and connected system of work in the operation of an organised criminal group); organised (the forming and existence of a group with an organisational structure, with a clear division of roles among its members); hierarchy (the existence of superiors and subordinates among the organisers and the members of an organised criminal group); authority (which is reflected in the respect for the decisions and ideas of the group leader); and the methods applied by the organisers and members of organised criminal groups in their criminal activities. The goal of every organised criminal group is always the acquisition of material gain. The commission of serious crimes and the impact on public authorities, the judiciary, and citizens should be added to this (Šikman, 2011).

This is particularly significant, because determining the clear structure of an organised criminal group, its organiser, the number of its members, their roles and tasks, and the time frame of and motivations for joint actions represents an important feature of these crimes. Therefore, it would be necessary to prove that an organised criminal group was organised to acquire material gain and has a clear hierarchical structure, whereby the organiser wilfully acted as an organiser and manager, and the members of the group wilfully participated in criminal activities as members, so that each member carried out predetermined tasks. Within the organisation's activities, an additional criterion for the existence of organised crime has to be met, and it consists of intimidation and threats used by the organiser in relation to other members of the organisation (S1 2 K 006087 11 K). In other words, if it is not possible to determine or prove these elements, then the criminal offence of organised crime does not exist (Šikman, 2019).

METHODOLOGY

A secondary analysis of the data contained in the court cases for organised crime heard in the Court of Bosnia and Herzegovina⁹ in the period between 2015 and 2018 was carried out (Sud B&H, n.d.). The analysis included 21 organised crime court cases, in which 27 judgments were passed on 44 people. Individual criminal offences perpetrated by organised criminal groups were selected using subject analysis (see Šikman, 2019; Simović & Šikman, 2019).

The judgments were analysed according to the following criteria: number of indicted persons; continuity of membership (the existence of awareness of joint actions and the execution of activity for the purpose of joint action); the existence of criminal structure (organiser/and groups and membership in the group); the existence of a developed plan of activities (division of roles and type of duty); type and number of criminal offences committed; influence on public authorities, judicial bodies and citizens; and criminal sanctions imposed against defendants.

For the purposes of data analysis, a matrix was created, into which the previously coded parts of the text of the judgments were entered. All entered data from the judgments was analysed according to the established criteria.

FINDINGS

In the analysed court judgments, the numbers within and composition of the groups¹⁰ were different and ranged from the minimum number of members – three to thirty-two members. According to the gender structure of the perpetrators, male perpetrators dominated¹¹, while their age structure varied from 23 to 55 years of age, with the largest number of convicted persons being between 30 and 50 years old. A number of the criminal groups analysed had a clear hierarchical structure (S1 2 K 006087 11 K and S1 2 K 015384 14 K), while other groups were made up of interconnected persons with loose connections between them (S1 2 K 020632 16 K; S1 2 K 024459 17 K; S1 2 K 025666 17 K) (Šikman, 2019).

⁹ The data was collected through the website of the Court of B&H, by selecting the year (2018, 2017, 2016, 2015), *Department* (department II), and *Type of Judgment* (First-Instance judgment) in the section *Judicial Practice of B&H* (Sud BiH, n.d.).

¹⁰ Interestingly, in two cases, the organised criminal group consisted of parents and their children (S1 2 K 023545 17 Ko.; S1 2 K 017901 15 K). Although these were the only cases of this nature in the judgments analysed, many studies show a substantial correlation between the criminal activity of parents and their children, and the possible implications should not be overlooked (van Dijk, Kleemans, Eichelsheim, 2019).

¹¹ In the court judgments analysed, which included 44 convicted persons, only one female was found (S1 2 K 017901 17 Kžk.).

Our findings indicated that all the criteria on the basis of which we qualify a certain criminal activity as organised crime were fully met in only two cases. The details of the criminal cases filed against Z.T. et al (S1 2 K 006087 14 Kžk) and D.E. et al (S1 2 K 013756 15 Kž 3; S1 2 K 015384 17 Kž), are as follows:

- The criminal group Z.T consisted of 14 members, while the criminal group D.E. consisted of 32 members;
- The criminal group Z.T. operated between early 2005 and September 2010, while the criminal group D.E. operated between 2005 and 2008. The continuity of membership in the organised criminal group follows from the above mentioned, considering that this is a ‘certain’ period of time. In contrast, in some criminal cases, it was established that the group operated for six months (S1 2 K 019373 15 K; S1 2 K 017901 15 K; S1 2 K 019332 15 K; S1 2 K 023109 16 K), which is obviously a period of time during which special investigative actions are applied, therefore the elements of continuity of membership are not visible in the reasoning of the judgment;
- During the same period, in the cases of Z.T. and D.E., elements of complicity were achieved, and they are reflected in the willingness to act jointly (mental elements) and the undertaking of joint actions for the purpose of committing criminal acts (objective elements). In another court case analysed, the mentioned elements were determined through indications (S1 2 K 020632 16 K), which is not typical in relation to an organised criminal group. In other words, if the elements of complicity, and aiding and abetting cannot be determined on the bases of material and testimonial evidence, then the question arises as to what type of group it is;
- There was an established criminal structure in these criminal groups, because it was clear who the organiser of the criminal group was, and who its members were. Thus, in the criminal group D.E., the Court found that: “E.D. and D.B. within each interconnected and organized group: made decisions and ordered the execution of activities, arranged and planed the execution of actions, executed the agreed activities with other members, supervised and controlled the execution of actions and decided on the splitting of proceeds derived from the agreed criminal acts executed by the group” (S1 2 K 015384 14 K), whereby the identical qualification was given in the case of the criminal group Z.T. (S1 2 K 006087 11 K). In contrast to the above, in some criminal cases the Court considered that there was an organised criminal group “without the need to determine the individual actions or the actions carried out by the organizer of the group, given that membership in the group exists as a criminal offense” (S1 2 K 020632 16 K). Although in this case there is a certain

degree of organisation, it is evident that the defendants acted quite independently. Also, in the second case, it was stated that the defendant was a member of an organised criminal group, but there was nothing within the statement that would indicate the specific organisation and structure of the group (S1 2 K 025168 17 Ko). Also, in a third criminal case, it was stated that the defendant “developed a plan” and “organized an organized criminal group” (S1 2 K 027624 18 K), which cannot be a sufficient explanation for the existence of an organised criminal group;

- These criminal groups had a developed plan of the activities of the group, with clearly defined roles and responsibilities for each member. This was proven in the case of the criminal group Z.T (S1 2 K 006087 11 K). A similar legal qualification was found in the case of the criminal group D.E. (S1 2 K 015384 14 K);
- The criminal group Z.T. was formed for the purpose of conducting drug trafficking (heroin and cocaine), while the criminal group D.E. was organised for the purpose of committing criminal offences to obtain mutual or personal material gain. Thus, the criminal group D.E. committed a cash-in-transit robbery in the settlement of Nedžarići in Sarajevo in June 2006, and stole 2.2 million euros which belonged to the Commerce Bank of Sarajevo (S1 2 K 015384 14 K), while the criminal group Z.T. committed a robbery in 2007 at the Sarajevo International Airport (Cargo centre) and stole about 2.5 million KM (S1 2 K 006087 11 K);
- The aforementioned criminal groups had committed several criminal offences during the period of their activity, including those for which purpose they were formed, as well as other serious criminal offences (for example, the criminal group D.E., among other things, was charged with three murders, an attempted murder, etc.). In other court cases, the persons were charged with the offence of Organised Crime; however, during the course of the criminal proceedings, it was determined that the elements of this criminal offence did not exist and the indictment was amended to charge a different criminal offence¹² (S1 2 K 014792 14 K and S1 2 K 023838 16 K). Additionally, persons were charged with the criminal offence of Organised Crime in conjunction with the criminal offence of Forgery of Documents and Verification of False Content in three of the studied court cases, (S1 2 K 027624 18 K; S1 2 K 026064 17 Kž; S1 2 K 026155 17 Kž). These are certainly not typical organised crime offences;

¹² Thus, in the criminal case S 1 2 K 014792 14 K, the B&H Prosecutor's Office submitted an amended indictment charging the defendants with the criminal offence of International Procuring in Prostitution under Article 187, Paragraph 1 of the B&H CC.

- By perpetrating their activities, these criminal groups exerted impact and disturbed the public. This is supported by the fact that the criminal group Z.T. was proved to have committed five murders in a particularly cruel (e.g., the murder of a pregnant woman), insidious (using the victim's trust) and callous manner (kill 'certified' by a shot to the head), causing great unrest, fear, and feelings of unsafety among the citizens (S1 2 K 006087 11 K). Also, the criminal group D.E. disturbed the general public by the manner in which the crimes were committed. A typical method of execution consisted of firing automatic rifles from a moving vehicle, which had previously been stolen, and abandoning and setting the vehicle on fire after killing the target (S1 2 K 015384 14 K);
- The verdicts passed in the criminal cases discussed confirmed that, given the length of the sentence, these were serious criminal charges. Thus Z.T., as the organiser, was sentenced to the maximum prison sentence of 40 years, while another member of the group was sentenced to long-term imprisonment (35 years), and the remaining defendants to prison sentences (S1 2 K 006087 14 Kžk). In another case, a member of the group was sentenced to 20 years in prison (S1 2 K 015384 14 K). The decision of the Appellate Panel in the same case can be cited as an example of appropriateness, because it upheld the appeal filed by the Prosecutor's Office of B&H and amended the sentence of the first-instance court (the prison sentence was increased for another member from 13 to 15 years) (S1 2 K 013756 15 Kž 3). On the other hand, in some criminal cases, a sentence was passed based on a plea agreement, which is particularly surprising if we take into account that the agreement was concluded with the group organiser (S1 2 K 019373 15 K; S1 2 K 019332 15 K; S1 2 K 023545 17 Ko), and that this practice is not in line with the criminal and political orientation regarding organised crime cases.¹³ An even more controversial issue is the imposition of sentences in the cases which qualified as organised crime. Thus, sentences below the statutory minimum were passed in these cases (S1 2 K 019332 15 K; S1 2 K 023109 16 K; S1 2 K 023545 17 Ko; S1 2 K 024459 17 K), including a suspended sentence (S1 2 K 021401 16 K; S1 2 K 027624 18 K; S1 2 K 025666 17 K), although the defendants had previously been convicted of the same criminal offences.

¹³ "Benefits" are usually given to members of an organized criminal group who decide to cooperate with judicial bodies, which is prescribed by the law.

DISCUSSION AND CONCLUSION

Since the 1980s, there has been considerable debate whether and to what extent a specific group and/or its activities constitute organised crime (Hagan, 1983, p. 52). In this sense, it was accepted that organised crime can be defined in relation to its members or in relation to the activities of a criminal group (Mallory, 2012, p. 2). Although these two models of organised crime, the Mafia Model (Paoli, 2003) and the Activity Model (van Duyne, 1997), have been maintained to this day (Paoli, 2016), the prevailing view is that the terms ‘criminal organisation’ and ‘criminal network’¹⁴ must be defined and agreed upon (von Lampe, 2002, p. 197). Some scholars (Finckenauer, 2005) define special characteristics of organised crime. Finally, the criminal group occupies a central place in international legal documents (United Nations, 2000; European Commission, 2008), as well as in most national legislation. That is the reason we decided to consider a typical example of a criminal group which constitutes organised crime, and to determine its differences from those criminal activities that are not organised crime.

Based on the conducted research, two key conclusions were reached. First, it is evident that there are reliable criteria based on which it is possible to determine that a certain group is an organised criminal group. These criteria include the number of members, the continuity of membership, joint action, clear group structure, the existence of the division of tasks and defined roles among its members, the type and number of offences committed, influence on citizens, and the type and length of the sentences passed. If these elements can be proven in relation to a specific criminal activity, then an organised criminal group exists.

Secondly, although the existence of the aforementioned elements was found in other studied cases, it cannot be claimed with certainty that an organised criminal group or an organised crime offence exist. Specifically, the fact that three or more persons jointly perpetrated a criminal offence is not sufficient – a higher level of their mutual connection is required. Likewise, the type and number of crimes committed clearly indi-

¹⁴ This concept has often been criticised. For example, Woodiwiss (2000) states that there are two main problems with the global pluralistic theory of organised crime: “The first is that Mafia-type groups only participate in illegal markets, despite countless claims to the contrary, they rarely, if ever, control them. The second problem with the global pluralistic theory is that, like the Mafia conspiracy theory, it uses semantics to camouflage the involvement of respectable institutions in organised criminal activity. However, as a great deal of historical and contemporary research shows, government agencies and key institutions, such as corporations, have frequently gained from and sometimes helped to sustain organised crime (Block & Chambliss, 1981; Chambliss, 1978; Gardiner, 1970; McCoy, 1991; Pearce, 1976; Ravlinson, 1998; Ruggiero, 1996)” (as cited in Woodiwiss, 2000).

cates the difference between the levels of criminal organisation. Thus, an organised criminal group will have a tendency to operate for a long period of time and to continuously perpetrate criminal offences; however, an organised group may be formed for the purpose of perpetrating one criminal offence (or possibly an extended criminal offence).

An important difference between an organised criminal group and an organised group, according to the derived criteria, lies in the type and length of the sentence. Although the most severe penalties are prescribed for organised crime offences which are, as a rule, usually imposed (as confirmed in the court cases analysed), milder sentences, even suspended sentences were passed in other cases. The question arises as to how it is possible to charge a person with an organised crime offence and subsequently sentence him/her to a suspended sentence. Clearly, in such cases, the offences were not regarded as organised crime offences. Also, the filing of charges for crimes which cannot be regarded as 'typical' organised crime offences was evident. This example relates to the criminal offences of document forgery and false certification. It seems illogical to organise an organised criminal group in order to commit these offences. We do not have a proper answer to this question, except that it is an irrational organised crime charge. Such judicial practice is not the best choice, because it 'blunts' the edge of criminal justice in these cases.

It is very important to establish clear criteria and make a distinction between these two concepts, although this is not entirely precisely determined by the current judicial practice. Today, it is considered that understanding and presenting the essential elements of organised crime leads to a successful criminal investigation (Mallory, 2012, p. 11). Specifically, a systematic investigation into activities in the fight against organised crime indicates that we need to have a better understanding of it, which means understanding its key characteristics today, especially its transnational dimension, and describing its specific local characteristics (Longo, 2010).

The findings of this research confirm that, in the observed period (2015-2018), the number of organised criminal groups in B&H was minor in relation to the total number of the cases processed. In other words, it is possible that organised crime processed in courts significantly differs from actual organised crime in B&H (Maljević, 2020). This conclusion is significant not only because it points to inconsistencies in the application of criminal law but also because it has broader implications. In literature (Dobovšek, 2006; Muehlmann, 2008) and public discourse (MB B&H, 2018), the prevailing opinion is that organised crime is a widespread phenomenon in B&H. Such views are not based on empirical verification. In this regard, further research is necessary, on the basis of which practical policy would assess the situation and design policies to reduce crime, including organised crime.

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26. S1 2 K 006087 14 Kžk
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**ОРГАНИЗОВАНЕ КРИМИНАЛНЕ ГРУПЕ –
КРИМИНОЛОШКИ КОНТЕКСТ И БЕЗБЕДНОСНЕ
ПЕРСПЕКТИВЕ (СТУДИЈА СЛУЧАЈА:
БОСНА И ХЕРЦЕГОВИНА)**

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Резиме

Организовани криминал у Босни и Херцеговини (БиХ) има вишедеценијску генезу, која се може посматрати кроз неколико периода. Истовремено, развијао се правни и институционални оквир против организованог криминала у БиХ, укључујући ратификацију међународних докумената и увођење потребних инкриминација у домаће законодавство (организова криминална група, појединачна кривична дела, и др.). Према ономе што претходно истраживања сугеришу чини се да не постоји довољно интересовања за овај феномен, како код стручне, тако и научне јавности. Посебно забрињава прилично широк приступ када се ради о кривичном процесуирању дела која се сматрају организованим криминалом. То се неминовно одражава и на конкретне кривичне поступке који се воде пред надлежним органима, али и на ствање слике о распрострањености овог криминалног феномена. То не значи да организовани криминал не постоји у БиХ, већ да се много чешће подижу оптужбе и за оне облике криминалног организовања које немају елементе организованог криминала. Управо се због тога у теорији и пракси и прави разлика између онога што јесте организовани криминал и онога што није.

Из тог разлога је припремљен овај рад. Његов циљ јесте да се на основу утврђених критеријума у литератури, који се односе на то шта се сматра организованим криминалом, анализирају правноснажни судски предмети у БиХ који су квалификовани као организовани криминал. Намера је да идентификујемо у којој су мери судске пресуде базирани на тим критеријумима. Такав приступ је значајан ради објективног сагледавања стања организованог криминала, а самим тим и адекватног одговора на исти проблем. Такође, организовани криминал у БиХ треба да буде анализиран и у друштвеном контексту, будући да организоване криминалне групе делују у одређеном друштвеном окружењу.

Резултати истраживања потврђују да је у посматраном временском периоду (2015–2018) број организованих криминалних група у БиХ био миноран у односу на укупан број процесуираних предмета. Другим речима, могуће је да је процесуирани организовани криминал значајно другачији од стварног организованог криминала у БиХ.