

MEANING AND GENERAL FEATURES OF ORGANIZED CRIME WITH A PARTICULAR FOCUS ON KOSOVO

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Abstract

This paper addresses some of the issues and problems of the organized crime in general, with examples taken from some economically developed countries, such as USA, Germany, France and Italy. Special attention of the paper is given to Kosovo and its Criminal Law. The paper is structured in a way that in the beginning it explains the meaning of organized crime and some of the features that distinguish it from other forms of criminality, followed by the legislative aspect indicating the manner how different legislations of countries regulate this area.

Key Words: Organized crime, criminal groups, features, legislation, criminal organizations.

Introduction

This paper deals with organized crime and the manner of its appearance ranging from the meaning and definition of this dangerous criminal phenomenon, in particular in some of the more developed countries and where this form of criminality is presented and carried out in various forms. Furthermore, the paper continues to address some of the most frequent and characteristic forms of offenses committed in the form of organized crime in contemporary society.

The paper devotes a significant part to the characteristics that must exist in order to consider a criminal offense as an offense that was committed in an organized manner.

It is very difficult to imagine today that a lasting and stable peace can be achieved in modern world without preventing and combating organized crime groups, at the country level as well as in the region and beyond.

Combating this phenomenon is difficult without knowing its forms and features; it almost amounts to mission impossible. Therefore, the present paper in detail describes some of the forms and features of offenses committed in an organized manner.

1. On the organized crime in general

"Nun sacciu, nun vidi, nun ceru; e si ceru, dormivu"

(I do not know anything, I didn't see a thing, I was not there, and if I was, I was sleeping).

Sicilian saying that expresses the silence on crime (omreta)¹

Battle with organized crime has changed significantly in recent years. With the development and advancement of technology, the risk from organized crime activities has increased and expanded significantly, and has become more complex.

Precisely for this reason, the fight against this phenomenon is not easy, in particular for our country, which does even not have sufficient capacity and tools needed to combat classic crime,² whereas to successfully combat organized crime in all its forms in which it appears, we need tools and far more sophisticated logistics. It is highly indicative that the development and advancement of technology has enabled and facilitated the activity of organized crime groups, which utilize the advantages offered by this technology to coordinate their activities in carrying out criminal actions. Today in the world, organized crime groups are increasingly becoming partners in crime, because they understand very well that there is more to gain from cooperation, rather than competing with each other.³ Organized crime is a serious political and economic threat to society. Such findings have been many times repeated by various local officials and the international community, highlighting the issue of organized crime as one of the key challenges on the European integration process of the countries of the region.⁴

The influence of organized crime is not easily measured, but one thing is known - that organized crime networks manipulate and monopolize the financial markets, traditional institutions, such as unions and construction industries and many other important institutions. Organized crime groups bring narcotics into our cities, for material gain and to increase the

¹ Raufer, Xavier, *Godmother of the world*, Tirana, 2005, p. 85.

² Latifi, Vesel, *Criminology, discovery and proof of the crime*, Pristina, 2011, p. 261.

³ For more information see: www.law.jrank.org/pages/1624/organizedcrime (accessed date: 13.10.2009).

⁴ Latifi, op. cit., p. 260.

level of violence in communities, corrupting officials and using bribery, extortion, intimidation and murder to maintain their criminal actions and to control certain territories.⁵ Their underground businesses, including prostitution and human trafficking, wherever they take place, bring misery to the country, region and beyond. They also lead to the loss of millions every year, through various stock and financial fraud, which are intentionally done for their illicit material benefit.⁶ For many scholars, organized crime is not only an object of academic study, but also a practical problem, where we all must engage in uncovering and investigation of organized crime, an extremely harmful and dangerous phenomenon for the country and its economy.

Policies aimed at combating organized crime tend to emphasize two types of strategies in relation to the issue of organized crime study. Firstly, they focus on goals or intentions of the members of organized crime groups, and secondly, they focus on structural features and relationships of organized crime with the targeted market.⁷ Local and central institutions of the state use an entire arsenal to uncover and investigate criminal groups. All this is done in order to more efficiently prevent and combat organized crime. Based on this, there is no coincidence that the most important tool of the prosecution was influenced by the act or statute known as *RICO – Racketeer Influenced and Corrupt Organizations*, which was adopted in 1970.⁸ Under the RICO statute, it is envisioned that the crimes which were committed by legitimate corporations or enterprises that have committed two or more offenses, within a period of ten years, were subject to prosecution.⁹ All states have enacted legislation prohibiting the activities of a criminal organization. Among the acts or laws that regulate this field is RICO statute, which was enacted in the US, in 1970.¹⁰

In recent years, the opening of national borders, increase in Internet use and the use of money in international markets, through which the movement of goods and persons is facilitated, has caused very complex problems related to the powers of law enforcement agencies and institutions in different states, but also internally.

⁵ For more information see: www.law.jrank.org/pages/1624/organizedcrime (accessed date: 13.10.2009).

⁶ Latifi, op.cit., p. 261.

⁷ For more information see: www.law.jrank.org/pages/1624/organized/crime (accessed on 13.10.2009).

⁸ Through RICO Statute, in the period after 1980, the most important criminal prosecutions of organized crime have been made under this Act, and the destruction of traditional organizing larger groups of organized crime, Cosa Nostra's, has been attributed criminal prosecution by the act.

⁹ Jay S. Albanese, *Organized Crime in America*, 3rd. ed., Cincinnati, Anderson, USA, 1995, p. 197.

¹⁰ Abdinsky, Howard, *Organized Crime*, Belmont, California, Wadsworth-Thomson, 2003, p. 318.

According to the scholars, it is more important to focus on the environment within which businesses, constituting organized crime, operate than on individuals, involved in such crime. The operating environment should be the object of policy attention in combating organized crime.

Money laundering by organized crime groups in the 1980s and 1990s (especially proceeds from the drug trade) have facilitated the relationship between organized crime groups and organizations in the legitimate economies, and have enabled the interconnection of such groups and governments of different states for whom that money is a very important resource in the implementation or enforcement of their government policies.¹¹ For this reason, the attention should focus more on the emergence and development of the process of “money laundering”, by enacting laws and policies to freeze the proceeds that offenders gain from their criminal activities. For policies on “*money laundering*” to be effective, a high degree of international cooperation is required, which, unfortunately, cannot always be achieved, because of differences in resources that are available to law enforcement or due to the involvement of political actors in such sensitive cases.¹²

2. The definition of organized crime

Organized crime, as a form of cooperation during the commission of criminal acts, undoubtedly represents a very serious threat to society, in particular for economic and political development of countries or states concerned. Therefore, to have a clearly defined picture of organized crime, one should address some of its essential elements, which must exist for such action to be considered as criminal offense, and then such criminal offense to be conducted as part of organized crime.

By analyzing the international literature, which deals with organized crime, we can conclude that the term organized crime was first used around the year 1896, in the annual report of the Association for Crime Prevention with headquarters in New York, USA.¹³

¹¹ Ibid.

¹² For more information see: www.law.jrank.org; Organized-Crime-Controlling-Organized-crime, (accessed on: 12.07.2010).

¹³ Cyrille Fijnaut and Letizia Paoli, (Eds.), *Organized Crime in Europe, (Concepts, Patterns and Control Policies in the European Union and Beyond)*, Netherlands, 2004/2006, p. 24.

Also, the term organized crime was used around 1920 by John Landesco, in his book “Organized crime in Chicago”. This is a very voluminous research book on crime in Illinois, which was published by the Illinois Association for Criminal Law (1929).¹⁴ Organized crime has for a long time been identified with the mafia, especially the Italian or Sicilian Mafia, as it was known differently. However, according to the criminological meaning, organized crime is defined as a joint conspiracy of two or more persons on an ongoing and secret basis, with the aim of committing one or more serious crimes and to ensure direct or indirect financial benefit or other material benefits.¹⁵

Since organized crime is a highly complex and widespread phenomenon, which is continuously evolving, both in forms and features, legal science, but neither practice have yet managed to have a unique and common definition, which would be accepted by all. The European Union, meanwhile, in the wake of its efforts to prevent organized crime activities in its countries, related to the definition of organized crime, has tried to give a definition of this type of criminality. In 1998, pursuant to a plan of EU states, “criminal organization” was considered the organization that has a structure consisting of two or more a person, which was created to operate at a certain time and that commits crimes or criminal offenses for which the law provides a punishment of over four years imprisonment.¹⁶ Whereas, according to another author, criminal organization is considered the creation or use of the organization, gang, conspiracy or other association for the purpose of committing criminal offenses.¹⁷

A criminal plan may not even exist, but the actions undertaken by criminal groups are coordinated, as it have been previously planned. Therefore, it suffices for them to be interrelated and that other necessary elements exist, which render a criminal act as part of organized crime. According to “*The Columbian Electronic Encyclopedia*”, organized crime represents a set of stable groups, organized in hierarchies, which, through violence or serious threat, have managed to obtain a monopoly in controlling large illegal markets.¹⁸

Organized crime is very complex and, as such, is defined not only in the scientific literature, but also in the laws and penal provisions of states, including various scientific papers

¹⁴Ibid.

¹⁵ Levinson, David, (edit.) *Encyclopedia of Crime and Punishment*, 2002, p. 112, (cit. By Gashi, Rexhep, *Organized Crime*, Pristina, 2011, p. 14.

¹⁶ Hysi, Vasilika, *Introduction to Criminology and Penology*, Tirana, 2000, p. 52.

¹⁷ Salihu, Ismet, *Criminal Law (Special Section)*, Pristina, 2008, p. 243.

¹⁸ Demolli, Haki, forms and measures to combat organized crime, *Journal "The Right"* Pristina, no. 2-4 / 2005, p. 55.

and international symposia. It deals with situations when there is a group of three or more persons who have a certain structure, conduct illegal activities for a relatively long time and the criminal offenses which they perform are punishable by long – term effective imprisonment, where the aim of the exercise of their activities is obtaining financial and material or any other form of direct or indirect immaterial benefit.

3. Some features of organized crime

Organized crime, as one of the current challenges faced by many countries of the world, is composed of, but also entails a significant number of features or specifications, that differ this form of criminality from other forms. Many different scholars and authors have written on the features or specifications of organized crime. Similarly for defining organized crime, there is no common and unique agreement, and even for features we do not have their exact number. Some authors cite more, and others less features for an act to be considered as criminal offense of organized crime.

Organized crime is characterized by several features, such as permanent connectivity of several persons in the commission of criminal activities; the existence of a hierarchical organizational structure and strong leadership power; dominance of order, discipline and accountability of members; imposed solidarity; secrecy of action and non-disclosure of the organization; absence of betrayal of the leader, etc.¹⁹

As a characteristic of organized crime is also seeking financial gain. For a business to survive, it must be profitable. Organized crime groups operate roughly in the same way. Thirst and desire to have everything and more and more profits, predisposes decisions and actions of many criminal organizations around the world. Another feature of criminal groups is: almost all criminal groups do not claim to be the only ones in the territory in which they operate within the country. They start from the principle that “there is enough for all”. There are cases that several criminal organizations operate in one area, which in silence, respect each other, avoiding conflict among themselves.²⁰

¹⁹ Halili, Ragip, *Criminology*, Pristina, 2011, p. 137-138.

²⁰ Ibid.

It is easily understood that all criminal groups “do not have a vertical, or hierarchical structure” because they operate independently of each other.²¹ Some criminal groups do not have a leadership, but each member operates “for its own interest”. It is understood that over time, due to change in environmental factors or the environment that surrounds us, and under the influence of other circumstances, organization, functioning and structure of criminal organizations also changes. Another important specific is that members of criminal groups “often change their patrons or bosses”, thus transfer from one criminal group to another. Depending on the nature of criminal groups and the methods they use, we have violent criminal groups and less violent criminal groups. According to many experts on organized crime, if criminal groups cannot resolve their problems through talks or negotiations, they, then, “use the language of violence or weapons”.

3.1. Commission of crime by groups of persons

Criminal offenses are considered as part of organized crime only if committed by a group of at least three persons. To understand organized crime, its essential elements should be highlighted, or, in other words, those that are required to be mentioned, such as the existence of the group, association or criminal organization. Association or organization can be large or small, depending on the number of members and their criminal activity.²²

Regarding the naming of criminal organizations, they may also differ in principle, but their activity is almost identical in relation to forms and activities, wherever they perform criminal activities in the world. By analyzing the names used by many authors, related to the criminal groups, we can conclude that for the activities conducted by criminal groups, the term more used is “mafia” or “mafia activity”.²³ As known from the literature on organized crime, orders given by officers cannot be discussed, nor is likely for members to give remarks about the way their implementation, they should be implemented in practice as the “Boss” wants, and in no other way. Each member of the organization is obliged to keep secrecy of the information they possess, and which are related to his criminal activity, conducted in the organization which he is part of. Otherwise, in case of disclosure, extraction or publication of any information, in

²¹ Ibid.

²² Halili, Ragip, Some characteristics of organized crime, Journal "The Right" no. 4/2002, Pristina, p. 48.

²³ Alison, Jamison, The Anti Mafia-Italy's Fight Against Organized Crime, London, 2000, p. 5, cited by Halili R., op.cit., (Footnote no. 58), p. 47.

public, or even before the institution of prosecution, members of the organization can expect strict punishment by other members of the organization.²⁴

Implementation of these measures or punitive sanctions, is always done by receiving instructions from bosses on how to act, and in most cases they are physically eliminated, and not only members who have betrayed the criminal organization, but also their family members. Also, the author *Poda* stresses that any information given by any of the members of the criminal organization in connection with the criminal plan, the members of the criminal group or other information that could harm the interests of the criminal organization, will be punished severely.²⁵

3.2. The organizational structure of organized crime groups

Organized crime is a serious crime, conducted by a structured group to benefit directly or indirectly, property or financial good. Organized crime is considered a structured group, which exists for a certain time and which acts in cooperation with the intent to commit one or more serious crimes in order to gain direct or indirect financial or material benefit in the interest of criminal organization. Regarding this element, it should be noted that we need to stop at the meaning of the word “*structured group*.” Structured group means any group consisting of three or more persons, which is not formed by chance, to perform momentary crime or offense and which does not mean, formally, to have defined roles for its members, continuity of its membership or that it has developed structure.²⁶

It is known that a criminal group cannot function if there is no organized structure which has separate roles and duties for each of its members during the exercise of their criminal activities. It should be noted that the legislation of the Republic of Kosovo provides a solution to the dilemma which often appeared in the judicial system regarding the issue of: “Can we talk about organized crime, in situations where organized group does not possess the so-called criminal plan”. However, the convention against organized crime, expressly determines criminal responsibility of each person, whether the one who organizes, creates, maintains, manages or directs the activities of an organized criminal group.

²⁴ Ibid.

²⁵ Poda, Zamir, *Transnational organized crime - violence and power system*, Tirana, 2003, p. 6.

²⁶ Article 283, paragraph 1, of the CCK.

Thus, despite not having a written criminal plan, organized crime may exist and conduct criminal actions of a great risk to society and the economy in general. Networking and sustainable structures and cooperation between members of a group or members of different groups, whether of one country or of different countries, is an important characteristic and factor for the existence of organized crime.²⁷ Depending on the organization of the criminal group and of the activities that it undertakes, we have the structure of the criminal group. Some organizations have hierarchical structure, and some have more flexible structure in their criminal organization. Organized crime groups generally have a defined structure, with a leading role and subordinates, through which criminal organization achieves its goals.

3.3. Violence, intimidation and corruption, as features of organized crime

One of the important features of organized crime groups is the use of violence, intimidation, or in certain cases the use of corruption, as a means way to exercise their criminal and organized activities. Violence was also used to corrupt officials and governors, in order to push people or clients that are linked to organized crime groups, to corrupt officials and governors.²⁸

The success of many criminal organizations, in their illegal activity, is precisely due to the corruption of officials and those persons responsible for their investigation and prosecution. Sometimes, the connection between them is so close that it is difficult to distinguish between the criminal and the official being corrupted.²⁹ Corruption used by organized crime groups to infiltrate state institutions, legal economies, law enforcement and political groups, is a powerful tool of organized crime groups and at the same time a possible indicator of the potential risks arising from organized crime groups. Corruption is often difficult to be noticed and classified and its negative impact is difficult to be measured. Indeed, measuring of corruption is usually based on public perceptions on the use of corrupt influence in different sectors of society. This, however, does not necessarily give the whole picture of the level of corruption in each country. The use of commercial structures by organized crime to assist their criminal activities is ongoing throughout the countries of the European Union.

3.4. The scope of criminal activities in the whole country

²⁷ Demolli, Haki, Some form of organized crime in Kosovo during the period 2002-2007, Journal "The Right ", No.3 / 4, 2008, p. 55.

²⁸ Togonal Oğuz, Mehmet, Organized Crime, Istanbul, 2006, p. 48.

²⁹ Ibid.

Trends or intentions of each criminal group are to have the widest expansion throughout the country, where they exercise their criminal activity. This means that it is understandable that some organized crime groups' deal only with some of the forms of organized crime, the others deal with most of the forms of organized crime, without making any difference, but only aiming to collect as much profit as possible from their illegal activities.³⁰ One thing is certain, all criminal groups aim to extend their activities as much as possible throughout the country, although some groups tend to expand even more, outside of the boundaries. Today, in modern day society, the majority of organized crime groups tend to expand their activities outside of the borders and beyond, because profits are many times higher. Each criminal group, which has greater extent, has higher gains. And, as we know from practice and literature, the main goal of organized crime activities is material gain for himself or other persons. This means that the intention of criminal groups is expanding and control as much as possible of the territory in which they operate. Organized crime, because of the tendency of continuous expansion beyond the borders of a country, is taking a transnational character and, as such, is more and more understood not only as a matter of state or just a region, but as issue of wider concern, thus as a broader concept of the whole international community.³¹

This makes us realize that the tendency of organized crime is not only to extend to the whole country, but that they have even bigger goals, to expand their activities further, outside of the borders, due to the enormous profits that the activities of transnational organized crime bring.

3.5. Cooperation with other international criminal organizations

Cooperation with other criminal organizations, such as those criminal organizations that operate on a national level, as well as those that operate internationally, is present everywhere in case of occurrence of criminal activities anywhere in the world. Criminal organizations aim to cooperate among themselves, because they know very well that by cooperating, profits and easements are several times higher for the exercise of their criminal activities with less obstacles.

One of the most significant advantages in the world of organized crime, is their total disregard to national borders or even conflicts with often antagonistic character, which brought wars, especially in the region of the Balkan states. Moreover, they knew how to use the conflicts

³⁰ Ibid.

³¹ Murati, Rexhep, Organized criminality and criminal procedural legislation, Journal, " The Right", no. 4/2002, Pristina, p. 87.

between their countries to disguise their criminal activities and to use these conflicts in their favor. The most typical example of this was the powerful smuggling with millions in income during the embargo of the former Yugoslavia.³² The conflicts between countries were in fact a very effective shield to divert attention from their criminal activities, as organized crime bosses are completely devoid of national complexes.

On the other hand, the question naturally arises: Would organized crime be so successful if developed Western countries will take seriously the virtues which claim that they are the foundations of their civilization?³³ For this question we must find an answer, which is very simple, - no. But, what should countries that have problems with organized crime do or undertake? They should undertake a significant number of actions, ranging from the adoption of adequate legislation on criminal offenses which are committed as part of organized crime, then the establishment of institutions and professional training of officials dealing with investigation, prosecution and adjudication of criminal offenses committed as part of organized crime. There should also be more consistency in the application of laws in practice, not deviating from their application, there must be political will of holders of high state positions, etc., and all of these must be done to successfully combat organized crime.³⁴

However, the anti-criminal policy against the activities of organized crime groups is not a simple, but, rather is a complicated one. This policy should be oriented towards complex strategy development, where intelligence and operational work of the relevant officials undoubtedly plays a crucial role.

We should emphasize that we have tried to examine above some of the causes or reasons that render organized crime as an overall problem in the world today, not just in a region or a country, and without doubt the most important element is the financial interest or tendency for greater economic gains.

3.6. Cooperation of organized crime groups with state power structures

The exercise of criminal activities, particularly certain criminal groups, is impossible without the cooperation with state power structures, according to most persons, and in particular according to the experts on the circumstances of occurrence, development and preventing or

³² For more information see: www.explorerunivers.com/t3941-ana-e-erret-e-globalizmit; (accessed date: 10.04.2012).

³³ Ibid.

³⁴ Latifi, Vesel; Elezi, Ismet; Hysi, Vasilika, combating crime policy, Pristina, 2012, p. 195.

combating organized crime. Some of the different forms of organized crime, in most cases, are closely interlinked with those governing bodies of the state, the persons who are charged with implementing the rule of law. In this way persons who run organized crime, are “favored” compared with other offenders who commit other offenses, because other perpetrators do not have such “collaborators” and “protectors”, like the heads of organized crime have.³⁵ If we make an analysis of why this correlation or this liaison exists, it is clearly seen that: “Organized crime shows or displays exceptional ability of adapting quickly to new circumstances and conditions, finding space for the realization of large profits, thus criminal groups, by attaining huge profits as a result creating huge capital, exercise destructive influence on government institutions and police and legal order itself in one country”.³⁶

Such situations become even more brutal in places that have a fragile democracy and an underdeveloped economy, as organized crime penetrates deeply to various spheres, in those segments where there are largest and beneficial financial interests to organized crime. They do not stop on that, they try to install persons who are associated with organized crime in all important institutions, such as legislative, executive, and in the judiciary, especially in some institutions where interest is much higher, so that in case of initiation of the investigation, prosecution or trial, they can influence the decisions of these institutions, but in certain cases also to determine the policies of these institutions against members of organized crime groups.

4. Criminal-legal treatment of organized crime

Criminal-legal treatment of organized crime is defined in the Criminal Code of the Republic of Kosovo. We shall consider the specifics of the definition of organized crime in the following part.

The applicable Criminal Code of Kosovo (CCK), in detail stipulates actions which are considered to have been committed as criminal offenses of organized crime.³⁷ Thus, according to the CCK, term “*organized crime*” means a serious crime committed by a structured group to benefit directly or indirectly, a financial or other material benefit.³⁸ Meanwhile “*organized*

³⁵ Ukaj, Bajram, Organized crime situation in Kosovo and criminal legislation, Journal, "The Right" no. 4/2002, Pristina, p.89.

³⁶ Halili, Ragip, Criminology, Pristina, 2011, p. 133.

³⁷ Article 274, Criminal Code of the Republic of Kosovo, year 2004.

³⁸ Article 274 of the CCK, year 2004.

criminal group” is defined as a structured group which exists for a certain time and acts jointly with the aim of committing one or more serious crimes to gain direct or indirect financial or other material benefit. With the term “structured group” one understands the group of three or more persons, which is not formed randomly, for momentary committing an offense and that does not mean to have formally defined roles for its members or a developed structure.³⁹

The CCK defines the notion of “*criminal association*” in manner that anyone who explicitly or tacitly agrees with one or more persons to commit or instigate the commission of a criminal offense or take action or other preparation for the implementation of such agreement, that person participates in criminal association.⁴⁰

Slovenian legislation is quite convenient for fight against organized crime and for confiscation of property and income (assets acquired illegally). Slovenian legislation, the fight against organized crime is regulated by different codes. This matter includes the following codes: Code of Police, State Prosecution Code, Criminal Procedure Code, Criminal Code, and Code for the Prevention of Money Laundering etc. Through these acts, provided are the rights, duties and powers of the police, prosecution and other bodies, by being defined in full. There is no specific law against organized crime.

According to Professor Haki Demolli, organized crime requires some elements that must be met to considered an act as a criminal offense, and then as part of organized crime.⁴¹ Key elements of organized crime, according to the author are:

a. Formal organization and structure of the group, which means that:

- The group must exist a certain time, thus not to be assembled on the spot or by chance;
- The group must necessarily be constituted by three or more persons;
- The group aims to conduct one or more criminal offenses for which a punishment of imprisonment of more than four years is stipulated;

b. Coordination and control the actions from a certain center;

³⁹ Article 274 of the CCK, year 2004.

⁴⁰ Article 274 of the CCK, year 2004.

⁴¹ Demolli, op.cit. p. 55.

c. Performing various criminal activities (i.e., it is not required to carry out crimes of only one type, but the goal is important, and that is material, direct or indirect benefit, for example: cars, land plots, business premises etc., or financial (example: cash, securities, checks, etc.).

d. These groups have good connections and are protected by corrupt local state structures, and in certain cases even by internationals.⁴²

According to the Kosovo criminal law, a person who commits a serious crime, as part of organized criminal group, may be punished by fine and imprisonment of at least seven years. It is understood that to have such an opportunity to impose a criminal sanction against the perpetrator, they must first become a member of organized criminal group, and then as part of that group to have committed a serious crime. Our legislation in question does not sanction only committing a serious crime, but also sanctions active participation in criminal activities, or other activities of an organized criminal group, if the perpetrator knew that his participation will contribute in committing serious crimes by organized criminal group or when commission of a criminal offense by the organized group activity results in death.⁴³

The applicable Constitution of the Republic of Kosovo,⁴⁴ and the CCK, provide that state bodies, exercising their legal mandate, of uncovering (the police), prosecution (prosecution) and trial (court), specify the defendants, incriminating period, location, manner of performance and effects, and prove or argue commission of the offense of organized crime following with the conviction and imposition of criminal sanctions, confirming procedural actions with admissible evidence. Based on the practices of countries with more experience in fighting organized crime, it is imperative to have adequate laws, which clearly define the responsibilities of the institutions and allow judges easier pronouncement of sentences for perpetrators of such crimes.⁴⁵ Naturally, we consider that efforts are still needed to complete legislation that will help combat organized crime in Kosovo.

5. Organized crime, according to international acts and conventions

⁴² Ibid, p. 56.

⁴³ Article 274, paragraph 3 and 4 of the CCK, the v. 2004.

⁴⁴ Article 108, 109 and 128, Constitution of the Republic of Kosovo (2008).

⁴⁵ KDI Report, Millions of illegal, (prevention and fighting), Pristina, 2011, p. 9.

Organized crime, as a quite disturbing and very present phenomenon in many countries of the world, in addition to being sanctioned by domestic laws and regulations, is also sanctioned by various international acts and conventions. It is well known today that organized crime crosses national boundaries and is increasingly taking attributes of international crime, with numerous consequences in humans as well as in-kind. In the absence of clear definitions of national legislations related to this criminal phenomenon, it is indisputable that such a condition affects and is causing even greater consequences in all countries where organized crime groups are present.⁴⁶ For this reason, there are consistent attempts to define this notion, by different authors as well as various international organizations, such as the United Nations, European Union etc.

In the wake of these efforts, defined are some of the elements that must exist for an illegal act to be considered as a criminal offense, and a part of organized crime. Most of these elements are defined by international conventions on organized crime, which have undoubtedly helped and have been issuing guidance to national legislations of various countries, including the legislation of the Republic of Kosovo.

Organized crime has appeared at the same time in various states, and in some states even later. The first attempts to define organized crime in Europe were recorded around 1980, which were crowned with the definition of this type of crime in an “International Conference of Ministers” in Naples, Italy, in 1994. Within this conference, the governments of the participating countries, unanimously adopted the “Political Declaration of the United Nations and Global Action Plan against transnational organized crime.”⁴⁷

United Nations Convention against Transnational Organized Crime, has the objective to support cooperation with the aim to prevent and combat transnational organized crime, more effectively and successfully.⁴⁸ In this case it is necessary to highlight several meanings of the notions and definitions of organized crime, according to the United Nations Convention, which are as follows: “*Organized criminal group*” means a group comprising by three or more persons, existing for a period of time and acting in concert with the aim of committing one or

⁴⁶ Gashi, Rexhep, Organized crime, Pristina, 2011, p. 12.

⁴⁷ Hysi, Vasilika, Introduction to Criminology and Penology, Tirana, 2000, p. 59.

⁴⁸ Article 1, the United Nations Convention against Transnational Organized Crime (UNCATOC), United Nations, New York, 2000.

more serious crimes or offenses established in accordance with the Convention, in order to attain, directly or indirectly, a financial or other material benefit.⁴⁹

The criminalization of participation in an organized criminal group, is also specifically and explicitly defined within the United Nations Convention against Transnational Organized Crime, as follows:

- Each State Party shall adopt such legislative measures and other measures, to the extent necessary to prove criminal acts, when committed intentionally;
- Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involvement in an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group.⁵⁰

In continuation of the definition of organized crime, the Council of Europe (CoE), has made efforts to define organized crime. This institution has defined this issue in the following manner: “Organized crime implies illegal activities carried out by structured groups of three or more persons, who exist for extended periods of time and have as objective committing serious crimes through coordinated actions which consist from use of violence, intimidation, corruption or other means and who have direct or indirect purpose of financial or material benefit”.⁵¹

A more or less similar definition of organized crime was given by the International Criminal Police Organization (INTERPOL). According to this definition, “Each group has a unified structure, with primary goal of obtaining money through illegal activities, often defending their illegal actions through fear, blackmail and corruption”.⁵²

Taken as a whole, the analysis of definitions and elements used by many institutions, but also scholars of organized crime, are more or less common or similar, although we cannot say that they are identical. Most authors emphasize the essential elements for an act to be considered as part of organized crime activities, such as: groups of three or more persons; hierarchy from top to bottom; the duration of their activity for a specified period of time;

⁴⁹ Article 1, UNCATOC.

⁵⁰ Article 3, UNCATOC.

⁵¹ Klaus von Lampe, Definitions of Organized Crime, for more details see: www.organizedcrime.de/organizedcrimedefinitions.htm#coe; (accessed date: 05.06.2012).

⁵² Nebsitt. Paul. Head of Investigation Organized Krimittē in Germanv. (cit.Bresler. 1993. p. 319).

committing serious and different criminal offenses; financial or material benefit, direct or indirect, the use of violence, intimidation or corruption in the exercise of their criminal activities.

Conclusion:

Organized crime, in the traditional sense, is usually treated as organized activities of criminal groups of at least three persons, in which other members of the group are subordinate to the leaders.

First definitions on organized crime have taken into account the features of criminal organizations of earlier times, such as committing crime in the form of the profession, strong hierarchical structure of the organization, and common ethnic background of criminals, confidentiality and application of the code of silence. It is worth mentioning that the United Nations Convention against Transnational Organized Crime does not define the meaning of “organized crime”, instead it defines the meaning of “organized criminal group” and “structured group”, since forms of the organized crime are diverse and new forms of it are appearing even nowadays.

In the second half of the twentieth century, organized crime has seen major developments in its organization and activities. Studies conducted in European countries show that organized crime has seen huge expansion, in particular after the 90’s of the XX century, and that it appears in different forms. Today organized crime is characterized by penetration into the highest levels of politics and the state. It should be noted that many states for a long time did not accept the existence of organized crime, thus covering the inefficiency of state organs and poor criminal and punitive policy.

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