

ORGANIZED CRIME IN WESTERN BALKANS – CASE SERBIA

Katarina Štrbac, Branislav Milosavljević and Veljko Blagojević
Ministry of Defence of Republic of Serbia

This paper discusses the common heritage of the Western Balkans in connection with organized crime, which, it can be claimed, did not significantly manifest under socialism. The disintegration of the former Yugoslavia led to war, destruction, and overall increase in crime, including organized crime. The factors that especially contributed to that, besides the war, are: the transition process, the increase in the level of corruption, inefficient functioning of the state apparatus, economic decline, and trade sanctions imposed by the United Nations which resulted in a sort of semi-legal cooperation between governmental authorities and organized criminal groups in the Western Balkans. Local wars in the former Yugoslavia enabled the expansion of illegal arms trafficking, theft and smuggling of motor vehicles, and smuggling of all kinds of excise goods, especially oil and cigarettes. The trafficking of narcotics became a very lucrative and widespread activity of criminal groups, with the geo-strategic position of the Western Balkans countries being one of the contributing factors.

The beginning of democratic changes in Serbia marked the commencement of the fight against organized crime. It was also the start of the creation of the legal regulatory system to counter organized crime, which involves interstate cooperation at both the regional and global level, as well as the adoption of international conventions and standards. Consequently, a special police unit for combating organized crime was established within the Serbian Ministry of Interior.

The Republic of Serbia, like most countries in the region, has adopted a series of legislative measures to combat organized crime, which come from experiences of other countries that have shown good results. Specific aspects of the investigative procedure and collecting evidence of organized crime cannot be achieved using conventional methods of investigation, such as home, other premises and persons' search warrants, temporary confiscation of items, questioning of the accused, witnesses' hearing, etc. In these efforts the basic dilemma is the level of proportionality between security and freedom, because the methods of an undercover investigation are special methods that are used to temporarily restrict the fundamental rights and freedoms of men, for the purposes of combating complex forms of crime.

Key Words: organized crime, criminal law, methods of undercover investigation, international cooperation

General remarks

There is no comprehensive agreement on the origin and evolution of organized criminal activity in criminal processing and criminological science, although it is evident that a “mafia” as a separate organization existed in the USA, Italy and other developed countries for decades. However, organized crime became the subject of attention of the international community only when it broke through all barriers and state borders during the 80s of the last century. Moreover, the term “organized crime” itself has since been used as a phrase denoting escalating concerns of national and supranational public institutions and citizens related to the expansion of domestic and international illegal markets, increase of the mobility of criminal actors across national borders, and their noticeable increase of ability to “toxify” lawful economic activity and undermine political institutions.¹ Additionally, organized crime brings into question the security of individual, collective, and even international security. Modern comprehension of security includes all aspects of man’s life and survival in the society (economic, social, political, educational, IT, defense and other aspects), as well as all forms of social education (regional, national, international). The security today is related to individual, society and state as a whole, as well as international community.

Despite such clear guidelines, there is still no standardized and widely accepted definition of organized crime, and therefore there are no definitions of the methods of operation and objectives, as well as forms of cooperation, strategy and ways of countering this phenomenon either. This is due to the fact that organized crime is not manifested in all the countries to the same degree and with the same intensity, but rather adapted to the existing social relations and favorable conditions for the certain forms of criminal activity.

The main problem is manifested in different understandings related to the view that all forms of organized criminal activity represent organized crime, regardless whether there is organized crime when there is no connection between a criminal organization and the representatives of state, political, economic, financial or other relevant structures. By analyzing the content of the definition of the term organized crime, the authors’ opinions can be systematized into two basic views.²

According to the first view, for the existence of organized crime it is not necessary that there is a connection between criminal organizations and the state and its organs. It is sufficient that there is a criminal organization, which performs various forms of criminal activity in order to gain illegal profit and possessions. Criminal organizations perform certain criminal activity, such as racketeering, smuggling, organizing of prostitution and gambling. There are also criminal organizations with a solid structural division of labour, responsibility and planning of the criminal activity, such as cases of a criminal activity related to property, which aspires to get incorporated into the legal economy, using violence, but lately also resorting to the more refined methods of influence.

¹ Paoli, L., Fijnaut, C.: *Organized Crime in Europe: Manifestations and Policies in the European Union*, Beyond, Freiburg, 2003, p.1.

² Bošković M., *Organizovani kriminalitet – prvi deo: kriminološki i kriminalistički aspekti*, Policijska akademija, Beograd, 1998, p. 4.

The second view is that besides the existence of a highly structured criminal organization, organized crime includes a specific connection of a criminal organization with the state and its various organs, as well as legitimate business, economic and financial subjects and influential political parties, thus providing the appropriate level of social prestige and significant impact. "Social prestige" and influence obtained in this way are manifested through, among other things, the obstruction of detecting irregularities in certain business relations, so it is not rare that it is difficult to distinguish some of the legal organizations from certain forms of organized crime.

Either way, this type of criminal activity involves a certain degree of organization, which is reflected in the planning of the conducting of criminal offenses, division of tasks, and management of the entire criminal activity by a particular boss. In which degree will each of these aspects be accomplished, depends primarily on the strength and the hierarchical structure of every criminal organization.

What differentiates criminal organizations from the individual, as well as all the other forms of collective conducting of criminal activity, is also a high level of professionalism and audacity of the perpetrators, dynamism and constant striving for expansion, and those are also important characteristics of organized crime.

Finally, this type of crime exhibits some particularities, above all, willingness to clash with representatives of the authorities, governmental bodies, political and other important organs which are ready to deal with their criminal activities, as well as readiness to eliminate those persons who may appear as prosecution witnesses (key witnesses) or who will not testify in their favor (defense witnesses).

While internal organization is a key particularity of this type of crime, the fact is that not all types of organizations are the same in terms of structure of relationships, the level and firmness of organization and hierarchy. According to the degree of inner firmness and the mode of action of organized crime, Interpol defines three types of criminal organizations:

- Traditional type,
- Professional type and
- Flexible type.

However, this division of organizations of organized crime is not strict, since they often overlap and have the characteristics of one or several. Certain particularities of organized crime are also related to its very basic conditions that allow it to endure and carry on with organized criminal activity for a longer period of time. Those characteristics are related to the use of violence and corruption for establishing criminal connections, but also other methods (blackmail, pressures, coercion, etc.), through which a criminal organization also manages to get certain concessions and achieve appropriate social status.

Finally, although organized crime appears in many forms, it is still worth mentioning the most prominent forms of this crime, such as: illegal production and trafficking of narcotics,³ trafficking of human beings (including trafficking of women, children and infants), trafficking of human organs, smuggling of (stolen) cars, smuggling and illicit

³ It is undisputed that the production and trafficking of narcotics represents the most prominent form of modern organized crime, although trafficking should also be added to this, and to a certain extent arms smuggling, money laundering, etc. Namely, illegal trafficking of narcotics is one of the most active forms of organized crime, because it brings enormous profits. It is estimated that, globally, the value of the revenue generated by drug trafficking (illegal) is just behind the profits made in oil trade (legal).

trade of cultural goods, smuggling of endangered species of flora and fauna, smuggling and illegal trade of excise and other valuable goods, illegal import of radioactive waste and other waste materials, organized prostitution, organized gambling, organized crime in the economic-financial area (money forgery and putting in circulation of counterfeit money, money laundering), racketeering and other forms of organized violent crime, cyber-crime and other offenses that are related to organized crime.

It should be particularly emphasized that in all of the countries in transition, organized crime, and especially organized economic crime, is on the constant rise, that it expands its field of activity to the different types of crime and across borders, that it exploits lawful economic activities in order to legitimize its criminal activities and that it applies advanced technology, especially for encoding and concealing communication.

Additionally, the change of property rights through privatization is another key contribution to economic crime, while asset misappropriation, that leads to the collapse of once successful state-owned enterprises which are then sold for small amounts of money, seems to be causing the greatest loss of public trust in the institutions of government. Together with losses of public revenue by avoiding taxes and duties, as well as frauds in the procurement field, machinations in privatization represent a major source of problems for countries in transition.

A large number of authors in the science of criminology, criminal justice and criminal procedural law dealt with conceptual definition of organized crime, and in the last few decades there is an intensive discussion about its content.

Thus, for example, organized crime is defined in the literature as a non-ideological activity, which includes a large number of people in a close social interaction, organized on a hierarchical basis, with a goal of acquiring profit and power, keeping illegal and legitimate activities, which, with relatively small risk, provide high income. Positions in a hierarchical structure are occupied either on the basis of funds or on the basis of rational criteria, in accordance with the capabilities that an individual possesses. Those positions are permanent and are not dependent on the person who occupies them at a certain point, and members of the association are constant. Through various means they strive to eliminate competition because the goal is monopoly over certain activities or territories. There is an inclination to use violence and bribery, in order to achieve a goal or establish discipline. Membership is limited, although those who are not members may be recruited in certain cases.⁴

It is also stated that organized crime encompasses prepared and, through division of work, planned, professionally executed serious crimes, which can be committed by at least three interrelated offenders united in a criminal association, that has a purpose to acquire and increase financial gain and social power, through lasting, secret and joint efforts of the members, without respecting international borders, with the use of violence, intimidation or corruption to ensure its illegal survival, i.e. criminal activity development.⁵

Besides, organized crime tends to behave in a market-oriented manner and to accept market conditions just like legal business entities, with the distinction that, in international context, this type of criminal activity achieves its influence due to the large financial resources it possesses, so that it develops and creates nearly parallel global market in

⁴ Abadinsky H., *Organised Crime*, Nelson Hall, Chicago, 1988, p. 152.

⁵ Sačić Ž., *Organizovani kriminalitet u Hrvatskoj*, Ministarstvo unutarnjih poslova Republike Hrvatske, Zagreb, 1997, p. 10.

which various goods and services are exchanged, so that in certain situations it can be talked about in terms of a criminal holding, a cartel or a company.⁶

In criminological theory the view that is present is that organized crime is a well organized criminal organization, with a strict hierarchy, discipline, responsibility, loyalty and division of tasks aimed at achieving maximal profit and legalization of illegally acquired property, due to the achieved degree of social prestige, either on grounds of penetration into the government structures or established connections with the authorities and state organs, legal business entities and influential political parties.⁷

Criminologists also deem that organized crime is an activity of the economic kind, carried out by criminal organizations, professional and organized groups, with strictly defined hierarchy, discipline and norms of conduct. Related to this type of crime are organized and semi-organized groups, which carry out criminal acts in conjunction with the representatives of local or higher levels of state government, i.e. its organs and institutions. Participants in organized crime are directly related (through a business relationship) with representatives of government financial institutions, commercial companies and political parties.⁸

Some theoreticians think that, from the aspect of criminology, the notion of organized crime involves types of delinquency and the typology of crime phenomena related to the activity of professional criminal organizations. That is the "commercial type" activity carried out by criminal associations with strictly established hierarchy, discipline and norms of conduct. This phenomenon is manifested in the form of activities of organized or semi-organized groups or other forms of associations, collective committing of the criminal act, in conjunction with the local or higher levels of state government, i.e. its organs and institutions. In addition, participants of organized crime may be indirectly related through a "business relationship" with representatives of financial institutions, commercial companies and political parties.⁹

Based on the stated and many other definitions of organized crime from the available scientific and expert literature, it can be concluded that among the authors who observe this phenomenon from the aspect of theory and practice of criminology, criminal justice and criminal procedural law, opinion prevails about several constituent elements of the concept of organized crime, among which the most important ones are:

- that it is a lasting organization;
- that it is an organization that rationally works for profit;
- that it is an organization that is characterized by the use of force or threats, and
- that it is an organization that needs corruption to acquire and preserve immunity from the application of law.¹⁰

Finally, views of eminent criminologists and criminalists show that, despite all the difficulties regarding the definition of organized crime, its manifestation requires certain

⁶ Pavišić B., *Pojave savremenih zločina – savremeni međunarodni kriminalitet*, Ministarstvo unutarnjih poslova Republike Hrvatske, Zagreb, 1991, p. 28.

^{7 7} Bošković M., *Organizovani kriminalitet – prvi deo: kriminološki i kriminalistički aspekti*, Policijska akademija, Beograd, 1998, p. 9.

⁸ Kresoja M., *Kriminalistika za osnovno policijsko obrazovanje*, Yugo-Pirs, Novi Sad, 2006., p. 511.

⁹ Bošković, M.: *Socijalna patologija*, Pravni fakultet u Novom Sadu, 2002, p. 129.

¹⁰ Albanese J. S., „The causes of organized crime“, *Journal of Contemporary Criminal Justice*, No. 4, Thousand Oaks, 2000, p. 412.

degree of correlation with the figures from the structures of state organs, that is to say, the creation of a certain influence in the political and economic structures. On the other hand, the stance of those theoreticians who believe that organized crime should be defined, or limited exclusively to illegal activities, which include the management and coordination of blackmail and prostitution, is completely unacceptable.¹¹

Characteristics of Organized Crime in the Western Balkans and in Serbia

Important element which qualifies unlawful activity of organized criminal groups as organized crime is the motive and the way in which that activity is being conducted, as well as the objective of criminal engagement. Organized crime manifests in the areas which, by their nature, ensure generation of extremely large incomes, due to which criminal organizations dedicate great attention to creating conditions for their manifestation, as well as the manner of implementation of criminal activities

In the former Yugoslavia, which lasted until the beginning of 1990s, organized crime essentially did not exist. Despite some liberalization, socialist Yugoslavia remained until the end a one-party, semi-police state. Closed socialist economy, controlled market, hard and well-controlled borders, minor trade and other relations with foreign countries did not allow for the emergence and development of organized crime. Private enterprise was nonexistent, owning real estate was restricted, and money flows were under strict control of state authorities. During this period there were certain rudimentary forms of organized crime, for example, drug trafficking, but both according to the scope and the degree of organization capacity, far behind the ones existing today. Other forms of organized crime (money laundering, human trafficking, illegal trafficking of weapons, smuggling of energy resources and human organs) either did not exist, or did so at negligible levels.

Foreign trade operations were under direct control of the intelligence services, which were controlled directly by the party leadership.¹² There was a so-called “economic crime” which was, despite some similarities, differed from organized crime according to its characteristics, in particular in that it could not have been internationalized, nor it aimed at the obtaining of social power and state power. Based on this, it can be concluded that organized crime does not succeed in totalitarian or semi-totalitarian states.¹³

¹¹ On this view, which definitely does not correspond with the majority views of organized crime in theory, for more details see Block A.; Chambliss W. J.: *Organized Crime*, Elsevier, New York; Oxford, 1981.

¹² Grubač M.: Organizovani kriminal u Srbiji, Zbornik radova Pravnog fakulteta u Splitu, god. 46, 4/2009., p. 701-709.

¹³ The Italian experience can serve as a proof of this. Mafia, as an old social construct in Italy, initially was supported by both secular and ecclesiastical authorities as a power that maintains social order and discipline. The first time it was under the effective control of the state was at the time of fascism, in the '30s and '40s. Those are phenomena that exclude each other and they cannot exist simultaneously, as they are both totalitarian. Upon coming to power, Benito Mussolini immediately and without hesitation closed all Mafiosi, and they were only released by USA, when they landed in Sicily in the summer of 1943, on the grounds that they are anti-fascists.

Organized crime, in all its forms and with its enormous scope started occurring in Serbia only in the early nineties of the last century. The disintegration of the socialist Yugoslavia, the beginning of the civil wars, imposing of economic sanctions by the international community to Serbia and Montenegro (from 1991), efforts of the new (Milosevic's) authoritarian regime to evade sanctions and to preserve power, led to the flourishing of organized crime. In a sort of self-defense, the authorities from that time (Milosevic's), spawned crime and increased corruption, as a "lifeline" and as means to preserve their political positions. The state connived organized crime as a source of necessary funds for the functioning of the state apparatus and the exercise of state functions, for ensuring the basic existence of the population and for purchasing high priced arms and ammunition for local wars. Crime was accepted as a part of the "tactics of economic and national survival". This period could be called the golden age of organized crime in Serbia.

Overall social and legal uncertainty, mass unlawfulness along with crime strengthening, as well as more often criminal dealings are summed expression of transition crisis in the society and crisis of the legal system. The most general reason of this destructive process lies in the fact that the Western Balkan countries were in "transition" from a socialist to a capitalist, market and democratic system. Every transition to a new social system constitutes a problem both in political and legal and economic sense. The transition involves profound changes in the legal, political and economic system, as well as manifestation of crisis and change of morals, ideology and psychology of people. Very large number of people couldn't accept great proprietary differences incurred by the new market system. Further layering of classes was additionally enhanced by lack of capital which led to falling of prices in privatization of companies, as well as bankruptcy of unprofitable giants along with mass layoff. On the other hand, a very small number of people, which acquired starting capital primarily through smuggling of oil, cigarettes and other goods, succeeded in becoming enormously rich by buying companies in privatization during the armed conflicts in former Yugoslavia

For a short period of time, Serbia got at the beginning of the '90s numerous criminal associations and all types of organized crime. Local wars in the former Yugoslavia enabled the expansion of the illegal arms trade, which brought enormous profits, particularly after the introduction of the embargo of the international community against these activities. Thefts and smuggling of motor vehicles, followed by insurance frauds and falsifying of the documents, had become every day and mass phenomenon. Oil and cigarette smuggling had become a specialty. Drug trafficking became a very lucrative and widespread activity of criminal groups, and the monopoly was held by the most powerful gangs in Belgrade and Novi Sad. Heroin and cocaine were purchased in large quantities abroad, despite international sanctions, and cannabis was grown in the country. Subsequently, entire factories of synthetic drugs were discovered. Trafficking of women and children and child pornography spread massively and quickly. Also, there are serious indications that human organs trafficking became rooted as a new form of organized crime. Cyber-crime, illegal copying and bank frauds appeared. Some of the main trade routes for radioactive substances lead through Serbia. Money laundering as a side effect and the condition for the existence of organized crime still is in many cases not registered and oppressed, although the phenomenon is present in a significant scope. A criminal offense under this name was introduced into the Criminal Code of Serbia only in 2005 (Article 231). Mass privatization of state enterprises that occurred in

the transition process of the political and economical system, was done with “dirty money” for the most part. Finally, for a long time now, Serbia is among the countries with the most corrupt government and public services.

Developing of understanding about increased social danger of organized crime in the Republic of Serbia

The previous thesis, that organized crime in Serbia developed only in the early nineties, and with a high degree of tolerance of state government, indicates that for a long time there was neither general awareness in Serbia of the increased social danger of organized crime, nor organized state activities aimed at its suppression. Neither the state nor the general and professional public were interested in this phenomenon because it seemed like it does not even exist as a socially dangerous phenomenon. Criminal activity was treated as normal, even useful activity and the public got accustomed to it over time. Very little was known about organized crime at the time in Serbia, even in theory, and even academic circles did not focus on the problem. The first serious, in-depth and systematic study of organized crime (*Countering Organized Crime and Corruption within the Strengthen of the rule of law in Serbia and Montenegro*) was started in Serbia in 2007 at the Belgrade Institute of Comparative Law thanks to the initiative of the research institute of the UN (*United Nations Interregional Crime and Justice Research Institute – UNICRI*) and of several professors from the Faculty of Law in Florence. Social awareness of the increased vulnerability of the general interest is generally formed difficultly and slowly. It is normal for that process to be delayed for some time, because the phenomenon must first be manifested, in order to find and take the appropriate measures for its suppression.

Particular and increased social danger from organized crime is the result of several of its characteristics which differ it significantly from traditional crime. Those are: *high degree of internal organization of the members*, with military discipline and internal hierarchical relations; *great thirst for money*, which ruthlessly affects material existence of the victim and stability of the state budget; *striving for power*, which threatens the survival of the state institutions, and trans-nationality or planetary expansion, which does not recognize state borders and national sovereignty, which was one of the main reasons modern states began to give up the dogma of national sovereignty, recognize the necessity of mutual cooperation and to begin to create common protective institutions. Classic crime is an individual, as a rule, unplanned, impulsive and sudden phenomenon. It causes conflict between an individual, offender and the state, which has a long established right to punish (*ius puniendi*) the said individual. The winner in this conflict is certain. In the case of organized crime, which is performed as a corporate and highly profitable business activity, the conflict is between two organizations, the criminal one and the state one, with the criminal organization sometimes being of the same power, and at times even stronger than the state. And it is precisely in times of civil crisis, that organized crime becomes particularly aggressive and tends to take over and replace the state government, or at least to be its equal partner. Organized crime threatens the foundations of the modern state and negates the fundamental principles of its democratic and legal regulation. It destabilizes governments, undermines parliamentary democracy,

destroys public trust in government and legal institutions, and denies legality and social morality. Organized crime brings into question safety, not only individual, but also collective, national and international.

Organized crime is extremely difficult to define, and it is also difficult to recognize and in concrete cases, to prove, mainly because its illegal activity overlaps with another, completely legal activities. It is precisely for those reasons that this type of crime is connected with those legal activities, so that it would cover its criminal trail and preserve the profit earned through criminal activity. Almost entire material gain acquired by organized crime is invested in commercial enterprises, educational institutions and humanitarian actions.

Changing of legislation of the Republic of Serbia in the fight against organized crime

Since the second half of 2002, when work on legal normative regulations for fight against organized crime started, significant results have been achieved: a) new substantive criminal legislation has been passed, and it grants certain incrimination of organized crime b) a special chapter (XXIX/a) has been included in the Code of Criminal Procedure from 2001 (later, in 2002) and it is dedicated to processing instruments for the fight against organized crime; c) a special law has been passed on the organization of state authorities (public prosecutors, the police and courts) in charge of the fight against organized crime and their responsibilities. Before that, a special police administration for the fight against organized crime (UBPOK) was established within the Ministry of Interior. In a short period of time, a number of international conventions was ratified, starting with the UN Convention against International Organized Crime, to the European Convention on the Prevention of Money Laundering, as well as all relevant conventions on international legal assistance, extradition, transfer of criminal cases and more. Also, the necessary anti-corruption laws were passed including those on conflicts of interest, the availability of information of public interest and public procurement, while the government established "its own" Anti-Corruption Council, which proved in many cases to be independent from the government as well.

One of important indicators of organized crime in specific area is the ratio of total number of criminal acts regarded as organized crime, and the number of those criminal acts committed by three or more persons. However, the fact that certain criminal acts distinctive to organized crimes, which are conducted by three or more persons, is not definitive indicator of criminal phenomenon in the specific case, but among these incriminations are those that meet the statutory criteria necessary for the existence of organized crime.

According to the official data of the Serbian Ministry of Interior, in the period from 2008 to 2013, a total of 811,996 criminal offenses have been carried out. The highest number of crimes was committed in 2013 (112,583 in total), and the lowest during 2006 (91,629), which is around 18.62% criminal offenses less. It should be noted that these are police statistics which consist of data on crimes reported to the police or detected by these organs.

By comparing calendar years, a slight drop in the crime rate can be noticed in the period of 2010 – 2012, and in 2013 the number of criminal acts was the highest in the

presented period. In this period, the average number of offenses was 101,499. Along with the number of criminal offenses, the types of organized crime acts are also presented including: unauthorized production, possession and distribution of narcotics, facilitating the use of narcotics, extortion, blackmail, kidnapping and trafficking.

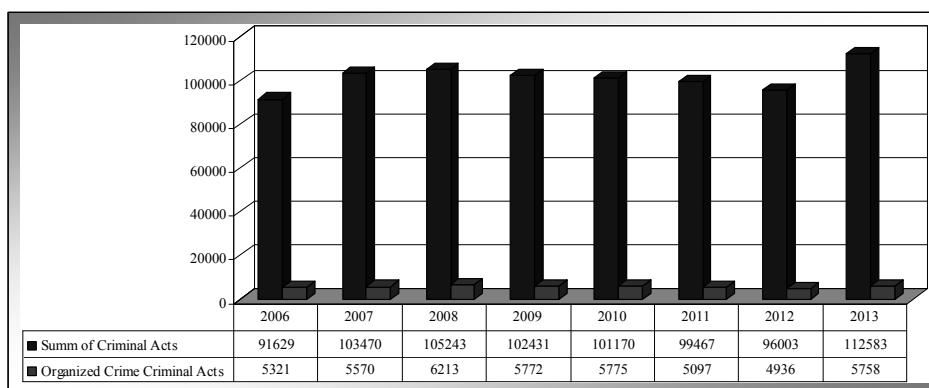


Chart 1 – Comparative review of criminal acts and acts of organized crime in the Republic of Serbia for the period 2008-2012¹⁴

It can be observed in the chart that acts of organized crime somewhat follow the crime rate. The largest number of organized crime offenses was recorded in 2008 (6,213), whereas in 2012, it was 21% lower, when the lowest number of organized crime acts was recorded. Organized crime acts account for 5-6% of the total number of all crimes on the territory of the Republic of Serbia.

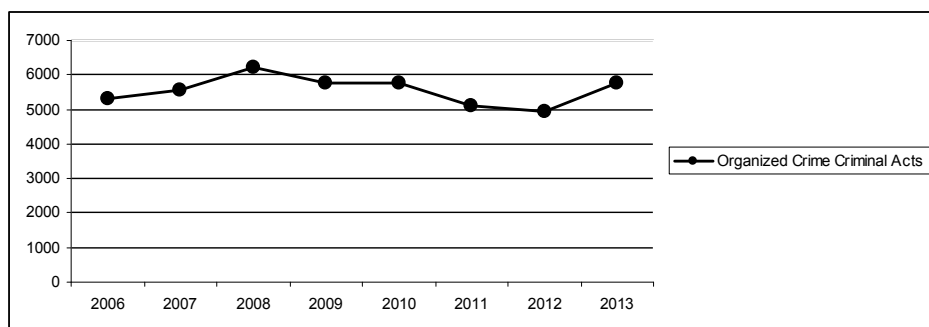


Chart 2 – Summary of organized crime acts in the Republic of Serbia for the period 2008-2012

¹⁴ The data is presented on the basis of the *Overview of the number of criminal offenses recorded in the period from 2006 to 2013* of the Ministry of Interior of the Republic of Serbia.

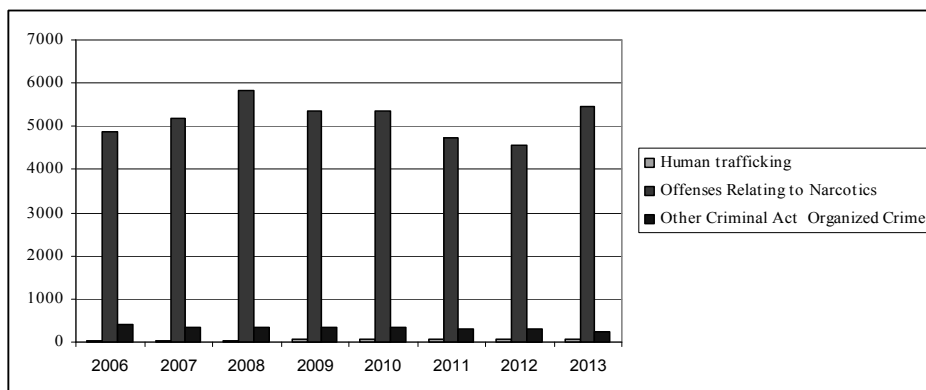


Chart 3 – Organized crime acts of the Republic of Serbia in the period 2006-2013

If we single out and look at the structure of solely organized crime acts, we can clearly notice that the leading acts are unauthorized production, possession and distribution of narcotics and facilitating the use of narcotics. On the other hand, the lowest number of offenses is related to extortion, blackmail and kidnapping. In the presented period 5,555 organized criminal acts are carried out on an average, with an average of 5,166 offenses related to drug crime. This only indicates that in the domain of organized crime in the Republic of Serbia, prevalent crimes are related to narcotics. In addition, it can be noticed also here that organized crime acts follow the trend of crime in general.

Faced with the threat and the need for a strategic approach to solving this problem, the Serbian Government adopted the National Strategy for the Fight against Organized Crime, and hence created the necessary political and legal conditions for the successful implementation of the strategy with a focus on three basic principles: the implementation and development of preventive action, repressive action and confiscation of assets derived from criminal acts of organized crime. In addition, the policy in the field of creating an effective system for combating organized crime has been established, which defines the strategic objectives, roles and responsibilities of governmental entities and determines the framework for the development of implementation plans.

It is estimated that several organized criminal groups are active in the Republic of Serbia, which are regionally associated with the same groups in neighboring countries and beyond, and most often with the groups from Montenegro, Bosnia and Herzegovina, Romania, Republic of Croatia, Republic of Macedonia, Republic of Bulgaria and Republic of Albania. A large number of criminal groups are active on the territory of the Autonomous Province of Kosovo and Metohija, with strongly developed hierarchical structures established on the family relations and primarily engaged in the smuggling of narcotics and psychedelic substances, trafficking in persons and organs, human trafficking, international smuggling of motor vehicles, smuggling of weapons and explosives, excise goods and other offenses involving violence.

Every analysis of organized crime in a country or a society should consider the characteristics of social context and changes within, and by paying special attention to

illegal markets. Furthermore, the analysis should also include the knowledge of criminal groups and their networks, especially their structure and the type of relationship between legal and illegal structures in the society. The reason lies in the fact that researches show that both legal and illegal markets function upon similar principles, which means that lawful and unlawful activities fall under similar rules of supply and demand. Organized crime does not manifest in an isolated manner, but rather in social environment that is constantly submitted to change. That is the reason why the organized crime signifies a dynamic process of unlawful activities that adjust to new situations susceptible to crime, sources and skills available to potential criminals.

The introduction of undercover (secret) criminal investigation

Along with acknowledging the need that fight against the most serious security challenges, and the forms of criminal activity at the same time, should include specific methods which are not common in “conventional” crime, a set of measures is established. Through criminal and procedural standardization of such, special evidentiary actions the latent danger of disrupting the balance between the demand for effective criminal proceedings and the need to protect fundamental human rights is overcome. Utilization of modern scientific and technological accomplishments in preventing and combating organized crime signifies an imperative in modern conditions. During this process, through implementation of certain operative measures and actions, along with necessary use of technical resources and methods, invasion of certain human rights and freedoms is possible. That is why this is considered in the public as lack of democracy in the society and state which misuses its authority when establishing control over private lives of its citizens. However, one fact is being overlooked: every crime is violation of certain human rights and freedoms, and modern crime, especially organized one, undermines the sole basis of the society along with all fundamental human rights and freedoms. Having that in mind, there is no dilemma whether state authorities, especially prosecuting authorities and primarily police authorities, should use modern technological achievements in fighting against crime.

A criminal investigation is a reconstructive process that uses deductive reasoning, a logical process in which the conclusion is derived from certain facts. Based on certain aspects of the facts that can be used as evidence, crime scene investigators infer that the suspect has committed an offense or that there is a reasonable suspicion of the suspect having committed a criminal offense.¹⁵

Accordingly, the modern science of criminal procedural law defines a secret criminal investigation as a special investigative, a possible exploratory activity of the police or criminal justice authority, which occurs *ultima ratio* in the case of serious crimes investigations, when it is not possible to obtain evidence in any other way or that would constitute a disproportionate difficulty.¹⁶ It is especially pointed out how, in comparison to the measures and the actions of traditional preliminary proceeding, as one of the stages

¹⁵ Korajlić N., *Kriminalistička metodika* (drugo izdanje), Centar za kulturu i obrazovanje, Tešanj, 2011, p. 31.

¹⁶ Halilović H., *Prikriveni istražitelji: pravno-kriminalistički pristup*, Fakultet kriminalističkih nauka, Sarajevo, 2005, p. 16,17.

of mixed criminal proceedings, this type of investigation exhibits certain particularities. Namely, some common rules of the investigative procedure proved to be, in modern settings of combating crime, especially organized crime, largely ineffective. This resulted in a significant deflection from the earlier norms and standards of criminal investigation procedures and operational-criminal treatment and caused adopting of a completely new model of investigation of organized criminal activities, as well as serious crime in general.

The basic features of this new form of investigation are such that investigations are exercised only in strictly defined situations. Significantly better results in preventing and detecting crime and its perpetrators are visible when compared to the traditional investigative approaches, but at the same time it also significantly jeopardizes or limits the rights and freedoms of citizens guaranteed by international, constitutional and other documents.¹⁷

Measures of undercover (secret) investigations are specific measures for the purposes of combating complex forms of crime, and they temporarily restrict the fundamental rights and freedoms of people.¹⁸ Namely, it is believed that the central problem of politics in democratic societies is the dilemma on how to maintain the level of proportionality between security and liberty, especially because in modern societies, it is very difficult to take the necessary measures to ensure security and stability and at the same time to protect the inalienable rights and fundamental freedoms of the individual.

According to some authors, a secret investigation involves those police activities that are carried out in secret or in a way that does not reveal their real purpose, or under other concealed circumstances from which the persons against whom the undertaking is conducted or persons to which the undertaking is referred to, are not aware of the official capacity of a person or the purpose of the measures taken.¹⁹

Therefore, as it may be noticed, this is a specific form of investigation and proving criminal acts, conducted when that is not possible to achieve using conventional methods of investigation, such as executing search warrants, temporary confiscation of items, examining of the defendant, questioning witnesses, etc. These kind of investigations, contrary to the previously performed traditional methods, show a much higher degree of efficiency but, on the other hand, represent a much greater threat to the basic human rights and freedoms, the respect of which in the modern world, is one of the basic principles of rule of law and democracy.

The measures of secret, undercover investigations are intended, by their nature, for the fight against the most serious forms of crime, such as systemic corruption, organized crime and terrorism. Lately, an expansion of their field can be noticed, and they are starting to be applied to the increasing number of criminal offenses prescribed by criminal codes. Perhaps it should be mentioned that literature in this field states that, in the '70s in the US and in the '90s in Europe, the target area of their application was organized crime. Afterwards, due to their efficiency, they began to apply to other areas of combating crime. It is certain, however, that the moment when these measures originated happened much earlier.²⁰

¹⁷ Ibid.

¹⁸ Sijerčić-Čolić H., *Krivično procesno pravo (knjiga prva)*, Pravni fakultet, Sarajevo, 2005, p.345.

¹⁹ Pavišić B.; Modly, D., *Kriminalistika*, Pravni fakultet u Rijeci, Rijeka, 1999, p. 143.

²⁰ Fijnaut C.; Marx G.T. (eds.), *Undercover - police surveillance in comparative perspective*, Kluwer Law International, The Hague, 1995, pp. 2-9 etc.

Undercover investigations, in principle, represent procedurally valid, evidentiary actions carried out by members of the law enforcement authorities, i.e. government organs for discovery (police, etc.) and prosecution (public prosecutor) that they proactively apply to members of organized criminal groups and to offenders of other forms of serious crime.

Contemporary criminal justice systems are characterized by the application of a wide range of measures and actions of undercover criminal investigation, which is directly related to the specialization of certain investigative techniques for certain criminal offenses. The tendency of their further dissemination and replication of certain undercover criminal investigation measures is notable as well from the previously mentioned reason.

Contemporary systems of criminal justice, with higher or lower degrees of variations or differences in the names, acknowledge the following measures of undercover (secret) criminal investigation:

(1) Surveillance and technical recording of telephone conversations, i.e. devices for technical distant communication;

(2) Entering premises for conducting surveillance and technical recording of premises;

(3) Secret surveillance and technical recording of persons and objects;

(4) The use of undercover agents and informants;

(5) Simulating purchase and sale of the objects of the offense;

(6) simulated bribery and simulated acceptance of the bribe;

(7) Providing simulated business services or concluding simulated legal deals; and

(8) Collation of computer data.

Efficiency of an investigation depends primarily on well-planned investigation as a complex and multidisciplinary process that is particularly evident when it comes to the use of special investigative actions. This involves defining a series of specifics distinctive for detection and proving serious crimes. At the very beginning, it is necessary to draft a plan of operation, which, among other, should include:

– identification of known facts and circumstances related to possible criminal act,

– which facts and circumstances should be determined during the investigation,

– identification of evidentiary resource which will be used to determine certain facts and circumstances related for criminal prosecution,

– to determine which actions should be undertaken and whether court consent should be obtained for the evidence acquired during the investigation,

– to determine subjects which will be carriers for planned evidentiary actions,

– to determine the sequence for executing particular actions and proving,

– to determine timeline for implementation of every action,

– to determine time period and the manner of communication between subjects involved in the investigation.

Above mentioned content is general by its nature and can be subjected to change (it can be expanded or reduced). Despite this possibility, it should be strived to implement stated activities in a single cycle for the purposes of detecting and identifying criminal act and its perpetrator. The most significant part of the operation plan lies in the fact that for the hardest crimes (as organized crime), this plan envisages the proposal of specific investigative actions for every suspect, along with adequate explanation for conducting the specific investigative action. Also, it is necessary to predict beginning and ending

point of each individual action, as well as an indicative date for completion of all actions. If plan envisages an undercover investigator, it is necessary to include which false identity and story shall be used (name, nickname, phone number, email, vehicle, and employment), taking into account that persons with criminal background cannot easily verify the "cover story". It is important to have arranged meet up locations and available phone signal, because all actions conducted by the private investigator should be secretly monitored for his personal safety. The plan should also anticipate the way in which investigative actions will be completed, along with arrests and raids. Finally, the plan should include the changes because the conditions are never ideal. All this should be done with an aim to ensure internal and external security of the investigator.

When it comes to detecting and proving the existence of organized crime, main difficulties emerge from its dominant and phenomenological characteristics. Absence of victim in a classical sense is one of the characteristics of a large number of criminal acts which fall under the scope of organized crime. Those are so-called victimless criminal acts, which are mostly related to illegal markets for narcotics, cars, weapons, but also prostitution, gambling, child pornography and human trafficking. They are characterized by concealed manifestation, that is lack of direct witnesses of committed crime – victim or injured party, lack of information on the location of committed crime and material evidence thereby, which along with silence code specific in the circle of organized crime causes that its vulnerability to traditional investigative methods is significantly reduced. Therefore, evidentiary techniques that stand out as efficient in the cases of organized crime are those that ensure concealed action and monitoring of organized criminal groups by the police above all other authorities. It is more than obvious that both the state and the society must define and exploit those types of criminal and procedural solutions, methods and resources for detecting and processing of criminal acts for the purposes of reaching the efficiency and effectiveness in the area of organized crime. Essential purpose of mentioned solutions is mostly to assign specific competences to the police that are wider than its usual competences. In doing so, it must be kept in mind that those competences may be misused and brought into a large conflict with the provisions protecting human rights and fundamental freedoms of citizens.

Concluding Remarks

The phenomenon of organized crime today is considered to be one of the most complex threats to overall security and stability. Numerous conditions and convenient circumstances for development of organized crime on national and international level make it difficult for domestic and international institutions to implement efficient approach to this problem, as well as their timely reaction. Starting with forms of organization, internal organization, set objectives, methods of operation and the quality of established connections, various forms of manifestation of organized crime at national and international level are possible, and which are incriminated in national and international legislation. The level of vitality of organized crime and the intensity of its manifestation depends on skillfulness of its members, and their success in utilizing favorable conditions present in social, political and economic relations of the country, but also on determination and efficiency of the state and its authorities to resist it in an efficient manner.

The entire Western Balkans region is heavily rooted in historical heritage, delays in the process of transition, wars and a poor economic situation. All of this helps to create a favorable climate for the strengthening of organized crime. In this context, Republic of Serbia has a particularly negative legacy, which, in addition to common traits, is characterized by many years of economic sanctions which it was exposed to. This fact further influenced creating a link between organized crime and individuals in state institutions.

According to the unwritten security concept, highest values significant to our survival were sovereignty, territorial integrity and interests of foreign policy. The biggest threats to the country were armed attacks that could be initiated by other countries, or alliance of countries, intelligence and economic subversions, or diplomatic failures in the international scene. Therefore, the state guarantees its security by developing armed forces, intelligence and security system and diplomatic authorities.

Factors that favour development of organized crime in Serbia are numerous, and by the type and intensity, they are similar to the factors of the same phenomena that affected countries in transition. Of particular influence were the following factors: poverty and high unemployment, ownership structure and ownership transformation, corruption, geographical transit position of the country, absence of enforcement or selective enforcement of regulations, lack of professionalism and abuse of modern technology.

The process of perceiving the real threat of organized crime in Serbia was relatively long and was impacted by the political situation in the country and instability in the region. The adoption of the Strategy for Combating Organized Crime at the beginning of 2009, created the basis for an organized and systematic approach of all state and social actors in the fight against organized crime.

From 2009 until today, there has been a change of executive power in Serbia, but the new government continued to act in accordance with the Strategy for Combating Organized Crime. At the same time, the political support to the state authorities in fighting organized crime has been given and many of the wealthiest businessmen, bankers and political officials have been accused of crimes that fall under organized crime.

What remains is to analyze the experiences and achievements of the implementation of the new Code of Criminal Procedure and the measures that the investigating authorities started applying in combating organized crime in Serbia, but it is certain that the entire Western Balkans region realized the necessity of the joint fight and cooperation in combating this negative social phenomenon.

It is anticipated that in varying intensity, further progress and development of organized crime in Serbia, will be affected by all of the above stated factors, but also the global economic crisis, the increased trend of narcotics and psychedelic substances, investing the money gained through committing crimes in legal channels, the expansion of high-tech crime, environmental crime, etc. If the aim is to analyze the reasons for the relative success in combating organized crime in the Western Balkans, the following factors must be taken into account: the nature of organized crime, which is in its essence adaptive to social changes, insufficient level of intergovernmental cooperation in combating organized crime, which leads to spillover of the activities of organized criminal groups from one country to another, the presence of most of the elements that led to the

strengthening of organized crime in the region such as economic and political instability, unemployment, corruption, etc.

By assessing the degree of success of the Western Balkan countries to overcome the conditions that generate organized crime, the degree of success in the fight against it can be assessed as well. Of course, it is about the substantial fight against organized crime, and until then, it must be based on repressive and preventive action of the state authorities and the constant adjustment of the legislation in terms of the more efficient detection of organized crime and its sanctioning. In this regard, it is particularly important to emphasize the need for institutionalizing international legal assistance as a necessary condition for an effective fight against organized crime, which, unlike states, has clear motives for cooperation and there is no political or other considerations and constraints.

Therefore, national strategies are not enough to fight against organized crime, due to the fact that transnational organized crime is a test for every legal system and its carriers, as well as international law and all states and their readiness for honest cooperation. The success is directly proportional to acquired level of cooperation both among competent state subjects in a country, and the level of cooperation among states themselves.

Global nature of organized crime demands defining of joint generally accepted strategy whose starting point would be active participation of all states and international institutions. Therewith, basic presumption for any cooperation is precise definition of subject of cooperation, in order to clearly define in what areas we are willing to cooperate. It is necessary to determine the sole concept of organized crime which would be generally accepted to begin with. The fact that organized crime is not manifested in every country in the same manner probably contributed to the existing lack of a single and widely accepted definition of organized crime, nor in political, nor in criminology, nor in criminal law literature. Instead of that, there are various definitions, some of which are similar to one another, some of which are very different, which further implies to non-compliant opinions on the content of the term "organized crime".

Finally, encouraging fact is that Western Balkan countries legally regulated the fight against organized crime during the last decade. This fight includes forces, procedural rules, resources, deadlines and methods, which is a clear indicator of countries' awareness of the threatening danger from a specific, complex and changeable negative phenomenon. Above all other things, this is a sign that the state acknowledged the very existence of organized crime which should be fought in systematic and determined fashion. Moreover, Western Balkan countries ratified the most important international conventions related to fight against organized crime in the previous period.

This way they became the part of already organized European and global system for fighting against organized crime. Besides, modification and adoption of abovementioned laws has not changed basic principles: no innocent person should be convicted; that no one shall be held guilty of a criminal offense until so proven by a final decision of a competent court; criminal sanctions shall be imposed on the offender of criminal act under the conditions provided by the Criminal Code and pursuant to lawfully conducted procedure, as well as a criminal sanction against the offender may be imposed only by the competent court in proceedings instituted and conducted by the Law.

References

- [1] Abadinsky H.: *Organised Crime*, Nelson Hall, Chicago, 1988
- [2] Albanese J. S.: „The causes of organized crime“, *Journal of Contemporary Criminal Justice*, No. 4, Thousand Oaks, 2000
- [3] Block A.; Chambliss W. J.: *Organized Crime*, Elsevier, New York; Oxford, 1981
- [4] Bošković M.: *Organizovani kriminalitet – prvi deo: kriminološki i kriminalistički aspekti*, Policijska akademija, Beograd, 1998
- [5] Bošković, M.: *Socijalna patologija*, Pravni fakultet, Novi Sad, 2002
- [6] Fijnaut C.; Marx G.T. (eds.): *Undercover - police surveillance in comparative perspective*, Kluwer Law International, The Hague, 1995
- [7] Grubač M.: Organizovani kriminal u Srbiji, Zbornik radova Pravnog fakulteta, br. 4, Split, 2009
- [8] Halilović H.: *Prikriveni istražitelj: pravno-kriminalistički pristup*, Fakultet kriminalističkih nauka, Sarajevo, 2005
- [9] Korajlić N.: *Kriminalistička metodika* (drugo izdanje), Centar za kulturu i obrazovanje, Tešanj, 2011
- [10] Kresoja M.: *Kriminalistika za osnovno policijsko obrazovanje*, Yugo-Pirs, Novi Sad, 2006
- [11] Pavišić B.: *Pojave savremenih zločina - savremeni međunarodni kriminalitet*, Ministarstvo unutarnjih poslova Republike Hrvatske, Zagreb, 1991
- [12] Paoli, L., Fijnaut, C.: *Organized Crime in Europe: Manifestations and Policies in the European Union*, Beyond, Freiburg, 2003
- [13] Sačić Ž.: *Organizovani kriminalitet u Hrvatskoj*, Ministarstvo unutarnjih poslova Republike Hrvatske, Zagreb, 1997
- [14] Sijerčić-Čolić H.: *Krivično procesno pravo (knjiga prva)*, Pravni fakultet, Sarajevo, 2005