

Understanding, Definition and Sanctioning of Organized Crime Under the Law of Republic of Kosovo

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Abstract

The presence and development of criminality in society dates back from the old ages to the present time, by transforming itself in various types of emergence, depending on the degree of social emancipation. In addition to social development processes, there are also changes from the viewpoint of ideas relating to the etymology of crime in society. In the beginning of XX century, the society dealt with drastic and dramatic changes in the whole domains of life, accompanied with changes in the form of occurrence of criminality in society. The term "organized crime" was originally used in 1896 in the annual report of Society for for the Crime Prevention in New York. In this report, the term was employed to define the acts of prostitution and gambling, protected by the public officers. Whereas, as far as Kosovo is concerned, the International Administration – UNMIK – promulgated the Regulation No. 2001/22 "On Measures against Organized Crime". The Regulation No. 2001/22 provides the definition of the term organized crime where it sets forth the measures and penalties that may be imposed to participants of an organized crime, the basic and qualified forms. With the purpose of supplementing the legal grounds to combat and prevent the criminality in the country, the Kosovo Assembly promulgated on 6th July 2003 the "Provisional Criminal Code of Kosovo"¹ (PCCK) which entered into force on 6th April 2004, which as per the EU's recommendations, was supplemented and amended time after time until the Kosovo Criminal Code was adopted on 20th April 2012. The key terms to be elaborated in this paper are as follows: Understanding and definition of the organized crime, sanctioning of the organized crime, Kosovo Criminal Code and Combating and Prevention of the Organized Crime.

Understanding, definition and sanctioning of organized crime under the Law of Republic of Kosovo

The presence and development of criminality in society dates back from the old ages to the present time, by transforming itself in various types of emergence, depending on the degree of social emancipation. During the history, the preoccupation, interest and reaction of society to the criminal acts has been different. Depending on the social conditions, there were introduced the means and measures to fight harmful and threatening acts to the society. The society's reaction was accompanied through providing various opinions and findings relating to etiology and phenomenology of criminality.

In addition to social development processes, there are also changes from the viewpoint of ideas relating to the etymology of crime in society. The "notion of criminality means the wholeness of all crimes that were committed at a certain time, space and period. The Criminality is a massive phenomenon that encompasses in itself all types of crimes committed in one place"². Whereas the term "crime means an individual act of human behaviour by means of which the criminal code is violated or breached and such breach usually faces penalty – punishment"³. The use of the term criminality or crime by the authorities of judiciary corresponds with the term criminal act. It was similarly applied in the literature of the national criminal law which sets forth that "the act which infringes, harms or eliminates the legal value of a human and certain community, it is called a criminal act or a criminality according to a more general term under the criminal law."⁴ Whereas, under the international criminal law, the notion of international criminal act or the international crime has not received yet a complete and precise definition, but it has rather adopted a definition of more sociological and criminological character in which it

¹ Provisional Criminal Code of Kosovo, Kosovo Assembly, Prishtina, 2003, which entered into force on 20th April 2004

² R. Halili, *Kriminologjia (Criminology)*, Prishtinë, 2002, p. 20

³ R. Halili, *Kriminologjia (Criminology)*, Prishtinë, 2002, p. 21

⁴ I. Salihu, *E Drejta Penale Pjesa e Përgjithshme (Criminal Law General part)*, Prishtinë, 2003, p. 25

sets forth that “the international criminal acts represent violation of important international values. At the epicenter of these international values which are violated by means of these criminal acts, is found the corpus of universal human rights”¹.

The criminological literature sets forth that “the volume, type of crimes and criminal behaviour have been closely linked with the development and transformation of certain societies and social – economic systems”². By rights, it can be concluded that the causes of types of criminality are miscellaneous, they tend to change, advance and do not bear the same importance in various political – economic development related processes. There are no doubts that in today’s circumstances of the modern society, “the criminality attempts, above all, to penetrate into the territories of countries with new democracy, but also in economically undeveloped countries, because in these countries, there is certainly a convenient space to develop and spread many criminal acts”³. Political and system related changes to certain countries with influence in trends and extent of occurrence of organized crime, including difficulties and inabilities to prevent and combat such phenomenon, particularly in the transitional countries, should be added to these circumstances”⁴.

The term “organized crime” was originally employed in 1896 in the annual report of the Society for the Crime Prevention in New York. In this report, the term was employed to define the acts of prostitution and gambling, protected by the public officers. Thus, initially, as “organized crime was considered illegal business involving politicians, police officers, legal officers and professional thieves, where their crime was organized”⁵. On the other hand, in Europe, for the first time “the notion of organized crime was employed in Italy (the notion of criminal organization of mafia type, 1982). The Ministers’ World Conference “on organized transnational crime” (Naples 1994) adopted the UN’s political statement and Global Action Plan against Organized Transnational Crime”⁶. For a long period of time, the organized crime continued to be identified with mafia, mainly the Italian one. “The organized crime encompassed the illegal activities of the well-organized members, a disciplined and engaged union in support of illegal services and trade, including: gambling, narcotics, threats at work and other criminal activities of the members of these groups”⁷.

In general, the organized crime has received treatment by researches as a complex, professional and worrying phenomenon for the whole globe, where the distinctions regarding its concept and definition prevailed for a long time: “It is called an organized crime because the professional criminals, on the occasion of committing a criminal act, they make plans and coordination specifically and due discipline”⁸.

Other authors provide that “Although there is no uniform definition of the organized crime, the criminal groups in Europe and beyond, make efforts to coordinate their activities and divide their areas of operation among themselves. The organized crime has recognized new developments in the types of criminal activities and the modes of their execution, by distinguishing the crime in Europe according to its international element”⁹.

According to the DEA’s specialists (*Drug Enforcement Agency*), “the organized criminality is defined as an illegal activity which is committed by criminal groups, whose primary activity is to violate the criminal laws during a certain period for profit purposes”¹⁰.

Furthermore, other authors’ opinions and findings have made special contribution in determination of the concept and definition of criminal organization. According to author Howard Abadinsky “the organized crime is a non-ideological

¹ I. Salihi, *Drejta Penale Ndërkombëtare (International Criminal Law)*, Prishtinë, 2005, p. 306

² R. Halili, *Kriminologjia*; citation p. 123

³ B. Pavicic, *Savremeni Medjunarodni Kriminalitet*, Pirucnik, nr. 3/91, Zagreb, cit. according to V. Vula, 2013 p. 22

⁴ V. Latifi & I. Elezi & V. Hysi, *Politika e Luftimit të Kriminalitetit (Policy of Fighting Criminality)*, Juridika, Prishtinë, 2012, p. 194

⁵ V. Latifi, *Kriminalistika (Criminalistics)*, Prishtinë, 2011, p. 259

⁶ V. Latifi, *Politika Kriminale (Criminal Policy)*, Prishtinë, 2011, p. 239

⁷ V. Latifi, *(Criminalistics)*, Prishtinë, 2011, p. 259

⁸ R. Halili, “Disa vepra të kriminalitetit të organizuar në Kosovë”, *E Drejta*, nr.4, (“Certain offences of organized crime in Kosovo”, *Law*, No. 4) Prishtinë, 2002 & R. Halili, *Kriminologjia (Criminology)*, Prishtinë, 2002, vep, cit p. 137

⁹ V. Hysi, *Kriminologjia (Criminology)*, Tiranë, 2005, p. 178

¹⁰ M.D. Moriarty, *Organizirani kriminalitet, gradivo DEA seminar për kriminalistë Pulë*, 1996, cit. sipas V.G.Vula fq. 27

enterprise involving a number of persons in close social interaction who are organized on hierarchical basis consisting of at least three levels, for the purpose of making profit and power, owing to participation in illegal and legal activities"¹.

At regional scope (for the members states of the European Union), a contribution regarding the definition of the organized crime has also been given by the European Union through the issuance of the Joint Plan dated 21st Dec 1992 "a criminal organization is called an organization which has a structure consisting of two or more persons, established to operate during a certain time and which commits crimes which are punishable under the law up to four (4) years of imprisonment or serious sentence"².

With the purpose of broader scope, following ratification by the countries, a contribution to the definition of the organized crime was made by the United Nations in 2000 in Palermo where it adopted the UN Convention against Transnational Organized Crime³ which entered into force in September 2003. The article 2 of the said Convention sets forth as follows:

"Organized criminal group" shall mean 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 this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

"Serious crime" shall mean conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least 4 (four) years or a more serious penalty;

"Structured group" shall mean 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;

By conducting a review of the findings made by various authors, including the review of legal acts adopted by international organizations, it can be concluded that the organized crime is the most threatening form of criminality which is present in specific forms all over societies, organized by three or more persons under the hierarchy of a leader, group order, loyalty, responsibility and solidarity among such members, with the will and purpose of making material profit, planning to commit illegal activities according to assigned roles for a long period of time.

With the fast development of technology and the global economy, there were also developed the methods and tools for combating and preventing criminal behavior which are manifested in the form of organized crime, as one of the most dangerous forms of crime in the modern world. Possession of certain characteristics, in deed, makes the organized crime the most dangerous form in comparison with all other criminal behaviours in society. The organized crime shows fast adaptation skills in new conditions and circumstances, by finding ways of making huge profits. ⁴ The development of technology, communication, larger options to move goods and services, have provided larger opportunities to transfer criminal activities⁵. The criminal behaviours have recognized new developments by evolving from the oldest forms of criminality to the latest ones according to the conditions and circumstances of social development.

With reference to the interpretation of the notion on organized crime provided by the United Nations Convention "against Organized Transnational Crime", the author Skënder Begeja, in his book "Kriminalistika" (Criminalistics), presents the following criminalistical characteristics of the organized crime:

1. The purpose to have everything by committing as many types of crime as possible.
2. The members of a criminal organization are required to fulfill their obligation from being loyal to giving their life.

¹ H. Abadinsky, "Organized Crime" Ninth Edition wadsworth – Belmont , USA, 2009, fq.5

² V. Hysi hyrje në Kriminologji dhe Penologji (Introduction to Criminology and Penology), Tiranë, 2000, p. 52 cit. according to V.Latifi, Kriminalistika (Criminalistics) p.180

³ UN Convention "against Organized Transnational Crime", Palermo / Italy, 2000

⁴ Ibid

⁵ V. Latifi & I. Elezi & V. Hysi, Politika vep e cit..., p.148

3. A special characteristic is the hierarchical structure consisting of the head and his subordinates. Any deviation from this purpose leads to elimination of the criminal organization's member. This discipline leads to fulfillment of certain objectives.
4. Its main objective is the corruption of government officials, officers in charge of tracking, investigation, adjudication and prevention of crime.
5. The selection of members of a criminal organization has been lately made by the persons who have good knowledge and can use modern information system, telecommunications, electronic mail, pyramidal schemes of money¹.

Legal treatment of organized crime under the Law of Republic of Kosovo

The dissolution of Socialist Federal Republic of Yugoslavia (SFRY) was accompanied with war between its constituent units and after the international military intervention, peace was restored in the region. The UN Security Council adopted the Resolution 1244 at its 4001th meeting in June 1999. Kosovo was placed under international civil administration which was accompanied with deployment of KFOR protection military structures and UNMIK civil structure. The establishment of this new reality was followed with creation of institutional and legal vacuum which was filled on 25th Jul 1999 through issuance of the Regulation No. 1999/1 by the United Nations international administration mission which determined the Authority of the Interim Administration Mission in Kosovo. This filling of legal vacuum continued through issuance of UNMIK Regulation 1999/24 on 12th Dec 1999 relating to definition of the law applicable in². Yet, there were still several legal vacuums to combat certain forms of criminality which had not been of concern to the country before. For the purpose of establishing legal infrastructure to combat, prevent and punish all criminal behaviours which emerge as special forms of criminality, UNMIK issued its Regulation No. 2001/22 "On Measures against Organized Crime". The UNMIK Regulation No. 2001/22 provides the definition to the notion of organized crime; it further sets forth the measures and penalties which may be imposed upon the participants of organized crime, as well as the basic and qualified forms.

¹ S. Begeja, *Kriminalistika (Criminalistics)*, Tiranë, 2007, p. 640

² UNMIK/REG No. 1999/24, 12 Dec 1999

Article 1 APPLICABLE LAW

- 1.1 The law applicable in Kosovo shall be:
 - (a) The regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and
 - (b) The law in force in Kosovo on 22 March 1989.

In case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence.

- 1.2. If a court of competent jurisdiction or a body or person required to implement a provision of the law determines that a subject matter or situation is not covered by the laws set out in section 1.1 of the present regulation but is covered by another law in force in Kosovo after 22 March 1989 which is not discriminatory and which complies with section 1.3 of the present regulation, the court, body or person shall, as an exception, apply that law.

- 1.3. In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected in particular in:

- (a) The Universal Declaration on Human Rights of 10 December 1948;
- (b) The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto;
- (c) The International Covenant on Civil and Political Rights of 16 December 1966 and the Protocols thereto;
- (d) The International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
- (e) The Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;
- (f) The Convention on Elimination of All Forms of Discrimination Against Women of 17 December 1979;
- (g) The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 17 December 1984; and;
- (h) The International Convention on the Rights of the Child of 20 December 1989.

- 1.4 No person undertaking public duties or holding public office in Kosovo shall discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, natural, ethnic or social origin, association with a national community, property, birth or other status. In criminal proceedings, the defendant shall have the benefit of the most favourable provision in the criminal laws which were in force in Kosovo between 22 March 1989 and the date of the present regulation.

- 1.5 Capital punishment is abolished.

Article 1 of the said regulation defines the organized crime as follows:

- (a) "Organized crime" shall mean the commission of a "serious crime" by a "structured group" in order to obtain, directly or indirectly, a financial or other material benefit;
- (b) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years; and
- (c) "Structured group" shall mean a group of three or more persons that:
 - (i) exists for a period of time and acts in concert with the aim of committing one or more serious crimes;
 - (ii) is not randomly formed for the immediate commission of an offence; and
 - (iii) does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

According to UN Resolution 1244, the Security Council of United Nations vested with powers UNMIK to organize first parliamentary elections in 2001 which were characterized with a fair electoral process in accordance with electoral standards which process was followed with the establishment of provisional institutions of self-government – Kosovo Assembly¹.

With the purpose of completing the legal grounds to combat and prevent criminality, the Kosovo Assembly adopted on 6th July 2003 "the Provisional Criminal Code of Kosovo"² (PCCK) that entered into force on 06th April 2004. According to specific etiological and phenomenological characteristics of organized crime, including its vast social dangerousness, the Provisional Criminal Code of Kosovo provides treatment to this type of criminality under chapter XXIII which sets forth the criminal offenses against property.

Article 274, paragraph 7 of the Provisional Criminal Code of Kosovo provides the definition of the organized crime:

- 1) The term "organized crime" means a serious crime committed by a structured group in order to obtain, directly or indirectly, a financial or other material benefit;
- 2) The term "organized criminal group" means a structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit;
- 3) The term "serious crime" means an offence punishable by imprisonment of at least four years.
- 4) The term "structured group" means a group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

With the adoption of the Criminal Code of Kosovo on 20th April 2012³, it was foreseen the sanctioning of criminal offences. In harmony with the recommendations provided by the European Union, the said code was subject to important amendments relating to punishment of criminal offenders, introducing higher penalties in the form of fine and imprisonment, including the policy of combating criminality that was raised in the highest degree against organized crime through definition and sanctioning of the types of its emergence. The chapter XIII of the said Criminal Code provides definitions to the terms used where article 120, paragraph 13 provides definition to the term **Organized criminal group** – which means a structured group existing for a period of time and acting in concert with the aim of committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit. On the other hand, the term **Structured union** - means a

¹ A. Bajrami, *Sistemi Kushtetues i Republikës së Kosovës* (Constitutional System of Republic of Kosovo), Prishtinë, 2011, p. 244

² Provisional Criminal Code of Kosovo, Kosovo Assembly, Prishtinë, 2003, which entered into force on 20th April 2004.

³ Criminal Code of Kosovo, Kosovo Assembly, Prishtinë, 2012, which entered into force on 01 January 2013

group of three or more persons that is not randomly formed for the immediate commission of an offence and does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

The Criminal Code of Kosovo of 2012, under chapter XXIV, sanctions the organized crime, respectively article 283 sets forth the criminal offence “**Participation in or organization of an organized criminal group**” in which it provides as follows:

1. Whoever, with the intent and with knowledge of either the aim and general activity of the organized criminal group or its intention to commit one or more criminal offenses which are punishable by imprisonment of at least four (4) years, actively takes part in the group’s criminal activities knowing that such participation will contribute to the achievement of the group’s criminal activities, shall be punished by a fine of up to two hundred fifty thousand (250, 000) EUR and imprisonment of at least seven (7) years.
2. Whoever organizes, establishes, supervises, manages or directs the activities of an organized criminal group shall be punished by a fine of up to five hundred thousand (500, 000) EUR and by imprisonment of at least ten (10) years.
3. When the activities of the organized criminal group provided for in paragraph 1 or 2 of this Article result in death, the perpetrator shall be punished by a fine of up to five hundred thousand (500, 000) EUR and by imprisonment of at least ten (10) years or lifelong imprisonment.
4. The court may reduce the punishment of a member of an organized criminal group who, before the organized criminal group has committed a criminal offense reports to the police or prosecutor the existence, formation and information of the organized criminal group in sufficient detail to allow the arrest or the prosecution of such group.
5. For the purposes of Article, “actively takes part” includes, but is not limited to, the provision of information or material means, the recruitment of new members and all forms of financing of the group’s activities.

With the purpose of prevention and combating the forms of emergence of organized criminality, the institutions of Republic of Kosovo have also issued other legal acts which contain provisions that directly or indirectly treat various forms of organized criminality such as: the law on amendment and supplementation of the Law no. 04/I-05 on declaration, origin and control of property of senior public officials and declaration, origin and control of gifts of all public officials dated 7th April 2014; law on supplementation and amendment of the Law no. 03/I-174 on financing of political parties, as amended and supplemented with the law no. 04/I-058 dated 19th August 2013; the criminal procedure code dated 21st Dec 2012; law on amendment and supplementation of the law no. 04/I-072 on control and supervision of state border dated 19th Aug 2013; law against corruption dated 12th May 2005; law on amending and supplementing the laws related to the mandate of European Union Rule of Law Mission in the Republic of Kosovo dated 7th may 2014; law on protection of witnesses dated 12th Aug 2011; law on liability on legal persons for criminal offences dated 31st Aug 2011; law on prevention and fight of the cyber crime dated 2nd July 2010; law on preventing and combating trafficking in human beings and protecting victims of trafficking dated 19th Aug 2013; law on amendment and supplementation of the law no. 03/I-196 on prevention of money laundering and prevention of terrorist financing dated 26th Feb 2013; law on implementation of international sanctions dated 4th May 2010; other, which are considered as important local instruments in respect of prevention and combating of organized crime.

Conclusion

Taking into account the findings provided by various authors in connection with the criminal characteristics of the organized crime, it can be concluded that the exercise of criminal activities by members of a criminal organization on continuous basis over a long period of time, under the planning and supervision of a leader, creates a professional criminal. The commission of criminal offences by these organizations, respectively by their professional members, is conducted as per the plan and distribution of duties, who are highly skilled and capable of, who use various advanced methods and techniques, who eliminate crime traces, who do not stay for a long time in one habitual residence, who know the techniques and tactics of police and other intelligence services, and whose activity expands at a global level by making professional use of their communications and transport income, including the general socio-economic condition.

In general, the organized crime is a complex phenomenon and highly heterogenic by adapting to the changing needs of economy and social and political institutions where it emerges and operates. Depending on the criteria taken for the basis of classification, the criminal phenomena emerge and operate in various forms of organized crime. Whereas, depending on the organization of a criminal group, they emerge and operate in various forms of criminal organizations.

Taking into account the treatment of respective provisions of aforementioned legal acts, it can be concluded that in terms of defining the notion of organized crime under the Criminal Law of Republic of Kosovo, such notion has been influenced by the international definition of the organized crime provided by the United Nations in 2000, in Palermo, on occasion of adoption of the Convention against Organized Transnational Crime which entered into force in September 2003. Additionally, it can be noted that the Republic of Kosovo has created a legal infrastructure, close to the European standards, which directly or indirectly, sanctions various forms of organized criminality in order to achieve to prevent and fight various forms of organized criminality which emerge in the Kosovo society.

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