

The Combat against the Organized Crime in the Republic of Kosovo

— Prevention and Efficiency

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Abstract: The organized crime is as a quite dangerous negative occurrence, which as such has penetrated in all segments of human society.

The organized crime actually is one of the most serious crimes in the local and international level which acts as an organized group, which goal is the financial benefit or any other direct or indirect material benefit.

The goal of the organized crime is in the supply with illegal goods and services through criminal organization which is involved in criminal activities and which has a quite well organized structure.

The characteristics or features of the organized crime consist in the fact that criminal groups do not have political goals, they have hierarchy, have special or limited membership, criminal groups are permanent, they are famous for using illegal violence, their intend is bribe, they have share tasks, they are famous for monopolist, in their criminal activities they are led with special norms and rules.

With the purpose of prevention and combat of the organized crime, the institutions of Republic of Kosovo should undertake special measures in the enhancing of the criminal prosecution organs capacities and the judicial system organs.

It is necessity approval of other laws for fighting and prevention of organized crime, especially the Law for prevention and combat of organized crime.

Key words: the meaning and characteristics of the organized crime, the international definition of organized crime, the definition of the organized crime according to criminal legislation of Kosovo, the measures for prevention of organized crime

1. The Meaning and Characteristics of the Organized Crime

The organized crime like in other regional countries, there is no doubt that it is spread in the Republic of Kosovo as well and it is present in many segments of the society and this form of the criminality is suffocating the economic life of Kosovo. Hereafter we can conclude that based on statistics of the competent institutions which deal with the combat of this crime, and even our county is found as suitable ground for development of this kind of criminality.

Regarding the organized crime, today to the teoriciens are dominating different concepts but the most

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comprehensive one that is used now days is according to that concept that organized crime means an criminal organization with a well conceptualized structure established for a period of time where is involved one or more persons who act jointly with the intend of committing criminal offenses which are punishable by imprisonment for a period of at least 4 years or more severe punishment, and that the intention of the perpetrators of this type of crime is material benefit and exercise unfair impact to public authorities.

Organized crime today is manifested or is committed in several forms, or through the following criminal offenses as follows: drug trafficking, trafficking of women, trafficking of weapons and ammunition, smuggling of goods, trade in works of art and national culture, clandestine traffic of persons, money laundering, counterfeiting of money and racketeering. Almost all of these offenses are currently present where more or less in the territory of Kosovo, like any other criminal offence these offences pose a particular risk to society, even social dangerousness of these criminal offenses is more than vacant for the fact that they are committed in an organized way through well organized and well-structured criminal groups.

2. International Definition of Organized Crime

Primarily, the organized crime will be treated on international plan level, where it was presented earlier on and efforts to combat and prevent were conducted, while organized crime in Kosovo dates back to the broader dimensions of time after the war¹ so after 1999 when the combating and prevention of this type of crime started. As mentioned above on the international level, the organized crime in various forms had occurred decades ago, therefore efforts to prevent and combat this type of crime dates earlier on as well. Thus the first attempt to prevent and combat organized crime, is completed with the approval of the Convention for prosecuting human trafficking and exploitation of the prostitution of others, of the year 1949².

With this convention all signatories are obliged to issue legal acts in order to combat, cooperation and prosecuting of all forms of human trafficking and exploitation for prostitution purposes. In 1961 we have the first approved Convention on Narcotic Drugs, as amended by the 1972 Protocol. Under this convention signatories assume obligations to enforce the provisions of this Convention, limiting the movement of drugs to only for medical and scientific purposes, production, manufacture, export, import, distribution, and possession of drugs. In order to prevent and combat organized crime, The United Nation promulgated the Convention against illicit traffic in narcotic drugs and psychotropic substances³.

Under these convention signatories parties assume obligations to enforce the provisions of this Convention by relevant applicable law, as well as under the Convention it is foreseen the confiscation of benefits revenues arising from trafficking drug trades. The Protocol against the illicit manufacturing and smuggling of firearms, their parts, components and ammunition that complements the United Nations Convention against.

International Organized Crime, issued in 2001. The purpose of this Protocol is to promote, facilitate and strengthen cooperation amongst Member states. Besides the UN, also the Council of Europe with the purpose and in order to prevent and combat organized crime approve “the Council of Europe Convention on action against

¹ Lufta e vitit 1998/99 në mesë të Ushtrisë e forcave paramilitare serbe dhe Ushtrisë Çlirimtare të Kosovës (UÇK). The war of 1998/99 between Serbian paramilitary forces and Kosovo Liberation Army (KLA).

² Konventa është miratuar nga Asambleja e Përgjithshme e Kombeve të Bashkuara me rezolutën e saj 317 (IV) të dt.02.12.1949 ndërsa ka hyrë në fuqi me dt.25.07.1951. The convention is approved by the General Assembly of the United Nations with its resolution 317 (IV) on 02.12.1949 while come into force on 25.07.1951.

³ Konventa është miratuar me dt.19.12.1988./ The convention is approved on 19.12.1988.

trafficking in human beings”⁴. Under this convention has been clearly determined to prevent and combat trafficking of human beings, protection of the rights of victims of trafficking, as well as to encourage and to promote international cooperation on action against trafficking in human beings.

Noting that the organized crime more and more is being exposed in social life and there is a necessity to prevent and combat this particular crime, where we have also the Europol Convention on organized crime, according to this convention there are verified 11 main features of organized crime which have been adapted by Europol as follows: criminal cooperation of more than two persons; certain tasks of each separately on criminal activity, action of persons with criminal activity over long periods of time, as well as stability and durability of the groups; strict discipline and systematic control towards each member of criminal group, conducting the activity with high risk for public safety, criminal activity at regional and international level, the use of violence, and the conduct of different ways of violence to blackmail in order to achieve criminal activity, construction and use of trade or business structures to support the criminal activities, executing operations of money laundry; commitment to influence or bias in politics, media, public administration, judicial authorities and the country's economy, as well as the realization of strategic welfares purposes or increasing the power of organized crime⁵. International community has continuously adapted and has issued new legal acts in order to prevent and combat organized crime in the wake of this legislative activity we also have the Council of Europe Convention on Laundering, discipline, sequestration and confiscation of crime revenues and financing of terrorism, promulgated in Warszawa, Poland in 2005, Recommendation No. 11 of 2001 of the Council of Europe's basic principles regarding the combat against organized crime. There would not be a success the prevention and combat of organized crime, despite the existing of international legal acts if their application in one way or another would be not successful, but to make this happen international agreements should be ratified in order to cooperate in the combating and prevention of organized crime. Additional activity in preventing and combating organized crime is also conducted amongst various international workshop and scientific session seminars, where through the meetings they share experiences of different countries in combating this type of crime. In this particular aspect worth referring is the International Conference of Ministers in Naples, held in Italy, 1994 where it has been adopted the Political Statement of the United Nations Global Plan of Action against Transnational Organized Crime. The purpose of conference held in Naples, Italy, was expressing a special exemplification in commemorating of the well-known Italian judges Giovanni Falcone and Paolo Borsellino, who were assassinated by the criminal hand of the Italian mafia.

3. The Definition of Organized Crime under the Criminal Legislation of Kosovo

As in international level as well as in Kosovo, the organized crime is sanctioned with the legal acts to combat and prevent organized crime. However, despite the existence of legislation to combat and prevent organized crime, this type of crime is not covered by sufficient legislation to combat and prevent. In Kosovo after the war of 1999 the Interim Administration Mission of the United Nations called with abbreviation “UNMIK”⁶, was installed,

⁴ Konventa është nxjerrë në Varshavë të Polonisë me dt.16.05.2005. The convention is promulgated in Warsaw Poland.

⁷ Saço, Sh. Shehu, B. (2002) Karakteristikat e krimit të organizuar dhe instrumentet e luftës kundër tij, kriminaliteti, rendi, dhe policimi, nr.5, Tiranë, fq.32-33. Saço, Sh. Shehu, B. (2002) the characteristics of organised crime and combat tools against it, the crime, rule of law and policing no. 5 Tiranë, pp. 32–33.

⁶ Me rezolutën 1244 të miratuar nga Këshilli i Sigurimit të Kombeve të Bashkuara të dt.10.06.1999 në Kosovë u vendos Misioni i Administratës së Përkohshme të Kombeve të Bashkuara (UNMIK). With resolution 1244 approved by the UN Security Council dated

this mission found Kosovo in quite legal vacuum, so this mission needed initially to promulgate several regulations to regulate and protect the life of the citizens and public institutions till the Construction of Assembly of Kosovo.

Besides promulgation of regulations in other fields UNMIK promulgated regulations with the legal power with regards of fighting and preventing organized crime, so UNMIK promulgated the Regulation 2001/4 on the Prohibition of Trafficking in Persons⁷, with this regulation are defined the criminal offences and punishments that are given sentence to this kind of criminal offences precisely to them who commits trafficking in human beings and also regulates the assistance and protection of the victims and damaged parties. With regulation nr.2001/22 on measures against organized crime⁸, is regulated and sanctioned organized crime where foresees the announce of punishment against those who commit this kind of criminality, against those who help and encourage organized crime, as well as to those who organize, establish, supervise, lead and direct the organized criminal activities. According to this regulation the definition of organized crime underlines as a serious crime of at least three more persons for the intend to gain financial and material benefit and for their criminal action maybe imposed the sentence of at least four years in jail. The subsequent Regulation UNMIK2002/6⁹, on “covert measure sand technical measures of surveillance and investigation” the fact should be highlighted that this regulation for the first times stipulates the Covert and Technical Measures of Surveillance and Investigation, due to up to now this manner of investigation and surveillance, was not covered by existing legislation. So after the promulgation this regulation, organized criminality and another type of crime was for first time applied for investigation based on the law, as this way of investigation and technical surveillance, would bring tangible results infighting and preventing organized crime, although not entirely neutralized this crime.

Apart the regulations stated above, being under the UNMIK administration Kosovo, begin to en act laws and codes that governing a more expanded way to other spheres of social life and state. So in 2003 Kosovo enacted Provisional Criminal Code of Kosovo (CCK)¹⁰ and the Kosovo Criminal Procedure Code (KPCP) which were announced and entered into force on the same day. Criminal Code of Kosovo apart to the general provisions also contains specific provisions, which regulate sands actions organized crime as well. So in the general Criminal Code contains legal provisions dealing with criminal union as a form of organized crime, since in the union crime participates more than one person. In the specific part of the CCK, is foreseen several legal provisions, which deal with various criminal offenses, which are committed in an organized manner, in this code is foreseen a special criminal offence that is explicitly called “Organized Crime”¹¹ (Article 274) which is a part of the chapter of criminal offences against wealth.

10 06.1999 in Kosovë (UNMIK).

⁷ Rregullorja ka hyrë në fuqi me dt.12.01.2001 e shpallur në Gazetën Zyrtare të Misionit të Administratës së Përkohshme të Kombeve të Bashkuara, vëllimi I i vitit 2001. The regulation came into force on 12.01.2001 and promulgated in the Official Gazette of the Provisional Administration of the United Nations in the year 2001.

⁸ Rregullorja ka hyrë në fuqi me dt.12.01.2001 e shpallur në Gazetën Zyrtare të Misionit të Administratës së Përkohshme të Kombeve të Bashkuara, vëllimi I i vitit 2001. The regulation came into force on 12.01.2001 and promulgated in the Official Gazette of the Provisional Administration of the United Nations in the year 2001.

⁹ Rregullorja ka hyrë në fuqi me dt.20.09.2001 e shpallur në Gazetën Zyrtare të Misionit të Administratës së Përkohshme të Kombeve të Bashkuara, vëllimi 4 i vitit 2001. The regulation came into force on 20.09.2001 and promulgated in the Official Gazette of the Provisional Administration of the United Nations, volume 4 of the year 2001.

¹⁰ Rregullorja ka hyrë në fuqi me dt.20.09.2001 e shpallur në Gazetën Zyrtare të Misionit të Administratës së Përkohshme të Kombeve të Bashkuara, vëllimi 4 i vitit 2001. The regulation came into force on 20.09.2001 and promulgated in the Official Gazette of the Provisional Administration of the United Nations, volume 4 of the year 2001.

¹¹ Rregullorja ka hyrë në fuqi me dt.18.03.2002 e shpallur në Gazetën Zyrtare të Misionit të Administratës së Përkohshme të Kombeve të Bashkuara, vëllimi nr.1 i vitit 2002. The regulation came into force on 18.03.2003 and promulgated in the Official Gazette of the Provisional Administration of the United Nations, volume no.1 of the year 2002.

Article 274 paragraphs 1 of the CCK, predicts quote: anyone who commits a serious crime as part of an organized criminal group, shall be punished by a fine of up to €250,000 (two hundred fifty thousand) as well as the sentence of imprisonment of at least 7 (seven) years. As a severe form of this crimes considered to exist, if any person organizes, establishes, supervises, manages or directs the actions of any organized criminal group. In paragraph 4 of this Article is foreseen as a severe form of this crime, if it has resulted with the death of a victim, in this case it is foreseen the punishment with a fine of up to €500,000,00 (five hundred thousand) and the sentence of imprisonment of least ten (10) years imprisonment, or long term imprisonment. Article 138 of the CCK, foresees criminal offense “Smuggling of migrants” which is committed in the form of organized crime, then foresees the criminal offense “Trafficking in persons” in Article 139 of the CCK. Both of these criminal offenses are committed under the organization and leadership of the organized criminal group. CCK for sees other criminal offences that are committed in organized way as: smuggling of intoxicating drugs and other psychotropic substances, counterfeit money, organization pyramid schemes, illegal gambling, smuggling of weapons and smuggling of goods, etc... In order to increase the combat and prevent the organized crime, Kosovo has adopted the Law on the prevention of money laundering and financing of terrorism¹², so this law is of particular importance in the field of fighting and preventing money laundering and financing terrorism. Apart from the legal provisions foreseen in this law that regulate and sanction the combat and prevention of this criminality, this law foresees other specific sectors such as Financial Intelligence Unit, which unit functions within the Ministry of Finance, as the central and independent institution. The Financial Intelligence Units responsible for reaching, obtaining, analyzing and disseminating to the competent authorities and the disclosure of information regarding potential money laundering and terrorist financing.

The war on preventing and fighting of organized crime¹³, in legislative aspect, has continued with the approval of new Penal Code¹⁴ which is applicable from dt.01.01.2013, whilst this code has also paid special attention to organized crime. So comparing to the old penal code, now the new penal code pays a big attention to organized crime for the fact that evidences as a special chapter only for organized crime therefore CHAPTER I XXIV ORGANIZED CRIME, whereas the special chapter for seen the organized crime in a comprehensive way only in one Article 16.

Comparing to the old code the new code which is currently applicable with the goal to combat the organized crime successfully has foreseen severer sanctions, while in the old code in paragraph 2 of the Article 274 for the member of the criminal group has foreseen the sentence imprisonment of 5 years, new applicable criminal code foresees sentence by imprisonment of at least 10 years, as well the old criminal code in paragraph 3 of Article 274 for a member of the criminal group has foreseen the punishment up to 20 years, the applicable criminal code foresees the punishment with imprisonment of at least 10 years or life in imprisonment sentence, while the old criminal code in paragraph 5 of Article 274 for a member criminal group fore saw the possibility of release from punishment, applicable criminal code does not foresee for this option, but foresees the possibility of mitigating the sentence. By making such a comparative view between the former criminal code and the new applicable criminal

¹² Ligji nr.03/L-196 për parandalimin e shpërlarjes së parave dhe financimit të terrorizmit, Gazeta Zyrtare e Republikës së Kosovës, nr.85, Prishtinë, 2010./Law no.03/L-196 for prevention of money laundering and financing of terrorism, Official Gazette of the Republic of Kosovo no. 85, Prishtinë, 2010.

¹³ Kodi nr.04/L-082 Penal i Republikës së Kosovës, Gazeta Zyrtare e Republikës së Kosovës, nr.19, Prishtinë, 2012./Code no. 04/L-082 Criminal of Republic of Kosovo, Official Gazette of the Republic of Kosovo, no. 19, Prishtinë, 2012.

¹⁴ Neni 238 I Kodit nr.04/L-082 Penal të Republikës së Kosovës, Gazeta Zyrtare e Republikës së Kosovës, nr.19, Prishtinë, 2012. Article Code no. 04/L-082 Criminal of Republic of Kosovo, Official Gazette of the Republic of Kosovo, no. 19, Prishtinë, 2012.

code, it is evident that there is stricter punishment for the perpetrator of organized crime, which aims to prevent and combat efficiently organized crime.

Also in order to prevent and combat organized crime, the applicable criminal code has given special place to the corruption as one of the forms of organized crime, highlighting in Chapter XXXIV as official corruption offenses and offenses against official duty¹⁵, which foresees several criminal offences of this quite sensitive nature and special dangerousness to the state of Kosovo, as a newest country in the world.

In continuation of the legislative activities, the Assembly of Kosovo approved the Law nr. 2012/04-L-140dt.11.02.2013 for Enhanced Competencies for confiscation of property gained by criminal offense, the President of Republic of Kosovo has promulgated by the Decree of, No. DL-020-2013. This law further strengthens the combat and prevention of organized crime, because the increase of wealth through committed criminal offenses is done respectively could be done on the base of any organized criminal network for the fact that only organized in criminal way can come to the great benefit of wealth, breaking the laws and other sub-legal acts could come to an unlawful wealth.

4. Necessity to Promulgate Other Laws and Measures for Prevention of Organized Crime

Many reports of Institutions in Republic of Kosovo indicate for relatively high level of organized crime, there are even findings that organized crime and corruption have suffocated Kosovo. Thus, according to police statistics during 2012 were identified 989 cases of this type of crime, arresting 1066 suspects and detained 659 suspects. All of these cases have to do with trafficking of human being, narcotic substances, smuggling of migrants, as well as other criminal offences related to organized crime, from the above mentioned cases 83 cases were caused by criminal groups that have functioned as well-organized groups¹⁶. So far, experience has shown that corruption syndrome as part of organized crime, has hit especially countries that were and are in transition, so from this evil Kosovo Republic could not be rescued. So apart from public institutions that provide statistics on organized crime, the non-governmental organizations provide as well information based on statistical evaluations and other surveys on about organized crime.

The “FREEDOM HOUSE” a renowned international organization estimates that the Republic of Kosovo with its consolidation resembling currently authoritarian regime as in Armenia and Kyrgyzstan, the organization makes the assessment from one to seven, so with mark one is evaluated the high level of democracy, while the seventh mark is assessed the weak level of democracy. According to this assessment Kosovo has stalled a lot in its progress so their fields and in progress of the judicial system but also in the war against corruption as a form of organized crime. In this regard “FREEDOM HOUSE” as an example takes the arrest and trial of chief anti-corruption Task Force, in the Special Prosecutor of the Republic of Kosovo and the arrest of two senior officials of the Ministry of Internal Affairs for bribery¹⁷.

Despite a permanent commitment in combating and preventing organized crime, the organs of criminal prosecution, the prosecution and the judiciary, results in this regards lacks the extent that it should be looking from the perspective must be considered necessity and persistence of the highest of all institutions in preventing and

¹⁵ Neni 422-437 I Kodit nr.04/L-082 Penal të Republikës së Kosovës, Gazeta Zyrtare e Republikës së Kosovës, nr.19, Prishtinë, 2012./Article 422-437 of Code no. 04/L-082 Criminal of Republic of Kosovo, Official Gazette of the Republic of Kosovo, No. 19, Prishtinë, 2012.

¹⁶ www.telegrafi.com, on 02.02.2013.

¹⁷ E përditshmja gazeta Koha Ditore, dt.19.06.2013 fq. 5. Daily Newspaper Koha Ditore date 19.06.2013, p. 5.

combating organized crime. To combat and prevent organized crime or at least reduce or stop it generally, it is a necessity of time to legislate other laws to combat and prevent this crime, so as a necessity would be the adoption of “law on preventing and combating organized crime”.

This law would have predict clear legal provisions in order to combat and prevent organized crime, whereas an special measure would be the confiscation of property of persons who have owned are a aspect that cannot justified the origin of the property, since it is obtained as a result of criminal activity. Within this law should also foresee the legal provisions that would apply to property against the persons hop are suspected in participation in a criminal organization, organizing and participating in terrorist groups, human trafficking, production and unauthorized processing of dangerous narcotics and psychotropic substances, etc.. The adoption of this law will greatly help in the investigation, revealing and trial of the so-called big fish or high profile figures of politics, and confiscation of their property. The government has issued the Government Programme of the Republic of Kosovo for the period 2001–2014 where among other things; part of the program is the combat and prevention of organized crime. The Government of the Republic of Kosovo also in the in the wake of state activities has adopted the State Strategy of the Republic of Kosovo against the organized crime an action plan for the period 2009–2012, a strategy that has resulted in the formation of several governmental mechanisms to combat and prevent organized crime.

5. Conclusions

(1) Republic of Kosovo continuously and persistently through state mechanism supposes to prevent and combat the organized crime.

(2) It is an urgent and inevitable task of Kosovo state to ratify as soon as possible the “Law on preventing and combating the organized crime”.

(3) Kosovo anticorruption agency in consistency with Law and with professionalism supposes to find the working methods to cooperate with persecution authorities on prevention and combating the organized crime.

(4) Various divisions established before the competent authorities, supposes to engage themselves more efficiently on prevention and combating the organized crime.

(5) The criminal persecution authorities, police authorities in cooperation with prosecution supposes to strengthen the cooperation among each-other pursuant to provisions of KCCP to infiltrate themselves in organized crime net as efficient method to prevent and combat the organized crime.

(6) The Kosovo Republic judiciary supposes to rule the organized crime cases more efficiently, herein the number of Judges ought to be increased in proportion with number of cases.

(7) Our reasonable opinion is to review and assess the establishment of a special court to rule on more sensitive cases as it is the organized crime.

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