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## **ORGANIZED CRIME – DEFINITION PROBLEMS**

### **1. INTRODUCTION**

Organized crime, as a modern expression of a special form of professional delinquency, makes the understanding of its sole substance and essence of the notion quite difficult for two relevant reasons: on one hand – the mythical perception of the Sicilian family in its romantic environment that is shared by the public; and on the other hand – insufficient research in this area, that derives mostly from its specific nature, meaning a secretive activity of the criminal elite.

In spite of the fact that this topic is nowadays rather appealing, no consensus has yet been reached in literature and expert documents adopted by national and international bodies about the definition of organized crime in a way that would include the entire complexity of it. Basically, definitions that are being offered are either too narrow, so they do not fit this phenomenon; or too wide, so they rather represent a mere description than a serious theoretical approach towards discovering what kind of phenomenon it really is and what activities it really includes.

In attempt to define organized crime, it must be kept in mind that there are various different approaches, so a large number of authors do not give real definitions, but rather descriptions of its basic characteristics or forms. Researches on organized crime are mostly based on positivistic approach and empirical studies of the phenomenon, while the final theoretical results are merely or mostly descriptive studies and definitions of the phenomenon and its different forms.

## 2. PROBLEMS WITH DIFFERENTIATION OF NOTIONS

Substantial problems while defining organized crime derive from the tendency to equalize or not make enough difference between substantial essence of phenomena which are similar in a way in which they are expressed or similar in certain elements which are common, but are in essence different. That especially goes for certain notions which are often mixed and these notions would be the transnational, international, professional and 'white collar' crime, with the notion organized crime; and other notions which are also mixed, and these would be the notions organized criminal group, criminal organization and mafia which present the essential subjects of organized crime.

These differences present themselves in such a manner that some authors consider them as completely different phenomena, others consider them as being synonyms, and some believe that they are only special forms of organized crime. The same problem is encountered with the notions mafia, criminal organization and organized criminal groups.

In connection to this, it is necessary to make a couple of basic determinations of these notions, which will make possible to consider them in an adequate way while dealing with organized crime itself, or its certain forms.

**Transnational crime** is certainly a form of organized crime, but it cannot be said that all of organized crime is at the same time transnational. The notion transnational crime was first developed by UN's Commission for Crime Prevention and Criminal Justice during preparations for the Fifth Congress of UN on the Prevention of Crime and the Treatment of Offenders in Geneva in 1975. This notion was developed to determine a special form of 'criminal activity that goes beyond international borders and jeopardizes legal systems of different countries'.

The organization and structure of criminal organizations and groups is such that they are not always nationally homogeneous, nor is their activity oriented only towards the soil of their own country. What characterizes modern crime is territorial internationality, specialty in certain kinds of criminal activity and mutual connection of criminal groups from one county with similar groups or organizations from other countries. This connection is mainly determined by necessity for cooperation in gaining profit, then by their mutual goals, tendency to expand the area of criminal activity, and also the need to conquer more

'market', further strengthen criminal organizations and prepare the ground for long-lasting activity.

Transnational crime is, consequently, a criminological notion that indicates different phenomena and offences in criminal systems of different countries, but what is common is that they go beyond jurisdiction of a single country. This notion was somewhat made more precise by the Secretariat of United Nations, or more precisely by the Conference of Ministers on Transnational Organized Crime that was held in Naples from November 21st to 23rd 1994, and which defines this notion as an 'offence whose beginning, prevention and/or direct or indirect effects affect or engage more than one country'.<sup>1</sup> The International Convention against Transnational Organized Crime was adopted in Palermo in December 2000, and treats transnational crime as crime that was committed in more than one country, or as crime that has connection or makes substantial consequences in more than one country.

**International crime** is a notion very close to notion transnational crime, because they both consider activity of criminal organizations that takes place in more than one country. Legal nature of the notions international, transnational and organized crime is, nevertheless, different. Namely, international crime denotes violations of international laws, which are either custom or contractual, and the offender of which is liable to criminal prosecution. These are crimes which the international community has special interest for, such as war crimes, genocide, drug and arms trafficking, white slavery, hijacking of airplanes and ships, assassinations and attacks on diplomatic staff and buildings.

Third notion which is often encountered in different literature on organized crime is the notion **professional crime**. It often happens that one of these phenomena is treated as a form of another and it is also sometimes considered that these phenomena belong to certain other phenomenon. Professional crime is a form of delinquency and typology of criminal phenomena which is performed by professional offenders. It includes crimes done in recidivism which demand a certain kind of professional knowledge, specialty and use of special methods and technical means.

Modern criminology finds that there are four characteristics which present the ground base of professional crime: permanence of offenders' activities; necessity for knowledge existence and tendency for habit gaining; criminal

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<sup>1</sup> A. CONF. 169/15/Add. April 14th 1995, paragraph 9.

activity that provides means for existence and a connection between offenders' personality and asocial background. The first characteristic is considered to be the most important and is characterized by various indicators, especially: consistent and systematic criminal behavior whose aim is to gain material goods in order to provide for existence and other needs. This provokes the creation of certain habits and rules of behavior which can easily be noted by two facts – special recidivism and duration of criminal activity.

In connection to this question, it can be said that professional crime is a wider notion, while organized crime is only one of its forms. Professionalism is an essential characteristic of organized crime, so professional crime can at the same time be organized, but it does not have to be.

**'White collar'** crime is the next notion which is important for the differentiation of notions which are close to organized crime. It is a form of professional crime, a crime committed by the so-called 'criminal elite', as it was defined by E. Sutherland. This notion indicates delinquent activities of criminal offenders which hold certain positions in social hierarchy that enable them to make important economy or political decisions, or to hold monopoly of power or some other power positions. It is actually a special form of the criminal phenomena in the field of economy, business and governing structures, and it presents a connection to certain kind of professional occupation that enables the offenders to make discretionary decisions, to control and execute official, business, state and financial kind of work.

The connection between organized crime and this type of criminal activity can most obviously be seen in the field of corruption. Namely, corruption and the connection to governing organs and representatives of public, financial and other institutions is one of essential characteristics of organized crime, and this makes the connection between these phenomena a direct one.

A particular question in criminal law and criminology is the question of defining and sanctioning organized forms of criminal gatherings, that can be small or large, formal or informal, and of different degree and firmness of organization. In connection to this, it is very important to determine the notions of group, delinquent group, gang and band.

**Group** is a collectivity, smaller or larger, organized or informal, and presents a gathering of people, who live together, work together and act in a certain way, and who share a similar lifestyle, culture or motivation. Motivation

can be positive or negative, which affects the character of the group. Criminology is familiar with different delinquent groups and social pathology with deviant groups.

**Delinquent group** is an informal social group of asocial and antisocial people and orientation (criminals, drug addicts, prostitutes, gamblers, etc.) who gather occasionally and spontaneously and spend their free time together. It is a special social bunch of offenders that is characterized by strong inner relations, common interests and has a large scale of intensity of mutual communication. It is also characterized by mutual trust and solidarity of members, mutual respect and submission to authority of will. The criteria for the formation of these groups are usually the type of criminal activity and the degree of professionalism and organization and also the firmness of the group. Following this criteria, the tightest relations are in those groups such as bands, criminal cooperations, parts of the mafia organization.

**Gang** is a band of robbers, organized group of juvenile delinquents inclined towards vandalism and other forms of individual or collective violence. It is characteristic for urban areas, and has changeable structure from smaller groups to 'criminal syndicates'. Members of the gang use different methods in their criminal activities, such as blackmails, threats, bribery, frightening, political connections and corruption. They usually take organized actions of the cruelest kind towards their opponents in order to gain influence in the area of market of organized crime.

The most serious problems of differentiation between notions are encountered with the notions organized criminal groups and criminal organizations. Firstly, this refers to the exactness of the notions organized, group and organization, which can have more meanings and are often used as synonyms or have different meanings. Organized type of criminal action generally means whichever kind of joint action of two or more criminal offenders in whatever kind of complicity. But it cannot be said that every kind of organization of criminal groups which take criminal activity is at the same time a conditional form of the constitutive type that can be defined as organized crime. Each type of criminal gathering that is characterized by a high degree of organization and professional inclination towards committing indefinite number of crimes, presents a certain danger of becoming some form of organized crime.

This means that organized criminal activity is in its substance a wider notion than the notion organized crime, and naturally this means that not all

forms of organized criminal action can be considered as organized crime. In connection to this, we encounter different forms of criminal gatherings in literature, of which the most important are mafia, organizations, groups and bands. Undoubtedly, the question of what they mean instantly arises.

**Criminal groups** can be temporary, but they can also turn into criminal bands, as firmer and more permanent criminal gathering that has its boss, hierarchy structure and basic aim – criminal acts. It should be said that notion of band refers to criminal groups that commit criminal acts with the element of violence. One form of band is gang, which was mentioned earlier.

Organized criminal group does not have to be large to have this status. Two or more members are quite enough, and it is not necessary for them to be a part of an existent criminal group. So, conspiracy in some corporation or conspiracy that is organized and done by some corporation presents organized crime when it is in accordance with other elements of the noted definition of organized crime. Similarly, crime can be organized (for example, cases of illegal smuggling of immigrants into other countries), while not being a part of criminal action of a wider criminal group.<sup>2</sup>

When criminal groups accomplish the highest form of structure, meaning solid - structured organizational form, when they become a permanent and well-structured associations whose activity is oriented towards gaining profit, whose ambitions are to become socially influential, to influence those in power and when they are of a suitable hierarchy structure, then they attain the character of criminal organizations. When organized criminal groups transform into criminal organizations they intend to have their own area of activity which is extremely specialized. This is why a document of the Committee of Experts of the Council of Europe, that defined obligatory (4) and non obligatory (7) criteria for identification of organized criminal groups, is somewhat helpful.

Obligatory criteria include following elements: cooperation between three or more individuals; long - term cooperation or cooperation for indefinite period of time; suspicion that serious crimes are being committed or knowledge that they actually are being committed; aim to gain profit and/or power. Non obligatory elements are in fact the following presumptions that: each member has a clearly determined part or duty; has a task to exercise some forms of inner

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<sup>2</sup> Chin, K. L: *Chinatown gangs: Extortion, enterprise and ethnicity*, Oxford University Press, New York, 1996.

discipline or control; use brutal force or other, but always violent means of intimidation; should widen the influence on politicians, media, administration, criminalistics services, courts or the economy by corruption or in other forms; should use commercial or economy structures to interfere into money laundering and achieve international cooperation.

In order to have the quality of organized criminal group, certain criminal gathering has to possess all the obligatory and at least two non obligatory criteria. The more non obligatory criteria the group satisfies, the higher degree of organization is achieved and the group moves from organized criminal group towards criminal organization and in the end it becomes mafia.

**Criminal organization** is a basic subject of organized crime. The main differences between criminal organizations are: tradition and duration; origin; direction of activity and the way in which the criminal activity is done and finally the degree of organization.<sup>3</sup> It is an organization characterized by continuity and firm structure and it is based on principles of hierarchy subordination and command, group discipline, collaboration and planning. The main priority in its actions is how to find the ways and possibilities to protect criminals and criminal activity. Some authors believe that in order to accomplish this, criminal organization bonds with local politicians. In the beginning it seeks a political party whose election campaign it would finance, regardless of the fact that it does not approve of its political ideas. Politician who accepts this form of support will, when the time comes and the opportunity presents itself, carry out his part of deal which originates from this union, and this establishes close cooperation. The result of this is that criminal organizations can perform their criminal activities without any disturbance and under the protection of those people who are obliged to protect and enforce laws.<sup>4</sup> Through the connections they have in police, in prosecution office, in courts, they are capable to abolish and exclude from punishment each one of their members; they can bring criminal investigation to an end, accomplish non punishment for their members, or less severe punishment, or secure privileges and benefits for the ones that are already convicted.

**Mafia** is defined as a specific form and the highest level of structure and strength of the criminal organization whose main characteristics are hierarchy

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<sup>3</sup> Milutinović, M: *Kriminologija*, šesto izdanje, Savremena administracija, Beograd, 1998, page 236.

<sup>4</sup> Milutinović, M: *Ibidem*, page 238.

structure of the organization, inner discipline and achievement of interests by force and tight corruption connections with authorities. By using the system of violence and the accumulated power, Mafia has different motives of influence on economy, political, cultural and social field of the society in which it conducts its activity from the lowest to the highest social levels.

In this way, in a certain sense, criteria of identification of different forms and levels of criminal organization were given, as a presumption of the differentiation of the notions criminal group, criminal organization and mafia. The differences are sometimes by all means obvious, and sometimes only slight differences exist, so it is not always easy to adequately put a concrete form of criminal group into one of the given classifications.

### **3. CRITERIA AND APPROACHES IN DEFINING ORGANIZED CRIME**

Bearing in mind that there are many definitions of organized crime, which originate from expert studies of professional organizations, theoretical ideas of scientists, legal regulations in specific countries, and also regulations of various resolutions and declarations of international institutions, we can classify all definitions of organized crime according to four different approaches: a) as a special form of modern professional crime; b) as a sort of activity of criminal organizations; c) as a criminal association that is organized for committing specific forms of crime in complicity and d) mixed criterion.

#### **3.1. DEFINITION OF THE PHENOMENON AS A FORM OF CRIME**

One group of theoretical orientation in defining determines organized crime as a special form of crime in typology of criminal phenomena.

There are numerous attempts in American literature to discover what the notion of organized crime is and they usually come down to the definition of notion given by criminal law. Its substance is dominated by approach that organized crime includes continual activity of criminal enterprise that is carried

out in a rational way and directed towards gaining profit though illegal activities.<sup>5</sup>

According to documents of the USA's Department of Justice, organized crime means self-preservable, structured and disciplined association of individuals or groups whose mutual aim is to get profit, in a fully or partially illegal way and at the same time to protect activities of the organization through system of violence, corruption and bribe. This indicates criminal activity of two or more people, in order to establish monopoly on criminal action in certain geographical area, which brings benefit or permanent financial gain and includes use of intimidation or violence on those who try to oppose the development of this activity, and also bribe of public administration whose participation is crucial for the further survival and development of criminal activity.<sup>6</sup>

These definitions regularly come down to activity of criminal-syndicate organizations of economy type, since the starting point is a belief that organized crime is represented in few criminal syndicates that are basically a fragile system based on relations of force and which represent a particular social structure; which are also based on a form of leadership that uses permanent methods of work; the final goal of this activity is formation of an enterprise. In this manner, organized crime is linked to the entrepreneurs (businesses) that are organized in order to obtain economy gain (profit) through illegal activities,<sup>7</sup> or to be more precise as syndicate-like criminality attached to business operations, organized for the purpose of gaining profit through illegal activities or enterprises.<sup>8</sup>

Some authors treat organized crime as continual criminal activity of the collective type of crime, as crime that consists of series of illegal transactions between number of offenders, through continual period of time, of which some offenders use specific skills, with aim to gain economy benefit and political power when political power is necessary for gaining benefit from economy<sup>9</sup>; also they describe it as an activity of groups of entrepreneurs whose ultimate

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<sup>5</sup> Hagan, F. E : *The Organized Crime Continuum: A Further Specification of a New Conceptual Model*, Criminal Justice Review, number 8, 1983, pages 52-57.

<sup>6</sup> Sačić, Ž: *Organizovani kriminalitet u Hrvatskoj*, MUP Republike Hrvatske, Zagreb, 1997, page 10.

<sup>7</sup> Sellin, T: *Organized Crime: A Business Enterprise*, Annals of the American Academy of Political and Social Science, May 1963, pages 12-19.

<sup>8</sup> Ignjatović, Đ: *Organizovani kriminalitet, drugi deo*, Policijska akademija, Beograd, 1998, page 18.

<sup>9</sup> Rhodes, R: *Organised Crime: Crime Control vs Civil Liberties*, New York, 1984, page 4.

goal is personal economy gain which they achieve by using illegitimate means<sup>10</sup>; and also as providing illegal goods and services that society permanently needs, on regular base<sup>11</sup>.

European law and criminology literature give a more precise definition of the notion of organized crime.

Documents of German police institutions (Committee of Confederate Interior Ministers and Temporary Committee of Department of Criminalistics Investigations) consider organized crime as a parallel society similar to mafia, and also any kind of conscious and willing joint action of certain number of people that includes division of labor and is done in order to commit criminal acts, often with use of modern infrastructures, with aim to achieve large financial gain as soon as possible. 'These conceptions are of a somewhat wider grasp because not only do they consider the activity of criminal organizations, but they also include any other group of people who have made a conscious and intentional decision to cooperate in forbidden activities during a period of time, share their activities, often use modern systematic infrastructure, with the basic intent to gain large profit, as soon as possible'.<sup>12</sup>

German criminologists find that organized crime denotes all actions that are directed towards gaining profit and power and that organized crime has three essential characteristics: in its substance it is a crime against the property which differs from its other forms by the intention to infiltrate into legal economy; means, conditions and circumstances in which it occurs are extremely complex, variable and unpredictable; use of violence which is, in accordance with the modernization of methods and means, lately substituted by ways of influence which are more sophisticated.<sup>13</sup>

E. Savona treats the notion of organized crime in a way that considers its essential characteristics: power to get organized and cooperation of more than one offender; use of violence and corruption which enables easier action; covering up the criminal activities with legal activities and legal corporations;

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<sup>10</sup> Siegel, L: *Criminology*, St. Paul, 1995, page 376.

<sup>11</sup> Ignjatović, Đ: *Organizovani kriminalitet, drugi deo*, Policijska akademija, Beograd, 1998, page 19.

<sup>12</sup> Kriminal u Švajcarskoj, Međunarodni policijski pregled. See: Bošković, Milo: *Socijalna patologija*, Pravni fakultet, Novi Sad, 2002, page 130.

<sup>13</sup> Schuler-Springorum, H: *The Evolution of Criminal Justice Systems* – in Fifth Conference of Crime Policy, Strasbourg, 1995, page 21.

main goal seen in gaining profit; transnational nature of activities that go beyond national borders.<sup>14</sup>

### 3.2. DEFINITION OF THE PHENOMENON ACCORDING TO THE CHARACTERISTICS OF CRIMINAL ORGANIZATIONS

Second group of theoretical orientation thinks that it is much more accurate to define organized crime by general and specific characteristics of criminal organizations which are seen as carriers of this sort of activity. Organized delinquency is, as they say, a firm and well-structured form of joint criminal behavior that has a certain business-like organization, and whose structure is presented in syndicates and other organized hierarchies of the criminal world. These definitions all come down to descriptions of some characteristics of 'criminal groups', 'defenders' and 'expert support', which are all necessary factors for the existence of organized crime<sup>15</sup>. This defining results in unfounded widening of the field of incriminations of organized crime to different phenomena which are not usually considered as the phenomena of organized crime.

According to German expert literature 'organized crime is a planned crime – committing activity whose goal is to obtain certain gain and power, that is individually or altogether of great significance and that includes joint activity of least two people (as a result of division of labor) for a long or indefinite period of time, by using specialized skills or business-like structures, or using violence and other means of frightening, or in connection to political structures, media, public administration, courts or the state'.<sup>16</sup> Organized crime is defined by its main characteristics, such as: uniting of few individuals in a profit-oriented community; action that is done according to plan; organizational structure; connection of legal activities with the illegal; flexible technology of action; use of technical infrastructure; influence on politics, media, public administration, courts and economy; mobility and internationality<sup>17</sup>; and it can also be defined

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<sup>14</sup> Ignjatović, Đ: *Organizovani kriminalitet, drugi deo*, Policijska akademija, Beograd, 1998, page 22.

<sup>15</sup> Organized Crime – World Perspectives, Jay S. Albanese – Dilip K. Das. Arvind Verma, 2003, Upper Saddle River, New Jersey 07458.

<sup>16</sup> Sačić, Ž: *Organizovani kriminalitet u Hrvatskoj*, MUP Republike Hrvatske, Zagreb, 1997, page 19.

<sup>17</sup> Kaiser, G: *Kriminologie – Ein Lehrbuch*, Heidelberg, 1993, Skoplje, 1996, page 21.

as 'criminal activities that are pictured as permanent and businesslike, and that are being strategically and technically planned and done by nationally and internationally structured groups in order to gain large profit or achieve influence in public life.'<sup>18</sup>

Italian legislation and criminology literature mostly incline towards this sort of belief. The Anti-mafia act that was enacted in 1982, defines organized crime with a description of the mafia type of organization, which means the following: existence of group that consists of three or more individuals; violence that is used by members in order to perform extortion; commitment to subordination and 'vow of silence' by members about the activities of the group; activities that are directed towards gaining (direct or indirect) control over economy flow, market and public services and the ultimate goal is to secure illegal income for themselves or others.<sup>19</sup>

G. Fiandaca explains that in order to consider the activity of criminal bands as organized crime, some criteria needs to be fulfilled: organizational dimension (existence of criminal organization); organizing criminal activity of the economy type ('criminal corporation'); use of violence so that positions of precedence or monopoly and also enlargement of the profit are preserved, but on the other hand financing of murders in order to prevent law enforcement or prevent the process of bringing political decisions that endanger them; and corruption of police, courts and executive political power.<sup>20</sup> By this, F. Scalfani considers: mass activity of stabile and structured organized groups; actions that are performed professionally and that create system of protection from organs of formal social control; use of different means, most often corruption.<sup>21</sup>

Police approaches in determining contents of notion of organized crime are very similar to each other and defined by the criteria that are given in acts of Europol. There are four main criteria: association of at least three people, operations that occur in unlimited or undefined period of time, committing crimes, gaining economy profit or social power. Also, there are additional criteria: existence of internal rules of behavior, use of corruption and/or violence,

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<sup>18</sup> *Kriminalistik Lexicon*, Heidelberg, 1984.

<sup>19</sup> Ignjatović, Đ: *Organizovani kriminalitet, drugi deo*, Policijska akademija, Beograd, 1998, pages 19-20.

<sup>20</sup> Fiandaca, G: *Criminalita e controllo penale*, L' indice penale 1991/1, pages 5-34.

<sup>21</sup> Scalfani, F: *Controlle du crime organise: prevention sociale et repression penale* - in Les actes de Seminaire Pan-Europeen: Les politiques criminales dans un Etat de droit – problemes de transition, Ljubljana, 1994, page 36.

influence on media, economy, public administration, politics, operations on international level, participation in money laundering.

On the First International Symposium on Organized Crime that was organized by the Interpol in May 1998, this type of crime is tied to 'any sort of activity or group of people that are engaged in illegal activity whose primary goal is to make profit, regardless of national borders'. This definition later, in a certain aspect, became broader and organized crime is now defined as 'any group that has corporate structure and whose primary goal is to obtain money through illegal activities and is based on frightening and corruption'.

According to definition of the National Criminal Intelligence Service (NCIS), 'organized crime is basically any association or gathering of people that are associated for the sake of permanent illegal activity, with main purpose in gaining and increasing financial gain, without respect for law or international borders.'<sup>22</sup>

Interpol of Republic of Slovenia considers organized crime as activity of criminal associations that is done in an entrepreneur-like way and that uses violence or corruption in order to achieve financial gain or social power.<sup>23</sup>

Sometimes, these definitions are particularly restrictive and include only basic elements, as it is the case with Russian literature, where it is accepted that organized crime includes creating and functioning of organized criminal groups, whose criminal activities are permanently directed towards committing crimes in order to achieve financial gain.<sup>24</sup> Also, Ukrainian Law on Organizational and Legal Basis for Fight against Organized Crime, which was enacted in 1993, considers organized crime as all offences that are committed in connection to creation and activity of organized groups of offenders.<sup>25</sup> Our renowned criminologist, M. Milutinović considers organized crime as firmly organized groups of criminals that operate through years and have their own rules and what allows them to do so is their firm organization with hierarchy relations and great operational skills that they present in the course of action.<sup>26</sup> Similar approach

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<sup>22</sup> Sačić, Ž: *Organizovani kriminalitet u Hrvatskoj*, MUP Republike Hrvatske, Zagreb, 1997, page 18.

<sup>23</sup> Sačić, Ž: *Organizovani kriminalitet u Hrvatskoj*, MUP Republike Hrvatske, Zagreb, 1997, pages 15-16.

<sup>24</sup> Sačić, Ž: *Ibidem*, page 13.

<sup>25</sup> Sačić, Ž: *Ibidem*, pages 12-13.

<sup>26</sup> Milutinović, M: *Kriminologija*, šesto izdanje, Beograd, 1988, page 237.

is presented by Đ. Ignjatović that considers organized crime as a form of crime against the property that is characterized by existence of criminal organization that carries out continual economy – type activity and uses violence and corruption towards the ones in power.

According to definition given by Ž. Sačić, organized crimes includes serious crimes that are well-prepared, planned, done in a professional way and include the division of labor and which are committed by at least three mutually involved perpetrators that are gathered in a criminal organization, whose purpose is to obtain and increase financial profit as well as social power through permanent, secretive and joint activity of its members, without respect for international borders, with use of violence, frightening or corruption, so that their illegal endurance and development of criminal activity is ensured.<sup>27</sup>

Polish criminalistics literature shares this point of view and sees organized crime as criminal activity of criminal organization, whose goal is to attain financial gain by committing different crimes and by using methods of bribery, frightening, blackmail and open armed violence. In relation to this, Polish police comprised a list of eleven essential features of criminal organizations or associations: motives for criminal activity of members of criminal organizations are purely in financial wealth and power; intent to commit crimes long-lastingly; division of tasks and criminal roles; specifically organized structure of criminal organizations and associations; committing crimes upon an order; conspiracy, discipline and control over members of criminal association; committing serious crimes; use of violence and other methods of frightening; use of power in politics, administration, courts and the police; criminal activities that go beyond homeland borders; money laundering.<sup>28</sup>

Hungarian criminal law literature assigns the notion of organized crime under the definition of crime that was committed by criminal organization under aggravating circumstances. According to Criminal Code of this country, criminal association exists if two or more people commit crimes in an organized manner or have the intent to do so. In relation to this, the notion of organized crime means specific committing of well-planned and professionally performed crimes by groups and organizations, which have hierarchy structure and are secretly led and which act in a longer period of time, specialize for different

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<sup>27</sup> Sačić, Ž: *Ibidem*, page 18.

<sup>28</sup> Sačić, Ž: *Ibidem*, page 21.

crimes, including murders and which connect to similar criminal associations outside Hungary in order to obtain financial gain.<sup>29</sup>

### 3.3. DEFINITION OF THE PHENOMENON ACCORDING TO FORMS OF EXPRESSION

Some approaches in defining organized crime express its essence through specific forms of criminal activity in which organized crime shows itself. This approach also, as the one described above, takes into concern some additional elements of the notion, but its sole essence is reflected in the typology of its particular forms.

According to the USA's act that concerns the approval of financial means for central and local organizations that deal with organization, education and preparing of special units for fight against organized crime, which was enacted in 1968, organized crime includes illegal activities of members of highly organized, disciplined groups that engage in acquiring illegal goods and services, including, but not limiting it to: gambling, prostitution, drugs, racketeering, usury and other illegal activities of members of the organization.<sup>30</sup>

This phenomenon is treated in an almost identical way by the later Act on Fight against Organized Crime (1970), which refers to organized crime as to certain forms of criminal activity (racketeering, collecting of illegal debts and converting illegal gambling into legal business) and also methods of committing these crimes (frightening, using means of communication, traffic and transport means).

Criminological point of view, according to Dutch authors, can best be described in attempt to identify organized crime by certain criteria including: hierarchy structure of criminal organizations built on division of labor and responsibility; use of internal system of sanctioning; use of violence; bribery of state officials in all branches of state power; directing illegal profit into legal flows (money laundering); long – term activity of criminal organizations;

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<sup>29</sup> Nagy, Z: Interpol, 1996, Sačić, Ž: *Organizovani kriminalitet u Hrvatskoj*, MUP Republike Hrvatske, Zagreb, 1997. Page 12.

<sup>30</sup> This act called 'Omnibus act on crime control and safe streets' has a large number of articles that were created in order to fight the problem of rising criminal activity. See: File: //A:/ Organized crime.htm. - © Euroreporter 1995. – Pages created by: Wilhelm Lagercrante: lagwill@jmk.sa.se – 21 – 06 – 95.

various manifestation of criminal activity through different crimes. This point of view can more precisely be determined as a group or network of people which are primarily turned towards illegally gained profit and who systematically commit series of crimes with great consequences. According to this idea, organized crime can be divided into two obvious criminal categories: on one hand, supplying consumers with illegal goods (drugs) and services; and on the other hand, infiltrating in legitimate businesses like banking, toxic waste industry, transport, industrial construction etc.<sup>31</sup>

Most criminal codes have exactly this approach in defining the phenomenon. This is also the case with our Act on Organization and Jurisdiction of Public Organs in Suppression of Organized Crime which bonds this type of crime to certain kinds and forms of crime (article 2): against constitutional order and security of Federal Republic of Yugoslavia; against humanity and international law; forgery and money laundering; unauthorized production and trafficking of drugs, munitions or explosive materials, human trafficking, robbery, armed robbery, bribe giving and bribe taking, extortion and kidnapping; other crimes with the punishment minimum of five years in prison – when there is an element of organized crime present (article 3) in a sense that there exists cooperation with intension to commit crimes (article 254 of the Criminal code of Federal Republic of Yugoslavia), with an agreement to commit crimes that are incriminated by the federal law (article 253 of the Criminal code of Federal Republic of Yugoslavia) or a criminal association (article 227 of the Criminal code of Republic of Serbia).

### **3.4. DEFINITION OF THE PHENOMENON ACCORDING TO MIXED CRITERIA**

Most approaches that exist in defining organized crime are actually based on mixed criteria which present a combination of elements of definitions. These elements are usually the form and the character of criminal gathering, but also some specific forms. Nevertheless, a large part of these definitions can be classified into one of the earlier described systematizations, because they are by their contents inclined towards the given criterion, but other can not be classified that precisely.

Because of this, the Committee for Organized Crime of the International Association of Chiefs of Police (IACP) determined four essential characteristics

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<sup>31</sup> Sačić, Ž: *Ibidem*.

for recognizing organized crime: structural organization; existence of formally organized and disciplined group whose leader does not personally commit crimes, which secures permanency of the organization in case of arrest, murder or other forms of elimination of whichever member of the band; continual gaining of profit; although other incidental crimes can be committed by members of such criminal groups (such as kidnapping or bank robbery), their primary source of income is trafficking of illegal goods, such as drugs, gambling, usury, prostitution or other activities that seem to survive because of human faults. These crimes, which are also known as 'victimless crimes', usually have three positive aspects for perpetrators: large profit, which is obtained with a smaller risk from exposal and prosecution; monopoly, since there is no competition, large profit is guaranteed and this position is preserved with use of most efficient methods of frightening and bribe; immunity, which derives from indifference and ignorance. Also, victims and witnesses are most efficiently neutralized by bribing and frightening. Finally, methods of corruption of police, prosecutors, courts, deputies, prison staff and parole officers are also used.

In the report called 'Influence of Criminal Activity on Society in general' that was presented by the Secretary General of the UN on Second conference of the Commission for Crime Prevention of the UN's Economic and Social Council (April 13th-23rd 1993), both definition and descriptions of this criminal phenomenon were given. This report states: 'a) organized crime – it is an activity of associated criminals or groups, which have united on economy base ... by dealing with illegal services and goods; b) organized crime means conspiratorial criminal activity, in a process in which, with help of hierarchically set structures, planning is coordinated and either illegal actions are performed, or legal aims are achieved, but with use of illegal methods; c) organized crime does not limit itself to illegal activities and performance of illegal services. Activities are also quite specific, like money laundering; d) organized in groups, criminals use different measures in their *work*, which can on one hand be concealed or refined, or on the other hand harsh, direct and open. These measures are used for establishing monopoly on illegal goods and services supply, for cover up of illegal activities, for corruption of officials.'<sup>32</sup>

Changes in our Criminal procedure Act brought particular articles about the procedure for crimes of organized crime and this is based on mixed criterion with three essential conditions that need to be fulfilled in order for crime to be

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<sup>32</sup> Internet: Курсовая работа – [www.Referats.corbina.ru](http://www.Referats.corbina.ru), pages 5 – 6. – Bošković, Milo: *Socijalna patologija*, Pravni fakultet, Novi Sad, 2002, pages 131 – 132.

treated as organized crime: committed crime must be a result of organized activity of at least two people; their goal must be to commit serious crimes in order to obtain profit or power.

Also, this act states some other conditions that must exist in order to treat a certain crime as organized: each member of the criminal organization has to have a role or part that had been determined in advance; activity of the criminal organization has to be planned for a longer or unlimited period of time; activity of the organization must be based on use of certain rules, internal control and discipline of its members; activity of the organization must be planned and performed on international scale; use of violence or frightening while performing activities must be present, or at least readiness to use them must exist; economy or business structures must be used while performing activities; money laundering or illegal profit must be used; influence of the organization or its part on politics, media, executive power, courts or on other social or economy factors must exist.<sup>33</sup>

D. Petrović believes that following conditions or elements have to be present so that a crime could be treated as organized: permanent association of large number of people; aim of criminal activity seen in gaining or attaining huge profits; hierarchy organizational structure, subordination and command; planned activities marked by committing crimes according to principles of division of labor and specialization; flexible, adaptable performance of illegal work, which always adapts to what the population needs; flexible criminal technology and diversity of criminal methods in committing crimes – racketeering, prostitution, gambling, drug trafficking, extortion, blackmail, murder and bodily harm, terror, bribe and other; internationalization and vital mobility; connection of organized crime with the state and political leaders. Because of its basic presumptions, this condition is the deciding one in totality of organized crime activity.<sup>34</sup>

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<sup>33</sup> These conditions for existence of organized crime were given based on definition of organized crime by the European Union – Work group for narcotics and organized crime, 1994, and which has eleven conditions.

<sup>34</sup> Petrović, D: *Organizovanje zločinačkih udruženja*, Srpsko udruženje za krivično pravo, Beograd, 1996, page 31.

#### 4. ESSENTIAL CHARACTERISTIC OF ORGANIZED CRIME

Defining of organized crime in important elements of its essence and contents, which would present the foundation for incrimination in both positive material legislation and formal procedure, has to take into consideration all of the given criteria, meaning that it is compulsory to define organized crime in the following manner: as a special form of crime, through basic characteristics of criminal organizations, as certain forms of criminal phenomenology (certain forms of expression) and in totality of all the elements.

Defining of organized crime **as a special form of crime** is caused by the necessity to distinguish this phenomenon from other phenomena in its specific elements. In the most general perspective, this means to identify this phenomenon and create the typology according to its specific elements.

In this sense, it can be described by the following characteristics.

Firstly, organized crime presents a modern form of professional criminal activity. Professionalism relates to aspects of planning and preparing of activities and also to aspect of performance of activity. Professionalism in planning and preparing means: precise planning; adaptability to market's requests; and professionalism on performance of activity means: use of applicable scientific knowledge and methods, use of professional skills and specialized work, secrecy in actions and among the members. Professional form is further expressed in so-called specific form of net structure of criminality, which is achieved by division and specialization of labor in certain criminal organization. Criminal nets are based on a nucleus, which presents the ruling mechanism and which secures the functioning of specialized tasks of specific parts and also regulates other key components of the net, which can either be international, national or local.

Professionalism of this sort of criminality is also represented by infiltration in political structures of society, especially the executive branch. This segment derives from necessity to conceal illegal income, secure organizational measures for prevention from state's intervention, transfer activities from illegal business to legal economy and financial market.

The main motto and aim of the criminal cartels is maximum profit with minimum effort. They possess capability to adapt to every alteration of conditions of work in the market, tremendous economy logic and at the same time present serious competition to legal businesses.

Foundation of organized crime on criminal law perception of perpetrators, or on criminological perception of the **type, structure and features of criminal organizations**, which are perceived as specifics of great importance, seems to be the most important ground in which peculiarities and characteristic of the phenomena are expressed.

This criterion is based on four principal elements: permanent organization; organizations which perform its activities rationally, to gain profit; use of special methods like violence or threats in performance of criminal activity; and the need for corruption in order to secure priority in legal businesses of illegal competition, and to preserve immunity from law enforcement.<sup>35</sup>

The organization itself is characterized by: firm organization and management, subordination and command, with diverse net structure and regulated internal relations; regulated hierarchy and precise division of labor or functions. The management has absolute authority over members and all their life issues.

Internal relations are based on subordination, authority and hierarchy; trust and solidarity; conspiracy in relations between members and crime committing. Organization has certain rules of behavior that are mainly aimed at protection of the organization and the effort to rule it more efficiently. Due to strict regulations, members of criminal organizations enjoy special protection of criminal syndicates.

Principles and methods of work on one hand, and use of means, on the other, while performing activities of criminal organization are quite specific in comparison to other forms of criminal activity. Adaptable techniques and tactical execution of crimes prevail; corruption, planned connections, infiltration into legal structures of public institutions and representatives of power are present and many other methods: from threatening or use of violence so that

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<sup>35</sup> Albanese, J. S: The Causes of Organized Crime, *Journal of Contemporary Criminal Justice*, Thousand Oaks, number 4/2000, pages 409 – 423.

monopoly is preserved, to discipline and cooperation and then again extortion, blackmail, murders, bodily harm, terror.

Measures of economy extortion, especially racketeering, are performed by criminal organization in a methodical, systematical and permanent way. Those activities are represented by various measures and methods, which can be obscured or refined, or on the contrary harsh, direct and open.

According to criterion of **structure of the form of expression of organized crime**, criminal activities of organized crime are the following: terrorist activities; some forms of economy crime; racketeering; money laundering; white slavery; trafficking of human organs; rare animal trafficking; production and trafficking of narcotics; organized prostitution; organized gambling; ecology crime, etc.<sup>36</sup>

**Mixed criterion** means that definition of notion of organized crime must be initiated from the combined (mixed) criterion, which cumulatively contains all three above mentioned criteria.

Bearing in mind the three given approaches, mixed criterion would have following essential characteristics: modern form of professional criminality whose foundation are criminal organizations (criminal syndicates); with elements of hierarchy in organization and relations; net organization; division of labor; connections with representatives of power and other institutions; work flexibility and infiltration into political and economy structures; aim seen in profit gaining; use of violence and corruption as a specific method of performance of special forms of crime whose main intention is to establish financial power and political influence.

This perception would actually present the definition of the contents of notion organized crime and the ground for incrimination of specific forms in which it is expressed.

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<sup>36</sup> Bošković, Milo; *Socijalna patologija*, Pravni fakultet, Novi Sad, 2002, pages 141 – 142.