

FALLING SHORT OF COMMITMENTS: HOW WESTERN BALKAN GOVERNMENTS FIGHT ORGANISED CRIME



WESTERN BALKANS
ORGANIZED CRIME
RADAR



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Foreword by the editor

Fight against organised crime has been, at least at least according to officials' statements, on top of the agendas of Western Balkan governments for almost a decade now. This commitment was often just a declaratory one, brought on by external actors, such as the EU through the accession process which encompasses the WB six and puts emphasis on the need to more effectively tackle the issue of organised crime. While the enlargement perspective was still considered credible and alive, the governments had an incentive to invest efforts in dismantling organised criminal networks that traditionally have been organised better than the governments themselves. With the onset of the so-called enlargement fatigue and no certain European future for the WB six, these incentives disappeared. As a result, and coupled with the absence of a genuine, organic drive to deal with organised crime within the WB countries, citizens' hopes of living in crime-free societies started disappearing as well.

This research report investigates a part of the above described problem. Namely, it attempts to determine why the governments are falling short of their commitments relating to organised crime. The question that needs to be addressed first is how anyone can even assess the effectiveness of the fight against organised crime in the WB6. While it is a general understanding that the results leave much to be desired, there is also a gap in both administrative and survey-based statistical data available to the public that makes it difficult to establish how effective state responses against organised crime truly are. This leaves room for competing narratives about the achieved results, and this is why it is possible for one WB government to claim that it is leading a highly successful *war on mafia* while, at the same time, there are credible reports and leading experts claiming that the same government is deeply criminalised and that its war on mafia is nothing but a media stunt.

The very first challenge identified in this report is the lack of credible data on organised crime, which happens to be the single biggest obstacle to an evidence-informed public debate on the issue. Although this has already been recognised, it is worth reiterating that most countries in the region do not have statistical systems in place that are able to collect and monitor data on organised crime. Even when these systems exist, data greatly varies from one type of crime to another, or it is not segregated to allow for a meaningful analysis. Tracking a case through the criminal justice system is especially difficult, because there are no unique identifiers that would allow it. Moreover, data from institutions are usually not readily available, and, even after obtaining it through freedom of information requests, few conclusions can be drawn because of case management systems that use different indicators that prevent meaningful comparison.

The second key finding is that, although legal and strategic preconditions are largely in place across the Western Balkan Six, it is the implementation that leaves much to be desired. Law enforcement agencies often lack sufficient capacities, proper coordination and resources to be able to successfully fulfil their mandates. Furthermore, it is a general opinion of all the interviewed interlocutors that good cooperation of law enforcement agencies is the most important factor in the fight against organised crime. Although bilateral agreements are in place, and there is a host of regional and international fora that enable such cooperation, there are also obstacles that prevent more effective cooperation and a better coordinated response.

Finally, politics play a significant part. Whether in the form of political influence on law enforcement agencies, lack of political will to combat organised crime, or a political decision not to fight it at all, it appears that politics is the main obstacle to having better state responses to organised crime in the Western Balkans. It was stated in the EU's Credible Enlargement Strategy of 2018 that "the countries show clear elements of state capture, including links with organised crime and corruption at all levels of government and administration." Political leaders are therefore, and simultaneously, the key problem solvers and the main problem that needs to be solved, which is why it is up to them to ultimately assume responsibility for creating an environment conducive to fighting organised crime and boosting societal resilience to the harm it causes.

Table of Contents

Albania	7
Executive summary	8
Introduction	9
Analysis of the Legal, Strategic and Policy Framework	10
Regional and EU-level Cooperation and Knowledge Sharing	13
The Track-Record of Albania’s Anti-OC Efforts	15
Identifying Key Shortcomings and Challenges	19
Recommendations	21
Bibliography	22

BiH	25
Executive summary	26
Introduction	27
Analysis of the Legal and Strategic Framework	28
Regional and EU-Level Cooperation and Knowledge Sharing	30
The Track Record of WB6 Governments’ Anti-OC Efforts	31
Key Shortcomings and Challenges	33
Recommendations	35
Bibliography	36

KOSOVO	37
Executive summary	38
Introduction	39
Analysis of the Legal, Strategic and Policy Framework	39
Regional and EU-level Cooperation and Knowledge Sharing	41
Track Record of Kosovo Institutions Anti-OC Efforts	43
Key Shortcomings and Challenges of the Kosovo Government’s Anti-OC Efforts	45
Recommendations	48
Bibliography	49

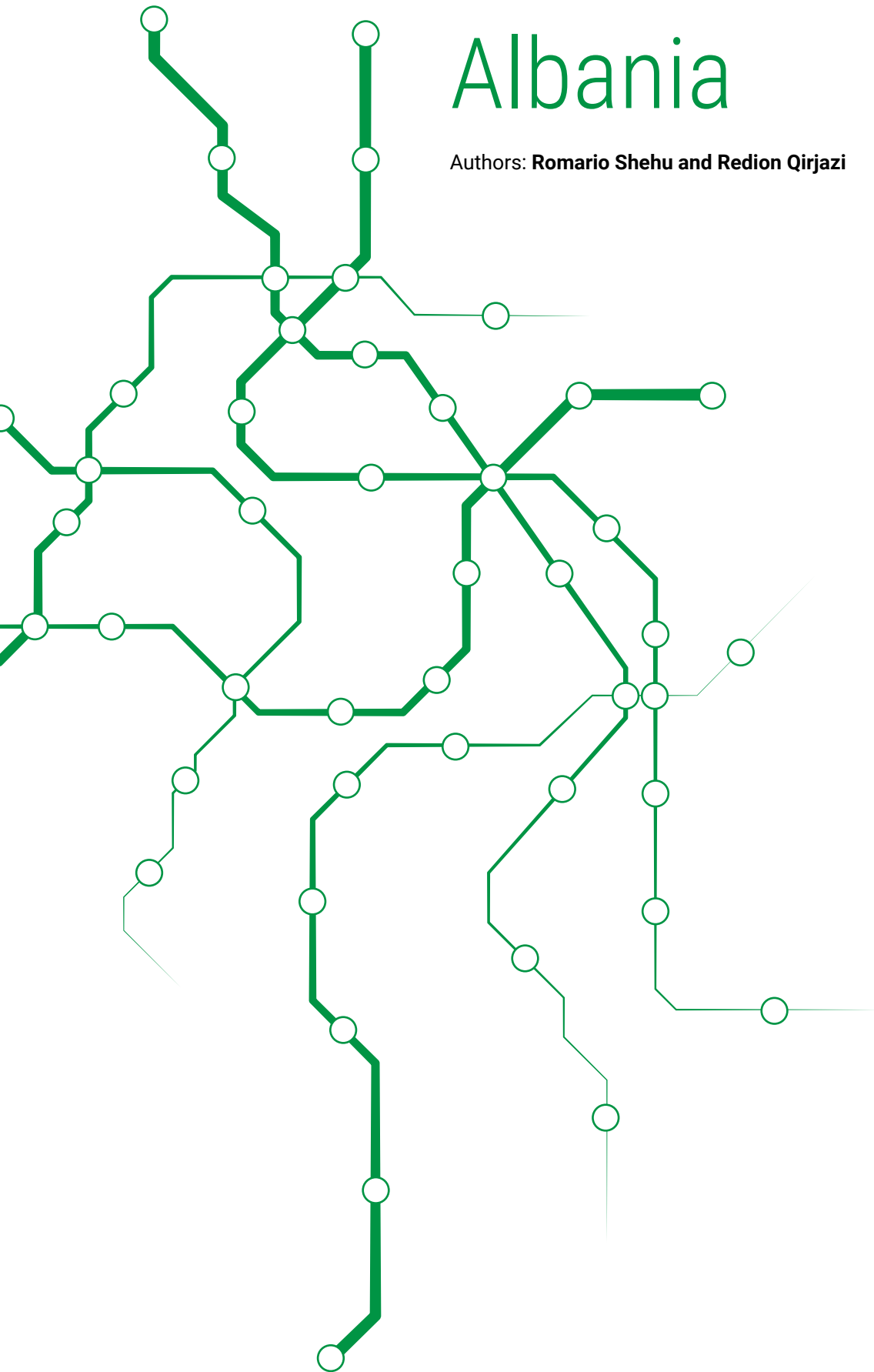
MONTENEGRO	52
Executive Summary	53
Introduction	53
Analysis of the Legal, Strategic and Legislative Framework	54
Regional Cooperation and Cooperation at the EU Level	56
Montenegro’s Track Record in the Fight against Organised Crime	57
Key Deficiencies and Challenges	59
Recommendations	62
References	63

NORTH MACEDONIA	64
Introduction	65
Analysis of legal, strategic and policy framework	65
Regional and EU-level cooperation and knowledge sharing	68
Track-record of North Macedonia anti-OC efforts	70
Conclusions and recommendations	74
Bibliography	75

SERBIA	77
Executive summary	78
Introduction	78
Analysis of the Legal, Strategic and Policy Framework	79
Regional and EU-Level Cooperation and Knowledge Sharing	81
Track Record of Serbia’s Anti-OC Efforts	82
Key Shortcomings and Challenges	83
Conclusion	84
Recommendations	85
Bibliography	86

Albania

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Executive Summary

This report is focused on providing an overview of Albania's efforts to combat organised crime (OC) by analysing the legal framework and the country's institutional and strategic efforts, and their impact on fighting OC. It will also identify shortcomings and provide appropriate recommendations.

Since the beginning of the political and economic transition in the early 1990's, OC has been one of the country's main challenges that is constantly reaching higher levels. The Albanian authorities started their efforts in fighting OC about a decade after its emergence, when - in the early 2000s - Albania became a State Party to the United Nations Convention against Transnational Organised Crime and transposed its provisions into its own Criminal Code. Other relevant legal provisions were implemented later. Albania took a more strategic approach in the late 2000s, when it adopted the first Intersectoral Strategy against Organised Crime 2008-2013. It was followed by other relevant policy documents and the second Intersectoral Strategy 2013-2020.

The adoption and implementation of these strategies has been neither regular nor consistent. There is overlapping and duplication in the case of Strategy against Organised Crime and other sectoral strategies. The number of dismantled OC groups has decreased since 2015. Despite its efforts, Albania's performance in fighting cannabis cultivation and drug trafficking is still poor. A comparably poor performance has been observed with regards to corruption. Although the country is becoming increasingly vulnerable to money-laundering, its proceedings have been at a similar rate from 2015 to 2019, with a slight increase in the 2017, and gradual decrease in the following years. The overall perception of citizens regarding public safety has decreased since 2015.

In the above context, criminal justice institutions should further improve their institutional coordination, but should also work closer with CSOs and make full use of the operational agreements with the European Union. There has been no threat assessment of OC in Albania for years now, despite the fact that it is important to publish it on a regular basis because it helps in understanding the threats and paves the way to addressing them.

OC has emerged as one of the most important challenges in Albania after the beginning of the country's political and economic transition in the early 1990's. Given the danger it poses, the effective fight against OC is a key delivery priority for Albania prior to its being able to open accession negotiations with the European Union (EU).¹ When OC emerged in the early 1990's, Albania was largely unprepared to face the challenges, and was only able to adopt its first Intersectoral Strategy to Counter Organised Crime, Illegal Trafficking and Terrorism in 2008² (renewed in 2013). In the meantime, international reports and statistics of national institutions revealed a significant expansion of Albanian OC in the country and abroad. Albanian OC networks are now able to conduct large scale trans-continental operations - from shipping drugs and controlling drug markets in Europe, to undertaking successful money laundering operations by using Albania as a platform.³ The Albanian authorities have made efforts to fight OC by improving the legal, institutional and strategic infrastructure and capacities, but tangible results remain to be seen.

The purpose of this report is to analyse the current efforts and the impact of the Albanian Government's efforts to tackle the issue of OC, to examine the existing challenges, and to provide recommendations. More specifically, the report: i) analyses the legislative, institutional and strategic framework for fighting OC, ii) assesses cooperation and knowledge-sharing between Albania and the EU, as well as regional cooperation, iii) analyses the track-record of Albania's OC efforts, iv) identifies key shortcomings that prevent a more effective anti-OC effort, and v) proposes recommendations to address issues.

The report has been prepared based on the qualitative research method, using primary and secondary data collected by way of desk research.

1 Enlargement Strategy and Main Challenges 2013-2014, www.ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2013/package/strategy_paper_2013_en.pdf. Accessed on 1 January 2021

2 CSDG Albania, 2020. Baseline Assessment: Intersectoral Strategy for Countering Organised Crime 2013-2020, Tirana: Centre for the Study of Democracy and Governance. Available at: www.csdgalbania.org/wp-content/uploads/2020/12/Baseline-assessment-Organized-Crime.pdf.

3 Dyrmishi and Kamolli, 2018. The administrative approach to fighting organised crime: Exploring the possibility of implementation in Albania. CSDG Albania

Analysis of the Legal, Strategic and Policy Framework

Albania has been a signatory to the United Nations Convention against Transnational Organised Crime (UNTOC)⁴ and its three protocols since 2002, while the UNTOC provisions on OC were transposed into the Criminal Code in 2003.⁵ In addition to the changes to the criminal legislation of 2017⁶, which introduced new offences and special investigative techniques, other relevant new laws were adopted as well.⁷ The Albanian legal framework is partially aligned with the EU Council Framework Decision on the fight against OC.⁸ Other changes related to the legal framework mentioned in the National Plan for European Integration (NPIE)⁹ 2020-2022 include the approval of several orders from the General Director of Police intended to strengthen institutional efforts towards fighting OC.

Albania has initiated practices to combat money laundering by people linked to crime and terrorism in 2009, when the government adopted the 'anti-mafia' law¹⁰ which aimed to prevent and counter OC and trafficking by confiscating the property of persons who have unjustified wealth, as a result of suspected criminal activity. Although several amendments were made to this law, it has remained largely unsuccessful due to the lack of institutional coordination and insufficient capacities.¹¹

Due to the inefficiency of the above law, in early 2020 Albania adopted a special package introducing temporary preventive measures to enhance its capacity to counter OC and terrorism (popularly referred to as the anti-'grab-what-you-can' package, or "KÇK").¹² These measures focused primarily on asset seizure and confiscation, thus limiting the movement of suspected criminals and restricting their economic activities. The "KÇK" mechanism is currently implemented by a special structure (OFL) within the General Directorate of State Police tasked with prevention, detection, documenting and

4 Law 8920/2002 on the ratification of the "United Nations Convention against International Organised Crime" and its two additional protocols

5 Law no. 8733/2001 and Law no. 9086/2003

6 Law no. 7895 Criminal Code of the Republic of Albania, amended by Law no. 36/2017 and Law no. 89/2017

7 Law no. 60/2016 on Whistleblowing and Whistleblower Protection; Law no. 9205/2004 on Justice Collaborators and Witness Protection, amended in 2009 by Law no. 10173/2009 on Justice Collaborators and Witness Protection

8 Council of the European Union decision on the fight against organised crime. Available at www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008F0841&from=EN.

9 The orders of the General Director of Police include: i) order 328/2018 on establishing the Sector of Specific Operational Force for Investigational Support, ii) the establishment of the unit Fast Albania, and iii) the Action Plan 257/2019 on preventing and fighting the criminal activity of cultivating narcotics 2019

10 Law no. 192/2009 on preventing and countering organized crime and trafficking through preventive measures against property. Available at www.pp.gov.al/web/liqj_per_parandalim-in_dhe_goditjen_e_krimit_te_organizuar_dhe_trafikimit_nepermjet_masave_parandaluese_kunder_411.pdf

11 General Prosecutor's Office, 2020. General Prosecutor's Report on the State of Crime for 2019, Tirana: General Prosecutor's Office

12 Council of Ministers, 2020. Normative Act "Preventive Measures in the Framework of Strengthening the Fight against Terrorism, Organised Crime, Serious Crime and Consolidation of Public Security. Tirana: Council of Ministers

countering serious and organised crime.¹³ Prior to its approval, the normative act was criticised by civil society organisations (CSOs) which asked the Speaker of the Assembly to convey their concerns in a joint statement:

“The Normative Act (Anti-KÇK) bypasses the constitutional framework of the country, violates the principle of separation and balance of powers, violates fundamental human rights and freedoms, including freedom of movement and the right to due process, it weakens the legal and effective independence of the Prosecution and may undermine the fight against OC.”¹⁴

The Ombudsman also had reservations about the normative act, as it assumed the provision of parallel competencies mechanisms that create premises for this normative act being unconstitutional and in violation of human rights.¹⁵ Despite the criticisms by CSOs and the Ombudsman, the normative act was approved,¹⁶ but it has not achieved the expected results. Yet, eleven months since the establishment of OFL, not a single property was confiscated. Practically, it failed in its mission to confiscate assets, while only managing to temporarily seize them.¹⁷

Albania’s efforts to confiscate and seize property acquired through OC activity have been unsuccessful, which is why the EU has urged Albania to establish or designate an office in charge of identifying and tracking criminal assets, and to adopt legislation targeting unjustified wealth.¹⁸

There are several specialised entities geared to fight OC in Albania. At the tactical level, there is the Department of Serious and Organised Crime within the Albanian State Police (ASP). OC investigations are supervised by the Special Prosecutor’s Office (SPO). Regarding judicial institutions, there are the Anti-Corruption and OC-Specialised Court of first instance and the Anti-Corruption and OC-Specialised Court of Appeals. The High Prosecutorial Council and High Judicial Council were established in 2018,¹⁹ which led to the establishment of the Special Prosecutor’s Office and the Anti-Corruption and OC Structure (SPAK),²⁰ tasked with investigating and adjudicating high-level cases of corruption and OC – also seen as an effective opportunity to investigate (the untouchable) senior officials and crime bosses in Albania.²¹

13 *Ibid.*

14 Albanian Helsinki Committee, 2020. Albanian Helsinki Committee. [Online] Available at: www.ahc.org.al/oponence-ligjore-per-aktin-normativ-me-fuqine-e-ligjit-te-keshillit-te-ministrave-nr-1-dt-31-01-2020/. [Accessed on 26 November 2020]

15 Brakaj, 2020. Fakte Albania. [Online] Available at: www.faktoje.al/spak-rrezon-legjitimite-tin-e-aktit-normativ-anti-kck/. [Accessed on 26 November 2020]

16 National Assembly of the Republic of Albania, 2020. On the Approval of the Normative Act on Preventive Measures in the Framework of Strengthening the Fight against Terrorism, Organised Crime, Serious Crime and Consolidation of Public Security. Tirana: Council of Ministers

17 Euronews Albania, 2020 [Online] Available at: www.euronews.al/al/unpublished/2020/12/23/11-muaj-nga-krijimi-i-ofl-se-ende-as-nje-prone-e-konfiskuar

18 European Commission, 2020. COMMISSION STAFF WORKING DOCUMENT: Albania 2020 Report, Brussels: European Commission. Available at: www.ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

19 United Nations Office on Drugs and Crime (UNODC), 2020. Measuring Organised Crime in the Western Balkans (Vienna) pp. 62-63

20 Law no. 95/2016 on the Organisation and Functioning of the Institutions for Countering Organised Crime and Corruption. Available at: www.klp.al/wp-content/uploads/2020/02/llogji_nr_95_2016_per_organizimin_dhe_funksionimin_e_institucioneve_per_te_luftuar_korrupsionin_dhe_krimin_e_organizuar_s_1728.pdf

21 Reporter.al, 2019. Available at: www.reporter.al/ngrihet-struktura-e-posame-per-luften-kunder-korrupsionit-dhe-krimin-te-organizuar/

Since the early 2000s, Albania has adopted a series of strategies to tackle corruption and other forms of OC.²² In 2008, it adopted the first strategy against OC,²³ which was followed by the second one in 2013.²⁴ It is the main national strategic document aiming to coordinate state efforts in countering OC, although such coordination efforts have not been successful.²⁵ Additional policy documents contributing to the fight against OC include action plans against cannabis cultivation and trafficking,²⁶ and those that refer to re-integration of victims of trafficking,²⁷ and cyber security.²⁸

Albania has not published a national OC threat assessment in recent years,²⁹ although it is important for reliable understanding of threats and addressing them properly. A good methodology for OC assessment is SOCTA.³⁰

Besides lacking the OC threat assessment, Albania did not have a monitoring report about the implementation of the strategy until the end of 2020.³¹ The absence of such monitoring inhibits the possibility of improvement and causes unavailability of data.

It was noted in the 2020 monitoring report³² that the process of adoption and implementation of the strategies has been irregular, inconsistent and made mainly as a response to EU demands. Indicators are poorly formulated and both anti-OC strategies have failed to produce action plans for three years, out of six, which would ensure proper their implementation.

22 Decision of the Council of Ministers no. 292/2004. National Strategy against Drugs 2004-2010; National Strategy for the Fight against Child Trafficking and Protection of Children Victims of Trafficking 2008-2010; National Strategy for Combating Trafficking in Human Beings 2008-2010; Intersectoral Strategy on Prevention, Fight against Corruption and Transparent Governance, 2008-2013; Integrated Border Management Strategy 2007-2013; Public Order Sector Strategy 2007-2013

23 Decision of the Council of Ministers no. 1140/2008 "Intersectoral Strategy on Combating Organised Crime, Trafficking and Terrorism 2008-2013"

24 Decision no. 663/2013 on the adoption of the Intersectoral Strategy for Combating Organised Crime, Illicit Trafficking and Terrorism 2013-2020 and the Action Plan 2013-2016

25 CSDG Albania, 2020. Baseline Assessment: Intersectoral Strategy on Countering Organised Crime 2013-2020, Tirana: Centre for the Study of Democracy and Governance. Available at: www.csdgalbania.org/wp-content/uploads/2020/12/Baseline-assessment-Organized-Crime.pdf, pp. 7-9

26 Decision of the Council of Ministers no. 248/2017 on the approval of the Action Plan against Cannabis Cultivation and Trafficking 2017–2020

27 Decision of the Council of Ministers no. 115/2016 on the approval of the Action Plan on Socio-Economic Reintegration of Women and Girls Victims of Trafficking

28 Decision of the Council of Ministers no. 973/2015. Available at: www.cesk.gov.al/wp-content/uploads/2016/04/Dokumenti%20i%20Politikave%20per%20Sigurine%20Kibernetike%202015-2017.pdf

29 European Commission, 2020. COMMISSION STAFF WORKING DOCUMENT: Albania 2020 Report, Brussels: European Commission. Available at: www.ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

30 The Serious and Organised Crime Threat Assessment - SOCTA is one of EUROPOL's strategic, flagship reports which serves to assess and prioritise threats, vulnerabilities and opportunities for crime.

31 CSDG Albania, 2020. Baseline Assessment: Intersectoral Strategy on Countering Organised Crime 2013-2020, Tirana: Centre for the Study of Democracy and Governance. Available at: www.csdgalbania.org/wp-content/uploads/2020/12/Baseline-assessment-Organized-Crime.pdf

32 *Ibid.* pp. 28-29

Regional and EU-level Cooperation and Knowledge Sharing

Strengthening international cooperation in the fight against OC is one of the strategic objectives of the national strategy.³³ While there is ample evidence that shows Albania's cooperation with the EU regarding the fight against OC, little information can be found regarding regional cooperation in this regard. Given the regional and transnational nature of cooperation among organised criminal groups (OCGs) and the fact that all Western Balkan (WB) countries are interested in fighting them,³⁴ regional cooperation is important.

Albania has taken steps to strengthen police cooperation with the EU by allowing airborne monitoring by the Italian Guardia di Finanza and by intensifying cooperation with the European Union Agency for Law Enforcement (EUROPOL) and the European Union Agency for Criminal Justice Cooperation (EUROJUST), which has led to a number of successful large-scale law enforcement operations.³⁵ Albania has also signed agreements on operational cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the European Border and Coast Guard Agency (FRONTEX). The latter launched its first full-fledged joint operation outside the EU at the Greek-Albanian border in May 2019,³⁶ as a result of which 7,087 irregular immigrants (77.8% of those caught in Albania) were stopped and processed at entry points used by irregular migrants.³⁷

Albania has signed an agreement on strategic and operational cooperation with EUROPOL, ratified it in 2014 and updated it in 2018.³⁸ This agreement allows for the exchange of personal data between parties through the Secure Information Exchange Network (SIENA). The number of joint international operations has increased slightly in 2019, which corresponds with the signing of the agreement between Albania and EUROPOL through Law no. 60/2018 (see: Chart 1).

33 Decision no. 663/2013 on the adoption of the Intersectoral Strategy for Combating Organised Crime, Illicit Trafficking and Terrorism 2013-2020 and the Action Plan 2013-2016, p. 13

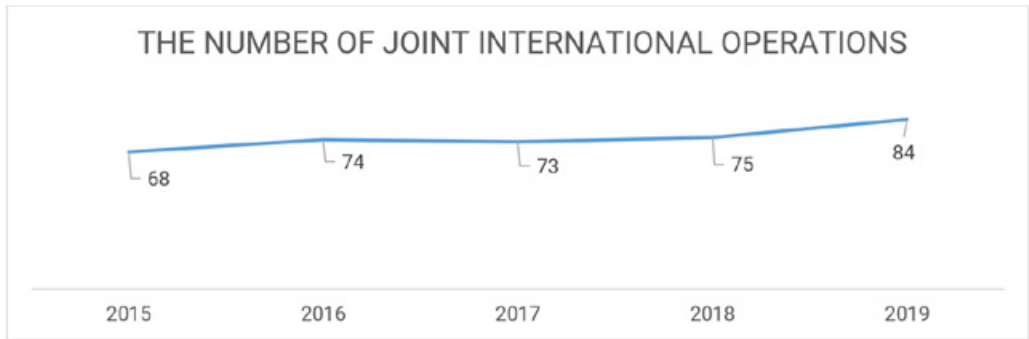
34 Balkans in Europe Policy Advisory Group (BiEPAG) (2019). Strengthening the Rule of Law in the Western Balkans: Call for a Revolution against Particularism. Policy Study. Available at: www.biepag.eu/wp-content/uploads/2019/03/Strengthening-the-Rule-of-Law.pdf

35 European Commission, 2020. COMMISSION STAFF WORKING DOCUMENT: Albania 2020 Report, Brussels: European Commission. Available at: www.ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

36 Frontex, 2019, "Frontex launches first operation in Western Balkans." Available at: www.frontex.europa.eu/media-centre/news/news-release/frontex-launches-first-operation-in-western-balkans-znTNWM

37 Albanian State Police, 2020. Annual report, Tirana. Available at: . pp. 16-17

38 National Plan for European Integration 2020-2022. Centre for Official Publications. Available at: www.qbz.gov.al/eli/vendim/2020/02/19/151.



*Chart 1: General Directorate of the State Police.
Retrieved from CSDG Albania, 2020*

While the EU 2020 report³⁹ indicates that the number and quality of messages exchanged through SIENA has improved significantly since the end of 2019, it also suggests that Albanian law enforcement agencies should make full use of the operational agreement with EUROPOL, including more proactive and timely information exchange through SIENA, and put joint investigation teams to better use. The agreement between Albania and EUROPOL (Law no. 77/2018) has enabled the deployment of a EUROPOL liaison officer at the premises of the ASP since 2019,⁴⁰ the first to operate in the WB. The liaison officer has helped strengthen police cooperation between Albania and EU Member States in the fight against OC, increase information-sharing, and enhance the capacities of ASP in assessing main OC threats. The data from the annual report of the State Police⁴¹ indicate that a total of 31,591 pieces of information were exchanged with international partners in 2019, of which 18,500 were exchanged with Interpol, 8,645 with EUROPOL, and 4,446 with contact officers. The same report states that information sharing has increased by 5%.

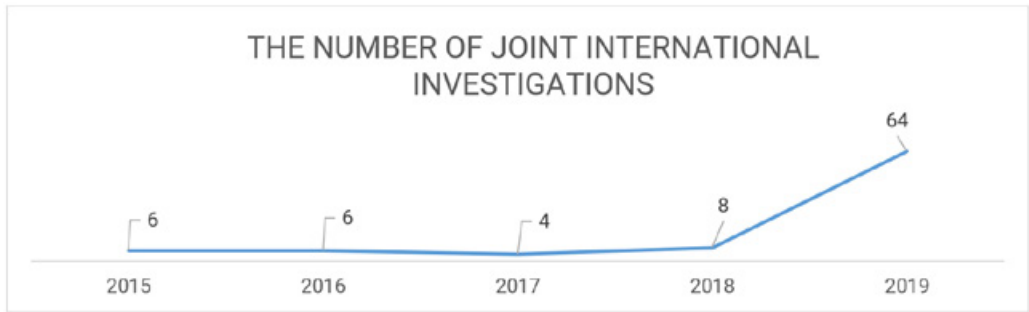
Albania has also signed the Cooperation Agreement⁴² with EUROJUST, ratified by Law no. 113/2018, whose main aim is to further facilitate judicial cooperation among Albanian and EU practitioners in the fight against serious crime, with specific focus on OC and terrorism. This agreement has greatly increased the total number of joint international investigations in Albania (see: Chart 2).

39 European Commission, 2020. COMMISSION STAFF WORKING DOCUMENT: Albania 2020 Report, Brussels: European Commission. Available at: www.ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf

40 National Plan for European Integration 2020-2022. Centre for Official Publications. Available at: www.qbz.gov.al/eli/vendim/2020/02/19/151.

41 Albanian State Police, 2020. Annual report, p. 15. Tirana. Available at: www.mb.gov.al/wp-content/uploads/2020/07/Policia-e-Shtetit-ANALIZA-VJETORE-2019.pdf.

42 General Prosecutor's Office, 2020. General Prosecutor's Report on the Crime Situation for 2019, Tirana: General Prosecutor's Office, pp. 287-288



*Chart 2: General Directorate of State Police.
Retrieved from CSDG Albania, 2020*

In 2019 alone, the Contact Point at the General Prosecutor’s Office has received at least 23 requests for legal assistance from Member States such as Italy, Greece, the Czech Republic, Switzerland, Hungary and Montenegro.⁴³ As per EU recommendation, Albania appointed the Liaison Prosecutor to EUROJUST in December 2020.⁴⁴ In 2020, the cooperation with EUROJUST led to the arrest of 37 members of an OCG responsible for international trafficking of large quantities of drugs,⁴⁵ and to a very successful unprecedented international operation involving judicial and law enforcement authorities in ten countries that resulted in complete dismantling of the Albanian-speaking ‘Kompania Bello’ criminal group, one of the most active cocaine-trafficking networks in Europe.⁴⁶

| The Track-Record of Albania’s Anti-OC Efforts

Since Albania has not recently published a national Serious and Organised Crime Threat Assessment, which is necessary to obtain a reliable picture of the threats, the track record of the country’s anti-OC efforts is evaluated according to several areas of OC, which are identified as indicators in the national Strategy⁴⁷ as well as in two international reports - the U.S. Department of State’s 2020 International Narcotics Control Strategy Report and the EC 2020 report on Albania.

⁴³ *Ibid.*, pp 289-290

⁴⁴ General Prosecutor’s Office, 2020. “The Liaison Prosecutor of Albania appointed to Eurojust.” Available at: www.pp.gov.al/web/Komandohet_Prokurori_nderlidhes_i_Shqiperise_prane_Eurojust_1518_1.php#.X_bpR9hKiUI

⁴⁵ Eurojust, 2020. European Union Agency for Criminal Justice Cooperation. [Online] Available at: <https://www.eurojust.europa.eu/major-albanian-italian-drug-trafficking-network-dismantled> [Accessed on 17 November 2020]

⁴⁶ Europol, 2020. European Union Law Enforcement Agency. [Online] Available at: www.europol.europa.eu/newsroom/news/joint-investigation-team-leads-to-dismantling-of-one-of-europe%E2%80%99s-most-active-albanian-speaking-networks-trafficking-cocaine [Accessed on 17 November 2020]

⁴⁷ Decision no. 663/2013 on the adoption of the Intersectoral Strategy for Combating Organised Crime, Illicit Trafficking and Terrorism 2013-2020 and the Action Plan 2013-2016



Chart 3: Data retrieved from the United Nations Office on Drugs and Crime, Measuring Organised Crime in the Western Balkans, 2020.

The dismantling of OCGs involved in OC activities is one of the internal indicators of the national Strategy. There are incremental changes in the number of persons convicted for participating in OCGs from 2015 to 2018. The conviction of six persons in 2015 increased to 17 persons in 2016, which was then followed by a dip to only nine persons in 2017, and a doubling of convictions in 2018 (see: Chart 3). There has actually been a decrease in the number of OCGs that have been dismantled over the years since 2015 (see: Chart 4). The reason for this could be a natural decrease in the number of OCGs caused by the effective work of anti-OC mechanisms, or simply an indicator of less effective performance of the competent institutions, especially considering the high level of OC activity still present in Albania.

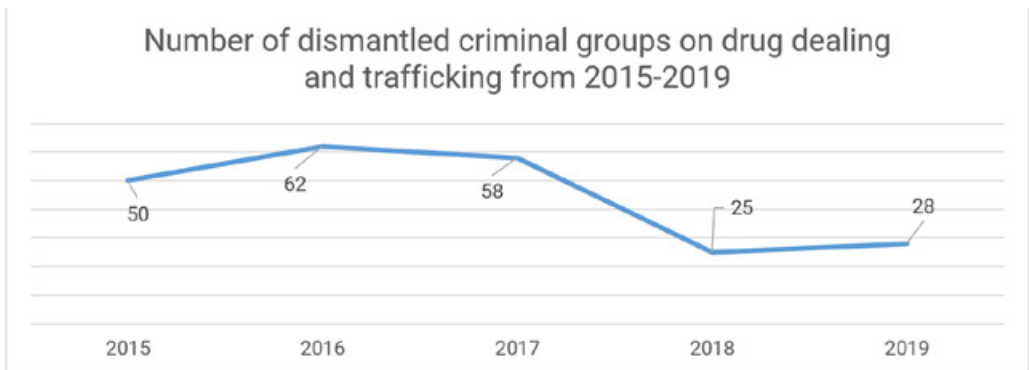


Chart 4: Source: CSDG Albania, 2020. Baseline Assessment: Intersectoral Strategy on Countering Organized Crime

Seizure of assets derived from illegal activities is another internal indicator of the national Strategy which is also highlighted in international reports. There has been similar number of money-laundering proceedings from 2015 to 2019, with a slight increase in 2017 and a gradual decrease in the years that followed (see: Chart 5). Considering Albania's widespread money-laundering indicated in international reports, the decreasing number of related criminal proceedings could be interpreted only as poor performance of state institutions in this regard.

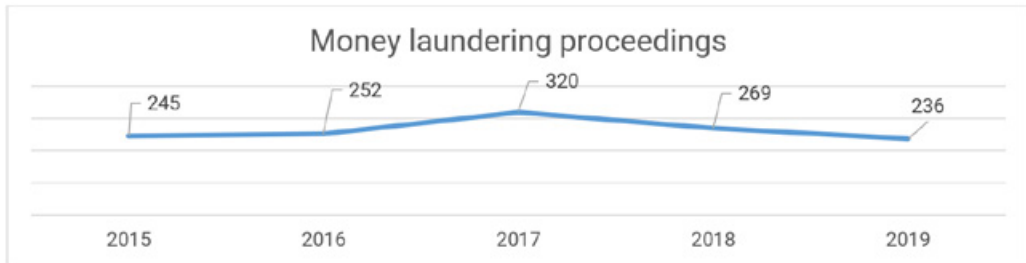


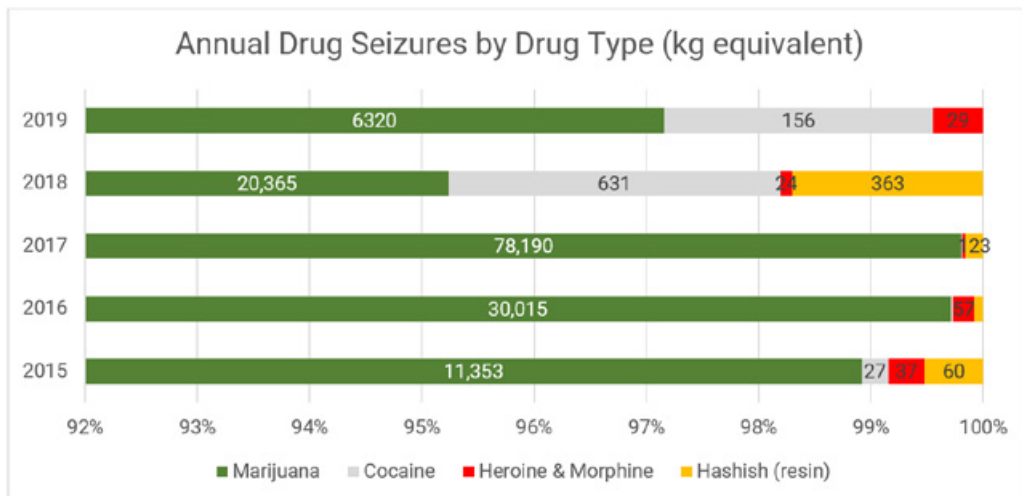
Chart 5: The chart shows the registered criminal proceedings on money laundering by the General Prosecutor Office (Article 287/a – anonymous accounts and Article 287/b - misappropriation of money or goods derived from the criminal act or criminal activity.

Illegal narcotics market is an indicator from the national Strategy which is highlighted in international reports as well. Drug trafficking has been the most profitable sector for criminal groups in Albania for the last 30 years. Cannabis cultivation remains strong, despite significant efforts to curb production.⁴⁸ The State Department report notes that Albania is in the process of attempting to enact sweeping criminal justice reforms to more effectively prosecute and convict criminals for drug trafficking, and that it is vital for the Albanian government to continue to implement the justice reform and work to erode the influence of OC.⁴⁹ On a more positive note, the EC report notes that Albania is continuing to show strong commitment to countering the production and trafficking of drugs. The EC report recommends that, in the coming year, Albania should adopt a new strategy and action plan on drugs, fill the legislative gap on drug precursors, and intensify the fight against drug trafficking.⁵⁰ The following chart (Chart 6) indicates the amounts of narcotics that have been seized in Albania during the period 2015-2019. Regardless of the amounts seized, the performance of state institutions in this regard is poor, considering Albania's widespread cannabis cultivation and drug trafficking indicated in international reports.

48 Reitano and Amerhauser, 2020. Illicit Financial Flows in Albania, Kosovo and North Macedonia. Global Initiative. Geneva. p. 52

49 United States Department of State: Bureau for International Narcotics and Law Enforcement Affairs, 2020. International Narcotics Control Strategy Report, Volume I. Drug and Chemical Control, Washington D.C.: United States Department of State: Bureau for International Narcotics and Law Enforcement Affairs

50 European Commission, 2020. COMMISSION STAFF WORKING DOCUMENT: Albania 2020 Report, Brussels: European Commission. Available at: www.ec.europa.eu/neighbourhood-enlargement/sites/near/files/albania_report_2020.pdf



*Chart 6: Annual Drug Seizures (kg equivalents) in Albania 2015 - 2018.
Source: United Nations Office on Drugs and Crime.
Data for 2019 are retrieved from CSDG Albania.*

Minimisation of corruption and placement of Albania among the countries that fight corruption effectively is another indicator of the national Strategy that is highlighted in international reports. The corruption situation has deteriorated from 2016 to 2019 (see: Chart 7) and the ISCO 2013-2020 has therefore not achieved the projected result.

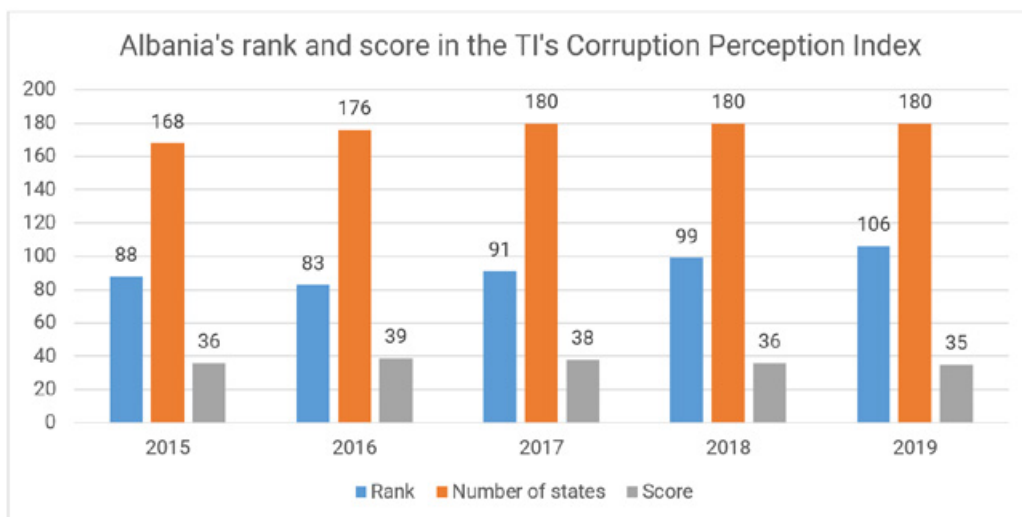


Chart 7: Albania's rank and score in the Corruption Perception Index of Transparency International 2015-2019.

Ensuring safety and order in the country is another internal national Strategy indicator. Despite this, the public's perception of safety in the country has decreased over the years, from 49% of the population that was feeling safe in 2015 to only 35% in 2019 (see: Chart 8). It is very challenging to measure this specific objective using institutional indicators, as no report has assessed the level of public safety.

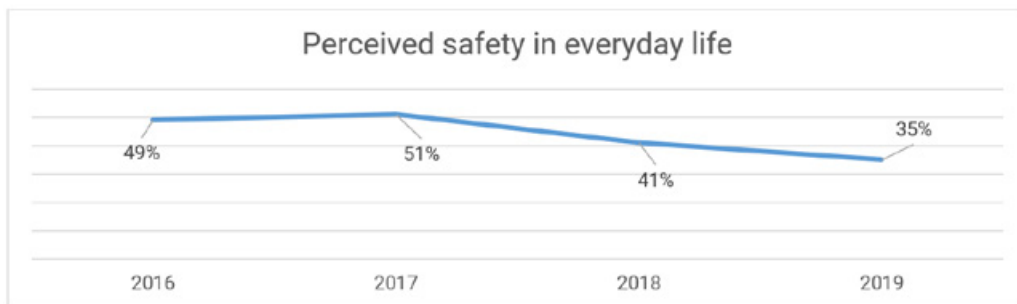


Chart 8: Data were taken from IDM Albania's "Trust in Governance" opinion polls. Most respondents said that criminality (67%), health issues (49%), injustice (36%), and employment insecurity (36%) were their everyday concerns.

Most of the provided data come from opinion polls conducted by CSOs that operate in the field. There is little tangible evidence from institutions to indicate how much public safety and order has improved over the years, which is another reminder of the need to develop strategies with measurable objectives.

On a similar note, the number of recorded criminal offences has increased over the years since 2015 (see: Chart 9) supporting the finding of the opinion polls which shows that the public feels less safe in 2019 than it used to four years ago.

Identifying Key Shortcomings and Challenges

This report has identified several shortcomings and challenges in the state's current efforts to fight OC.

The strategic objectives of the ISCOG 2013-2020 have been replicated in other relevant national sectoral strategies. This has caused overlapping and duplications that could be a burden to the implementing institutions and lead to a waste of resources.

The process of adoption and implementation of the ISCOGs has been irregular and inconsistent. The indicators in the ISCOG 2013-2020 were formulated without baseline information, with intermittent targets (rather than annual), and there are no provisions on data collection or the calculation method used for measuring results.

Albania has not published a national Serious and Organised Crime Threat Assessment in the recent years, although this document is necessary to obtain a reliable picture of the threats the country is facing, and to design interventions to address them.

Monitoring and evaluation reports are important because they provide recommendations for overcoming the burdens and duplications of the Strategy and contribute to its better implementation. However, as at the end of 2020, there has been no state or independent report on the implementation of the ISCOG 2013-2020 in Albania.

OCGs usually disregard state borders and cooperate internationally, which makes the fight against OC a challenge for different states and renders their cooperation highly significant. Although there is available data on Albania's cooperation with the EU in this regard, little information can be found on regional cooperation.

Regardless of its efforts to seize and confiscate OC property, Albania remains unsuccessful in this area due to the following: i) the available number and value of seized and confiscated assets does not correspond to the level of criminality in the country, ii) the deployed mechanisms have practically failed in their mission to confiscate assets, managing only to temporarily seize them, and iii) the decreasing number of criminal proceedings carried out for money laundering reflect the poor performance of state institutions in this regard.

Recommendations

Due to limited resources, inadequate capacities and even lack of in-depth understanding and coordination of the threat, the fight against OC poses great challenges for Albania, much like it does for many other nations in the region. Consequently, it is imperative that Albania learns to maximise its efforts, avoid wasting resources, and develop a simple and easy strategy for the fight against OC. In that regard, some specific recommendations for Albanian institutions would be:

Albania should publish the national Serious and Organised Crime Threat Assessment on a regular basis and by adopting the EU's SOCTA methodology. This will help the country obtain a reliable picture of the threats it is facing and enable it to decide on operational measures it should take to address them, especially when drafting of the next ISCOG.

Albania should further increase its efforts to tackle money laundering and adopt legislation targeting unjustified wealth, because financial investigations are not systematically accompanying criminal proceedings from the start, and their effectiveness thus remains limited.

Albania should establish an office in charge of identifying and tracking criminal assets, in line with the EU *acquis*.

Albanian law enforcement agencies should make full use of the operational agreement with EUROPOL, including more proactive and timely information exchange through SIENA, and make better use of joint investigation teams to conduct investigations with their EU counterparts.

Given the regional and transnational cooperation of OCGs and the danger they pose to the WB, it is important to strengthen regional cooperation in the fight against OC.

Albania should develop a more effective monitoring mechanism for the implementation of the strategies. This will ensure reduction of overlap and continuous improvement of the strategic objectives through informed decision-making.

Albania should increase information sharing among criminal justice institutions to efficiently combat OC networks.

State institutions should work with the civil society to enrich their findings and improve monitoring through external overview of state activities related to OC.

Increase the technical capacity of the criminal justice system personnel to combat OC. This includes specialised trainings for prosecutors, judges, police officers and members of other related institutions.

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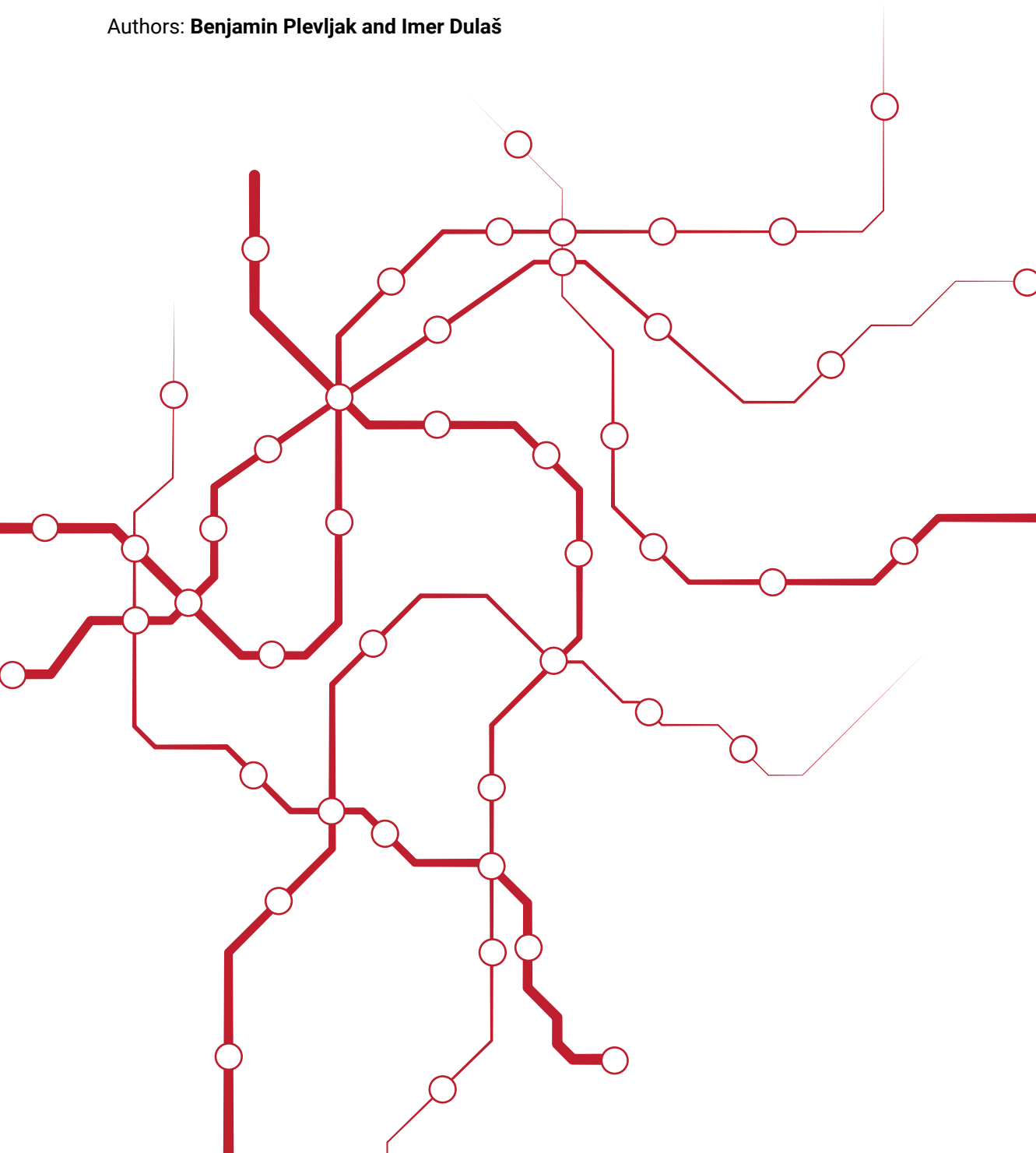
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Bosnia and Herzegovina

Authors: **Benjamin Plevljak and Imer Dulaš**



Executive Summary

The purpose of this empirical study is to analyse the current efforts (and impact) of the government of Bosnia and Herzegovina in tackling organised crime, identify successful approaches and examine the current challenges. In addition, the aim is to draft and propose recommendations to strengthen, support, and promote good practices in combating organised crime and identify shortcomings and challenges.

The method of qualitative analysis of document content was used to analyse the national legislative framework, action plans and other strategic documents related to the fight against organised crime, and to examine the track record of convictions. Documents related to regional and European cooperation were reviewed as well. Semi-structured interviews were conducted with five representatives of the criminal justice system.

Bosnia and Herzegovina cooperates with both the EU and governments in the Western Balkans. The Strategic Agreement on Cooperation between the Council of Ministers of BiH and the European Police Office (EUROPOL) is one example of cooperation at the international level, while at the regional level cooperation takes place mostly through joint investigations of police agencies and signed Conventions such as the Police Cooperation Convention for Southeast Europe.

The records of judgments and other track record documents of the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina were also taken into account as they show the effectiveness of the above mentioned institutions.

Due to the coronavirus pandemic, some of the interviews had to be conducted through an online communication platform. There were no limitations in other aspects of the research.

This analysis provides insight into the work of state institutions charged with the fight against organised crime and the status of regional cooperation and cooperation with the EU. This was accomplished by interviewing representatives of the criminal justice system and by conducting an analysis of the reports, national strategic documents and track record documents.

Introduction

OC is one of the most striking forms of crime and it endangers the security of almost all the countries. The number of such activities in Bosnia and Herzegovina is extremely high, but drug trafficking, money laundering and human trafficking are the most dominant.¹

Looking at the documents of the European Union describing the situation concerning organised crime and corruption in BiH, it can be concluded that these phenomena are continuously the most prevailing. In their BiH-related documents from the last three years, the EU has stated that corruption is still very much present² and that efforts against organised crime require better investigation and prosecution. The fight against trafficking in human beings, smuggling of migrants, trafficking in firearms and terrorism requires a more efficient delineation of competencies and powers.³ As regards prevention and fight against corruption and organised crime, Bosnia and Herzegovina is currently at the early stage. The EU reports also state that there has been no progress in the implementation of the key priorities listed in the Opinion of the Commission on the Application of Bosnia and Herzegovina for membership in the European Union 2019, the 2019 recommendations in this area, or the findings from the Expert Report on the Rule of Law in BiH.⁴

Regional cooperation, as well as cooperation with the European Union, is a key factor in the fight against organised crime. Organised crime is a phenomenon that often disregards borders, so states are usually unable to deal with it alone. Members of organised criminal groups are rarely from one country. Their cooperation is most often regional, so that they could cover as much territory as possible and thus increase the profit of the organisations. It is evident that cooperation between the governments exists. There are mechanisms of regional cooperation and cooperation with the EU, in the form of documents such as the Strategic Agreement on Cooperation, signed between the Council of Ministers of BiH and the European Police Office (EUROPOL), international arrest warrants and regional cooperation documents such as the Police Cooperation Convention for Southeast Europe.

As the report continues, the focus will be on the analysis of the legislative frameworks, strategies and other documents referring to the fight and cooperation in the fight against organised crime, knowledge capacities of the criminal justice system and governments, as well as their practices and challenges. Regional and EU-level knowledge sharing will be considered, as well as the track record of the Bosnia and Herzegovina government in prosecuting organised crime and the final convictions. Finally, shortcomings will be identified and presented, together with recommendations on cooperation at the national and regional level.

1 Centre for Security Studies Sarajevo, Study on Organised Crime in Bosnia and Herzegovina, Sarajevo 2014

2 European Commission, Bosnia and Herzegovina 2020 Report

3 Opinion of the Commission on the Application of Bosnia and Herzegovina for membership in the European Union 2019

4 European Commission, Bosnia and Herzegovina 2020 Report

Analysis of the Legal and Strategic Framework

Besides other agencies at the level of Bosnia and Herzegovina, the State Investigation and Protection Agency (SIPA) and the BiH Border Police (BP BiH) operate within the Ministry of Security of Bosnia and Herzegovina. They perform operational work in combating organised crime. There is the Court and the Prosecutor's Office of Bosnia and Herzegovina, while the Service for Foreigners' Affairs – which operates within the same Ministry - is also included in the fight against organised crime as an administrative organisation. The Intelligence-Security Agency of Bosnia and Herzegovina and the Indirect Taxation Authority also play an important role in the fight against OC.

As for the entity level, there are institutions such as the Federal Ministry of Interior (FMUP), the Ministry of Interior of the Republic of Srpska (MUP RS) and the Brčko District Police. There are also district (basic and cantonal) municipal prosecutor's offices, while the Prosecutor's Office of the Brčko District of BiH is in charge of the Brčko District.

Bosnia and Herzegovina has four criminal laws and four criminal procedure codes: for Bosnia and Herzegovina,⁵ the Federation of Bosnia and Herzegovina,⁶ for the Republic of Srpska⁷ and for the Brčko District.⁸ These laws include legal regulations and mechanisms for combating all forms of crime, although special investigative actions regulated in the aforementioned Criminal Procedure Codes are perhaps the most important for the fight against organised crime.⁹

In addition to the Criminal Codes, an active approach to this issue is reflected in the development of the Organised Crime Threat Assessment, Strategies and Action Plans for the Fight against Organised Crime in Bosnia and Herzegovina,¹⁰ and strategies and action plans for the fight against corruption.¹¹

The Council of Ministers of Bosnia and Herzegovina has adopted four Strategies for the Fight against Organised Crime, but there is also the Strategy for the Fight against Corruption in BiH, issued by the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption.

The Court of Bosnia and Herzegovina also issues a strategic document entitled *The Court of BiH's Medium-Term Plan*, which includes a two-year plan. The latest medium-term plan of the Court of BiH covers the period 2019-2021. In addition, the Court of BiH issues anti-corruption plan, the last of which was the Anti-Corruption Plan for the period 2018-2019.

Among others, the most important principles mentioned in the Strategy for the Fight against Organised Crime in BiH are: *the principle of political will*, which implies that an active fight against organised crime is a priority activity of institutions in Bosnia and

5 Criminal Code of Bosnia and Herzegovina

6 Criminal Code of the Federation of Bosnia and Herzegovina

7 Criminal Code of the Republic of Srpska

8 Criminal Code of the Brčko District of Bosnia and Herzegovina

9 Criminal Procedure Code of Bosnia and Herzegovina

10 Strategy for the Fight against Organised crime in Bosnia and Herzegovina for the period 2017-2020, p. 3

11 Strategy for the Fight against Corruption in Bosnia and Herzegovina (2015-2019)

Herzegovina, and the *principle of legality*, which implies respect for the Constitution and domestic laws, as well as for the provisions of international agreements (international legal instruments) to which Bosnia and Herzegovina is a signatory. Regarding regional and EU-level cooperation, the *principle of proactive international cooperation and ensuring the active role of Bosnia and Herzegovina at the international level* is the principle which reflects BiH's commitment to participating in the fight against organised crime at both regional and international levels.

As regards legislative, strategic and political framework at the national level, representatives of criminal law institutions provided their opinion as to whether these really are working or should be improved, as well as their view on the level of cooperation at both national and regional level. The majority of representatives believe that the existing legislative framework is good. However, they add that there is always room to make the fight against organised crime more effective, and that it could be improved through full implementation of the law and the application of the already existing norms.

One of the representatives believes that strategies are not absolutely necessary if we have professionals who do their job properly, i.e. work for justice and enforce the law.

The police apply positive legal regulations that have been adopted at the state/entity levels and harmonised with international recommendations and standards, as well as the provisions of accepted international documents.

As for the assessment of the current policy in the fight against organised crime and its effectiveness in terms of records of prosecution, conviction and support to victims, representatives of certain institutions are involved in the institutional development of a document which will define the dangers of this form of crime and identify priorities that could cause potential adverse effects.

In addition to these strategies, the Police Cooperation Convention for Southeast Europe is also a very important document that shows regional cooperation. This Convention is the result of a desire to advance the common security interests of Albania, Serbia, Bosnia and Herzegovina, Northern Macedonia, Moldova, Romania and Montenegro.¹²

Organised Crime Threat Assessment (OCTA) is an assessment that elaborates on the threats posed by organised crime and gives priority to those that are projected to cause the greatest damage (direct negative impact on the budget). It also serves as basis for the development of strategic documents in this area and provides guidance to all relevant bodies in the fight against this form of crime.

The need for such a document, which is certainly future-oriented, arises from the analysis of the threat assessment of serious and organised crime in the European Union (EU SOCTA), which was done by EUROPOL and which showed that organised criminal groups linked to certain areas pose a serious threat to the security of the European Union and its member states.¹³

The adoption of OCTA is highly important for all the citizens of Bosnia and Herzegovina. It represents an important step in the process of joining the European Union while also showing a clear commitment of institutions in BiH to contribute to the fight against this – evidently - global problem.

12 Police Cooperation Convention for Southeast Europe

13 Organised Crime Threat Assessment in Bosnia and Herzegovina, 2016, p. 2

The Strategic Agreement on Cooperation between the Council of Ministers of BiH and the European Police Office (EUROPOL) was signed and ratified in 2007, envisaging the exchange of exclusively non-operational information. The Agreement on Operational and Strategic Cooperation between BiH and EUROPOL (Operational Agreement) was signed on 31 August 2016 and has entered into force in March 2017. However, the Operational Agreement is still not fully implemented because the Joint Contact Point for BiH (JCP) provided for in the Agreement has not been established to date.¹⁴

Regional and EU-Level Cooperation and Knowledge Sharing

Regional cooperation is an important segment for improving relations between the countries of the Western Balkans, and for jointly responding to the challenges the region is facing. After the 1990s, various initiatives have been launched to improve the cooperation of these countries and bring socio-economic benefits, as well as - in the case of this research - benefits in terms of security. Some of these strategies, initiatives and agreements are the Central European Free Trade Agreement (CEFTA), the Regional Cooperation Council, the Berlin Process, SEE2020, etc.

The South East Europe 2020 Strategy states that “The policy objectives and measures envisaged by the Strategy should contribute to the creation of some one million new jobs during the current decade. By joining forces in the achievement of common goals and united by shared European values, South East Europe will succeed”¹⁵, which shows readiness and commitment to improving the overall situation in the Western Balkans. The ways and mechanisms of regional and international cooperation concerning the security sector of Bosnia and Herzegovina will be presented below.

As regards institutions’ cooperation at the regional and/or EU level, and the platforms/bodies through which this cooperation takes place, the representatives stated that cooperation takes place in various forms. Members of the Court of Bosnia and Herzegovina participate in conferences, expert meetings, initiatives and all other forms of professional networking, all with the aim of achieving progress and adopting good practices and solutions. Its representative stated that this has had an impact on the implementation of Convention recommendations in BiH law.

The Court of Bosnia and Herzegovina is a member of the European Network of Supreme Courts for the Exchange of Judicial Practice which operates within the European Court of Human Rights in Strasbourg. They participate in various projects and publish their practices in an annual newsletter.

One of the interlocutors singled out the Good Practice Exchange Programme, which was conducted in cooperation with USAID through the Justice Against Corruption Project’s Good Practice Network and was aimed primarily at exchanging practices and expert materials in the field of corruption, economic crime and organised crime among partner prosecutors from all over Bosnia and Herzegovina.

¹⁴ Strategy for the Fight against Organised Crime in Bosnia and Herzegovina (2017-2020), p.19

¹⁵ The Southeast Europe 2020 Strategy (SEE2020), Regional Cooperation Council, p.6

As regards cooperation of the Federal Police Administration with European and regional police bodies, it takes place on a daily basis with National Central Bureaus of INTERPOL, EUROPOL, SELEC, police attachés and liaison officers.

In addition to the above, there is a platform for the exchange of information, which was established within the Directorate for Coordination of Police Bodies of BiH, Sector for International Operative Police Collaboration, NCB Interpol, Sarajevo Department.

There is also a special framework for regional cooperation provided for by the Convention on Police Cooperation in Southeast Europe, which, in addition to defining the exchange of information and data, provides the possibility of cooperation through the formation of joint investigation teams of the signatory countries.

The Federal Police Administration also participates in programmes through projects organised with the assistance of IPA funds, TAIEX, OSCE, iPROCEEDS, and in trainings organised by the Centre for Education of Judges and Prosecutors of FBiH, the High Judicial and Prosecutorial Council of BiH, the Ministry of Security of BiH, etc.

As regards cooperation with non-governmental actors, commitment to cooperation in the fight against organised crime with non-state actors is also expressed in the principles for drafting and implementing the Strategy for the Fight against Organised Crime in BiH, the Strategy for the Fight against Corruption, as well as in other strategic documents that clearly envisage the concept of cooperation between the public and private sectors, civil society and citizens. Representatives of criminal law institutions say that they provide support and encouragement to professional, independent and impartial investigative journalists, and to civil society organisations whose knowledge could lead to the identification of real threats arising from organised crime or which could point to traces and perpetrators.

Not all participants, however, have the same opinion of CSOs. One of the representatives believes that civil society organisations, with the exception of a few, have a limited reach because their funding seems to depend primarily on those whose work they should be monitoring.

The Track Record of WB6 Governments' Anti-OC Efforts

As for the documents that were used to collect track record information for the needs of the analysis, the Prosecutor's Office of Bosnia and Herzegovina publishes information about its work each year. This document includes a special section related to organised crime and corruption. The years 2017 and 2018 were taken into account, as the work report for 2019 is not yet available. Documents and reports from the Court of BiH for the years 2018 and 2019 were also considered, as well as the Annual Report of the State Investigation and Protection Agency of BiH for the year 2018.

We will focus first on the results of the work of the Prosecutor's Office of Bosnia and Herzegovina in 2017 and 2018, more precisely its Department no. 2 (Special Department for Organised Crime, Financial Crime and Corruption).

In the years 2017 and 2018, the prosecutors of Department 2 has filed a total of 203 indictments against 416 persons. As for the cases that were handled by this Department, the Court of BiH has issued prison sentences whose total duration is 231 years and 8 months.

	Indictments	Individuals	Duration of the prison sentence
2017	96	210	136 years + 8 months
2018	107	206	95 years

Table 1: Prosecutor’s Office of Bosnia and Herzegovina

According to the Information on the Work of the Prosecutor’s Office, KM 5,089,244.80, EUR 120,900.00, HRK 800.00 and USD 446.00 in total, as well as a large number of real estate, vehicles and other movables, have been confiscated in 2017,¹⁶ while the total amount of illegally acquired property confiscated in 2018 was KM 4,042,383.62.¹⁷

It is worth noting that the number of indictments filed by Department 2 of the Prosecutor’s Office of Bosnia and Herzegovina is increasing each year, but it is interesting that the number of years to which perpetrators are sentenced is actually decreasing.

As for the 2018-2019 work of the Court of Bosnia and Herzegovina, or more precisely – its Department 2 which deals, among other things, with organised crime – it has issued a total of 262 first instance verdicts and resolved 251 cases. As for the Appellate Division of Department 2, there were a total of 44 appellate judgments, while the total number of third instance verdicts was four.¹⁸

	First instance verdicts	Completed cases	Appellate judgments	Third instance verdicts
2018	127	126	26	1
2019	135	125	18	3

Table 2: The Court of Bosnia and Herzegovina

As regards the State Investigation and Protection Agency, in the year 2018, cases related to organised crime concerned drug trafficking, human trafficking, arms trafficking and money laundering.

¹⁶ The Prosecutor’s Office report for the year 2017, p. 29

¹⁷ Information on the Work of the Prosecutors Office for 2018, p. 27

¹⁸ Court of Bosnia and Herzegovina, Department for Judicial Administration of the Court of BiH, power-point presentation.

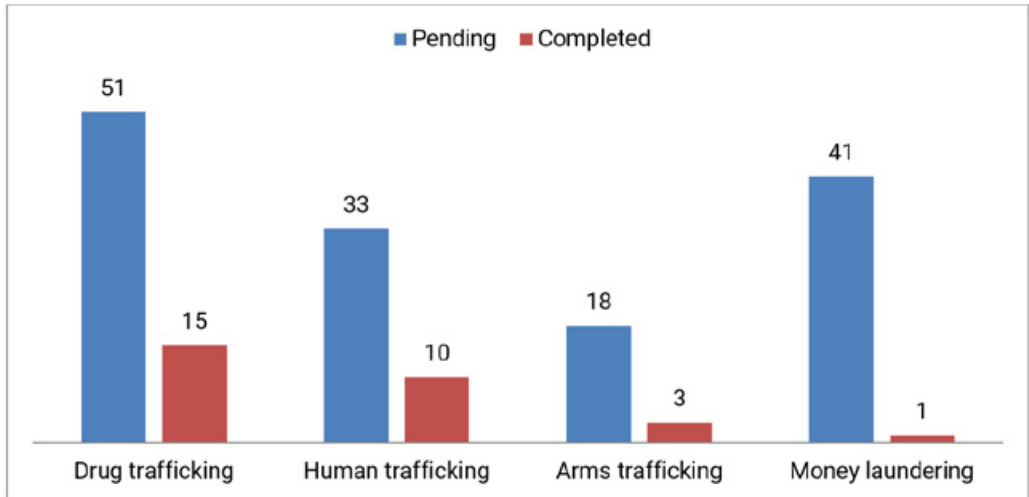


Chart 1: Cases related to Organised Crime in 2018¹⁹

Analysing the data, it can be concluded that about 20% of all the processed cases related to organised crime were in fact completed. The majority of the completed cases involved the criminal offence of human trafficking (30%), while the fewest involved money laundering (2%).

Investigations of criminal offences of money laundering have established that KM 59,419,391.28 of illegally acquired funds was inserted into the legal cash flows using the financial system of Bosnia and Herzegovina, and that material damage caused by the reported criminal offences amounted to KM 56,791,027.20.²⁰

It is important to emphasise that international cooperation has been achieved in a total of 7 cases related to human trafficking, seven cases related to organised crime, and 18 cases involving drug trafficking. Speaking of actions whose realisation was aided by international cooperation, we can single out the following: “CD1/13 Oceans”, “Heir”, “Damar”, “Albatross” and “Smoke”. An important segment in combating criminal activities is also the cooperation between the agencies that operate within Bosnia and Herzegovina itself, which has proven effective in several resolved cases and undertaken actions.

Key Shortcomings and Challenges

It should be noted that a good part of the public believes that judiciary is governed by politics, and this needs to change. The society’s trust has been violated, which means that citizens are not willing to report crimes or testify at trials. They are also discouraged by the fact that lawsuits can sometimes take years, which has made them lose both the will and desire to file them. According to a study from 2017,²¹ citizens trust the prosecution and judiciary the least.

¹⁹ State Investigation and Protection Agency’s Annual Report for 2018

²⁰ State Investigation and Protection Agency’s Annual Report for 2018, p. 6

²¹ Pointpulse Report – The Citizens’ Opinion of the Police: Results of the Public Opinion Research in Bosnia and Herzegovina (2017)

The policy of the fight against organised crime must be supported at the level of institutions, in order for them to be able to act more progressively, prosecute perpetrators of crimes more efficiently, and tighten penal policy, especially for perpetrators of crimes in the field of corruption. It is necessary for the state to make a strategic commitment to effectively combat organised crime, which must be accompanied by concrete legislative action and the activities of the executive branch of power.

One interviewee finds the current legislative, strategic and political framework at the level of Bosnia and Herzegovina absolutely inadequate, primarily as a result of the state's constitutional structure, which is proving disastrous in the fight against organised crime. The parallel existence of four criminal justice systems, uneven practice in the application of both substantive and procedural law, and the lack of harmonised action in the field of legislative interventions (amendments to laws) have led to a worrying level of legal uncertainty among the citizens of BiH. One of our interlocutors was of the opinion that it is necessary to point out that successes recorded in the prosecution of certain perpetrators of this type of crime are mostly the result of individual enthusiasm and commitment of prosecutors and police officers, and almost never an achievement of the system.

There are cases where laws must be harmonised at the entities' level. One of the representatives noted that the Federation of BiH's Law on Misdemeanours is full of shortcomings when compared to the same law in the Republic of Srpska and the countries of the region, which results in uneven court practice and situations where certain behaviours and actions are recognised as misdemeanours in one entity, but not in others.

Two of the respondents noted a lack of competence and education of members of the criminal justice system. One stated that the impossibility of the injured party to influence the investigation, indictment and the course of the criminal proceedings represents another gap in the criminal law system. Namely, all responsibility is with the Chief Prosecutor. As regards police officers' dealing with criminal acts of organised and inter-cantonal crime, it is possible to single out the absence of a special prosecutor's office and a court which would be competent to investigate and prosecute crimes committed in two or more cantons, as well as crimes that start in one canton and finish in another.

Representatives listed investigation as the most sensitive phase, as it serves to collect evidence on which the entire subsequent criminal proceedings before the court are based. Unfortunately, very often there is a lack of evidence, poor quality evidence or ineffective presentation of evidence in court.

Regarding the shortcomings related to CSOs, one respondent stated that the work of CSOs depends heavily on donors, which can be an obstacle to their objectivity and can ultimately have a major impact on the fight against organised crime and corruption.

One of the respondents stated that the reaction of the state will be stronger when people stop looking at things as if they did not concern them, and when the system starts protecting those who dare to report crime and testify about it. For this model to be more efficient, citizens must have confidence in institutions."

Recommendations

Police and CSOs must encourage citizens to report criminal activity, in order to strengthen cooperation and trust between the society and the police. For the purpose of achieving the same goal, the judiciary and the prosecution must restore citizens' trust in these institutions and their will to testify, through positive examples and practices such as faster action, stricter penal policy, etc.

Police agencies need to put a greater focus on community policing. International factors can have a great influence in terms of training and education aimed at exchanging best practices.

The state should strengthen the capacities of prosecutor's offices and courts, especially in dealing with crimes committed in two or more cantons, as well as crimes that start in one canton and finish in another.

Improve education and professionalism in the police, as well as judicial and prosecutorial capacities, since lack of competence significantly affects efficiency in the fight against organised crime. As it turns out, it is necessary to educate police officers in dealing with money laundering.

The legislative power should try to harmonise laws within the state for a better and more balanced fight against organised crime, as the parallel existence of four criminal justice systems and uneven practice in the application of both substantive and procedural law have led to a worrying level of legal uncertainty among the citizens of BiH.

It is necessary for the state level to invest more effort in the establishment of a contact point for cooperation with EUROPOL, in order to strengthen international police cooperation which would lead to more efficient actions aimed at suppressing organised crime.

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Criminal Code of the Republic of Srpska (“Official Gazette of the RS” nos. 49/2003, 108/2004, 37/2006, 73/2010, 1/2012, 67/2013)

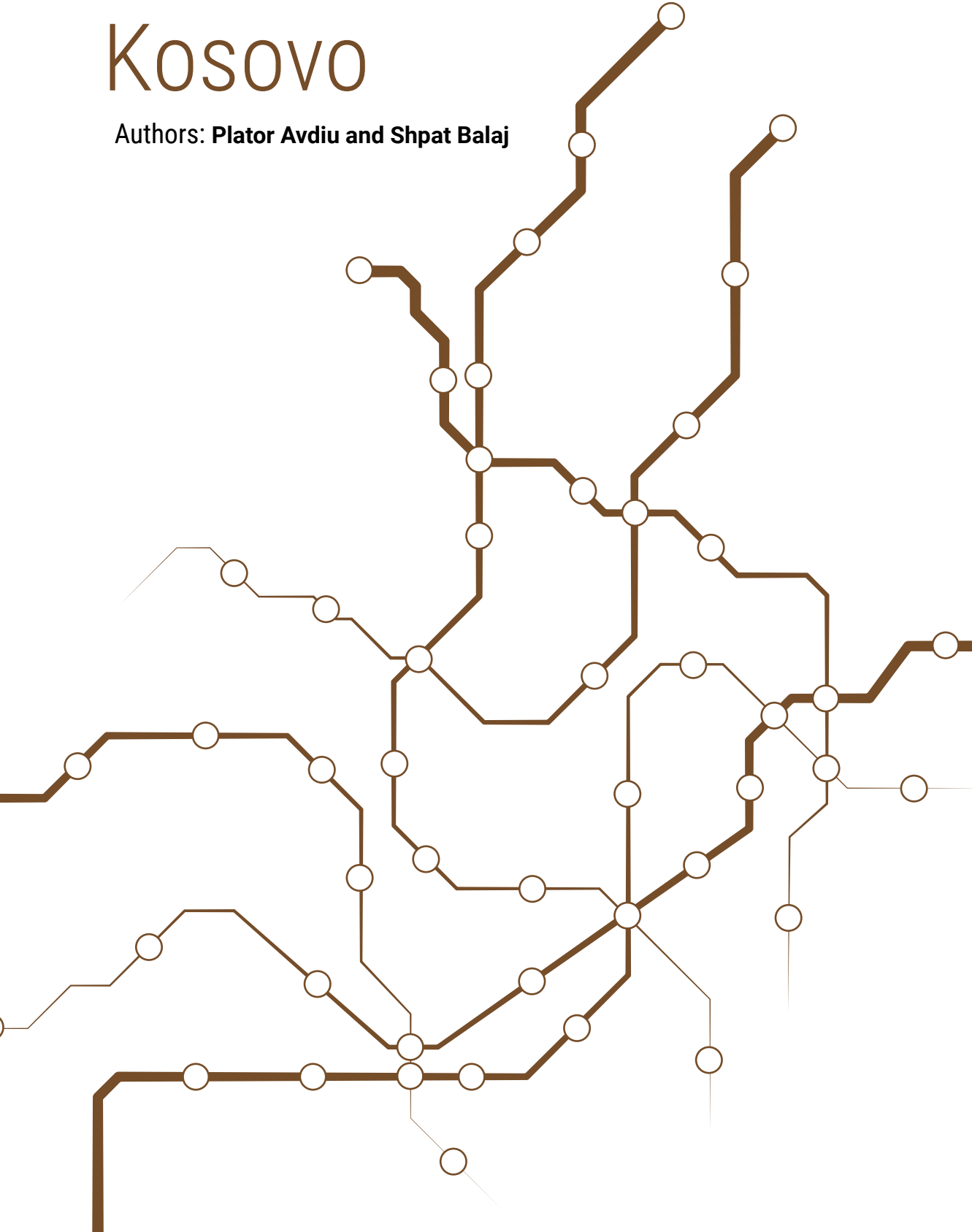
Criminal Code of the Brčko District of Bosnia and Herzegovina (“Official Gazette of the Brčko District of BiH” nos. 33/2013 - consolidated text, 47/2014 - correction 26/2016, 13/2017 and 50/2018)

Criminal Procedure Code of Bosnia and Herzegovina

Court of Bosnia and Herzegovina, Department for Judicial Administration of the Court of BiH, power-point presentation

KOSOVO

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Executive Summary

The effective fight against OC in Kosovo continues to be a challenge to the rule of law and its strengthening processes. Challenges and shortcomings in this regard are present in different forms. The key institutions forming the chain of criminal justice response are faced with particular challenges that arise from corruption, poor organisation, limited capacities or lack of institutional responsibility and competence. On the other hand, there are also common problems that are mainly related to the political level, the lack of political will to address the organisations' needs and challenges, or general political developments in Kosovo and the region as a whole. Consequently, as a result of unaddressed challenges and shortcomings, Kosovo's track record in the fight against organised crime remains weak and there is a discrepancy between the legal and strategic framework and its implementation in practice.

Kosovo's constitutional and legal framework in the field of prevention and combating organised crime and other criminal activities is solid. The Criminal Code has specific legal provisions defining organised criminal groups as well as conviction of organised crime-related activities. As regards strategic documents of the Kosovo institutions, the National Strategy and Action Plan against Organised Crime 2018-2022 is in place, however there is lack of information on its implementation in practice and the fulfilment of anti-organised crime strategic objectives. Kosovo has good judicial cooperation with neighbouring countries, with the exception of Serbia. As regards police cooperation, the Kosovo Police has concluded bilateral agreements with the Western Balkan countries, excluding Serbia and Bosnia & Herzegovina. It is estimated that the Kosovo Police has signed 93 international police cooperation agreements. Apart from the countries in the Western Balkans, some of these agreements include bilateral cooperation with the European Union Member States on joint investigation teams, as well as the exchange of information on civil and criminal cases. Since 2016, Kosovo has signed the Working Arrangement with the European Border and Coast Guard Agency (Frontex) on irregular migration, cross-border crimes, border security and overall border management, including daily exchange of data. Moreover, a Working Arrangement concluded between Kosovo and the European Union Agency for Law Enforcement Cooperation (Europol) in 2020 has formalised cooperation between these parties. It paves the way for cooperation between Kosovo, the EU and its Member States in preventing and combating organised crime, serious and other forms of crime.

Introduction

The political and socio-economic developments in the Western Balkans have caused organised criminal groups to extend their activities in the region, while the presence of corruption and political influence in the judiciary has facilitated their influence in Kosovo and the region in general. Based on the World Justice Project Rule of Law indicators, Kosovo was ranked second in enforcing and respecting the rule of law in the region of Eastern Europe, leaving all the other WB countries behind.¹ However, when it comes to effective investigations by the criminal justice system, Kosovo remains below the WB regional average. Besides the above, lack of justice and Kosovo police's cooperation with some of the Western Balkan countries (e.g., Serbia and Bosnia and Herzegovina) and current political obstacles to its membership in Interpol (including other regional/international security organisations) is hindering the country's international police cooperation in preventing and combating transnational organised crime. However, the recent working arrangement, concluded between Kosovo and Europol, is a positive development.

Despite the fact that the legal framework in Kosovo is quite solid, and that – at least in theory – it meets the needs of effective fight against organised crime and corruption, making practical use of it leaves much to be desired. Various analyses of international institutions and civil society organisations show that Kosovo still has a lot of progress to make in addressing organised crime and corruption, and that various elements of the criminal justice system are suffering from serious shortcomings that undermine Kosovo's progress in this regard. In general, there is a lack of profiling and specialisation of both institutional actors and civil society in the field of organised crime, which reduces the understanding and effectiveness of the fight on one hand, while facilitating the functioning and development of organised criminal groups on the other.

Analysis of the Legal, Strategic and Policy Framework

As regards legal framework, the Criminal Code of the Republic of Kosovo² contains some legal provisions on organised crime activities. According to this legal document, an organised criminal group is a structured association and consisting of three or more persons, established over a period of time, which acts in concert with the aim of committing one or more serious criminal offenses in order to acquire, directly or indirectly, a financial or other material benefit.³ Article 277 of the Code stipulates that whoever, with the intent and with knowledge of either the aim or the general activity of the organised criminal group or its intention to commit one or more criminal offences punishable by a maximum imprisonment of at least four (4) years, or more

1 World Justice Project, 2020. *Rule of Law Index 2020*. Available at: https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

2 Code No. 06/L-074 Criminal Code of the Republic of Kosovo. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

3 Paragraph 13 of Article 113, Code No. 06/L-074 Criminal Code of the Republic of Kosovo. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

actively, takes part in the group's criminal activities knowing that such participation will contribute to the achievement of the group's criminal activities, shall be punished by a fine of up to EUR 250,000 and imprisonment of at least 7 years.⁴ Furthermore, any person that organises, establishes, supervises, manages or directs the activities of an organised criminal group shall be punished by a fine up to EUR 500,000 and by a prison term of at least 10 years.⁵

Other laws affecting the fight against organised crime are: Law on the Management of Sequestered and Confiscated Assets,⁶ Law on Extended Powers on Confiscation of Assets,⁷ Law on Assets and Gifts Declaration of All Public Officials,⁸ Law on the Prevention of Conflict of Interest in Discharge of a Public Function,⁹ and Law on the Protection of Whistleblowers¹⁰. There are also other specific laws that aim to combat activities related to organised crime. They can be found using the link provided in the footnote.¹¹

One of the important legal documents is the Criminal Procedure Code.¹² The new code has been recently drafted by the Ministry of Justice of Kosovo, with the support of international community in Kosovo¹³ but it has yet to be adopted and enacted by the relevant institutions (the Government and the Assembly). Among the most important innovations the draft law offers are the suspension of public officials who are convicted by court for any criminal offence involving corruption and abuse of official duty. Another amendment is the harmonisation of the new code with the Law on Extended Powers on Confiscation of Assets for enhancing capacities of law enforcement institutions of Kosovo towards confiscating of assets.¹⁴

In terms of strategic documents, the State Strategy and Action Plan against Organised Crime 2018-2022 recognises OC as a threat to both internal and external security.¹⁵ It aims to use material, financial and human resources as rationally as possible, and develop policies for assuming responsibilities on prevention and combating organised

4 *Ibid*, Paragraph 1 of Article 277

5 *Ibid*, Paragraph 2 of Article 277

6 Law no. 05/L-049 on the Management of Sequestered and Confiscated Assets. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12360>

7 Law No. 06/L-087 on Extended Powers on Confiscation of Assets. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18337>

8 Law no. 04/L-050 on the Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of All Public Officials. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767>

9 Law no. 06/L-011 on the Prevention of Conflict of Interest in Discharge of a Public Function. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=16314>

10 Law no. 06/L-085 on Protection of Whistleblowers. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18303>

11 Ministry of Internal Affairs of the Republic of Kosovo. (2018). *State Strategy and Action Plan against Organized Crime*, pp. 10-14. Available at: <https://mpb.rks-gov.net/Uploads/Documents/Pdf/EN/48/STATE%20STRATEGY%20AND%20ACTION%20PLAN%20AGAINST%20ORGANIZED%20CRIME%202018%20%E2%80%93%202022.pdf>

12 Criminal No. 04/L-123 Procedure Code. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

13 For more information, see the following link: <https://md.rks-gov.net/page.aspx?id=1,15,2396>

14 *Ibid*.

15 Ministry of Internal Affairs of the Republic of Kosovo. (2018). *State Strategy and Action Plan against Organized Crime*, p. 5. Available at: <https://mpb.rks-gov.net/Uploads/Documents/Pdf/EN/48/STATE%20STRATEGY%20AND%20ACTION%20PLAN%20AGAINST%20ORGANIZED%20CRIME%202018%20%E2%80%93%202022.pdf>

crime and protecting individuals and society from this phenomenon.¹⁶ Kosovo's Strategy against Organised Crime lists three core objectives: i) preventing and combating forms of organised crime, ii) further strengthening capacities for the prevention and fight against organised crime, and iii) establishing cooperation and coordination between national and international actors in preventing and fighting organised crime.¹⁷ The institution charged with coordinating the implementation of the strategy objectives is the National Coordinator against Organised Crime, who is also monitoring the indicators of this strategic document. Besides this body, line ministries, law enforcement institutions (the police, the Prosecutor's Office, etc.) are responsible for monitoring and conducting assessments of the activities described in the Strategy's action plan.¹⁸

Regional and EU-level Cooperation and Knowledge Sharing

In terms of regional cooperation in the field of anti-organised crime activities, the police and justice institutions in Kosovo have solid and sound cooperation with neighbouring countries (such as Albania, Montenegro and Northern Macedonia). Cooperation with Serbia, however, still remains a political challenge. Kosovo currently has bilateral agreements on judicial cooperation with all its neighbours, excluding Serbia.¹⁹ Despite Kosovo's readiness to cooperate with Serbia on judicial and police related issues, the latter refuses to establish police and judicial bilateral and/or regional cooperation with Kosovo, mainly for political reasons and due to fact that Serbia refuses to recognise Kosovo's independence.²⁰

The Kosovo Police has also signed bilateral cooperation agreements with some of the Western Balkan countries, but its biggest challenge remains the bilateral police cooperation with Serbia and Bosnia & Herzegovina caused by the lack of information exchange in the security area with these countries.²¹ This inevitably limits the attempts of rule of law institutions in Kosovo to proactively prevent and fight transnational organised crime and organised crime groups that operate in the region. It is important to highlight that the Kosovo Police has signed 93 international police cooperation agreements, including 20 countries, and that it cooperates with EU Member States on a bilateral basis (through joint investigation teams and exchange of information on civil and criminal cases).²²

¹⁶ *Ibid*, p. 6

¹⁷ *Ibid*, p. 14

¹⁸ *Ibid*, p. 16

¹⁹ Centre for Democracy and Human Rights (2019). Regional Judicial Cooperation in Criminal Matters: Overview of Comparative Practices of Western Balkan Countries, Centre for Democracy and Human Rights, Podgorica, p. 59. Available at: <http://www.cedem.me/en/publications/studies-and-public-politics/send/71-studies-and-public-politics/1931-regional-judicial-cooperation-in-criminal-matters-overview-of-comparative-practices-in-western-balkans>

²⁰ Dragojlo, S. and Isufi, P. (2021). *Cover-Up Claims Shadow Unsolved Murder of Kosovo Serb Politician*. BIRN, 15 January 2021. Available at: <https://balkaninsight.com/2021/01/15/cover-up-claims-shadow-unsolved-murder-of-kosovo-serb-politician/>

²¹ Aliu, L. and Avdiu, P. (2016). Goridan Knot: Kosovo's Obstacles towards Membership into International Organisations: INTERPOL Case, Kosovo Centre for Security Studies, Prishtina, p. 13. Available at: http://www.qkss.org/repository/docs/KCSS_INTERPOL_November_2016_904229.pdf

²² European Commission. (2020). *Kosovo 2020 Report*, p. 42. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

Since 2011, the Kosovo Government has established the International Law Enforcement Coordination Unit (ILECU) within the General Directorate of the Kosovo Police.²³ ILECU is an EU-based initiative to create an effective international law enforcement cooperation mechanism among the Western Balkans beneficiary countries, and to improve international law enforcement cooperation in the region.²⁴ This mechanism, which is integrated in national criminal intelligence models, is also designed to support the exchange of information in international investigations and facilitate contacts at the operational level.²⁵ It is also worth mentioning that the ILECU is the central point of contact of the Kosovo Police when it comes to international police cooperation, which implies that police cooperation information goes through the ILECU.²⁶ A Memorandum of Understanding between the Ministry of Internal Affairs, Ministry of Justice, Ministry of Finances and the State Prosecutor's Office was signed in 2011, for the purpose of coordinating the actions and increasing the effectiveness of this unit in Kosovo.²⁷

Cooperation of Kosovo institutions with the EU-based mechanisms started following the Working Arrangement with the European Border and Coast Guard Agency (Frontex), which was signed by the Ministry of Internal Affairs and Frontex in 2016 with the purpose of establishment operational cooperation, The key implementing partner of the working arrangement is the Border Department of the Kosovo Police.²⁸ It also enables close cooperation on irregular migration, cross-border crime, border security and overall border management, including the daily exchange of data. Within Frontex, Kosovo participates in the Western Balkan risk analysis network and other regional exercises organised by Frontex.²⁹

A major development occurred in 2020, when Kosovo concluded a Working Arrangement with Europol, the EU's law enforcement agency,³⁰ thus formalising cooperation between Kosovo and Europol. Its aim is to establish cooperative relations between Europol and Kosovo's law enforcement institutions that support EU Member States and Kosovo in preventing and combating serious crime, organised crime, terrorism and extremism.³¹ Besides this, the Kosovo Police participates in Europol's Platform for Witness Protection Prosecutors, and the EU has recommended that judges undertake

23 Government of Kosovo. (2011). *Memorandum of Understanding for coordination and support provided for International Law Enforcement Coordination Unit*, p. 2. Available at: <http://kpk.spinpa-gency.com/assets/cms/uploads/files/Memorandumet/2011/ILECU.pdf>

24 For more information, see the Regional Cooperation Council's press release at the following link: <https://www.rcc.int/press/59/establishment-of-international-law-enforcement-coordination-units-in-western-balkans-launched-in-vienna-today>

25 Ibid.

26 Kursani, Sh. (2015). *Police cooperation between Kosovo and Serbia*, Belgrade Centre for Security Policy and Kosovar Centre for Security Studies, Belgrade and Prishtina, p. 6. Available at: http://www.qkss.org/repository/docs/Police_cooperation_between_Kosovo_and_Serbia_749694.pdf

27 Government of Kosovo. (2011). *Memorandum of Understanding for coordination and support provided for International Law Enforcement Coordination Unit*, p. 2. Available at: <http://kpk.spinpa-gency.com/assets/cms/uploads/files/Memorandumet/2011/ILECU.pdf>

28 FRONTEX. (2016), "Frontex signs working arrangement with Kosovo", available at: <https://frontex.europa.eu/media-centre/news-release/news-release/frontex-signs-working-arrangement-with-kosovo-u1FpiJ>

29 European Commission. (2020). *Kosovo 2020 Report*, p. 49. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

30 Ministry of Internal Affairs of Kosovo. (2020), "Minister Veliu signed a cooperation agreement with EUROPOL", available at: <https://mpb.rks-gov.net/f/57/420/Ministri-Veliu-nenshkruajti-mar-reveshjen-e-bashkepunimit-me-EUROPOL-in>

31 EUROPOL. (2020). *Working Arrangement establishing cooperative relations between the law enforcement authorities of Kosovo and the European Union Agency for Law Enforcement Cooperation*. Available at: <https://www.europol.europa.eu/partners-agreements/working-arrangements>

training on how to effectively protect witnesses.³² It is important to note that Kosovo is already a member of certain regional security initiatives, including SEESAC (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons), MARRI (Migration, Asylum, Refugee Regional Initiative), etc. Nevertheless, it is not yet a full member of a number of other regional security organisations, including RACVIAC (Centre for Security Cooperation) or SELEC (Southeast European Law Enforcement Centre). Despite the fact that Kosovo and Serbia reached a technical agreement on Kosovo's regional representation (in 2012, through EU facilitation),³³ Serbia fiercely campaigns to block Kosovo's membership in regional initiatives, including those dealing with security. Consequently, Kosovo is currently neither a member nor a participant in these initiatives.

Track Record of Kosovo Institutions Anti-OC Efforts

Since 2008, local and international institutions in Kosovo have made efforts to provide an effective response to organised crime (OC) and corruption. Despite having several mechanisms in place that deal with OC and corruption, in the last decade Kosovo has been assessed as not having made much progress in tackling OC. The audit report of the European Court of Auditors on EULEX³⁴ has highlighted the slow developments and inefficiency of EULEX in improving the rule of law, particularly in regard to fighting OC and corruption.³⁵ Similarly, the transfer of OC and high-level corruption cases from EULEX to local institutions³⁶ has as well been characterised by a major backlog in the handling of these cases, and there have been almost no convictions for OC offences from the time of transfer to date.³⁷ To break the 'tradition' of a weak track record in fighting OC, the Parliament of Kosovo adopted the new Law on Courts in 2018, which established special departments within the Basic Court and Court of Appeal of Prishtina³⁸ that deal exclusively with offences filed by the Special Prosecution.^{39,40} According to the Special Prosecution, the establishment of these departments has facilitated their work easier and paved the way to better efficiency.⁴¹

32 European Commission. (2020). *Kosovo 2020 Report*, p. 43. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

33 See the EU-facilitated technical agreement on Regional Representation and Cooperation, reached between Kosovo and Serbia, at the following address: https://kryeministri-ks.net/wp-content/uploads/docs/agreement_0210_representation.pdf

34 EULEX is a EU mission established in Kosovo. One of its main tasks was to ensure that (among others) cases of OC and corruption, economic crimes and other serious crimes are properly investigated, prosecuted and enforced. For a detailed description of the EULEX mission, see: *Council joint action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX Kosovo Article 3*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008E0124&from=EN>

35 European Court of Auditors, 2012. *Special report no. 12 - European Union assistance to Kosovo related to the rule of law*

36 For more on changes to the EULEX-s mandate and the transfer of their cases to local institutions, see: <https://www.eulex-kosovo.eu/?page=2,44,197> and [http://www.qkss.org/repository/docs/Decon_eulex_paper_eng_\(2\)_635460.pdf](http://www.qkss.org/repository/docs/Decon_eulex_paper_eng_(2)_635460.pdf)

37 Interview with a prosecutor from the Special Prosecutor's Office, 15 December 2020, Prishtina.

38 Although the Special Departments are established within the Basic and Appeal Courts of Prishtina, their mandate extends to the national level.

39 The Special Prosecutor's Office in Kosovo was established in 2008, with a special mandate to prosecute certain criminal offenses, with special focus on those related to OC.

40 Law no. 06/L-054 on Courts. Article 13. Available at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302>

41 Interview with a prosecutor from the Special Prosecutor's Office, 15 December 2020, Prishtina.

However, in the period 2013-2019, investigations were terminated in almost half of the total cases that were handled by the Special Prosecution. The high number of terminated investigations and dismissed criminal charges is especially present in the cases involving organised crime. Out of the total number of such processed cases, investigations have been terminated or criminal charges have been dismissed in 46 percent of the cases.⁴² As for corruption cases, in 54 percent of them investigations have been suspended, or criminal charges dismissed.⁴³

Cases handled by Special Prosecution	% of suspended investigations and/or dismissed criminal charges	% of indictments
Cases related to weapons (ex. Trafficking)	43%	57%
Cases related to narcotics (ex. Trafficking)	47%	53%
Smuggling of migrants	36%	64%
Organised crime	46%	54%
Corruption	54%	46%
Money laundering	78%	22%
Smuggling of human beings	43%	57%
Economic crimes	35%	65%
Incitement of hatred	25%	75%

Figure 1 - The performance of the Special Prosecutor's Office in the period 2013-2019.

Source: <https://bit.ly/38ePclf>, p.42

During the period January-September 2020, the Special Prosecutor's Office handled 38 cases with OC-related offences, involving 204 persons.⁴⁴ Out of the total, 34 cases were transferred from the previous years, while four new criminal charges were filed during the above period. In the same period, the special prosecution managed to solve six cases involving 29 persons. Investigations have been terminated in 14 of them, while indictments have been filed in 15.⁴⁵ Although criminal justice institutions are generally lagging behind when it comes to effective processing OC and corruption cases, the confiscation of assets is an even greater challenge. While temporary freezing of assets during criminal proceedings is on a positive the final confiscation is wanting.⁴⁶ This problem could be the result of the high number of dismissed corruption and OC cases.

⁴² Kosovo Prosecutorial Council, 2020. *Comparative and analytical report on characteristic criminal offences of the inter-institutional transmission mechanism for the period: 2013-2019*. Available at: [Raporti krahasimor dhe analitik për veprat penale karakteristike 2013-2019.pdf](https://prokuroria-rks.org/Raporti_krahasimor_dhe_analitik_per_veprat_penale_karakteristike_2013-2019.pdf) (prokuroria-rks.org)

⁴³ *Ibid.*

⁴⁴ Kosovo Prosecutorial Council, 2020. *Periodical report on characteristic criminal offences of the inter-institutional transmission mechanism for January-September 2020*. Available at: [RAPORTI JANAR-SHTATOR 2020, I MEKANIZMIT PËRCJELLES NDERINSTITUCIONAL.pdf](https://prokuroria-rks.org/RAPORTI_JANAR-SHTATOR_2020_I_MEKANIZMIT_PERCJELLES_NDERINSTITUCIONAL.pdf) (prokuroria-rks.org)

⁴⁵ *Ibid.*

⁴⁶ EULEX, 2020. *EU Rule of Law Mission Justice Monitoring Report: Findings and Recommendations September 2019 – Mid-March 2020*.

Cases transferred from previous years		New cases received in the period January – September 2020		Total cases (transferred + new)		Processed cases (completed/ resolved)		To be processed/ remaining cases	
Cases	People involved	Cases	People involved	Cases	People involved	Cases	People involved	Cases	People involved
34	177	4	27	38	204	6	29	32	175

Figure 2 - Performance of the Special Prosecutor's Office in the period January - September 2020. Source: <https://bit.ly/3v5nhob>, p. 32

Kosovo's slow and weak progress in the fight against organised crime and the presence of corruption are also an obstacle to the standardisation of good practices with the EU. The European Parliament has called on Kosovo to improve regulatory measures for final convictions in cases of high-profile corruption and OC, and has emphasised the need to step up the efforts in fighting these phenomena.⁴⁷ The European Commission's Kosovo 2020 report acknowledges that there has been some limited progress in the fight against OC in 2020, but it also sheds light on lenient sentencing in the cases of high-profile corruption and OC.⁴⁸

Key Shortcomings and Challenges of the Kosovo Government's Anti-OC Efforts

One of the key challenges facing Kosovo institutions pertaining to the fight against OC is the political influence and corruption in independent bodies and institutions. Judicial structures are exposed to political influence and dependence on certain political entities and figures.⁴⁹ The special prosecution is aware of this problem and believes that political influence is more pronounced in cases involving corruption and OC.⁵⁰ Besides the judiciary, political influence and corruption are also present in the Kosovo Police (KP). Although many police officers were arrested for corruption in 2019, these arrests ended in impunity.⁵¹ In this regard, it is necessary to address the lack of accountability of the chain of command of this institution when its officials are arrested for corruption or other criminal offences. Having in mind how KP is organised, in some cases it is difficult for police officers to commit criminal offences without the knowledge of their superiors, and not investigating the incompetence or involvement of the superiors is

47 European Parliament, 2020. *DRAFT REPORT on the 2019-2020 Commission Reports on Kosovo (2019/2172(INI))*. Available at: https://www.europarl.europa.eu/doceo/document/AFET-PR-647076_EN.pdf

48 European Commission, 2020. Kosovo 2020 Report. Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf

49 US State Department, 2020. *2019 Country Reports on Human Rights Practices: Kosovo*. Available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/kosovo/>

50 Interview with a prosecutor from the Special Prosecutor's Office, 15 December 2020, Prishtina

51 US State Department, 2020. *2019 Country Reports on Human Rights Practices: Kosovo*. Available at: <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/kosovo/>

generally harmful in terms of adequate response to corruption and organised crime.⁵² Moreover, in 2020, senior officials of the KP and the Correctional Service of Kosovo have been observed in close company of persons suspected and convicted of various criminal offences.⁵³ However, the affinity of senior officials towards OC figures is not exclusive to the Kosovo Police or the Correctional Service. In 2017, the then Minister of Foreign Affairs of Kosovo was seen having a friendly meeting with the chairman of the Serbian party in the Kosovo Assembly who allegedly also happens to be a powerful OC figure in the region. This shows the proximity of certain political entities in Kosovo to organised crime, and the reflection this phenomenon may have on anti-OC efforts.⁵⁴

Apart from the challenges arising from the political aspect and corruption, which are not necessarily connected or solvable by one institution, the challenges are also present regarding the capacities and competences of criminal justice institutions. Prior to the establishment of the Special Department within the Basic Court, indictments for OC cases were being filed in the courts in the respective regions where the offences were committed.⁵⁵ The handling of indictments by these courts has been characterised by the incompetence of their judges and a backlog of unresolved cases.⁵⁶ The lagging in solving the old cases is still present, as the Special Department is responsible only for new indictments submitted by the Special Prosecution. The old indictments are tried in the courts that received them prior to the establishment of the Special Department.⁵⁷

On the other hand, the Special Prosecutor's Office itself has shortcomings in terms of effective fight against organised crime because its prosecutors are not yet profiled and specialised in OC.⁵⁸ Given the sensitivity and risk of investigating and addressing OC, this has been an ongoing recommendation of the civil society, while according to representatives of the Special Prosecutor's Office the process of further profiling and specialisation is expected soon.⁵⁹ On the other hand, the way the KP is organised occasionally presents obstacles to its efficiency in fighting OC. While, in principle, the cases of OC are handled by the KP's Directorate of Organised Crime Investigations, sometimes there is an unintentional overlapping of competencies between different directorates responsible for investigating different types of crimes.⁶⁰ In some cases, this results in parallel investigations by departments that are less competent to investigate OC. This has apparently affected the work of the Special Prosecutor's Office as well. According to them, criminal charges filed by the KP frequently do not in fact necessarily represent OC.⁶¹ This indicates lack of competency and highlights the need for further specialisation and profiling in KP officers. Meanwhile, the work of the institutions is hampered, to a certain extent, by the Criminal Procedure Code, which foresees that

52 Interview with representatives of the Investigation Department, Anti-Corruption Agency, 2 December 2020, Prishtina

53 Insajderi, 2020. *Pas raportimit të Insajderit, suspendohen Komandanti I Njesisë Speciale dhe Drejtori I Burgut të Sigurisë së Lartë*. Available at: <https://insajderi.com/pas-raportimit-te-insajderit-suspendohen-komandanti-i-njesise-speciale-dhe-drejtori-i-burgut-te-sigurise-se-larte/>

54 Pavlović, B. and Dojčinović, S., 2019. *How a Meeting on a Yacht May Have Changed Kosovo's Political History*. OCCRP. Available at: <https://www.occrp.org/en/investigations/how-a-meeting-on-a-yacht-may-have-changed-kosovos-political-history>

55 Interview with a prosecutor from the Special Prosecutor's Office, 15 December 2020, Prishtina

56 *Ibid.*

57 *Ibid.*

58 Gashi, L. and Thaqi, M., 2020. *Krimet Speciale në Kosovë*. Kosovo Law Institute. Available at: <https://kli-ks.org/krimet-speciale-ne-kosove/>

59 *Ibid.*

60 Interview with the Directorate of Organized-Crime Investigations, Kosovo Police. 08 December 2020. Prishtina.

61 Interview with Prosecutor of Special Prosecution Office. 15 December 2020. Prishtina.

if within two years the investigation does not result in an indictment or suspension, it is automatically terminated.⁶² According to the representatives of criminal justice institutions, the investigation period envisaged in the Criminal Procedure Code does not effectively address OC, as in many cases OC is complex and as such requires broad and long-term investigations.⁶³

A major challenge of the criminal justice system is the absence of membership in key international law enforcement and justice mechanisms such as EUROPOL and EUROJUST, and the lack of formal cooperation with regional countries such as Serbia and Bosnia & Herzegovina. Organised criminal groups cross state borders and their damage often extends to the regional level.⁶⁴ For years, Kosovo has been failing in its efforts to become a member of INTERPOL, which process has been actively hindered also by Serbia.⁶⁵ In these circumstances, absence of membership in various international mechanisms and lack of regional cooperation with certain countries obstructs rapid exchange of information and results in non-communication and non-unification of the response to transnational crime.⁶⁶ Consequently, this affects the track record of anti-OC efforts of Kosovo institutions and the region in general, while also leaving a loophole for organised criminal groups to use political processes to their advantage.

62 Code of Criminal Procedure. Article 159. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861>

63 Interview with Prosecutor of Special Prosecution Office and Interview with the Directorate of Organized-Crime Investigations, Kosovo Police. 08 and 15 December 2020. Prishtina.

64 For an example that strengthens this argument, see: <https://www.occrp.org/ru/investigations/503-naser-kelmendi-from-kosovo-inmate-to-sarajevo-businessman>

65 Avdiu, P., 2017. *Rruga me pengesadrejt INTERPOL-it*. Sbunker. Available at: <https://sbunker.net/siguria-bllogje-tematike/88982/rruga-me-pengesa-drejt-interpol-it/>

66 Interview with the Directorate of Organised Crime Investigations, Kosovo Police, 8 December 2020, Prishtina

Recommendations

Following the snap parliamentary elections in 2021, the newly established Kosovo institutions (the Government and the Assembly) should adopt and enact the newly drafted Criminal Procedure Code as soon as possible.

The Special Prosecutor's Office should ensure that its prosecutors are specialised and profiled in organised crime, in order to increase the effectiveness of the work of this institution and provide concrete results.

The Special Department within the Basic Court of Prishtina should increase its capacities in order to prevent the backlog of cases, as was the case with other courts prior to the establishment of this department.

The Kosovo Judicial Council should conduct a comprehensive evaluation of the current capacities and competence of judges in Basic Courts in the region of Kosovo to address the backlog of organised crime and corruption cases.

The Kosovo Police should undergo internal reorganisation in order to further define the role of its internal mechanisms in the fight against organised crime.

Criminal justice institutions in general need to further strengthen practices in confiscating illegal assets, while other responsible mechanisms should increase the effectiveness of the use of confiscated assets for the needs of the country.

The Government of Kosovo and the political level in general should refrain from inappropriately influencing the criminal justice system, and should effectively address their capacity needs in order to improve the anti-organised crime track record.

The Government of Kosovo should increase its efforts in ensuring the membership of Kosovo in international mechanisms such as INTERPOL.

The rule of law institutions in Kosovo, primarily the Kosovo Police, should make full use of the working arrangements with FRONTEX and EUROPOL to deepen mutual cooperation on prevention and combating serious and organised crime, including transnational organised crime.

The Government of the countries in the region should refrain from politicising cooperation with Kosovo in the area of the rule of law and its perspective of becoming a member of INTERPOL and similar mechanisms. Having in mind the effects of organised crime on the region and the cooperation of organised criminal groups in all WB6 countries, cooperation and development in this regard must remain unconditioned by political developments.

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Montenegro

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Executive Summary

Organised crime (OC) is recognised as one of the key problems, not only in Montenegro and other countries of the Western Balkans, but also in Europe. Although OC is widespread, the number of criminal organisations operating in Montenegro has not been precisely identified. Bearing in mind that organised criminal groups operate across countries' borders, it is not enough for only Montenegro to be involved in the fight against their activities. It is necessary to cooperate with the institutions of other countries, especially the police, as well as with international organisations that deal with this topic. Montenegro has established a legal framework for the fight against organised crime in line with the EU *acquis*. Most information in this area are available, thanks to the obligation to report to the EU on the results in the context of accession negotiations. Although Montenegro has made some progress in this area, there are many problems and challenges it faces in practice.

Introduction

The exact number of criminal organisations operating in Montenegro has not been precisely determined. According to official data, it seems that their number is declining. It was estimated that 35 such groups were active in 2011, 20 in 2013 and 11 in 2017.¹ There is not enough information in the official data on the possible consolidation of criminal groups, their merger, or regarding what actually happened to members of as many as 24 criminal groups.

Organised criminal groups from Montenegro also operate outside its borders and are mainly involved in drug smuggling from Latin America to Europe. They wage violent gang wars, participate in shootings across Europe and cause much violence in the region.² Almost 50 people have lost their lives in the five-year war between two Montenegrin criminal clans - Škaljar and Kavač - which was fought all over Europe.³

The fight against organised crime has been one of the priorities in the area of the rule of law since the opening of accession negotiations with the European Union in 2012. However, in all its earlier reports, the European Commission has emphasised the need for a more proactive approach in the fight against this phenomenon. Also, it is important to note that the government in Montenegro has changed in 2020, after thirty years, and that a new dynamic is expected in this area.

1 SOCTA (publicly available version), 2017

2 Walter Camp, Making a Killing: What Assassinations Reveal about the Montenegrin Drug War, 2020.

3 Investigative documentary series "Path of Revenge", TV Vijesti, 2020

Analysis of the Legal, Strategic and Legislative Framework

One of the most important strategic documents in this area is the Strategy for the Fight against Organised Crime and Corruption for the period 2010-2014, accompanied by the Action Plans 2010-2012 and 2013-2014, which have been developed for the purpose of its implementation. The National Commission for the Implementation of the Strategy for the Fight against Organised Crime and Corruption⁴ was formed in 2010 to monitor the implementation of the Strategy and its accompanying plans. Its members, among others, included representatives of non-governmental organisations and the Parliament of Montenegro. Thanks to the presence of NGOs, this body began to receive more attention in the media and the public.

The second set of strategic documents consists of the Action Plan for Chapter 23⁵ and the Action Plan for Chapter 24,⁶ which indirectly concern the fight against organised crime and high-level corruption.⁷ Instead of creating a new strategy for the fight against organised crime and corruption, measures from the Strategy that were not implemented were included, via an annex, in the Action Plan for Chapter 23.⁸ The Government of Montenegro reports on the results in the field of fight against OC through the reports on the implementation of these plans, through *track record tables* that show the balance of achieved results and are sent as annexes to the reports, and through special submissions intended to be used in the European Commission (EC) Report on Montenegro. The main guidelines for improving the fight against organised crime are the detailed and precise recommendations published by the EC in a non-paper, an informal paper on the status of Chapters 23 and 24.⁹

In addition to the above, there are also other strategic documents related to the fight against OC: Strategy for Combating Trafficking in Human Beings 2019-2024, Strategy for the Prevention and Suppression of Radicalisation and Violent Extremism 2020-2024, Development Strategy of the Police Directorate 2016-2020, National Security Strategy of Montenegro, Integrated Border Management Strategy 2020-2024, Strategy for the Suppression of Illicit Possession, Abuse and Trade in Small Arms and Light Weapons and Ammunition 2019-2025, and others.

Montenegro's strategic framework in the fight against OC is complemented by the document that analyses the existing risks and dangers of organised crime. The goal of SOCTA (Serious and Organised Crime Threat Assessment) is to emphasise the importance of a strategic approach in the fight against OC and to show the current state

4 The commission was composed of 13 members, two of which were from the NGO sector.

5 Action Plan for Chapter 23, available at: <https://bit.ly/2L0tlvV>

6 Action Plan for Chapter 24, available at: <https://bit.ly/3pwNecL>

7 The Government of Montenegro adopted them in 2013, while the revised version, with long-term priorities, was adopted in 2015

8 Operational document for the prevention of corruption in the areas of special risk recognises the following areas: public procurement, privatisation, urban planning, education, health, local self-government and the police. The document is available at: <https://bit.ly/3aix3JE>

9 Read more about the method of reporting on the rule of law reforms in the publication of the Institute Alternativa „Gaps in Reporting on Rule of Law Reforms“, available at: <http://bit.ly/3n-vWDQi>

and the alarming nature of certain forms of crime in the region as well as their impact on Montenegro. OCTA 2010, SOCTA 2013 (amended in 2015) and SOCTA 2017 were drafted since the year 2010. Part of this document is public, while the classified section is intended for the Police, the Prosecutor's Office and other law enforcement authorities and agencies in the country. .

According to the European Commission, the legal framework for combating OC has largely been established and aligned with the EU *acquis*.¹⁰ The main legal acts that recognise or address criminal offences in the field of OC are the Criminal Code of Montenegro,¹¹ the Criminal Procedure Code (CPC),¹² the Law on Prevention of Money Laundering and Financing of Terrorism¹³ and the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity.^{14 15}

Amendments to the Criminal Code of 2010 prescribed, for the first time, a special criminal offence of organised crime - creation of a criminal organisation (Article 401a).¹⁶ According to these changes, criminal liability is present when someone organises or belongs to a criminal organisation. Previously, this liability existed only when another, specific criminal offence was committed as part of an organisation.¹⁷ It is also important to note that the concept of prosecutorial investigation was introduced into the Criminal Code in 2009; this type of investigation began to be applied in 2010, in proceedings for organised crime, corruption, terrorism and war crimes, while the full application of prosecutorial investigations began in 2011.¹⁸

Institutionally speaking, the three main links in the Montenegrin criminal justice system charged with fighting corruption and organised crime are: the Special Police Department (SPD) and the Criminal Police Sector, the Special State Prosecutor's Office (SSPO), and the Specialised Department of the High Court in Podgorica.

10 European Commission, Montenegro Progress Report 2020, p. 44

11 Criminal Code of Montenegro, "Official Gazette of the Republic of Montenegro (RM)", nos. 70/2003, 13/2004 – corr. and 47/2006 and the "Official Gazette RM" nos. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 – corr., 14/2015, 42/2015, 58/2015 – other law, 44/2017, 49/2018 and 3/2020

12 Criminal Procedure Code, "Official Gazette RM" nos. 57/2009, 49/2010, 47/2014 - decision of the Constitutional Court, 2/2015 - decision of the Constitutional Court, 35/2015, 58/2015 – other law, 28/2018 - decision of the Constitutional Court and 116/2020 - decision of the Constitutional Court

13 Law on the Prevention of Money Laundering and Terrorism Financing, "Official Gazette RM" nos. 033/14 of 4 Aug 2014 and 044/18 of July 2018

14 Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, "Official Gazette RM" nos. 58/15 and 47/19

15 This area is also partly regulated by: the Law on Witness Protection; Law on Internal Affairs; Law on International Legal Assistance in Criminal Matters; laws confirming bilateral agreements signed between the Government of Montenegro and the governments of other countries on cooperation in the field of combating terrorism, organised crime, unauthorised sale of narcotic drugs, psychotropic substances and precursors, illegal migration and other criminal offences.

16 According to Article 401a of the Criminal Code, a criminal organisation is an organisation consisting of three or more persons whose purpose is to commit criminal offences punishable by imprisonment of four years or more, in order to gain illegal profit or power. Whoever establishes a criminal organisation whose goal is to commit criminal offences for which a sentence of imprisonment of four years or more may be imposed by law, shall be punished by imprisonment for a term between three and fifteen years.

17 MANS, Behind the statistics - Analysis of the legal framework and final court judgments for criminal offences with elements of organised crime, 2019

18 Six Years of Prosecutorial Investigation in Montenegro – Cooperation between the Police and the Prosecution, Institute Alternativa, 2016

The SSPO was introduced by the Law on the Special Prosecutor's Office in 2015.¹⁹ Once it was established in 2016, the SPD was formed as well. It is responsible for police affairs and acts upon the requests of the Chief Special Prosecutor and Special Prosecutors. This department formally operates within the Police Directorate's Sector for the Fight against Organised Crime and Corruption.²⁰ The Specialised Department for Organised Crime, Corruption, Terrorism and War Crimes, which operates within the High Court in Podgorica, is charged with prosecuting offences in the area of organised crime.

In 2019, the Directorate for the Prevention of Money Laundering and Terrorism Financing was reorganised and is now a part of the Police Directorate.²¹

Regional Cooperation and Cooperation at the EU Level

The state authorities of Montenegro have good cooperation with the authorities of countries in the region, as well as with international organisations, both under agreements on international cooperation and through joint projects and programmes.

According to the interviewed representatives of all competent institutions, the state authorities of Montenegro charged with fighting organised crime mostly cooperate with the EU by fulfilling obligations from the "European agenda". These three institutions (SSPO, SPD and the Special Court) assess cooperation with the region as good, because it takes place through the exchange of data in the form of international assistance and is regulated by cooperation agreements. The police cooperate with organisations such as INTERPOL, EUROPOL, SELEC and FRONTEX. Also, since 2019, the Police Directorate of Montenegro has been a full member of Balkan Cartel, the EUROPOL operational group that deals with organised criminal gangs that smuggle cocaine on a global level.

Our interlocutors state that, thanks to the support of the Council of Europe through the *Horizontal Facility for the Western Balkans and Turkey* programme, the Judicial Council has managed to implement - through several projects - numerous activities to improve the capacity of the judiciary.²² The Judicial Council also cooperates with the European Network of Judicial Councils (ENCJ), the European Office for Judicial Cooperation (EUROJUST), the European Commission for the Efficiency of Justice (CEPEJ), EUROL, GRECO, OSCE and others. The prosecution believes that cooperation with the region and other countries in Europe can be improved in the part related to joint investigation teams. "It is necessary to investigate the possibilities of this way of working, and to define how to use the evidence obtained by the teams, how to act and respect the laws of those countries, as well as other details depending on the contract".²³

19 Law on Special State Prosecutor's Office, "Official Gazette RM" no. 10/15 of 10 March 2015

20 In 2019, the Police Directorate was reorganised into 8 sectors, one of which is the Sector for Fight against OC, which consists of five units, including the Special Police Department (SPD).

21 This year, the Office for Restitution of Property was established within the Police and charged with identifying and finding property acquired through criminal activity.

22 Report on the work of the Judicial Council and the overall situation in the judiciary in 2019

23 Interview with a representative of SSPO

In terms of training, the Judicial and Prosecutorial Training Centre was opened in 2015. The Centre provides training that enables judges and public prosecutors to acquire and improve their knowledge, abilities and skills in accordance with the principles of independence, autonomy and ethical standards of the profession. Prosecutors also specialise in certain areas, follow programmes and trainings organised by international institutions, and are obligated to report on the trainings and seminars they attend.²⁴ On the other hand, according to the interlocutors from the ranks of judges, training of judges is not crucial for performing the job. "Since judges' priority are the trials, due to the volume of work they often do not attend complete trainings and are not able to continuously, through visits, respond to cooperation with courts from other countries".²⁵

The training of police officers is the responsibility of the Ministry of the Interior (Mol). Based on Director's consultations with managers and their associates, the police propose to the Mol the trainings they need, whereupon the Mol, in coordination with the Police Academy, determines which of them can in fact be realised. The representative of the Ministry of the Interior with whom we spoke believes that the problem with these trainings is the fact that, in the end, people who truly need them do not get trained because they are otherwise engaged doing important jobs.²⁶ She also believes that it is necessary to improve the evaluation of trainings and monitor the satisfaction of participants.

Montenegro's Track Record in the Fight against Organised Crime

According to the data provided to us by the institutions regarding the results they achieved in 2020, there has been an increase in the number of criminal charges and cases involving criminal offences in the field of organised crime. In the first six months of 2020, the Police Directorate submitted to the Special State Prosecutor's Office (SSPO) 43 (19) criminal charges and reports, as supplements to criminal charges (20) filed against 234 (203) natural persons and 96 (31) legal entities due to reasonable suspicion that they committed 346 (228) criminal offences in an organised manner.²⁷

According to the representative of SSPO, the Special State Prosecutor's Office issued 27 orders to conduct investigations against 198 natural persons in the first 11 months of 2020, while 43 indictments were filed against 339 natural persons in cases involving organised crime.²⁸

According to the data provided to us by the Judicial Council, in 2020 there were 59 (38) cases pending for the criminal offence of creating a criminal organisation, while the number of resolved cases for said period was 12 (2). For this offence, first instance convictions were issued against 48 (13) persons, while in three cases the proceedings were suspended. Final convictions were issued against 33 people, and the proceedings

24 Interview with a representative of SSPO

25 Interview with representatives of the High Court in Podgorica

26 Interview with a representative of Mol

27 Data for the entire year 2020 will be available in the first half of 2021

28 Presentation of SSPO representatives at the online conference "News on the Fight against Organised Crime", video from the conference is available at: <http://bit.ly/3r5NwYO>

were suspended in the case of three. In 2020, there were 8 (12) pending cases and 2 (5) resolved cases involving the criminal offence of criminal association. For this offence, first-instance convictions were issued against three persons (2), while final convictions were issued concerning the same number of people.

In the period from 3 July 2015 to September 2020, SSPO has filed 117 indictments against a total of 664 natural persons and 152 legal entities.

However, the above shows that the achieved results are difficult to monitor due to differences in reporting. The problem lies in the fact that the statistics are set so that the work of interconnected authorities cannot be monitored. In their reports, the police provide statistics on criminal offences, the prosecution reports on persons against whom criminal proceedings have been instituted, while the courts report on cases themselves (which may involve more than one person and several criminal offences).²⁹

In its latest report, the EC noted that Montenegro has reached a certain level of readiness to fight OC, but that limited progress has been made in relation to the recommendations made in the previous report.³⁰ As the European Commission put it, Montenegro has done the most to establish a centralised register of bank accounts, strengthen police capacity, and increase the number of asset seizures. Units within the Police Directorate have been reorganised. Institutional capacities have been strengthened to address trafficking as well as the field of computer crime. Also, for the first time in five years, Montenegro has prepared a national report on drugs. The number of investigated narcotics-related cases has continued to grow, and the number of investigations of narcotics smuggling has increased.³¹

However, the report states that the crime scene in Montenegro is still dominated by frequent murders related to criminal clans. Murders involving Montenegrin criminal groups have also taken place abroad (9 of them since 2018), in countries including Spain, Germany, Austria and Greece.

The latest non-paper on Chapters 23 and 24 states that the internal organisation and coordination of law enforcement agencies has improved, as reflected in an increasing number of investigations, arrests and seizures.

On the other hand, the biggest problem is the way in which criminal proceedings in the field of organised crime are conducted before the courts. "Court proceedings are excessively long because of frequent and multiple delays. These long delays, as well as the lack of trust between the prosecution and the courts as a result of certain controversial acquittals in recent years, have led to the prosecution's widespread use of plea agreements". A suspected criminal who becomes an associate witness in the course of the investigation is exempt from legal proceedings regardless of the gravity of the crime he has committed. As a result, despite some significant exceptions, the EC report concludes that „the criminal justice response seems generally mild, while penalties, fines and confiscation of assets are disproportionately low compared to the gravity of the crimes”.

29 Gaps in reporting on reforms in the area of rule of law, Institute Alternativa, 2018

30 European Commission, Progress Report on Montenegro 2020

31 European Commission, Progress Report on Montenegro 2020

Key Deficiencies and Challenges

Although some progress has been made over the years, some challenges remain chronic. Cooperation between the Special State Prosecutor's Office and the Special Police Department is good and has improved the "statistics", but there are still doubts about selective approach to work. The length of court proceedings is particularly concerning. Cases ending in plea agreements and lenient sentences have caused public outrage and the impression of an absence of justice in society. Certain secret surveillance measures were repealed in 2018, with a seriously negative impact on the results.

Since Montenegro recently acquired a new Government, one of the challenges that lie ahead are the changes that are to be made in key positions in institutions, especially those authorised to fight corruption and organised crime. The Police Directorate can manage efforts to combat OC only up to a certain level, while key and final decisions are the responsibility of the SSPO and its subordinate SPD. The existing legislative framework stipulates that the head of the SPD is appointed by the director of the Police Directorate, with the consent of the Chief Special State Prosecutor. In practice, there is a problem when the director of the Directorate and Chief Special Prosecutor are unable to reach an agreement regarding this position, as it happened in 2016. In addition to the SPD, the latest organisational changes have also created a special Sector for the Fight against Organised Crime (hereinafter: the Sector), which is accountable for its work to the Director of the Police Directorate.³² The problem of the existence of two units dealing with the fight against organised crime - the Sector and the SPD, with leaders who are accountable to different superiors, calls into question the hierarchical responsibility and their functioning within the system.

Quality police personnel remain a challenge. The police lack senior investigators of organised crime and drug trafficking, experts in charge of special investigative measures, as well as experts in computer crime, economic crime and forensics.³³ According to the representatives of SPD, it is necessary to strengthen human capacity to engage in financial investigations (economists, lawyers), and to analyse and store data.³⁴

Since the 2018 ruling of the Constitutional Court, a number of special investigative methods (SIMs), crucial for conducting criminal investigations, have been no longer applicable. The prosecution is denied the use of special investigative methods, or the so-called "controlled delivery", which is when a shipment of drugs is detected and allowed to continue its way in order to provide evidence against the perpetrators. This is something that seriously hampers the fight against serious and organised crime. Restoring the full use of special investigative methods, while fully respecting constitutional principles, should be ensured as a matter of priority.

Earlier recommendations, to conduct financial investigations in parallel with criminal proceedings, remain unfulfilled. In most cases, financial investigations start too late and focus on the search for property, mainly with the goal of extended confiscation, and

32 D. Bajramspahić, S. Muk, "The New Government and the Fight against Corruption and Organised Crime: What to Do in the Prosecutor's Office and the Police?", Institute Alternativa, 2020

33 European Commission, Progress Report on Montenegro 2020

34 Interview with a representative from SPD

are therefore not in line with EU practice and FATF standards. Instead, the prosecution conducts financial analyses as part of criminal investigations to value the proceeds of crime, but not sufficiently to prove crime, improve knowledge of criminal networks, or detect financial flows and investments of dirty money in the economy. According to one police officer, a representative of the SPD, the department lacks people who would work on financial investigations. "The SPD should raise the level of financial investigations; it is necessary to hire several new executors who could deal with that sort of thing (economists, lawyers). More people are also needed to analyse and store data, which means that we are missing some 8 to 10 people".

In technical terms, problems in the work of these institutions are caused by the lack of office space. Namely, the High Court's department specialised for organised crime trials and the regular High Court (which has jurisdiction over first and second instance criminal trials and second instance civil litigation) share two courtrooms, which is one of the reasons for the slow work of the courts in these cases. It was difficult to organise trials that involve a large number of defendants even before the epidemic of Covid-19. It is necessary to also think about the location and the security aspect, since this court building is located in the centre of the city. Another issue that remains open is securing the court premises, which is currently done by the police. Statutory changes that envisaged the formation of judicial police were initiated a few years ago, but the classification and qualification of such job positions has failed to motivate police officers to apply for them.³⁵ SSPO operates in highly inadequate premises, as it is located, together with the Higher State Prosecutor's Office, in the building of the Supreme State Prosecutor's Office. The SSPO has a particularly pronounced problem with working space; namely, it uses only 17 offices, which - to boot - are inadequate and not adapted to the way this prosecutor's office operates. Since two special prosecutors work in each of these offices, together with advisors and their associates, it is impossible to use them to perform certain procedural actions such as collecting information from citizens or holding working meetings with the police, experts, parties and others.³⁶

When it comes to the liability of state prosecutors, there are still no significant changes. No prosecutor has been held accountable for statute of limitations or for omissions in the indictments that led to acquittals and dismissals of charges. On the same note, no judge has been disciplined because of the statute of limitations or omissions in confirming indictments that led to acquittals in many important cases.³⁷

Institutions continue to have limited access to key databases, which hampers investigations. Long court proceedings and numerous delayed hearings continue to prevent the passing of judgments in organised crime cases. Final verdicts based on plea agreements remain the norm, leading to shorter prison terms and lesser fines.³⁸

As regards these institutions' cooperation with non-state actors, representatives of the prosecution and the judiciary believe that their cooperation with the non-governmental sector is good. They do not cooperate with local communities, as their job is mainly to act at the state level. The Ministry of the Interior believes that the relationship of

35 Interview with representatives of the High Court in Podgorica.

36 D. Bajramspahić, "Behind the numbers - Cross-section of the results of the special fight against organised crime and high level corruption", Institute Alternativa, 2018

37 MANS, Behind the statistics - Analysis of the legal framework and final court judgments for criminal offences with elements of organized crime, MANS, 2019

38 European Commission, Unofficial working document on the situation in Chapters 23 and 24, 2020

the authorities with non-state actors depends on who happens to be the head of a specific authority at a given moment. The problem occurs when the contributions of actors outside the system are viewed only as criticism, and when there is resistance to their proposals.³⁹ As for the media, the prosecution believes that reporting on the work of their institution is polarised. As good practice, prosecutors list organisation of press conferences, at which, in addition to presenting the results of the work of the SSPO, they also answer questions posed to them by journalists.

There is an opinion among judges that, for better results in the field of organised crime, a Special Court should be established instead of the existing Department. The reason for this are: a significant increase in the number of cases; long duration of proceedings; the need for additional security measures, etc. In addition, one interviewed judge believes that all such cases involve extensive existing material, that confirmation of indictments is demanding, and that not all of this can be controlled in a quality manner. Regarding the above, she recommends a different organisational approach of the Extrajudicial Council: to form a special standing Council which would be permanently tasked with these issues.

39 Interviews with representatives of the Mol, SPD,SSPO and the High Court in Podgorica

Recommendations

Strengthen the capacity of SPD by adding 8 to 10 people to work on financial investigations, analysis and data storage.

Prescribed secret surveillance measures - which have been repealed - should be reinstated, with certain changes, in the manner recommended by the Constitutional Court.

Increase the efficiency of criminal investigations by improving institutions' access to key databases and by establishing an interoperable system with a single search function.

Address the issue of long trials and frequent interruptions in organised crime cases; ensure a stronger mutual understanding between courts and prosecutors regarding certain key legal concepts such as money laundering and the quality of evidence.

Improve the strategic oversight of the criminal justice system by establishing a centralised database, in the field of organised crime and high-level corruption, collected from all relevant authorities, for analysis and policy making purposes.

Strategically use SOCTA to guide operational priorities in the fight against organised crime.

Develop a new strategy for the development of the Police Administration, guided by organisational changes that have occurred within it.

Amend the Law on the Special State Prosecutor's Office to improve the semi-annual and annual reports on the work of the SSPO by adding a special part, which will contain an overview of the work and results of all special prosecutors, as well as information on rejected criminal reports, according to applicants. Reporting should also be improved by adding information on the complexity of cases.

In order to fully determine and monitor the official data of different institutions, it is necessary to prepare an analysis of the situation and differences in statistical reporting of these three institutions and propose measures for gradual harmonisation of the statistics, with deadlines for the implementation of conclusions and recommendations.

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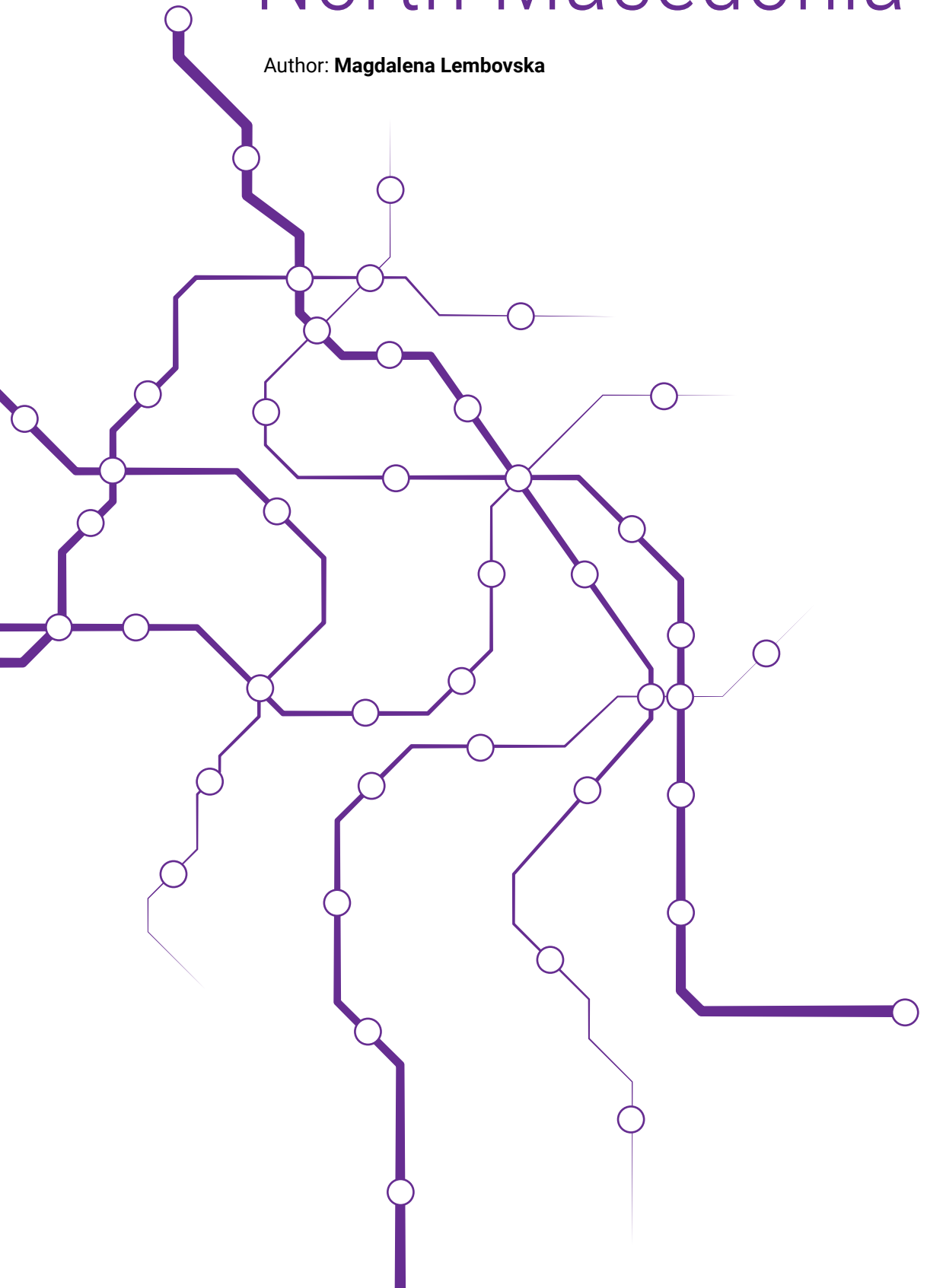
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List of interviews:

1. Interview with representatives of the High Court in Podgorica, held on 10 December 2020
2. Interview with a representative of the Special Police Department, held on 25 November 2020
3. Interview with a representative of the Special State Prosecutor's Office, held on 27 November 2020
4. Interview with a representative of the Ministry of Interior, held on 4 December 2020

North Macedonia

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Introduction

Fight against organized crime and corruption is considered to be a top priority for North Macedonia. While public discourse in the last few years have been predominantly focused on corruption, misuse of office and politicization of the institutions, there have been only limited analysis of other types of organized crime.

This paper aims to analyze the institutional, strategic and legal framework as prerequisites for fighting organized crime, but also track record and practical challenges of the state authorities to demonstrate tangible results in this area. Finally, the paper provides a number of recommendations to improve the fight against organized crime and to translate the rhetoric commitments on political level into operational practice.

The paper relies on desk and field research. It looks into the legal and strategic documents in the area of fighting organized crime, official data from the institutions, reports by national and international organizations and other documents. Two e-mail interviews were conducted: one with a representative of Department for Organized and Serious Crime within the Ministry of Interior, who also provided valuable recommendations for improving the situation, and one with the Financial Police.

The paper takes a closer look into the fight against illicit trafficking in drugs as one example of transnational organized crime, in order to highlight the various aspects that should be taken into consideration when assessing “success”. Further research and efforts addressing various types of crimes and organized crime groups is highly recommended.

Analysis of legal, strategic and policy framework

The legal framework has been generally assessed as sufficient to enable fight against organized crime and is largely aligned with the EU *acquis*. North Macedonia has ratified the relevant international conventions in this area, which provides the basis for fighting organized crime in line with international standards and engaging in international cooperation in this regard.

Key institutions in the fight against organized crime is the Department for Serious and Organised Crime within the Ministry of the Interior and the Public Prosecutor’s Office for Prosecuting Organised Crime and Corruption within the Public Prosecutor’s Office. Taking into consideration that organized crime is largely associated with financial crimes, the Financial Police within the Ministry of Finance is another important stakeholder, monitoring suspicious financial transaction through legal financial channels. The customs administration, Financial Investigation Unit within Ministry of Finance and the Public Revenue Office also have competences in addressing financial crimes and money laundering. Finally, the Agency for Management of Confiscated/ Seized Goods is an important institution that should deal with the proceeds and crime.

In the last few years, important institutional reforms affecting the fight against organized crime occurred. The Administration for Security and Counterintelligence

(UBK) used to be part of the Ministry of Interior, held police powers, and had the monopoly over the interception of communications. This organizational unit used to play a major role in investigations related to serious organized crime and terrorism. In 2018 – 2019, it went through a major transformation and became an independent Agency for National Security (ANB). ANB does not have police powers and should no longer be involved in investigations. As a result of this reform, there is a newly formed Sector for fight against terrorism, violent extremism and radicalism within the Department for Suppression of Serious and Organized Crime at the Ministry of Interior. The European Commission (EC) recommends that the country needs to ensure that the institutional reforms “are effective and translated into a proactive policy of implementing the strategic documents and achieving further tangible results”.¹

When analyzing the institutional set-up, it is worth mentioning the public trust in these institutions as an indicative element of their legitimacy in fighting organized crime. The latest EUROMETER² shows that public trust in institutions is generally weak, as they rarely manage to obtain the trust of at least half of the population. While the police is one of the most trusted institutions (43% said that they mostly or fully trust the police, still bearing in mind that 30% do not trust it), the results of the public prosecution and the judiciary are especially discouraging. Only 14% respondents trust these two institutions, against 68% who indicated mistrust.³

The most important strategic document would be the Serious and Organized Crime Threat Assessment (SOCTA). However, the latest such publicly available document is the regional SOCTA, prepared by the authorities of North Macedonia, Montenegro and Serbia in 2016.⁴ However, the current strategic approach is not aligned and does not follow the methodology determined with the Europol policy cycle/EMPACT.⁵ The interviewed representative of the MoI recognized the systemic approach in fighting organized crime according to the European standards remains a challenge. Even though strategic determinations exist, there is a lack of strategic coordination, strategic direction and established system for prioritization and monitoring and evaluation.

Following the 2020 EU Commission Report, where it was highlighted that the strategic framework needs to be updated to ensure consistency with the Europol policy cycle/EMPACT, the Government of the Republic of North Macedonia urged the Ministry of Interior to finalize the latest SOCTA in line with the Europol policy cycle. Therefore, this area should be closely monitored in future.

Speaking about the strategic framework, there are several separate strategic documents related to organized crime; however, many of them expired in 2020. These include:

1 European Commission: North Macedonia Report 2020.

Available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/north_macedonia_report_2020.pdf

2 EUROMETER is a public opinion survey conducted by EUROTHINK – Center for European Strategies. The latest survey (at the time of writing of this paper) was conducted in December 2020 and is available at: <http://eurothink.mk/2020/12/31/4925/>

3 Ibid.

4 Available at: http://www.mvr.gov.mk/Upload/Editor_Upload/analizi-statistiki/Socta%20iz-vestaj%202016%20MK.pdf

5 EMPACT stands for European Multidisciplinary Platform against Criminal Threats. It is a four-year policy cycle set up by the European Union in order to create a greater measure of continuity for the fight against serious international and organized crime

Police Development Strategy 2016-2020⁶; National Strategy on Illicit Drugs 2014-2020⁷; National Strategy for Combating Trafficking in Human Beings and Illegal Migration 2017-2020,⁸ Strategy to Strengthen the Capacity for Conducting Financial Investigation and Asset Confiscation 2018-2020 etc.⁹ Unfortunately, none of these strategies was evaluated and updated in a timely and inclusive manner so far. Also the various strategies are not always aligned or provide clear links between each other. Still, the Ministry of Interior, in cooperation with OSCE Mission in Skopje, adopted three new internal strategies referring to 2020 – 2022: Strategy for human resource management,¹⁰ Strategy for inclusion and communication with the community¹¹ and Strategy for Development of the Training Center of the MoI.¹²

While there is a strong link between organized crime and corruption, the latest National Strategy for Prevention of Corruption and Conflict of Interest (2021 – 2025)¹³ does not provide any such mentions. One possible explanation might be the fact that this strategy has a preventive role, and the State Commission for Prevention of Corruption that has ownership of this strategy does not have any competences related to organized crime.

On policy level, the fight against organized crime and corruption is considered to be a top priority, at least judging by the statements of the Prime Minister and the competent ministers on various occasions. However, one indicator to assess the political will is the willingness to empower the relevant institutions and various bodies with the necessary resources in order to fulfill their mandates. Unfortunately, many of them are struggling with financial resources and work with fewer personnel than envisaged with their Acts of Systematization of Workplaces. For instance, the premises of the State Commission for Prevention of Corruption SCPC are not adequate, and as a result, they cannot put into function important equipment for electronic interconnection between state authorities responsible for fighting corruption and organized crime (worth 2,4 million euros, received through EU IPA funds). SCPC was supposed to move to new premises; however, the same premises were allocated to the new Ministry of Political System and Inter-Community Relations.

The Public Prosecutor's Office for Prosecuting Organised Crime and Corruption is also facing important challenges. Their Systematization Act has envisaged 13 public prosecutors, but 3 places remain empty (10 are fulfilled). At the same time, their own analysis has shown the need to double the existing number of prosecutors, i.e. they need a total number of 21 prosecutors within this specialized department in order to be ready

6 Available at: https://mvr.gov.mk/Upload/Editor_Upload/Strategija%20za%20razvoj%20na%20policijata%202016-2020.pdf

7 Available at: <http://zdravstvo.gov.mk/wp-content/uploads/2018/03/mkd-strategija-za-opo-jni-drogi-2014-2020.pdf>

8 Available at: <http://nacionalnakomisija.gov.mk/wp-content/uploads/2016/12/Nacional-na-strategija-i-akciski-plan-za-borba-protiv-trgovija-so-lugje.pdf>

9 Other relevant strategies include: National Cyber Security Strategy 2018-2022 ; National Small Arms and Light Weapons (SALW) Control Strategy 2017-2021 ; National Counterterrorism Strategy 2018-2022 ; National Strategy for Countering Violent Extremism 2018-2022; and National Anti-Fraud Strategy 2019-2022. In 2020, the Financial Intelligence Unit, which is part of the Ministry of Finance published an Assessment of the Risk of Money Laundering and Terrorism Financing.

10 Available at: https://mvr.gov.mk/Upload/Editor_Upload/FINAL%20HR%20STRATEGY_MK.pdf

11 Available at: https://mvr.gov.mk/Upload/Editor_Upload/CE&C%20STRATEGY_MK.pdf

12 Available at: https://mvr.gov.mk/Upload/Editor_Upload/TC%20STRATEGY_MK.pdf

13 State Commission for Prevention of Corruption: National Strategy for Prevention of Corruption and Conflict of Interest (2021 – 2025), December 2020. Available at: <https://dksk.mk/wp-content/uploads/2021/01/Nacionalna-strategija-DKSK-KONECNA.pdf>

to fulfill their mandate. Moreover, they face a serious shortage of professional personnel to support their work. For instance, the systematization act of this special office envisages 29 advisors and associates, but they employ only 9. The situation is similar with the administrative personal (envisaged 27, fulfilled 15).¹⁴

One of the most important bodies, the National Coordination Centre for the Fight against Organised Crime that was established by the Government with the aim to provide cooperation between the various law enforcement agencies in 2014,¹⁵ became partially operational in September 2017. The lack of capacity of this center to fulfill its mandate was regularly criticized in the national reports of the European Commission. Finally, this body became fully operational in 2019, when all relevant institutions¹⁶ assigned their representatives and connected their databases to the center.

Regional and EU-level cooperation and knowledge sharing

Organized crime oftentimes has a transnational component, and regional and international cooperation and knowledge sharing is a must. Various international reports have shown that the criminal landscape in Europe is undergoing rapid change and organized crime groups are increasingly flexible, inter-connected and cooperative, while also becoming financially and politically stronger.¹⁷ One of the biggest deficiencies of the WB countries in their fight against OC is considered to be the financial dimension of OC, especially taking into consideration that money laundered from drugs-related operations through the Western Balkans exceeds European averages.¹⁸

The authorities in North Macedonia use the channels for cooperation provided by Interpol, Europol, SELEC, but also liaison officers of other countries. North Macedonia signed an Agreement on Operational and Strategic Co-operation with Europol in 2009,¹⁹ with the aim of extending the cooperation and support in the combating of serious forms

14 Public Prosecution of North Macedonia: Annual Report 2019, 2020. Available at: <https://jorm.gov.mk/wp-content/uploads/2020/09/izveshtaj-na-javnite-obvinitelstva-na-rsm-za-2019-godina.pdf>

15 Government of the Republic of North Macedonia: Decision for establishing a National Coordination Centre for the Fight against Organised and Serious Crime. No. 42-2332/1 from 16.03.2014 (applicable since 01.01.2015). Available at: <https://dejure.mk/zakon/odluka-za-formiranje-na-nacionalen-koordinativen-centar-za-suzbivanje-na-organiziran-i-seriozen-kriminal>

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18 Drug Money: The Illicit Proceeds of Opiates Trafficked on the Balkan Route (UNODC, 2015). https://www.unodc.org/documents/data-and-analysis/Studies/IFF_report_2015_final_web.pdf cited in: https://www.unodc.org/documents/evaluation/indepth-evaluations/2019/UNODC-IES_Independent_formative_evaluation_IISG_WBCSCI_EU_action_report_Feb_2019.pdf

19 Available at: <https://www.europol.europa.eu/agreements/republic-of-north-macedonia> Previously. North Macedonia signed a Strategic Agreement with Europol in 2007

of international crime, particularly through the exchange of information and regular contacts at all appropriate levels.²⁰ The EC has assessed that there is operational cooperation in the fight against trafficking of human beings, weapons, and drugs.²¹ In 2020, the Mol's Department for Serious and Organized Crime established a working station with direct access to the European Center for fight against Terrorism at Europol, enabling data exchange through secure communication link for information exchange (SIENA). However, there is a recommendation that Cooperation and data exchange can be further improved through a more proactive approach in information sharing.²²

The cooperation agreement with Eurojust was signed in November 2008,²³ while ten years later, North Macedonia signed an agreement with Eurojust. During the same 2018 year in November, North Macedonia appointed its first liaison officer at Eurojust.²⁴

The Financial Police has assessed their international cooperation as "generally good".²⁵ They normally cooperate through the national Interpol bureau, but also with the European Agency against Fraud OLAF.

North Macedonia is a member of Interpol since 1993. In the recent years, there has been an improvement in the area of information exchange. Since the end of 2018, border control databases have been interlinked with those of Interpol through the tool FIND (Fixed Interpol Network Database), meaning that each control of passengers, travelling documents and vehicles automatically go through the Interpol searchers for persons, documents and vehicles.²⁶ The Cybercrime Departments is also connected to Interpol's databases on cybercrime.²⁷

Cooperation is also related to training and capacity building, as many of those activities have been provided by international partners. The Mol benefits from EU and USA assistance programs, TALEX instrument, numerous bilateral and multilateral programs etc. One of the most relevant training opportunities is the arrangement between the Mol and the European Police Academy (CEPOL). The EC encourages the authorities to continue being responsive by using opportunities offered by CEPOL, despite its budgetary constraints. The importance of this opportunity has been also confirmed by the Mol.²⁸

The Financial police is also benefiting from training offered by international partners, such as the OSCE Mission in North Macedonia and the embassies of the UK, USA, Italy and the Netherlands.

As the COVID-19 pandemic has had a strong impact on the societies, it also influenced international cooperation between law enforcement authorities. On the positive note, training continued online, and the authorities were able to continuously benefit from

20 Ibid. Article 2

21 European Commission: North Macedonia Report 2020

22 Ibid.

23 Available at: <https://www.eurojust.europa.eu/agreement-cooperation-between-eurojust-and-former-yugoslav-republic-macedonia>

24 Eurojust, Press Release: "Major step against organised crime in Western Balkans", 23.11.2018. Available at: <https://www.eurojust.europa.eu/major-step-against-organised-crime-western-balkans>

25 E-mail questionnaire, Financial Police

26 Mol: Strategic Plan 2020 – 2022. Available at: [https://mvr.gov.mk/Upload/Editor_Upload/STRATESKI%20PLAN%202020-2022\(1\).pdf](https://mvr.gov.mk/Upload/Editor_Upload/STRATESKI%20PLAN%202020-2022(1).pdf)

27 Ibid.

28 Interview with a representative of the Organized and Serious Crime Department, Ministry of Interior

training delivered by prominent stakeholders such as UNODC, OSCE, IOM, ICITAP etc. However, according to the Head of the Department for Serious and Organized Crime, experience has shown that best cooperation happens when there is an opportunity for direct face-to-face meetings, in order to reinforce the trust, transparency and accountability as principles of paramount importance in international police cooperation in risky and sensitive operations.²⁹

When speaking about training, some reports have found that “there have been a plethora of training programs delivered by external agencies in the past 20 years”; however, there have been concerns whether such capacity building have been “sufficiently relevant to, or has taken account of, the needs of criminal-justice-systems in the region.”³⁰ Therefore, it is important for the donor organization to closely cooperate with the beneficiaries not only while programming their assistance, but also for the concrete activities and modules.

Track-record of North Macedonia anti-OC efforts

The first obstacle in assessing the results of the country’s commitments to fight organized crime is the access to data to be analyzed and most importantly, the quality of data that could be obtained. North Macedonia has a weak data management system on organized crime and organized crime groups. UNODC research³¹ has shown that North Macedonia, as most countries in the Western Balkan, does not have statistical systems in place to record, report and analyze information.³² It is especially challenging to trace a case through the criminal justice process, from investigation to prosecution to adjudication with one unique identifier. Also, there is no data on the economic value of organized criminal activities. The absence of a proper data management system seriously hampers the ability to develop evidence-based policies.

In the latest country report by the European Commission, North Macedonia is praised for improving the track record for fighting organized crime in 2019, especially because there is a steady increase in the number of criminal investigations opened against organized crime groups, especially against groups involving many suspects.³³ Certain data can be found in the Mol’s latest annual report³⁴ where one might find that the Mol suppressed 21 organized criminal group in 2019, incriminating 136 natural and 4 legal persons, which is an increase compared to 2018 (please see Table 1). Also, the criminal landscape that has been targeted by Mol has changed. In 2018, the main results were in fighting

29 Interview with a representative of the Organized and Serious Crime Department, Ministry of Interior

30 Global Initiative against transnational organized crime: “Tackling Serious and Organized Crime in the Western Balkans. Wilton Park Conference Report” February 2020. Available at: <https://globalinitiative.net/wp-content/uploads/2020/05/GIATOC-Wilton-Park-conference-report-4May1125-Web.pdf>

31 UNODC: “Research Brief: Measuring Organized Crime: Assessment of data in the Western Balkans. Available at: https://www.unodc.org/documents/data-and-analysis/Macro/Research_brief.pdf

32 Ibid. Regional comparison available on page 12, country profile on data availability can be found on page 27

33 European Commission: North Macedonia Report 2020

34 Ministry of Interior: Annual Report 2019. Available at: [https://mvr.gov.mk/Upload/Editor_Uplod/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0_%202019%20%20\(3\)final.pdf](https://mvr.gov.mk/Upload/Editor_Uplod/%D0%93%D0%BE%D0%B4%D0%B8%D1%88%D0%B5%D0%BD%20%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0_%202019%20%20(3)final.pdf)

illicit drugs trafficking, while in 2019, the Mol has predominantly targeted corruption, smuggling of migrants, followed by illicit drugs trafficking.

Type of crime	OC groups in 2018	OC groups in 2019	Members of OC groups in 2018	Members of OC groups in 2019
Illicit drugs trafficking	9	6	49	19
Smuggling of migrants	3	4	15	43
Violent crime	2		11	
Corruption		8		57
Economic crime	1	1	12	3
Money laundering				
Cultural heritage	1		15	
Illicit arms trafficking		1		9
Smuggling of goods		1		5
Total	16	21	102	136

Table 1: Suppressed criminal groups in 2018 and 2019³⁵

However, one should bear in mind that the Mol does not follow the completion of the cases, i.e. whether the members of the criminal groups have been successfully brought to justice and convicted for their deeds. Chart 1 shows the total number of criminal charges submitted for all types of crime (separate statistics for organized crime was not available), number of criminal charges filed by the Public Prosecution and number of convictions in 2019. The Public Prosecution files criminal charges for just over one quarter of the total number of cases that have been reported to them.

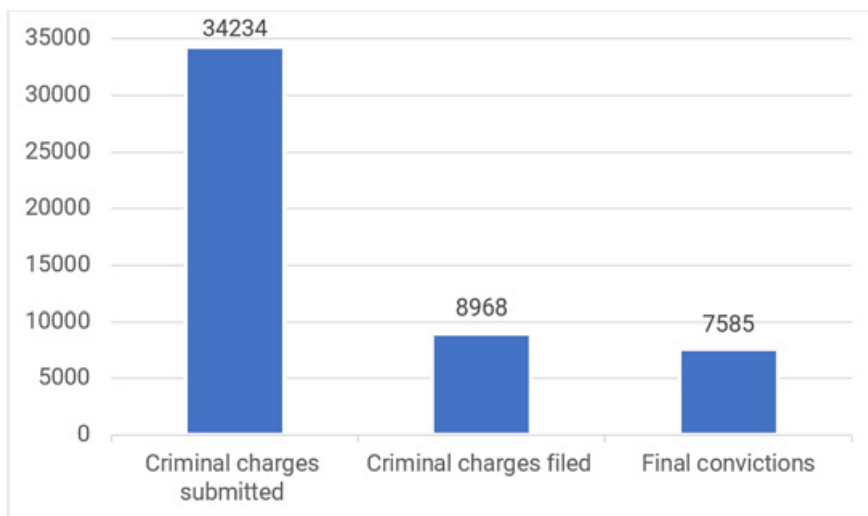


Chart 1: Total number of criminal charges submitted, number of criminal charges (indictments) filed by the Public Prosecution and number of convictions in 2019.³⁶

³⁵ Source: Ministry of Interior, Annual report 2019.

³⁶ Source: Annual report of the Public Prosecution for 2019, Skopje 2020. Available at: <https://jorm.gov.mk/wp-content/uploads/2020/09/izvestaj-na-javnite-obvinitelstva-na-rsm-za-2019-godina.pdf>

For the purpose of analyzing track record beyond one type of data, it is worth analyzing the fight against drugs. The results in the fight against drugs are especially important in assessing country's commitment and capacity to address OC. The trade in illicit drugs is the largest criminal market in the EU, estimated at a minimum retail value of €30 billion per year in the EU.³⁷ North Macedonia is a "major transshipment point for Southwest Asian heroin and hashish, and a minor transit point for South American cocaine destined for Europe."³⁸ Moreover, the costs of trafficking in illicit drugs are huge, taking into consideration the risks to the lives and health of drug users.

Cross-analyzing different statistics show a mixed picture regarding whether North Macedonia's authorities have demonstrated tangible results in the fight against drugs. When it comes to heroin, the largest seized quantities occurred in the first half of the decade (a total amount of 148 kg seized heroin). During the last few years, the police has managed to seize only insignificant amounts, less than 1kg per year. When it comes to cocaine, the seized amounts can be calculated in grams, with the exception of 2010 and 2011 when the authorities managed to seize 1kg and 1,5kg cocaine respectively. It seems that the focus has been put on marijuana, especially in the last three years. Fighting against trafficking in all types of drugs is definitely recommended, however, it seems symptomatic that the authorities started intensively focusing on marijuana in times when the country legalized medical marijuana.³⁹

Total amount of seized drugs – by type and quantity (articles 215 and 216 of the Criminal Code)										
Seized	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Marijuana (in kg)	459.7	286.4	784.6	477	632	226	623.7	510.18	1532.43	977.20
Heroin (In kg)	37.1	23.7	55.3	11.7	20.2	5.36	0.8	1.4	1.97	0.73
Cocaine	2 kg	1,5 kg	173 g.	15,8 g.	318 g.	0,07 kg.	717 g.	263,84 g.	586,69 g.	852,3 g.
Cannabis stems	4,199	1,247	2,755	1,421	1,187	2,362	2,414	389	819	131
Ecstasy tablets	459	3,628	206	142	1,217	490	522	1,187	472	409.5

Table 2: Total amount of seized drugs – by type and quantity⁴⁰

37 European Commission: "EU Security Union Strategy", Brussels, 2020. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596452256370&uri=CELEX:52020DC0605>

38 Overseas Security Advisory Council, Bureau of Diplomatic Security, U.S. Department of State: "North Macedonia 2020 OSAC Crime & Safety Report" available at: <https://www.osac.gov/Country/NorthMacedonia/Content/Detail/Report/4c2842d7-0569-4811-8e69-192b0f314190>

39 North Macedonia legalized medical marijuana in 2016. As of October 2020, 55 companies were licensed to harvest marijuana.

40 Source: Data of the Ministry of Interior. Available at: <https://mvr.gov.mk/analiza/kriminal/31>

In 2019, the Public Prosecution notes an increase by 48.7% compared to the previous 2018 in detected perpetrators of deeds related to illicit production and distribution of narcotic drugs, psychotropic substances and precursors.⁴¹ Even though their annual report states that these proceedings “are indicators for successfully completed actions of the competent authorities in preventing drugs-related crimes”, this statement should not be taken for granted. The provided statistics does not indicate the structure of perpetrators, i.e. if the focus has been on organized crime groups or simply drug users who were apprehended due to their possession of illicit drugs.

Finally, organized crime is predominantly motivated by financial gains. Confiscation of crime proceeds would be the final step in bringing justice and ensuring that “crime does not pay off”. Unfortunately, confiscation remains one of the biggest challenges in this regard and significant efforts will be needed in order to make this mechanism functional in practice.

41 Public Prosecution of North Macedonia: Annual Report 2019, 2020

Conclusions and recommendations

The analysis has shown that formally, legal and institutional setup is established and sufficient to address organized crime issues. However, the responsible institutions are still struggling with human, technical and financial resources to fulfill their responsibilities. On strategic level, the analysis has noted a lack of strategic coordination, planning, system for prioritization, and monitoring and evaluation. - It is especially important to work towards increasing public trust in the criminal justice system, particularly in the public prosecution and the judiciary as the least trusted institutions. Therefore, the paper provides the following recommendations:

Capacities:

The rhetorical commitment on political level to prioritize the fight against organized crime, should be translated into providing the necessary resources to the institutions, their professionalization and depoliticization;

The responsible institutions should establish sound human resource management system. All new recruitments should be made transparent and merit based; while the opportunity for career advancement, merit-based promotion and rewards will have a positive influence in promoting personal and professional integrity;

The Department for fight against organized crime and corruption needs to have its own decentralized budget for cover operations, that can be envisaged on the medium and long term;

Strategy and coordination:

North Macedonia needs to adopt SOCTA Methodology in line with the European standards and further aligned and update all relevant strategies addressing specific crime areas and/or institutional development.

There is a need to establish the so-called tracking system by integrating information from pre-investigation, investigation and court proceedings, which would enable continuous monitoring of cases, monitoring and control of their progress in real time, control of decisions, measurement of effectiveness and efficiency, spent budget funds for investigations and etc. Moreover, the authorities should demonstrate capacity to return the proceedings of crime to the state through confiscation of assets.

The operational cooperation and coordination between the various institutions does not seem to fully function in practice and there is a need to further regulate the relations between the public prosecutors and the judicial police.

The role of civil society:

It is crucial to invest in strong civil society organizations and independent media that can monitor the results in the fight against organized crime, detect systemic deficiency, provide evidence-based recommendations for improvement and alarm the public and the international community in cases of weak results or lack of will to deal with concrete and especially high-level cases of organized crime and corruption.

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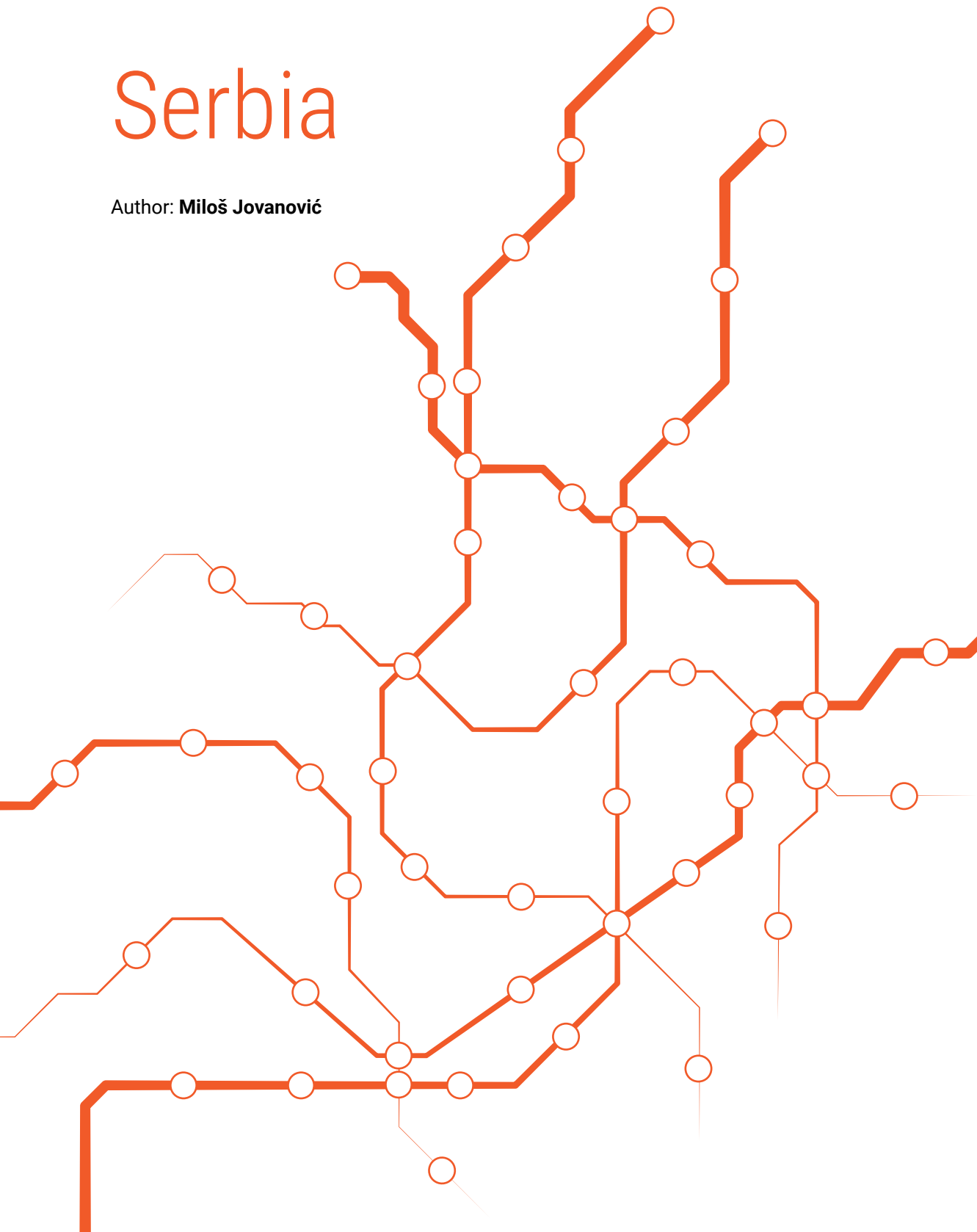
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Serbia

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Executive Summary

The main purpose of this report is to assess the fight against organised crime (OC) in Serbia, i.e. the contribution of the criminal justice system thereto, as the main existing shortcomings and challenges. The qualitative research methodology was used during the preparation of the report: 1) analysis of current laws and strategies, as well as analysis of relevant national and international reports, and 2) analysis and interpretation of replies obtained in the course of conducted interviews. Due to the closed nature of institutions responsible for combating OC, there were only two interviews. The legal, strategic and institutional framework for combating OC in Serbia is sufficiently developed. Serbia has good police cooperation, both at the regional level and at the level of the European Union (EU). Hence, the conditions for combating OC are fulfilled, but results are lacking. Unfortunately, there are no systematised publicly available data and the real effects of the fight against OC are therefore not entirely clear.

One of the main characteristics of OC is the connection between the members of one organised criminal group (OCG) and the representatives of the state, as evidenced by the most recent cases in the 'War against Mafia' declared by the Serbian Government in October 2020. This arrangement prevents genuine fight against OC and selectively redirects state efforts against rival OCGs, as shown by reports of investigative journalists. Thus, the fight against OC in Serbia depends directly on the political will. That is why state capture is the main reason for the lack of results in fighting OC. Institutions that are not independent and autonomous cannot adequately perform the work for which they were established. Political influence on the work of institutions competent to fight OC is the key challenge, particularly in the police as an institution that is not operationally autonomous. The above is an additional cause of insufficient cooperation between the police and the prosecution, which shows the shortcomings of the implementation of prosecutorial investigation.

Introduction

Organised crime is a threat to human, national, regional and international security that is enormously harmful to contemporary society. A recent public opinion poll shows that one quarter of Serbian citizens believe that OC is a threat to national security, while 15% are convinced that it is corruption.¹ The development of the legal and institutional framework is a precondition for combating OC. The work plans of all the Governments of the Republic of Serbia envisaged a fight against OC, but there have been almost no concrete results in the field. This means that political will is an important component in the fight against OC. Cooperation between competent state bodies at the regional level is also necessary for an effective fight against this phenomenon. The fight against OC poses a challenge to Serbia's accession to the EU, especially because of the significance of Chapter 24 (Justice, freedom and security).

1 Ignjatijević, M., Elek, B. and Pavlović, M. (2020), "Weapons against 'white plague', crime and corruption: Citizens' view of security", Belgrade Centre for Security Policy, available at: <https://bez-bednost.org/wp-content/uploads/2020/11/naoruzanje-03.pdf> (accessed on 27 January 2021)

Analysis of the Legal, Strategic and Policy Framework

The primary legal basis for the fight against OC includes the Criminal Code, the Criminal Procedure Code and the Law on the Organisation and Competence of State Bodies in the Suppression of Organised Crime, Terrorism, and Corruption. According to the Criminal Procedure Code, “OC is the commission of criminal offences by an OCG or its members”,² while an “OCG is a group of three or more persons that exists for a certain period of time and acts in concert to commit one or more criminal offences punishable by imprisonment for a term of four years or more, for direct or indirect financial or other gain”.³ This definition of OC is the consequence of the adoption of the United Nations Convention against OC (the Palermo Convention) and additional protocols. The goal of an OCG is to make a profit through criminal activity and make that profit legal.

The criminal legislation of Serbia has accepted the definition of OC that puts the criminal organisation in the foreground. However, activities of OCGs are an equally important element of OC and are presented in the special part of the Criminal Code as more serious forms of concrete crimes. Drug trafficking, smuggling of humans, human trafficking, trafficking in weapons and explosives, property crime, economic crime, cybercrime and environmental crime are forms of OC that were analysed in the 2019 Serious and Organised Crime Threat Assessment (SOCTA). In the territory of Serbia, “smuggling and trafficking of drugs are the most important criminal activities of the majority of OCGs”.⁴ This is quite logical, as drug trafficking is one of the most profitable forms of OC in the world.

The Prosecutor’s Office for Organised Crime, the organisational unit competent for combating Organised Crime that operates within the Ministry of Interior, the Special Department for Organised Crime of the High Court in Belgrade (as the first instance court), the Special Department for Organised Crime of the Appellate Court in Belgrade (as the second instance court), and the Special Detention Unit of the District Prison in Belgrade are the main institutions of the national security system that are competent for the suppression of OC.⁵ The Prosecutor’s Office for Organised Crime conducts pre-investigation and the investigation procedure. The Service for Combating Organised Crime of the Criminal Police Directorate is an organisational unit within the Ministry of Interior competent for the detection of OC. The Security Information Agency (BIA), the Military Security Agency (VBA), as well as institutions that operate within the Ministry of Finance are also actors that contribute to conducting the pre-investigation and investigation procedure.

2 Criminal Procedure Code, “Official Gazette of the Republic of Serbia” nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019, Article 2, paragraph 34, available at: https://www.paragraf.rs/propisi/zakonik_o_kvivicnom_postupku.html (accessed on 27 January 2021)

3 *Ibid.*, Article 2, paragraph 33. (accessed on 27 January 2021)

4 Ministry of Interior (2019) “Serious and Organised Crime Threat Assessment 2019”, p. 20, available at: <http://www.mup.gov.rs/wps/wcm/connect/3d0a3df4-4e1d-4b70-8475-3d69f6d21107/SOCTA+2019+-+ENG-compressed.pdf?MOD=AJPERES&CVID=nnvYlq8> (accessed on 12 February 2021)

5 Law on the Organisation and Competence of State Bodies in the Suppression of Organised crime, Terrorism, and Corruption, “Official Gazette of the Republic of Serbia” nos. 94/2016 and 87/2018, Article 4, available at: <https://www.paragraf.rs/propisi/zakon-o-organizaciji-i-nadleznosti-drzavnih-organa-u-suzbijanju-organizovanog-kriminala-terorizma-i-korupcije.html> (accessed on 27 January 2021)

Within the Ministry of Justice, there is the Directorate for the Management of Confiscated Property, which manages seized property acquired through OC activity. Due to the complexity of OC, according to the Law on the Organisation and Competence of State Bodies in the Suppression of Organised Crime, Terrorism and Corruption it is possible to establish a financial forensic service, appoint liaison officers and form a task force.⁶ The Financial Forensic Service was thus established within the Prosecutor's Office for Organised Crime. The migrant crisis of 2015 caused the establishment of the Permanent Task Force for the Fight against Human Smuggling. It was formed in 2016 and included representatives of the Ministry of Interior and the Republic Public Prosecutor, who were engaged in combating organised smuggling of human beings. The task force continued to work through the Department for Combating Trafficking in Human Beings and Human Smuggling within the Service for Combating Organised Crime.

The easiest way to detect and prove the activities of an OCG is for a member of the OCG to cooperate with the police or the prosecution to disclose the operational information needed as evidence in court. In that case, the person receives the status of protected witness and is taken care of by the Protection Unit within the Ministry of Interior. Covert interception of communications, covert surveillance and recording, simulated operations, computer data search, controlled delivery and undercover investigators are special investigative/evidentiary actions, as determined by the Criminal Procedure Code, may be applied in the fight against OC.⁷ However, "Serbia is late in carrying out the analysis of the roles and practices of security services and the police in implementing special investigative measures, especially interception, in the pre-investigation phase, which would bring them in line with the best European practices".⁸ Namely, the BIA, the only civilian security service in Serbia, is the only institution in charge of applying special investigative measures, owing to the fact that it possesses the necessary technical capabilities. Therefore, the police cannot independently apply special investigative measures and thus depends on the BIA. Moreover, financial investigations are important for detecting money flows related to OC, but Serbia unfortunately lacks sufficient capacities in this regard.

In the National Strategy for the Fight against Organised Crime 2009, it was emphasised that "the Government will create all necessary political and legal preconditions for the successful implementation of the Strategy, with a focus on three basic principles: implementation and development of preventive and repressive actions and the confiscation of criminally acquired assets".⁹ One of the priorities of the new Government of the Republic of Serbia, formed in October 2020 (and as stated in the Prime Minister's speech) in the fight against OC is to focus on "cutting organised criminal groups' funding sources and breaking their network of influence in state bodies, politics, and media".¹⁰

6 *Ibid.*, Articles 19-23 (accessed on 27 January 2021)

7 Criminal Procedure Code, "Official Gazette of the Republic of Serbia" nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019, Articles 161-187, available at: https://www.paragraf.rs/propisi/zakonik_o_kvivicnom_postupku.html (accessed on 27 January 2021)

8 European Commission (2020), "Commission staff working document: Serbia 2020 report", Brussels, p. 42, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf (accessed on (accessed on 12 February 2021)

9 National Strategy for the Fight against Organised Crime, "Official Gazette of the Republic of Serbia" no. 23/2009, available at: http://demo.paragraf.rs/demo/combined/Old/t/t2009_04/t04_0105.htm (accessed on 27 January 2021)

10 "Programme of the Government of Serbia, candidate for Prime Minister Ana Brnabić" (2020), p. 15, available at: https://www.srbija.gov.rs/view_file.php?file_id=2431&cache=sr (accessed on 27 January 2021)

Although legal regulations that enable competent institutions to fight against OC have been adopted during the period 2009-2020, the obstacle to an effective fight against OC is mostly the lack of political will. It was stated in the National Security Strategy of 2019 that OC represents a “special security threat posed by the activities of criminal groups in southern Serbia, primarily due to their connections with persons engaged in terrorist, extremist and separatist activities”.¹¹ Hence, successful fight against OC requires cooperation on the regional level as well as national institutions that operate free of political influence.

Regional and EU-Level Cooperation and Knowledge Sharing

Serbia is a part of the Balkan route and therefore needs to cooperate with all the regional police agencies. The Ministry of Interior has signed police cooperation agreements with all the countries in the region except Kosovo. Namely, police cooperation with Kosovo is carried out through the mediator EULEX (the EU Rule of Law Mission in Kosovo) and UNMIK (the United Nations Mission in Kosovo), while direct cooperation takes place through ILECU (International Law Enforcement Coordination Units), as does cooperation of the border police at border crossings.¹² The complicated political situation between Kosovo and Serbia only facilitates criminal activities of OCGs. On the other hand, Serbia has good cooperation with the Southeast European Law Enforcement Centre (SELEC). “Serbia has a liaison officer who works there, and through whom we make necessary contacts. What is important about SELEC is their expertise and speed, because they react extremely quickly, which is very important in the fight against OC”.¹³

Europol and Eurojust are the most important EU institutions that enable cooperation in the fight against serious and organised crime at the EU level. Such cooperation implies police cooperation and complementary judicial cooperation in criminal matters.¹⁴ Serbia concluded an operational and strategic agreement with Europol in 2014, while in 2019 it concluded an agreement with Eurojust. These are important because they enable direct cooperation between the police authorities and the above institutions, as well as the exchange of information regarding specific OC cases. Also, these agreements enable the formation of joint investigation teams that will include police officers from Serbia.

A good track record of prosecutions and convictions in OC cases is relevant for Serbia’s accession to the EU. Unfortunately, Serbia lacks this track record, which is an issue that is subjected to criticism by the European Commission in its annual country reports on Serbia.

11 National Security Strategy (2019), “Official Gazette of the Republic of Serbia” no. 94/2019, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/skupstina/strategija/2019/94/2> (accessed on 27 January 2021)

12 Elek, B. (2015), “Towards More Effective Police Cooperation between Serbia and Kosovo”, Belgrade Centre for Security Policy, available at: https://bezbednost.org/wp-content/uploads/2020/07/towards_more_effective_police_cooperation_between_.pdf (accessed on 27 January 2021)

13 Interview with Milan Pekić, Director of the Office for Combating Drugs, 9 February 2021, Belgrade

14 Tasić, D. and Elek, B. (2015), “Fight against serious and organised crime”, Stojanović Gajić, Sonja (ed.), A Guide to Cooperation in Internal Affairs in the European Union, OSCE Mission to Serbia and Belgrade Centre for Security Policy, p. 165, available at: https://bezbednost.org/wp-content/uploads/2020/06/vodic_kroz_saradnju_u_unutrasnjim_poslovima_u_evro_20160629_113122.pdf (accessed 27 January 2021)

Track Record of Serbia's Anti-OC Efforts

Comprehensive, disaggregated data regarding prosecutions and convictions in OC cases are not publicly available due to the different record-keeping practices of law enforcement agencies. However, some information can be found in the report of the European Commission, which states that “new investigations into OCGs were initiated in 2019 against 156 individuals (compared to 146 in 2018, and 191 in 2017). Indictments were filed against 65 individuals. The number of convictions in OC cases is slightly increasing: convictions (first instance) in 2019 were issued in the case of 167 individuals (out of which 42 were plea agreements approved by the courts) compared to 155 in 2018”.¹⁵ The practice of fighting against OC in Serbia is characterised by mass arrests, mostly of perpetrators of less serious crimes devoid of the elements of organisation. Additionally, these mass arrests are accompanied by a populist rhetoric of politicians and public officials.¹⁶

In the period from 2015 (when the SOCTA report was published for the first time) to 2019 (when the second official assessment was published by the Ministry of Interior), the number of OCGs decreased, which was attributed to the good work of the police. There are currently 27 OCGs operating in Serbia (15 mid-level, 7 high-level, and 5 low-level OCGs, viewed in terms of the level of organisation).¹⁷ The conflict between the Škaljar and Kavač criminal clans has been ongoing since 2014. It divided the criminal underground in Serbia, causing OCGs to sided with one clan or the other. That is one potential explanation for the reduction of the number of OCGs. Members of the Škaljar clan were arrested in police actions mostly because they were more numerous and more active in Serbia. Reports by investigative journalists show that there are certain connections between state representatives and members of the Kavač clan.¹⁸ This clans' conflict significantly contributed to the increase of ‘mafia’ murders in the territory of Serbia. Based on the data compiled by an investigative news portal, there have been 86 mafia-style murders in Serbia in the period between 2015, when the first victim of this conflict was killed, and 2020. The perpetrators of 49 of these murders are still unknown.¹⁹

Members of the criminal-hooligan group *Principi*, who were part of the Kavač clan, were arrested at the beginning of February 2021. Veljko Belivuk, leader of that criminal-hooligan group and members of this group are also suspected of drug trafficking, kidnapping and several murders. However, the high-profile investigation of this group covers the period from 2019 onwards, despite the fact the group was at that time already active for several years, and despite the well-established links between their

15 European Commission (2020), “Commission staff working document: Serbia 2020 report”, Brussels, p. 43, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf (accessed on 12 February 2021)

16 Pejić Nikić, J. (Ed.) (2020), “prEUgovor Alarm: Report on Progress of Serbia in Chapters 23 and 24”, prEUgovor coalition, May 2020, Belgrade, available at: http://preugovor.org/upload/document/alarm_report.pdf (accessed on 12 February 2021)

17 Ministry of Interior (2019) “Serious and Organised Crime Threat Assessment 2019”, available at: <http://www.mup.gov.rs/wps/wcm/connect/3d0a3df4-4e1d-4b70-8475-3d69f6d21107/SOCTA+2019++ENG-compressed.pdf?MOD=AJPERES&CVID=nnvYlq8> (accessed on 12 February 2021)

18 Vojinović, M. and Pavlović, B. (2019) “Stefanović on arrests: The Škaljar clan is stronger in Serbia”, available at: <https://www.krik.rs/stefanovic-o-hapsenjima-u-srbiji-jaci-skaljarski-klan/> (accessed on 07 Mart 2021)

19 KRIK and Radio Free Europe (2021), “Black book”, available at: <https://www.crnaknjiga.rs/index.php> (accessed on 12 February 2021)

members and high-ranking state officials.²⁰ In another prominent case known as Jovanjica, members of the police, the BIA and the VBA were accused of drug trafficking, forgery of documents and association with the aim of committing criminal acts. The indictment for this case was submitted to the Appellate Court for decision.²¹ Jovanjica is probably the largest marijuana plantation that has been discovered in Europe. Despite proven connections of OCGs with state officials in both these cases, the criminal proceedings never addressed them, which shows how serious the Government is when it comes to tackling OC.

| Key Shortcomings and Challenges

Institutions must be independent and autonomous to be able to successfully fight against OC, but in Serbia, political will limits them in this area. As one representative of the judiciary stated, the fight against mafia in Serbia is staged “because many things depend on politics. The police, the prosecutor’s office and the courts are one system, but political will is the main problem”.²² Although there are true professionals in law enforcement institutions, they are prevented from doing their job, especially if it goes against the interests of the political elite. Hence, in Serbia political will is the key factor in deciding how the fight against OCGs will be carried out.

The main problem in the work of the police is that it is not operationally independent, as it depends on the decisions of political officials in the Ministry of Interior. “There is no clear separation between the police, as a governmental civil authority authorised by law to take coercive measures to resolve harmful or potentially unsafe situations, and the Ministry, as a structural part of the Government shaped to provide organisational requirements for policing (budget, human resources, land, property and equipment)”.²³ In practice, this situation is reflected in the fact that any operational processing that is especially important for the fight against OC can be influenced by the Minister of Interior who is a political appointee.

The police do not have sufficient cooperation with the prosecutor’s office, despite the fact that prosecutorial investigations started back in 2013. This means that the prosecutor’s office conducts investigations, while the police must follow the prosecutor’s orders. However, the problem is that “during the pre-investigation and investigation phases, the police have to report to the Ministry of Interior, not just to the prosecutor’s office”.²⁴ Another issue is that “media relations, including press releases concerning ongoing operations, are still managed mainly by the Ministry of Interior and not by the prosecution and/or the police”.²⁵ This makes it possible for representatives

20 Vojinović, M. (2021), “Belivuk and members of his group have been remanded in custody”, available at: <https://www.krik.rs/belivuku-i-clanovima-njegove-grupe-produzen-pritvor/> (accessed on 07 Mart 2021)

21 Veljković, J. (2021), “Jovanjica 2 submitted to the Appellate Court”, available at: <https://birn.rs/jovanjica-2-dostavljena-apelacionom-sudu/> (accessed on 07 Mart 2021)

22 Interview with a representative of the judiciary, 10 February 2021, Belgrade

23 Pejić Nikić, J. (Ed.) (2020), “prEUgovor Alarm: Report on Progress of Serbia in Chapters 23 and 24”, prEUgovor coalition, May 2020, Belgrade, p. 92, available at: http://preugovor.org/upload/document/alarm_report.pdf (accessed on 12 February 2021)

24 European Commission (2020), “Commission staff working document: Serbia 2020 report”, Brussels, p. 42, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf (accessed on 12 February 2021)

25 *Ibid.* (accessed on 12 February 2021)

of the Ministry of Interior to abuse information from ongoing investigations by placing them in the media for their own purposes, which is a practice that is widely used in Serbia. In addition, the Prosecutor's Office for Organised Crime has a problem with human resources, which is why the European Commission recommends that its human and financial capacities be increased.²⁶

According to one interviewee, both "the judiciary and the prosecution have a problem with people who lead them - namely, the High Court Council and the State Prosecutorial Council. In the case of a media smear campaign, these bodies should protect us, and they do not. No politician will exert direct pressure and say 'do this and that'; pressure is applied in other ways, for instance through trials held by the media. The role the media play is quite sad; due to sensationalism, evidence is first presented in the media and only then to the court".²⁷ This is a consequence of leaking information from the investigation and delivering it to pro-government tabloids. When reporting on cases of the fight against OC, these media's role is to respond to the requests of the political elite, which results in the creation of wrong conclusions in the public. This is why reports of independent media, those that show relevant facts from concrete cases of OC, are very important for the fight against OC.

| Conclusion

Teloped, which is at least partially the result of the harmonisation of regulations with the EU *acquis*. The institutional framework is in place, but cooperation between the Service for Combating Organised Crime and the Prosecutor's Office for Organised Crime is not good enough. Unfortunately, there are no systematised publicly available data on the track record of the efforts made by the above Service, the above Prosecutor's Office and the Special Department for Organised Crime of the High Court in Belgrade. The track record is difficult to figure out because these institutions do not have publicly available comparable data on how many criminal investigations were initiated or how many criminal proceedings ended in convictions. It is thus extremely difficult to establish their real impact in the fight against OC, and the public does not have this information.

The political elite in Serbia are declaratively committed to the fight against OC, but the practical consequences of said commitment are lacking. The role of the media is very important in the fight against OC, but media outlets are often abused by the political elite. The evidence is presented in tabloids, disrupting investigations. As a consequence, citizens are getting the wrong impression that the fight against OC is proceeding in the right direction and that results are good. Investigative journalists have established links between state representatives and members of OCGs in numerous cases, but no criminal proceedings have been initiated to date. Institutions in Serbia are not efficient in the fight against OC because they are not independent. The political elite interfere in their work, which results in a selective fight against organised crime.

²⁶ *Ibid.*, p. 41 (accessed on 12 February 2021)

²⁷ Interview with a representative of the judiciary, 10 February 2021, Belgrade

Recommendations

It is necessary to protect the operational autonomy of the Service for Combating Organised Crime and the Prosecutor's Office for Organised Crime;

Good cooperation between the Service for Combating Organised Crime and the Prosecutor's Office for Organised Crime is of crucial importance in the fight against OC. In that sense, employees of the above Service need to be directly accountable to the above Prosecutor's Office;

The Service for Combating Organised Crime, the Prosecutor's Office for Organised Crime and the Special Department for Organised Crime of the High Court in Belgrade should publish reports on their work regarding criminal prosecution and convictions, and thus enable qualitative and quantitative analysis of the fight against OC;

Police cooperation with Kosovo must be improved and enhanced through more direct cooperation, as this is the only way to prevent activities of OCGs in these territories;

The High Court Council and the State Prosecutorial Council should ensure the integrity of the judicial system and protect judges and public prosecutors in the event of pressure so that they can continue to do their job independently.

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