

# ORGANISED CRIMINALITY

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SUMMARY: 1. Issues of the Definition of Organised Criminality and the Criminal Justice Reaction.

## 1. Issues of Definition of Organised Criminality and Criminal Justice Reaction

Certain serious forms of criminality, such as organised criminality, present a challenge to many modern democratic societies to such an extent that in relation to them and their prevention and suppression, the entire criminal justice systems of many countries, and society as a whole, have been put to the test. First of all, it is about establishing a balance between the protection of society from criminality on the one hand, and the protection and provision of basic, universally accepted human rights and freedoms on the other<sup>1</sup>.

Organised criminality is a phenomenon that, apart from the field of law, has various implications in numerous other fields, has an extremely negative effect on the entire society and practically leaves no one indifferent<sup>2</sup>. In this sense, for a successful fight against such a serious form of criminality, the cooperation and timely action of competent institutions, both nationally and internationally, must be synchronised and constantly improved.

When analyzing serious forms of criminality, it is always important to start from a rational and scientific approach that requires a deeper knowledge of them, a realistic assessment of their severity and the dangers they pose both for individuals and for society as a whole, but also the possibilities and limits of criminal law in combating them, especially taking care that it does not become a threat to certain rights and freedoms of citizens. In this sense, it is indisputable that the danger and harmfulness of organised criminality are extremely high, but it is very important to realistically assess the possibilities and scope of the criminal law response in relation to such a serious form of criminality, that is, they should not be underestimated, but neither should they be overestimated<sup>3</sup>.

The successful definition and determination of the main characteristics of organised criminality is multifold important for its successful prevention, both from the aspect of adopting quality strategies and from the aspect of the operational activities of competent authorities, especially when it comes to a quality normative framework that is relevant to this issue<sup>4</sup>.

With certain specific legal solutions that would not call into question the basic principles of criminal law, nor threaten basic human rights and freedoms, criminal law is

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<sup>1</sup> I. BODROŽIĆ, *Review of the book "Criminal Law Suppression of Organised Crime, Terrorism and Corruption" by Z. Stojanović and D. Kolarić*, in *Safety*, v. 1/2015, 2015, p. 231.

<sup>2</sup> M. ŠKULIĆ, *Organised Criminality – Term, Manifestations, Criminal Offense and Criminal Procedure*, Belgrade, 2015, p. 19.

<sup>3</sup> Z. STOJANOVIĆ, D. KOLARIĆ, *Criminal Law Suppression of Organised Crime, Terrorism and Corruption*, Belgrade, 2020, p. 13.

<sup>4</sup> A. STEVANOVIĆ; *Organised Criminality – Key Elements of the Term: Legal and Criminological Determinants*; Annual of the Faculty of Security, Belgrade, 2018, p. 283.

certainly capable of suppressing these forms of criminality to the extent that criminal law can otherwise contribute to suppressing criminality in general. In this sense, it is extremely important to emphasise that for a successful fight against organised criminality, it is necessary to continuously provide favorable conditions for the wider application of the existing criminal law and to arrive at an adequate model of its use in order to suppress organised criminality as successfully as possible<sup>5</sup>.

Also, it is important to point out that the term organised criminality was recognised in professional literature as one of the “*most controversial terms*”<sup>6</sup>. Such an attitude was most often influenced by its different criminological and legal definitions, sometimes by wrong interpretations, and the fact that the term “organised criminality” itself was not initially created as a product of scientific consideration, but received its content previously in media representations, certainly had a special significance in this context<sup>7</sup>. In this sense, and as it is often pointed out in the literature, it was precisely the lack of clear and generally accepted criteria that would successfully define the term itself that led to sharp academic disagreements, which later had their repercussions on the normative level as well<sup>8</sup>.

In addition to the fact that organised criminality can manifest itself in different ways in every society, it is well known that it represents a dynamic category with a constant tendency to change and complicate its manifestations, which further complicates its adequate definition<sup>9</sup>. In the context of the above, it is also important to point out that the term organised criminality itself is a criminological and not a criminal law term that represents a special combination of several punishable behaviors that, under certain conditions, grow into a specific type of crime with a high degree of danger to society, which is why its direct statistical monitoring is impossible<sup>10</sup>. It is a phenomenon that has numerous characteristics that criminologists arrive at on the basis of a certain generalization of certain characteristics that occur in some criminal organizations around the world, where the shaping of these characteristics depends on the authors themselves or researchers<sup>11</sup>.

As is well known in the theory and science of criminal law, it is very difficult to come up with a unique criminal law definition of organised crime, especially for the reason that its concept can be understood and even defined too broadly and vaguely. As stated in theory and science, the problem of the impreciseness of the concept of organised criminality could be alleviated to some extent by accepting the division into organised criminality in a narrower and broader sense<sup>12</sup>.

As can be concluded, the importance of properly defining this phenomenon is only an initial step in the field of its better familiarization, especially its phenomenological

<sup>5</sup> Z. STOJANOVIĆ, D. KOLARIĆ, *op. cit.*, p. 14.

<sup>6</sup> Đ. IGNJATOVIĆ, *Organised crime in the 21st century – controversies and dilemmas*, in J. ČIRIĆ (ed.), *Suzbijanje organizovanog kriminaliteta kao preduslov vladavine prava*, 2016, p. 40 stated according to: A. STEVANOVIĆ, *op. cit.*, p. 284.

<sup>7</sup> *Ibid.*

<sup>8</sup> P. GOUNEV, T. BEZLOV, *Examining the links between organised crime and corruption*, 2010, p. 23. stated according to: A. STEVANOVIĆ, *op. cit.*, p. 284.

<sup>9</sup> S. MIJALKOVIĆ, M. BAJAGIĆ, *Contemporary armed conflicts – definition, eitiology and phenomenology*, in *Kultura Polisia*, v. 9, 2, 2012, p. 23. stated according to: A. STEVANOVIĆ, *op. cit.*, p. 284.

<sup>10</sup> Đ. IGNJATOVIĆ, M. ŠKULIĆ, *Organised Criminality*, Belgrade, 2012, p. 17.

<sup>11</sup> Z. STOJANOVIĆ, D. KOLARIĆ, *op. cit.*, p. 109. In this sense, the US doyen of criminology, Howard Abadinsky, gave the most comprehensive definition of organised criminality.

<sup>12</sup> See more in Z. STOJANOVIĆ, *Organised crime and issues of protection and realization of human rights*, in *Human rights and contemporary trends in criminal policy*, 1989, pp. 122-125, where this division is encountered for the first time in our literature; stated according to: Z. STOJANOVIĆ, D. KOLARIĆ, *Criminal law suppression of organised crime, terrorism and corruption*, 2020, p. 14.

characteristics, but at the same time the most significant step in terms of its successful recognition and suppression<sup>13</sup>. Also, it is necessary to continuously analyze all the possibilities of the existing legal mechanisms that must be used in order to suppress this phenomenon, to improve and modernise them. Certainly, it is quite clear that criminal law and punishment are necessary and irreplaceable in the fight against organised criminality, while also keeping in mind the important principle that criminal law represents the last resort in the line of defense of society against criminality, and accordingly it is important to point out that for the successful fight against organised criminality and its suppression, preventive action through the application of a series of measures and standards from other areas and branches of law, as well as the establishment of adequate solutions that are outside the scope of criminal law, is of exceptional importance.

In the end, it is important to point out that for the successful suppression of organised criminality, it is necessary to constantly monitor its phenomenological dimensions, which especially apply to its actors and new emerging forms in society, given that, unlike any other type of criminality, it has a pronounced ability to adapt to various newly emerging social - political and technological circumstances<sup>14</sup>. In this sense, for a successful fight against such a serious form of criminality, such as organised criminality, the cooperation and timely action of competent institutions, both on the national and international level, must be synchronised and constantly improved.

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<sup>13</sup> M. ŠKULIĆ, *Organised criminality, concept and aspects of criminal procedure*, 2003, p. 23.

<sup>14</sup> A. STEVANOVIĆ, *op. cit.*, p.283.