

DIMENSIONS OF SECURITY.

Organized Crime

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ORGANIZED CRIME AS A THREAT TO SECURITY SYSTEMS – SERBIAN EXPERIENCE

Title:	ORGANIZED CRIME AS A THREAT TO SECURITY SYSTEMS – SERBIAN EXPERIENCE
Abstract:	<i>Not only does organized crime, emerging in various forms and shapes, seriously endanger national security of all contemporary states, but it also represents an international, global problem. That is the reason why several international legal documents have been adopted under the auspices of universal as well as regional and international organizations. These legal sources establish a system of international standards in order to provide adequate, efficient, effective and lawful suppression of organized crime and each state is expected to implement and apply them within their national legislations. In the past couple of years, during the process of European integration, the Republic of Serbia has been making significant efforts, particularly in normative and legislative sphere, in order to establish an efficient mechanism for prevention and suppression of organized crime. In this paper, the authors analyze essential characteristics of this form of crime and discuss its general effects on the safety of security systems.</i>
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Introductory Remarks

Each security system represents a unique and comprehensive structure that

exists in every society, comprising a set of entities and the activities they conduct not only in the times of peace, but during

conflicts or on other extraordinary occasions as well. All security factors in one country are interrelated on the grounds of its political principles and legal system.¹ In conceptual sense, the term "security" is so disputable that a universal consent on its meaning cannot be achieved². The causes of major disagreements regarding the definition of "security" lay in different perceptions of the values (physical integrity, personal property, political independence, territorial integrity, international peace etc.) and of the subjects (citizens as individuals, the state, international community, social security, economic system, environment etc.) that are supposed to be protected.³

Definition and general concept of national and worldwide security has been undergoing some significant alterations in the context of modern society challenges⁴, including continuous interstate and internal armed conflicts, permanent environment pollution and degradation, violence based upon national and religious convictions, increasingly frequent incidents of international terrorism and unstoppably spreading web of various forms of transnational organized crime. After the Cold War, former "hard" concept of security was replaced with a "soft" approach. The development and actualization of "soft" concept of security were encouraged by the appearance of so called "asymmetrical" threats to security such as terrorism and organized crime, but also by the process of "securitization" of social instability, economic difficulties, illegal migrations, ecological problems, epidemics of various contagious diseases and other phenomena and processes that

¹ Zoran Dragišić, *Sistem nacionalne bezbednosti – pokušaj definisanja pojma*, in "Vojno delo", no. 3/2009, p.162.

² David Baldwin, *The Concept of Security*, in "Review of International Studies", no. 1/1997, pp. 3-26.

³ Zoran Dragišić, *Op.cit.*, p.163.

⁴ See for example: Stephen E. Sachs, *The Changing Definition of Security* http://www.stevesachs.com/papers/paper_security.html, accessed 29.05.2013.

had not been recognized as security threats in former, traditional "hard" concept⁵.

Therefore, it can be sad that contemporary definition of security does not refer only to internal (or external) security of the state, but also to the security of systems of food, health, money and trade.⁶ When discussing the threats to security system, the focus is now placed on structural violence, which goes beyond physical violence and includes indirect violence done to individuals when unjust economic and political structure reduce their life expectancy through lack of access to basic material needs⁷. Security of both – individuals as well as entire states may be endangered in many ways and committing criminal offences represents one of them. However, importance, scope, grave consequences and social hazard of its perpetrators, make organized transnational crime stand out among other criminal offences that constitute the structure of contemporary criminality.

A shared perception has emerged of this form of criminality that is so diverse that it cannot be depicted by using the standard activity-based classifications of crime, but requires, instead, the broader, generic term "organized crime". Descriptions of organized crime vary according to the needs and experiences of different investigative or research organizations and individuals⁸ and various definitions of this term have been appearing in scientific literature.⁹ One of

⁵ Zoran Dragišić, *Op.cit.*, p.163.

⁶ Ann J. Tickner, *Re-visioning Security, International Relations Theory Today*, Ken Booth and Steve Smith, (eds.), *International Relations Theory Today*, Polity Press, Cambridge, 1994, p.180.

⁷ *Ibidem.*, p. 187.

⁸ Shona Morrison, *Approaching Organized Crime: Where Are We Now and Where Are We Going?* in "Trends and Issues in Crime and Criminal Justice", no. 231/2002, p.1.

⁹ See for example: Phil Dickie, *Organizing Crime: Toward a Research Regulatory Approach to Organized Crime*, in Duncan Chapell and Paul Wilson (eds.), *The Australian Criminal Justice System – The Mid 1990s*, Butterworths, Sydney, 1994, and Petrus C. Van Duyne, *The Phantom and*

the first authors to suggest a standardized definition of organized crime was Donald R. Cressey¹, who described this phenomenon as "any crime committed by a person occupying in an established division of labor a position designated for the commission of crimes, providing that such division of labor includes at least one position for a corrupter, one for a corruptee and one for an enforcer"².

Traditionally, all definitions of this term have implied that the activities undertaken have a strong economic imperative; the offences are of "major significance" and the organized crime groups are enduring in nature.³ The international economic threat posed by global organized crime in an increasingly global economy is among the major threats to national security since it does not just affect a selected group of financial institutions or regional areas but international financial networks and economies at national level as well.⁴

Although it is impossible to speak about the national state of organized crime independently from the outside influences because of the existing international connections⁵, it can be noticed that the features of organized crime that appear on global level, can be detected in national

legal systems as well, including the one of the Republic of Serbia. It can be described as a "unity or accumulation of criminal energies" of a larger number of persons, expressed through various forms of joint criminal ventures with a greater or smaller degree of constancy and endurance. The persons involved in this form of crime continuously commit serious criminal offences with the intention to obtain or generate illegal profits, namely material (financial) gain, but also in order to attain economic, political or other influence⁶. They often closely cooperate with the state representatives and are deeply infiltrated in "legal" social, political and economic structures, spreading their "tentacles in a wide variety of criminal and legitimate enterprises"⁷.

Since these organizations tend to act as secret formations and associations that permanently keep committing extremely serious criminal offences, it is understandable that the majority of contemporary criminal legislations provide specialized state bodies, jurisdictions, procedures and measures designed for the suppression and prevention of organized crime. These national legislative solutions are based upon relevant international legal sources, in particular The UN Convention on Transnational Organized Crime⁸, adopted in 2000. Current legislation of the Republic of Serbia is also familiar with similar solutions. Namely, in the past couple of years, the Republic of Serbia has established a solid legal framework for efficient, adequate, prompt and lawful fight

Threat of Organized Crime, in "Crime, Law and Social Change", no. 24/1996, pp. 341-377.

¹ Carter F. Smith, Jeff Rush, Catherine E. Burton, *Street Gangs, Organized Crime Groups and Terrorists: Differentiating Criminal Organizations* in "Investigative Sciences Journal", no. 1/2013, p. 5.

² Donald R. Cressey, *Theft of the Nation: The Structure and Operations of Organized Crime in America*, Harper and Row, New York, 1969, p. 319.

³ Shona Morrison, *Op.cit.*, p. 1

⁴ Mora Stephens, *Global Organized Crime as a Threat to National Security*, in *Global Organized Crime*, Woodrow Wilson School Policy Conference 401A. Intelligence Reform in the Post-Cold War Era Conference, January 6, 1996, <https://www.fas.org/irp/eprint/snyder/globalcrime.htm>, accessed 28.05.2013.

⁵ Bojan Dobovšek, *Organized Crime – Can We Unify the Definition?*, in *Policing in Central and Eastern Europe – Comparing Firsthand Knowledge With Experience from the West*, College of Police and Security Studies, Ljubljana, 1996

⁶ Dragan Jovašević, *Suzbijanje organizovanog kriminala u Republici Srbiji*, in Gordana Stanković (ed.), *Zbornik radova Pravni sistem Republike Srbije – usaglašavanje sa pravom Evropske unije*, Pravni fakultet Univerziteta u Nišu, Niš, 2005, p. 423.

⁷ Carter F. Smith, Jeff Rush, Catherine E. Burton, *Op.cit.*, p. 5.

⁸ See: UN General Assembly, *United Nations Convention against Transnational Organized Crime, resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25, http://treaties.un.org/Pages/ViewDetails.aspx?mtds_g_no=XVIII-12&chapter=18&lang=en, accessed 16.05.2013. and "Official Gazette of SRJ – International Treaties", No 6/2001

against all forms and aspects of organized crime. In that way, our country joined other European systems of criminal law and accepted the standards they set when it comes discovering and applying an efficient system of measures and procedures for the prevention and suppression of organized crime.

By adopting a special Law on the Organization and Competences of the State Organs in Combating Organized Crime¹ in 2002, which regulates a specific field of law dedicated to the organization of courts, the Republic of Serbia established special state bodies with the purpose to suppress organized crime, including: 1) special body within Criminal Police Directorate of the Ministry of Interior called Service for Combating Organized Crime, 2) special public prosecutor, 3) special council of District (now: Higher) Court in Belgrade and 4) special custody unit within District Correctional Facility in Belgrade. Finally, by amending Criminal Procedure Code in 2002, a particular type of criminal procedure was introduced². It includes a set of special investigative techniques that provide a more efficient investigation of criminal offences with the element of organized crime and facilitate the assessment of criminal liability of their perpetrators.

In its Chapter 7, entitled as "Special Investigative Techniques", new Serbian Criminal Procedure Code³ introduces special measures, means and procedures with the aim to facilitate the investigation of criminal cases related to organized crime. The alterations and amendments of Criminal Procedure Code from 2001, adopted in 2009, which annulated Criminal Procedure Code from 2006, introduced a new Chapter 29a named "Special

Provisions on the procedure for Criminal Offences of Organized Crime, Corruption and other Extremely Serious Criminal Offences"⁴. The final reform of criminal legislation that increased the efficiency of social reaction to organized crime by introducing new solutions in this field occurred in September 2011, when the latest Criminal Procedure Code⁵ was adopted. In the Part 3 of Chapter 7 named "Evidence", which is called "Special Investigative Techniques", this law determines and enumerates criminal offences these special provisions are applied on. A significant number of these criminal offences are placed within the category of organized crime.

Organized Crime in International Law

As a form of criminality committed by a group of persons "jointly engaged in continuing significant illegal activities irrespective of national or other boundaries"⁶, organized transnational crime represents a phenomenon that seriously sabotages and endangers the system of international and regional security. Therefore, the efforts of international community to prevent and suppress this "disease of modern society" at the beginning of the third millennium appear to be absolutely logical and reasonable. However, the attempts to define the term, nature, contents, characteristics and elements of organized crime on an international level had not been made until the end of the last century.

Legally binding definitions of organized crime and its elements were shaped later, within the auspices of the United Nations, as UN Convention against

¹ Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime, "Official Gazette of RS", No. 42/2002, 27/2003, 39/2003, 67/2003 and 115/2005.

² Dragan Jovašević, *Komentar Krivičnog zakona SR Jugoslavije*, Službeni glasnik, Beograd, 2003, p. 148.

³ Criminal Procedure Code, "Official Gazette of RS", No 46/2006.

⁴ Law on Alterations and Amendments of Criminal Procedure Code from 2001, "Official Gazette of RS", No 72/2009

⁵ Criminal Procedure Code, "Official Gazette of RS", No 72/2011

⁶ Richard Dubourgh, Stephen Prichard (eds.), *The Impact of Organized Crime in the UK: Revenues and Economic and Social Costs and Criminal Assets Available for Seizure*, p.11, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/99094/9886.pdf, accessed: 29.05.2013.

Transnational Organized Crime with Additional Protocols was adopted on a diplomatic conference that took place in Palermo in December 2000. In Article 2, Paragraph 1, Subparagraph a, this international legal document defines "organized criminal group" as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the Convention, in order to obtain, directly or indirectly, a financial or other material benefit. Such group is formed in order to commit serious (severe) criminal offences i.e. serious crimes punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

The aforementioned definition suggests that all organized crime groups share some common characteristics. The group is comprised of three or more persons; it exists for a certain period of time and the members of the group act together, jointly, in order to commit one or more serious crimes or misdemeanors prescribed by the Convention. It is important that these criminal offences are committed with the intention to obtain, directly or indirectly, a financial or other material benefit. The group is formed with the aim to commit serious crimes punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Furthermore, the Convention also defines a structured group, describing it as a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure. Unlike terrorist groups, whose engagement in violent acts is motivated by specific political causes, most organized crime groups are only interested in political power for the security it would provide their organization and are primarily motivated by money.¹ For example, Howard Abadinsky puts

forth a list of common attributes found in organized crime groups²: lack of political goals, hierarchical structure, limited or exclusive membership, constitution as a unique subculture, self-perpetuation, willingness to use illegal violence, monopolistic behavior and explicit rules and regulations³.

The Convention does not include even an indicative list of the offences or activities of organized criminal groups, but tries to capture the essence of the phenomenon in a broad definition applicable across jurisdictions regardless of the type of criminal activity in question.⁴ However, it is clear that organized criminal group and structured group represent special joint criminal ventures formed with the intent to commit serious crimes such as: terrorism, corruption, human trafficking, smuggling of illegal migrants, money laundering, blackmail, extortion, some criminal offences against property and illegal drug trade.

The United Nations Office on Drugs and Crime also defined organized crime as criminal offences committed by "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in order to obtain, directly or indirectly, a financial or other material benefit"⁵.

Being one of the oldest regional political organizations in Europe, the Council of Europe⁶ joined the efforts of the

¹ Mora Stephens, *Op.cit.*

² Carter F. Smith, Jeff Rush, Catherine E. Burton, *Op.cit.*, p. 5.

³ Howard Abadinsky, *Organized Crime*, Tenth Edition, Wadsworth – Cengage, Florence, Kentucky, 2012, p. 3.

⁴ Shona Morrison, *Op.cit.*, p. 2.

⁵ See: UN Office on Drugs and Crime Vienna, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, New York, 2004, p. 5, <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>, accessed 04.06.2013.

⁶ Branislav Milinković, Ranko Petković, *Savet Evrope 1949-1996 – zbirka dokumenata*, Službeni glasnik, Beograd, 1996

international community to form a unique normative framework for combating the most dangerous forms and aspects of organized criminal acting much earlier. Several international legal acts of regional character relevant for this issue have been adopted under the auspices of the Council of Europe, including the following: 1) European Convention on the Compensation of victims of Violent Crimes (1983)¹, 2) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)² and 3) Agreement on Illicit Traffic by Sea (1995)³, Implementing Article 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)⁴.

Organized Crime in the Legislation of the Republic of Serbia

Organized crime represents a relatively new phenomenon in the Republic of Serbia, which emerged during the 1990s as the consequence of civil wars, authoritarian and corrupted political regime, United Nations Security Council Sanctions and economic crisis and poverty. As a so called "police – state" with only one political party, closed socialistic economy, strictly controlled market and state borders and limited contacts with foreign subjects, former Socialistic Federal Republic of Yugoslavia did not represent suitable surroundings for the emergence and development of organized crime. There were no private enterprises, the right to possess immobile property was limited and the courses of money were intensively

monitored by the police⁵. Therefore, the appearance of organized crime in our country is related to the end of the twentieth century and the dissolution of former socialistic state and economy. In that period, Serbia rapidly became the home of numerous organized crime groups and all types of organized crime, including: illegal trade of weapons, motor vehicles, oil, cigarettes, drugs, human trafficking, insurance and banking frauds, forgery of official documents and child pornography. In a word, "the state was fully integrated in crime, and crime was fully integrated in the state". In spite of that, there was no adequate legal response to this issue in Serbia – neither of national nor of international character. Topics related to the issue of organized crime were not discussed among experts and the first serious and systematic research of this problem was conducted in 2007⁶ on the initiative of United Nations Interregional Crime and Justice Research Institute (UNICRI)⁷.

The Government of the Republic of Serbia took the initial step in the suppression of security threats coming from organized crime in 2009⁸, when National Strategy to fight Organized Crime⁹ was adopted. Action Plan for the Implementation of this Strategy was adopted six months later, within the prescribed deadline. This document explained more specifically the objectives identified in the Strategy: developing a proactive approach and increasing the efficiency of in fighting organized crime, strengthening human capital and material resources that are supposed to be invested

¹ European Convention on the Compensation of victims of Violent Crimes, European Treaty Series No. 116, Strasbourg, 24.09.1983.

² Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, European Treaty Series No 141, Strasbourg, 08.11.1990.

³ Agreement on Illicit Traffic by Sea Implementing Article 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Council of Europe Treaty Series No 156, Strasbourg 31.01.1995.

⁴ UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, United Nations Treaty Series, vol. 1582, p. 95.

⁵ Momčilo Grubač, *Organizovani kriminal u Srbiji*, in "Zbornik Radova Pravnog fakulteta u Splitu", no. 4/2009, pp. 701-702.

⁶ *Ibidem.*, pp. 703-704.

⁷ Sandro Calvani (ed.), *The fight against organised crime in Serbia: from the existing legislation to a comprehensive reform proposal*, UNICRI, Springer-Verlag, Turin, 2008.

⁸ Saša Đorđević, *Strategic Response of Serbia to Organised Crime*, in "Western Balkans Security Observer", nr. 15/2009, p. 44.

⁹ National Strategy to Fight Organized Crime, "Official Gazette of RS", No 23/2009.

in this field, harmonization of national legislation with international standards in this area, strengthening cooperation at national, regional and international levels and intensification of cooperation between government bodies, private sector and civil society¹. Accordingly, a set of criminal legal provisions of substantial, procedural, organizational and executive character (either new laws or amendments of existing ones) dedicated to the questions relevant for the issue of organized crime was adopted. This collection of measures, means and procedures implemented by different state bodies is supposed to contribute to an efficient, lawful, adequate, prompt and effective fight against this form of crime, in order to provide protection for the most important social goods and values, as defined in the Criminal Code². The following laws are dedicated to this matter: 1) Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime, 2) Criminal Procedure Code, 3) Criminal Code, 4) Law on the Enforcement of the Prison Sentence for Criminal Offences of Organized Crime³ and 5) Law on Seizure and Confiscation of the Proceeds from Crime⁴.

Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime

Serbian Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime adopted in 2002 contains an interesting solution. Namely, the prerogative of this legal document of organizational and procedural character is to determine the term and characteristics of organized crime – an institute of criminal law that is traditionally

¹ Saša Đorđević, *Op.cit.*, p. 45.

² Criminal Code of the Republic of Serbia, "Official Gazette of RS", No 85/2005, 88/2005, 107/2005, 72/2009, 111/2009 and 121/2012

³ Law on the Enforcement of the Prison Sentence for Criminal Offences of Organized Crime, "Official Gazette of Republic of Serbia", No 72/2009 I 101/2010.

⁴ Law on Seizure and Confiscation of the Proceeds from Crime, "Official Gazette of RS", No 32/2013.

supposed to be systematized within substantial provisions of criminal law. In Article 2, this law defines organized crime as commission of criminal offences by an organized crime group or other organized group or their members, for which minimum of four years of imprisonment or a more severe punishment is prescribed⁵.

The conditions that need to be fulfilled if a group of offenders is to be treated as an organized crime group are enumerated in Article 3 of this law: 1) the group must include at least three persons; 2) the group has to exist for a certain period of time; 3) the group must act in consent in order to commit one or more criminal offences; 4) the group is supposed to be founded with the purpose to commit criminal offences for which imprisonment of minimum four years or a more severe punishment is prescribed and 5) the reason why the members formed such group is obtaining, either directly or indirectly, financial or other material benefit.

Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime regulates forming, organization, jurisdiction and authorizations of special organizational units of state bodies, established in order to uncover and prosecute the perpetrators of criminal offences with the element of organized crime (Article 2), including: criminal offences against constitutional order and security of the Republic of Serbia, criminal offences against humanity and other values protected under international law, forgery, money laundering, illegal production and putting in circulation of drugs, illegal trade, illegal trade in weapons, ammunition or explosive substances, human trafficking, robbery, grand larceny, bribery, soliciting and accepting bribes, extortion, abduction and other criminal offences for which punishment of minimum five years of imprisonment is prescribed.

⁵ Ljubiša Jovanović, Dragan Jovašević, *Krivično pravo. Opšti deo*, Nomos, Beograd, 2002., pp. 28-31.

After Amendments and Alterations from 2009, Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime, Corruption, and Other Particularly Serious Criminal Offences¹ it was prescribed that the aforementioned law is to be applied in order to facilitate discovering, criminal prosecution and adjudication in the cases of: organized crime; criminal offences against constitutional order and security; criminal offences against official duty if the accused i.e. the person who is given bribe has the status of a public official or a responsible person; abuse of office if obtained material benefit exceeds the amount of 200,000,000 dinars; international terrorism; financing terrorism, some cases of money laundering; criminal offences against state bodies and criminal offences against judiciary system if their commission is related to the abovementioned crimes. This law defines organized crime as the commission of criminal offences by an organized crime group or its members. In order to be treated as an organized crime group, a group must comprise at least three persons, it has to exist for a certain period of time and act in consent and with the aim to commit one or more criminal offences for which imprisonment of minimum four years or a more severe punishment is prescribed. Finally, the purpose of forming such a group must be obtaining, either directly or indirectly, financial or other benefit.

Criminal Procedure Code of the Republic of Serbia

The term and characteristics of criminal offences with the element of organized crime are also determined by Criminal Procedure Code, after its alteration from December 2002², in Article

¹ Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime, Corruption, and Other Particularly Serious Criminal Offences, "Official Gazette of RS", No 72/2009.

² Law on Amendments and Alterations of Criminal Procedure Code, "Official Gazette of SRJ, No 68/2002".

504 a. This law was in force until June 2007. Criminal Procedure Code from 2002 defines organized crime as criminal offences that represent results of organized acting of more than two persons with the aim to commit serious offences in order to obtain benefits or power. Apart from the enumerated obligatory elements, the existence of this most dangerous form of contemporary criminality requires at least three of these alternative conditions prescribed by the law to be met: 1) that each member of the organization has had a previously determined task or role, 2) that it has been planned that the activity of criminal organization is to be conducted in a longer or unlimited period of time, 3) that the activity of criminal organization is based upon the application of certain rules of internal control and discipline of its members 4) that the activity of criminal organization is planned and performed on an international level, 5) that these criminal activities include violence or intimidation or that the members of the group are ready to apply such methods, 6) that economic or business structures are involved with the commission of these criminal activities, 7) commission of money laundering and 8) that criminal organization or some of its parts have an influence on politicians, media, executive or judiciary authorities or other social or economic entities³.

In Article 21, Criminal Procedure Code adopted in 2006⁴ uses the term "organized crime" to describe cases in which there is reasonable doubt that a criminal offence for which four years of imprisonment or a more severe punishment is prescribed, has been committed as the result of joint action of three or more persons associated in a form of a criminal organization or group, purpose of which is commission of serious crimes in order to gain benefits or power, provided that at least three of the following conditions are fulfilled: 1) that each member of crime

³ Tihomir Vasiljević, Momčilo Grubač, *Komentar Zakonika o krivičnom postupku*, Službeni glasnik, Beograd, 2003, p. 893.

⁴ Criminal Procedure Code, "Official Gazette of RS", No 46/2006.

organization has a previously determined or an obviously definable task or role within the group, 2) that it has been planned that the activity of the organization is going to last for a longer or indefinite period of time, 3) that the activity of the organization is based upon certain rules of inner control and discipline of its members, 4) that the activity of the organization is planned and committed on an international level, 5) that the commission of these activities includes violence or intimidation or that its members are willing to apply these means, 6) that economic or business structures are involved with the commission of group's activities, 7) that money laundering is used, 8) that the organization or some of its fractions have an influence on politicians, media, legislative, executive or judicial authorities or other important social or economic factors.

Law on Amendments and Alterations of Criminal Procedure Code adopted in 2009¹ introduced some important changes regarding the title of chapter 29a, that was entitled as "Special provisions regulating procedure for criminal offences of organized crime, corruption and other extremely serious criminal offences". Article 504a of this legal source defines the following terms: 1) organized crime, 2) organized crime group, 3) corruption and 3) other particularly serious criminal offences. The alterations of Criminal Procedure Code affecting the definition, elements and characteristics of organized crime introduced radical changes in this field. Namely, Article 504a defines organized crime as commission of criminal offences by an organized crime group or its members. An organized crime group is defined as a group of three persons or more that exists for a certain period of time and acts with consent of its members and with the aim to commit one or several criminal offences for which imprisonment of four years or a more severe punishment is prescribed, in order

to obtain, directly or indirectly, financial or other benefit.

Even if they are not committed as the result of an organized crime group's activities, the following criminal offences are considered crimes of corruption: 1) abuse of office, 2) trade in influence, 3) accepting bribes and 4) bribery². On the other hand, particularly serious crimes include the following criminal offences even if they are not committed by an organized crime group: 1) murder, 2) aggravated murder, 3) abduction, 4) robbery, 5) extortion, 6) counterfeiting money, 7) money laundering, 8) unauthorized production and putting in circulation of drugs, 9) criminal offences against constitutional order and security of the Republic of Serbia, 10) unauthorized production, keeping, carrying and trade of weapons and explosives, 11) illegal crossing of state borders and smuggling of migrants, 12) human trafficking, 13) trafficking of underage persons for adoption, 14) international terrorism, 15) taking hostages and 16) financing terrorism.

The adoption of new Criminal Code in 2011³ launched a much less complicated definition of organized crime. According to Article 2 of this legal document, organized crime exists if criminal offences are committed by an organized crime group or its members, whereas organized criminal group is defined as a group comprised of three or more persons acting with consent, which exists for a certain period of time with the aim to commit one or more criminal offences for which imprisonment of four years or a more severe punishment is prescribed, in order to obtain, directly or indirectly, financial or other gain.

Article 161 of Criminal Procedure Code adopted in 2011 emphasizes that special investigative techniques are to be conducted if there is reasonable doubt that a person has committed some of the

¹ Criminal Procedure Code, "Official Gazette of RS", No 72/2009.

² Milan Škulić, *Zakonik o krivičnom postupku*, Službeni glasnik, Beograd, 2009, p. 300.

³ Criminal Procedure Code, "Official Gazette of the Republic of Serbia", No 72/2011.

following criminal offences: 1) criminal offences that are placed under the jurisdiction of Special Prosecutor by a special law, 2) precisely enumerated criminal offences such as: aggravated murder, abduction, showing (publicly displaying), obtaining and possession of pornographic material and using underage persons for pornography, extortion, counterfeiting money, money laundering, unauthorized production and putting into circulation drugs, compromising independence, compromising territorial integrity, attack against constitutional order, sedition, diversion, sabotage, espionage, disclosing a state secret, instigating national, racial and religious hatred and intolerance, violation of territorial sovereignty, conspiracy for unconstitutional activity, plotting of offences against constitutional order and security of the Republic of Serbia, grave offences against constitutional order of the Republic of Serbia, unauthorized production, keeping, carrying and trade of weapons and explosives, illegal crossing of state borders and smuggling of migrants, abuse of office, trade in influence, accepting bribes, bribery, human trafficking, taking hostages, criminal offences from Article 98, Paragraphs 3, 4 and 5 of Data Secrecy Law¹ and subornation of perjury if it is committed in relation to the abovementioned criminal offences².

Criminal Code of the Republic of Serbia

General Part of Criminal Code of 2005 contains provisions that determine the definition and elements of criminal offences, grounds of criminal liability and guilt, system of criminal sentences and rules on their imposing and application. However, some specific solutions applicable on criminal offences with elements of organized crime are found

¹ Data Secrecy Law, "Official Gazette of RS" No104/2009.

² Slobodan Beljanski, Goran Ilić, Miodrag Majić, Aleksandar Trešnjev, *Zakonik o krivičnom postupku*, Službeni glasnik, Beograd, 2011, p. 155

among these general provisions³. Criminal Code also contains definitions of basic, aggravated or privileged forms of particular criminal offences and prescribes punishments for them. Some of them are exactly the ones for which procedural laws (i.e. Criminal Procedure Code) and organizational laws (i.e. Law on Organization and Jurisdiction of State Bodies in the Suppression of Organized Crime) provide special investigative techniques, if their commission includes the elements of organized crime.

The term "organized crime" was included in Criminal Code for the first time after its amendments adopted in September 2009. It was systematized within the chapter containing definitions of terms used in the Code. Namely, in Article 112 Subparagraph 35, Criminal Code defines "organized crime group" as a group of three or more persons that exists for a certain period of time and acts with the consent of its members in order to commit one or more criminal offences for which imprisonment of four years or a more severe punishment is prescribed, with the intention to obtain, directly or indirectly, financial or other benefit. Furthermore, Subparagraph 22 of the same Article defines "group" as a gathering of at least three persons who are connected in order to commit criminal offences continuously or occasionally. It is not required that the group has strictly defined roles of its members, permanence of membership or a developed structure.

In a broader sense, some other provisions of Criminal Code regulating the following fields are also relevant for organized crime issue: complicity in criminal offence, criminal sanctions (imprisonment and fine) a special, *sui generis* measure – confiscation of material benefit obtained by a criminal offence with the elements of organized crime. Furthermore, Criminal Code incriminates the activities that consist of creating an organized crime group or becoming its

³ Dragan Jovašević, *Krivično pravo. Opšti deo*, Nomos, Beograd, 2010, p. 143.

member in the form of these criminal offences: 1) conspiracy to commit a crime and 2) criminal alliance. The Code is also familiar with some criminal offences that may obtain a special qualification and form, for which a more severe punishment is prescribed, if they are committed by a group or organized crime group: abduction, aggravated theft, grand larceny, robbery, extortion, blackmail, conspiracy for unconstitutional activity, illegal crossing of state borders, smuggling of migrants and organizing and incitement to genocide and war crimes.

The Code does not incriminate "organizing a criminal association" as a particular form of complicity in criminal offence since January the 1st 2006. However, contains two incriminations that actually provide criminal liability for criminal offences of organized crime, both of which are systematized within its Chapter 31 called "Criminal Offences against Public Peace and Order": 1) conspiracy to commit a crime and 2) criminal alliance.

Conspiracy to Commit a Crime

Conspiracy to commit a crime, prescribed in Article 345, represents a special case of incrimination of preparatory activities as an independent criminal offence due to a high level of social hazard they enclose. This criminal offence is committed by conspiring with another to commit a particular offence punishable by imprisonment of five or more years. The title and the nature of the chapter this criminal offence is placed into suggest that its purpose is to protect public peace and order. However, it appears that the actual aim of this incrimination is to protect the entire legal system as a collection of legal documents.

Conspiring with another person to commit a criminal offence may include informal or written agreement, consent or arrangement to commit a precisely determined serious crime. A serious crime is a criminal offence for which imprisonment of five years or a more severe punishment is prescribed. It is

irrelevant whether the perpetrator is aware of legal qualification of such crime or familiar with the legal provision by which it is incriminated. It is also not important whether the crime is supposed to be committed abroad or within national borders and who the social or legal values damaged or endangered by its commission belong to. Criminal offence of conspiracy to commit a crime is completed at the moment when the perpetrators agreed to commit a crime, even if they fail to commit it or do not even attempt to do so. If the planned crime is committed, there is a case of so called "artificial" or "counterfeit" joinder of two criminal offences: conspiracy to commit a crime and previously planned criminal offence. The perpetrator has to act with premeditation, which means that he must be aware not only of the agreement with a precisely determined person but also of the characteristics of the crime that they intend to commit. His premeditation must also include his willingness to cause the consequences of such criminal offence in the outer world. The punishment that can be imposed for this criminal offence is fine or one year of imprisonment.

Criminal Alliance

Criminal alliance, defined in Article 346, obtained its title and new contents and forms after the amendments of September 2009. It also represents the situation in which preparatory activities are incriminated as an independent criminal offence due to a high degree of their social hazard. The offence is comprised of organizing a group or organized crime group whose purpose is committing criminal offences punishable by imprisonment of three or more years (if the law does not prescribe a more severe punishment for creating such an alliance) or of becoming a member of such group. As the title of its chapter may suggest, social values protected by this incrimination are public peace and order. However, it seems more appropriate to conclude that it actually protects the entire

legal system, as a collection of legal sources¹.

Criminal alliance may appear in two basic, two aggravated and two privileged forms. The basic form of this criminal offence is committed by organizing a group purpose of which is to commit criminal offences punishable by imprisonment of three years or a more severe punishment (provided that the law does not prescribe a more strict punishment for such offence) or by becoming a member of such group. So, this, basic form of criminal alliance can be committed by performing one of these two activities: organizing a group or becoming a member of the group.

Organizing a group includes creating a new or using an existing organization or a group of persons. When creating such a group, the perpetrator discovers, gathers, connects, bonds together and encourages other individuals to participate in his criminal plan (plan of criminal activities), by which he obtains the consent of these persons to participate in the commission of criminal offences as group members. Using an already existing group, association or alliance, which has previously been established with the purpose to conduct legal or illegal activities, means that the perpetrator changes its initial purpose and directs its activities towards the commission of criminal offences comprised in his criminal plan. In this form, criminal offence is completed at the moment when several persons are joined together in order to fulfill their goal – commission of criminal offences. Becoming a member of the group refers to giving informal or written consent to be a part of the group, but it may also be accomplished by direct, factual commission of some activities that contribute to the achievement of group's criminal goal or purpose.

So, basic form of this criminal offence shall exist if the following

elements are present: 1) criminal group, defined as an alliance of at least three persons connected with the purpose of permanent or occasional commission of criminal offences, whose members do not need to have clearly defined roles, continuous membership or developed structure.; 2) commission of criminal offences for which imprisonment of minimum three years or a more severe punishment is prescribed (serious crimes); 3) accessory or supplementary character of this criminal offence, which means that it will exist only if no conditions are met for the existence of another, more serious crime. Any person acting with premeditation as a form of guilt may appear as the perpetrator of this criminal offence. Its first basic form is punishable by imprisonment from 6 months up to 5 years, whereas for the second basic form imprisonment from 3 months to 3 years can be imposed.

More serious, i.e. "qualified" forms of this criminal offence, for which more severe punishments are prescribed, may appear in three cases.

The first one exists in the case of organizing a criminal group whose purpose is to commit criminal offences provided that the law does not prescribe a more strict punishment for such activities². The activity of organizing an organized crime group consists of creating a new or using an already existing organization, alliance or a group of persons. When forming a crime group, the perpetrator finds, discovers, connects or encourages several persons to participate in his criminal plan (plan of criminal activities), through which he manages to obtain their consent to commit one or more criminal offences as members of the group. Using an already existing group comprises redirecting the activities of an organization or an alliance that has been previously established with the aim to perform legal or illegal activities and directing its activities towards the commission of criminal offences from

¹ Dragan Jovašević, *Komentar Krivičnog zakona SR Jugoslavije*, Službeni glasnik, Beograd, 2003, p. 328.

² Vojislav Đurđić, Dragan Jovašević, *Krivično pravo. Posebni deo*, Nomos, Beograd, 2010, p. 243.

perpetrator's criminal plan. This form of criminal offence is completed at the moment when several persons got together in order to accomplish the goal of committing criminal offences.

The second form of criminal alliance exists if a perpetrator becomes a member of an organized crime group either through giving his oral or written agreement or via direct, factual commission of the activities that contribute to the accomplishment of group's criminal goal.

In both cases, two conditions need to be met. Firstly, there must be an organized criminal group, which, in the sense of article 112 point 35 of Criminal Code, refers to a group of three or more persons that exists for a certain period of time and acts with the consent of all its members to commit one or more criminal offences for which imprisonment of minimum four years or a more severe punishment is prescribed, with the intention to obtain, directly or indirectly, financial or other benefit. Secondly, it is important to emphasize that this criminal offence is of accessory, subsidiary or supplementary character, which means that it will exist only if there are no legal preconditions for the existence of another, more serious criminal offence. This form of criminal alliance is punishable by imprisonment from six months to five years.

The third form of criminal alliance will exist if one of the two previously described forms of this criminal offence is committed with the intention to commit criminal offences for which imprisonment of twenty years or imprisonment from thirty to forty years can be imposed. There are two qualifying circumstances in this case: the nature and the character of the group and the type i.e. the seriousness and the gravity of criminal offences that group's members intend to commit. In this case, the organizer may be sentenced to imprisonment of at least ten years or imprisonment from thirty to forty years, whereas imprisonment from six months to

five years can be imposed on group members.

Criminal Code of the Republic of Serbia is also familiar with two less serious i.e. privileged forms of criminal alliance.

The first privileged form, for which the perpetrator may be sentenced to maximum 3 years of imprisonment or even completely deliberated, exists if the organizer uncovers the group before committing, as its member or on its behalf, a criminal offence from the criminal plan. This form of criminal alliance is completed at the moment when the group is formed, before the commission or attempt of any criminal offence. Therefore, there is no voluntary abandonment of the commission of criminal offence in this case. Instead, it represents a special situation indicating perpetrator's repent. Only organizer of a group or of an organized crime group may appear as the perpetrator of this privileged form of criminal alliance. The activity of uncovering (unveiling or revealing) of the group must be conducted in a particular manner – on a voluntary basis. Organizer's motives to uncover the group by reporting its existence, members or plans to relevant state bodies in an informal or written manner are irrelevant. Finally, the group has to be uncovered before the organizer committed any of planned criminal offences as its member or on its behalf.

The least serious form of criminal alliance for which fine or imprisonment up to one year may be imposed, is committed if a member of a group or an organized crime group unveils the group before committing a criminal offence from the criminal plan as its member or on its behalf. There are three circumstances that contribute to a privileged or less serious character of this criminal offence. The perpetrator can only be some of group's or organized crime group's members. The activity that constitutes this criminal offence is comprised of uncovering, unveiling or reporting the group to relevant state bodies. The perpetrator has to uncover the group before committing a criminal offence as its member.

Conclusion

The significance, scope, and consequences of organized transnational crime make it stand out among other criminal offences that constitute the global structure of contemporary criminality. Its social hazard is indeed particular and cannot be compared with "regular" or "classical" criminal offences and, as such, must not be neglected or underestimated¹. This type of crime can be described as a special, cumulative effect of criminal energies of a larger number of persons, which appears in different forms of criminal associations with a lower or higher degree of consistency and duration. It comprises a "continuing criminal conspiracy, having a firm organizational structure, a conspiracy fed by fear and corruption"². The perpetrators of these criminal offences continuously conduct their illegal activities irrespectively of national or other boundaries in an organized manner with the aim to gain illegal material benefit and to obtain economic, political or other authority.

Since this is the case of secret, undisclosed associations and alliances that permanently keep committing a multitude of extremely serious crimes, all contemporary legislations are familiar with special bodies, jurisdictions, procedures and measures for suppression and prevention of organized crime. These legislative solutions are primarily based upon and derived from relevant international documents, most important of which is United Nations Convention against Transnational Organized Crime.

Although it had not been familiar with the phenomenon of organized crime until the 1990s, the Republic of Serbia relatively quickly managed to create an adequate legal framework for countering this form of criminality. It was essential to overcome the main obstacle for the confrontation with this problem – the lack of awareness about its dangerous consequences and the fact that the state

used to treat it as a tacitly accepted "survival tactics"³. Since then, our country has adopted a series of organizational, procedural and substantial legal provisions, creating solid legal grounds for an efficient, prompt, effective and lawful fight against increasing rate of all forms and aspects of organized crime. In that way, our country joined other European systems of criminal law and embraced their standards when it comes to the attempts to discover and apply an efficient system of measures and procedures for the suppression and prevention of organized crime.

However, the creation of a solid normative framework represents only the initial step. All the aforementioned characteristics of organized crime and its connections with legal and official state structures make this phenomenon far more complex and require a more comprehensive approach that would include coordinated actions of all relevant subjects on national and international level – lawmakers, judiciary systems, special police units and experts from the fields of law (criminal law in particular), criminology, penology, victimology, criminalistics and security studies. The suppression of organized crime should be started on the grounds of innovative tactics and strategies, based upon the cooperation of all social entities, conducted through a carefully prepared program of national safety and international cooperation.⁴ In order to fight organized crime in an efficient and effective manner, it is necessary to develop cooperation and, what is even more important, confidence between governmental (state) bodies, private sector and civil society representatives. The application of three fundamental principles of combating organized crime (that are also mentioned in Serbian National Strategy to Fight Organized Crime): developing preventive activities, enhancing repressive measures and seizure of property acquired through

¹ Momčilo Grubač, *op.cit.*, p. 704

² Mora Stephens, *Op.cit.*

³ Momčilo Grubač, *Op.cit.*, p. 702

⁴ Bojan Dobovšek, *Op.cit.*

crime may be considered an appropriate effort to achieve a more efficient suppression of organized crime¹.

As cooperation among global organized criminal groups increased, restrictions have lessened between international borders.² The international (or transnational) character of organized criminal groups and the multitude of locations in which their illegal activities take place make the coordination of international police analyses and investigations more difficult. On one hand, the strategy of criminal associations is rapidly advancing, whereas, on the other, the coordination and cooperation between police forces and between other relevant state bodies fails to keep up with those changes. Moreover, great mobility of capital throughout geographically unlimited areas enabled new techniques of money laundering to emerge. Therefore, it is essential to harmonize relevant criminal legal provisions of various states. Unfortunately, numerous efforts of European countries in the field of international cooperation directed towards the search of new strategies and tactics of suppression of organized crime have given only scant results.³

Some authors claim that organized crime cannot survive only under totalitarian and semi-totalitarian regimes because two totalitarian systems (state on one hand and organized crime group on the other) cannot co-exist. Such statements are based upon the fact that Italian fascistic regime managed to confront the mafia for the first time and establish social order and discipline during the 1930s and 1940s.⁴ However, modern democratic states that respect human rights as the highest social values must achieve and maintain a sustainable balance between the interests of safety and the respect of citizens' right of privacy, data secrecy, right to possess private mobile and immobile property, freedom of movement of people and goods

etc. Limiting and restricting fundamental and universally accepted human rights and freedoms cannot be a solution to the problem of organized crime. On the contrary, it should be sought in harmonization of legislative provisions on European and international level, cooperation between relevant state bodies, constant exchange of information, creation and maintenance of a uniform database on criminal organizations and perpetrators of criminal offences with the element of organized crime. It is also important that lawmakers keep up with new trends in the field of organized crime in order to be capable of upgrading laws, strategies, action plans and other tactics of suppression and prevention of this phenomenon. To conclude, it should be emphasized that political will to address the issue of organized crime represents *condicio sine qua non* for its successful suppression. That is the reason why this problem should be approached not only from legal but also from political perspective and treated in the context of current social, economic, political and other relevant circumstances.

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¹ Saša Dorđević, *Op.cit.*, p. 44

² Mora Stephens, *Op.cit.*

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