

ORGANIZED CRIMINALITY - CONTEMPORARY SOCIAL THREAT

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ABSTRACT

CONTEMPORARY SOCIETY IS CURRENTLY EXPERIENCING AN UNPRECEDENTED EXACERBATION OF THE NEW, INCREASINGLY SOPHISTICATED AND OFFENSIVE FORMS OF ORGANIZED CRIME, WHICH CREATES SPECIAL DIFFICULTIES IN THE PREVENTION AND COMBATING OF TRADITIONAL MEANS. ORGANIZED CRIME HAS ALREADY BECOME THE MAIN ENEMY OF THE STABILITY OF THE INTERNAL SECURITY EQUATION, PART OF THE GLOBAL PHENOMENON CALLED MARY KALDOR'S THE "NEW WAR".¹

IN THE MODERN SOCIETY, THE ORGANIZED CRIME KNOWS A PERMANENT EXPANSION OF THE VARIETY OF WAYS OF MANIFESTATION, AIMING TO MAXIMIZE THE PROFIT OBTAINED FROM THE CONDUCTED, LEGAL OR ILLEGAL TRANSACTIONS, INCLUDING BY THE "RECYCLING" OF THE OBTAINED FUNDS, USING ALL THE POSSIBILITIES TO REMOVE THE OBSTACLES THAT ARE IN THE WAY, THE ULTIMATE GOAL BEING THE ACQUISITION OF INFLUENCE AND POWER AT THE SOCIETAL LEVEL.

ANALYZING THE CURRENT CONTEXT OF ORGANIZED CRIMINALITY, THE AUTHORS ADDRESS SOME KEY POINTS: ORGANIZED CRIMINALITY REPRESENTS A MAJOR RISK TO MODERN HUMAN SOCIETY; THE PHENOMENON OF ORGANIZED CRIMINALITY HAS AN UNPRECEDENTED EVOLUTION AND DIVERSIFICATION, AS WELL AS A GROWING SPECIALIZATION, BOTH IN THE SO-CALLED "TRADITIONAL" CRIMINAL FIELDS (SUCH AS DRUG TRAFFICKING, ILLEGAL MIGRATION, THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION, TRAFFICKING OF HUMAN BEINGS, ETC.) , AS WELL AS IN DIRECTIONS THAT HAVE EXPERIENCED AN "EXPLOSION" IN THE RELATIVELY RECENT PERIOD (CYBERCRIME, TERRORISM); THE NEED TO PERMANENTLY ADAPT THE CRIMINAL LAW, TO THE MEANS AND METHODS OF KNOWING, PREVENTING AND COUNTERACTING THE PHENOMENON OF ORGANIZED CRIME, USED BY THE INSTITUTIONS RESPONSIBLE FOR THE DEFENSE OF PUBLIC SECURITY AND ORDER.

KEY WORDS: CRIME, TERRORISM, GLOBALIZATION, GROUPING, DRUGS, TERRORISM, THREATS, SECURITY.

¹ Klador, M., Human Security, Ed. CA Publishing, 2007, pg. 23;

1. Organized crime a societal security threat

"The cost of international organized crime represents \$ 870 billion. However, we cannot evaluate the suffering and pain that these illegal activities cause to millions of people".

These words were uttered by the Head of the United Nations Office on Drugs and Crime, Iuri Fedotov, at the end of 2012, in Vienna, on the occasion of presenting the United Nations assessment on international organized crime.

Translating the issue in the immediate news, the views held by Jari Liukku, the head of the European Center for Organized Crime within Europol, who stated in April 2019 that, "Organized crime represents the highest risk for the internal security of the European Union are eloquent"¹. Similar opinions are also expressed by other Europol officials, according to whom "The increase of organized crime violence represents the biggest threat to the security of Europe, far exceeding terrorism and migration".²

Organized criminality, by its dimensions, forms of manifestation and adverse consequences on society, especially on the economic and social environment, has become, more than ever, a major risk to the security of the states, the reason why it has been resorted to the elaboration of adequate strategies for combating the phenomenon, which are based on state analyses of the dynamics of organized crime and its manifestation tendencies, especially in the short and medium term.

The specialization of criminal groups, especially in areas where the profit is maximum, has led to the professionalization of the demonstration areas, such as: drug trafficker networks and the attraction the young population to the consumer sphere, the trafficking of human beings for sexual exploitation and slavery, trafficking weapons and radioactive materials, illegal migration, etc., significantly affecting the economic balance (by fraudulating the public budgets and transferring important amounts of money in the accounts of interest groups), and socially, by the adverse impact on the health and future of the nations.

According to a report from the Council of Europe, tax crime, drug trafficking, smuggling and human trafficking are the main forms of organized crime that pose a threat to democracy in today's Europe: "Organized crime (...) undermines our fundamental European goals, including the rule of law, democracy and human rights"³, said Alexander Segel, rapporteur of the Council of Europe.

In 2017, Rod Wainwright, Europol director, in the context of presenting the Europol report "Assessment of the threat posed by serious forms of crime and organized crime in the EU" (SOCTA EU), stated: "The SOCTA 2017 is the most comprehensive study of serious and organized crime in the EU ever committed"⁴.

According to this study, in 2017, at the level of the European Union, there were over 5000 criminal groups where there were over 180 nationalities, 7 groups out of 10 were active in

¹https://www.dcnnews.ro/europol-crima-organizata-principala-amenintare-la-adresa-securitatii-europene_648425.html;

² Ibidem;

³ Words said in an interview given on this topic, in 2004 to Radio Free Europe.

⁴ www.consilium.europa.eu/ro/policies/eu-fight-against-organised-crime-2018-2021.

more than 3 countries, over 45% were involved in more than one. criminal activity, and in the case of the drug market alone, the profit was over 24 billion euros.

A major factor in the propagation of the phenomenon is the technological development and the online style of work.

In the case of Romania, in 2017, the activities on the migrant trafficking line werw on the increase, being detected by the Border Police workers a number of 12608 migrants (as compared to 2180 in 2016), of whom 5508 were organized in 738 groups of migrants.¹

The phenomenon has increased as a result of the modification of the classic routes to the western European states, with a view of the border security measures adopted by some states, such as Hungary, which has built a border guard fence with Serbia, which has imposed traffic networks. a repositioning of the routes.

As a result, both the United Nations and the Council of Europe at the level of the European Union², as well as the Parliament of Romania³, have considered that the phenomenon of international (cross-border) organized crime affects the global security of the union and of our country, meaning that they have given it its dimension. threat / security risk.

Thus, the National Strategy for the Defence of the Country mentions⁴ among the risks⁵ to national security - cross-border crime, from drug trafficking, persons, weapons and goods, illegal migration to economic-financial crime.

2.Organized criminality - conceptual landmarks. International and national legal regulations.

The complexity of the phrase "organized crime" and the diversity of its activities, as well as the need to approach coherent, homogeneous and pragmatic measures of international cooperation, in the fight against this phenomenon, has determined the international community to try to conceptualize and even define the phenomenon.

The UN General Assembly, in the World Plan of Action against Transnational Organized Crime⁶, conceptualized "organized crime" by introducing into an action matrix the entire range of illegal activities that affect social security (illegal migration, human trafficking, drugs trafficking, cybercrime, illegal trading of nuclear products and conventional weapons, up to corruption, as a scourge of the end of the last millennium). The subsequent efforts of the international institutions with concerns in the field, although they failed to lead to the definition

¹ www. border police, Analysis of the activity of the Romanian Border Police for 2017.

² See EU Policy Cycle 2017 - 2021 - Plan for Combating Serious Crime and Organized Crime, at www. data.consilium.europa.eu/doc/document/ST-6958-2017-INIT/ro/pdf.

³ National Strategy for the Defense of the Country of June 23, 2015 for the period 2015-2019 - A strong Romania in Europe and in the world, published in the Official Gazette No. 450 of June 23, 2015.

⁴ In Chapter III - Threats, risks and vulnerabilities, Subchapter 3.2. Risks.

⁵ The risks represent the probability of manifesting an uncertain event, with direct or indirect impact on national security.

⁶ The World Plan of Action against Transnational Organized Crime, adopted by UN General Assembly Resolution no. 49/159 of December 23, 1994.

of the concepts of "organized crime" respectively "organized criminality", concluded the need to report to this phenomenon through the concept of "criminal organization"¹.

In this context, within the United Nations Convention against Transnational Organized Criminality, (known as the "Palermo Convention")², was agreed the need to replace the phrase "criminal organization" with the phrase "organized criminal group"³, which will be imposed later and in the criminal laws of the EU Member States too.⁴

Thus it can be seen that the complex phenomenon of organized crime is difficult to define precisely and completely, the lack of such a legally accredited definition can be explained precisely by the unprecedented dynamics of the phenomenon as a whole or of the various forms of manifestation, humanity facing at present a varied spectrum of crime, particularly difficult to predict.

In order to combat all forms of criminal activity, the phenomenon in general, the international organizations and bodies, the states have, over time, adopted various legal instruments with the help of which it has been tried to stop all criminal phenomena associated with organized crime.

Here we list only a few of these, adopted internally by the Romanian state, and we start with the United Nations Convention of November 15, 2000, against transnational organized criminality⁵ and the related Protocols, concerning the trafficking of human beings known as the Palermo Convention, followed by a series of conventions elaborated by the Council of Europe, namely: the Council of Europe Convention on the washing, discovery, seizure and confiscation of the proceeds of crime (ETS no. 141) of 8 November 1990⁶, the Convention on cybercrime (ETS no. 185) of 23 November 2001⁷, the Convention of the Council of Europe on the fight against trafficking in human beings (ETS no. 197), of May 16, 2005⁸, the Convention for the protection of children against sexual exploitation and sexual abuse, of October 25, 2007⁹, as well as other documents such as the Anti-drug Strategy of the European Union for the years 2005 - 2012¹⁰.

All these documents/concepts expressed in their contents have been transposed into the internal legislation through various normative acts that come to help stop / minimize the actions of national and international organized crime actors.

¹ [https://www.juridice.ro/504857/Alina Lefter / organized-crime-approaches-doctrinal-and-legal-international-instruments.html](https://www.juridice.ro/504857/Alina_Lefter_/organized-crime-approaches-doctrinal-and-legal-international-instruments.html);

² adopted on November 15, 2000 in New York

³ According to art. 2 lit. a) of the Palermo Convention, the "organized criminal group" is: "a structured group made up of three or more persons, who exist for a certain period and act in agreement, in order to commit one or more serious offenses or planned offenses of this Convention, in order to obtain, directly or indirectly, a financial advantage or another material advantage "

⁴In the Romanian Criminal Code, the phrase is found in art. 367 para. 6.

⁵ Published in the Official Gazette of Romania no. 813 of November 8, 2002

⁶ Published in the Official Gazette of Romania no.353 of May 28, 2002.

⁷ Published in the Official Gazette of Romania no.343 of April 20, 2004.

⁸ Published in the Official Gazette of Romania no 622 of July 19, 2006

⁹ Published in the Official Gazette of Romania no.885 of December 29, 2010.

¹⁰ For the full content of the Strategy see www.ana.gov.ro.

We remind the National Strategy, from December 9, 2004, for combating organized criminality between 2004 - 2007¹, the National Anti-drug Strategy, from January 27, 2005, from 2005 - 2012², the National Strategy from November 22, 2006 against trafficking human beings for the period 2006 - 2010³, the National Strategy against trafficking of human beings for the period 2012 - 2016⁴, the National Strategy of September 23, 2015, regarding immigration for the period 2015 - 2018⁵, the National Strategy of July 5, 2018 for integrated management of the state border of Romania between 2018 - 2020⁶, the Law no. 39/2003 on preventing and combating organized crime⁷, Law no. 678/2001 on preventing and combating trafficking of human beings⁸, Law no. 143/2000 on combating trafficking and illicit drug use⁹, Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, prevention and sanctioning of corruption¹⁰ - the Title regarding computer crimes, GEO no.121 / 2006 regarding the legal regime of the precursors¹¹, Law no.141 / 2010 regarding the establishment, organization and functioning of the National Information System for Alerts (SINS) and Romania's participation in the Schengen Information System¹², Law no.302 / 2004 on international judicial cooperation in criminal matters¹³, republished, Law no. 286/2009 on the new Criminal Code entered into force on January 1, 2014¹⁴.

The United Nations Convention Against Transnational Organized Criminality, hereinafter referred to as the Convention, concerns the following areas: participation in the activity of a criminal group, money laundering, corruption, criminal prosecution and sanctioning, extradition, transfer of convicted persons, joint investigations, international cooperation and the material and territorial competence in the field, but also the collection, analysis and exchange of information between the services with attributions on this issue.¹⁵

The text of the Convention defines the organized criminal group as "a structured group, consisting of three or more persons, existing for a certain period of time and aimed at committing one or more serious crimes, in order to obtain, directly or indirectly, benefits financial or material"(art.2 letter a)¹⁶.

¹ Published in the Official Gazette of Romania no 1256 of December 27, 2004.

² Published in the Official Gazette of Romania no 112 of February 3, 2005.

³ Published in the Official Gazette of Romania no 967 of December 4, 2006.

⁴ Approved by the Government Decision no. 1142 of 2012

⁵ Published in the Official Gazette of Romania no.789 of November 23, 2015.

⁶ Published in the Official Gazette of Romania no.486 of July 5, 2018.

⁷ Published in the Official Gazette of Romania no.50 of January 29, 2003

⁸ Published in the Official Gazette of Romania no 783 of December 11, 2001

⁹ Published in the Official Gazette of Romania no 362 of August 3, 2000

¹⁰ Published in the Official Gazette of Romania no. 279 of April 21, 2003

¹¹ Published in the Official Gazette of Romania no 1039 of December 28, 2006

¹² Published in the Official Gazette of Romania no.343 of April 20, 2004

¹³ Published in the Official Gazette of Romania inr. 758 of November 10, 2008

¹⁴ Published in the Official Gazette of Romania no.343 of April 20, 2004

¹⁵ C. Olaru, The particularities of organized crime in Romania, Hamangiu Publishing House, 2015, p.43

¹⁶ Published in the Official Gazette of Romania no. 813 of November 8, 2002

Based on this concept, the Convention also defines other terms such as: "serious crimes", "structured group", "illicit crime products", "controlled traffic", etc., each aiming to ensure clarity and rigor to the text of the Convention.¹

In conclusion, for an association of persons to be considered an organized criminal group, it is necessary to meet four essential requirements: a) it must consist of a minimum of three persons, b) it must be constituted on a hierarchical structure, within which the role of each person is clearly established, c) its existence is for a long or indefinite period of time and d) the main activities have an illegal character / the objectives are predominantly or exclusively criminal, the first of the crimes committed being that of criminal association.

In the doctrine were also admitted other features specific to the organized criminal group: their conspiracy character, concealment of sources of income and recycling of illegally acquired funds, the use of methods of constraint (physical, mental) or co-interest, channeling concerns to the new modern technologies specific to the current era, the tendency towards transnationalization, the conquest of the centers of economic and political power, etc.

Interpol classifies the organized crime groups into five categories: a) professional organizations - specialized on maximum two types of activities, b) ethnic criminal organizations - formed on social, political, cultural or historical criteria, c) mafia's families - have different activities, they are very well organized according to norms of internal conduct and the members strictly adhere to a moral code, d) international terrorist organizations - they usually have political, religious or racial motivations and they have specific activities and e) specialized groups on money recycling.²

In Romania, the problem of organized crime is regulated in the contents of the Penal Code (Law no. 286/2009 on the Penal Code) and Law no. 39/2003 regarding the prevention and fight against organized crime.

The basic concept with which it operates is represented by the organized criminal group, defined in art. 367 para. (6) of the Penal Code.³

¹ V. Dobrinou, I. Pascu and the Collective, The New Criminal Code Commented, Vol. II, Juridical Universe Publishing House, Bucharest, 2012, p.923.

² C. Olaru, op.cit., pg.49.

³ Establishment of an organized criminal group

- 1) The initiation or establishment of an organized criminal group, the accession or support, in any form, of such a group is punishable by imprisonment from one to 5 years and the prohibition of the exercise of certain rights.
- 2) When the crime that falls within the scope of the organized criminal group is sanctioned by law with the sentence of life imprisonment or with imprisonment of more than 10 years, the punishment is the imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.
- 3) If the facts provided in par. (1) and para. (2) were followed by the commission of an offense, the rules regarding the contest of crimes are applied.
- 4) The persons who committed the acts mentioned in par. (1) and para. (2), if he denounces to the authorities the organized criminal group, before it has been discovered and the commission of any of the offenses falling within the group's purpose has been committed.
- 5) If the person who committed one of the facts mentioned in par. (1) - (3) facilitates, during the criminal prosecution, the finding of the truth and the taking and criminal responsibility of one or more members of an organized criminal group, the special limits of the sentence are reduced by half.

Law no. 39/2003 regarding the prevention and fight against organized criminality, in art. 2, defines other terms that are used in the field such as: serious offence - the offense for which the law stipulates the life sentence imprisonment or the sentence of imprisonment whose special maximum is at least 4 years, as well as the crimes of: submission to forced labour or compulsory, provided in art. 212 of the Criminal Code; disclosure of secret service or non-public information, provided in art. 304 of the Criminal Code; deletion or modification of markings on lethal weapons, provided in art. 344 of the Criminal Code; unfair competition; corruption, offenses assimilated to them, as well as offenses against the financial interests of the European Union; drug trafficking; the legal regime of drug precursors; non-observance of the provisions regarding the introduction into the country of waste and residues; organization and operation of gambling; respectively, a crime with a transnational character - any crime that, as the case may be: is committed both within the territory of a state and outside its territory; it is committed on the territory of one state, but the preparation, planning, management or control either takes place, in whole or in part, on the territory of another state; or is committed on the territory of a state by an organized criminal group that carries out criminal activities in two or more states; it is committed on the territory of one state, but its result occurs on the territory of another state.

As a result, organized crime has two dimensions, a national one - with reference to all the crimes that are committed on the geographical area of a state and does not have elements of foreignness, and a transnational one, meaning the sum of the crimes committed, in a concerted manner, by individuals who act on the territory of several states.

The ways of manifestation of organized crime cover a wide range of crimes, usually among the most serious, of which, at the level of the European Union in 2017, the most manifested, in a hierarchy from 1 to 10, the places were occupied by: crime cyber (1) which caused global losses of 400 billion euros, drug trafficking (2), facilitating illegal immigration into the EU (3), organized theft and burglary (4), trafficking of human beings (5), fraud with excise goods and community fraud by ghost companies (Missing Trade Into Community - MTIC) (6), trafficking firearms (7), offenses against the environment (8), laundering of funds obtained from committing crimes (9) and fraud of documents (10).¹

3.Current evolutions of the phenomenon of organized criminality

Taken differently, as a political reality or determined by economic interests, globalization has led to a paradigm shift in the treatment of experts or in the public discourse of organized crime.

Transnational organized criminality has used the facilities generated by globalization, whether we were talking about the effects at the end of the Cold War and the political changes that took place on the continent of Europe, or the inherent difficulties that most Western states have faced in adapting to the liberalization of flows. of people, goods, services, and capital, or the effects of the economic crisis that marked the beginning of the new millennium significantly.

6) Organized criminal group means the structured group, consisting of three or more persons, constituted for a certain period of time and to act in a coordinated manner in order to commit one or more crimes. "

¹ According to EU SOCTA data.

The phenomenon of organized criminality is regarded today by the institutions with attributions in security and intelligence, as an unconventional / asymmetric threat to the security of the states, because it affects both the human rights stipulated in domestic or international legal regulations, as well as the efforts / measures of economic development, social and political at the societal level. Even though some specialists consider that in recent years, due to the multitude of terrorist attacks and the migratory crisis in Europe, organized crime has not been in the forefront, remaining somewhere in the shadow, this issue needs to be addressed, both at the level by experts as well as by the responsible institutions, with maximum responsibility, through institutional cooperation.

Against the background of the technological development that revolutionized the contemporary world, the new typology of the profile of the member of such a criminal group appeared, refined intellectually and behaviorally, educated in entrepreneurial spirit, in other words professional. As a consequence, the cross-border crime has "evolved", and today four phenomena are highlighted, in particular, in the overall dynamics that the phenomenon has registered lately:

✓ **Computer crime (cybercrime)**

The advances in communication technology have favoured the emergence of new action perspectives for criminal groups, and the virtual environment through its almost unlimited functional characteristics, has removed the conditions imposed by the temporary factor or the geographical space, becoming in many situations a concrete means of committing crimes.

Today, global actors specialized in cybercrime use with great ability the entire logistical and human infrastructure that they benefit from at the planetary level for the implementation of such illicit activities. More and more criminals are exploiting the speed and anonymity offered by the Internet, to commit a variety of crimes, which know no borders, neither physical nor virtual, causing significant damage and endangering potential victims from anywhere on the Internet. world.

New trends and adaptations of cybercrime are constantly emerging, generating costs for the global economy of billions of dollars. If in the past, cybercrimes were committed in particular by individuals or small groups of people, at present, complex networks of cybercrime have been developed and acted upon, usually connected to other activities specific to organized crime, which involve relating in time real between individuals from all corners of the world, to commit cyber attacks on an unprecedented scale.

✓ **Terrorism (especially the Islamic fundamentalist)**

According to the University of Maryland's Global Terrorism Index, religious extremism has far surpassed nationalist or separatist extremist phenomena and has become the main reason for the terrorist attacks since September 11, 2001. Since 2001 there have been five times as many deaths as before as a result of some terrorist attacks, and most terrorist incidents in recent years may be linked to groups that have a religious agenda. If before 2000, behind many of the attacks

were separatist organizations like the IRA or the Chechen rebels, then the number of terrorist incidents generated by nationalist separatist groups remained somewhat stable, while religious extremism registered an alarming growth.

The most active terrorist groups in the last two decades are Boko Haram, Al Qaeda, and ISIS, developing their activities mainly in Iraq, Afghanistan, Pakistan, Nigeria and Syria, with 80% of all victims of terrorism coming from one of these five countries. Terrorist groups are increasingly using the internet, as a means of communication between them, to exchange information, coordinate attacks, spread their propaganda, raise money and recruit followers.

✓ **Illegal migration**

Co-ordinated and funded by approximately 90% by large cross-border criminal groups, migration is now a significant risk potential for propagating extremist ideas and for infiltrating terrorist cells into the territory of the destination states, mostly democratic states in Western Europe. A comprehensive study conducted in 2016 by Alex P. Schmid, under the protection of the International Counter-Terrorism Center in The Hague, indicates the fact that the Islamic State sought to tax persons seeking refuge from the territories controlled by the terrorist organization, in cooperation with migrant trafficking networks, and used migratory waves to infiltrate jihadist fighters into Europe. Poor management of the situation of migrants can generate particularly serious problems, both socially and economically in the destination states, as well as politically, between the countries whose geographical areas are targeted by terrorist attacks, and the originating states of the migrants involved. in such activities.

✓ **Drug trafficking**

Drug trafficking is one of the most "corrosive" threats to modern society. In the last two decades, the narcotics industry has evolved from point-to-point business to high-level multinational enterprises, which employ thousands of people and generate profits of around billions of dollars. The total value of drugs marketed on the international market now exceeds the profit generated by oil production and ranks secondly in the world after arms trade. Drug addiction causes significant changes in the contemporary society, and the illegal production and distribution of drugs spreads waves of crime and violence everywhere.

4. Conclusions

We are currently witnessing, on the one hand, the globalization of cross-border organized crime, and on the other hand, the awareness of the adverse consequences of this phenomenon, by the civil society, the national / international institutions and the media, which has been established lately as the main vector that militates to combat the phenomenon. In this context, the inter-institutional collaboration between the institutions with attributions in the field of national security and public order, but also between these institutions and society, in general, must be

continuous and effective, in order to allow the mutual efforts to be combined and to ensure a prompt response and suitable for all threats to national / international security.

However, to achieve this goal, it is necessary to adopt a clear, efficient and pragmatic legislation, which will provide the legal framework for the optimal exercise of institutional attributions and which will allow an efficient collaboration between the state institutions, by providing them with the means (both legislative and materials) and the tools needed to support the effort to combat major risks for national security and citizen security, represented in the contemporary society by organized crime and terrorism.

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