



# JUDICIARY AND FIGHT AGAINST CORRUPTION **BEHIND THE STATISTICS**

Analysis of legal framework and final judgments for  
criminal offenses with elements of organized crime (Vol. 5)



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# INTRODUCTION

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The aim of this publication is to give a clearer picture about the results of judiciary in the fight against organized crime in Montenegro.

This document provides an analysis of the legal framework, statistics and final court judgments rendered in the period from 2013 to the end of 2018.

The thirty case studies presented in this publication contain an analysis of the conduct of the Special Prosecutors, as well as the practices of the courts of first and second instance.

Details of the most common forms of organized crime, such as drug smuggling, money laundering and smuggling of human beings, are presented in separate chapters. Separate studies also provide analysis of proceedings that dealt with other forms of organized crime, including possession of weapons, trafficking in human beings and smuggling of excise goods.

The responsibility of judges and prosecutors for numerous omissions in these cases is addressed in a separate section of the publication.

The last chapter focuses on the deletion of important data from court judgments that limit the analysis and public scrutiny of the work of judiciary.



# SUMMARY

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## Legal framework

The 2010 amendments to the Criminal Code prescribe a **separate criminal offense of organized crime**, that is, the creation of a criminal organization. Establishment or belonging to a criminal organization is now the basis for criminal liability that previously existed only when another, specific crime was committed in the organization.

Two years ago, amendments to the Criminal Code were adopted stating that for the existence of a crime of **money laundering** it is not necessary that there be a conviction for the predicate crime from which that money originated. However, the old legal framework still applies in proceedings for criminal offenses committed before 2017, except where the new law is more favorable for the offender.

Elements of organized crime in practice are most commonly found in the offenses related to the smuggling of **narcotics**. The 2010 amendments to the Criminal Code were to the benefit of the defendants when it comes to commission of the most serious form of that crime.

## Statistics

Final judgments are available to the public for 35 organized crime cases that have been completed in the last six years. Convictions were rendered for two thirds of the offenses that the prosecution charged the defendants with.

However, **every third sentence imposed was below the statutory minimum**. For the criminal offense of establishment of a criminal organization, only 6% of the sentences imposed were above the minimum.

The most common offense with elements of organized crime was the unauthorized production, possession and distribution of narcotic drugs. Almost all of these proceedings were conducted for smuggling of marijuana, and only four were related to cocaine and heroin smuggling.

Every fifth organized crime case ended with a plea agreement. Three-quarters of the sanctions agreed in the plea agreements were below the statutory minimum.





## Publicity of work

The courts publish final judgments on their websites after **deleting numerous pieces of information relevant to controlling their work and also analyzing narcotics smuggling channels.**

Although the trials were public, the courts anonymized the names of all persons mentioned in the proceedings, and from some judgments they even deleted the names of the prosecutors. The names of the states, cities, ports and locations where the narcotics were seized, as well as the names of the companies and ships used to commit the crimes were anonymized. The amounts of money laundered were also deleted from some judgments.

## Practice

The penal policy in organized crime cases was extremely lenient, to which the Court of Appeals of Montenegro contributed significantly

The courts have rarely assessed the amount of the narcotic drugs, the motives from which the offense was committed, and the amount of proceeds gained as aggravating circumstances. In some cases, they did not properly appreciate previous convictions of the members of a criminal organization. On the other hand, many mitigating circumstances were attached great importance by the courts to the benefit of those convicted of organized crime.

**Despite this, special prosecutors often did not appeal the lenient sentences imposed on the masterminds and members of criminal organizations.**

Use of the plea agreement mitigated further the penal policy. The prosecution concluded agreements even when there was sufficient evidence for conviction in regular proceedings, although the defendants did not disclose the masterminds and other members of criminal organizations, nor other crimes or information about property acquired through crime.



The most important proceedings ended in acquittals because the Special Prosecutors made numerous omissions in the indictments and charged the defendants with actions that did not constitute criminal offenses, as well as crimes that did not exist at the time of commission. Some indictments did not contain the basic legal requirements for the existence of organized crime. There were omissions even when prosecutors had evidence, provided to them by other countries.

In some cases, prosecutors dropped criminal charges after years of court proceedings without justification, while some persistently presented indictments for the crimes subject to statute of limitations.

Unlawful indictments were upheld by the courts, instead of being sent for amendments. These proceedings ended in acquittals and prohibition of retrial of the accused of those offenses.

In some important cases the judges demonstrated that they do not know which law to apply in cases of money laundering, or how this crime is proved.

## **Accountability**

No prosecutor was held accountable for the omissions in the indictments and court proceedings, nor for the failure to act promptly, which resulted in the occurrence of the statute of limitations.

The judges who upheld the unlawful indictments were not held accountable, nor the judges who made multiple mistakes to the benefit of the accused of organized crime.





# METHODOLOGY

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This publication contains an analysis of final court judgments for criminal offenses with the elements of organized crime rendered in the period from 2013 to 2018.

We have collected the judgments from the websites of the Higher Court in Podgorica, the Higher Court in Bijelo Polje, the Court of Appeals and the Supreme Court. However, the final judgments published in the websites of the courts are not classified, so it is not possible to determine which ones relate to organized crime. In addition, although they have the so-called judicial information system, most courts have been reluctant to provide us with the case reference numbers relating to offenses with the elements of organized crime.

That is why we have collected data by searching the websites of the courts according to the articles of the Criminal Code that define establishment of a criminal organization, that is, criminal association. [1] Since only the initials of the defendants can be found in the judgments, which has greatly complicated their analysis, we have collected information about their names from the media and other sources.

Based on the information from the judgments, in all cases related to organized crime we have classified each individual defendant into one of the types of organized crime (in relation to the specific offense that the person is charged with): narcotics, money laundering, smuggling of human beings, trafficking in human beings, forgery, weapons and other. We also sorted the proceedings by type of narcotics into cocaine, heroin and marijuana.

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[1] Articles 401 and 401a of the Criminal Code, more details in Chapter 1: Legal Framework

When it comes to penal policy, in practice it often happens that a person convicted of organized crime is also convicted of other offenses with or without the elements of organized crime. The judgments state the individual sentences for each of these offenses, and the courts impose a cumulative sentence that is shorter than the sum of the penalties for individual offenses.

When analyzing the minimum and maximum sentences imposed, we used data on individual sentences, because it was methodologically impossible to process cumulative sentences. This means that the penal policy of the courts is, on average, more lenient than our statistics show. Moreover, many persons have been convicted in several court proceedings, in which case the courts, in a special procedure, merge the penalties and impose a cumulative sentence that is always shorter than the sum of the penalties merged. This further mitigates the sanction imposed on a person convicted of organized crime.

**All final judgments for criminal offenses with the elements of organized crime are available at [www.mans.co.me](http://www.mans.co.me).**





# 1.

## LEGAL FRAMEWORK

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The criminal offense of organized crime, that is, the creation of a criminal organization, was prescribed by the 2010 amendments to the Criminal Code as a separate offense. According to these changes Criminal liability exists already when it is organized or when one belongs to a criminal organization. Earlier this responsibility existed only when another specific criminal offense was committed in the organization. However, these changes is essentially decriminalized the use of political parties in the activities of a criminal organization.

The criminal offense of **criminal association** does not in itself indicate the existence of organized crime, but in the practice of the courts it is classified in this group of offenses, thus improving the official statistics. The description of the act of that crime fulfills only two of the four mandatory conditions for the existence of organized crime that must be met cumulatively.

The offenses that most often have elements of organized crime in practice include the Unauthorized Production, Possession and Distribution of **Narcotics**. The 2010 amendments to the Criminal Code were to the benefit of the accused of committing the most serious form of drug trafficking. Other criminal offenses include **Trafficking in Human Beings and Possession of Weapons**, and **Money Laundering**, which is covered in a separate publication. [2]

Two years ago, amendments to the Criminal Code were adopted, which clearly stipulated that the existence of a criminal offense of **money laundering** did not require the existence of a conviction for the predicate crime from which that money originated. However, the old legal framework still applies in criminal proceedings instigated for criminal offenses committed prior to 2017, except where the new law is more favorable to the offender.

[2] Monitoring report 3 – Money laundering, Analysis of the final court verdicts (2013 – 2018), link: <http://www.mans.co.me/en/wp-content/uploads/2020/02/Monitoring-report-3-Money-laundering.pdf>



## 1.1. Definition of organized crime

The 2010 amendments to the Criminal Code (CC) stipulate for the first time a separate criminal offense of organized crime, that is, creation of a criminal organization. [3] Prior to that, definition of organized crime [4] was given in the Criminal Procedure Code of Montenegro (CPC). [5]

### Creation of a criminal organization

According to the Criminal Code, the act of organizing or belonging to a criminal organization is sufficient for the existence of the criminal offense of creation of a criminal organization, and if the mastermind or member of the organization commits another criminal offense as part of the organization, they will be held responsible for that offense as well.

**Criminal liability exists already when one organizes or belongs to a criminal organization, while in the past this liability existed only when another concrete criminal offense is committed as part of the organization.**

The law prescribes a prison term ranging from **three to fifteen years** for the mastermind, and from **one to eight years** for the member of the criminal organization.

In order to have this crime committed, it is necessary to **cumulatively fulfill the following conditions:**

- 1) **existence of a certain degree of suspicion** - reasonable suspicion that a criminal offense was committed;
- 2) **gravity of the offenses that represent the goal of the organization** - reflected in the abstract gravity expressed through the stipulated four-year prison sentence or a more severe sentence;
- 3) **organized character** - implies the fact that the crime must be the result of the activities of three or more persons associated into a criminal organization or a criminal group;
- 4) **the specific criminal objective** of the organization or group, which consisting commit crimes for the purpose of gaining profit or power.

In addition, the existence of organized crime **requires the fulfillment of at least three** of the following conditions:

- 1) **hierarchical structure** - each member of the organization or group had a predefined or obviously definable task or role;
- 2) **continuity of action** - the activity is planned for a longer period of time or for an unlimited period;
- 3) **internal rules** - the activity is based on the application of certain rules of internal control and discipline of members;
- 4) **internationalization of activities** - activities are planned and implemented in international proportions;
- 5) **violent nature** of the organization - activities of the organization include the application of violence or there is readiness for their application;
- 6) **existence of business connections** - activities of the organization include the use of economic or business structures;
- 7) **unlawful legalization of income** - activities of the organization include laundering of money or illicit proceeds;
- 8) **links to power factors** - there is an influence of the criminal organization upon the political authority, media, legislative, executive or judicial powers or other important social or economic factors.

[3] Criminal Code, Article 401a

[4] Criminal Procedure Code, Article 22

[5] Criminal Procedure Code, "Official Gazette of MNE" no.57/2009 and 49/2010



It is prescribed that a criminal organization uses economic or business structures, but not **political structures**, in its activity, although such a solution existed in the Criminal Procedure Code previously in force. [6]

**After the law was amended, the use of a political party in the activities of a criminal organization is no longer one of the possible conditions for the existence of organized crime.**

Instead of considering the use of political structures, i.e, political parties, as one of the special conditions for the existence of organized crime, the CPC and the Criminal Code try to prescribe this link through the influence of the organization on "**political authority**". [7]

The term "**political authority**" in legal terms is completely vague and imprecise. Namely, from a strictly legal point of view, it is indisputable that there is only legislative, executive and judicial power, so it is unclear who the influence should be exerted upon in order to influence political authority and to fulfill this requirement for the existence of organized crime.

Therefore, the condition of influence on "political authority" here appears to be superfluous and certainly does not lead to the possibility of connecting political parties with organized crime, since political parties cannot be considered as one of the branches of power, nor as "political authority" either.

### **Criminal Association [8]**

The criminal offense of criminal association **does not in itself indicate the existence of organized crime**, but in the practice of the courts it is classified in this group of offenses, thus improving official statistics.

This criminal offense involves the establishment of a group or other association, a plan for committing crimes, assigning roles to members and generally taking measures for the functioning of the association, that is, for committing crimes for the purpose of which the association is organized. According to practice and legal theory, the group and association are made up of at least three persons who have joined forces to commit criminal offenses.

Exactly these characteristics (organized character, number and role of members, purpose) represent similarities to organized crime and also constitute the reason for the prosecution and the courts to **unjustifiably treat the cases involving this criminal offense as cases of organized crime**.

**The description of the act of this crime fulfills only two of the four mandatory conditions for the existence of organized crime that must be cumulatively met.**

[6] In Article 507, Paragraph 4 ("Official Gazette of RoM", no. 71/2003, 7/2004 and 47/2006)

[7] Article 22, Item 8, line 2 of the CPC and Article 401a, Paragraph 6, Item 8 of the Criminal Code

[8] Until the 2010 amendments to the Criminal Code, this criminal offense was called criminal association (the word in English is the same)

### **Mandatory conditions**

|  |         |
|--|---------|
| Existence of a certain degree of suspicion                           | Met     |
| Severity of crimes that constitute the objective of the organization | Met     |
| Organized character  | Not met |
| Criminal goal of obtaining profit or power                           | Not met |

**The description of the act satisfies only one of eight additional conditions, at least three of which must be met in order to classify an offense as organized crime.**

### **Additional conditions (at least three must be met)**

|                                    |         |
|------------------------------------|---------|
| Hierarchical structure             | Met     |
| Continuity of action               | Not met |
| Internal rules                     | Not met |
| International activity             | Not met |
| Violent nature of the organization | Not met |
| Existence of business ties         | Not met |
| Unlawful legalization of profit    | Not met |
| Relations with power factors       | Not met |

Lastly, in the 2010 amendments to the Criminal Code, the legislator indirectly confirmed that this is not a criminal offense that necessarily entails organized crime, when in addition to this criminal offense, the criminal offense of establishment of a criminal organization was prescribed.

**According to the legal description of the action, the mastermind is responsible for establishment of a criminal association, and a member of the association is responsible only if the aim of the association is to commit criminal offenses for which a prison term of five years or a more severe sentence may be imposed.**

In the event that the mastermind or a member commits a criminal offense within the association, they will be responsible for that criminal offense and the criminal offense of criminal association.

For a criminal association whose purpose is to commit criminal offenses for which a prison term of one year or a more severe sentence may be imposed, the mastermind may be sentenced to imprisonment for a term of up to three years. A member of this association is not responsible for this crime.

If a criminal association is aimed at committing criminal offenses for which a prison term of five years or a more severe sentence may be imposed, the mastermind may be sentenced to a prison term ranging from one to eight years, and the member may be sentenced to a prison term of up to two years.



## 1.2. Criminal offenses characteristic of organized crime

### Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs

The act of committing the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs is prescribed alternatively as:

- 1) unauthorized production, processing and sale;
- 2) buying, holding or transporting for sale;
- 3) mediation in sales or purchases and
- 4) any other means of unauthorized release into circulation of narcotic drugs. [9]

Therefore, in order to have this criminal offense, the act of buying, holding or transporting a narcotic drug must be carried out for the purpose of sale.

For the basic form of this crime, a sentence of imprisonment of two to ten years has been stipulated, while for the more severe forms of the offense, the Criminal Code defines sentences of two to 15 years. [10]

The Criminal Code also criminalizes certain preparatory actions for this crime. Namely, the perpetrator shall be punished by imprisonment for a term ranging from six months to five years for the production, procurement, possession, transportation or enabling the use of equipment, materials or substances that he knows are intended for the production of narcotic drugs.

**With the amendments to the Criminal Code the Government and the Parliament allowed for concrete benefits to the accused of the most severe form of this offense, as well as an easier entry and use of narcotic drugs in Montenegro.**

With the 2010 amendments to the Criminal Code, paragraphs 2 and 3 of Article 300 of the previously applicable Code [11], which prescribed two more serious forms of this offense and more severe sentences, were changed in favor of the accused of those criminal offenses.

#### Several persons or networks

**These amendments to the Criminal Code changed the more serious form of this criminal offense in cases where it was committed by several persons.** Namely, Article 300, Paragraph 3 previously stipulated that the offender would be punished by prison term ranging from three to fifteen years if the offense was committed by several persons or if the offender organized a network of resellers or intermediaries.

The 2010 amendments to the Code deleted the words **"if the offense was committed by several persons"** and stipulated that the offender would be punished by prison term ranging from three to fifteen years **only** if he organized a **network of resellers or intermediaries**.

In explaining the Proposal of these amendments to the Criminal Code, **the Government did not give reasons for changing this paragraph.** However, according to jurisprudence and legal theory, the legal formulation of **"several persons"** refers to **two or more persons**. The **notion of a network, however, implies more than two persons**. Thus, these amendments to the law unnecessarily **make the procedure of proving the crime more difficult** and give a more favorable position the persons charged with committing a serious form of this crime.

Annex 2 provides an overview of changes to this article of the law.

[9] Criminal Code, Article 300, Paragraph 1.

[10] The penalties for serious forms are: two to twelve years in prison for the introduction of narcotic drugs into Montenegro for the purpose of committing this criminal offense; from three to fifteen years in prison for organizing a network of resellers or intermediaries; from three to fifteen years in prison for a perpetrator who sells, offers for sale or gives narcotic drugs without remuneration for the purpose of further distribution to a minor, a mentally ill person, a person with a temporary mental disorder, a person with severe mental retardation or a person treated for drug addiction, or who distributes narcotic drugs mixed with a substance that can cause serious health impairment, or who commits this crime in an educational or upbringing institution or in its immediate vicinity or in a penal institution, or in a public place or at a public event, or if the offense is committed by an official, a physician, a social worker, a priest, a teacher or an educator/caregiver using his or her position or who uses a minor to commit the offense.

[11] Official Gazette of RoM" no.70/2003 dated 25.12.2003.



## Money laundering

**Two years ago, amendments to the Criminal Code were adopted, which clearly stipulated that the existence of a criminal offense of money laundering did not require the existence of a conviction for the predicate crime from which that money originated.**

**However, the old legal framework still applies in criminal proceedings instigated for criminal offenses committed prior to 2017, except where the new law is more favorable to the offender.**

Already in 2008, Montenegro ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. [12] In Article 9, paragraph 5, of the Convention, it is explicitly stated that each Party shall ensure that a prior or simultaneous conviction for the predicate offense is **not a prerequisite** for a conviction for money laundering. **Only with the 2017 amendments** [13] did the Montenegrin Criminal Code fully comply with the provisions of that Convention.

The criminal offense of Money Laundering was first introduced in the Montenegrin Criminal Code in 2002, since 2003 it has been prescribed by Article 268 of the Criminal Code and amended three times in 2006, 2010 and 2017. All of these amendments complicated the court proceedings, as it was necessary to determine which law to apply in each individual case.

### Legal framework in force



**With the 2017 amendments to the Criminal Code it is stipulated that the existence of a criminal offense of money laundering does not require the existence of a final conviction for a predicate crime.**

With these amendments, the criminal offense of money laundering is described in the following way:

“Anyone who converts or transfers money or other property knowing that they are derived from criminal activity for the purpose of concealing or disguising the origin of the money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived from **criminal activity**, or who conceals or misrepresents the facts on the nature, origin, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from **criminal activity**”.

**The following sanctions are prescribed for money laundering:**

- For the basic form of that crime – six months to five years [14],
- value of money or assets exceeds 40,000 euro – from one to 10 years [15],
- offense committed by several persons associated to commit such crimes – from three to 12 years. [16]

[12] Montenegro ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism by the Law adopted on 29 July 2008, Official Gazette of MNE - International Agreements, no. 5/2008 dated 07 August 2008.

[13] Law on Amendments to the Criminal Code of Montenegro, Official Gazette of MNE no. 44/2017 dated 06 July 2017 – came into force on 14 July 2017. Article 24 amends Article 268 that prescribes the criminal offense of money laundering

[14] Paragraph 1 of Article 268

[15] Paragraph 3 of Article 268

[16] Paragraph 4 of Article 268



The law in force prescribes the same penalties for money laundering in the case of convicts who have also committed the predicate crime, and those who did not participate in the illicit acquisition of the money they laundered. [17] The 2017 amendments to the Law specify that the person who helps the offender to avoid responsibility for the offense committed or to conceal the origin of the money or property will also be punished.

It also stipulates that anyone who could or should have known that money or property was derived from criminal activity will be punished for money laundering by a prison term of up to three years. [18]

The Criminal Code also stipulates that the money and property subject to the commission of the criminal offense of money laundering will be confiscated [19], and after the amendments in 2017, the CC provides a more precise definition of property. [20]

## Previous legal framework

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**2002.**

The criminal offense of Money Laundering was first introduced in the Montenegrin Criminal Code in 2002. It follows from the description of the offense in this Code that **there must exist a conviction for the predicate offense:**

“Anyone who invests, takes over, replaces or otherwise conceals, in the banking, monetary or other economic activity, the true source of money, that is, objects or rights acquired by money for which he knows that it was obtained through a **criminal offense**”. [21]

**2003.**

With the adoption of the 2003 Criminal Code, the first paragraph of that Article was amended and gave a somewhat more general description of the action of money laundering, but there still remained a mandatory **condition for the prosecution to prove the predicate crime:**

„Anyone who conceals, through banking, financial or other economic activity, the means of obtaining money or other property known to have been obtained through a criminal offense“.

**2006.**

The next amendment to the law specifies the value of **over 40 thousand euros** as the one that constitutes a more serious form of a criminal offense. Prior to that, Paragraph 3 stipulated that money or property must be of „high value“.

Paragraph 5, which generally prescribed criminal liability of the person who committed the offense out of negligence, was also amended. The 2006 amendments specify the criminal liability of the perpetrator, “and he could and should have known that money or property constituted proceeds of crime”. Thus, it is specified that **negligence refers to only one characteristic of the crime** – the knowledge that money or property was obtained through criminal activity, because the crime of money laundering itself cannot be committed out of negligence.

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[17] Paragraph 2 of Article 268

[18] Paragraph 5 of Article 268

[19] Paragraph 6 of Article 268

[20] Paragraph 7 of Article 268

[21] Article 129a of the 2002 Criminal Code

**2010.**

The 2010 amendments to the Criminal Code change the description of this crime [22] and define it in three forms:

- conversion or transfer of money or property;
- acquisition, possession or use of money or property; and
- concealing or misrepresenting facts about money or property.

With the 2010 amendments, it is stipulated for the first form of this offense (conversion or transfer) that it is money or property obtained through criminal activity, while for the other two forms of the offense it was prescribed that it is money or property obtained or derived from a criminal offense.

These amendments to the Criminal Code use for the first time the term "criminal activity" through which money or property should have been obtained. In that case, for the first form of the offense, there is no need to have a conviction for a predicate crime.

For the other two forms of the offense, the CC still stipulates that money or property must be obtained through a criminal offense, which implies the existence of a conviction, since the crime can only be proven in this way.

**This amendment is less favorable for the defendants who committed the crime of money laundering via conversion or transfer of money or property, as they can be convicted even if there is no conviction for the predicate crime from which the money originated.**

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[22] Criminal Code, Article 268, Paragraph 1





**The 2010 amendments reduced maximum stipulated sanctions for the persons convicted of money laundering who committed the predicate offense, from eight to five years.**

Before these changes, persons convicted of money laundering who participated in the commission of the crime by which they acquired the money could be sentenced to a prison term ranging from one to eight years.

The **2010 amendments** stipulated the same sanctions for those offenders as for the ones who did not participate in the illicit acquisition of money - **from six months to five years in prison.** [23]

**Provision of the 2010 Law, which is still in force, is more favorable for persons accused of money laundering who have committed the predicate crime through which that money was obtained.**

Annex 3 provides an overview of amendments to the legal framework that criminalizes money laundering. This criminal offense was prescribed for the first time in 2002, amended in 2003 when the Criminal Code was adopted, and amended again in 2006, 2010, and, finally, in 2017.

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[23] Paragraph 2 of Article 268 of the Criminal Code

## Trafficking in Human Beings

The criminal offense of trafficking in human beings is most commonly committed in the form of organized crime. This criminal offense has one of the most complex descriptions of the action through which it is committed in the Criminal Code [24], which makes it difficult to prove. **For this crime to occur, it is necessary to take a particular action, in a particular way and with a particular purpose.**

According to the legal description [25], the **act of execution** is the recruitment, transportation, transfer, handing over, sale, purchase, mediation in sale, hiding or keeping of another person.

This act should be done in one of the following **ways**:

- by force or threat,
- by deceit or keeping in delusion,
- by abuse of authority, trust, dependency relationship, difficult position of another,
- by withholding, seizing, destroying or forging personal documents, obtaining or producing such documents, or by giving or receiving money or other benefit for the purpose of obtaining consent of a person having control over another.

In addition, it is necessary that actions be taken with a specific **objective** that can be:

- labor exploitation, forced labor, servant placement,
- commission of crimes, prostitution or other type of sexual exploitation, use for pornographic purposes,
- begging,
- taking away a body part for transplantation or
- for use in armed conflict.

If this offense was committed against a minor, then it is not necessary to prove that force, threat or any other of the above methods of execution was used. [26]

The punishment for the basic form of this offense is between **one and ten years in prison**. For more serious forms of this crime, the Criminal Code imposes more severe penalties:

- **minimum three years in prison** if the offense was committed against a minor or was committed by an official in the course of his official duty or if it intentionally endangered the life of one or more persons [27],
- **one to twelve years in prison** if the act resulted in serious bodily harm to a person [28],
- **minimum ten years in prison** if the act resulted in the death of one or more persons or if the perpetrator deals with committing this offense or the act was committed in an organized manner by several persons. [29]

The Law also stipulates that a **prison sentence ranging from six months to five years** will be imposed on the person who uses the services of a person for whom he knows that he is a victim of trafficking in human beings, and if the victim of human trafficking is a minor the user of the service will be punished by a **prison term ranging from three to fifteen years**.

[24] The basis for legal formulation was the UN Convention against Transnational Organized Crime, amended by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

[25] Criminal Code, Article 444, Paragraph 1.

[26] Criminal Code, Article 444, Paragraph 2.

[27] Criminal Code, Article 444, Paragraph 3.

[28] Criminal Code, Article 444, Paragraph 4.

[29] Criminal Code, Article 444, Paragraph 5 and 6.



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## Smuggling of Persons

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In a similar manner to criminal association, the prosecution and the courts often, without justification, classify the criminal offense of Illegal Crossing of the State Border and Smuggling of Persons as organized crime. [30] Thus, proceedings for this crime are also conducted as proceedings for organized crime, and indictments and verdicts are included in the statistics relating to organized crime, although the conditions required by law for organized crime are by far not met.

Besides, a more serious form of crime of Illegal Crossing of the State Border and Smuggling of Persons exists when several persons in an organized manner [31] are illegally transporting other persons across the border, or an unauthorized crossing of the border, or unauthorized stay or transit is granted to a person for a gain.

Therefore, a qualifying circumstance that constitutes a more serious form of this crime is a certain degree of organization, which is certainly not at the level of organized crime, in terms of satisfying a number of conditions precisely prescribed by the CPC and the CC.

For unauthorized crossing of the border or the attempt to cross the border of Montenegro, under arms or by use of force, a prison sentence of up to one year is prescribed.

For more serious forms of this crime, the Criminal Code imposes more severe penalties:

- from three months to five years in prison for engaging in illicit transfer of other persons across the border of Montenegro and for committing this criminal offense for financial or other gain;
- from one to ten years in prison if the offense was carried out in an organized manner, by abuse of office or in a manner that endangers the life or health of the smuggled persons or if a greater number of persons were smuggled.

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## Unauthorized possession of weapons and explosive substances

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For the unauthorized manufacture, sale, purchase, exchange, carrying or possession of firearms, ammunition and explosives, a prison sentence of three months to three years is prescribed. [32]

In the case of weapons, ammunition and explosives the possession of which is forbidden to the citizens, a sentence of six months to five years in prison is prescribed, and repairing, processing, transporting or otherwise distributing them is criminalized. [33]

Finally, if it is a large quantity or a weapon of great destructive power, the law stipulates a sentence of one to eight years in prison. [34]

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[30] Criminal Code, Article 405.

[31] Article 405, Paragraph 3 of the Criminal Code

[32] Article 403, Paragraph 1 of the Criminal Code

[33] Article 403, Paragraph 2 of the Criminal Code

[34] Article 403, Paragraph 3 of the Criminal Code



## 2.

# STATISTICAL ANALYSIS

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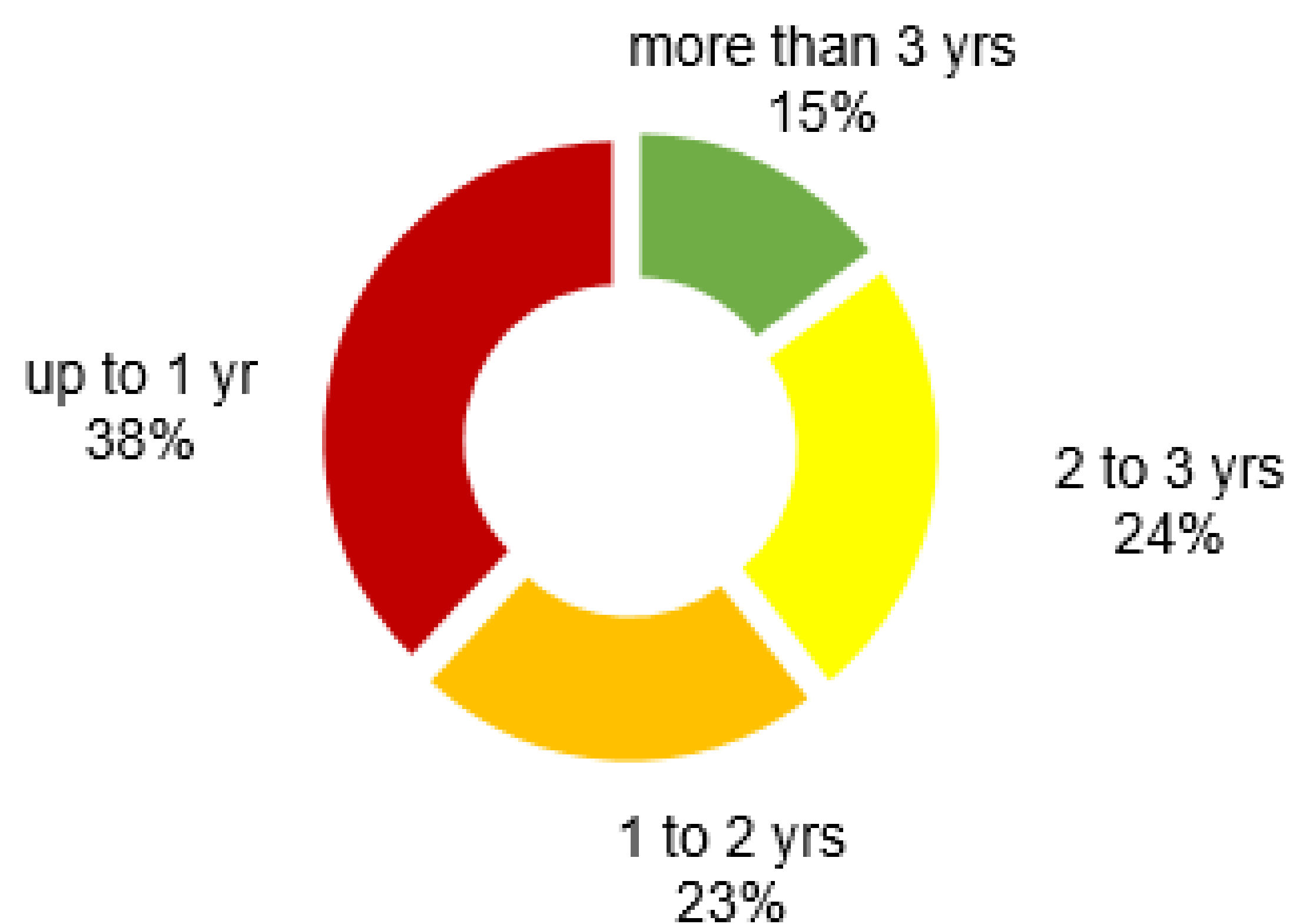
On the websites of the courts, final verdicts are available for 35 organized crime cases. In these proceedings, 222 persons were charged with 433 crimes with elements of organized crime.

Convictions were rendered for over 70% of the crimes that the prosecution charged the defendants with.

However, every third sentence imposed was below the statutory minimum.

Average sanction imposed for organized crime was 19 months in prison. For only 12 crimes sentences imposed were more than five years in prison.

Introduction of a new criminal offense, establishment of a criminal organization, has increased the prosecution's success in proving organized crime. However, the penal policy of the courts for this offense was extremely lenient, with only 6% of the sentences imposed being above the statutory minimum.



Graph 1: Sanctions for offenses with elements of organized crime in final judgments (2013 - 2018)



The most frequent offense with elements of organized crime was the unauthorized production, possession and distribution of narcotic drugs. Almost all of these proceedings were conducted for smuggling of marijuana, and only four were related to cocaine and heroin smuggling.

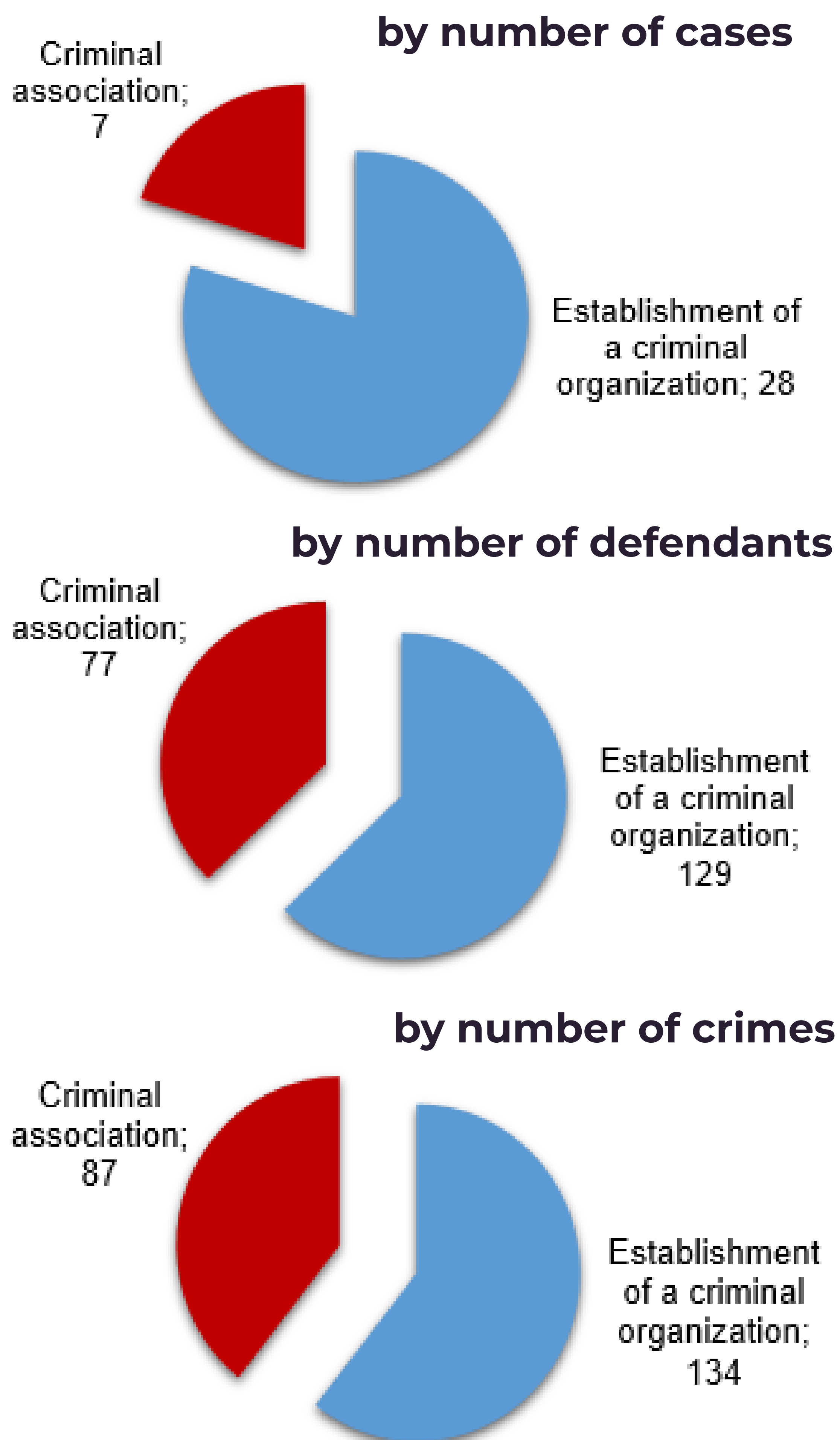
## 2.1. Organized crime

In the cases of organized crime the prosecution charged the defendants with the establishment of a criminal organization, as a relatively new criminal offense, or criminal association that existed in our legislation even earlier.

In 80% of cases the defendants were charged with establishment of a criminal organization (Article 401a of the Criminal Code).

In every fifth case the defendants were charged with criminal association (Article 401 of the Criminal Code). Most of the final judgments in these cases were rendered in the course of 2013 and 2014, and they referred to several persons. For that reason, overall statistics show that every third person accused of organized crime was charged by the prosecution with criminal association.

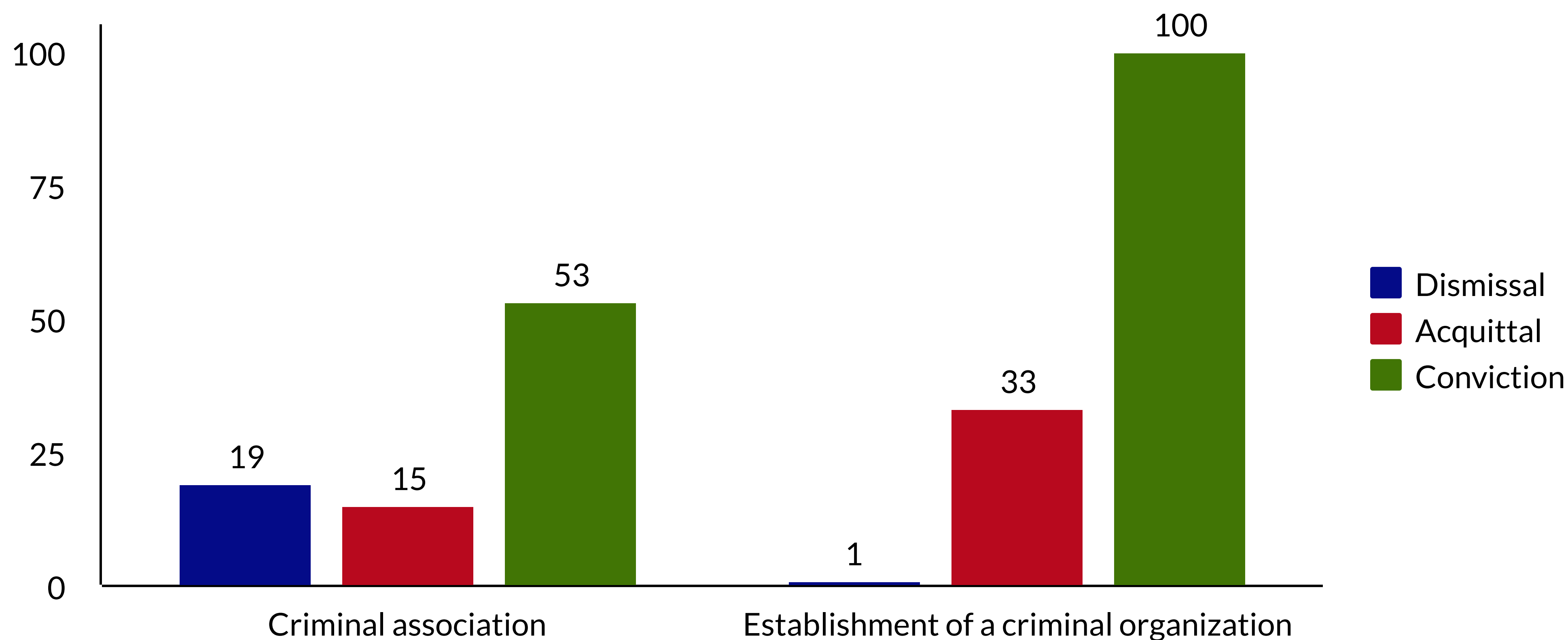
In cases in which the defendants were charged with criminal association, the prosecution prosecuted 12 persons on average, and in the cases related to establishment of a criminal organization, it prosecuted less than five persons on average.



Graph 2: Criminal offenses of organized crime in which final judgments were rendered (2013 - 2018)

Over the last six years, more than 60% of final convictions for criminal offenses of criminal association have been rendered. Every fifth judgment for this crime was a dismissal, mainly because of the statute of limitations, while every sixth was acquittal.

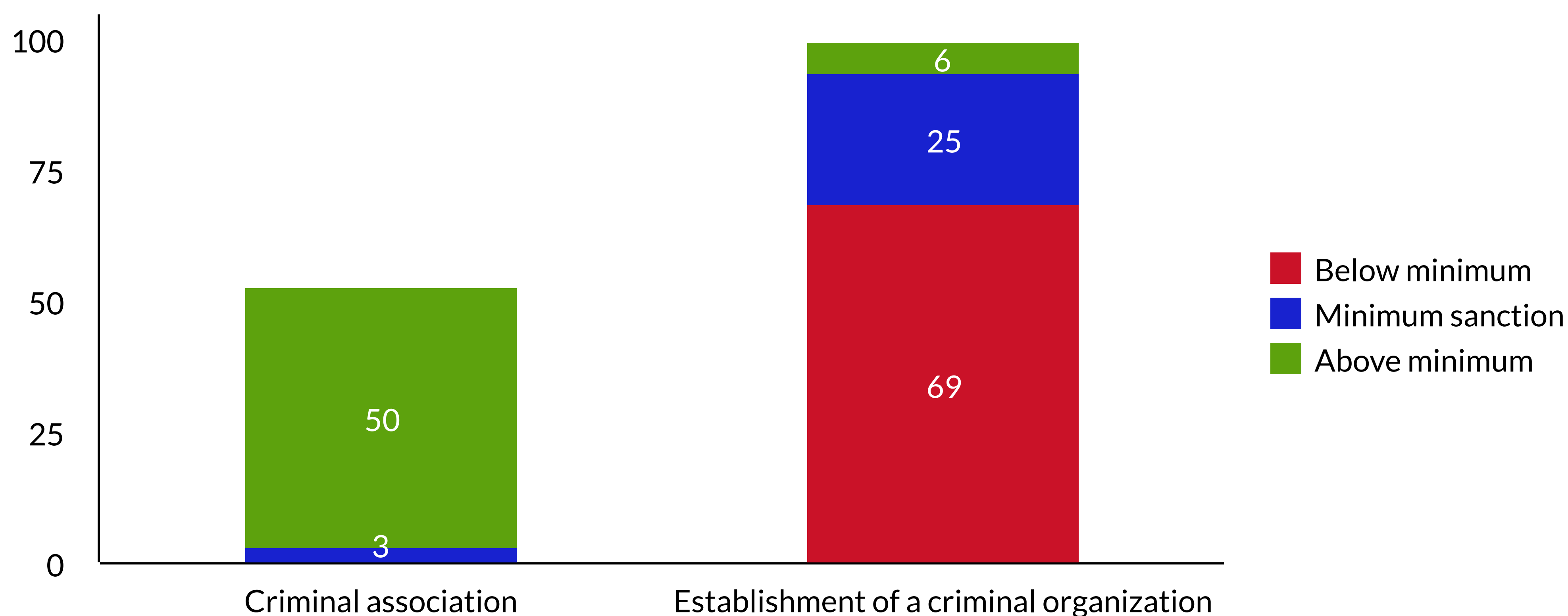
On the other hand, the prosecution has had much more success in proving a new crime, the establishment of a criminal organization, where 75% of convictions were rendered. In the case of this crime, the statute of limitations is negligible, but every fourth judgment was an acquittal.



Graph 3: Final judgments for criminal offenses of organized crime (2013 - 2018)

**Introduction of a new crime, the establishment of a criminal organization, has increased the prosecution's success in proving organized crime. However, the penal policy of the courts for this crime is more lenient than in the case of criminal association.**

For just six criminal offenses of establishment of a criminal organization, the courts have imposed sentences above the legal minimum. In the case of convictions for criminal offenses of criminal association, almost all the sentences imposed were above the minimum.



Graph 4: Sanctions for criminal offenses of organized crime imposed in final judgments (2013 - 2018)

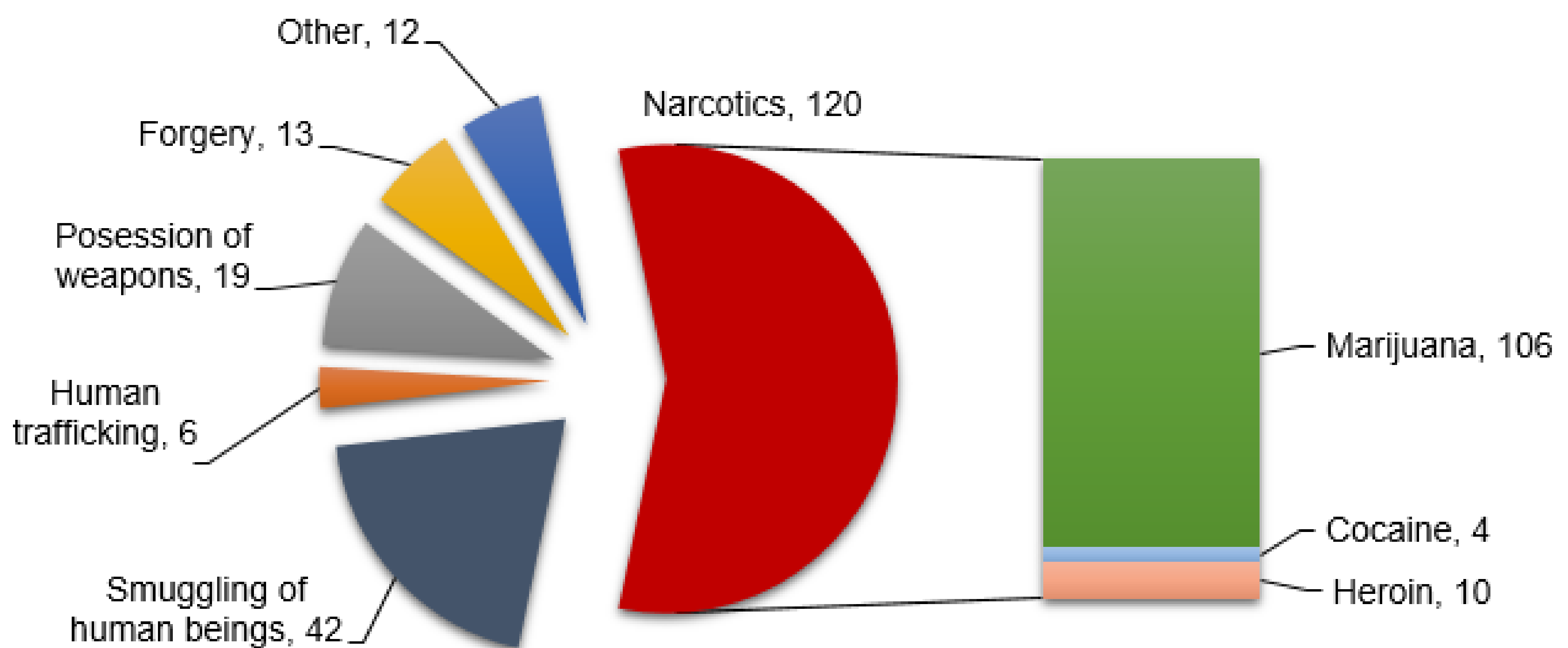


## 2.2. Criminal offenses with elements of organized crime

The most common offense with elements of organized crime was the unauthorized production, possession and distribution of narcotic drugs.

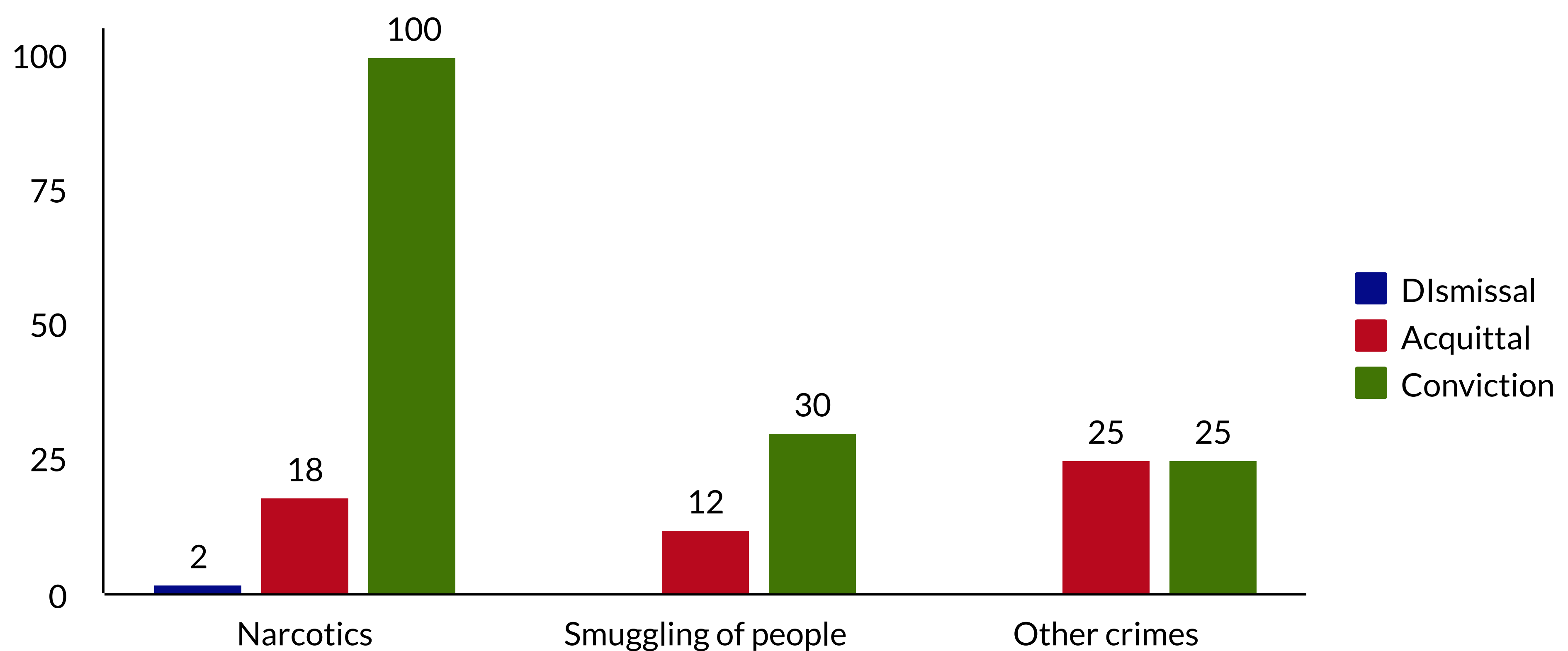
**Nearly 60% of criminal offenses with the elements of organized crime that defendants were charged with related to smuggling of narcotics, mainly marijuana.**

One in five offenses involved the smuggling of people, and one in ten related to the possession of weapons. Forgery of documents and trafficking in human beings were present in a much smaller percentage, as were other criminal offenses.



Graph 5: Number of offenses with elements of organized crime stated in the indictments for which final judgments were rendered (2013-2018)

As many as 75% of convictions have been rendered for criminal offenses with elements of organized crime. Prosecutors have been more successful in proving narcotics smuggling than smuggling of people or other crimes.



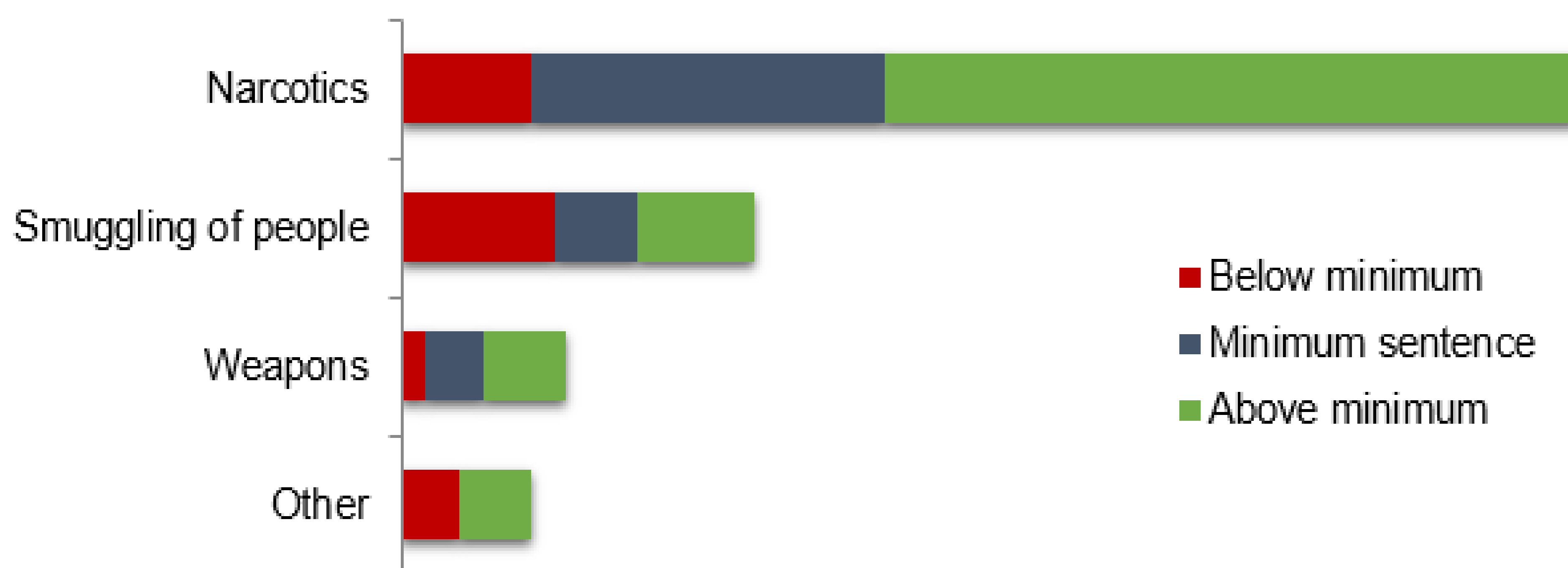
Graph 6: Final judgments for criminal offenses with elements of organized crime (2013 - 2018)

## One in five sanctions for criminal offenses with elements of organized crime was below the statutory minimum.

Half of the sentences imposed for offenses with elements of organized crime are above the statutory minimum, every third sentence is a minimum one, and every fifth is below the minimum.

The penal policy was most stringent in cases involving drug trafficking, where about 60% of the penalties were above the statutory minimum. However, even in these cases, every third sentence was at the legal minimum and every tenth is below the prescribed one.

In human trafficking cases, two thirds of the penalties are below or at the statutory minimum. In cases involving other offenses with elements of organized crime, one in two sanctions is above the minimum.



Graph 7: Sanctions for offenses with elements of organized crime imposed by final judgments (2013 – 2018)



## Narcotics

Persons accused of organized cocaine or heroin smuggling were charged by the prosecution in only four proceedings, with a total of 14 crimes.

Only three cases related to cocaine smuggling and all were launched following investigations by other states. Two of the proceedings involved higher quantities of cocaine and were related to the Balkan Warrior case, and one ended with a plea agreement. A third trial was instigated against one person following the arrest of members of his criminal group in the Netherlands.

Only one final judgment was issued for the smuggling of three kilograms of heroin by several persons. [35]

## Smuggling of people

In the last six years, final judgments were rendered in **four cases** of organized smuggling of people, two of which concern members of the same criminal group. **33 people were indicted, and 21 were convicted.**

Additionally, **a plea agreement was concluded with one person** for the criminal offense of Organized Crime, but not for the criminal offense of Smuggling of People.

For organized smuggling of people the courts have usually imposed sanctions below the statutory minimum.

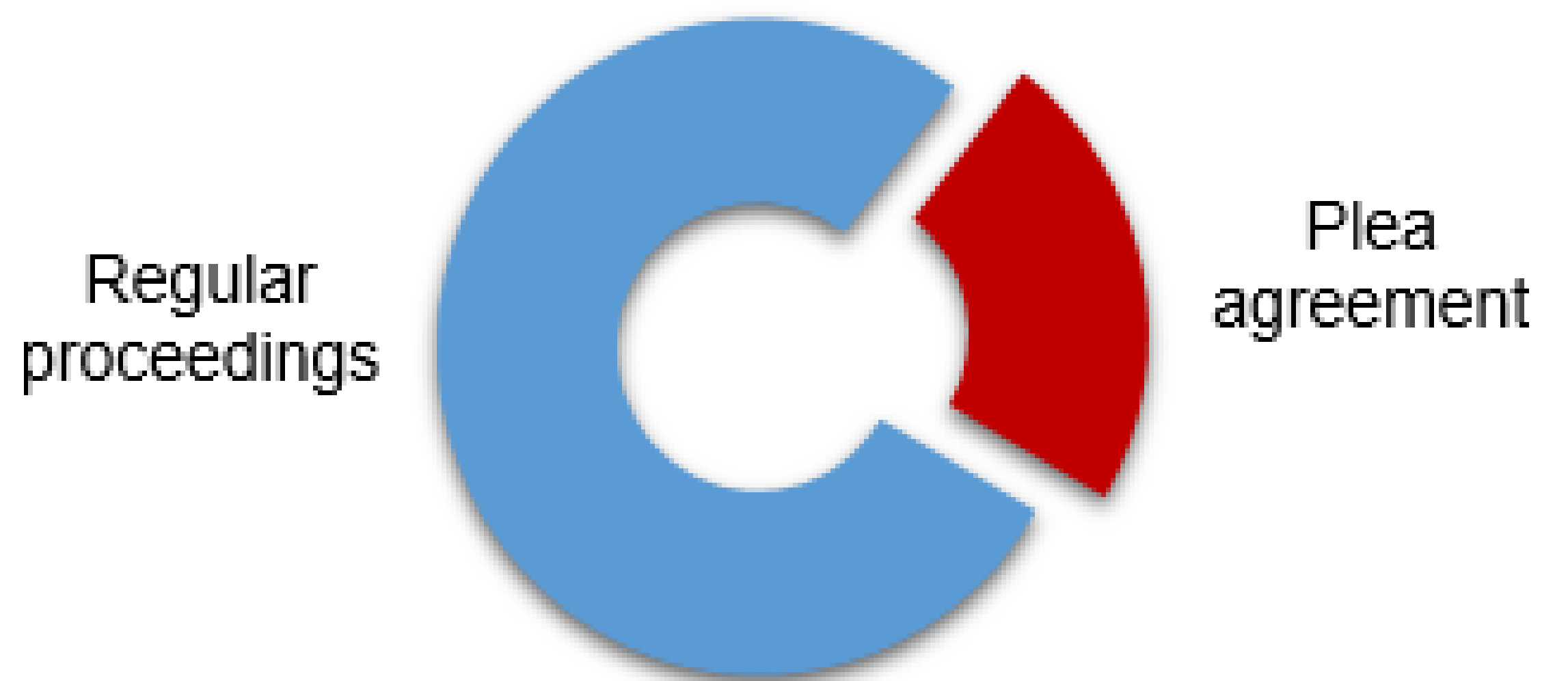
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[35] In some cases related predominantly to smuggling and sale of marijuana, smaller quantities of heroin were also found with the defendants.

## 2.3. Type of proceedings

### One in five cases of organized crime ended with a plea agreement.

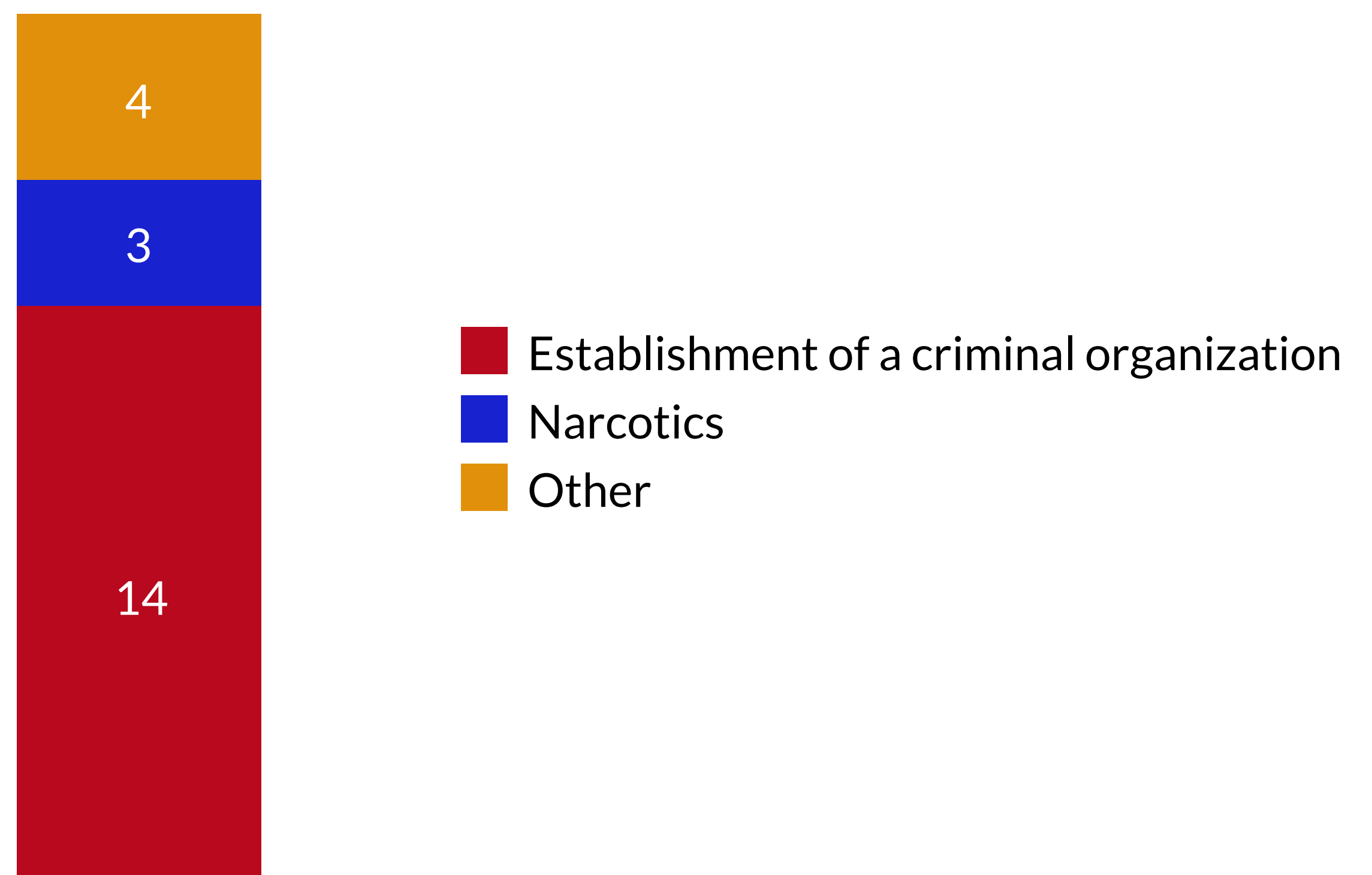
In eight cases the prosecution concluded agreements with the defendants who confessed to the commission of 21 crimes.



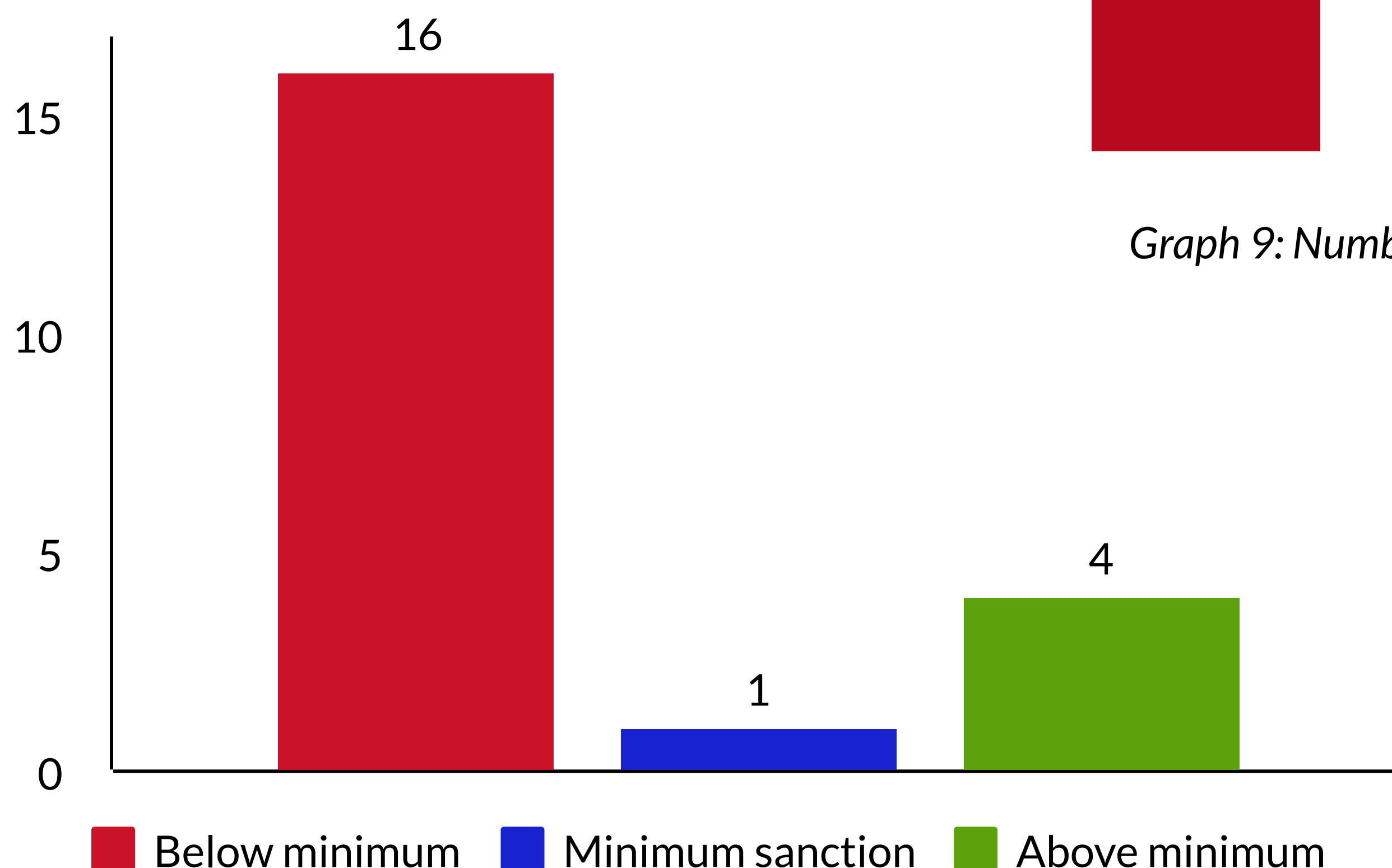
Graph 8: Number of cases in which final judgments were rendered in regular proceedings in relation to plea agreements (2013 - 2018)

On the other hand, in the remaining 27 cases the prosecution charged the defendants with over 400 crimes.

### Plea agreements were usually concluded for crimes of establishment of a criminal organization, or narcotics smuggling, with elements of organized crime.



Graph 9: Number and type of crimes subject to plea agreements (2013 - 2018)



Graph 10: Sanctions for offenses of organized crime - plea agreements (2013 - 2018)

**Three quarters of sanctions based on plea agreements are below the statutory minimum.**





# 3.

## SMUGGLING OF NARCOTICS

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Penal policy in cases of organized smuggling of narcotics is extremely lenient and does not contribute to the suppression of this phenomenon. The Court of Appeals of Montenegro has contributed an additional mitigation of the penal policy.

The courts pronounced stricter sanctions to the persons convicted of smuggling smaller quantities of narcotics than to the ones who traded in larger quantities of narcotics in an organized manner. **Despite all that, special prosecutors mostly did not appeal the lenient sanctions pronounced to the masterminds and members of the criminal organizations.**

The courts have rarely considered the quantity of narcotics, reasons for which the offense was committed and the amount of proceeds obtained as aggravating circumstances. In some cases they did not properly consider the previous convictions of the members of the criminal organization. On the other hand, many of the mitigating circumstances the courts have given great importance to the benefit of the persons convicted of organized crime.

The use of the plea bargaining agreements has additionally mitigated the penal policy, although the defendants did not reveal the masterminds and other members of the criminal organizations, nor other criminal offenses and data about proceeds of crime.

Special prosecutors made omissions in the indictments even in cases when they had evidence of organized smuggling of narcotics provided by third countries.

Prosecutors charged the defendants with actions that did not constitute criminal offenses, and such indictments were confirmed by the courts, instead of returning them for amendment. These proceedings ended in acquittals and prohibition of retrial for those offenses.

### 3.1. Convictions and penal policy in regular proceedings

Penal policy of the courts in regular proceedings was mild and uneven.

For organized smuggling of narcotics the courts have usually pronounced sanctions below the prescribed minimum. Pronounced the stricter sanctions to the persons convicted of smuggling smaller quantities of narcotics than to the ones who traded in larger quantities of narcotics in an organized manner.

The Court of Appeals of Montenegro, by rule, has mitigated the pronounced sentences, even in the case of organized smuggling of larger quantities of narcotics.

In some cases the sanctions depended on the judge who acted in the case, and not on the severity of the crime.

Special prosecutors have mostly not appealed the lenient sanctions pronounced to the masterminds and members of the criminal organizations.

In some proceedings the courts have relativized previous convictions, thus the recedivits were pronounced lower sanctions.

In the case of persons convicted of organized sale of large quantities of narcotics, the courts have considered as mitigating circumstance “bad financial situation”, which was confirmed only on the basis of their statements.

Any form of marital status of the defendants in these proceedings was treated by the courts as a mitigating circumstance, thus, on that basis, lower sanctions were pronounced to those who were married, as well as to the defendants who were divorced or single.

In some cases of organized crime, the mitigating circumstance was the passage of time since the crimes was committed. The same judges were not applying the same approach in other cases, in which the defendants were prosecuted for less severe offenses.



## Case study 1: Court of Appeals “cuts” the sanctions for heroin trafficking

This study shows that the penal policy of the courts in cases of heroin smuggling is extremely mild.

The Court of Appeals mitigated punishments for habitual offenders for the same crimes because they are young and poor, even though they have been involved in heroin trafficking for years.

At the same time, the court imposed the same sentence on the member of criminal organization who has never been convicted, as on organizer who is a habitual offender.

As a mitigating circumstance, the court also considered the passage of time since the offense was committed, although a final verdict was rendered after only four years.

The first verdict in this case imposed prison terms totaling 656 months, but they were reduced by each subsequent, so that they were ultimately set at 356 months with the final verdict.

| <i>Total punishment</i> |                 |
|-------------------------|-----------------|
| Higher                  | Appellate       |
| <b>55 years</b>         | <b>30 years</b> |

At the end of the proceedings, the sentences were further reduced because they were merged with the sentences in other cases in which the defendants were also convicted of drug trafficking, since even eight years later, they had still not served the original sentences.

### Information about the defendants

Members of two drug groups were arrested in the police action "Bear" in early September 2009 in Berane, Rozaje and Bijelo Polje.

The leader of the Rozaje group was Bekim Tabakovic, who was arrested with Munir Ukovic, and two kilograms of heroin and 5.5 kg of paracetamol, a mixture used to mix drugs, were seized from them. This group procured heroin from Kosovo, then mixed it with paracetamol and repackaged it in quantities of one to two kilograms. [36] In addition to the two, Samir Kurpejovic and Orhan Music were arrested as members of the group.

The Berane group was led by Ivan Biletic, who, together with brother, Dragan Biletic, bought drugs from Tabakovic and sold it further through street dealers. [37] In addition to the Biletic brothers, Danijel Mandic [38], Adis Ljuskovic, Denis Rebronja and Marko Dacic from Bijelo Polje participated in actions of the Berane group.

[36] Novosti: "Medved" pojeo dilere", 06 September 2009, <http://www.novosti.rs/vesti/planeta.300.html:250334-Medved-pojeo-dilere>

[37] Ibid.

[38] Telegraf: "Ko je Danijel Mandić Manda koji je likvidiran sinoć u Beranama?", 21 December 2017., <https://www.telegraf.rs/vesti/jugosfera/2921236-ko-je-danijel-mandic-manda-koji-je-likvidiran-sinoc-u-beranama-hapsen-je-u-policijskoj-akciji-medved-robijao-zbog-dilovanja-droge>

## Indictment

**Nine persons have been charged** with criminal offenses of Criminal Association [39] and Unauthorized Production, Possession and Distribution of Narcotics. [40] Bekim Tabakovic and Ivan Biletic were charged as masterminds of criminal associations and others as members of a criminal association.

One person has been charged with the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics and Unlawful Possession of Weapons and Explosive Substances. [41]

## First verdict: Strict punishments, verdict concealed from the public

**The first verdict of the Higher Court in Bijelo Polje [42] in this case it has not been published on the website of the courts, so the reasons for the verdict and the reasoning are not known. The available verdicts in this case do not provide information on individual sanctions pronounced for specific offenses from that verdict, but only on cumulative prison terms:**

- The masterminds
  - Ivan Biletic sentenced to nine years in prison,
  - Tabakovic to eight years and six months in prison,
- Members:
  - Dragan Biletic to seven years in prison,
  - Kurpejovic to five years and six months in prison,
  - Ukovic to five years in prison,
  - Mandic to four years and six months in prison,
  - Dacic to four years and two months in prison,
  - Rebronja to four years in prison,
  - Music to three years and six months in prison, and
  - Ljuskovic to three years and six months in prison.

**The first verdict rendered a total of 54 years and eight months in prison.**

This judgment **was quashed** by the decision of the Court of Appeals of Montenegro [43] and the case was sent back to the first instance court for a retrial.

**The judgment of the Court of Appeals has not been published either, so it is not known why it quashed the first instance verdict.**

[39] Article 401 of the Criminal Code

[40] Article 300 of the Criminal Code

[41] Article 403 of the Criminal Code

[42] Ks.no.19/09 dated 04.02.2011.

[43] Ksz.no.34/2011 dated 24.01.2012.



## Second verdict: Reduction of some sanctions and acquittals

In the retrial, the Higher Court in Bijelo Polje rendered a **conviction** [44] with much **lighter sentences** for the criminal offenses of Criminal Association [45] and the Unauthorized Production, Possession and Distribution of Narcotics [46], and sentenced:

- The masterminds:
  - Ivan Biletic to six years in prison,
  - Tabakovic to five years and two months in prison,
- Members:
  - Dragan Biletic to five years and two months in prison,
  - Kurpejovic to four years and three months in prison,
  - Ukovic to three years and six months in prison,
  - Mandic to two years and five months in prison [47], and
  - Dacic to two years and five months in prison.

For information, for the offense of Criminal Association, a prison sentence of **one to eight years** is prescribed for the **mastermind** and a prison sentence of up to two years for a member of the association. Imprisonment of **two to ten years** is prescribed for the Unauthorized Production, Possession and Distribution of **Narcotics**.

In this verdict, the Court **acquitted** the following defendants of the criminal offenses of Criminal Association and the Unauthorized Production, Possession and Distribution of Narcotics: Music, Rebronja and Ljuskovic.

This verdict imposed prison sentences for a total of **29 years and 8 months**, almost twice less than the first.

The Court of Appeals of Montenegro **upheld** this verdict in the part where

- Tabakovic, Kurpejovic and Ukovic were convicted of the criminal offenses of Criminal Association and the Unauthorized Production, Possession and Distribution of Narcotics;
- Mandic was convicted of Unlawful Possession of Weapons and Explosive substances and Unauthorized Production, Possession and Distribution of Narcotics;
- Ljuskovic and Rebronja were acquitted of the Unauthorized Production, Possession and Distribution of Narcotics. [48]

With the same verdict, the Court of Appeals **reverses** the first instance verdict in relation to the penalties for drug trafficking:

- Ivan Biletic was sentenced to five years in prison,
- Dragan Biletic was sentenced to four years and six months in prison, and
- Dacic was sentenced to two years and two months in prison.

[44] Ks.no.5/12-09 dated 31.10.2012.

[45] Article 401 of the Criminal Code

[46] Article 300 of the Criminal Code

[47] For criminal offenses of Unauthorized Possession of Weapons and Explosive Substances and Unauthorized Production, Possession and Distribution of Narcotics.

[48] Verdict Kzs.no.23/2013 dated 28.05.2013.



At the same time, that court **overturned** the first instance verdict in the part where it **convicted of Criminal Association** Ivan Biletic, charged as the Mastermind, and as members: Dragan Biletic and Dacic.

**The court also overturned the verdict in the part where the following defendants were acquitted of Criminal Association** Ljusković, Rebronja and Music, as well as the part in which he was acquitted of the Unauthorized Production, Possession and Distribution of Narcotics.

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## Lighter sanctions due to young age, poverty and lapse of time

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In explaining the penalties that have been reduced compared to the first verdict, the Court of Appeals cites as a mitigating circumstance young age, poor financial standing, family circumstances "and in particular the fact that the acts were committed in 2009, almost four years ago". In terms of the aggravating circumstances, the Court stated earlier conviction of all the defendants.

The verdict does not contain information about the defendants' financial standing, but it is undisputed that they were buying and selling larger quantities of heroin, which contradicts the allegations that they were all of poor financial standing. Thus, it can be concluded that the financial standing was established only from the statements given by the defendants during the hearing, and that the court neglected the fact that they engaged in the trafficking of a large quantity of narcotics. [49]

There is no information on the age of the defendants in the verdict, so it is not possible to appreciate that part of the Court of Appeal's reasoning.

The circumstances under which the offense was committed, its consequences and the degree of guilt of the defendants, as circumstances that are valued under the Criminal Code [50] when deciding on the sentence. However, they are not mentioned by the Court of Appeals in the verdict.

Besides, the criminal offense of which the defendants were convicted in these proceedings was committed in the period from mid-June 2009 until 4 September 2009, when the defendants were discovered by the police.

The indictment in this case [51] was filed on 21 December 2009, and the Court of Appeals rendered this verdict on 28 May 2013. It follows that the proceedings up to this verdict by the Court of Appeals lasted **less than three and a half years**. This circumstance regarding the lapse of time from the commission of the crime cannot represent a mitigating circumstance for sentencing, especially since the defendants were discovered relatively quickly and the indictment was filed a few months after the crime was committed.

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[49] Article 100 of the Criminal Procedure Code stipulates that the defendant, when heard for the first time, will also be asked what is his financial position  
[50] Article 42, Paragraph 1.  
[51] Kts.no.44/09



## Third verdict: Convicted eight times, but young and poor

With the new verdict of the Higher Court in Bijelo Polje [52] the following were **acquitted**:

- Dacic of the criminal offense of Criminal Association, and
- Music of Criminal Association and Unauthorized Production, Possession and Distribution of Narcotics.

With the same verdict, the following were **convicted** of Criminal Association [53]:

- Ivan Biletic, mastermind, to **one year and six months**,
- Dragan Biletic to **ten months**,
- Ljuskovic to **seven months**, and
- Rebronja to **seven months**.

They were convicted because as the mastermind and members of a criminal group, with predetermined tasks and roles, willing to use violence and intimidation, have sold, trafficked for sale and held larger quantities of heroin.

In the case of Ivan Biletić, the court found the mitigating circumstances that he was of a relatively young age and of poor financial standing.

However, the date of birth of the defendant was removed from the verdict, so it is impossible to ascertain how old this defendant is and what the court considers to be a relatively young age. Likewise, there is no evidence of the financial standing of this defendant, which leads to the conclusion that the financial standing was established only from the statement given by the defendant during the hearing. [54]

At the same time, the court found that he had been convicted as many as eight times, of which in five cases to higher prison sentences, and exactly for the criminal offense of the Unauthorized Production, Possession Distribution of Narcotics. [55]

The court in its verdict have been arbitrarily enumerated the circumstances under which the offense was committed, its consequences and the degree of guilt of the defendant, without specifying what those circumstances were in the specific case and how it valued them.

In the same way, the court “reasoned” the sentences to Dragan Biletic, Ljuskovic and Rebronja, citing as mitigating circumstance that they were of young age and poor financial standing, and previous conviction as aggravating circumstance.

[52] Ks.no.5/13-12 dated 23.09.2013.

[53] Article 401 of the Criminal Code

[54] Article 100 of the Criminal Procedure Code stipulates that the defendant, when heard for the first time, will be asked, inter alia, about his financial standing.

[55] Of all the verdicts published in this case, this verdict is the first one that contains concrete data regarding previous convictions of the defendants.

## **Court of Appeals: Reduced further, the same sentence for the previously (non)convicted**

In deciding on appeals against the verdict of the Higher Court in Bijelo Polje, the Court of Appeals **reversed** the first instance verdict by reducing further the sentence [56]:

- Ivan Biletic, who was previously convicted eight times, of which five times for drug trafficking, was sentenced to one year,
- Dragan Biletic to six months,
- Ljuskovic to six months,
- Rebronja to six months, and
- Music's acquittal was reversed and he was sentenced to one year.

The Court of Appeals **upheld** the first instance verdict in the part where Music - was acquitted of Unauthorized Production, Possession and Distribution of Narcotics and Dacic was acquitted of Criminal Association.

The Court of Appeals accepted the mitigating circumstances listed by the first instance court for the Biletic brothers, adding that "it had in mind, in particular, the **lapse of time since the commission of the criminal offense in question, which is almost 5 years.**"

At the time when this verdict was rendered, the proceedings before the court lasted **four years and three months.**

In its reasoning of the one year prison term for Music, the Court of Appeals stated as mitigating circumstances the fact that he behaved well in the past, as this person had not been previously convicted, as well as the lapse of time since the commission of the offense, noting that there were no aggravating circumstances in case of this defendant. Thus, Music, as a member without previous convictions, got the same sanction as Ivan Biletic, as the mastermind of the criminal organization.

**The court pronounced the same sanction for criminal association to a member of the criminal organization, who had no previous criminal record, as it did in the case of the mastermind of that organization, who was convicted eight times before.**

**The law prescribed a prison sentence of up to eight years for the masterminded, and up to two years for a member of the criminal organization.**

**The courts have been reducing sentences in all stages of these proceedings, thus the total sanctions imposed are twice lower in the end of the proceedings, which is shown in the table below.**

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[56] Verdict KZS.no.45/13 dated 11.03.2014.



| Defendant        | Offense                    | Verdict / sanction (in months) |                        |                               |                        |                       |
|------------------|----------------------------|--------------------------------|------------------------|-------------------------------|------------------------|-----------------------|
|                  |                            | First [57]                     | Second [58]            | Appellate                     | Third                  | Appellate             |
| Ivan Biletic     | Criminal org. narcotics    | Convicted<br>Convicted         | Convicted<br>Convicted | <b>Vacated</b><br>Reversed 60 | 18                     | Reversed 12           |
|                  | <i>Cumulative sentence</i> | 108                            | 72                     |                               |                        | <b>66</b>             |
| Bekim Tabakovic  | Criminal org. narcotics    | Convicted<br>Convicted         | Convicted<br>Convicted | Upheld<br>Upheld              |                        |                       |
|                  | <i>Cumulative sentence</i> | 102                            | <b>62</b>              | <b>Upheld</b>                 |                        |                       |
| Dragan Biletic   | Criminal org. narcotics    | Convicted<br>Convicted         | Convicted<br>Convicted | <b>Vacated</b><br>Reversed 54 | 10                     | Reversed 6            |
|                  | <i>Cumulative sentence</i> | 84                             | 62                     |                               |                        | <b>56</b>             |
| Samir Kurpejovic | Criminal org. narcotics    | Convicted<br>Convicted         | Convicted<br>Convicted | Upheld<br>Upheld              |                        |                       |
|                  | <i>Cumulative sentence</i> | 66                             | <b>51</b>              | <b>Upheld</b>                 |                        |                       |
| Munir Ukovic     | Criminal org. narcotics    | Convicted<br>Convicted         | Convicted<br>Convicted | Upheld<br>Upheld              |                        |                       |
|                  | <i>Cumulative sentence</i> | 60                             | <b>42</b>              | <b>Upheld</b>                 |                        |                       |
| Danijel Mandic   | Weapons narcotics          | Convicted<br>Convicted         | Convicted<br>Convicted | Upheld<br>Upheld              |                        |                       |
|                  | <i>Cumulative sentence</i> | 54                             | <b>29</b>              | <b>Upheld</b>                 |                        |                       |
| Marko Dacic      | Criminal org. narcotics    | Convicted<br>Convicted         | Convicted<br>Convicted | Vacated<br>Reversed 26        | Acquitted              | Upheld                |
|                  | <i>Cumulative sentence</i> | 50                             | 29                     |                               |                        | <b>26</b>             |
| Orhan Music      | Criminal org. narcotics    | Convicted<br>Convicted         | Acquitted<br>Acquitted | Upheld<br>Upheld              | Acquitted<br>Acquitted | Reversed 12<br>Upheld |
|                  | <i>Cumulative sentence</i> | 42                             |                        |                               |                        | <b>12</b>             |
| Adis Ljuskovic   | Criminal org. narcotics    | Convicted<br>Convicted         | Acquitted<br>Acquitted | Vacated<br>Upheld             | 7                      | Reversed 6            |
|                  | <i>Cumulative sentence</i> | 42                             |                        |                               |                        | <b>6</b>              |
| Denis Rebronja   | Criminal org. narcotics    | Convicted<br>Convicted         | Acquitted<br>Acquitted | Vacated<br>Upheld             | 7                      | Reversed 6            |
|                  | <i>Cumulative sentence</i> | 48                             |                        |                               |                        | <b>6</b>              |
| <b>Total:</b>    |                            | <b>656</b>                     | <b>347</b>             |                               |                        | <b>356 [59]</b>       |

Table 1: Sanctions pronounced to the defendants in all stages of the proceedings [60]

[57] Data regarding individual sentences imposed by the first instance court is not known, because the verdicts are not publicly available, and the information about cumulative sentences has been taken from other accessible verdicts

[58] No data about individual sanctions from this verdict

[59] The table gives a sum of prison terms rendered by the Court of Appeals in two proceedings, depending on which verdict became final for which of the defendants

[60] Black are marked final verdicts.



## Reduction of new sentences, because over the years they did not serve the old ones

Finally, with the new verdicts of the Higher Court in Bijelo Polje, the sanctions against the Biletic brothers were further reduced, as they had not served the sentences imposed on them in other proceedings years ago.

The Criminal Procedure Code prescribes that a final verdict may be reversed without repeating the criminal proceedings if in two or more verdicts against the same sentenced person, a number of sentences were imposed with final force and effect, without having applied provisions on fixing a cumulative sentence for concurrent criminal offenses. [61]

According to the provisions of the Criminal Code that stipulate concurrence of criminal offenses, if a perpetrator by one or more acts committed several criminal offenses for which he is tried at the same time, the court will first pronounce the punishment for each of these offenses, and then impose a cumulative punishment for all the offenses. [62] Where for concurrent criminal offenses the court pronounced prison terms, the court shall increase the most severe punishment fixed, provided that the **cumulative punishment is shorter than the sum of individual punishments fixed.** [63]

When a convicted person is tried for a crime committed before or while serving a prison term under an earlier conviction, the court will impose a **cumulative sentence for all offenses** by applying the provisions on the concurrence of criminal offenses, taking the previously imposed sentence as already determined. [64]

In August 2014, Ivan Biletic **had still not served a three-year prison sentence rendered in 2006.** The verdict of the Higher Court in Bijelo Polje reversed five verdicts by which he was convicted, as follows: in 2006, in 2012, two in 2013 and one in 2014. [65] The sum of imposed sentences based on all verdicts was nine years, so his **cumulative sentence was reduced by seven months** and he was convicted to a cumulative prison term of eight years and five months.

In addition, the verdict of the Higher Court in Bijelo Polje reversed five verdicts by which Defendant Dragan Biletić was convicted, as follows: in 2008, in 2012, two in 2013 and one in 2014. [66] In December 2014, he **had still not served the prison term of one year and three months imposed in 2008.** The sum of all sentences imposed was six years and nine months, so his **cumulative sentence was reduced by eleven months** and he was sentenced to a cumulative prison term of five years and ten months.

[61] Article 421, Paragraph 1, Item 1 of the CPC

[62] Article 48, Paragraph 1 of the Criminal Code

[63] Article 48, Paragraph 2, Item 2 of the Criminal Code

[64] Article 50, Paragraph 1 of the Criminal Code

[65] Kv.no.129/14 dated 29.08.2014, K.no.18/06 dated 07.07.2006, by which he was sentenced to **three years** in prison for the Unauthorized Production, Possession and Distribution of Narcotics, Ks.no.5/12-09 dated 31.10.2012, which was later reversed by the verdict of the Court of Appeals Kzs.no.23/13 dated 28.05.2013 and Ivan Biletic was sentenced to **five years** in prison for Unauthorized Production, Possession and Distribution of Narcotics, Ks.no.5/13-12 dated 23.09.2013, which was later reversed by the verdict of the Court of Appeals Kzs.no.45/13 dated 14.03.2014, and Ivan Biletic was sentenced to **one year** in prison for Criminal Association

[66] Kv.no.129/14 dated 29.08.2014, K.no.63/08 dated 11.12.2008, by which he was sentenced to **one year and three months** in prison for Unauthorized Production, Possession and Distribution of Narcotics and which sentence was included in the verdict of the Higher Court in Bijelo Polje Kv.no.46/13 dated 09.05.2013, Ks.no.5/12-09 dated 31.10.2012, which was later reversed by the verdict of the Court of Appeals Kzs.no.23/13 dated 28.05.2013, and Dragan Biletic was sentenced to **four years and six months** in prison for Unauthorized Production, Possession and Distribution of Narcotics, Ks.no.5/13-12 dated 23.09.2013, which was later reversed by the verdict of the Court of Appeals Kzs.no.45/13 dated 14.03.2014, and Dragan Biletic was sentenced to **one year** in prison for Criminal Association



## Case study 2: Sanctions depend on the judge, not the severity of the crime

This study shows that penal policy depends on the judges acting in the particular cases, and not on the severity of the crime.

Two persons were tried in separate proceedings for complicity in smuggling more than 150 kilograms of marijuana. Although they smuggled narcotics together, one was convicted to a five times more severe sanction than the other.

With the indictment of the Special Prosecutor's Office [67] Ratko Maljkovic, Ljubomir Cupic and Ramazan Nelevic were charged with the criminal offense of Establishment of a Criminal Organization and Unlawful Production, Possession and Distribution of Narcotic Drugs, more specifically 153 kilograms of marijuana.

In a separate proceeding, the Accused Maljkovic was convicted [68] with a final and enforceable verdict to four years' imprisonment for the criminal offense of Unlawful Production, Possession and Distribution of Narcotic Drugs. [69] In the same case, for the criminal offense of Establishment of a Criminal Organization, Maljkovic was sentenced to a the minimum prescribed sentence of one year in prison, and the court sentenced him to a cumulative four-year and eight-month prison sentence for both offenses. The court stated that there are mitigating circumstances in his case because he was a family man, a father of two children, with no mention of the aggravating circumstances.

In the second proceeding, the court [70] convicted the defendant Cupic for the criminal offense of Establishment of a Criminal Organization to a prison term of five months, and for the smuggling of narcotics, to nine months in prison, well below the prescribed minimum for this crime. [71] For both crimes, Cupic was pronounced a cumulative sentence of one year and one month in prison. In the reasoning of the verdict, the court stated as a mitigating circumstance that he had no previous criminal record, and as an aggravating circumstance the court stated the quantity of the narcotic drugs.

So, Cupic and Maljkovic together, as accomplices, introduced 153 kg of marijuana into Montenegro for further sale, but for the same criminal offense Cupic was sanctioned with a **five times more lenient punishment**.

| Quantity      | Sanctions for the accomplices            |
|---------------|--|
| 153 kilograms | Maljković: 56 months<br>Ćupić: 13 months |

Defendant Nelevic was also convicted of the criminal offense of Establishment of a Criminal Organization by Imprisonment for a term of eight months. In his case, the court stated only the mitigating circumstances that he is a family man, a father of two children. The court did not explain in the verdict why the aforementioned mitigating circumstances of any defendant justify the imposition of penalties well below the prescribed minimum.

Only the defendants appealed the verdict and it was upheld by the Court of Appeals of Montenegro. [72]

**Special Prosecutor who represented the indictment [73] was satisfied with these mild sanctions, and did not appeal the first instance verdict.**

[67] Kts.no.12/13 dated 20 November 2013, Special Prosecutor Veljko Rutovic  
[68] Verdict of the Higher Court in Podgorica K.no.166/12, judge Predrag Tabas  
[69] At the time when the verdict was rendered he had no previous criminal record.  
[70] Ks.no.3/15 dated 25 November 2015, judges Biljana Uskokovic, Boris Savic, Dragoje Jovic  
[71] Article 300, Paragraph 1 of Ccstipulates imprisonment from two to ten years for this criminal offense  
[72] Verdict Kzs.no.9/2016 dated 29 June 2016, judges Milic Medjedovic, Ratko Cupic and Seka Piletic  
[73] Veljko Rutovic



### Case study 3: Stricter sanctions for dealers than for organized smuggling of marijuana

The courts imposed way more lenient sanctions in the proceedings related to the sale of smaller quantities of marijuana, when these offenses were not committed in an organized manner, than in the case of organized criminal groups that smuggled larger quantities of this narcotic drug.

The Higher Court in Bijelo Polje found the accused Dragisa Mrdak guilty of the criminal offense of Unlawful Production, Possession and Distribution of Narcotic Drugs. He was sentenced to **one year** in prison for illegally holding **11.71 grams of marijuana** for sale, which were seized from him by authorized officers. [74]

In the second case, the same court issued, and the Court of Appeals upheld the verdict, sentencing Elvis Kordic to **six months in prison** for committing the crime of Unlawful Production, Possession and Distribution of Narcotic Drugs, as he was found with **2.7 grams of marijuana**. [75]

On the other hand, the masterminds and members of criminal groups that smuggled larger quantities of narcotics were imposed the same or more lenient penalties by the courts than individuals who resold smaller quantities of narcotics.

Thus, one of the accomplices in an organized smuggling of 153 kilograms of marijuana was sentenced to nine months in prison. [76] In another trial, the mastermind of the criminal group that smuggled about 100 kilograms, was sentenced to 18 months in prison and members of that group to prison terms ranging from four to six months. [77]

| Sanctions for smuggling of marijuana  |                                     |
|---|-------------------------------------|
| Organized groups  | Individuals                         |
| <b>153 kg</b><br>Accomplice: <b>9</b> months                                  | <b>0,117 kg</b><br><b>12</b> months |
| <b>100 kg</b><br>Mastermind: <b>18</b> months<br>Members: <b>4 - 6</b> months | <b>0,027 kg</b><br><b>6</b> months  |

Table 2: Comparison of sentences imposed for smuggling of marijuana in an organized manner, and in the case of individual offenses that were not committed in an organized manner

[74] RTCG: "Osuden na godinu zbog 11 grama marihuane", 15 December 2015, <http://www.rtcg.me/vijesti/hronika/113082/osudjen-na-godinu-zbog-11-grama-marihuane.html>

[75] Dan: "Držao tri grama droge", 16 February 2019, <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=684029&datum=2019-02-16>

[76] Ks.no.3/15 dated 25.11.2015, judges Biljana Uskokovic, Boris Savic, Dragoje Jovic. More details in Case Study 2.

[77] Verdict Kzs.no.9/2018 dated 14.09.2018, judges Seka Piletic, Ramo Strikovic and Zoran Smolovic



### 3.1.1. Interpretation of aggravating circumstances

In organized crime cases, the courts have most often stated previous convictions of the defendants as an aggravating circumstance. In some cases, the courts relativized even that circumstance, and reduced sentences and even to the masterminds and members of the organized criminal groups.

The courts have rarely referred to other aggravating circumstances that should be of great importance in sentencing, even when they existed, and in particular: the degree of guilt, [78] the motives for which the offense was committed [79], and the severity of endangering or violating protected good. [80]

Even when the first instance courts imposed more severe sentences due to these aggravating circumstances, the Court of Appeals reduced them. Judging by the specific cases, that court does not consider that a larger amount of narcotics is a reason for a more stringent penal policy.

## Legal framework

The Criminal Code stipulates that when imposing the sanction, the following circumstances shall particularly be taken into consideration:

- Degree of guilt,
- Motives of the crime,
- Severity of endangering or violating the protected good,
- Circumstances in which the offense was committed,
- Previous life of the perpetrator,
- Personal circumstances,
- Behavior of the perpetrator upon commission of the crime,
- Attitude of the perpetrator towards the victim of the crime
- As well as other circumstances related to the personality of the perpetrator. [81]

[78] Guilt can have different degrees, especially through intent and negligence, but also within those two degrees of guilt. For example, in deciding on the degree of intentional guilt, the court determines how intensely the perpetrator wanted the occurrence of the consequence, that is, the court should assess the degree of the willful element in his intent, and then whether he showed particular persistence or recklessness and the like when committing the offense.

[79] The reasons or motives are ethically assessed, so the court assesses for which motives the offense was committed. For example, greed is a motive that is generally ethically low-value and should represent an aggravating circumstance, unless the offense was committed to provide for basic living needs, which would all have to be determined by the court.

[80] Through the severity of endangering or violating the protected goods, the court determines the extent to which the act committed has endangered or harmed the protected goods. This circumstance is determined specifically in a way that the court establishes the extent to which the particular offense violated the protected good. For example, the smuggling of a large amount of drugs significantly endangers and harms human health as a good that is protected by this crime and this should be assessed as an aggravating circumstance.

[81] Article 42 of the Criminal Code



## Case Study 4: 100 kilograms is not a large quantity

The Court of Appeals is of the opinion that larger quantity of narcotics does not constitute a sufficient reason for more stringent penal policy of the first instance court, although exactly that fact, with the degree of guilt, should affect the most the imposition of the sanction.

In this case, the first instance verdict imposed slightly harsher sentences on the convicted persons for smuggling of approximately 100 kilograms of marijuana.

Seven persons were convicted with the judgment of the Higher Court in Podgorica [82], of whom six for the criminal offense of Criminal Association and the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, and one for the criminal offense of Criminal Association.

The mastermind of the criminal association was sentenced to a single sentence of seven years and four months in prison for the criminal offenses of Criminal Association and the Unauthorized Production, Possession and Distribution of Narcotic Drugs. One member of the association was sentenced to three years and four months in prison for the same offenses, another to four years and four months, two members were sentenced to three years each and one to two years and six months in prison. One defendant was sentenced to one year in prison for the criminal offense of Criminal Association.

For most of the convicts the first instance court accepted as an aggravating circumstance the quantity of narcotic drug of marijuana of 101 kilograms.

The Court of Appeals reduced the sentences of all persons convicted of both criminal association and unauthorized production, possession and distribution of narcotic drugs, [83] and in particular the sentence of the mastermind. **The mastermind's sentence was reduced by ten months, and sentences of other members of the criminal association were reduced by four to eight months.**

In the reasoning of this decision, the Court of Appeals criticized the Higher Court for

**“overemphasizing the aggravating circumstances related to the gravity of the crime committed expressed through the quantity of the narcotic drug and its danger to human health”.**

The Court of Appeals does not provide a rationale for this view, although the smuggling of a large quantity of narcotics indicates a high degree of harm or threat to health, as a protected good. These are circumstances which, according to criminal law theory, [84] together with the degree of guilt, **should have the greatest impact on sentencing.** In imposing the sentence for this crime, this circumstance is specifically determined by the quantity of the narcotic drug.

The Court of Appeals also acknowledges that the first instance court did not sufficiently appreciate the mitigating circumstances, as follows: for the mastermind, the first instance court stated that he was married and a parent, and stated the same for two members of the association, one of whom had not been previously convicted. For other members of the association the court appreciated as a mitigating circumstance that they were unemployed, that is, they had no previous criminal record. The Court of Appeals did not provide any justification for this view.

[82] Ks.no.2/2013 dated 08.05.2013, judges Ana Vukovic, Biljana Uskokovic and Ratko Cupic

[83] Verdict Kzs.no.34/13 dated 29.11.2013, judges Zoran Smolovic, Ramo Strikovic and Seka Piletic

[84] Zoran Stojanovic, PhD: "Komentar Krivičnog zakonika Crne Gore", pg. 179, Podgorica 2010, Published by the OSCE Mission to Montenegro



## Case Study 5: It is (not) important that he was convicted of narcotics smuggling

The Court of Appeals reduced the sentence of the mastermind of the criminal group, assessing that the first instance court gave too much importance to his previous criminal record, as organized crime and narcotics smuggling are not the same criminal offenses. The same verdict states that the criminal organization was established exactly for the purpose of committing the crimes of narcotics smuggling.

In the verdict of the Higher Court in Podgorica [85], the mastermind of the criminal organization was sentenced to a cumulative sentence of five years and four months in prison, and a member of the organization to a cumulative sentence of one year and ten months. They were convicted of the criminal offense of Establishment of a Criminal Organization and Unauthorized Production, Possession and Distribution of Narcotic Drugs. The indictment alleges that they smuggled about 10.5 kg of marijuana.

The Court of Appeals [86] **reduced the sentence to the mastermind by one year and four months** by imposing a more lenient sentence for the criminal offense of establishment of a criminal organization.

In the reasoning of this decision, the Court of Appeals stated that the Higher Court in Podgorica

*“overemphasized the aggravating circumstance related to the fact that the defendant was previously convicted of the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, without taking into consideration the fact that this is not the same type of a criminal offense”.*

However, the Court of Appeals disregarded the fact that the criminal organization was established for exactly the commission of criminal offenses was the Unauthorized Production, Possession and Distribution of Narcotic Drugs, so it is absurd not to consider the mastermind’s earlier conviction as a reason for a more stringent punishment.

Besides, the verdict of the Court of Appeals states that the Higher Court did not sufficiently appreciate the fact that this was a family, married man, father of two minor children.

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[85] Ks.no. 25/13 dated 10.10.2014, verdict was not published, so it is not known who the judges were and what was the reasoning  
[86] Verdict Kzs.no.5/15 dated 01.04.2015, judges Milic Medjedovic, Milivoje Katnic and Seka Piletic

## Case study 6: More lenient sentence for the recidivist

The same person was convicted twice of organized crime and narcotics smuggling, and a more lenient sentence was pronounced for the repeated offenses. The same judge was involved in both judicial panels.

The defendant was first convicted for the participation in smuggling of over **50 kilograms of marijuana** to a single prison term of **three years and ten months**. [87]

This sanction was reduced by the verdict of the Court of Appeals [88] to **three years and four months** in prison. The Court of Appeals criticized in this case the Higher Court for not appreciating sufficiently the mitigating circumstances, that is, the fact that the defendant is unemployed and single. [89]

A little less than a year later, this defendant was convicted again at the first instance court of the same type of offenses and was sentenced to a cumulative sentence of **three years and three months for the organized smuggling of 24 kilograms of marijuana**. [90]

The president of the panel of judges in this case [91] was a member of the panel that sentenced the defendant to a more stringent sentence in the previous proceedings.

The Court stated that in the case of this defendant it considered as an aggravating circumstance earlier convictions for the same crimes, while not finding any mitigating circumstance.

**However, with the new verdict, the court imposed a more lenient sentence than the previous one, so it is unclear how it assessed the previous convictions for the same offenses and the absence of mitigating circumstances.**

The sentence was upheld by the verdict of the Court of Appeals of Montenegro. [92]

Ultimately, these sentences were further reduced by their merger, and thus, with the verdict of the Higher Court in Podgorica [93], this defendant was sentenced to a cumulative sentence of six years and six months in prison.

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[87] Verdict Ks.no.23/2013 dated 20.10.2014, judges Valentina Pavlicic, Boris Savic and Dragoje Jovic

[88] Kzs.no.4/15 dated 06.04.2015, judges Milic Medjedovic, Milivoje Katnic and Ratko Cupic

[89] More details on the mitigating circumstances can be found in Chapter 3.2.2. Interpretation of Mitigating Circumstances

[90] Verdict of the Higher Court in Podgorica Ks.no.6/14 dated 06.08.2015, judges Jovic Dragoje, Dragica Vukovic, Sonja Cveticanin Ognjenovic. He was convicted of the establishment of a criminal organization and unauthorized production, possession and distribution of narcotic drugs

[91] Judge Dragoje Jovic

[92] Kzs.no.4/2016 dated 07.06.2016, judges Zoran Smolovic, Dragisa Rakocevic and Milenka Zizic

[93] Kvs.no.79/16 dated 30.08.2016, judges Suzana Mugosa, Branka Boskovic and Miljana Pavlicevic



### 3.1.2. Interpretation of mitigating circumstances [94]

The courts most often state the personal circumstances of defendants as mitigating circumstances in organized crime cases. These include the defendants' family status, age, unemployment, poor financial status or health state. Criminal law theory considers that it is not justified to attach to these circumstances the importance of the central circumstances for imposing a sentence. [95]

The Montenegrin courts additionally appreciate these circumstances as a reason for the reduction of sentences, without particular justification, and with an arbitrary selection of reasons. In doing so, they provide incomprehensible and illogical explanations indicating that completely contradictory circumstances are treated in the same way.

Thus the courts have usually cited marital or family status as a mitigating circumstance for convicts for organized crime and have always interpreted it in favor of the convicts, so that those who are married, divorced or single were imposed a more lenient sentence.

Lack of promptness and the lengthy court proceedings the courts cited as a reason for the reduction of sentences in organized crime cases, and did not appreciate these circumstances in cases of minor offenses.

The courts trusted the word of the masterminds of the criminal groups who ran international narcotics smuggling and pronounced more lenient sanctions to them because they were poor or sick, although their financial status was not supported by evidence, nor was the sickness determined by experts.

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[94] The Criminal Code does not make a distinction between aggravating and mitigating circumstances, as one and the same circumstance, depending on the case, can appear as a mitigating or an aggravating one.

[95] Zoran Stojanovic, PhD "Komentar Krivičnog zakonika Crne Gore", pg 180, Podgorica 2010, Published by the OSCE Mission to Montenegro

## Case study 7: Lower sanctions for each marital status

The courts usually state marital or family status as a mitigating circumstance for the defendants convicted of organized crime and always interpret it in favor of the convicts. Numerous cases show that the courts used any type of marital status as a reason for reducing sentence.

The verdict of the Court of Appeals [96] reduced the sentence to the person convicted of the Establishment of a Criminal Organization and the Unauthorized Production, Possession and Distribution of Narcotic Drugs. In the first instance verdict this person was sentenced to a cumulative prison sentence of **three years and ten months** [97] for participating in the smuggling of over 50 kilograms of marijuana, and the Court of Appeals reduced the sentence to **three years and four months** in prison.

The Court of Appeals found that the Higher Court had not sufficiently evaluated the mitigating circumstances. By the way, in the case of this defendant the Higher Court “found” mitigating circumstances in the fact that he was unemployed and **unmarried**, although the fact that the defendant was not married cannot be regarded as a mitigating circumstance.

On the other hand, in the final judgments of the Higher Court in Podgorica, the mitigating circumstance for sentencing was precisely the fact that the accused were **married**. [98] The fact that the defendants were married was considered as a mitigating circumstance exactly by the Court of Appeals of Montenegro. [99]

In case of the defendant accused of participation in smuggling 25 kilograms of marijuana, the Higher Court in Podgorica cited, among other things, the fact that he was **divorced** as a reason to reduce his sentence. [100] This view was also accepted by the Court of Appeals, which upheld such a sentence. [101]

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[96] Kzs.no.4/15 dated 06.04.2015, judges Milic Medjedovic, Milivoje Katnic and Ratko Cupic

[97] Verdict Ks.no.23/2013 dated 20.10.2014, judges Valentina Pavlicic, Boris Savic and Dragoje Jovic

[98] Ks.no.3/15 dated 25.11.2015, judges Biljana Uskokovic, Boris Savic and Dragoje Jovic; Ks.no.23/14 dated 26.12.2017, judges Biljana Uskokovic, Ana Vukovic and Dragica Vukovic; Kvs.no.194/18 dated 21.08.2018, judge Boris Savic

[99] Verdict Kzs.no.9/2018 dated 14.09.2018, judges Seka Piletic, Ramo Strikovic and Zoran Smolovic

[100] Ks.no.6/14 dated 06.08.2015, judges Dragoje Jovic, Dragica Vukovic and Sonja Cveticanin Ognjenovic

[101] Kzs.no.4/2015 dated 06.04.2015, judges Milic Medjedovic, Milivoje Katnic and Ratko Cupic



## Case study 8: Sanctions are lower because the courts delay the proceedings

Courts have stated that convicts for organized crime should have their sentences reduced due to the lengthy court proceedings. The same circumstances were not considered by the same judges as mitigating in case involving corruption in the economy.

In this case, the indictment was filed one year after the smuggling of approximately one hundred kilograms of marijuana, the first-instance proceedings lasted five years, and the second-instance proceedings an additional year.

The Higher Court imposed sanctions to the masterminds and members of the criminal group below the legal minimum. The Special Prosecutor was satisfied with such penalties, and did not lodge an appeal.

| Quantity           | Maximum sentence imposed |
|--------------------|--------------------------|
| 97 - 360 kilograms | 1,5 years                |

Following the defendants' appeals, the Court of Appeals reduced further the sentences for everyone, especially the masterminds.

### Indictment

This case refers to four criminal groups operating in the territory of Montenegro, Albania, Bosnia and Herzegovina, Croatia and Serbia in the period from 1 June to 26 December 2011, in cooperation with criminal organizations from Albania and Bosnia and Herzegovina, with the aim of smuggling marijuana for an illicit pecuniary gain.

According to media reports, 367 kilograms of marijuana were seized at the time of arrest of members of these criminal organizations. [102] However, it is apparent from the operative part of the final and enforceable judgment of the Higher Court in Podgorica [103] in this case that the defendants were charged with smuggling a total amount of 97 kilograms of marijuana.

A total of 21 persons were indicted and all were charged with the crime of Establishment of a Criminal Organization, while one defendant was also charged with the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs.

[102] Government of Montenegro: "Uspješno okončana višemjesečna međunarodna policijska akcija "Trio", 26. December 2011., <http://www.gov.me/vijesti/110789/Uspjesno-okoncana-visemjesečna-međunarodna-policijska-akcija-Trio.html?alphabet=lat>

[103] Ks.no.23/14 dated 23.12.2017, judges Biljana Uskokovic, Ana Vukovic and Dragica Vukovic



## Higher Court: All sanctions are below the legal minimum

With the verdict of the Higher Court in Podgorica [104] all the defendants were convicted of organized crime, that is, the criminal offense of Establishment of a Criminal Organization.

The court sentenced two masterminds to prison term of **two years and six months each** for the criminal offense for which the legally prescribed prison term ranges from **three to fifteen years**. [105]

The court sentenced one member of the criminal organization to **ten months** in prison, three to **eight months** each, and 15 to **six months** in prison. The law stipulates an **imprisonment sentence ranging from one to eight years** for that criminal offense. [106]

A member of the criminal organization, who was also charged with the criminal offense of Unlawful Production, Possession and Distribution of Narcotic Drugs, was sentenced for these two offenses to a cumulative sentence of two years and two months in prison.

Therefore, the court reduced sentences to all the defendants below the prescribed minimum, with a justification that they are family people, married, parents, that they were relatively young at the time of commission of the crime and that a longer period of time had passed since the commission of the crime. The Court found no aggravating circumstances on the part of the defendants.

The crimes were committed in 2011, and the indictment was filed in August 2012. Thus, six years have passed from the commission of criminal offenses to the verdict, that is, five years have passed since the indictment was filed until the verdict was rendered.

Considering that this was a complex case involving as many as 21 defendants, it is completely incomprehensible that the court considers the duration of the five-year proceedings as a reason for mitigating sentences for all defendants.

## Court of Appeals: Sanctions reduced properly, but not sufficiently

The Special Prosecutor who represented the indictment in this case [107] was satisfied with the verdict and the sentences imposed, so he did not lodge an appeal.

Acting on the appeals of the defense counsel of the 17 defendants, the Court of Appeals assessed further the mitigating circumstances in favor of the defendants and reduced the sentences further. [108] As a reason for reduction of sentences, the Court of Appeals stated the time that passed since the commission of the crime - seven years, a year more than when the first instance court ruled.

The Court of Appeals reduced the most the prison sentences imposed on the masterminds of the criminal organizations, sentencing them to a one year shorter prison term than they were convicted to in the first instance verdict.

[104] Ks.no.23/14 dated 23.12.2017, judges Biljana Uskokovic, Ana Vukovic and Dragica Vukovic

[105] Article 401a, Paragraph 1 of the Criminal Code

[106] Article 401a, Paragraph 2 of the Criminal Code

[107] Nataša Boškovic

[108] Verdict Kžs.no.9/2018 dated 14.09.2018, judges Seka Piletic, Ramo Strikovic and Zoran Smolovic



The Court of Appeals reduced the sentences to the member of the criminal organization who was sentenced to ten months in prison and the defendants sentenced to eight months in prison, by four months each. The sentence was reduced by two months to those sentenced to six months in prison. The information on sanctions is presented in the table below.

| Role in the criminal organization | Sanctions (in months) |              |                  | % of sentence reduction |
|-----------------------------------|-----------------------|--------------|------------------|-------------------------|
|                                   | Threatened            | Higher Court | Court of Appeals |                         |
| Masterminds                       | 36 - 180              | 30           | 18               | 40 %                    |
|                                   |                       | 10           | 6                | 40 %                    |
|                                   |                       | 8            | 4                | 50 %                    |
| Members                           | 12 - 96               | 6            | 4                | 33 %                    |

Table 3: Sentences imposed by the Higher Court and the Court of Appeals compared to the sentences stipulated in the law, by roles of the defendants in the criminal organization

Additionally, the cumulative sentence imposed on one defendant, of two years and four months for both criminal offenses, was reduced by three months.

**In the proceedings related to corruption in the economy, the same judges did not consider the lapse of time from the commission of the crime as an aggravating circumstance.**

In the case of a woman convicted of abuse of office in business operations, **no court has taken into account the fact that more than ten years have passed from the commission of the criminal offense until the final judgment was rendered.** [109]

The Higher Court in Podgorica [110] sentenced the defendant to one year in prison for the criminal offense of Abuse of Position in Business Operations [111], and the Court of Appeals [112] upheld that judgment. The court took into account as a mitigating circumstance that she was a family woman, a mother of two, without previous convictions and unemployed, and did not find any aggravating circumstances.

Neither the first instance court, nor the court of second instance took into account the passage of time since the commission of the crime, as in the case of the person convicted of organized crime.

The same judge [113] participated in the adoption of both verdicts of the Higher Court (the one where the passage of time was a reason for a more lenient sanction and the one where this was not relevant). Besides, the same judge participated in the adoption of both verdicts of the Court of Appeals. [114]

[109] The convicted woman in this case committed the crime in the period from January to July 2005, the first instance verdict was adopted eight years later, in March 2013, and the second instance verdict only in October 2015 – more than ten years since the commission of the crime.

[110] KS 29/13 dated 16.03.2015, judge Biljana Uskokovic

[111] The employee of the national airline was convicted for appropriating the money from the sale of air tickets.

[112] Verdict of the Court of Appeals of Montenegro Kž-S.no.13/15 dated 28.10.2015, judges Milic Medjedovic, Ratko Cupic and Seka Piletic

[113] Biljana Uskokovic

[114] Seka Piletic



## Case study 9: More lenient sanctions for poor masterminds of the criminal groups

The courts impose lower sanctions to the masterminds of the criminal groups who managed international trafficking in narcotics, because they are poor or unemployed. Financial status of those defendants was established by the courts on the basis of their statements only, and the courts accepted illogical claims that poor persons have the money and the capacity to organize trafficking of larger quantities of narcotic drugs from other countries.

With the verdict of the Higher Court in Podgorica [115] four persons were convicted of the criminal offense of establishment of a criminal organization and the unauthorized production, possession and distribution of narcotic drugs. The indictment stated that they smuggled approximately 38 kilograms of marijuana from Albania to Montenegro, and then to Bosnia and Herzegovina and Croatia.

The mastermind was convicted to a cumulative prison sentence of **five years and ten months**. Members of the organization were convicted to cumulative prison sentences of three years and ten months, three years and four months, and one year.

The Court of Appeals reduced the sentence to the mastermind of the criminal organization by one year. [116] In the justification of this decision the Court of Appeals stated that the mastermind had previous convictions, but not for the same type of crime, but for violent behavior [117] and an assault against an officer in the performance of official duty. [118]

The court stated that the **mitigating circumstance in favor of the convict could be considered as particularly mitigating for reduction of sentence**. The only mitigating circumstance in the case of this defendant was the fact that he was unemployed, but the court did not give a justification why this one mitigating circumstance in favor of the defendant could be considered **particularly** mitigating.

In the case of the defendants from whom two kilograms of heroin were seized that were smuggled from Kosovo to Montenegro, the court considered bad financial situation of the defendants as a mitigating circumstance, although that situation was established on the basis of their statements only. [119]

The court did not give a justification how is it possible that “poor” masterminds of the criminal groups have the funds and the capacity to engage in purchase of larger quantities of narcotics and smuggle them through several countries.

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[115] Ks.no.23/2013 dated 20.10.2014, judges Valentina Pavlicic, Boris Savic and Dragoje Jovic  
[116] Kzs.no.4/2015 dated 06.04.2015, judges Milic Medjedovic, Milivoje Katnic and Ratko Cupic  
[117] Article 399 of the Criminal Code  
[118] Article 376 of the Criminal Code  
[119] More details in the Case Study: Court of Appeals “cuts” sentences for heroin smuggling



## Case study 10: Reduced sentence to the mastermind because he sees the doctor frequently

The Court of Appeals reduced the sentence imposed on the mastermind of the criminal group because he went to medical examinations several times, without engaging experts to examine medical documentation and establish whether there are serious health issues in question.

With the verdict of the Higher Court in Podgorica [120], seven persons were convicted of establishment of a criminal organization and unauthorized production, possession and distribution of narcotic drugs. The indictment of the Special Prosecutor [121] alleges that members of this criminal organization smuggled approximately **25 kilograms of marijuana** from Albania to Montenegro and Serbia.

The mastermind of the criminal organization was sentenced to a cumulative sentence of **four years** [122] in prison for both offenses.

The Court of Appeals reversed the first instance verdict and reduced the sentence to the mastermind of the criminal organization by six months. [123]

In the reasoning of the verdict, the Court of Appeals stated that it was **on the basis of the prison medical record** that this defendant was found to have health problems.

The Court of Appeals stated in its verdict that it had checked the allegations made by the lawyer of this defendant, which were made at a session before that court

*“...with respect to the fact, which was pointed out at the session of the panel of the second instance court, that after the appeals were filed, there was a problem in the health condition of the accused M.Z., and that, thus, the complainants were neither aware of, nor able to know this fact at the time of writing the appeal, by obtaining the medical record from the Institute for the Execution of Criminal Sanctions, from which he determined that the defendant had health problems, due to which he was subject to several examinations in the Clinical Center of Montenegro, where he was also subject to CT examination...”*

However, the Court of Appeals does not provide an explanation of what the health problems are, why he was examined and what was determined, and thus, it is completely incomprehensible how it determined the “poor health state” of the mastermind of the criminal organization, which was the reason to mitigate the sentence. In addition, the court does not have the expertise to assess the defendant's health state by looking at his or her medical record, and establishment of this fact requires the involvement of a **court expert** as the only person able to assess the defendant's health status.

[120] Ks.no.6/14 dated 06.08.2015, judges Dragoje Jovic, Dragica Vukovic and Sonja Cveticanin Ognjenovic

[121] Kt-S no.25/13 dated 24.04.2015, Special Prosecutor Mira Samardzic

[122] Five members of the criminal organization were convicted to prison sentences: one to two years and ten months, the second one to three years and three months, and the remaining three members to one year in prison each. One defendant was acquitted.

[123] Verdict Kzs.no.4/2016 dated 07.06.2016, judges Zoran Smolovic, Dragisa Rakocevic and Milenka Zizic

## 3.2. Plea bargaining agreements

Conclusion of plea agreements in cases of organized smuggling of narcotics mitigated further the penal policy, and did not contribute to the detection of other perpetrators of criminal offenses or to the seizure of illegally obtained proceeds.

Special prosecutors concluded agreements with defendants for organized smuggling of narcotics even when they had sufficient evidence on the basis of which other members of the same criminal organizations had already been convicted.

It is not possible to determine from the agreements and verdicts reached whether the prosecution asked the defendants at all to provide information about other crimes, members and masterminds of criminal groups, or their illegally acquired assets.

The prosecutors agreed exceptionally lenient sanctions for persons who played important roles in the organized smuggling of narcotics. In this way, organizers and persons at the top of the criminal hierarchy received lighter sentences than mere executors of their orders.

Such agreements were confirmed by the courts, although the confessions of the defendants were incomplete, as they did not reveal the masterminds and other members of the criminal organizations, nor did they assist in detecting other criminal offenses.



## Case study 11: Plea agreement where the guilt was already established

The defendant, who had been on the run for six years and was found, during court proceedings, to have played a hierarchically more important role in the criminal organization, received a more lenient sentence than another defendant who was convicted in the regular proceedings.

By entering into a plea agreement, the prosecution agreed to a more lenient sentence, although other states provided evidence already considered sufficient by the court for a conviction and a more significantly stringent sanction. At the same time, the defendant confessed to only what the Prosecution had already proven in regular court proceedings.

Although it was obvious that the confession was not complete, since the defendant did not disclose who gave him the orders, or who was the mastermind of the criminal organization, or other unknown facts about the operation of that organization, the Higher Court in Podgorica accepted the agreement.

### Indictment based on evidence from Spain

The Spanish police seized 77 kg of cocaine in April 2011, and Montenegrin nationals participated in its smuggling. Six persons were arrested and subject to criminal proceedings with the National High Court in Madrid. Citizens of Montenegro, Dragan Scepanovic and Zeljko Martinovic were also involved in the smuggling of cocaine from South America to Europe.

Based on the evidence collected by the Spanish authorities, an indictment [124] was brought before the Higher Court in Montenegro. The indictment referred to Dragan Scepanovic and Zeljko Martinovic, who were charged with commission of a crime of unauthorized production, possession and distribution of narcotics [125] and establishment of a criminal enterprise [126], that is, organized crime.

According to the indictment, **Scepanovic's role was to find sailors to transport cocaine from South America to the countries of Europe, to agree with them the transport of cocaine, and through Martinovic, to give instructions to the sailors. Martinovic served as a link between Scepanovic and the sailors** with regard to the execution of smuggling, that is, accepting to transport and deliver cocaine, and he also **gave instructions** to the sailors on behalf of Scepanovic.

Defendant Scepanovic was unreachable by the judicial authorities of Montenegro, thus, he was tried in absentia and an arrest warrant was issued against him.

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[124] Kt-S.no.12/11 dated 07 October 2011

[125] Article 300, Paragraph 1 of the Criminal Code

[126] Article 401a of the Criminal Code



## First verdict: strict sentences for narcotics, acquitted for organized crime

With the first verdict in this case, the Higher Court in Podgorica [127] found the defendants guilty of the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics and sentenced them to imprisonment, Dragan Scepanovic to nine years in prison and Zeljko Martinovic to seven years in prison. This offense is punishable by a term of imprisonment ranging from two to ten years. [128] Thus, the court sentenced the defendants to severe sentences that are close to the prescribed maximum.

Martinovic was convicted to a two years shorter prison term because the court established a mitigating circumstance in the fact that he confessed to the crime by describing his and Scepanovic's role and repented of his actions. The court also found that his family and financial situation represented mitigating circumstances, that is, he was married, the father of three minor children, one of whom was suffering from cerebral palsy, and that he was of a poor financial status, i.e. a beneficiary of social welfare.

By the same verdict, the defendants were acquitted of the criminal offense of Establishment of a Criminal Organization, because the court found that they acted in the commission of one specific crime and not in the direction of committing an unspecified number of criminal offenses in the area of smuggling of narcotics, as presented in the indictment.

However, the Court of Appeals of Montenegro found that the first instance court did not give clear reasons in terms of whether the defendants and other members of the criminal organization acted in the direction of committing an unspecified number of crimes. That is why the first instance verdict was quashed in relation to the section on the acquittal for organized crime, and the case was referred back to the Higher Court in Podgorica for reconsideration.

At the same time, the Court of Appeals of Montenegro upheld the sentences imposed on the defendants for the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics, and in that part the first instance verdict became final. [129]

## Second verdict: Acquitted again for organized crime

In the new trial, the Higher Court in Podgorica acquits again the defendants of the criminal offense of Establishment of a Criminal Organization, with the conclusion that there is no evidence to establish that an NN person organized a criminal organization whose members became defendants Scepanovic and Martinovic. [130]

This judgment was also quashed by the Court of Appeals of Montenegro and the case was sent back again to the court of first instance. [131]

The Court of Appeals stated that it was clear from the evidence that defendant Scepanovic had

*„previously brought in or organized the bringing of narcotic drugs on board“, as well as*

*„that he explained that he would arrange the delivery of drugs anywhere in Europe and in any country, that he would wait there and take cocaine“. [132]*

The Court of Appeals found that a criminal organization had already been formed to commit the criminal offenses of smuggling of narcotic drugs indefinitely in the future.

[127] Ks.no.23/11 dated 01 November 2012

[128] Article 300, Paragraph 1 of the Criminal Code

[129] Verdict of the Court of Appeals of Montenegro KzS no.1/2013 dated 12 February 2013

[130] Verdict of the Higher Court in Podgorica Ks.no.5/13 dated 19 September 2013

[131] Decision of the Court of Appeals of Montenegro KzS no.1/2014 dated 25 February 2014

[132] Ibid.



## Third verdict: convicted also for organized crime, sentences minimal

It was only in the third trial that the Higher Court in Podgorica found that the criminal organization's objective was to commit an unspecified number of offenses "for the purpose of obtaining illicit profit, which according to the estimates of the Spanish authorities in the second echelon amounted to several millions of euros".

The third verdict of that court states that

*“there is no doubt that defendant Scepanovic had previously coordinated activities on the bringing of narcotic drugs on board”, and the defendants were also convicted of the criminal offense of Establishment of a Criminal Organization. [133]*

The prescribed sentence for this crime for the members of a criminal organization ranges from one to eight years in prison. [134]

However, the court sentenced both defendants to the same - **minimum prison term** of one year. In doing so, the court lists the same circumstances relevant to the sentencing that it stated when it sentenced those defendants for smuggling of narcotics to prison term close to the prescribed maximum.

**The court has imposed completely different penalties for the same circumstances - in the case of narcotics smuggling close to the maximum, and minimum penalties in the case of organized crime.**

## Final verdict: Sentenced in absentia to nine and a half years

The final judgment in this case was rendered by the Court of Appeals of Montenegro, which sentenced the defendants to a cumulative sentence for both crimes: Unauthorized Production, Possession and Distribution of Narcotics and Establishment of a Criminal Organization. Defendant **Scepanovic** was imposed in absentia a cumulative sentence of **nine years and six months** in prison, while defendant **Martinovic** was imposed a cumulative sentence of **seven years and six months** in prison. [135]

In the justification of the sentences imposed, the Court of Appeals stipulates the same circumstances, but does not give reasons why the same circumstances involving the same persons for one offense constitute a reason for a sentence close to the prescribed maximum, while for the other offense they constitute a reason for the minimum prescribed sentence.

[133] Verdict of the Higher Court in Podgorica Ks.no. 4/14 dated 18.November 2014

[134] Article 401a, Paragraph 2 of the Criminal Code

[135] Verdict of the Court of Appeals of Montenegro KzS no.2 /2015 dated 10 March 2015



## Agreement: Three and a half years less for confession of proven facts

Following the final verdict, in May 2017, the extradition of defendant Scepanovic from the Netherlands to Montenegro was carried out, according to the NCB Interpol Podgorica arrest warrant. [136] Given that Scepanovic was sentenced in absentia, he and his defense attorney were able to file a request for retrial within six months of his extradition. [137]

**Instead of retrial, Scepanovic concluded an agreement with the Special Prosecutor, Mira Samardzic.**

Although the court convicted Scepanovic with a final judgment to nine and a half years in prison, the Special Prosecutor concluded a plea agreement with him, reducing his total sentence by three and a half years. [138]

**The prosecution did not obtain Scepanovic's full confession, as he did not disclose how and when he became a member of the criminal organization and who was its organizer. It can be inferred from the judgments that the prosecution did not engage in the identification of the defendants' assets and did not ascertain whether those assets came from an international cocaine smuggling operation.**

All of the above should have been of a particular interest to the Special Prosecutor when concluding the agreement, especially since the Prosecution had at its disposal the evidence already judged by the court to be sufficient for a conviction.

## The court accepted the agreement: Full confession and fair punishment?

The Criminal Procedure Code stipulates that with the plea bargaining agreement the defendant fully confesses to the crime that s/he is charged with. [139] The same Code stipulates that, **if this condition is not met**, that is, if the defendant has not fully confessed to the crime that s/he is charged with, **such an agreement must be dismissed by the court.** [140]

Defendant Scepanovic, in an agreement with the prosecution, did not confess when and how he became a member of the criminal organization, from whom he received orders and instructions, which he transmitted further and who was possibly the organizer of the criminal organization.

Although such a confession is incomplete, the Higher Court in Podgorica [141] accepted the agreement and issued a verdict [142] by which Scepanovic's sentence is three and a half years lower than the one imposed in the regular proceedings conducted in his absence.

[136] <http://www.up.gov.me/Interpol/172611/Saopstenje-Interpol-Realizovana-ekstradicija-lica-iz-Holandije-u-Crnu-Goru-radi-izdrzavanja-kazne-zatvora-u-trajanju-od-9-godine.html>

[137] Article 431, Paragraph 1, Item 1 of the Criminal Procedure Code

[138] The Special Prosecutor and the defendant Scepanovic have agreed on a cumulative prison term of six years for both offenses, with the obligation of Scepanovic to pay 10,000 euro for humanitarian purposes.

[139] Article 301, Paragraph 1.

[140] Article 302, Paragraph 9 in relation to Paragraph 8, Item 2.

[141] Judge Dragoje Jovic

[142] Ks.no.43/17 dated 20 June 2018



The Higher Court accepted the individual sentences agreed by the defendant with the prosecution, that is, five and a half years for narcotics smuggling and one year for establishment of a criminal organization, and sentenced Scepanovic to a cumulative prison sentence of six years.

**Although Scepanovic did not fully confess to the crime, the court stated in the verdict that full and clear confession was the reason for reducing his sentence.**

The Criminal Procedure Code stipulates that the agreement must be in line with the interests of fairness, and that the sanction serves the purpose for which criminal sanctions are imposed. [143]

The Court states that the sanction is "in a legally acceptable proportion" with the case law of this Court for the same offenses.

In the same case, defendant Martinović, who received instructions from Scepanovic and was the mediator in their transfer, was punished by a year and a half more severe punishment than Scepanovic, who had been on the run for six years and had an undeniably more significant role in the hierarchy of the criminal organization. The verdict also shows that Martinovic confessed to the crime in regular proceedings, and told the court how he met Scepanovic and became a member of the criminal group.

| Criminal offense  | Legally prescribed sentence | Defendant  | Sentenced pronounced |                |
|---|-----------------------------|------------|----------------------|----------------|
|   |                             |            | Regular proceedings  | Plea agreement |
| Unauthorized production, possession and distribution of narcotics | 2 - 10 years                | Scepanovic | 9 yrs                | 5,5 yrs        |
|   |                             | Martinovic | 7 yrs                | -              |
| Establishment of criminal organization (enterprise)               | 1 - 8 years                 | Scepanovic | 1 year               | 1 year         |
|   |                             | Martinovic | 1 year               | -              |

*Table 4: Comparison of sanctions pronounced in regular proceedings and based on the plea agreement for both of the defendants*

[143] Article 302, Paragraph 8, Item 5.

## Data Concealing

In this case, the courts conceal a series of information from the judgments that would allow an analysis of how the judiciary handled the case of organized smuggling of cocaine from South America to the countries in Europe.

The data about identity of the defendants and all other members of the criminal organization, their nicknames have been removed from the judgments.

The names of the countries and ports from which the cocaine was taken and to which it was transferred for further distribution were deleted, as well as the names of the cities and addresses where the cocaine was found through searches.

The names of the ships, as well as the registration plates of the cars used to transport the cocaine were also deleted. Even the brand of phones and lap tops used by members of the criminal organization, brands and models of backpacks in which cocaine was found were removed from the verdict.

## Case study 12: Agreed 2.5 years za 100 kilograma

Thanks to the agreement with the prosecutor, the accused of membership in a criminal organization and of smuggling 100 kg of marijuana received a sentence that is two times lower than the one imposed on two couriers that he hired to transport narcotics.

The Special Prosecutor [144] concluded a plea agreement in which he and the defendant agreed to prison sentences of

- **four months** for the criminal offense of Establishment of a Criminal Organization, as well as
- **two years and four months** for the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs.

The statutory punishment for the first offense is **one to eight years in prison** and for the second one - **two to ten years in prison**.

The defendant admitted to the prosecutor that, as a member of a criminal organization, he had participated twice in the smuggling of almost 100 kilograms of marijuana, 20 kilograms the first time, and 79 kilograms the second time.

Together with other members of the organization, the defendant purchased and transported marijuana for sale, brokered and arranged delivery. His role as a member of the criminal organization was to find marijuana buyers in Serbia, take drugs from other members and hand them over to the customers, hire couriers for smuggling and arrange transfers through Montenegro.

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[144] Mira Samardzic



The verdict states information about the mastermind and other members of the criminal organization and the roles they played in drug trafficking. However, the verdict also states evidence establishing the guilt of the defendant and other members of the organization, including the mastermind. This includes evidence collected through secret surveillance measures, certificates of search and seized items from the mastermind of the criminal organization and other members, as well as records of drug discovery.

Thus, the confession of the defendant did not contribute to the resolution of the crime and to the discovery of other perpetrators.

The Higher Court in Podgorica accepted the agreement of the prosecution and the defendant, sentencing him to a cumulative prison sentence of **two years and six months**, a fine of 6 thousand euros, and obliged the defendant to pay two thousand euros for humanitarian purposes. [145]

| Mastermind   | Courier 1    | Courier 2  |
|--------------|--------------|------------|
| 2,5<br>years | 3,5<br>years | 5<br>years |

The court cited the **defendant's confession and the fact that he was a married, family man**, as the sole reasons for mitigating his sentence.

**The court does not mention aggravating circumstances in the judgment, so it can be concluded that the following were completely ignored:**

- the degree of guilt of the defendant,
- greed as the reason to commit the crime, and in particular
- the severity of the threat and harm to health as a protected good resulting from the quantity of almost 100 kilograms of narcotics.

The couriers who transported these drugs were imposed, in regular proceedings, significantly more stringent sanctions.

Thus, the first **courier**, who transported 20 kilograms of marijuana in one case, was sentenced in regular proceedings [146] to **three years and six months in prison**.

The other **two couriers**, who transported 79 kilograms, were sentenced [147] to **five years in prison each**.

[145] Verdict Kvs.no.194/18 dated 21.08.2018, judge Boris Savic  
[146] K.no.35/17 dated 10.07.2017, judge Vukomir Boskovic  
[147] K.no.32/17 dated 15.06.2017, judge Sefkija Djesevic

### 3.3. Acquittals

Special prosecutors made omissions in the indictments that led the courts to acquit the defendants, even when they had evidence of organized drug trafficking provided to them by other states.

In some cases prosecutors described in an absurd manner the activities of organized criminal groups involved in drug trafficking, claiming that the masterminds were selling drugs to other members.

Prosecutors charged the defendants with actions that did not constitute criminal offenses, and such indictments were upheld by the courts, rather than returning them for amendment.

Those proceedings ended in acquittals and a prohibition of retrial of defendants for those criminal offenses.

Some cases were decided by the judges who were in conflict of interest, because they had previously ruled in the investigation.



## Case Study 13: International (un)organized crime

The proceedings in this case of international smuggling of cocaine were also instigated on the basis of evidence provided by other countries. Although it involved a criminal organization operating in several countries, the prosecution charged the defendant in Montenegro with only one cocaine sale operation, so this person could not be convicted of organized crime.

According to information from the authorities of other countries, this is an organized criminal group that smuggled cocaine from South America through the Netherlands and Belgium for further sale in Central and Eastern Europe. [148] The money that was collected was transferred via courier service to the Balkans, to be placed in the legal flows through the purchase of vehicles and real estate. [149]

Within the framework of this international police action [150], several persons were arrested in Serbia, Bosnia and Herzegovina, the Netherlands, Belgium, and Montenegro. Proceedings in Serbia are ongoing [151], and two persons accused in Bosnia have been convicted of drug trafficking and establishment of a criminal organization. [152]

With the indictment of the Special Prosecutor's Office [153], Mirsad Halilovic from Bijelo Polje is charged with the commission of the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics and the Establishment of a Criminal Organization. [154]

However, the indictment indicated that cocaine was only sold once in the Netherlands, and Halilovic was not charged with having committed crimes in the territory of any other country. Thus, he could not be convicted of organized crime because one of the three mandatory conditions for the existence of this offense was missing, which is acting for the purpose of committing several crimes for which a prison term of four years or more can be imposed. [155]

**It follows from the verdict that the prosecution did not conduct a financial investigation, identify the defendant's property for international cocaine smuggling, nor did it check whether that property came from a cocaine related business.**

[148] Radio TV Serbia: "Arrest for cocaine smuggling", 30. May 2013 <http://www.rts.rs/page/stories/sr/story/11/region/1333520/hapsenja-zbog-sverca-kokaina.html>

[149] Faktor: "Potvrđena prvostepena presuda: Svercerima kokaina 12 godina zatvora", 17 May 2018., <https://faktor.ba/vijest/potvrena-prvostepena-presuda-vercerima-kokaina-12-godina-zatvora-296178>

[150] This is an investigation called "Arka RS" instigated in March 2012 by the authorities of the Republic of Srpska, Croatia, Serbia and the Netherlands against the group suspected of smuggling cocaine from South America, through the Netherlands, for further sale in the territory of Central and Eastern Europe. Government of Montenegro, Report on implementation of the Action Plan for 2013 for implementation of the Strategy of Montenegro for the prevention of drug abuse, 2013-2020, March 2014

[151] Blic: "član moto-bande "anđeli pakla" i narko-diler ko je "tebra", kriminalac decenijama poznat policiji, koji je danas uhapšen u velikoj akciji", 11 January 2019., <https://www.blic.rs/vesti/hronika/clan-moto-bande-andjeli-pakla-i-narko-diler-ko-je-tebra-kriminalac-decenijama-poznat/pbkd2hd>

[152] Faktor: "Potvrđena prvostepena presuda: Svercerima kokaina 12 godina zatvora", 17 May 2018., <https://faktor.ba/vijest/potvrena-prvostepena-presuda-vercerima-kokaina-12-godina-zatvora-296178>

[153] Kts.br.16/13 od 29.11.2013. godine, zastupao je Specijalni tužilac Lukač Hasan

[154] The indictment states that in October 2012, in Rotterdam, Mirsad Halilovic from Bijelo Polje, together with Zoran Hadzi Jovanovic from Serbia, subject to criminal proceedings in Serbia, purchased over seven kilograms of cocaine for further sale. According to the indictment, they sold these drugs via other persons discovered by the Dutch police and from whom cocaine was seized.

[155] According to Article 401a, Paragraph 6 of the Criminal Code, in order for organize crime, that is, criminal organization to exist it is necessary that the organization is comprised of three or more persons whose aim is to commit crimes subject to a legally defined prison term of four years or more, for the purpose of gaining illicit proceeds or power



## Higher Court: Convicted for drugs, no evidence of organized crime

With the verdict of the Higher Court in Bijelo Polje [156], Halilovic was sentenced to six years in prison for the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics, while he was acquitted of the criminal offense of Establishment of a Criminal Organization.

The verdict of the Higher Court in Bijelo Polje states that there are telephone communications between Halilovic and persons identified as members of a criminal organization, but "it is not possible to establish in a reliable manner what exactly those communications refer to", and especially not that their communications are related to the purchase, transfer, possession for sale and sale of narcotic drugs, that they had a predetermined task and role, that the activities of the criminal organization were carried out for a long time and internationally, all with the aim of obtaining illegal profit, which would be generated as described." However, the court does not provide the reasoning in this part, nor the reasons why it concluded that it is impossible to establish what the recorded conversations refer to.

But, previously in the part of the reasoning related to the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, for which Halilovic was convicted, the court cited parts of recorded conversations in relation to this criminal offense and then stated: "*it is concluded from the content of the communication as described that the accused Halilović committed the criminal offense in question.*"

It is also stated in the verdict that there was no evidence that members of the criminal organization had a pre-defined task and role, or that they had acted for a longer period time, or internationally.

The Court indicated that the Indictment stated that the sale of drugs was carried out on one day only, on 1 November 2012 in the Netherlands. The court concludes that the evidence did not indicate that the organization of the criminal group took place in the Republic of Srpska, nor did the indictment charged the defendant with the commission of crimes in any country other than the Netherlands.

Thus, although the case involved several persons who smuggled cocaine from South America via the Netherlands and Belgium for further sale in Central and Eastern Europe, the prosecution did not provide evidence that it was organized drug smuggling. Instead, the accused in Montenegro was charged with one crime only, and even that one on the basis of evidence obtained by the authorities of other countries. Thus, it follows that the prosecution did not conduct any investigation and did not attempt to obtain any evidence, but charged the defendant with only one crime based on evidence obtained from another state.

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[156] Ks.no.9/13 dated 08 May 2014.



## Court of Appeals: No evidence, because communication is coded

Acting upon the appeals of the prosecutor and the defense attorney, the Court of Appeals of Montenegro upheld the verdict in the acquittal for the criminal offense of Establishment of a Criminal Organization, and reversed the verdict in the part of the sentence for the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics. The Court of Appeals reduced the sentence to Halilovic from six to five years in prison. [157]

The Court of Appeals accepted the findings of the Higher Court in Bijelo Polje, stating that it could not be established from the conversations that the accused were members of a criminal organization:

*"In particular, it was not possible to determine what was the role and tasks of the members of the organization, the content of telephone communications conducted between them, whereby they used specific expressions and SMS messages that were coded."*

It is generally known that members of a criminal organization who smuggle narcotics use coded terms in their communication, but the Court of Appeals did not provide any explanation either as to what was specifically the content of those communications for which it is unknown what they refer to and which are coded.

The Court of Appeals then stated:

*"Besides, with the established fact from the adduced evidence that the sale of narcotic drug of cocaine took place on one day only in the territory of the Kingdom of the Netherlands, the allegations in the appeal that the court incorrectly concluded that the defendant and the other persons mentioned in the indictment did not act for a longer period time and on an international scale are inadmissible".*

In the part of the decision regarding the sentence, the Court of Appeals stated that Halilovic's previous convictions could not be regarded as an aggravating circumstance. The court explained that these were verdicts from 2012 for offenses for which he was fined and convicted to a suspended sentence, and which he committed more than 12 years ago, which means that legal rehabilitation had taken place. [158] With that reasoning, the Court of Appeals reduced Halilovic's sentence to five years in prison.

## Data concealing

Before the final verdict was published data about identity of the defendant and all other members of the criminal organization.

Names of the states where cocaine was distributed also the name of the city where the cocaine was seized were deleted from the verdict. In addition, the address at which it was stored, the locations and names of the places where members of the criminal organization met, as well as the routes they used, were removed from the verdict.

[157] Verdict KzS.no.12/2014 dated 19 September 2014

[158] Article 118, Paragraph 1 of the Criminal Code stipulates that upon rehabilitation the criminal conviction is deleted from the records and all of its legal consequences are suspended, while the convicted person is considered to be a person without previous convictions; whereas Article 119, Paragraph 2, Items 2 and 3 of that Code stipulate that legal rehabilitation takes place where a person who received a suspended sentence does not commit another criminal offense during his probation term or within one year of expiry of the probation term, or a person punished by a fine, community work or up to six months in prison does not commit another criminal offense within three years from the date punishment has been fully served, became time barred or was pardoned.



## Case study 14: Everyone acquitted due to omissions in the indictment

This example shows that the indictment with deficiencies that had to be remedied before the trial began has passed the control by the court. Two and a half years later, the same court issued an acquittal precisely because of these deficiencies in the indictment.

All the defendants were acquitted because the prosecution had no evidence that either of them had committed the criminal offense of Establishment of a Criminal Organization. As regards narcotics trafficking, the court found that the prosecutor charged the defendants with acts that did not constitute a criminal offense.

The judges who rendered the first verdict were not even allowed to decide the case, as they had previously participated in the investigation.

### Indictment

The indictment of the Special Prosecutor [159] included three criminal organizations and a total of 17 defendants. [160]

Three persons were charged with the Establishment of Criminal Organizations [161] and Buying, Possession and Transport of Narcotic Drugs for Sale. [162] fourteen persons were charged with affiliation with a criminal organization [163], and six were charged with Buying, Possession and Transport of Narcotic Drugs for Sale.

They were accused of smuggling about 20 kilograms of marijuana, 400 grams of heroin and 30 grams of cocaine.

### First verdict: Three criminal groups convicted

With the first verdict in this case [164], the Higher Court in Bijelo Polje convicted all of the defendants of the crimes they were charged with and sentenced everyone to prison, except one defendant as the charges against her were dismissed because the prosecutor withdrew from criminal prosecution in her case. [165]

The defense attorneys appealed the convicting part of the verdict on behalf of the defendants, and the Prosecution appealed only the decision on the sentence.

The Court of Appeals of Montenegro quashed the verdict of the Higher Court in Bijelo Polje in the convicting part and in that part returned the case to the first instance court for retrial. [166]

[159] Kts.no.10/10-02 dated 13.01.2011, represented by the Special Prosecutor Hasan Lukac

[160] Mensur Sahman, Alen Mujezinovic, Mevludin Mujanovic, Edin Kanalic, Milivoje Milovic, Djordje Djukic, Vahid Strikovic, Marko Raicevic, Dzevad Hajdaragic, Velimir Knezevic, Masan Covic, Elmin Hadrovic, Dzevad Halilovic, Suad Pacariz, Milivoje Puric...

[161] Article 401a, Paragraph 1 of the Criminal Code

[162] Article 300, Paragraph 2 of the Criminal Code

[163] Article 401, Paragraph 2 of the Criminal Code

[164] Ks.no.10/10-02 dated 19.11.2013.

[165] This verdict was not published, so other data is not available.

[166] Ruling Kzs.no.21/12 dated 29.05.2012.



## Court of Appeals: Judges who decided the case were the ones who participated in the investigation

The Court of Appeals overturned the first instance verdict for violations of the proceedings, as it was rendered by judges who were involved in evidence gathering during the investigation.. At the same time, the Court of Appeals vacated the verdict because it did not specifically list the acts by which the defendants have committed the crimes.

## Mastermind sells drugs to a member of the criminal organization

The Court of Appeals found that the first instance court did not specify the actions by which the defendants committed the crimes they were charged with.

The court concluded that the verdict of the Higher Court was incomprehensible because it stated that the mastermind was selling narcotic drugs to a member of the organization, that is, members of the organization were selling narcotic drugs to each other, which is inconceivable because in this way no gain could be obtained for the criminal organization.

## Second verdict: Everyone acquitted because of the deficiencies in the indictment

By the verdict of the Panel of Judges, comprised of other judges of the Higher Court in Bijelo Polje [167], all the defendants were acquitted of all the crimes they were charged with.

For the organized crime or criminal offense of Establishment of a Criminal Organization, the court found that **there was no evidence** to convict any of the defendants. As regards narcotics trafficking, the court found that the prosecutor charged the defendants with acts that **did not constitute a criminal offense**.

The indictment alleges that eight defendants were convicted by previous verdicts with a final effect of the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, which gave the Prosecutor grounds for a charge of Organized Crime. However, the court stated that it could not be concluded from the contents of the secret surveillance measures that the defendants had joined criminal organizations for the purpose of committing criminal offenses related to narcotics and that they had acted with predetermined tasks and roles for a longer time and internationally using intimidation, so there is no evidence that they committed the criminal offense of Establishment of a Criminal Organization.

In the new verdict, the Higher Court in Bijelo Polje stated that the actions of the defendants in relation to the criminal offense of Establishment of a Criminal Organization have not been specified. The Court concluded that, in relation to the first criminal organization, the Indictment

*„does not contain the time and manner in which it was organized, the time when the members of the organization joined the organization, the period of time for which they planned their activities, what were their specific roles they were assigned and the assignment of those roles, nor can that be concluded from the evidence adduced...“.*



For the other criminal organization, the court concluded that

*„there is no evidence to determine the time and manner of establishment of the criminal organization, the manner in which the members directly or indirectly received instructions from the mastermind of the criminal organization, their plan of action, nor evidence to support its organizational, functional and hierarchical connections and assignment of roles in the criminal organization“.*

For the third criminal organization, the court found that the prosecutor had most inaccurately presented the conduct "in the sense of delimiting and separating the actions of the defendants in relation to the crimes they were charged with". In this part, the Prosecutor failed to present specifically "which concrete actions were taken by the defendants to commit the offenses they are charged with". All the defendants were charged with actions related to the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, without specifying the actions taken to commit the criminal offense of Establishment of a Criminal Organization.

For that reason the court, which convicted all but one defendant of organized crime in the first verdict, now concluded that "there is no evidence to confirm that the conditions necessary for an organization to be considered criminal have been met."

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### **Prosecution understood the inconsistencies too late**

It is apparent from the verdict of the Higher Court in Bijelo Polje that in the retrial the Special Prosecutor changed the factual description of the charge and in the amended indictment stated that the mastermind had engaged members of the criminal organization for the unauthorized sale of heroin. Thus, the Prosecutor sought to resolve the inconsistencies pointed out by the Court of Appeals that it was inconceivable for the mastermind to sell drugs to members and members to one another.

However, from the contents of the secret surveillance measures, the court has actually concluded that the accused members of the criminal organization were buying heroin from the mastermind. Thus, the court also accepted the reasons stated by the Court of Appeals when vacating the verdict and concluded that it was "inadmissible for a criminal organization mastermind to sell narcotics to a member of a criminal organization or for members of the organization to sell drugs to one another ...".

The Court noted that criminal organizations were "established, inter alia, for the purpose of obtaining illicit profit or power" and that it was inconceivable that the profits would be obtained by sale between members of the criminal organization.

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### **Prosecutor "forgot" that drugs were brought in for sale**

In relation to the charge for the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, the court concluded that the action alleged by the prosecutor in the indictment was not a criminal offense because it did not correspond to the description of any of the acts of this criminal offense prescribed by the Criminal Code.

Specifically, the Indictment alleges that the defendants illegally brought the narcotics into Montenegro, but the Prosecutor omitted the stipulation that the drugs had been brought in for sale, which is an essential element of this act of execution.



The defendants were charged with the criminal offense referred to in Article 300, Paragraph 2 of the Criminal Code, and the act of that criminal offense was described as buying, possession or transport of narcotics **for sale**. The omission of this stipulation that narcotic drugs were brought into Montenegro “for sale” is a mistake of the prosecutor, due to which the Higher Court “states that the conduct of the defendant is not a criminal offense if the drugs were not brought into the country, purchased, held or transported for sale”.

The Higher Court also stated that the conduct of the two defendants "was not adequately described, because **none of the alternative actions defined for the commission of this crime** were specified." The court stated that in case of one of the defendants, it was not described how he conducted unauthorized sale of heroin, where he did it, at what price and under what conditions, which cannot constitute a clear set of facts describing the actions of the defendant on the basis of which he could be convicted.

Thus, all the defendants were acquitted due to the deficiency in the indictment because, as stated in the verdict of the Higher Court, "the court could not add a constituent element of the crime, as it would thus assume a role that does not belong to it".

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### Too late to amend the indictment

The Special Prosecutor amended the indictment in the second trial before the Higher Court in Bijelo Polje, adding that the defendants had procured and transported narcotic drugs "for sale". However, the Prosecutor was not able to make this change at that stage of the proceedings because the Prosecutor had not lodged an appeal against the previous verdict, except for the decision on the sentence, and thus, by amending the indictment, he could not have constituted an essential element of the crime.

Namely, the Criminal Procedure Code prescribes the principle of prohibition of modification to the detriment of the defendant. In the case where the appeal is lodged solely in favor of the defendant, the judgment shall not be modified to his detriment with respect to the legal qualification of the offense and the criminal sanction.

However, the appeal against the convicting part of the first verdict was lodged only in favor of the defendants, so in the retrial the prosecutor was not in the position to modify the indictment to the detriment of the defendants in terms of legal qualification, that is, the court could not have taken the amended indictment as the basis for the verdict because it would then violate the principle prohibition of modification to the detriment of the accused.

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### The first panel confirmed the unlawful indictment

Still, in addition to the unacceptable omissions of the Special Prosecutor, with such views and conclusions in the retrial, the Higher Court has also revealed serious omissions in the control of the indictment.

After the indictment has been filed, it is submitted to the court for review and confirmation, and the court has scheduled a hearing for its examination and evaluation of legality and justification. [168] When it finds in the procedure for indictment control that the offense in the indictment is not a criminal offense or that there is insufficient evidence that the defendant is reasonably suspected of the offense he is charged with, the court must suspend the criminal proceedings. [169]

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[168] Article 293 of the Criminal Procedure Code  
[169] Article 294, Paragraph 1 Item 1 of the Criminal Procedure Code



However, the First Panel of Judges of the Higher Court in Bijelo Polje did not suspend the proceedings but confirmed the indictment, although the defendants were charged with the offense of Establishment of a Criminal Organization for which the same court later found that there was no evidence and that the prosecutor did not specify concretely any actions of any of the defendants.

The Criminal Procedure Code stipulates that the indictment must contain a description of the act from which the legal characteristics of the crime are derived,[170] meaning that the offense that the defendants are charged with the indictment must be consistent with the legal description of the crime. In the event that the indictment has errors or defects relating to the description of the offense that the defendant is charged with, the court is obliged to return the indictment to the prosecutor to rectify the deficiencies and to file an amended indictment within three days. [171]

With this indictment the prosecutor charged the defendants with an action related to smuggling of narcotic drugs which does not constitute a criminal offense under the Criminal Code because it lacks an essential element, as stated above.

However, the Higher Court in Bijelo Polje did not comply with the law, but confirmed the indictment with obvious deficiencies and allowed the continuation of the proceedings which ended with the acquittal. Because of such court action of the Court, these defendants can never be tried again for these crimes.

**Judges who have decided in this case in the first panel, although they were prohibited from doing so by the law, are still in the same positions. These judges also ruled in other important organized crime cases where numerous omissions were made. [172]**

## Acquittal confirmed by the Court of Appeals

The acquittal of the Higher Court in Bijelo Polje was upheld by the Court of Appeals of Montenegro,[173] stating that the first instance court "correctly stated in the reasoning of the impugned verdict that it was bound by the principle of prohibition of amendment to the detriment of the defendants, having found that the appeal was lodged only in favor of the defendants".

The Court of Appeals also affirms the view that, as the previous verdict was quashed by taking into account the appeal of the Defense Counsel lodged in favor of the defendants, the judgment cannot be modified to their detriment with regard to the legal qualification of the crime.

The Court of Appeals notes that what the defendants were charged with in the original indictment "did not contain the mandatory elements of the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs", further confirming that the Higher Court confirmed an unlawful indictment.

[170] Article 292, Paragraph 1, Item 2 of the Criminal Procedure Code

[171] Article 293, Paragraph 6 of the Criminal Procedure Code

[172] For example, the same panel of Judges Gorica Đalović, Šefkija Đečević and Vitomir Bošković tried in the case of Ks.no.4 / 15-11 in the case against Kalić, and Judge Šefkija Đečević was the President of the Trial Chamber in the case of Šarić Ks.br.3 / 11

[173] Verdict Kzs.no.52/2013 dated 25.03.2014.



## They do not want to control their colleagues

This case also shows a rather incomprehensible court action in assessing the lawfulness of secret surveillance measures. The use of these measures was prescribed precisely by the judges who tried this case in the first panel of judges.

The final verdict of the Higher Court in Bijelo Polje states that the court did not inspect the orders ordering the secret surveillance measures, the orders to extend the use of the secret surveillance measures, or the orders ordering the search. At the same time, this court finds that they were made in accordance with the law and that they were acted upon in accordance with the law.

The court then concludes that the secret surveillance measures were approved and prolonged in a lawful manner, but that they did not produce material evidence for the criminal offense of Establishment of a Criminal Organization. However, it remains incomprehensible how could the court conclude this, if it did not inspect during the proceedings the orders introducing and extending the use of these measures.

## Data concealing

In this case again, the courts have removed from the verdicts the data regarding the defendants, vehicles they used, names of mobile networks they used, locations where they were staying, and even the **official reference numbers of the written evidence** adduced during the proceedings.



## 4.

# MONEY LAUNDERING

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In the past six years, seven final verdicts for money laundering have been rendered. [174] However, in only two cases did the prosecution charge the defendants with both money laundering and organized crime.

Proceedings conducted in relation to the Montenegrin branch of the so-called “Balkan Warrior” resulted in acquittals.

In this case the prosecution charged the defendants with the criminal offense of Establishment of a Criminal Organization that was not prescribed by the law at the time of commission. The prosecution accused them also of acts that did not fit the description of the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs.

The Higher Court in Bijelo Polje upheld such an indictment, although it had an obligation to review it and return it for amendment. The court thus allowed the continuation of the proceedings on the unlawful indictment, which led to acquittals entailing the prohibition of retrial for these acts.

Ultimately, the money laundering charges dropped because the prosecution had no evidence that it came from smuggling of cocaine. After three overturned verdicts of the first instance court, and six years after the indictment was filed, it was only in the proceedings before the Court of Appeals that the origin of the money was being established for the first time.

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[174] All final money laundering verdicts made in the last six years have been analyzed in the MANS Monitoring Report available at: <http://www.mans.co.me/en/wp-content/uploads/2019/10/Monitoring-report-3-Money-laundering.pdf>



In the second proceedings described in this chapter, the prosecution has prosecuted a number of persons for numerous organized crime offenses over the years, although it did not have adequate evidence.

After seven years of trial, the prosecution dropped charges for money laundering because it concluded itself that there was no evidence, while the court found that there is no evidence of the criminal association of the accused masterminds of the criminal group. Meanwhile, the criminal prosecution of members of that group, and several other offenses were subject to statute of limitation due to the lengthy court proceedings.

## **Case study 15: Montenegrin branch of the “Balkans Warrior”**

This case study refers to one of the most important criminal proceedings instigated in Montenegro.

The first defendant in the case is Dusko Saric, the brother of Darko Saric, whom police and judicial authorities in several countries consider to be the main drug lord and organizer of cocaine trafficking from South America to Europe, in the case known as the “Balkan Warrior”. While Darko Saric is being tried in Serbia for criminal offenses of international cocaine trafficking and money laundering, his brother is acquitted with the final verdict of the court in Montenegro.

In this case Dusko Saric was charged with cocaine trafficking and laundering of more than EUR 21 million obtained from cocaine trafficking, as a member of a criminal organization organized by his brother Darko, and together with the defendant Jovica Loncar and other members of the organization. [175]

### **The omissions of the Special Prosecutor’s Office and the Higher Court in Bijelo Polje enabled the organized crime actors to be acquitted, without the possibility of ever being tried again for those offenses.**

The proceedings ended seven years after the indictment was filed, and Saric and Loncar were acquitted of all charges with the final verdicts of the Court [176] and the Court of Appeals. [177] They are acquitted of the charges for organized crime and cocaine trafficking because the Special Prosecutor and the Higher Court in Bijelo Polje have charged them with actions that do not constitute criminal offenses according to the Criminal Code, and the charges for money laundering failed because during the proceedings neither the court, nor the prosecutor engaged in establishing its origin.

The Higher Court in Bijelo Polje upheld the apparently unlawful indictment, despite the legal obligation to control it, and rendered three unlawful verdicts, showing that it was unable to determine which law to apply.

[175] Soković Goran, Vujanović Željko, Pandrc Marko, Nedić Boško, Novaković Nenad, Vuković Draško, Tošić Darko, Vorotović Marko, Pavlović Nikola, Labudović Dragan, Rakić Dejan, Pandrc Miloš, Cajić Miloš, Adamović Radan, Krpović Miloš, Joksović Nebojša, Tunjić Borislav, Knežević Mirko, Nikolić Miloš, Bajić Vitomir, Bulajić Marko, Crljen Srećko, Crljen Vladimir, Dimitrijević Nenad, Dimitrijević Nikola, Đorđević Zlatko, Gaćeša Dragan, Kapetanović Božidar, Klisura Srpkó, Milovac Milan, Sibinski Živko, Dudić Dragan

[176] Kž.I no.2/18 dated 06.03.2018.

[177] Kžs.no.83/12 dated 08.03.2013. and Kž.no.66/15 dated 27.09.2017.



Having in mind that the special prosecutors and the Higher Court judges should be among the most competent staff in the judiciary, the possibility that there exists such a degree of ignorance and incompetence at that level is almost fully excluded. For that reason, the omissions in this case raise serious doubts about the abuse of office by the Special Prosecutor's Office and the Court.

The proceedings against Dusko Saric and Jovica Loncar were instigated in 2011. In the indictment of the Special State Prosecutor [178] Saric is charged with the commission of three criminal offenses:

- A. Establishment of a Criminal Organization,
- B. Unauthorized Production, Possession and Distribution of Narcotics (more than 260 kg of cocaine), and
- C. Money Laundering in the amount of EUR 21,353,879.22 obtained through the sale of cocaine, (continued criminal offense, committed together with the other defendant Jovica Loncar).

Special Prosecutor, Djurdjina Ivanovic, drafted the indictment in a way that ultimately had to result in the acquittal. The prosecutor charged the defendants with an offense which was not stipulated as a criminal offense at the time of commission, that is, with an action that did not correspond to the description of any criminal offense.

Such an indictment was confirmed by the panel of judges of the Higher Court in Bijelo Polje, headed by Sefkija Djesevic, as the President of the Panel, and Vukomir Boskovic and Joka Varagic, as members of the Panel. Thanks to their decision to confirm an unlawful indictment, the defendants can never be tried again for these criminal offenses.

The text that follows contains an overview of verdicts for each of the three criminal offenses that Saric was charged with.

## A. Organized crime

### Charges for a criminal offense that is not stipulated in the law

Organized Crime is first defined in the procedural code (CPC), with the provisions that were applied to every offense committed in an organized manner,[179] while it has been stipulated as a separate criminal offense, Establishment of a Criminal Organization, with the amendments of the Criminal Code in 2010. [180]

As the Criminal Code cannot be applied retroactively, except when it is more favorable for the defendant, the state prosecutor cannot charge the defendants with the criminal offense of establishment of a criminal organization for offenses committed prior to the 2010 amendments to the Criminal Code. In such cases, the prosecutor is obliged to refer in the indictment to the provision of the CPC, with the explanation that a criminal offense was committed in an organized manner.

**However, in this case [181] the Special Prosecutor charged Defendant Saric with the criminal offense of establishment of a criminal organization for actions committed in the period from 2007 to 2009, that is, prior to coming into effect of amendments to the Criminal Code in which that offense is stipulated.**

Such an omission of the Special Prosecutor had to result in the failure of the indictment.

[178] Kt-S.no. 7/10-2 dated 14.05.2011.

[179] Article 22, Item 8 of the Criminal Procedure Code

[180] Article 401a of the Criminal Code

[181] Verdict number Ks. no. 3/11 dated 03.05.2012., Indictment number Kt-S.no.7/10-2 filed on 14 May 2011, which was represented by the Special Prosecutor Djurdjina Ivanovic



## Higher Court confirmed the indictment for a non-existent criminal offense

After its filing, the indictment is submitted to the Court to control and confirm it, and the Court schedules a hearing to review and assess the legality and justification of the indictment. [182] If it is established, during the course of control of the indictment, that the act that the act the defendant is charged with is not a criminal offense, the court must discontinue the criminal proceedings. [183]

However, the Higher Court in Bijelo Polje did not suspend the proceedings, but confirmed the indictment, despite the fact that the Special Prosecutor charged the defendants with the act that did not constitute a criminal offense at the time when it was committed.

Thus the Court allowed for the continuation of the proceedings based on an unlawful indictment, which resulted in the acquittal, as well as the prohibition of retrial for the same offense. Namely, **had the Higher Court in Bijelo Polje acted in line with the law and discontinued the criminal proceedings, the defendant could have been tried for this criminal offense in a new trial**, because the prohibition of retrial does not refer to cases that were discontinued with the final decision of the Court. [184]

In the first verdict in this case, [185] the Higher Court in Bijelo Polje **acquitted** Defendant Saric, concluding that there is **no evidence** that the defendant committed the crime of Establishment of a Criminal Organization.

## Acquittal by the Court of Appeals

Almost two years after the filing and confirmation of the unlawful indictment, the **Court of Appeals** of Montenegro [186] **acquitted** Defendant Saric of this offense, but on other grounds – because **at the time of commission the offense he was charged with was not stipulated in the law**.

The Court of Appeals of Montenegro called exactly upon the principle of legality, noting that the criminal offense of establishment of a criminal organization was incriminated as a criminal offense only with the amendments to the Criminal Code in 2010, while the indictment states that the time of commission of the crime was in the period from October 2007 to May 2009.

The Court of Appeals concluded that with such an indictment, this criminal offense could not have been subject to evidentiary proceedings and that the defendant is acquitted because the act he is charged with did not constitute a criminal offense according to the law in force at the time of commission.

**Thus, Saric was acquitted on the charges for organized crime on the legal basis that is most favorable for the defendant and that stipulates that the act he is charged with is not a criminal offense. [187]**

[182] Article 293 of the Criminal Procedure Code

[183] Article 294, Paragraph 1, Item 1 of the Criminal Procedure Code

[184] Article 6 of the Criminal Procedure Code stipulates that no person will be tried again (Ne bis in idem) for a criminal offense s/he has already been acquitted of by a final judgment, while Article 36 of the Constitution of Montenegro stipulates that no person can be tried again or convicted again for the same punishable act.

[185] Ks.no. 3/11 dated 03.05.2012.

[186] Zoran Smolovic, President of the Panel, Ratko Cupic and Dragisa Rakocevic, members of the Panel

[187] Verdict Kzs.no.83/12 dated 08.02.2013.



## B. Cocaine trafficking

### Indictment for the action that does not correspond with the description of the criminal offense

In the indictment, Saric is also charged with the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics, that is, of more than 260 kilograms of cocaine.

However, with regard to this criminal offense, the indictment states the action that does not correspond to the description of that criminal offense in the Criminal Code.

The Criminal Code defines the action through which the criminal offense of Unauthorized Production, Possession and Distribution of Narcotics is described alternatively as follows:

- 1) Unauthorized production, processing and sale;
- 2) Purchase, possession or transport for sale;
- 3) Mediation in sale or purchase, and
- 4) Any other act of unauthorized release into circulation of narcotic drugs. [188]

However, the Special Prosecutor did not charge Defendant Saric with any of the stipulated actions of this criminal offense. Saric was not charged with unauthorized production, processing and sale, nor with the purchase, possession or transport for sale, nor with mediation in sale or purchase, nor with any other act of releasing narcotics into circulation, as defined in the description of this criminal offense in the Criminal Code.

Instead, the Court of Appeals found that the Special Prosecutor in its indictment, and the Higher Court in Bijelo Polje in its first instance verdict against Saric, charged him with actions that do not constitute a criminal offense. In the verdict of the Court of Appeals [189] it is stated as follows:

*“...From the aforementioned description of facts it can be concluded that the actions taken by Defendant Dusko Saric in relation to sale of 27 kg and 20.658 grams of cocaine were the ones where he **was in Livigno** at the time when sale of cocaine took place, and two days prior to detection of perpetrators who sold narcotics, **he left Milan and came to Belgrade**”.*

In the same verdict, the Court of Appeals also states as follows:

*“...As for the description of facts regarding **issuance of orders through telephone communication, this part related to actions taken following the commission of the crime, which was committed by the members of the group in Livigno...**”*

Thus, the prosecutor charged Defendant Saric with staying in particular locations during the sale of cocaine and giving certain orders to other members of the criminal organization via telephone, however, for actions taken after the commission of the criminal offense in relation to sale of cocaine. As these are actions that do not fall under any of the actions stipulated in the Criminal Code as a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, Saric had to be acquitted of these charges.

[188] Article 300, Paragraph 1 of the Criminal Code of Montenegro  
[189] Kzs.no.83/12 dated 08.02.2013.



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## The Higher Court confirmed the indictment for actions that do not constitute a criminal offense

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The Criminal Procedure Code stipulates that the indictment must contain, inter alia, description of the actions from which legal characteristics of a criminal offense stem from. [190] Thus, the offense that the defendant is charged with must correspond with the legal description of the action that constitutes a criminal offense.

In case that the indictment contains some mistakes or shortcomings regarding the description of offense that the defendant is charged with, the court is obliged to send the indictment back to the prosecutor to correct the shortcomings and file a corrected indictment within three days. [191]

Still, the Higher Court in Bijelo Polje did not act in line with the law, but confirmed the indictment in this part, with obvious shortcomings, and allowed for the continuation of proceedings, which also resulted in an acquittal and prohibition of retrial for cocaine trafficking.

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## Acquittal by the Higher Court

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In the first verdict in this case, [192] the Higher Court in Bijelo Polje acquitted Defendant Saric of guilt for this offense, concluding that there is no evidence that the defendant committed the crime of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs.

Thus, the Special Prosecutor in its indictment and the Higher Court in Bijelo Polje in the first instance verdict, [193] described the criminal offense committed by Defendant Saric as his stay in a particular location at the time of sale of cocaine and leaving one location and moving to another prior to detection of offenders who were engaged in selling drugs, as well as giving particular orders to other members of the criminal organization via telephone, but regarding actions taken after the commission of crime in relation to the sale of cocaine.

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## Acquittal by the Court of Appeals

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Just as in the case of the charges for organized crime, the Court of Appeals of Montenegro, in the same verdict [194] reversed the first instance verdict and acquitted Defendant Saric of the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, again on grounds that are most favorable for the defendant, that is, based on the conclusion that the action he is charged with does not constitute a criminal offense according to the law, because it does not contain the necessary elements of that criminal offense as described in the Criminal Code.

Stay in a particular location, leaving one location and moving to another and giving orders for actions after the sale of drugs do not constitute any of the actions described in the Criminal Code as the ones by which the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs is committed.

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[190] Article 292. Paragraph 1. Item 2.

[191] Article 293. Paragraph 6. of the Criminal Procedure Code

[192] Ks.no.3/11 dated 03.05.2012.

[193] Ks.no.3/11 dated 03.05.2012.

[194] Kžs.no.83/12 dated 08.02.2013.



## C. Money laundering

In relation to the charges for this criminal offense, three trials were held before the Higher Court in Bijelo Polje, because the Court of Appeals vacated its verdicts. Finally, after the third verdict of the Higher Court, the Court of Appeals held a hearing and rendered a verdict that was confirmed by the Supreme Court.

### First trial: Which law does the court apply?

With the indictment of the Special Prosecutor, Saric and Loncar were charged with allying via banking and financial operations to conceal the manner of obtaining money that they knew was obtained through crime of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs.

In the period that the prosecution stipulated as the time of commission of the offense of money laundering, the Criminal Code was amended twice, in 2008 and in 2010; and with the 2010 amendments, it was exactly the description of this criminal offense that was changed. [195]

With the first verdict [196] in this case, the Higher Court in Bijelo Polje convicted Defendant Saric to **eight years in prison**, and Defendant Loncar to **six years in prison** for the criminal offense of Money Laundering.

In its verdict, the Court specified the time of commission of the offense to be the period from 24 July 2007 to the end of 2010, although the indictment specifies a different time period, from 24 December 2007 to the end of 2010. However, the court did not specify any act of the defendants in 2010, but stated that the last act was committed on 30 December 2009.

The verdict of the Higher Court in Bijelo Polje does not specify which law was applied by the court, thus, **this verdict was vacated as incomprehensible by the verdict of the Court of Appeals of Montenegro, and the case was sent back for retrial.** [197]

Namely, the Higher Court in Bijelo Polje did not state clearly the time when the offense was committed, that is, it remained unclear whether this offense was committed in late 2009 or in late 2010. This fact determines which law is to be applied, because the 2010 amendments to the Criminal Code amended the description of the criminal offense of Money Laundering.

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[195] Before these amendments, the description of this criminal offense stated that the offense was committed by the person who concealed the manner of obtaining money or other assets for which he knew that they were obtained through a criminal offense, via banking, financial or other business operation.

The description of this criminal offense in the Criminal Code from 2010 involves three different forms:

- conversion or transfer of assets;
- obtaining, possessing or using assets, and
- concealing or falsely presenting facts about property.

[196] Ks.no. 3/11 dated 03.05.2012.

[197] Kzs.no.83/12 dated 08.02.2013.



## Second trial: Wrong law, there is no predicate criminal offense

In the retrial, following the evidentiary proceedings, the prosecutor changed the description of facts regarding the time when the crime of money laundering was committed, by specifying a shorter period of time in the indictment, from 24 December 2007 until the end of 2009.

With the new verdict in the Higher Court in Bijelo Polje [198] Defendants Saric and Loncar were convicted again and the court sanctioned them with **five years and six months in prison**.

Still, in this verdict again the court made the mistakes that make the verdict incomprehensible and unlawful. For that reason, **the Court of Appeals vacated for the second time the verdict and returned the case for retrial to the first instance court.** [199]

In its verdict, the Higher Court in Bijelo Polje qualified this criminal offense referring to the amendments to the Criminal Code in 2008. However, these amendments did not refer to the criminal offense of money laundering, so the Court of Appeals noted that they should have applied the Criminal Code from 2006, because this Code was in force at the time of commission of the crime, and no later amendments of the Code were more favorable for the defendants in order to be applied.

According to the verdict of the Court of Appeals, the Higher Court in Bijelo Polje omitted from the disposition of the verdict the part of the indictment with the description of the predicate criminal offense through which the money was obtained.

The indictment states that this money was obtained through a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs from Article 300 of the Criminal Code, committed in an organized manner with Darko Saric, brother of Dusko Saric, as the organizer, and other members of the criminal organization, for which criminal proceedings were instigated against these persons in the Republic of Serbia and the Republic of Italy. In the continuation, the indictment describes how Dusko Saric and Jovica Loncar introduced the money obtained through a criminal offense into the legal financial flows.

However, in its verdict the Higher Court in Bijelo Polje mentions only generally that the money was obtained through a criminal offense, without stating the action through which the money was obtained and who took that action. In the opinion of the Court of Appeals, this made the convicting verdict completely incomprehensible.

Additionally, the Higher Court in Bijelo Polje states that it took into consideration the fact that Defendant Saric was previously acquitted of the criminal offenses of Establishment of a Criminal Enterprise and Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs. The fact that Saric was acquitted of these criminal offenses cannot be related to the criminal offense of Money Laundering, which was clearly stated by the Court of Appeals in its ruling.

Besides, the Court of Appeals noted serious contradictions in the first instance verdict. Namely, the Higher Court in Bijelo Polje related the origin of money with the actions taken by Dusko Saric and his criminal organization and the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, and then, as a contradiction, stated that the money was not obtained through that criminal offense.

Thus, it remained completely unclear which part of the indictment was accepted by the Higher Court in Bijelo Polje and what it concluded in terms of which criminal action was used to obtain the money for which the defendants have allegedly concealed the manner in which it was obtained.

[198] K.no. 23/13-11 dated 30.12.2013.  
[199] Kž.no. 61/14 dated 12.06.2014.



## Third trial: The origin of money was not established?

With the third verdict of the Higher Court in Bijelo Polje [200] Defendants Saric and Loncar were convicted again to **five years and six months in prison**.

In this verdict, the Higher Court reintroduces into the description of facts the description of the predicate criminal offense, stating that the defendants knew that the money was obtained through the criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs from Article 300 of the Criminal Code, for which other countries have instigated criminal proceedings against Darko Saric and other persons.

Both the prosecutor and the defendants' attorneys have lodged appeals with the Court of Appeals against the verdict of the Higher Court.

The Court of Appeals of Montenegro rejected the prosecutor's appeal, while accepting the appeal by the defendants' attorneys and amended the first instance verdict by **acquitting the defendants of the criminal offense of Money Laundering because it has not been proven that they have committed it.** [201]

As the Court of Appeals decided for the third time in the same case, based on appeals, this court rendered the verdict [202] after it held again the main hearing. [203]

In its verdict the Court of Appeals noted that:

*“neither the prosecutor, nor the first instance court have found it necessary to establish whether the money that was ultimately paid to the account of the company MAT COMPANY LLC Pljevlja originates from legal sources, as claimed by the defense, or from the sources states in the indictment”.*

In the same verdict, the Court of Appeals stated that it is clear that the court expert was not ordered, or instructed to investigate the origin of assets in non-resident accounts of the companies the documentation of which was subject to his expertise.

**Thus, more than six years after the indictment was filed in this case, it was for the first time before the Court of Appeals that the origin of money was being established, for which the prosecution claimed that it originated from cocaine trafficking.**

That is, the decisive facts to prove the criminal offense of Money Laundering regarding the origin and basis of money and control of documentation of the commercial banks and other legal entities were established by the court expert, instead of the prosecutor, in the third proceedings on the appeals before the second instance – Court of Appeals.

The Court of Appeals issued an order to the financial expert to look into the documentation of the commercial banks [204] and other legal entities and to establish the basis on which the money was paid into the accounts of the defendants' companies. The court expert stated in his report the grounds and sources of funds paid into the accounts of the defendants' companies.

[200] K. no.39/14-11 dated 27.02.2015.

[201] Verdict of the Court of Appeals of Montenegro Kž.no.66/15 date 27.09.2017.

[202] In line with the provision of Article 407, Paragraph 5 of the Criminal Procedure Code, which was in force at the time when the Court of Appeals of Montenegro rendered the verdict, when the first instance verdict was vacated twice, the second instance court will render the verdict itself in the session of the panel or following a main hearing.

[203] Article 395, Paragraph 1 of the Criminal Procedure Code stipulates, inter alia, that the main hearing before the second instance court will be held if necessary to present new evidence or to repeat already presented evidence due to erroneous or incomplete establishment of the facts.

[204] Hypo Alpe Adria banka AD Podgorica and Prva banka Crne Gore AD Podgorica



However, the prosecution did not provide any evidence that this amount, or part of the amount, was obtained through a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs, committed in an organized manner, with Dusko Saric as the organizer, and other members of the criminal organization.

For that reason, the Court of Appeals concluded that the indictment only causes suspicion, that is, there are only leads that the money was obtained through a criminal offense of Unauthorized Production, Possession and Release into Circulation of Narcotic Drugs from Article 300 of the Criminal Code, for which other countries have instigated criminal proceedings against Darko Saric and other persons.

## Supreme Court: There is only suspicion...

Seven years after the filing of the indictment these proceedings were concluded with the final verdict of the Supreme Court of Montenegro [205] that rejected the prosecutor's appeal and upheld the verdict of the Court of Appeals of Montenegro by which the defendants were acquitted of the guilt for the offense of Money Laundering.

The Supreme Court has also upheld the opinion that there is only suspicion that the money originates from a criminal offense and that the prosecution did not prove this fact.

## Data concealing

On the basis of the Rulebook adopted by the President of the Supreme Court of Montenegro [206] the data regarding

- amounts of money the origin of which was assessed by the court expert,
- names of companies and names of the banks,
- names of the defendants, prosecutor, court expert, defense attorneys and all other persons

were deleted from the published final verdict of the Court of Appeals.

This prevents the analysis of the verdict and insight by the public into the manner of work and conclusion taking of the court. This is the final verdict, thus, it is of particular concern that the key facts on the basis of which the court decided that there is no guilt on the side of the defendants are being concealed from the public.

[205] Kž.I.no.2/18 dated 06.03.2018.

[206] More details in MANS Monitoring report Vol 2 - Judiciary and fight against corruption, april 2019



## Case study 16: After seven years, the prosecution dropped charges for money laundering

This case study shows that the prosecution prosecuted several persons for numerous organized crime offenses in the proceedings that lasted for several years without adequate evidence.

After seven years of court proceedings, the prosecution dropped its money laundering charges because it concluded itself that there was no evidence that these crimes were committed.

The court found that the prosecution did not have any evidence of criminal association in the case of the accused masterminds.

Meanwhile, criminal prosecution of members of a criminal group was subject to statute of limitation because of the lengthy court proceedings.

On October 25, 2006, the prosecution indicted 16 persons, charging them with 92 criminal offenses, including criminal association and laundering of over € 200,000 obtained through criminal offenses of forging a document and fraud by misleading customers that it was a lawful sale of stocks in the stock market.

For almost all of these offenses, the court, after nearly eight years, rendered acquittals or dismissals. [207]

**The Higher Court in Podgorica found that the prosecution did not prove that the three defendants were the masterminds of the criminal organization:**

“When it comes to the criminal offense of Criminal Association, where these defendants are charged with being its masterminds, the Court did not adduce any evidence from which it could reliably establish the manner in which the criminal association was organized and in which it acted, or the actions that they as the masterminds have taken to form a criminal association.” [208]

“The mere allegation in the factual description that these defendants organized a criminal association - a group, managed a criminal association, that they assigned roles and tasks as masterminds, that they - as masterminds - had pre-assigned roles and that they used economic and business structures, **does not indicate in any way that they have actually undertaken any of the aforementioned activities that could give them the capacity of masterminds of a criminal association because the evidence adduced did not confirm this part of the charge**”. [209]

**For all the defendants charged by the prosecution of being members of the criminal association, the court rendered dismissals in relation to the criminal offense of criminal association, since the absolute statute of limitations on prosecution occurred. [210]**

[207] Ks.no.3/14 dated 22.07.2014, judges Valentina Pavlicic, Ratko Cupic and Radomir Ivanovic

[208] Ibid.

[209] Ibid.

[210] The amended indictments charged those defendants with becoming members of a criminal group in mid-2005. Article 125, Paragraph 1, Item 6 of the Criminal Code stipulates that the statute of limitation on prosecution occurs in any case when the double time required by law for the statute of limitation for the prosecution to occur has elapsed; when these provisions are related to the time stated in the indictment as the time when the defendants committed this crime (mid-2005), in relation to these defendants and in relation to this criminal offense, the absolute statute of limitation for prosecution occurred on 31 December 2011.

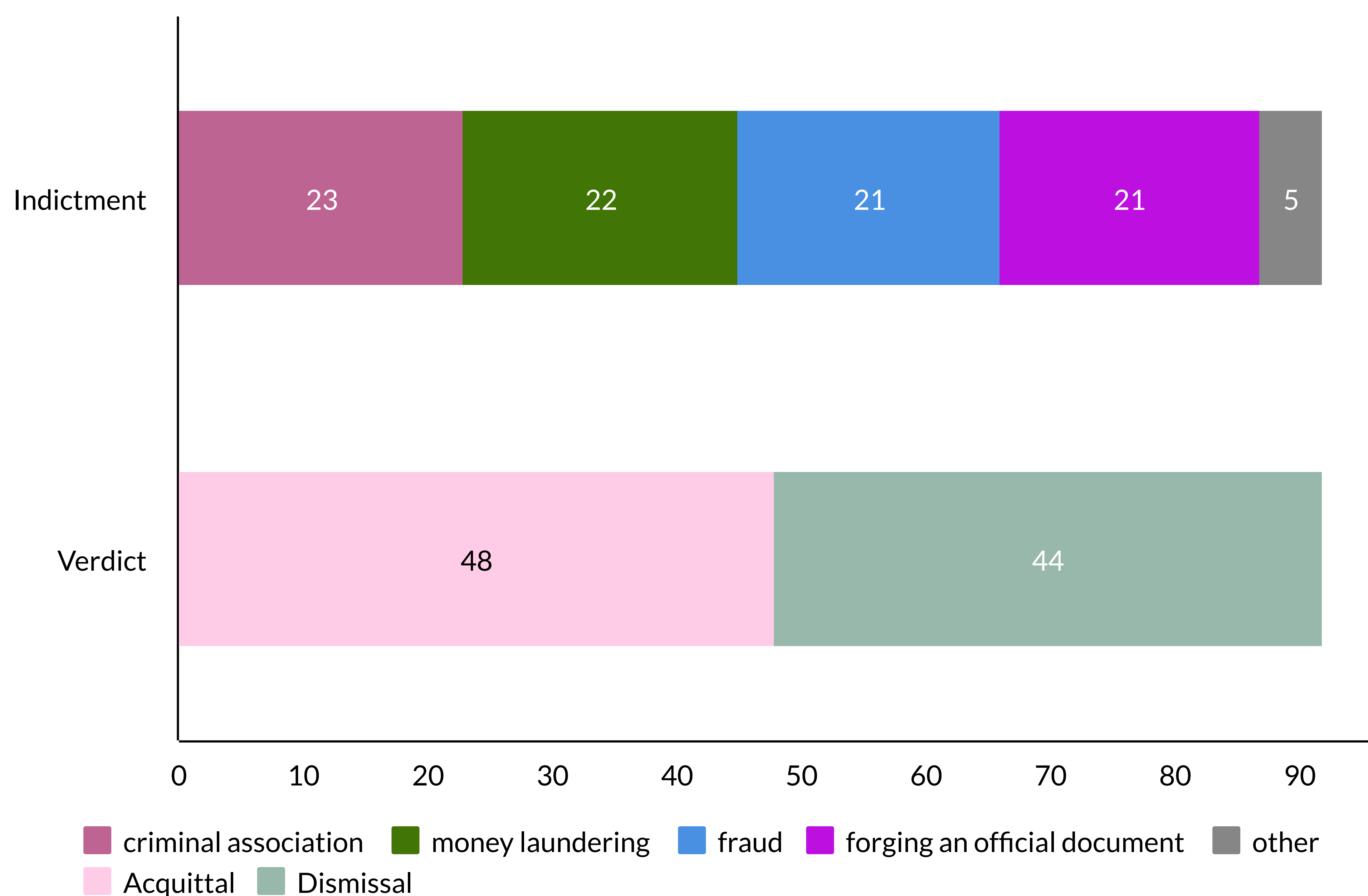


The Deputy Special Prosecutor, Lidija Vukcevic, amended the indictment several times and **dropped all charges of money laundering in her closing statement seven years after the indictment was filed.**

The verdict states that the prosecutor pointed out that she **drops further prosecution “because the established facts at the main hearing did not prove that they committed the mentioned criminal offenses.”**

The court found that the prosecution did not prove any of the criminal offenses of fraud or the criminal offenses of forgery of an official document.

Finally, the court found that the absolute statute of limitations has occurred for all criminal offenses of abuse of office and unconscientious performance of service. [211]



**Graph11:** Number and type of criminal offenses that defendants were charged with, in relation to the final verdict of the Higher Court in Podgorica by number of criminal offenses [212]

**The Court of Appeals dismissed the appeal of the Supreme State Prosecutor’s Office and upheld the first instance verdict. [213]**

[211] Having in mind the time of commission – mid-2005, absolute statute of limitation occurred on 31 December 2011.  
 [212] Ks.no.3/14 dated 22.07.2014, judges Valentina Pavlicic, Ratko Cupic and Radomir Ivanovic  
 [213] Kž-S.no. 22/14 dated 10.02.2015, judges Milic Medjedovic, Milivoje Katnic and Seka Piletic



## 5.

# SMUGGLING OF HUMAN BEINGS

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Penal policy of the courts for organized smuggling of a larger number of migrants through Montenegro into the EU countries is very lenient. The courts usually imposed sentences below the statutory minimum on the masterminds and members of these criminal groups.

Such penalties did not deter the perpetrators of criminal offenses from this type of crime, so some of them were arrested again even before serving their prison sentences.

The Special Prosecutor's Office did not appeal the verdict, which imposed sentences below the legal minimum for organized smuggling of several hundred migrants.

Some indictments were unjustifiably presented as results in the fight against organized crime, as the courts found that the prosecution did not have evidence for organized smuggling in human beings.

In one case, the prosecution entered into an agreement with the mastermind of the criminal organization, although it had strong enough evidence for a more severe conviction in the regular proceedings. The court accepted such an agreement, accepting the confession, and in particular the defendant's "middle age" as mitigating circumstances.



## Case study 17: Lenient penal policy encourages recidivists

In this case, without proper justification, the courts reduced the sentences to the mastermind and members of the criminal group that smuggled migrants to the countries of the European Union across several states.

These defendants were previously convicted of drug trafficking from the same destinations, and in these proceedings the courts imposed sentences below the statutory minimum.

Even these lenient sentences were not efficiently implemented in practice, so the mastermind of the criminal association continued to smuggle people even after the verdict became final, instead of serving a prison sentence.

Two proceedings were conducted before the Higher Court in Podgorica, against the mastermind and members of the criminal organization that in the period from September to December 2013 smuggled in an organized manner **210 citizens of the Afro-Asian countries from Albania to Montenegro and Serbia, and further on to the countries of the European Union.**

The proceedings against one member of the criminal organization were separated due to his poor health state, as stated in the judgment of the Court of Appeals. [214]

### The first verdict: Lenient sanctions

With the verdict of the Higher Court in Podgorica [215] the mastermind of this criminal organization, Drazen Djokic and nine other members of the criminal organization were convicted of the criminal offenses of Establishment of a Criminal Organization and Unauthorized Crossing of the State Border and Smuggling of Human Beings.

**All of the imposed sanctions were close to or below the statutory minimum.**

For the establishment of a criminal organization, Djokic, as the mastermind, was sentenced to two years in prison, which is below the statutory minimum, and for smuggling to one year and eight months, thus a cumulative sentence of **three years and six months** in prison was imposed on him.

**However, Djokic was previously convicted of participating in the organized smuggling of over 100 kilograms of marijuana** from Albania through Montenegro to Bosnia and Herzegovina. [216] The Court of Appeals [217] then mitigated his sentence with the reasoning that the court of first instance gave too much importance to the amount of narcotic drugs and its danger to human health [218], and was sentenced to a cumulative sentence of two and a half years.

[214] Kzs.no.5/2017 dated 21.04.2017, judges Dragisa Rakocevic, Milenka Zizic and Zoran Smolovic

[215] Ks.no.11/14 dated 30.12.2015

[216] Ks.no.2/13 dated 08.05.2013, judges Ana Vukovic, Biljana Uskokovic and Ratko Cupic

[217] Kzs.no.34/13 dated 29.11.2013, judges Zoran Smolovic, Ramo Strikovic and Seka Piletic

[218] More details can be found in Case Study 4: 100 kilograms is not a large quantity

**Reasoning of the court for these extremely lenient sanctions imposed on the mastermind of the criminal group, who was convicted previously, is unknown, because the first instance verdict, which was partially upheld as final and enforceable, has not been available to the public.**

For the establishment of a criminal organization, the mastermind and four members of that organization were sanctioned below the statutory minimum, three were punished with a minimum sentence, and only one was punished above the prescribed minimum.

Four members of the organization were imposed a sanction below the statutory minimum for the smuggling of a larger number of people. The sanction imposed on the mastermind was seven months above the statutory minimum, for one member of the organization the sanction imposed was four months above the minimum, for two of them the sanction was three months higher than the minimum, and one defendant was imposed a sanction two months higher than the statutory minimum.

| Sanctions/ criminal offenses and circumstances | Establishment of a criminal organization | Smuggling of a larger number of persons | Cumulative sentence |
|--|--|---|---------------------|
| <b>Mastermind</b>                              |  |   |                     |
| Statutory                                      | 3 – 15 yrs                               | 1 – 10 yrs                              | -                   |
| Imposed  | 2 yrs                                    | 1 yr and 7 m                            | 3 yrs and 6 m       |
| <b>Members</b>                                 |  |   |                     |
| Statutory                                      | 1 – 8 yrs                                | 1 – 10 yrs                              | -                   |
| Imposed  | 1 yr and 5 m                             | 1 yr and 4 m                            | 2 yrs and 7 m       |
|  | 1 yr                                     | 1 yr and 3 m                            | 2 yrs and 2 m       |
|  | 1 yr                                     | 1 yr and 3 m                            | 2 yrs and 2 m       |
|  | 1 yr                                     | 1 yr and 2 m                            | 2 yrs and 1 m       |
|  | 7 m                                      | 6 m                                     | 1 yr                |
|  | 6 m                                      | 6 m                                     | 11 m                |
|  | 6 m                                      | 5 m                                     | 10 m                |
|  | 5 m                                      | 5 m                                     | 9 m                 |

Table 5: Overview of sanctions imposed with the first instance verdict [219] (in years and months)

**The special prosecutor who represented the indictment [220] was satisfied with the pronounced sanctions, so he did not appeal the first instance verdict.**

[219] First instance verdict was not published, so we do not know which circumstances the court considered when imposing sentences and how.  
 [220] First instance verdict was not published, so it is not known which prosecutor represented the indictment.



## Court of Appeals: Sanctions against the mastermind and six members upheld, against three members overruled

The verdict of the Court of Appeals of Montenegro [221] confirmed the sentences for the mastermind and six members of the criminal organization.

In the reasoning of the verdict, the Court of Appeals stated that the first instance court had taken into account all the circumstances that influenced the sentencing and that it correctly assessed them. However, it remained unclear what the circumstances were and how the first instance court assessed them, especially in relation to the mastermind of the criminal organization who had previously been convicted and to whom the Court of Appeals had previously reduced the sentence, but he continued to commit crimes.

The first-instance verdict was overturned due to the erroneous establishment of facts in case of three members of the criminal organization who were punished with the lowest cumulative sentences of nine, ten and eleven months in prison. The Court of Appeals states that

*“...the conclusion of the first instance court that the conditions are met with regard to these defendants that these defendants became members of a criminal organization aimed at committing the criminal offense of unauthorized crossing of the border and smuggling of people, and that they engaged in smuggling of a larger number of people, does not have a strong basis in the adduced evidence”.*

## Second verdict: Merger of proceedings, three persons acquitted

The court joined a new case against three defendants with the proceedings against Nino Camaj, against whom it has previously separated the proceedings because of his medical condition.

He is also accused [222] of taking, as a member of the same criminal organization organized by Djokic, foreign nationals who were smuggled at the border with Albania, transporting them to Podgorica and handing them over to other persons who were making groups of 10 or more "asylum seekers" for the purpose of smuggling, took the money for smuggling and transported "asylum seekers" to Albania who were taking over, as "guides", groups of Afro-Asian citizens and transferred them from Albania to Montenegro.

Camaj was imposed sanctions below the prescribed minimum for both offenses. For establishment of a criminal organization, the court sentenced him to seven months in prison and eight months in prison for unauthorized crossing of the state border and trafficking in human beings, thus, for both offenses he was imposed a **cumulative sentence of one year and two months in prison.**

In the reasoning of the verdict, the court states that it has taken into account mitigating circumstances, namely: a medical condition caused by a serious illness "as concluded from the medical records" and the fact that he is a family man, assessing that as a particularly mitigating circumstance.

[221] Kžs.no.10/2016 dated 24.06.2016

[222] Indictment by the Special Prosecutor Mira Samardzic Kt-S no.31/13 dated 26.05.2014



However, there is no indication in the verdict of what kind of disease is in question, no medical records are stated, no expert was hired - expert witness to review the medical records and submit findings and opinions to the court. Also, there is no indication of how many family members live with the defendant and what type of kinship is in question.

**The Court states that it took into account previous convictions as an aggravating circumstance, but without specifying how that circumstance influenced the determination of sentences below the prescribed minimum.**

Nino Camaj was **previously convicted** to four years in prison for the criminal offenses of **criminal association and unauthorized production, possession and distribution of narcotic drugs**, with the same verdict that convicted the mastermind of the criminal organization Drazen Djokic for the same offenses. [223]

Three defendants who were tried together with Camaj, in a retrial, were **acquitted** because the court found that there is **no evidence** that they committed the crimes that the prosecution charged them with. [224]

### **Court of Appeals: More lenient sanctions are appropriate, although he was already previously convicted**

The verdict of the Higher Court was upheld by the Court of Appeals of Montenegro. [225] And that court reiterated again the mitigating circumstances in favor of Camaj: poor health caused by a serious illness, as well as being a family man, and concluded that

*“in relation to both offenses, the first instance court appropriately mitigated the sentence below the lower limit prescribed for the offenses he was convicted of, regardless of the fact that the defendant had previous convictions”.* [226]

### **Instead of going to prison, the mastermind continued to smuggle people**

Although the conviction of the mastermind Djokic and other members of the criminal organization became final in June 2016, two years later he was not serving a three-year and six-month prison sentence.

Instead of serving a prison sentence, Djokic continued to smuggle migrants in October 2018, when he was **arrested again**, transporting 14 migrants from Pakistan to the border with Bosnia and Herzegovina for a financial compensation, and was **charged again with human trafficking**. [227]

[223] In this case, Camaj was sentenced to three years and six months in prison for the unauthorized production, possession and distribution of narcotic drugs and one year in prison for criminal association, for participating in the organized smuggling of 101 kg of marijuana from Albania through Montenegro to Bosnia and Herzegovina.

[224] The court found that they, as taxi drivers, were transporting foreign nationals at the cost of the usual taxi fare. There was no other evidence that the three defendants acted as members of a criminal organization based on the pre-determined tasks and roles, that they were aware that they were operating within a criminal organization and that they wanted to commit crimes.

[225] Verdict Kžs.no.5/2017 dated 21.04.2017

[226] The verdict of the Court of Appeals states that “in view of his poor health, which resulted in separation of the proceedings against him from the proceedings against the mastermind and other members of the criminal organization, and the first-instance court properly mitigated his sentence below the prescribed minimum for both offenses that he was convicted of, regardless of the fact that the defendant was previously convicted of the offenses”.

[227] Source: <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=665898&datum=2018-10-06>



## **Case study 18: Sanctions below the minimum for organized smuggling of migrants**

This study shows that the Special Prosecutor's Office did not appeal the verdict that imposed minimum sanctions for organized smuggling of several hundreds of migrants into the countries of the European Union.

In this case the court did not assess the aggravating circumstances regarding the degree of guilt, severity of violation of the protected good and the severity of consequences of the committed offense.

Based on the indictment of the Special Prosecutor [228] proceedings were conducted before the Higher Court in Podgorica against the mastermind and members of the criminal organization who smuggled in an organized manner **minimum 301 Afro-Asian nationals from Albania to Montenegro and Serbia and further on to the EU countries** in the period from September to December 2013.

A total of 14 persons were convicted with the verdict of the Higher Court in Podgorica. [229]

For the establishment of a criminal organization, **Ujkan Muric** was sentenced to two years in prison, while the statutory minimum is three years. For the offense of smuggling, he was sentenced to three years, which is above the statutory minimum of one year.

**Nine members were convicted of establishing a criminal organization, but the sanctions are below the statutory minimum of one year:**

- Six members were sentenced to 10 months in prison each
- Three members were sentenced to six months in prison each.

For the criminal offense of smuggling within the criminal organization, where the statutory minimum is one year in prison:

- Four members were sentenced above the statutory minimum
- Two stayed at the statutory minimum
- Three were sentenced below the statutory minimum.

**Eight persons** were convicted of smuggling of persons outside the criminal organization:

- One person was imposed the minimum sanction
- Seven persons were imposed sanctions below the statutory minimum.

**All of the persons convicted of organized crime have been imposed sentences below the legal minimum. Most of the sanctions for smuggling of human beings are below or at the statutory minimum.**

[228] Kt-s.no.31/13 dated 16.07.2014, Special Prosecutor Natasa Boskovic  
[229] Ks.no.13/14 dated 25.04.2016, judges Biljana Uskokovic, Ana Vukovic and Dragica Vukovic



| <b>Defendant</b>         | <b>Offense</b>                                       | <b>Statutory sentence</b> | <b>Imposed sentence</b> |
|--------------------------|--|---------------------------|-------------------------|
| Murić<br>(mastermind)    | Establishment of a criminal organization             | 3 – 15 yrs                | 2 yrs                   |
|                          | Smuggling of human beings                            | 1 – 10 yrs                | 3 yrs                   |
|                          | <i>Cumulative sentence</i>                           |                           | 4 yrs & 10 m            |
| Ćetković<br>(member)     | Establishment of a criminal organization             | 1 – 8 yrs                 | 10 m                    |
|                          | Smuggling of human beings – within the organization  | 1 – 10 yrs                | 2 yrs                   |
|                          | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 3 m                     |
|                          | <i>Cumulative sentence</i>                           |                           | 3 yrs                   |
| Lazarević<br>(member)    | Establishment of a criminal organization             | 1 – 8 yrs                 | 10 m                    |
|                          | Smuggling of human beings – within the organization  | 1 – 10 yrs                | 1 yr & 6 m              |
|                          | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 6 m                     |
|                          | <i>Cumulative sentence</i>                           |                           | 2 yrs & 8 m [230]       |
| Lagator<br>(member)      | Establishment of a criminal organization             | 1 – 8 yrs                 | 10 m                    |
|                          | Smuggling of human beings                            | 1 – 10 yrs                | 12 m                    |
|                          | <i>Cumulative sentence</i>                           |                           | 1 yr & 8 m              |
| Pejović<br>(member)      | Establishment of a criminal organization             | 1 – 8 yrs                 | 6 m                     |
|                          | Smuggling of human beings                            | 1 – 10 yrs                | 12 m                    |
|                          | <i>Cumulative sentence</i>                           |                           | 1 yr & 4 m              |
| Grujičić<br>(member)     | Establishment of a criminal organization             | 1 – 8 yrs                 | 6 m                     |
|                          | Smuggling of human beings – within the organization  | 1 – 10 yrs                | 10 m                    |
|                          | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 3 m                     |
|                          | <i>Cumulative sentence</i>                           |                           | 1 yr & 5 m              |
| Mijatović<br>(member)    | Establishment of a criminal organization             | 1 – 8 yrs                 | 6 m                     |
|                          | Smuggling of human beings – within the organization  | 1 – 10 yrs                | 10 m                    |
|                          | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 3 m                     |
|                          | <i>Cumulative sentence</i>                           |                           | 1 yr & 5 m              |
| Huremović<br>(member)    | Establishment of a criminal organization             | 1 – 8 yrs                 | 10 m                    |
|                          | Smuggling of human beings                            | 1 – 10 yrs                | 2 yrs                   |
|                          | <i>Cumulative sentence</i>                           |                           | 2 yrs & 8 m             |
| Murić<br>(member)        | Establishment of a criminal organization             | 1 – 8 yrs                 | 10 m                    |
|                          | Smuggling of human beings                            | 1 – 10 yrs                | 2 yrs                   |
|                          | <i>Cumulative sentence</i>                           |                           | 2 yrs & 8 m             |
| Kalač<br>(member)        | Establishment of a criminal organization             | 1 – 8 yrs                 | 10 m                    |
|                          | Smuggling of human beings                            | 1 – 10 yrs                | 6 m                     |
|                          | <i>Cumulative sentence</i>                           |                           | 1 yr & 2 m              |
| Hender Alija<br>(member) | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 12 m                    |
| Samir Aljušević          | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 10 m                    |
| Dacić (member)           | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 10 m                    |
| Dragaš<br>(member)       | Smuggling of human beings – outside the organization | 1 – 10 yrs                | 6 m                     |

Table 6: Statutory and imposed sentences on the mastermind and members of the criminal organization

[230] In the case of this person, there was an extraordinary mitigation of the sentence, imposing a total sentence of two years and 10 months, which must be lower than the sum of the cumulative sentence imposed in this proceeding and the sentence imposed in another proceeding.



## Why were the sanctions mitigated?

In the reasoning of these sentences, the court states that it reduced sentences to defendants below the limit prescribed for the offenses they were convicted of due to the “particularly mitigating circumstances” that these are **young people, without previous convictions, family people and parents.**

The verdict does not give a specific explanation as to why these circumstances are considered particularly mitigating in this case, which would mean that they are not a reason for a more lenient punishment only, but are also a reason for mitigating the sentence below the statutory minimum.

Besides, the court did not find any aggravating circumstances for any of the defendants, so it follows that it completely **ignored the degree of guilt and the consequences of the crimes committed**, and in particular the fact that they smuggled at least 301 persons and obtained financial gain from those persons.

## Upheld by the Court of Appeals

Acting upon the appeals of the defendants and their attorneys, **the Court of Appeals of Montenegro rendered a verdict [231] that upheld the sanctions for all of the defendants.**

That court was not even in the position to impose more stringent sanctions on the defendants because the prosecutor did not appeal the first instance verdict.

**The special prosecutor that represented the indictment [232] was satisfied with the sentences imposed and did not appeal the first instance verdict.**

The Court of Appeals does not mention or appreciate at all the fact that the defendants smuggled at least 301 persons, gained proceeds, and that the degree of guilt is indisputably high among all the defendants. Instead, it **affirms that the first instance court properly appreciated the mitigating circumstances and that it properly reduced the sentences below the prescribed limits.**

[231] Kžs.no.20/2016 dated 22.12.2016, judges Zoran Smolovic, Ratko Cupic and Dragisa Rakocevic  
[232] Nataša Boskovic

## Case study 19: The example of good results melted away

This study shows that the indictments for organized smuggling of human beings were unjustifiably presented as results in the fight against organized crime.

The Special Prosecutor's Office indicted **ten persons** and charged them with 28 criminal offenses. The court convicted two persons only for one criminal offense – forging of official document and concluded that the prosecution did not have evidence for organized smuggling of human beings.

In the beginning of 2012, five people from Bijelo Polje, Plav, Tuzi and Pec were arrested in the “Toronto” police action. [233] This action was assessed by the police as a major contribution to the fight against border crime. [234] In March 2013, this action was presented as evidence that action is being taken with respect to the recommendations of the Parliamentary Assembly of the Council of Europe. [235]

### The indictment

The Special Prosecutor's Office indicted 10 persons [236] and charged them with 28 criminal offenses. They were accused of being members of a criminal group organized by Zeljko Krgovic, which smuggled a larger number of people, for whom forged travel documents were produced in order to enable crossing of state borders.

The prosecution accused them of **producing counterfeit passports, driver's licenses and identity cards for persons from Kosovo or deportees from the EU and the US, and then allowing them to travel to EU countries via Podgorica, Belgrade, Tirana and Skopje airports.** [237]

As the mastermind, Krgovic was charged with establishment of a criminal organization [238], forging of documents [239], unauthorized crossing of state border and smuggling of human beings in an organized manner. [240]

**Nine persons** were charged with being members of a criminal organization, as well as committing criminal offenses of smuggling people in an organized manner and forging documents. They have also been charged with the criminal offense of unauthorized crossing of the state border, and only one of them was also charged with assisting in the commission of that crime. Finally, one person was charged only with aiding in the forgery of documents.

[233] Persons arrested were Željko Krgović (Bijelo Polje), Albert Dedvukaj (Tuzi), Suad Nišić (Bijelo Polje), Zvezdan Drakulović (Plav) and Samir Kastrati (Peja), and the police issued a warrant against five persons from Macedonia, Albania, Serbia and Kosovo.

[234] Police Directorate, “Polijski glasnik”, magazine of the Police Directorate, January-March 2012, no. 13, year V

[235] Vijesti: “Nezavisno pravosuđe u fokusu Vlade?”, 26 March 2013, <https://www.vijesti.me/vijesti/drustvo/nezavisno-pravosuđe-u-fokusu-vlade>

[236] Kt.S.no. 3/12 dated 06.07.2012.

[237] Source: <https://www.monitor.co.me/eu-i-sad-pritiskaju-crnu-goru/>

[238] Article 401a, Paragraph 1 of the Criminal Code

[239] Article 412 of the Criminal Code

[240] Article 405, Paragraph 3 of the Criminal Code



## Verdict: Only two persons were convicted of forgery

Four days after the assessment that this action represents evidence that steps are taken with regard to the recommendations of the Council of Europe Parliamentary Assembly [241], the Higher Court in Bijelo Polje rendered a verdict [242] by which only two defendants were convicted of only one crime – forgery of a document.

One person was convicted to one year in prison, and the other one to a conditional sentence of 4 months in prison, which will not be executed if the defendant does not commit another crime in the period of one year. With the same verdict **all of the defendants were acquitted of all other criminal offenses**, because there was no evidence that they have committed them.

The court concluded that in case of the criminal offense of Establishment of a Criminal Organization it has not been established that “legally prescribed cumulative requirements were fulfilled regarding the number of persons who would join together to commit crimes, that is, three or more persons, and that there was a prior agreement or understanding between them that they conspired to commit a crime”.

Therefore, it stems from the verdict that there is **no evidence that a criminal organization was created** with the aim of committing criminal offenses of forging the documents and unlawful crossing of the state border and smuggling of people, as the prosecution claimed.

Besides, the court noted in the verdict that it has not been “established that the accused Krgovic acted as the mastermind of the criminal organization because, based on the evidence obtained by SSM, it is clear that the co-defendants in this criminal case contacted defendant Krgovic via mobile phone **for advice on how to procure travel documents** for their friends, relatives and the like, following which Krgovic acted on his own.

Thus, the criminal organization stated by the prosecution in the indictment **does not have a plan and an objective by which it operates, nor do they have predetermined roles and tasks, and therefore no awareness of joint action, and the accused Krgovic did not play a leading role as a mastermind.**

Besides, the prosecutor [243] also stated in the indictment with regard to the defendant, convicted by this verdict of forgery of a document, that **she was a member of a criminal organization**, but **did not charge** her with the criminal offense of establishment of a criminal organization.

In the end, the court found that **no evidence adduced has confirmed** that the defendants were committing the criminal offense of Unlawful Crossing of the State Border and Smuggling of Persons by smuggling a larger number of persons, transferring them across the border for the purpose of travelling to the countries of the EU or the USA”.

The verdict of the Higher Court in Bijelo Polje was also **upheld by the Court of Appeals** [244] stating that **there were no actions to establish that Krgovic had created a criminal organization** and that the other defendants had become its members. The Court states that **none of the evidence adduced indicates the participation** of the defendants in the commission of other crimes they had been charged with, except for the two convicted of forgery of documents.

[241] Vijesti: "Nezavisno pravosuđe u fokusu Vlade?", 26 March 2013, <https://www.vijesti.me/vijesti/drustvo/nezavisno-pravosuđe-u-fokusu-vlade>

[242] Ks.no.8/12 dated 29.03.2013, judges Sefkija Djesevic, Jovan Varagic and Vidomir Boskovic

[243] Hasan Lukac

[244] Verdict Kžs.no.40/2013 dated 25.11.2013, judges Zoran Smolovic, Seka Piletic and Milic Medjedovic



## Case study 20: Prosecution concluded the agreement although it had evidence

The prosecution concluded an agreement with the mastermind of a criminal organization that smuggled people into the EU, although it had strong enough evidence for a more stringent conviction in the regular proceedings. The court accepted such an agreement, and assessed the confession, and in particular the defendant's "middle age" as mitigating circumstances.

The Special Prosecutor [245] has concluded a plea agreement [246] with the mastermind of a criminal organization operating in the territory of Montenegro, Bosnia and Herzegovina and Croatia. [247]

The defendant hired other members of the criminal organization to smuggle Turkish nationals to Italy and EU countries for a financial gain of three thousand euros per person. The criminal organization has smuggled minimum 28 Turkish nationals, and it follows that they have earned proceeds of at least 84,000 euros.

He was charged only with the criminal offense of **Establishment of a Criminal Organization** [248], **but not with Smuggling of Human Beings**. The prosecution has agreed to a **two-year** prison sentence, which is below the statutory minimum [249], **and a fine of five thousand euros**. The Grand Cherokee vehicle was seized from the defendant, as well as the proceeds of crime and the cell phones used to commit the criminal offense.

The prosecutor's agreement with this defendant was fully accepted by the verdict of the Higher Court in Podgorica [250] **and the court stated in the verdict that the defendant's guilt stems from the evidence presented by the prosecutor, the power of which lead the defendant to actually propose the conclusion of a plea agreement.**

Despite that fact, the court cites the confession that "greatly contributed to the cost-effectiveness of the proceedings" as a reason for reducing the sentence below the prescribed minimum.

As a particularly mitigating circumstance, the court states that the person is "middle-aged". The court does not give reasons why a defendant's middle age is a mitigating circumstance at all, and in particular why it is particularly mitigating to cause a sentence below the statutory minimum.

Data about the date of birth of the defendant and his age have been deleted from the verdict, so it is impossible to determine the age that the court considers to be a particularly mitigating circumstance and the age in which one should be punished more leniently for a committed offense.

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[245] Mira Samardžić

[246] Kt-S no.173/17 dated 07.11.2018

[247] Together with the criminal organization from Bosnia and Herzegovina, whose mastermind is being prosecuted in that country, and together with the criminal organization from Croatia, whose mastermind is being prosecuted in Croatia.

[248] Article 401a, Paragraph 1 of the Criminal Code

[249] Statutory sanction for the mastermind of the criminal organization is three to fifteen years in prison

[250] Ks.no.7/18 dated 26.11.2018, judge Biljana Uskokovic





## 6.

# OTHER FORMS OF ORGANIZED CRIME

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Members of criminal groups involved in drug trafficking have been prosecuted for attempted murder and possession of a weapons.

At the outset of the bloody war of the drug gangs, the police accidentally discovered plans to kill, and one of the arrested persons confessed everything and described the mastermind. However, the prosecution did not indict the head of the clan and, five months later, the planned murder was committed.

The prosecution signed plea agreements with members of the criminal organizations with whom they found a large quantity of weapons. Although the confessions of the defendants did not assist the solving of the crimes they were convicted of, or the disclosure of other perpetrators and criminal offenses, they agreed sanctions with the prosecution that are several times lower than the statutory minimum.

In the only case of organized trafficking in human beings with a final and enforceable verdict closed in the last six years, the Special Prosecutor filed an incomprehensible indictment without a single piece of evidence. The court acted on such an indictment instead of returning it for correction, rendering a verdict transgressing the allegations in the indictment. Such a judgment was overturned by the Court of Appeals and the case was sent back to the first instance court, but none of the defendants could no longer be convicted of human trafficking.



Unlike most other proceedings, in the case of cigarette smuggling, the prosecution obtained evidence of the creation of a criminal organization against the mastermind and several members by applying secret surveillance measures. The court imposed sanctions on all the defendants that were close to or below the statutory minimum, but the Special Prosecutor did not appeal such a verdict.

The prosecution indicted four persons for organized smuggling of vehicles across the border. The indictment did not specify any action of organization of a criminal association, and some persons were charged with actions that did not constitute criminal offenses. The first instance court was obliged to reject such an indictment, but it noted its shortcomings only in the verdict. Due to these mistakes of the prosecutor and the court, these defendants cannot be tried again for these criminal offenses.

## **6.1. Other criminal offenses of the criminal groups smuggling narcotics**

### **Case study 21: Accidentally discovered murder planning**

During the course of 2014, a war started between the Montenegrin criminal clans involved in cocaine smuggling, killing at least 40 people so far. [251] The so-called "Kavacki" and "Skaljarski" clan have allegedly gotten into a war because of the theft of over 200 pounds of cocaine in Spain.

In May 2015, Montenegrin police accidentally arrested two persons who planned to kill a high-ranking member of the other clan.

One of the arrested persons confessed everything and described the mastermind of his criminal group. He later withdrew his confession, but the court nevertheless took into account his confession and imposed more severe punishments than usual on the defendants.

However, the prosecution did not indict the mastermind of this clan and, five months later, the planned murder was still committed.

In the indictment of the Special Prosecutor [252] South African citizen Michael Gregory Ferraris and Montenegrin citizen Aleksandar Markovic have been charged with the criminal offense of Establishment of a Criminal Organization. [253] According to the indictment, they belonged to a criminal organization established by an unknown person for the purpose of committing serious crimes of unauthorized production, possession and distribution of narcotic drugs [254] and aggravated murder, [255] for the purpose of obtaining illicit profits from international smuggling of cocaine.

[251] Blic: "40 ubijenih u ratu klanova", 12 May 2019., <https://www.blic.rs/vesti/hronika/40-ubijenih-u-ratu-klanova-1-mrtvi-u-crnoj-gori-i-beogradu-medu-zrtvama-i-politicar-a/ejmdw67>

[252] Kt-S.no.49/15 dated 13.11.2015.

[253] Article 401a of the Criminal Code of Montenegro

[254] Article 300 of the Criminal Code of Montenegro

[255] Article 144 of the Criminal Code of Montenegro



The indictment alleges that Markovic had the role of recruiting new members of the criminal organization and hiring perpetrators of serious crimes, providing them with assistance and resources from the mastermind, showing the persons to be killed, providing a link between the members of the criminal organization and the mastermind.

Ferraris, on the other hand, only became a member of the organization in April 2015 when he accepted Markovic's proposal to kill Goran Djurickovic [256] for 70,000 euros.

A month before the arrest of Ferraris and Markovic, a close friend of Goran Djurickovic was killed in Budva, and the police believes that he was an “accidental victim” and that even then Djurickovic was the actual target. [257] Ferraris confirmed these allegations in his defense before the police and the prosecution, stating that he had learned from Markovic that this criminal offense was also organized by the same mastermind.

According to the confession by Ferraris, the unknown mastermind of the criminal organization recruited directly and indirectly, through Markovic, members of the criminal organization, determined who to kill [258], secured funds and financed the costs from the money obtained through international smuggling of cocaine.

### Traffic police accidentally discovered murder plans

It is concluded from the content of the verdict of the Higher Court in Podgorica [259], convicting Ferraris and Marković of the criminal offense of Establishment of a Criminal Organization, that the perpetrators were discovered by accidental control by the traffic police.

During the inspection, police noticed that Ferraris operated the vehicle in gloves, did not have any ID and was a foreigner. At the same time, police found that the vehicle he was driving did not have real license plates, but forged German plates, which he affixed to the vehicle.

Ferraris was detained by police for forgery of a document, i.e. license plates, and a search of the apartment in which he resided resulted in discovery of plans and drawings for the murder for which he had been hired.

### He confessed and described the mastermind, and then refuted the confession

The accused Ferraris **confessed** to the police and the Higher State Prosecutor **the criminal offense** he was charged with, detailing the actions he and Markovic took to realize the murder of Djurickovic.

In his confession, Ferraris stated that Markovic referred to the mastermind of the criminal organization as “the leader of the Montenegrin mafia”.

In the prosecutor’s office Ferraris stated that he saw the mastermind several times, described his looks, the vehicles he used and that he lives in Kotor.

[256] According to the indictment, the criminal organization believed that Djurickovic, owner of the restaurant “The Old Fisherman” from Budva, participated also in the smuggling of narcotics.

[257] Saša Markovic was murdered in mid-April 2015, in a classical ambush close to his home in Budva, while the defendants were arrested in May of that year. Dan Daily: "Marković ubijen greškom", 21 August 2015, <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=506602&datum=2015-08-21>

[258] Besides the murder of Djurickovic, Ferraris revealed in the prosecutor’s office that the criminal organization was aimed at murdering unidentified family of four from Kotor, and after those murders the criminal organization would initiate a war will all those involved in the theft of 220 kg of cocaine.

[259] Ks.no.21/2015 dated 17.06.2016.



However, in the main hearing, Ferraris stated in his defense:

*„his defense presented before the prosecutor in Podgorica is not true because he was threatened by the police in Kotor that he would not leave Montenegro alive. That the police forced him to confess...“*

## Prison sentences of five and six years

Although Ferraris tried to refute the confession given to the prosecution, in the verdict of the Higher Court in Podgorica [260] it is stated that after hearing the witness

*„the court had no reason to doubt or question the quality and legality of such a defense before the Higher Prosecutor’s Office“.*

The verdict also states:

*„It is simply a fascinating amount of information and facts that defendant F. gave right after his arrest, and in relation to a completely different event, down to the smallest details, especially given the extensiveness of his statement before the prosecutor and his interpretation of that statement.“*

With regard to the accusations regarding police pressure, which allegedly forced him to make a false confession, the verdict states:

*„It is completely undisputed that his information given to the police as a citizen does not constitute evidence in these proceedings, nor did the court use that statement when conducting the proceedings and rendering a decision, but it did use his defense presented in the Higher Prosecutor's Office“.*

The court states that it is evident from the record, which the defendant did not challenge, that it was he who signed that he did not want a confidential interview with his defense lawyer, before presenting his defense.

The High Court sentenced Ferraris and Markovic as members of a criminal organization to five and six years in prison respectively. This offense is punishable by one to eight years in prison. [261] Although the court did not find any aggravating circumstance in sentencing the defendants, the sanctions imposed on them are closer to the statutory maximum.

This verdict was confirmed by the Court of Appeals of Montenegro. [262]

## Mastermind at large, murder committed

Five months after the arrest of Ferraris and Markovic, Djurickovic was murdered on the terrace of his restaurant “The Old Fisherman” in Budva. [263]

Thus, in the third attempt, the plan of the criminal organization was accomplished, although the police and the prosecution were aware that this murder is planned.

Although the prosecution obtained in this case detailed information about the mastermind of the criminal organization, he was not indicted, so the planned murder was actually executed.

[260] Ks.no.21/2015 dated 17.06.2016.

[261] Article 401a, Paragraph 2 of the Criminal Code

[262] KžS.no. 18/2016 dated 07.11.2016, judges Milic Medjedovic, Seka Piletic and Ratko Cupic

[263] Vijesti: "Budva: Ubijen ugostitelj Goran Đuričković", 27 October 2015, <https://www.vijesti.me/zabava/budva-ubijen-ugostitelj-goran-durickovic>



## Case study 22: Agreements for automatic guns

In 2018, one prosecutor signed two plea agreements with members of criminal organizations involved in drug trafficking, found by the police to have held a large quantity of weapons and ammunition.

In both agreements, sanctions were agreed that were several times lower than the statutory minimum. The defendants were caught committing the crime because the police found them in possession of a large quantity of weapons and ammunition. Thus, their confessions did not influence the resolution of offenses they were convicted of, nor the identification of other perpetrators and offenses.

The Court upheld both agreements, concluding that the defendants had clearly and fully confessed the crimes. However, none of them contains information from whom the weapons were purchased, whether it was sold and to whom, or whether it was used or planned to be used to commit crimes.

In late September last year, the Special State Prosecutor [264] concluded a plea agreement [265] with the defendant charged with criminal offenses of Establishment of a Criminal Organization [266] and the most serious form of the offense of Illicit Possession of Weapons and Explosive Substances. [267]

The defendant confessed that he became a member of a criminal organization established for the purpose of committing an unspecified number of criminal offenses of illicit possession of weapons and explosive substances and unauthorized production, possession and distribution of narcotic drugs. **In his confession, he confirmed the name of the mastermind** and confessed that he had recruited other persons who had accepted membership in that organization.

He also confessed that he acted upon orders and instructions from members of the criminal organization to participate in the concealment, transportation and storage of firearms and ammunition, to take it over, store and sell it, as well as to take money and transmit messages between members of the organization.

The defendant confessed also that in March 2018, he **procured, held and transferred a larger quantity of weapons, acting upon orders and instructions from the the mastermind of the criminal organization, involving four guns, to hunting rifles and two carbines.**

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[264] Sasa Cadjenovic

[265] Kt-S.no.50/18

[266] Article 401a, Paragraph 2 of the Criminal Code

[267] Article 403, Paragraph 3 of the Criminal Code



## Agreed sanctions of four and three months in prison

The special prosecutor and the defendant agreed to a **four-month prison sentence for the establishment of a criminal organization and three months for the illicit possession of weapons and explosive substances**, and agreed to a cumulative sentence of six months in prison.

The **prescribed sanction** for a member of the criminal organization is **one to eight years in prison**, and the same punishment is prescribed for the serious form of the crime of illicit possession of weapons and explosive substances.

## The Court: He clearly and fully confessed the crime

This agreement was upheld by the Higher Court in Podgorica. [268] In the reasoning of the verdict, the court stated that there were no aggravating circumstances, that the defendant **clearly and fully confessed the crime**, that he **explained all the decisive facts** relating to the offense and the guilt, that it was a young man and that he was not previously convicted, which the court considered to be particularly mitigating circumstances.

The verdict states that the court read a number of pieces of evidence, including record of search of the apartment and receipts of confiscated items from the mastermind of the criminal group, as well as records of searches of his computer, mobile phones and other electronic devices, letters, statement specifying the time of crossing the state border, telephone communications listings and secret surveillance measures. The court also stated in the verdict “that the Special State Prosecutor provided sufficient evidence of the defendant’s guilt”.

**It can be concluded from the contents of the verdict that there was sufficient evidence of the guilt of the defendant, and that the prosecutor was aware of the identity of the mastermind and other members of the criminal organization.**

**Thus, the confession of the defendant in this case did not contribute to the identification of the mastermind, other members, nor to the identification of other crimes.**

The verdict also states that the court read the files of the prosecution in the case against a juvenile member of this criminal organization, but there is no information on whether proceedings are being conducted against the mastermind and other members. Thus, it is impossible to check whether other persons will be convicted and what the sanctions will be, and whether the court will use in those proceedings the verdict in these proceedings and the defendant's confession.

[268] Kvs.no.337/18 dated 21.12.2018, judge Boris Savic



## What is missing in the defendant's confession?

The defendant did not disclose from whom and under what conditions he obtained a larger quantity of weapons, for what purposes the weapons were procured, for the purpose of committing criminal offenses or for sale, and to whom.

The defendant confessed that his role was to "convey messages between members of the organization". However, according to the agreement and the judgment, he did not state the content of the messages he conveyed that pertained to the commission of the offenses for which the organization was founded.

### The court did not look into

- **the degree of guilt of the defendant** arising from the roles he played in the criminal organization and the actions he undertook,
- **the severity of the violation and endangerment of the protected property,** arising from the fact that the organization was established to commit an unspecified number of offenses related to weapons and drugs, as well as from the quantity of weapons as the object of another criminal offense.

The judgment of the Higher Court listed evidence establishing the guilt of the mastermind and members of the criminal organization, including certificates of seized weapons and secret surveillance measures, so it follows that the defendant's confession was not relevant for the purpose of discovering the offenses and disclosing other perpetrators.

**The prosecution concluded a plea agreement with the defendant caught by the police during the commission of the crime.**

## The same prosecutor – a new plea agreement with more lenient sanctions

One month after the first agreement, in the same case, the same Special Prosecutor [269] concludes another plea agreement with another defendant - member of a criminal organization. That person was also charged with criminal offenses of establishment of a criminal organization and the most serious form of criminal offense of illicit possession of weapons and explosive substances.

This defendant confessed also that he had become a member of the criminal organization, that he had recruited other persons who had accepted membership in the organization established for the purpose of committing an unspecified number of criminal offenses of illicit possession of weapons and explosive substances and unauthorized production, possession and distribution of narcotic drugs. He confessed that he had acted based on the orders and instructions of members of the criminal organization to conceal, transport, store and sell firearms for the needs of the criminal organization, to supply it, when needed, to other members of the criminal organization, and to commit crimes himself.

Also, this defendant confessed that he obtained, from an "unknown person", and then held and stored a larger quantity of weapons, namely **a gun, a hunting rifle, two automatic rifles** and a larger amount of ammunition. These weapons and ammunition were recovered from the defendant and seized before confession.

[269] Sasa Cadjenovic



## Agreed sentences of three months in prison for each

In the plea agreement the Special Prosecutor and this defendant defined the sanction of three months' imprisonment for each, the establishment of a criminal organization and for the illicit possession of weapons and explosive substances, and agreed that the cumulative sentence be four months in prison.

Both offenses are punishable by imprisonment ranging from one to eight years.

## The Court: Convicted, but confessed to it all and has children

This agreement was also accepted by the same judge of the Higher Court in Podgorica, who rendered a judgment [270] stating that the aggravating circumstance is the fact that the defendant was previously convicted.

As mitigating circumstances, the court stated that the defendant clearly and fully confessed to the crime, that he explained all the decisive facts relating to the offense and guilt, that it was a young man who was married and the father of two minor children, which the court considered to be particularly mitigating circumstances.

Just as in the agreement with another member of the criminal organization, this defendant did not contribute to the disclosure of the mastermind, other members of the organization or other crimes. The reasoning of the judgment is identical to the previous case where the court enumerated a series of written evidence that it read pertaining to the guilt of the defendant, as well as the mastermind and other members of the criminal organization, and the court also concluded that "the Special Prosecutor provided sufficient evidence of the defendant's guilt".

## Full confession, but weapons obtained from the "unknown person"

This defendant's confession is not clear and complete and does not reveal all the decisive facts. Nor did this defendant disclose from whom and under what conditions he had acquired a larger quantity of weapons, for what purposes the weapons were intended and the like.

Instead, the defendant said that he obtained the weapons from an "unknown person", as stated in the plea agreement.

In this case again the court completely ignored the defendant's degree of guilt arising from the role he played in the criminal organization and the actions he undertook, as well as the severity of the violation and endangerment of the protected property, which stems from the fact that the organization was formed to commit an unspecified number of criminal offenses related to weapons and drugs.

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[270] Kvs.no.336/18 dated 21.12.2018, judge Boris Savic



The judgment states that, as a member of the criminal organization, the defendant was given the task:

*“to act upon orders and instructions of members of a criminal organization, to conceal, transport, store and sell firearms for the needs of the criminal organization, to supply it to other members of the criminal organization, if necessary, and to commit criminal offenses himself”.*

However, neither the agreement nor the judgment contains information about other crimes committed by the defendant or other members of the criminal organization.

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### **He confessed after being caught committing the crime**

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This judgment of the Higher Court also lists the evidence establishing the guilt of the mastermind and members of the criminal organization, including certificates of confiscated weapons and secret surveillance measures.

The judgment stated

*"He kept weapons and ammunition in his apartment and in his parents' apartment where they were found by officers of the Police Directorate."*

Thus, the weapons had already been found and seized from this defendant prior to his confession, so it follows that this confession was not relevant for resolving the crimes and exposing other perpetrators.



## 6.2. Trafficking in human beings

### Case study 23: „Aphrodite“ [271]

The only proceedings related to organized trafficking in human beings were infamously terminated due to the omission of the Special Prosecutor, as well as the Higher Court in Podgorica.

In the course of these proceedings, the Special Prosecutor filed an incomprehensible indictment without a single piece of evidence for human trafficking. The court acted on such an indictment instead of returning it for correction, rendering a judgment exceeding the allegations in the indictment.

Such a judgment was overturned by the Court of Appeals and remanded the case to the first instance court, but the defendants could no longer be convicted of human trafficking.

During the proceedings, the prosecution changed the indictment several times and changed the description of the goal of the criminal organization four times. In the end, only the mastermind was convicted of criminal association, and several persons were found guilty of mediation in prostitution.

By imposing maximum sentences for the lightest crime that the defendants were charged with, the court gave grounds for filing an extraordinary legal remedy - a request for the protection of legality. At that stage of the proceedings, the statute of limitation occurred and the charges were dropped against three defendants.

The police officers who secured the premises where the offenses were committed were not convicted, as the court found that they were not on duty at the time.

### Accused of the organized human trafficking

The mastermind of the organization was charged with organization of a criminal group, in the period from the beginning of 2009 until 14 February 2010, for the purpose of committing serious crimes against humanity and other goods protected by international law, punishable by imprisonment of up to five years or a more severe sanction.

He is accused of buying, through "unidentified agencies" in Serbia, and for the price of 200 to 300 euro, women from Serbia and Kosovo for the purpose of sexual exploitation. He placed these persons in cafes in Ulcinj and Podgorica, where he allegedly employed them as dancers. They were engaged in the provision of sexual services, to his account and to the account of the members of the group, and they collected the money for those services. The indictment also alleges that the defendants also held a minor refugee from Kosovo among these women.

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[271] In this case MANS's the legal adviser was the ex officio attorney of one of the defendants.



The indictment requested seizure of 106 thousand euros from the mastermind and members of the association as the proceeds of crime, as well as seizure of the items used or intended for use to commit a criminal offense, such as passenger motor vehicles and others.

The indictment of the Special State Prosecutor [272] included **sixteen persons**. Eight defendants were charged with having committed in an organized manner:

- a serious form of the crime of criminal association,
- a serious form of trafficking in human beings, because the offense was committed against a minor or in an organized manner by several persons, and
- mediation in prostitution in basic and serious form when committed against a minor or by several persons in an organized manner.

In addition, **three members of the Police Directorate** were indicted because they secured nightclubs while prostitution and criminal offenses were committed in them and charged with the criminal offense of Abuse of Office.

Three of the defendants were charged with the criminal offense of Mediation in Prostitution and two with the criminal offense of human trafficking in an organized manner committed by several persons.

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## Convicted of organized crime and mediation in prostitution

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By the first judgment in this case [273], all defendants were acquitted of the criminal offense of Trafficking in Human Beings because the court found that it had not been proven that they had committed this crime.

In that judgment, all sixteen defendants were found guilty, as follows:

- eight defendants of criminal association and mediation in prostitution,
- three members of the Police Directorate for abuse of office, and
- five defendants were convicted of mediation in prostitution.

**Fourteen defendants were sentenced to a total of 26 years and eight months in prison, and two defendants got a conditional sentence:**

- For criminal association, the court imposed a sentence of two years on the mastermind, one member of the association was sentenced to a year and a half, and the others to one year in prison each [274];

- For mediation in prostitution, the mastermind and one member of the association were sentenced to four years and six months in prison each, and the others to one year in prison each. [275]

These defendants were sentenced to cumulative sentences, the mastermind to six years, one member to five and a half years, and the other five to one year and 10 months in prison.

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[272] KTS.no.12/10 dated 09.08.2010, Special Prosecutor Mira Samardzic

[273] Ks.no.25/2010 dated 13.06.2011, judges Valentina Pavlicic, Dragisa Rakocevic and Ratko Cupic

[274] For a serious form of the crime of criminal association when the association aims to commit crimes punishable by a prison term of five years or a more severe sentence, a prison term of one to eight years for the mastermind and a prison term of up to two years for a member of the association are prescribed. The basic form of the offense exists when the association aims at committing criminal offenses for which a sentence of imprisonment of one to five years can be imposed, in which case the perpetrator can only be the mastermind, while members of the association are not responsible for this criminal offense.

[275] The criminal offense of mediation in prostitution at the time of commission was punishable by a term of imprisonment of three months to one year for the basic form, and a prison term of two to ten years when the offense was committed against a minor or by several persons in an organized manner. With the 2017 amendments to the Criminal Code the maximum prescribed sentence for the basic form of this offense was increased to two years.



In addition, the Higher Court in Podgorica sentenced

- one defendant to three months in prison for the criminal offense of Mediation in Prostitution, and for the same criminal offense two defendants were conditional sentenced to three months imprisonment, suspended for one year;
- the three indicted police officers to one year in prison each for the criminal offense of abuse of office. [276]

### **No evidence of human trafficking**

The Court points out that, except for listing the legal characteristics of the said crime, the Prosecutor did not offer or adduce any evidence during the proceedings of the crime of trafficking in human beings.

According to the court, the prosecutor did not prove any of the acts constituting the elements of this criminal offense, not the threat, abuse of trust and difficult opportunities of the other, nor the recruitment, purchase, surrender and holding of other persons for the purpose of prostitution, labor and sexual exploitation.

In addition, after the evidentiary proceedings, the Prosecutor amended the indictment and added that the purpose of human trafficking was not only sexual, but **labor exploitation** as well, but the court stated that the Prosecutor failed to give concrete details of it in the course of the proceedings, and no evidence established what this labor exploitation was.

### **No evidence that 106 thousand euro originated from crime**

The court seized the mobile phones from the defendants, while it did not accept the prosecutor's motion to confiscate their motor vehicles. According to the court, the conditions for this were not met, as the prosecutor did not prove during the proceedings that the defendants' vehicles were used and intended for the commission of the crimes of which they were convicted.

Also, the court did not accept the prosecutor's motion to seize € 106,000 because it had not been proven that these were proceeds of these crimes.

### **The court denied the motion to calculate the proceeds from the provision of sexual services**

In his closing statement, the prosecutor suggested that the proceeds of sexual services be calculated by the court, presenting the following calculation:

*„minimum 10 females, two clients per each female for half an hour each, which amounts to 20 sexual services per night for 70 euros each, and that each female was engaged for 20 days a month“.*

The prosecutor's motion for the court to calculate the earnings was assessed by the court as impossible and procedurally problematic because there was no realistic indicator for these allegations.

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[276] The criminal offense of abuse of office is punishable by a prison term of six months to five years.



## Court of Appeals reversed the judgment

Acting on the appeals of the Prosecutors and the attorneys of the defendants, the Court of Appeals of Montenegro **quashes [277] the judgment** of the Higher Court in Podgorica in the convicting and acquitting part for all of the defendants, **except for the two defendants** who were rendered a suspended sentence for mediation in prostitution, **because neither the defendants nor the Special Prosecutor appealed this part of the judgment.**

### The judgment is incomprehensible

The Court of Appeals first finds that the disposition of the Higher Court's judgment is **incomprehensible** because it found the two defendants guilty, but it did not establish factually or legally which crime they were guilty of.

In addition, the Higher Court sentenced one defendant to five years and six months in prison and gave reasons for the five-year sentence in the reasoning of the judgment, which made the judgment contradictory.

**The Higher Court found two of the defendants guilty, but failed to state in the judgment, factually and legally, which offense they were guilty of and the sentence they were rendered.**

### The goal of the criminal group has not been defined

The Court of Appeals stated that “neither general, nor specific essential elements of the substance of the crime that the defendants were charged with can be determined in an arbitrary and vague manner”, and that the court must do so in a repeated proceeding unless these deficiencies are remedied by the Special Prosecutor.

That court indicated that the Special Prosecutor was required to clearly state the goal of the criminal group in the indictment by stating the **exact name of one or more of the criminal offenses** the group's goal was to commit, **including precise legal qualification.**

Instead, according to the Court of Appeals, the Prosecutor arbitrarily stated in the indictment that the group's goal was to commit serious crimes against humanity and other property protected by international law.

Besides, the Special Prosecutor did not clearly define the goal of the group in relation to the commission of the criminal offense of mediation in prostitution, since it is not known whether the purpose is to commit the basic or serious form of this offense.

Namely, the basic form of this crime was punishable by a prison sentence of up to one year, and the more severe form by a prison sentence of two to ten years. It depends on this determination whether a member of the criminal association will be held accountable at all, since the condition that the goal of the association is to commit crimes punishable by a prison term of five years or a more severe punishment must be met in order to do so. [278]

**The Court of Appeals noted that the first instance court should have returned the indictment for correction before the beginning of the trial.**

[277] Decision Ksž.no.31/11 dated 20.01.2012, judges Milivoje Katnic, Zoran Smolovic and Svetlana Vujanovic  
[278] Article 401, Paragraph 2 of the Criminal Code



## The Higher Court exceeded the indictment

According to the Court of Appeals, the Higher Court in Podgorica exceeded the indictment because it expanded the number of crimes for the purpose of which a criminal group was established.

The indictment states that the purpose of the group, in addition to committing serious crimes against humanity and other goods protected by international law, is also to commit the **criminal offense of mediation in prostitution**, that is, only this crime against sexual freedom.

On the other hand, the Higher Court found that the defendants did not commit the criminal offense of Trafficking in Human Beings and therefore omitted the perpetration of serious crimes against humanity and other goods protected by international law from the goal of the group.

However, in the second part, the Higher Court unlawfully expanded the range of offenses in the indictment, stating that the purpose of the group was to **commit criminal offenses against sexual freedoms punishable by one to ten years' imprisonment**. In this way, the court arbitrarily determined the goal of the criminal group, extending the previous charge that the group's goal was to commit the criminal offenses of mediation in prostitution.

The Criminal Procedure Code [279] stipulates that the judgment may refer only to the indicted person and **only to the offense subject to charges** in the indictment filed or amended in the main hearing. Thus, the Higher Court exceeded the indictment, which constitutes a serious violation of the provisions related to criminal proceedings. [280]

## The prosecutor indicted, and the court convicted the persons of the action that does not constitute a criminal offense

The Court of Appeals found that the Higher Court had convicted one defendant of the criminal offense of Mediation in Prostitution citing an act described by the prosecutor and the court in a manner that did not constitute a criminal offense.

The Special Prosecutor and the Higher Court stated that the defendant, as a member of the criminal group, “once again admitted a minor to work in the Aphrodite Nightclub”. However, admitting someone to work in a nightclub does not constitute an act of committing any crime.

The Special Prosecutor charged the defendant with this criminal offense in his closing statement, by which, according to the Court of Appeals, he unlawfully extended the indictment, while the Higher Court committed a material breach of rules of criminal procedure by rendering a decision on the criminal offense subject to unlawful extension of the indictment.

The Higher Court sentenced police officers for abuse of office, describing that they did so while providing security services at the Afrodita club. The Court of Appeals found the first instance judgment incomprehensible in this part because the court states that these defendants committed this crime as police officers, and describes that they took the actions by which they committed the crime while they were not on duty as police officers.

The Court of Appeals therefore indicated that it was a duty

*„of the special prosecutor, and then the court of first instance, to determine whether and according to which regulation police officers are obliged to carry out the official duty of police officers even after their working hours, which would be a prerequisite for failure to carry out official duty outside the working hours“.*

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[279] Article 369, Paragraph 1

[280] Article 386, Paragraph 1, Item 5 of the Criminal Procedure Code



## **The court should have returned the indictment for correction**

The Court of Appeals pointed out the numerous deficiencies and incomprehensibility of the indictment with regard to the legal qualification of the criminal offenses that the defendants were charged with, as well as the factual description from which one does not know for sure which action and which offense each of the defendants is charged with.

## **Proceeds of crime should have been determined**

The Court of Appeals also found that there were incomprehensible reasons in saying that the conditions were not met for the proceeds of crime to be seized from the defendants. That Court notes that the first instance judgment states that the defendants withheld part of the compensation paid by the clients for sexual services rendered to them by the injured parties, so the Higher Court was obliged to determine the amount of financial benefit at its discretion.

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## **Second judgment: Nine persons convicted, total punishment over 10 years**

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### **Multiple amendments to the indictment and omissions made by the prosecution**

At the start of a new trial before the Higher Court in Podgorica, the Special Prosecutor revises the indictment again by now charging eight defendants with a serious criminal offense of criminal association, which exists when the association seeks to commit criminal offenses punishable by fifteen years' imprisonment. He charges the mastermind and two other members of the association with the basic and serious form of the criminal offense of trafficking in human beings (when the offense was committed against a minor), and three members with the basic form of this criminal offense.

In his closing statement, the prosecutor amends the indictment again and charges the mastermind and six other defendants with criminal association aimed at committing criminal offenses punishable by prison term ranging from five to fifteen years. [281]

### **The prosecutor changed the association's goal four times:**

- He first argued that the purpose of the association was to commit criminal offenses of mediation in prostitution;
- Then the purpose was to commit criminal offenses against sexual freedom, for which one to ten years' imprisonment may be imposed;
- After that, the purpose was to commit offenses punishable by a prison term of fifteen years;
- And lastly, the goal was to commit criminal offenses punishable by five to fifteen years in prison.

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[281] In his closing statement the prosecutor also dismisses the prosecution of one defendant who was charged with a serious criminal offense of criminal association. At the same time, the Prosecutor states that he dismisses the prosecution of this defendant for the basic form of the criminal offense of trafficking in human beings, as well, although he did not charge him with that crime, but only with its serious form.



## Only the mastermind was convicted of criminal association

The Higher Court reiterated that the Prosecutor had not provided any evidence for the criminal offense of human trafficking. [282]

In this judgment, the court found that the existence of a criminal group whose purpose was the commission of criminal offenses of mediation in prostitution had been proven and that prostitution was carried out in the clubs operated by the defendants and where the defendants worked, and that they mediated in that prostitution.

Members of the association are only criminally liable if the purpose of the association is to commit offenses punishable by a term of imprisonment of five years or more. [283] At the time of commission, mediation in prostitution was punishable by a prison term of up to one year.

Therefore, the court could only convict the mastermind of the association of criminal association, who is criminally liable even when the purpose of the association he organized was to commit criminal offenses punishable by a prison term of one year or a more severe sentence.

The mastermind was convicted of the basic form of the criminal offense of criminal association [284], as well as of the basic and serious form [285] of the criminal offense of mediation in Prostitution involving a minor. He was sentenced to one year for each for the first two offenses, and to one year and six months in prison for the third one. He was rendered a cumulative sentence of three years and four months.

Eight defendants were convicted of the basic form of the criminal offense of mediation in prostitution, seven to one year each, and one to three months in prison.

Six persons were acquitted of the criminal offense of trafficking in human beings, and three police officers of the charges of abuse of office. The Special Prosecutor dropped the prosecution of one defendant for the offense of criminal association and the charge was dismissed.

The prosecutor again suggested that the court calculates the proceeds of sexual exploitation in the same manner as the first time, but the court found that the prosecutor's proposal was not justified in terms of serving as a basis for the decision. The Court reiterated that there was no evidence that the profit was obtained through the commission of crime, nor that the defendants' vehicles had been used and intended to commit the offenses of which they were convicted.

## Acquitted police officers aware of prostitution

The Court notes that the criminal offense of abuse of office is committed by someone who acts contrary to the rules and interests of the service he performs and while exercising his duty, and that the accused police officers were not performing any task for the needs of the service, nor acted in their official capacity when securing the premises where prostitution and criminal offenses were committed.

**The Higher Court acquitted three police officers, although it established that they were aware that criminal offenses were committed in the premises they were securing.**

[282] Ks.no.2/2012 dated 18.06.2013, judges Valentina Pavlicic, Ana Vukovic and Biljana Uskokovic

[283] Article 401, Paragraph 2 of the Criminal Code

[284] When the purpose of the association is to commit crimes punishable by prison term ranging from one to five years

[285] Against a minor



The accused police officers did nothing to prevent or detect the offenses they knew were being committed, which they could and should have done, not only when they were off duty and when they were securing the premises, but also when they were on duty, because they knew that in those hours criminal offenses were also committed in those establishments.

**One of the forms of the criminal offense of abuse of office and failure to perform official duty, based on the then applicable Law on Police, cited in the judgment, which prescribed what the police affairs were, and stated that they also included the activities of detecting and preventing the commission of criminal offenses.**

### **Court of Appeals: the Higher Court judgment upheld**

Acting upon the appeals of the Special Prosecutor and the defense attorneys, the Court of Appeals fully upheld [286] the judgment of the Higher Court in Podgorica.

### **Supreme Court: Statute of Limitation in the case of three defendants**

A defendant sentenced to an unconditional imprisonment sentence of **one year or more** may request the Supreme State Prosecutor's Office to file a request for protection of legality against the final judgment for violation of the Criminal Code to the detriment of the defendant. [287]

The defense attorney of one of the convicted persons submitted a motion to the Prosecutor's Office to file a request for protection of legality, since at the time when the final judgment was rendered, the absolute statute of limitations for the criminal offense of mediation in prostitution had already arisen. The prosecution rejected the motion [288], claiming that the statute of limitations did not occur.

However, the Supreme Court of Montenegro upheld the defendant's appeal [289] and reversed the judgment of the Court of Appeals by dismissing the charge against that person [290] because the absolute statute of limitations on prosecution had occurred. [291] For the same reasons, the Supreme Court's ruling dismissed *ex officio* [292] the charges against two other defendants.

**Out of sixteen defendants charged with a total of 40 crimes, eight persons were convicted of a total of ten crimes.**

[286] Judgment Kzs.no.42/2013 dated 16.12.2013, judges Milic Medjedovic, Seka Piletic and Zoran Smolovic

[287] Article 438.

[288] Decision Ktz.no.23/14 dated 06.10.2014, State Prosecutor Stojanka Radovic

[289] Ruling Kž-s II no.7/14 dated 26.11.2014, judges Vesna Medenica, Radule Kojovic and Stanka Vucinic

[290] Judgment Kzz no.14/14 dated 08.12.2014, judges Vesna Medenica, Radule Kojovic and Stanka Vucinic

[291] Statute of limitation occurred in late November 2013, and the judgment of the Court of Appeals was rendered on 16 December of the said year.

[292] In the proceedings based on the motion for protection of legality, the benefit of cohesion exists, the so-called *beneficium cohesionis*, which means that if the Supreme Court finds that the reasons for its decision in favor of the convicted person exist also for one of the co-defendants in respect of whom no motion for the protection of legality has been filed, action will be taken *ex officio* as if such a motion existed. Article 441, Paragraph 2 of the Criminal Procedure Code



## 6.3. Smuggling

### Case study 24: Cigarettes

Unlike many other cases, in this case, the prosecution provided evidence for the establishment of a criminal organization, both against the mastermind and against several members, by applying secret surveillance measures.

All defendants were imposed sanctions by the court close to or below the statutory minimum.

In the case of all the defendants, the court assessed as mitigating circumstances the fact that they were family people and parents, and most of them of poor financial status, although it did not explain in the judgment on the basis of which it established these facts.

At the same time, the court did not assess at all the circumstances which must be taken into account under the Criminal Code in determining the sentence, such as the degree of guilt, the circumstances and motives for which the offense was committed, or the severity of the threat or violation of the protected property.

The Special Prosecutor who represented the indictment was satisfied with the lenient sentences and did not appeal the first instance verdict.

### Indictment

A total of seven persons have been indicted by the Special Prosecutor [293], six of whom have been charged with the criminal offense of establishment of a criminal organization. In addition, five defendants were charged with the criminal offense of smuggling, and one customs officer was charged with a serious abuse of office. One defendant was charged only with the criminal offense of smuggling.

According to the indictment, the criminal organization was organized by the accused Zeljko Momic in September 2013 and it operated until January 2014 to smuggle consumer goods from Serbia to Montenegro and vice versa.

The accused member of the organization, customs officer Vukoman Mrdak, allowed freight vehicles with smuggled goods to pass the customs crossing, without customs control, so this criminal organization repeatedly smuggled goods from Serbia to Montenegro and vice versa.

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[293] Kts.no. 6/14 dated 29.11.2014, Special Prosecutor Lidija Vukcevic



The indictment alleges that in September 2013, the criminal organization smuggled a larger quantity of cigarettes and other goods from Montenegro to Serbia with a **total value of more than EUR 250,000**. [294]

Also, in December 2013, the mastermind purchased in Serbia a large quantity of alcoholic beverages, cigarettes, pyrotechnics and other consumer goods [295] with a **total value of over 75 thousand euros**. These goods were allowed to pass the border crossing by the accused customs officer, without exercising customs control, in which way he enabled the criminal organization to **earn the amount of almost six thousand euros based on the unpaid customs duty**.

## Evidence collected through the secret surveillance measures

Through the use of secret surveillance measures, the prosecution has obtained evidence of the criminal offense of establishment of a criminal organization, as well as evidence of who is the mastermind of the criminal organization.

During the evidentiary proceedings, the Court heard all the audio records of all telephone conversations mentioned in the final report of the Police Directorate - Criminal Police Sector, as well as transcripts of telephone conversations obtained through the use of secret surveillance measures under the orders of an investigating judge of the Higher Court in Podgorica.

In more than 30 pages of reasoning, the judgment points to the concrete content of numerous conversations heard, from which it follows that the organizer, Zeljko Momic charged for the smuggled goods, and gave instructions and specific tasks to the members of the criminal organization to take the goods over.

## Judgment: Sanctions below or close to the statutory minimum

The first judgment of the Higher Court in Podgorica was quashed by the Court of Appeals of Montenegro, but these judgments have not been published.

The second judgment of the Higher Court in Podgorica [296] in this case convicted all seven of the defendants. The mastermind and five members were convicted of the criminal offense of Establishment of a Criminal Organization. In addition, the mastermind and four members were also convicted of smuggling and the customs officer for serious abuse of office. One defendant was convicted of smuggling only.

**All the sanctions imposed were close to or below the statutory minimum.**

[294] That is, 18000 cartons of cigarettes "Marble", 4250 cartons of cigarettes "Monte", 50 cartons of cigarettes "Eva slims", 1350 cartons of cigarettes "Trokadero - blue", 250 cartons of cigarettes "Merlin", 50 cartons of cigarettes "Trokadero - black", 100 cartons of cigarettes "Trokadero - red", textile goods and bijoux - of the total value of 254.541,40 €.

[295] Alcoholic beverage - 4080 bottles of beer "Haineken", 1584 of "Rubin", 360 bottles "Gorki list", 90 bottles "Viljamovka Takovo", 30 bottles "Kajsijevaca Takovo", 36 bottles "Jegermeister", 2400 "Red bull", 180 bottles of pear grappa "Simex", 180 bottles "Rum Simex", 48 bottles of grappa "Plantaze", 42 bottles of grappa "Prvijenac" Plantaze, 1200 of bottles of wine "Chardonnay" Plantaze, 1200 bottles of wine "Vranac" Plantaze, 105 cartons of cigarettes "Marlboro", 15 cartons of cigarettes "Drina", 31 cartons of cigarettes "Clasic", 1500 pcs. of firecrackers, 1150 pcs. of pyrotechnic devices, textile goods, technical goods and food of a total value of 75.327,00 €.

[296] Ks.no.15/2016 dated 04.12.2017, judges Vesna Pean, Dragoje Jovic and Sonja Cveticanin Ognjenovic



For establishment of a criminal organization, the mastermind and five members of the organization were imposed sanctions below the statutory minimum, and the customs officer who was a member of that organization got a minimum sentence.

The sanctions for smuggling imposed on the mastermind and one member are six months above the minimum, while three defendants were imposed minimum sentences. For a more serious abuse of office, a customs officer was imposed a minimum sanction. The defendant who was not a member of the criminal organization was convicted of smuggling and imposed a conditional sentence.

| <b>Defendant</b>                          | <b>Offense</b>                           | <b>Prescribed sentence</b> | <b>Imposed sentence</b>                        |
|---|--|----------------------------|--|
| Momic<br>(mastermind)                     | Establishment of a criminal organization | 3 – 15 yrs                 | <b>2 yrs</b>                                   |
|   | Smuggling                                | 6 m – 5 yrs<br>+ fine      | 1 yr<br>+ 2.000 €                              |
|   | <b>Cummulative sentence</b>              |                            | <b>2 yrs &amp; 10 m<br/>+ 2.000 €</b>          |
| Baosic<br>(member)                        | Establishment of a criminal organization | 1 – 8 yrs                  | <b>11 m</b>                                    |
|   | Smuggling                                | 6 m – 5 yrs<br>+ fine      | 1 yr<br>+ 1.000 €                              |
|   | <b>Cummulative sentence</b>              |                            | <b>1 yr &amp; 8 m<br/>+ 1.000 €</b>            |
| Mrdak<br>(member –<br>customs<br>officer) | Establishment of a criminal organization | 1 – 8 yrs                  | <b>1 yr</b>                                    |
|   | Abuse of Office                          | 1 – 8 yrs                  | 1 yr   |
|   | <b>Cummulative sentence</b>              |                            | <b>1 yr &amp; 9 m</b>                          |
| Simovic<br>(member)                       | Establishment of a criminal organization | 1 – 8 yrs                  | <b>10 m</b>                                    |
|   | Smuggling                                | 6 m – 5 yrs<br>+ fine      | 6 m<br>+ 1.000 €                               |
|   | <b>Cummulative sentence</b>              |                            | <b>1 yrs &amp; 3 m<br/>+ 1.000 €</b>           |
| Stanic<br>(member)                        | Establishment of a criminal organization | 1 – 8 yrs                  | <b>10 m</b>                                    |
|   | Smuggling                                | 6 m – 5 yrs<br>+ fine      | 6 m<br>+ 1.000 €                               |
|   | <b>Cummulative sentence</b>              |                            | <b>1 yr &amp; 3 m<br/>+ 1.000 €</b>            |
| Baosic<br>(member)                        | Establishment of a criminal organization | 1 – 8 yrs                  | <b>10 m</b>                                    |
|   | Smuggling                                | 6 m – 5 yrs<br>+ fine      | 6 m<br>+ 1.000 €                               |
|   | <b>Cummulative sentence</b>              |                            | <b>1 yr &amp; 3 m<br/>+ 1.000 €</b>            |
| Vorotovic                                 | Smuggling                                | 6 m – 5 yrs<br>+ fine      | <b>5 m, 1 yr<br/>conditional +<br/>500 EUR</b> |

Table 7: Individual and cummulative sentences imposed by the Higher Court in Podgorica [297]  
(in years and months, that is, in EUR)



## Mitigating and aggravating circumstances

In the case of all the defendants, the court did not consider the circumstances that must be assessed in sentencing, namely:

- the degree of guilt;
- the motives for which the offense was committed - in the specific case, to earn profit;
- the severity of the threat or violation of the protected property - the objective gravity of the offense, the manner and means of commission, the value of the goods and the damage to the state budget;
- the circumstances under which the offense was committed. [298]

**In the case of all the defendants the court considered as mitigating circumstances the fact that they were family people and parents, and most of them were of a poor financial status, although it did not explain in the judgment on the basis of what it established these facts.**

| Defendant          | Mitigating circumstances  | Aggravating circumstances   |
|--------------------|---|---|
| Momic (mastermind) | Family man, father of one child, unemployed, poor financial status in particular: no previous convictions | none  |
| Baasic (member)    | Family man, father of one child poor financial status   | Previous convictions for the same type of offenses                                    |
| Mrdak (member)     | Family man, father of four  | Previous conviction for an offense in the area of traffic offenses was not considered |
| Simovic (member)   | Family man, father of four, unemployed in particular: no previous convictions                             | none  |
| Stanic (member)    | Family man, father of one child, poor financial status in particular: no previous convictions             | none  |
| Baasic (member)    | Family man, father of two, retired, poor financial status in particular: no previous convictions          | none  |
| Vorotovic          | Family man, father of four, retired, poor financial status in particular: no previous convictions         | none  |

Table 8: Mitigating and aggravating circumstances stated in the judgment

**The Special Prosecutor who represented the indictment [299] was satisfied with lenient sanctions, and did not appeal the first instance judgment.**

## Court of Appeals: Sanctions imposed on all the defendants were upheld

The Court of Appeals [300] upheld the first instance judgment. Only the defendants appealed the verdict, so it could not be altered to their detriment either in terms of the legal qualification of the crime or the criminal sanction. [301]

[298] Article 42 of the Criminal Code (general rules on imposition of sanctions)

[299] Lidija Vukcevic

[300] Kzs.no.7/18 dated 25.05.2018, judges Zoran Smolovic, Milenka Zizic and Dragisa Rakocevic

[301] Article 400 of the CPC (prohibition of alteration to the detriment of the defendant when it was only the defendant who lodged an appeal)



## Case study 25: Vehicles

This study shows that in the case of vehicle smuggling, the prosecution did not provide any evidence of organized crime, although it indicted four persons of 12 criminal offenses offenses.

In the indictment, the prosecutor did not specify any act of organization of a criminal association by the mastermind or the members.

The prosecutor charged some persons with acts that were not criminal offenses, so the court should not have started the proceedings, but was obliged to dismiss the indictment. However, the court only noted the shortcomings of the indictment in the judgment. Due to these errors of the prosecutor and the court, these defendants cannot be retried for these crimes. [302]

The final judgment in this case has not been published, so it is impossible to find out the reasons and reasoning for that judgment, and the name of the prosecutor who filed and represented the unlawful indictment also remains unknown.

### Indictment

With the indictment of the Special Prosecutor [303], Milan Terzic was charged with the criminal offense of Smuggling, since in October 2009 he transferred two vehicles that were not subject to customs clearance from Serbia to Montenegro in a way that he avoided police and customs control. He was charged with criminal offenses of criminal association and forgery of official document, three other persons were charged with criminal offenses of criminal association and smuggling and one defendant was charged with criminal offenses of criminal association, smuggling and aggravated theft.

### Judgment: Out of 12 criminal offenses, conviction for only one

By the judgment of the Higher Court in Bijelo Polje [304], Milan Terzic was sentenced to **one year and two months** in prison and a fine of EUR 1,2 thousand for **the continued criminal offense of Smuggling**. [305] The criminal offense for which Terzic was convicted is punishable by a prison sentence of **six months to five years** and a fine.

Terzic and all other defendants have been **acquitted of criminal association and other crimes**.

[302] Article 6, Paragraph 1 of the Criminal Procedure Code – prohibition of retrial (ne bis in idem). The same principle is stipulated in Article 36 of the Constitution of Montenegro, and in Article 4, Paragraph 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms

[303] It is not possible to establish which prosecutor represented the indictment, because the final first instance judgment of the Higher Court in Bijelo Polje was not published, and the judgment of the Court of Appeals which upheld the first instance judgment does not state the data about the reference number of the indictment and the prosecutor who represented it.

[304] Ks.no.1/12 dated 21.12.2012.

[305] Article 265 of the Criminal Code



This judgment was upheld by the Court of Appeals of Montenegro [306], but it remained unclear what circumstances influenced the sentencing of Terzic and how the court assessed them, since the first instance judgment of the Higher Court in Bijelo Polje was not published.

It follows from the judgment that the Court of Appeals accepts the position of the Higher Court in Bijelo Polje to acquit of all the defendants of the criminal offense of Criminal Association and states: **“the content of the evidence presented is of such a nature that no decisive fact can be established from them with regard to the crime in question”**.

**The The prosecutor did not specify in the indictment any action of establishment of a criminal association by the mastermind or the action whereby the other defendants became members of that association.**

The judgment of the Court of Appeals states that:

**“there are no actions on the basis of which it can be established** that defendant Terzic organized a criminal association and the other defendants become members of that criminal association as alleged in the indictment”

**“no evidence adduced indicates with certainty** that defendant M.T. undertook any action of creating a criminal association, or devising a plan for committing crimes, or assigning individual roles to members of that association, nor is it apparent that he had taken any organizational activity which would be a condition for the functioning of the association for the purpose of committing criminal offenses”.

### **Two defendants charged with actions that did not constitute a criminal offense**

It is apparent from the Court of Appeal's judgment that the Prosecution did not write a lawful indictment and that the Higher Court in Bijelo Polje did not lawfully control the indictment prior to its confirmation.

Already in the course of control of the indictment, the Higher Court should have established that the action stated in the indictment was not a criminal offense and suspended the criminal proceedings. [307] Instead, the Higher Court apparently noted this omission by the prosecutor only in its judgment.

For the two defendants who were acquitted the Court of Appeals stated that the actions described in the indictment **“did not contain the essential characteristics of the crimes** that they were charged with, for which reason and according to the law they did not constitute criminal offenses”.

The Court of Appeal's judgment states that the factual description given by the prosecution for one defendant in the indictment **“does not contain the legal characteristics of the said crime** that the defendant was a member of a criminal association.”

The court also found that the factual description of the actions in the indictment that charged the defendants with the commission of the criminal offense of Smuggling does not contain the legal characteristics of the crime.

[306] Kžs.no.39/13 dated 19.11.2013.

[307] Article 294, Paragraph 1, Item 1 of the Criminal Procedure Code





# 7.

## ACCOUNTABILITY OF JUDICIARY

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Omissions of the Special Prosecutors have led to acquittals in the most important cases with the elements of organized crime.

These prosecutors charged the defendants with actions that did not constitute criminal offenses or with crimes that did not exist at the time of commission. They have pursued several years long proceedings against some defendants accused of money laundering, although they had no evidence that the money originated from criminal offenses.

Some prosecutors prosecuted members of criminal groups, although their indictments did not contain basic legal requirements for the existence of organized crime. In some cases, prosecutors have represented for years the indictments for criminal offenses for which the statute of limitations has occurred.

Many of the Special Prosecutors were not held accountable for these omissions, but promoted rather. No prosecutor was held responsible for the omissions in the indictments leading to the acquittals, nor for the lack of promptness that led to the statute of limitations for prosecution.

Judges who upheld the unlawful indictments were not held accountable, though this led to acquittals and prohibition of retrial for these crimes.



In some important proceedings, judges of the Higher Court in Bijelo Polje have shown that they do not know which law to apply in cases of money laundering, nor how this crime is proven.

In one organized crime case, the judges of that court who were involved in the investigation were adjudicating the case, which led to the reversal of the judgment. No disciplinary proceedings have been instigated against these judges either.

## 7.1. Accountability of prosecutors

According to the prosecution, from 2013 to 2018, four disciplinary proceedings were initiated against prosecutors, solely in connection with the failure to report income or property, not because of incompetent work or lack of promptness.

The Law on State Prosecutor's Office prescribes several disciplinary offenses for state prosecutors [308], and the **incompetent or negligent** performance of the prosecutorial function constitutes the most serious disciplinary offense. This misdemeanor offense can be established if the prosecutor unjustifiably works for less than half of the standard, has received twice the grade not satisfactory, or has been sanctioned twice for serious misdemeanors, or if he starts performing another public duty or other activity. [309]

If the prosecutor fails to act in the cases within the statutory deadlines without a justified reason, and consequently the **statute of limitations** occurs, the impossibility of conducting the proceedings and other consequences prescribed by the law, he has committed a serious disciplinary offense.

The motion for establishing disciplinary responsibility of the State Prosecutor may be filed by the Head of the State Prosecutor's Office, the Head of the directly superior State Prosecutor's Office, the Supreme State Prosecutor, the Minister of Justice and the Commission for Monitoring the Application of the Code of Ethics of State Prosecutors. [310]

**No prosecutor was held accountable for statute of limitations of criminal prosecution or for omissions in the indictments that lead to acquittals or dismissals.**

[308] Article 108 of the Law on State Prosecutor's Office. In addition to the misdemeanour offense of failure to provide information on assets and income in line with the regulations governing the prevention of conflicts of interest, the law prescribes nine more serious disciplinary offenses, four misdemeanour offenses and two most serious ones.  
[309] Article 108, Paragraph 6 of the Law on State Prosecutor's Office  
[310] Article 110 of the Law on State Prosecutor's Office



## Case study 26: Omissions by the prosecution in the Balkan “Warrior case” [311]

In the case against Dusko Saric, Special Prosecutor Djurdjina Nina Ivanovic made numerous omissions in the indictment, but was still promoted in service.

She accused Saric of committing a crime that was not prescribed at the time of the commission, as well as of committing certain actions that did not constitute a crime. She also charged him with money laundering, although she did not provide any evidence that the money came from a crime. Despite this, Ivanovic is now a prosecutor in the Supreme State Prosecutor's Office.

The indictment against Saric was filed by the then Special Prosecutor's Office headed by Djurdjina Nina Ivanovic. [312] In the available judgments, there is no information about other prosecutors who have acted in the case.

### Not a criminal offense

The Special Prosecutor [313] charged the accused Saric with the criminal offense of Establishment of a Criminal Organization for the actions that took place in the period from 2007 to 2009, that is, prior to the entry into force of the amendments to the Criminal Code prescribing this crime. Namely, the criminal offense of establishment of a criminal organization [314] was introduced with the 2010 amendments to the Criminal Code.

### Actions do not correspond with the description of the crime

The same indictment charged Saric with the criminal offense of Unauthorized Production, Possession and Distribution of Narcotic Drugs, that is, more than 260 kg of cocaine. However, in relation to this crime, the indictment lists actions that do not correspond to the description of the act of that crime in the Criminal Code. [315]

The Criminal Procedure Code prescribes that the indictment must contain, inter alia, a description of the act from which the legal characteristics of the crime are derived. [316] Therefore, the offense stated in the indictment must correspond with the legal description of the act of the crime.

[311] Proceedings against Saric and Loncar are described in detail in Case Study 15, and this chapter contains only the most important conclusions in the context of accountability of the acting state prosecutors.

[312] "Dan" Daily: "Nina pod lupom zbog Kalića", 17 September 2016, <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=564784&datum=2016-09-17>, Source: <https://www.monitor.co.me/i-ari-i-lonar-trae-odtetu-od-drave-nae-pare-za-korektne-momke/>

[313] Judgment Ks.no. 3/11 dated 03.05.2012, Indictment Kt-S.no.7/10-2 filed on 14 May 2011, represented by Special Prosecutor Djurdjina Ivanovic

[314] Article 401a of the Criminal Code

[315] Saric was charged, among other things, with **staying** in Livigno at the time of the cocaine transfer, **leaving** Milan and coming to Belgrade two days before the perpetrators of drug trafficking were detected, and giving certain instructions to other members of the criminal organization by telephone. but for actions taken **after** the commission of the crime related to cocaine trafficking, which are actions not prescribed by the Criminal Code as a criminal offense of unauthorized production, possession and distribution of narcotic drugs.

[316] Article 292, Paragraph 1, Item 2.



## No evidence

Finally, in its judgment [317] the Court of Appeals noted that the Prosecution did not provide any evidence that the money or a part of it was obtained through the criminal offense of unauthorized production, possession and distribution of narcotic drugs.

Such action by the Special Prosecutor had to result in the failure of the indictment, so the proceedings ended in acquittal and the defendant can no longer be tried for these crimes.

**Despite these omissions, Djurdjina Ivanovic was promoted in mid-2015 to the position of the Deputy Supreme State Prosecutor [318], and is still a prosecutor in the Supreme State Prosecutor's Office today. [319]**

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[317] Judgment of the Court of Appeals of Montenegro Kž.no.66/15 dated 27.09.2017.

[318] "Dan" Daily: "Đurđina Ivanović zamjenik VDT-a", 25 June 2015, <https://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=498140&datum=2015-06-25>

[319] <https://www.tuzilastvo.me/index.php/vrhovno-drzavno-tuzilastvo/drzavni-tuzioci-u-vrhovnom-drzavnom-tuzilastvu>



## Case study 27: Other omissions of the prosecution

The Special Prosecutor charged the accused member of a criminal group with only one criminal offense, although the legal requirement for him to be charged with organized crime is the commission of several criminal offenses. In the second example the prosecutor changed in those proceedings the description of the purpose of the criminal association four times, while in the third, the prosecutor for two years represented the indictment for the criminal offense for which the statute of limitations had been prosecuted.

In the case against members of a criminal organization smuggling cocaine in several countries, Special Prosecutor Hasan Lukac charged the defendant with only one act of cocaine sale. [320]

That person could not have been convicted of organized crime because one of the three mandatory conditions for the existence of that crime was missing, and that is the purpose of committing **multiple criminal offenses** for which a sentence of four years in prison or a more stringent sentence can be imposed. [321]

This Special Prosecutor was not held accountable either for the omissions in the indictments.

\* \* \*

It has already been stated that in the "Aphrodite" case the prosecution has filed an incomprehensible indictment, without evidence of trafficking, and has changed the description of the criminal association's purpose four times.

\* \* \*

Special State Prosecutor Mira Samardzic filed an indictment for a serious crime of money laundering, although the offense in question was a lighter form of that crime.

The gravity of the offense was determined by the amount of money that was known to the prosecutor at the time of the indictment. The defendant was charged with money laundering in the amount of EUR 17 thousand, and the prosecutor charged him with a serious criminal offense which exists, according to the law, when the amount of money exceeds EUR 40 thousand.

Only after two years of trial, the Special Prosecutor corrected this mistake in the indictment, which resulted in a judgment dismissing the indictment for the statute of limitations on prosecution, which the Prosecutor did not appeal. [322]

In this case, again, the prosecutor's responsibility for the said omission was not assessed, nor the possible responsibility of anyone for the statute of limitations on the prosecution of the criminal offense of Money Laundering.

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[320] Kts.no.16/13 dated 29.11.2013, represented by Special Prosecutor Hasan Lukac

[321] According to Article 401a, Paragraph 6 of the Criminal Code, for the existence of organized crime, i.e. of a criminal organization, the organization must be comprised of three or more persons, and its purpose must be commission of crimes punishable by four years in prison or a more stringent sanction, in order to gain illicit proceeds or power

[322] More details in the case study: Statute of Limitations because of the mistake in the indictment



## 7.2. Accountability of judges

According to data from the Judicial Council website, in the period from 2013 to 2015, six judges were subject to disciplinary proceedings for violating legal deadlines in scheduling hearings or drafting judgments and for inappropriately treating a party to the proceedings. Since the enactment of the new law in 2015, one judge has been subject to disciplinary proceedings for violating the statutory deadline for drafting a judgment.

However, in addition to these disciplinary offenses, the Law on Judicial Council and Judges prescribes eleven other serious disciplinary offenses, five minor disciplinary offenses and two most serious disciplinary offenses. [323]

Among other things, the law stipulates that a judge commits a serious disciplinary offense if, without justifiable reason, he delays the proceedings or fails to process the case, which causes the statute of limitations for criminal prosecution or the statute of limitations for the commission of criminal offense punishable by a prison term of minimum one year.

**None of the judges were held disciplinary liable for the statute of limitations on prosecution, nor for the omissions in confirming the indictments that lead to acquittals in numerous important cases.**

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[323] Article 108 of the Law on Judicial Council and Judges



## Case study 28: Omissions by the prosecution in the “Balkan Warrior” case [324]

The Higher Court in Bijelo Polje confirmed the unlawful indictment against Saric, although it was obliged to ask the prosecutor to correct and amend it, and to suspend the proceedings. Had the court acted in this way, the defendant could have been tried for these offenses in a new proceeding, since the prohibition of retrial does not apply to proceedings which have been suspended based on a final and enforceable decision.

The judges of the Higher Court in Bijelo Polje have shown that they do not know which law to apply in cases of money laundering, nor how this crime is proven. Therefore, it was only after three proceedings before that court that the Court of Appeals conducted a hearing and found that there was no evidence that the money had been obtained through a crime.

### Unlawful indictment confirmed

After the prosecution files the indictment, it is submitted to the court for review and confirmation, and the court schedules a hearing to examine and assess the legality and justification of the indictment. [325]

**When it finds in the indictment control proceedings that the act stated in the indictment is not a criminal offense, the court must suspend the criminal proceedings. [326]**

However, the Higher Court in Bijelo Polje did not suspend the proceedings but confirmed the indictment against Saric, despite the fact that the Special Prosecutor charged the defendant with an act that did not constitute a criminal offense at the time of commission.

The court thus allowed the continuation of the proceedings on the unlawful indictment, which resulted in the acquittal, but also the prohibition of retrial for this offense.

**Namely, should the Higher Court Bijelo Polje have acted in accordance with the law and suspended the criminal proceedings, the defendant could have been tried for this criminal offense in the new proceedings, since the prohibition of retrial does not apply to the proceedings which have been suspended with a final court decision. [327]**

Two years after the unlawful indictment was filed and confirmed, Appeals Court of Montenegro acquitted defendant Saric of this crime because at the time of the execution, the act he was charged with was not prescribed by the law. [328]

[324] Proceedings against Saric and Loncar are described in detail in Case Study 15, and this chapter contains only the most important conclusions in the context of accountability of the acting prosecutors.

[325] Article 293 of the Criminal Procedure Code

[326] Article 294, Paragraph 1, Item 1 of the Criminal Procedure Code

[327] Article 6 of the Criminal Procedure Code stipulates the prohibition of retrial (Ne bis in idem) of a person who was acquitted with a final court decision, while Article 36 of the Constitution of Montenegro stipulates that no person can be subject to retrial, or convicted again for the same punishable act.

[328] Judgment Kzs.no.83/12 dated 08.02.2013.



**In addition, if the indictment has errors or deficiencies relating to the description of the act that the defendant is charged with, the court is obliged to return the indictment to the prosecutor to remedy the deficiencies and to file a corrected indictment within three days. [329]**

However, the Higher Court in Bijelo Polje did not comply with the law, but in this part confirmed the indictment with obvious deficiencies and allowed the continuation of the proceedings, which also resulted in the acquittal and the prohibition of retrial for cocaine smuggling.

As in the case of charges for organized crime, in the same judgment [330] the Court of Appeals of Montenegro acquitted defendant Saric of the criminal offense of Unlawful Production, Possession and Distribution of Narcotic Drugs, again with the justification which is most favorable to the defendant, i.e. with the conclusion that the offense he was charged with does not constitute a crime under the law, as it does not contain the essential elements of the substance of that crime referred to in the Criminal Code.

### **Convicted three times without evidence**

When it comes to charges for money laundering, the Higher Court in Bijelo Polje found the defendants guilty on three occasions, and the Court of Appeals overturned those judgments.

**In the first proceedings, the Higher Court in Bijelo Polje failed to state which law it applied**, and this judgment was quashed as incomprehensible by the judgment of the Court of Appeals of Montenegro and the case was returned for retrial. [331]

**In the second proceedings, the Higher Court applied the wrong law** and in the judgment qualified the offense by referring to the 2008 amendments to the Criminal Code. However, these amendments did not refer to the criminal offense of Money Laundering, so the Court of Appeals stated that the 2006 Criminal Code had to be applied because that code was in force at the time of commission of the crime, and no amendment of the law after the commission of the crime is more favorable for defendants in order to be applied.

In the third proceedings, the Higher Court finally applied the relevant law and convicted the defendants again, but the Court of Appeals stated that in that proceeding the court **did not determine whether the money came from a crime**.

**More than six years after the indictment was filed in this case, it was before the Court of Appeals that the origin of the money, which the prosecution claimed came from smuggling of cocaine, was being determined for the first time.**

That court also acquitted the defendants of the crime because there was no evidence that they had obtained the money by smuggling cocaine. That judgment was upheld by the Supreme Court.

**It is unknown which judges confirmed the indictment, and the ones who acted in the case were Sefkija Djesevic, Jokan Varagic, Vukomir Boskovic, who are still judges of the Higher Court in Bijelo Polje.**

[329] Article 293, Paragraph 6 of the Criminal Procedure Code

[330] Kžs.no.83/12 dated 08.02.2013.

[331] Kžs.no.83/12 dated 08.02.2013.



## Case study 29: Judges in conflict of interest

In one organized crime case, the Court of Appeals of Montenegro overturned the judgment [332], as the judges who took evidence in the investigation participated in its adoption.

A member of the panel which rendered the judgment, Judge **Gorica Djalovic**, as an investigating judge, issued an order to extend the investigation and ordered secret surveillance measures against two defendants.

Two defendants were treated in the same way by Judge **Sefkija Djecevic**, another member of the Panel of Judges.

Besides, the President of the Panel of Judges, Judge **Vukomir Boskovic**, issued an order to extend the investigation and ordered secret surveillance measures against four defendants.

Such conduct by the judges was contrary to the then applicable Criminal Procedure Code, which stipulated, inter alia, that a judge could not exercise judicial office if he had taken evidentiary actions in the same criminal case. [333]

Also, the current Criminal Procedure Code, in the same provision, stipulates that a judge cannot exercise his/ her judicial duty if he/she participated as an investigating judge in the same criminal case.

All three judges continue to act in organized crime cases under the jurisdiction of the Higher Court in Bijelo Polje.

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[332] Decision Kžs.no.21/12 dated 29.05.2012.  
[333] Article 38, Item 4.





## 8.

# ACCESS TO INFORMATION

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The courts publish final judgments on their websites after deleting from them numerous pieces of information relevant to controlling their work and also analyzing narcotics smuggling channels.

All organized crime trials were public and reported in the media. Nonetheless, in all final convictions for organized crime, the courts anonymized the names of all persons mentioned in the proceedings, including the defendants, their defense attorneys, witnesses, as well as expert witnesses.

The names of the Special Prosecutors who represented the indictments were also deleted from some of the judgments.

In most of the final judgments related to drug trafficking, the names of states, cities, and especially the ports from which narcotics were taken and to which they were transferred for further distribution, were anonymized. There are neither the names of the ships used to transport the drugs, nor the locations where they were seized.

The amounts of money allegedly laundered and the names of the companies that were used to commit those crimes were deleted.

This information was anonymized on the basis of the Rulebook issued by the President of the Supreme Court. At the initiative of MANS, the Constitutional Court found that this Rulebook was contrary to the Constitution and the law.

However, anonymization continues on the basis of the Rules of Procedure of the Courts, which do not prescribe precisely what information should be omitted, which leaves room for the continued unjustified hiding of information.



## 8.1. Rulebook on anonymisation contrary to the Constitution and the law

On the basis of the Rulebook issued by the President of the Supreme Court of Montenegro, many data relevant to the work of non-governmental organizations as well as research journalists trying to discover the paths of narcotics smuggling, were deleted from the final judgments for organized crime. At the initiative of MANS, the Constitutional Court found that this Rulebook was contrary to the Constitution and the law.

The Rulebook on Anonymization of Data in Court Decisions stipulates that prior to publication a series of data be removed from final court decisions. This includes the removal of information about parties, defendants, injured parties, witnesses, friends, neighbors, proxies - attorneys, experts, interpreters of other persons officially involved in the proceedings, names and headquarters of legal entities, institutions, associations, trade unions, etc., addresses and the like.

Due to the contradiction of this Rulebook with the provisions of the Constitution and laws that prescribe the publicity of proceedings as rules, and strict and precise reasons for exclusion of the public, MANS filed an initiative with the Constitutional Court to review the constitutionality and legality of that act.

On 25 April 2019 [334] the Constitutional Court of Montenegro accepted this initiative and initiated the constitutionality and legality review process on the grounds that the President of the Supreme Court had exceeded the powers by adopting such an act.

Subsequently, on 3 July 2019, the President of the Supreme Court declared the Rulebook invalid. On 27 September 2019, the Constitutional Court of Montenegro adopted a decision [335] declaring that the Rulebook on anonymization of data in court decisions at the time of its validity was not in line with the Constitution and the law. [336]

It was thus confirmed that the President of the Supreme Court of Montenegro had violated the Constitution and the law by adopting the disputed Rulebook, and that numerous data from the final judgments were hidden from the public on the basis of an act contrary to the Constitution and the law.

**However, the anonymization continues on the basis of the Rules of Procedure of the court, which prescribe that prior to the publication of final judgments, personal and other information are changed and omitted. [337] It is not prescribed what “other information” is, which leaves room for continued arbitrary hiding of information.**

[334] Decision U-II no.67/18;

[www.ustavisud.me/ustavisud/skladiste/blog\\_2/objava\\_149/fajlovi/Saop%C5%A1tenje%20sa%20IV%20sjednice%20Ustavnog%20suda.pdf](http://www.ustavisud.me/ustavisud/skladiste/blog_2/objava_149/fajlovi/Saop%C5%A1tenje%20sa%20IV%20sjednice%20Ustavnog%20suda.pdf)

[335] U-II no. 67/18

[336] Source: <http://www.ustavisud.me/ustavisud/objava/blog/7/objava/48-saopstenje-sa-ix-sjednice-ustavnog-suda-crne-gore>

[337] Article 40 of the Rules of Procedure of the Courts



## 8.2. Deletion of data relevant for the analysis

Important data on narcotics smuggling channels were deleted from the final judgments for organized crime, although the trials were public and were reported on by the media. The amounts of money that were allegedly laundered and the names of the companies that were used to do so were also deleted.

From the final judgments the courts diligently deleted the data on:

- the names of the defendants, expert witnesses, defense attorneys and all other persons
- the names and nicknames of the defendants and other members of the criminal organization, as well as their defense attorneys, and in some cases the data on
- the names of the prosecutors who represented the indictment
- the names of the **states, cities, and in particular the ports** from which the narcotics were taken and to which they were transferred for further distribution, that is, in which the narcotics were found by search or where the defendants met,
- the names of the ships used to transport the narcotics
- the names of the places where they met,
- the names of the mobile networks they used, the names and brands of their phones and lap tops, and even the brands and models of the backpacks in which the narcotics were found.

### Case study 30: Courts protect privacy of the criminals or hide omissions?

**Even the names of the prosecutors who represented the indictment are deleted from some final judgments.**

u promet opojnih droga iz člana 300 stav 1 Krivičnog zakonika V. S. kojeg brani advokat B. J. advokat iz Podgorice zbog krivičnih djela- stvaranje kriminalne organizacije iz člana 401a stav 2 u vezi stava 6 Krivičnog zakonika i neovlašćena proizvodnja, držanje i stavljanje u promet opojnih droga iz člana 300 stav 1 Krivičnog zakonika i K. R. kojeg brane advokati D. V. i Z. P. advokati iz Podgorice zbog krivičnih djela- stvaranje kriminalne organizacije iz člana 401a stav 2 u vezi stava 6 Krivičnog zakonika i neovlašćena proizvodnja, držanje i stavljanje u promet opojnih droga iz člana 300 stav 1 Krivičnog zakonika, rješavajući po optužnici Vrhovnog Državnog tužioca – Odjeljenja za suzbijanje organizovanog kriminala, korupcije, terorizma i ratnih zločina Podgorica KTS.br. 18/11 od 20.10.2011. godine koju je na glavnom pretresu zastupao **D. B. - Deputy Special Prosecutor in Podgorica** nakon održanog usmenog, glavnog i javnog pretresa dana 23.01.2012. godine, nakon tajnog vijećanja i glasanja, donio je dana 26.02.2013. godine i javno objavio

*Excerpt from the judgment of the Higher Court in Podgorica Ks.no. 25/2011*



**Names of the defendants are deleted from all the judgments, and only the initials were left. In cases where the initials of several persons were the same, the analysis was almost impossible.**

1. Okrivljeni R. D., S. M., B. N., L. B. i R. D. djelujući u okviru organizovane kriminalne organizacije, realizujući zajednički dogovor tokom jula 2011. godine učestvovali u međunarodnoj neovlašćenoj kupoprodaji i prenosu 10 kg marihuane koja supstanca je proglašena za opojnu drogu Rješenjem o utvrđivanju opojnih droga ("Sl.list SRJ br.44/02"), iz Crne Gore u Hrvatsku, pri čemu su bili svjesni svog djela, htjeli njegovo izvršenje i znali da je njihovo djelo zabranjeno na način što je okrivljeni R. D. zadužio pripadnika kriminalne organizacije okrivljenog S. M. kako bi kupio 10 kg marihuane i pronašao kupca za drogu, pa je S. zajedno sa okrivljenim R. D. ugovorio prodaju sa licem iz Hrvatske J. L. predmetne marihuane za iznos od 20.000,00€, dok je pripadnik kriminalne organizacije okrivljeni B. N. po upustu okrivljenog R. D. provjerio kvalitet droge koja se nalazila kod okrivljenog S., i obavijestio okrivljenog R. da je droga dobrog kvaliteta pri čemu je okrivljeni L. B. okrivljenom B. donio mobilne telefone radi komunikacije sa drugim pripadnicima kriminalne organizacije tokom prenosa marihuane, nakon čega je okrivljeni S. tražio od P. A. da pronađe "k." za prevoz droge u Hrvatsku, pa je P. A. koji je pravosnažno osuđen presudom Višeg suda u Podgorici Ks.br.16/12 od 10.10.2012. godine jer je neovlašćeno posredovao u prodaji

\* \* \*

Prilikom odmjeravanja kazne za izvršena krivična djela sud je optuženim u smislu člana 42 st.1 KZ cijenio sve okolnosti koje utiču da kazna bude manja ili veća pa je S.M. i B.N. kao olakšavajuće okolnosti cijenio da se radi o licima koja su ranije bila dobrog vladanja i s tim u vezi ranije neosuđivana, a što je sud utvrdio uvidom u izvod iz kaznene evidencije, optuženom L.B. i D.Z. kao olakšavajuće okolnosti cijenio je porodične i materjalne prilike, da su oženjeni, da su roditelji i da imaju po dvoje maloljetne djece. Optuženom L.B.u cijenio je i to da je priznao izvršenje krivičnog djela i izrazio kajanje i svojim iskazom pomogao u rješenju ove krivično pravne stvari. Optuženim L.B. R.D. i D.Z. sud je kao otežavajuću okolnost cijenio činjenicu da se radi o licima koja su ranije osuđivana pri tom su L.B. i D.Z. višestruki povratnici a L.B. i R.D. su osuđivani i za istovrsno krivično djelo za koje im je suđeno u ovom postupku dakle, licima koja su sklona vršenju krivičnih dijela. Optuženom R.D. kao otežavajuću okolnost sud nije cijenio raniju osuđivanost jer se ne radi o istorodnom krivičnom djelu za koje mu je suđeno u ovom postupku. Optuženi L.B. je pravosnano osuđen presudom ovog suda K. br. 212/2011 od 23.12.2011. godine, pa kako nije započeo sa izdržavanjem kazne to mu je sud primjenom čl. 50 st. 1 KZ kaznu uzeo kao utvrđenu. Sud je cijenio i to da se radi o značajnoj količini opojne droge marihuane pa je optužene osudio na kazne zatvora kao iz izreke presude nalazeći da će se izrečenim kaznama zatvora u odnosu na optužene u cjelosti postići svrha kažnjavanja iz čl. 32. KZ u okviru opšte svrhe krivičnih sankcija iz čl. 4. st.2. KZ.

*Two defendants with the same initials, one was previously convicted, but it is not possible to determine which one, Excerpts from the judgment of the Higher Court Ks. no.16/12*



The names of the countries to which and from which narcotics are smuggled, as well as the names of cities, ports, streets and facilities have been deleted from the judgments. The names of ships that smuggled drugs have also been deleted.

krilumčarenja droge, pri čemu je B. zajedno sa okrivljenim Š. pripremio utovar kokaina u J.A., and takeover in Š. te dalju prodaju u čemu su trebali da budu uključeni Z.Š. i S.B. ... zajedno sa okrivljenim Š. učestvovao u dogovorima sa pomorcima ship >> P. << at the port O. u S. oko prevoza kokaina; više neidentifikovanih lica iz drugih zemalja kao pripadnici kriminalne organizacije, koji su predali drogu pomorcima J.A. to transport in E. koja kriminalna organizacija je realizovala isporuku 77 kg kokaina koji je zaplijenjen od strane Španske policije dana 14.04.2011 godine zbog koje radnje su okrivljeni Š.D. i M.Ž. osudjeni pravosnažnom presudom ovog suda Ks.br.23711, a zbog krivičnog djela organizovanog kriminala u Španiji se vodi postupak protiv M.N., P.V., Br.I., K.D., D.D., C. G. i T. K. T.

Dana 14.03.2011. godine istražni sudija je odredio uspostavljanje službe za nadzor sastavljene od agenata koje pripadaju pokrajinskoj brigadi sudske policije grupe I za opojne droge. Iz zapisnika o nadzoru je utvrđeno da je dana 13.04.2011. godine u 08,00 časova uspostavljen uredaj za praćenje unutar pristaništa C. in the port T. er je u to vrijeme trebao da pristane Cargo ship "P.". Nakon što se usidri pomenuti brod počinje istovar žitarica u 14 časova i 30 minuta. U 15 časova i 20 minuta sa broda su izašla dva mornara kroz prolaz S. i uputila se u pravcu trgovačkog centra E., pješajući do P. d. I. I. Jedan od njih dvojice identifikovan je od strane ovlašćenih službenika kao D.K. Mornari su čekali 5 minuta na ulazu prema ulici V. B. kada su ih pokupile dvije osobe koje su vozile R.M. registarskih tablica ... uputivši se kasnije u mjesto L.P. Nakon dolaska sva četvorica napuštaju vozilo i sastaju se sa još dvije osobe koje su ih čekali na terasu ugostiteljskog objekta zvanog "P.", a što se vidi i na fotografskom izvještaju tajnog nadzora. U 16 časova i 10 minuta dvije osobe koje su sjedjele na terasi su ustale i uputile se do telefonske govornice. Pet minuta kasnije ostale četiri osobe su ustale sa terase ušle u kola i uputili se prema trgovačkom centru D., u mjesto B., mjestu gdje kupuju četiri odijela od neoprana. Sva četiri pronadjena odijela od neoprena kupljena su u 16 i 39 časova u trgovačkom centru »D.« i to od strane N.M., D.K., V.P. i I.B.. Službeniku policije u tržnom centru izdata je kopija o kupljenim artiklima od strane mornara iz koje se vidi da su kupljena četiri odijela u iznosu od 87,88 €. U 17 časova i 36 minuta pomenuto vozilo sa četiri putnika vratilo se na isto mjesto gdje je pokupilo mornare. Dva mornara su izašla i uputila se pješke ka luci. Pola sata kasnije ponovo stižu u mjesto L.P. gdje se vozilo R.M. zaustavlja u visini vozila G. italijanskih registarskih tablica .... .. tamno plave boje. Jedna osoba izlazi iz vozila R.M. i ulazi u vozilo R.G. Osobe koje su bile u R. M. su primjećene da ulaze u P. br. ..., i pojavile su se na balkonu na petom spratu, na kome stoji plakat »prodaje se« i broj telefona .... U luci T. oko 20 časova stiže taksi unutar pristaništa C., mjesto gdje je usidren brod, da bi nakon nekoliko minuta u plaga ušla tri mornara, D.K., N.M. i V.P. koji su se uputili taksijem to T. to E. shopping mall Na tom mjestu su ih prihvatili sa vozilom G. italijanskih registarskih tablica .... i prebacili do mjesta u S., konkretnije na parking u ul. T., mjesto blizu broja... u ul. B.. stan ..., gdje je i pronadjeno 29 paketa kokaina prilikom pretresa izvršenog dana 15.04.2011. godine. Osoba koja ih je uzela u blizini trgovačkog centra E. i osoba koja je vozila vozilo G. je bio D.D. U 01 i 45 časova dvojica mornara su ušla u taksi u mjestu S. i uputili se ka luci T..

Iz zapisnika o praćenju od 14.04.2011. godine, službenici za praćenje su vidjeli da je ... u in the building J. Street B. ... in S... an D.D. i G.C. U momentu hapšenja oni su imali ključeve od pomenutog stana kojima su otvorili vrata da bi se izvršio pretres.

## Amounts of money were deleted from the judgments, and names of the companies through which the money was laundered were hidden.

Information on the amount of money claimed by the prosecution as having been laundered is an essential feature of the substance of the criminal offense of money laundering, which determines which qualification the defendant will be charged with. This decides whether the defendant will be charged with a lesser or more serious form of the crime, what is the prescribed sentence and when the statute of limitations on criminal prosecution occurs.

The names of the companies owned by the defendants, which the prosecution claimed were used for money laundering, were also deleted from the judgments.

znanje optuženih Š.D. i L.J., na osnovu simulovanog Ugovora o subordiniranom zajmu od 11. aprila 2008. godine, izvršen prenos novčanih sredstava pribavljenih krivičnim djelom na rezidentni devizni račun broj .. "M.c" DOO Pljevlja čime je stavljen u platni promet Crne Gore, pri čemu su optuženi S.D. i L.J. za investiciona ulaganja, uplate ino dobavljačima i za redovno poslovanje koristili novac dobijen po Ugovorima o kreditu br... od 20.02.2008. godine i br... od 03.05.2008. godine i pozajmice dobijene u periodu od 18.04.2008-16.02.2009. godine u ukupnom iznosu od ... €, koja kreditna zaduženja nijesu imali namjeru da vrate niti su vratili novcem iz redovnog poslovanja već „prljavim“ novcem - sredstvima nerezidentnog pravnog lica "C.c", a zatim dana 15.05.2009. godine simulovanim Ugovorom o cesiji pravno lice "C.c" novčano potraživanje od pravnog lica "M.c" DOO in the amount of .... € ustupilo pravnom licu "M.LLC", iz Delaware - SAD, koji novčani iznos je, radi prikrivanja izvora i tokova novca, ovo pravno lice simulovanim Ugovorom o pristupanju osnivača i prenosu osnivačkih prava i udjela od 14.12.2009. godine, koji je potpisao optuženi L.J., uložilo u osnivački kapital pravnog lica "M.c" DOO, - kod "H.A.A.B" AD Podgorica preko nerezidentnog računa br... pravnog lica "M.LLC" iz Delaware - SAD, po nalogu optuženog L.J. uz znanje optuženog Š.D. na osnovu simulovanog Ugovora o subordiniranom zajmu od 20.05.2009. godine, izvršili prenos novčanih sredstava pribavljenih krivičnim djelom na rezidentni račun br... "M.c" DOO Pljevlja tako što su u periodu od 25.05.2009-24.12.2009. godine uplaćivali prljav novac u ukupnom in the amount of .... € i tako ga stavljali u platni promet Crne Gore, koji je "M.c" DOO iskoristio za investiciona ulaganja u Crnoj Gori i Srbiji, plaćanja ino dobavljačima i za redovno poslovanje, a zatim dana 14.12.2009. godine, radi prikrivanja izvora i tokova novca dobijenog po osnovu ovog Ugovora o subordiniranom zajmu, simulovanim Ugovorom o pristupanju osnivača i prenosu osnivačkih prava i udjela, "M.LLC" iz Delaware- SAD, dio novca u iznosu od ... € uložili u osnivački kapital pravnog lica DOO "M.c",

- "H.A.A.B" AD Podgorica u periodu od 05.05.2009 - 30.12.2009. godine, na rezidentne račune pravnog lica "M.c" DOO uplatila po osnovu ugovora o kreditu KR. br... od 05.05.2009, KR. br... od 10.09.2009, KR. br... od 06.11.2009 i KR. br... od 30.12.2009. godine, novac u ukupnom in the amount of .... € koja kreditna zaduženja okrivljeni nijesu vratili novcem iz redovnog poslovanja već „prljavim“ novcem – sredstvima nerezidentnog pravnog lica "M.LLC" koja je "M.LLC" iz Delaware- SAD po nalogu optuženog L.J. uz znanje optuženog Š.D. deponovao kod "H.A.A.B" AD Podgorica, radi obezbjedjenja kredita pravnog lica "M.c" DOO, u iznosu od ... € i ... USD u protiv vrijednosti od ... €, koji novčani iznos je "H.A.A.B" AD Podgorica upotrijebila za pokriće dijela odobrenih kredita,



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# Annex 1

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## Criminal offenses - establishment of a criminal organization and criminal association

### Article 401a of the Criminal Code Establishment of a criminal organization

- (1) Whoever organizes a criminal organization aimed at committing criminal offences punishable by law by a prison term of four years or a more severe punishment **shall be punished by a prison term from three to fifteen years.**
- (2) A member of the criminal organization referred to in para. 1 above shall be punished by a prison term from **one to eight years.**
- (3) The mastermind of a criminal organization who prevents the commission of criminal offences for the purpose of which the organization was created by revealing the criminal organization or otherwise shall be punished by a prison term from **three months to three years and his punishment may also be remitted.**
- (4) A member of a criminal organization who reveals the criminal organization or contributes to it being revealed shall be punished by a prison term up to **one year, and his punishment may also be remitted.**
- (5) **The mastermind and a member or a criminal organization who commits a criminal offense as a member of criminal organization shall also be punished for that offense.**
- (6) The criminal organization referred to in para. 1 above shall be considered to include the organization composed of three or more persons which has as its objective the commission of criminal offenses punishable by law by a four year prison term or a more severe punishment for the purpose of obtaining unlawful gain or power, provided that minimum three of the following conditions are met:
- 1) that each member of the criminal organization had a predefined or obviously definable task or role;
  - 2) that activities of the criminal organization have been planned for a longer period of time or for an unlimited period;
  - 3) that the activities of the criminal organization are based on the application of certain rules of internal control and member discipline;
  - 4) that the activities of the criminal organization are planned and implemented in international proportions;
  - 5) that activities of the criminal organization include application of violence or intimidation or that there is readiness for their application;
  - 6) that activities of the criminal organization include the use of economic or business structures;
  - 7) that activities of the criminal organization include laundering of money or illicit proceeds or
  - 8) that there is an influence of the criminal organization or its part upon the political authority, media, legislative, executive or judicial powers or other important social or economic factors.

## Article 401 of the Criminal Code

### **Criminal Association**

(1) Anyone who organizes a group or other association with a view to commit criminal offences punishable by a prison term of one year or longer shall be **punished by a prison term up to three years.**

(2) Where the offence under para. 1 above refers to an association that aims to commit criminal offences punishable by a prison term of five years or longer, the mastermind of the association shall be punished by a prison term from one **to eight years**, and a member of the association by a prison term **up to two years.**

(3) Where the offense under para. 1 above refers to an association that aims to commit criminal offences punishable by a **fifteen year** prison term, the mastermind of the association shall be punished by a prison term from two to twelve years, and a member of the association by a prison term **up to three years.**

(4) Where the offence under para. 1 above refers to an association that aims to commit criminal offences punishable by a twenty year prison term or a long prison term, the mastermind of the association shall be punished by a **prison term not shorter than ten years or a long prison term**, and a member of the association by a prison term from **six months to five years.**

(5) The mastermind of the association referred to in Paras. 1 to 4 above who reveals the association or otherwise prevents the commission of criminal offences for which the association was founded shall be punished by a prison term **up to three years, and the punishment may also be remitted.**

(6) **Punishment may also be remitted** where a member of the association referred to in Paras. 2, 3 and 4 above reveals the association or contributes to its revelation.

(7) **The mastermind and a member of the association who commits a criminal offence as a member of association shall be punished for that criminal offence as well.**



# Annex 2

## Criminal offense of the unauthorized production, possession and placing on the market of narcotic drugs - review of changes

| Criminal Code in force   | 2010 Amendments   | 2006 Amendments  | Original provision from 2003   |
|--|---|--|--|
| <p><b>Article 300</b></p> <p>(1) Anyone who unlawfully produces, processes, sells or offers for sale, or who for the purpose of selling buys, keeps or transports or mediates in the selling or buying, or in some other way unlawfully sells substances proclaimed to be narcotics or plants containing such substances, shall be punished by an imprisonment sentence of <b>two to ten years</b>.</p> <p>(2) Anyone who brings into Montenegro, with the intention to commit crimes referred to in Paragraph 1 of this Article, substances that are proclaimed narcotics or plants containing such substances, shall be punished by an imprisonment sentence of <b>two to twelve years</b>.</p> <p>(3) If the perpetrator of the offense referred to in Paras. 1 and 2 of this Article organized a network of dealers or mediators, s/he shall be punished by an imprisonment sentence of <b>three to fifteen years</b>.</p> | <p>Article 300 is amended as follows:</p> <p>„(1) Anyone who unlawfully produces, processes, sells or offers for sale, or who for the purpose of selling buys, keeps or transports or mediates in the selling or buying, or in some other way unlawfully sells substances proclaimed to be narcotics or plants containing such substances, shall be punished by an imprisonment sentence of <b>two to ten years</b>.</p> <p>(2) Anyone who brings into Montenegro, with the intention to commit crimes referred to in Paragraph 1 of this Article, substances that are proclaimed narcotics or plants containing such substances, shall be punished by an imprisonment sentence of <b>two to twelve years</b>.</p> <p>(3) If the perpetrator of the offense referred to in Paras. 1 and 2 of this Article organized a network of dealers or mediators, s/he shall be punished by an imprisonment sentence of <b>three to fifteen years</b>.</p> | <p>In Article 300, Paragraph 6, following the words “shall be confiscated” the words “and destroyed” shall be added.</p> | <p>Article 300</p> <p>(1) Anyone who unlawfully produces, processes, sells or offers for sale, or who for the purpose of selling buys, keeps or transports or mediates in the selling or buying, or in some other way unlawfully releases for circulation the substances or preparations pronounced to be narcotics, shall be punished by an imprisonment sentence of <b>two to ten years</b>.</p> <p>(2) Anyone who unlawfully brings into Montenegro substances or preparations proclaimed to be narcotics, shall be punished by an imprisonment sentence of <b>two to twelve years</b>.</p> <p>(3) If an act referred to in Paragraphs 1 and 2 of this Article is committed by more persons or the offender organized a network of dealers and mediators, the perpetrator shall be punished by an imprisonment sentence of <b>three to fifteen years</b>.</p> |



| <b>Criminal Code<br/>in force</b>  | <b>2010<br/>Amendments</b>   | <b>2006<br/>Amendments</b> | <b>Original provision<br/>from 2003</b>   |
|--|--|----------------------------|---|
| <p>(4) The punishment referred to in paragraph 3 of this Article shall be imposed on the person who sells, offers for sale or without compensation, for further distribution, gives narcotic drugs to a minor, a mentally ill person, a person with temporary mental disease, a person with severe mental retardation or a person being treated from drug addiction, or who places on the market a narcotic drug mixed with a substance that may cause serious harm to health, or who commits the act referred to in paragraph 1 of this Article in an educational or upbringing institution, or in its immediate vicinity or in an institution for the execution of criminal sanctions, or in a public establishment or at a public event, or if the act referred to in Paras. 1 and 2 of this Article is committed by an official, a doctor, a social worker, a priest, a teacher, or an educator through the abuse of his position, or who uses a minor to commit this act.</p> | <p>(4) The punishment referred to in paragraph 3 of this Article shall be imposed on the person who sells, offers for sale or without compensation, for further distribution, gives narcotic drugs to a minor, a mentally ill person, a person with temporary mental disease, a person with severe mental retardation or a person being treated from drug addiction, or who places on the market a narcotic drug mixed with a substance that may cause serious harm to health, or who commits the act referred to in paragraph 1 of this Article in an educational or upbringing institution, or in its immediate vicinity or in an institution for the execution of criminal sanctions, or in a public establishment or at a public event, or if the act referred to in Paras. 1 and 2 of this Article is committed by an official, a doctor, a social worker, a priest, a teacher, or an educator through the abuse of his position, or who uses a minor to commit this act.</p> |                            | <p>(4) A perpetrator of acts referred to in Paragraphs 1 to 3 of this Article who discloses the person from whom s/he obtains the drugs may be released from punishment.</p> <p>(5) Anyone who unlawfully makes, acquires, possesses or gives for use equipment, material or substances which are known to be intended for producing narcotics, shall be punished by an imprisonment sentence of <b>six months to five years</b>.</p> <p>(6) Narcotics and substances used for their production shall be confiscated.</p> |
| <p>(5) A perpetrator of acts referred to in Paragraphs 1 to 4 of this Article who discloses the person from whom s/he obtains the drugs may be released from punishment.</p>   | <p>(5) A perpetrator of acts referred to in Paragraphs 1 to 4 of this Article who discloses the person from whom s/he obtains the drugs may be released from punishment.</p>   |                            |   |
| <p>(6) Anyone who unlawfully produces, acquires, possesses, transports or gives for use the equipment, material or substances that are known to be aimed at producing narcotic drugs, shall be punished by imprisonment sentence of <b>six months to five years</b>.</p>   | <p>(6) Anyone who unlawfully produces, acquires, possesses, transports or gives for use the equipment, material or substances that are known to be aimed at producing narcotic drugs, shall be punished by imprisonment sentence of <b>six months to five years</b>.</p>   |                            |   |
| <p>(7) Narcotics and devices used for their production shall be confiscated and destroyed.</p>   | <p>(7) Narcotics and devices used for their production shall be confiscated and destroyed.</p>   |                            |   |



# Annex 3

## Money laundering criminal offense - changes

| CC in force<br>(amended in 2017)  | Amendments<br>(2010)  | Amendments<br>(2006)  | Basic<br>(2003)   | Previous CC<br>(2002 - Article 129a)  |
|---|---|---|---|---|
| <p>(1) Anyone who converts or transfers money or other property knowing that they are derived from criminal activity for the purpose of concealing or disguising the origin of the money or other property or who acquires, possesses or uses money or other property knowing at the time of receipt that they are derived <u>from criminal activity</u>, or who conceals or misrepresents the facts on the nature, origin, place of deposit, movement, disposal or ownership of money or of other property knowing they are derived from <u>criminal activity</u> shall be punished by a prison term from <b>six months to five years</b>.</p> <p><b>It is not necessary to have a final conviction for the predicate crime!</b></p> | <p>(1) Whoever <u>converts or transfers money or other property while aware that it was obtained via criminal activity</u>, with the intention of concealing or misrepresenting the origin of money or other property, or who <u>acquires, holds or uses money or other property while aware at the time of receipt that it originated from a criminal offense</u>, or who <u>conceals or misrepresents</u> facts regarding the nature, origin, place of deposit, movement, disposal or ownership of money or other property <u>aware that it was obtained through a criminal offense</u> shall be punished with a prison term ranging from six months to five years.</p> <p><b>It is not necessary to have a final conviction for the predicate crime just for the transfer and conversion of money!</b></p> | No changes  | <p>(1) <u>Anyone who conceals, through banking, financial or other economic activity, the means of obtaining money or other property known to have been obtained through a criminal offense</u> shall be punished with a prison term ranging from six months to five years.</p> | <p>(1) Anyone who <u>invests, takes over, replaces or otherwise conceals</u>, in the banking, monetary or other economic activity, <u>the true source of money</u>, that is, objects or rights acquired by money for which <u>he knows that it was obtained through a criminal offense</u>, shall be punished with a prison term ranging from six months to five years.</p> |
| <p>(2) The sanction referred to in Para. 1 of this Article shall be imposed on the perpetrator of this offense, who is also the perpetrator or accomplice in the crime through which money or property referred to in Para. 1 of this Article was obtained, or the person who assists the perpetrator to avoid liability for the committed offense, or takes action with the same goal in order to conceal the origin of money or property referred to in Para. 1 of this Article.</p>  | <p>(2) <u>The sanction referred to in paragraph 1 of this Article</u> shall be imposed on the perpetrator of the offense referred to in Paragraph 1 of this Article if he is also the perpetrator or accomplice in the criminal offense through which the money or property referred to in Paragraph 1 of this Article was obtained.</p> <p><b>Punishment reduced from 1 to 8 years, to a range from six months to 5 years!</b></p>   | No changes  | No changes  | <p>(2) If the perpetrator of the offense referred to in Paragraph 1 of this Article is also the <u>perpetrator or accomplice in the crime through which the money or financial benefit</u> referred to in Paragraph 1 of this Article <u>was obtained</u>, he shall be punished with the prison term from one to eight years.</p>   |
| <p>(3) Where the amount of money or value of the property referred to in Paras. 1 and 2 of this Article exceed forty thousand euros, the perpetrator shall be punished by a prison term from <b>one to ten years</b>.</p>   | No changes  | <p>(3) Where the amount of money or value of the property referred to in Paras. 1 and 2 of this Article <u>exceed forty thousand euros</u>, the perpetrator shall be punished by a prison term from one to ten years.</p> | No changes  | <p>(3) If the money or property referred to in Paras. 1 and 2 of this Article is of a <b>big value</b>, the perpetrator shall be punished with a prison term from one to ten years.</p>   |



| CC in force<br>(amended in 2017)  | Amendments<br>(2010) | Amendments<br>(2006)   | Basic<br>(2003) | Previous CC<br>(2002 - Article 129a)  |
|---|----------------------|--|-----------------|---|
| (4) Where the offences under Paras. 1 and 2 of this Article were committed by several persons who associated for the purpose of committing such offences, they shall be punished by prison term from <b>three to twelve years</b> .   | No changes           | No changes   | No changes      | (4) If the offenses referred to in Paras. 1 and 2 of this Article are committed by <b>several persons who associated</b> for the purpose of committing such offenses, they shall be punished with a prison term ranging from <b>three to twelve years</b> . |
| (5) Anyone who commits the offence under Paras. 1 and 2 above and could have known or should have known that the money or property was derived from criminal activity, shall be punished by a prison term of <b>up to three years</b> .   | No changes           | 5) Anyone who commits the offence under Paras. 1 and 2 above and <b>could have known or should have known</b> that the money or property constitutes proceeds of crime, shall be punished with a prison term of <b>up to three years</b> .<br><br><b>The person who could have and should have known will be punished!</b> | No changes      | (5) If the offense referred to in Paras. 1 and 2 of this Article was <b>committed out of negligence</b> , the perpetrator shall be punished with a prison term of <b>up to three years</b> .  |
| (6) Money and property referred to in Paras. 1, 2 and 3 above shall be confiscated.   | No changes           | No changes   | No changes      | (6) Money and property referred to in Paras. 1, 2 and 3 of this Article shall be confiscated.   |
| (7) <b>Property</b> , for the purpose of this Article, means <b>property rights of any kind</b> , irrespective of whether they are relating to tangible or intangible property, movable or immovable property, securities and other documents proving property rights.<br><br><b>Definition of property included!</b> | No changes           | No changes   | No changes      | Not prescribed  |







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