

OVERVIEW OF PREVENTING AND COMBATING ORGANIZED CRIME

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Abstract

This research paper presents a general overview of preventing and combating organized crime as observed from both the national perspective concerning the Republic of North Macedonia and the international perspective concerning various legal acts and policies recognized on a global level. Such legal study, moreover, establishes the objectives to display the current legal mechanisms simultaneously criticized by their efficiency in the fight and prevention against organized crime within the country and beyond. The research methods used within this paper include a comparative-legal approach of the considerably vague notion of organized crime, as well as a critical analysis concerning legal acts related to the prevention and fight against organized crime. The results of the research methods implemented are displayed within each section of the paper and simultaneously reflect upon the expected ramification of this study. Although not explicitly stated in theory, the implications of this study in a practical manner consider criticisms toward the vagueness of the notion of organized crime, the attempt to achieve a globally accepted concept of organized crime, as well as the effectiveness of the number of international and national legal acts in the Republic of North Macedonia addressing the issue of organized crime.

Keywords: criminal law; organized crime; criminal policy; national security; criminology.

JEL Classification: K14

1. Introduction

Criminality means "the totality of all crimes committed in a certain time, space and period. Crime, as a whole of crimes committed, is divided into primary and secondary crime. Primary criminality means crimes that have been committed for the first time, for which criminal proceedings have been conducted by the competent authorities, while secondary criminality represents the repetitions of criminal behaviours and their treatment two or more times in the criminal procedure bodies"³.

It has been more than a decade since former FBI Director Louis J. Freeh targeted global organized crime as a priority threat to national security, defining it as "a continuing criminal conspiracy having a firm organizational structure, a conspiracy fed by fear and corruption"⁴.

There are **different definitions** of the notion of organized crime, depending on their purpose and the legal-dogmatic and criminal-political functions of defining this notion. From the aspect of the criminal-legal treatment of the organized participation of more persons in a criminal offense, the most appropriate is the definition that combines the criminal-laws elements and goals of the special and reinforced reaction: *the commission of criminal offenses by a criminal association with intent to achieve profit or power, by using force or by exploiting a special position in society, by reducing risk by engaging in legal economic, political and other activities and by a pre-established system of protection from prosecution.*⁵

According to Prof. Kambovski, organized crime is defined as: "Committed criminal offenses by criminal associations for the purpose of gaining benefits and/or gaining power, by using violence, or by exploiting one's position in society, by reducing the risk with the involvement of the legal, economical and political activities, as well as with a system previously prepared for protection from criminal prosecution."⁶

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³ R Halili, *Criminology*, Prishtina, 2016, p. 16.

⁴ Ibid, p. 17.

⁵ Vlado Kambovski and Ismail Zejneli, *Criminal Law*, Tetovo, 2018, p. 238.

⁶ Ibid, p. 239.

The term "organized crime" was first used in 1896 in a report by the Association for the Prevention of Crime in New York. There, the term was used for prostitution and gambling protected by public officials. According to the report, organized crime considered all illegal businesses that involved politicians, police officers, lawyers and professional thieves, whenever their crime was organized.

As trade and travel restrictions between countries disappeared and world economies became increasingly interdependent, so did international crime syndicates.

2. A comparative-legal approach of defining organized crime regarding international law

Article 3 of the 2000 UN Convention against Transnational Organized Crime⁷ (the Palermo Convention) defines the activity of a criminal group. According to this Convention, an **organized crime group** means a structured group of three or more persons, which exists for a certain period of time and acts with the intention of committing one or more criminal offenses, or acts defined by the convention to gain direct or indirect financial benefit or any other form of benefit. Serious offenses are those for which a sentence of at least four years is provided. A structured group is a group that is not formed by chance, for the momentary commission of a crime and that should not have formally defined roles of its members, continuity in its membership or a developed structure.

The Convention imposes an obligation on the signatory states to incriminate such offenses: the consent of one or more persons to commit a serious criminal offense, followed by the commission of the offense by one of the participants or membership in an organized criminal group, participation in the activities of an organized criminal group, organization, direction, incitement, facilitation or counselling in the commission of serious criminal offenses involving an organized criminal group.

The United Nations Convention on Transnational Organized Crime (UNTOC) can be considered the most important attempt to date to achieve a globally accepted concept of organized crime. This convention entered into force in September 2003. By June 2006, it has been ratified in all project areas by most member states of the Council of Europe and the European Union. This is the most valuable legal instrument for Europe and the region. UNTOC applies to organized crime, corruption, money laundering and obstruction of justice, provided that the offense is of an international nature and involves an organized criminal group as defined in the Convention.

Considering the main characteristics of organized crime, we can mention the following:

- the criminal organization has a permanent character; it is not created solely for the commission of a number of criminal offenses, nor a specific time.
- once created, it tends to remain in operation.
- membership in criminal organizations is done through threats or propaganda and very rarely voluntarily. Ordinary criminals, as well as professional ones avoid criminal groups; because they know that if they become members of the group, they would either remain forever in the group or they would be liquidated,
- the organization is built on the principles of subordinating hierarchy and unconditional submission of the lower members towards the higher ones,
- the organization protects every member of itself, both, from court and other government body proceedings as well as from other criminal organizations
- in every organization there is a permanent criminal code. The most common punishment is the death penalty which is executed in cases of espionage (betrayal) against the police or other criminal organization.
- each member of the organization receives a regular salary, while special fees are also received for special services.

Today, organized crime is increasingly recognizing new developments both in the forms of

⁷ United Nations, *United Nations Convention against Transnational Organized Crime*, United Nations, Palermo, 2000, p. 5.

reporting criminal acts and in the ways of committing them. These crimes are committed by local criminal groups that have power in the area where they operate or by heterogeneous groups⁸. Although there is no uniform definition of organized crime, criminal groups in Europe and beyond are trying to coordinate actions and divide areas of operation between them. For this reason, various international organizations and institutes are studying organized crime, the forms of its occurrence, as well as their means of organization and operation.

It should be noted that in the emergence of organized crime there are several tendencies, such as: the reconstruction of initiatives for criminal action in accordance with the changes in the world economy and the rules of its operation; its international character (many criminal organizations are changing the ways of organizing and areas of activity); introduction of criminal groups in cooperation with the governments of the countries, in order to minimize the risks during the development of their activity; engaging in less productive activities, but which, at the same time, carry fewer risks. Therefore, in this regard, the orientations of the European criminal policy against organized crime are directed at:

- creating a criminal policy that enables the detection, investigation, prosecution and punishment of various forms of economic crime;
- preparation, qualification and specialization of police, prosecution and court staff to fight organized crime;
- creation of appropriate and specialized structures for the fight against certain forms of organized crime;
- taking protective measures against potential victims, witnesses and penitents, as well as coordinating the work of the police, prosecution and courts with counterpart bodies in neighbouring countries or in a region⁹

3. The fight and prevention regarding organized crime in the Republic of North Macedonia

In order to fight organized crime, there are a number of international and national legal acts in the Republic of North Macedonia today, such as:

- UN Convention against Transnational Organized Crime;
- Protocol against the trafficking of migrants by land, air and sea;
- Convention on the Punishment of Trafficking in Human Beings and Exploitation of Prostitution by Others, 1949;
- UN Convention, 1988, "Against the Illicit Trafficking in Drugs and Psychotropic Substances;
- Council of Europe Convention on Action against Trafficking in Human Beings, 2005;
- Europol Convention on Organized Crime;
- Council of Europe Convention on Laundering, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism - Warsaw, 2005;
- Basic public prosecutor's office for prosecution of organized crime and corruption;
- Law on prevention of corruption;
- Law on public prosecutor's office for prosecution of criminal offenses related to and concerning the content of illegal prosecution;
- Law on Prevention of Money Laundering and Financing of Terrorism;
- Law on Public Prosecution of Republic of N. Macedonia.

The fight against organized crime does not end with the incrimination of the *criminal organization*. In most European legislations in the last decade some changes have been made in the substantive and procedural criminal law, in the aggravation of the criminal repression, the extension of the police powers and introductions of special investigative techniques, the permitting of the

⁸ Ismet Elezi and Vasiliki Hysi, *Criminal Policy*, University of Tirana, Tirana, 2001, p. 107-113.

⁹ Veton Vula, *Organized Crime*, Prishtina, 2020, p. 14.

interception of telephone conversations, etc.

The most effective tool in the fight against organized crime is the determination of the minimum competencies of the state, the creation of a good economic system and a good economic policy in which the state will not interfere in the conduct of economic processes¹⁰. State intervention in the economic sphere should be (self)controlled in the formation and improvement of the institutional framework, i.e. the adoption of regulatory mechanisms that ensure that market economy processes are developed in a way that most contributes to the economic interests of actors in these processes and for the well-being of society as a whole. Its preliminary task is to ensure compliance with the law, protection of equality of subjects, protection from monopolistic behaviour, guarantee of security of means of payment, payment and legal circulation, as well as protection from crime, but in no way direct interference in relations between entities in the market, privilege for some of them, etc. Strong state and liberal economy - this is the modern concept of a democratic, legal and economically advanced state.

Criminal policy against organized crime should be oriented towards the design of complex strategies where the secret services and operational work play a special place¹¹. The detection and investigation of organized crime requires protective measures against potential victims, witnesses and defendants, who assist in detecting the activities of criminal groups. This professional activity of fighting organized crime is the work of the state and its organs of power, behind which stands an entire mechanism of power and technique which the citizens do not possess.

In the Republic of North Macedonia, the courts, the prosecution, the police also play an important role in fighting and preventing organized crime.

The Basic Criminal Court in Skopje has established a specialized judicial department responsible for the trial of organized crime and corruption offenses¹² (Article 31 of the Law on Courts of RNM).

In the Central Police Services, there is a Department for organized crime for the prevention and detection of criminal offenses for which the prosecution begins *ex officio*, committed by a group organized by at least three persons, which operates for a certain period, with the aim to realize direct or indirect financial compensation or other type of material benefit and which will commit one or more criminal offenses, as well as for other criminal offenses for which the law provides for imprisonment for a period of at least four years¹³ (Article 18 of the Police law of RNM).

Pursuant to Article 32 of the Law on Public Prosecution¹⁴, the Basic Public Prosecution Office for the Prosecution of Organized Crime and Corruption is authorized to prosecute criminal offenses committed by a structured group of three or more persons, which has a period of and acts for the purpose of committing one or more criminal offenses for which a prison sentence of at least four years is envisaged.

According to the European Commission report for North Macedonia for 2021¹⁵, the country has some level of preparation in **the fight against organised crime**. The legislative framework is broadly in line with European standards and efforts to implement strategies against organised crime must continue. Some progress was made at the operational level, but more needs to be done to improve the effectiveness of law enforcement in fighting certain forms of crime, such as money laundering and financial crimes. Coordination remains crucial for all stakeholders involved in combatting organised crime.

¹⁰ Vlado Kambovski and Co., *Organized Crime - legal aspects*, Tetovo, 2008, p. 26.

¹¹ V. Latifi, *Criminal Policy*, Prishtina, 2013, p. 125.

¹² The Law on Courts of the Republic of North Macedonia, Article 31.

¹³ The Police Law of the Republic of North Macedonia, Article 18.

¹⁴ The Law on Public Prosecution of the Republic of North Macedonia, Article 32.

¹⁵ "Key findings of the 2021 Report on North Macedonia", European Commission, October 19, 2021, https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5280

4. Conclusions

Based on the conducted comparative-legal approach of the considerably vague notion of organized crime, as well as a critical analysis concerning legal acts related to the prevention and fight against organized crime within this research paper, we consider some essential implications of our study as follows:

- given that various authors and legal professionals have proposed different definitions of organized crime as a particular criminal occurrence which poses as a serious threat to national security, there is a necessity of a comprehensive definition which would combine the legal-dogmatic and criminal-political functions, as well as the aspect of the criminal-legal treatment of the organized participation of more persons in a criminal offense. Ultimately, this definition could be believed to lead toward more precise and more efficient legal acts aimed toward the prevention and fight against organized crime.

- by analyzing the United Nations Convention on Transnational Organized Crime (UNTOC), as well as the Palermo Convention, with particular emphasis on Article 3, it was established that the respective legal acts of international character represent the most relevant attempts to archive a globally accepted concept of organized crime. As previously stressed, it could be considered that the key to formulating a comprehensive definition of organized crime lies in the establishment of such legal acts, as their international character would only contribute in accepting the proposed definition on a global scale.

- by analyzing both national and international legal acts in the Republic of North Macedonia concerning organized crime, it has been established that the prevention and fight against organized crime does not end with the incrimination of the criminal organization, where the most effective tool in the fight against organized crime is the determination of the minimum competencies of the state, the creation of a good economic system and a good economic policy in which the state will not interfere in the conduct of economic processes.

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