

Organized Crime and Similar Terminological Concepts. A Problem in Defining the Notion of Organized Crime

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Abstract:

One of the fundamental problems in defining the notion of organized crime is, that next to the public opinion, not even a part of the experts, do not make, in a sufficient way, a difference between the essence and the content of organized crime and to this similar phenomenon by taking in account the way these manifest or their shared elements. As such, confusion is being made between the organized crime notion and the terms of transnational organized crime, international crimes, "white collar" crimes, professional crimes, crimes of abuse of power, political crimes, etc. Even if it could be said that, these terms are in a way similar and that they have some common elements, we are referring to specific phenomenon and terms, that should not be confused.

The present study will present these criminogenic concepts and the resemblances and differences between these and the organized crime phenomena.

Keywords: *organized crime, transnational organized crime, international crimes, cross-border crimes, "white collar" crimes, professional crimes, crimes of abuse of power, political crimes.*

1. Introduction

The first and most important step in understanding a social phenomenon, as such for organized crime as well is for its definition to be determined. Setting down the correct and complete notion is very important so that a stable base is being established as well as from other professional and theoretical considerations.

The fact that, on one hand, there is no clear, precise and complete definition and on the other hand the multitude of different approaches in defining the concept, can bring to discrepancies and misunderstandings regarding to the organized crime phenomenon's existence, patterns, amplitude and degree of social danger. This could negatively influence the adequate reaction and decisions of the law-making body bringing it to fail to take the necessary repressive actions against this criminogenic phenomenon.

Exactly defining the notion is crucial as for certain procedural mechanisms that regard the prevention, detection, proving and sanctioning the actual organized crime acts.

The importance of defining organized crime "is not important only from the theoretical character, but as well of great importance for the competent state's authorities for

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their practical actions”¹ signifying therewith the essential premise in order for this phenomenon to be rebutted. Defining organized crime is necessary for the elimination of different legal stereotypes of this phenomenon, as well as in order to be able to make a clear distinction between this and other similar phenomenon. Still, defining it is not easy at all, because it implies a very complex and adequate process, by applying multiple scientific method and principles. On the other hand this term is often wrongly perceived and very hard to define.

Even though, the problem of defining organized crime is being discussed for over decades by the doctrine and international studies and professional institutions, as well as by national legislations, resolutions and international declarations, today there no unanimously accepted definition but, on the contrary there are multiple different definitions on this matter.

When writing on this matter there are almost no authors, studies or analysis that, when dealing with this problem, try to give their own definition on organized crime. It could be said that “in defining organized crime there are as many different definitions and approaches as many authors dealing with it”².

How difficult it is for a universal definition of this phenomenon to be given, it is maybe proven by the literature, very often, mentioned example on the *The Federal Organized Crime Control Act of 1970*³, that does not contain a definition on organized crime, even though *de facto* essential for this legal document, even though the notion is implemented within the title of the law.

There are many motives because of which there is no definition for this concept not to be universally accepted. Some of the difficulties met by the theoreticians, practitioners and law-makers concern for example: different theoretical approach modalities of the problem, the dynamism and complexity of organized crime, different social-economic, political and juridical systems form one state to another, “hyper-inflation” of the organized crime notion, different terminological concepts, etc.

Organized crime represents phenomenon that, because of its social, juridical, mass-media and other implications, does not leave anyone indifferent. “Expressions as, *mafia*, *underground*, *crime syndicate*, *gang*, *boss*, and others have become part of daily vocabulary of people all around the world, and the occultism, the enormous power and wealth that surrounds the organized crime actors have broth a contributions to the formation of the mystical aureole around it”⁴. Many books have been written, movies and TV series have been made on the legendary leaders of organized crime like Al Capone, Meyer Lansky or Lucky Luciano and, and almost every day there is news in mass-media on the crimes committed by the members of organised crime group.

On the other hand, this subject has been debated a lot within the scientific and professional opinion concluding with many theoretical papers, leading in such a way to the impression that this phenomenon has been, from the scientific point of view, completely analysed, researched and clarified. Even so, on a closer look, it can be

¹ Milan Škulić, *Organizovani kriminalitet – pojam i krivičnoprocesni aspekti*, Beograd, Dosije, 2003, p. 26.

² Milo Bošković, Zdravko Skakavac, *Organizovani kriminalitet – Karakteristike i pojavnici oblici*, Novi Sad, Fakultet za Pravne i Poslovne Studije i Prometej, 2009, p. 142.

³ *The Federal Organized Crime Control Act of 1970*, Public Law 91-452, 84 Statute, October 15, 1970, <http://www.gpo.gov/fdsys/pkg/STATUTE-84/pdf/STATUTE-84-Pg922-3.pdf>.

⁴ Đorđe Ignjatović, *Organizovani kriminalitet – II deo – kriminološka analiza stanja u svetu*, Beograd, Policijska akademija, 1998, p. 3.

concluded that things are not really that simple, that many questions remain without explanations, that there are many confusing attitudes and evidently, this “story” will not end soon.

It cannot be contested that, organized crime is one of the most intriguing subjects and this is why, it became an “everyone knows everything about it”⁵ phenomenon, but in reality there are just a few people that really understand its essence and signification.

As such all the above mentioned lead to one of the most significant problem for defining the organized crime concept. This is the product of, not only the public view, but as well a part of the specialized opinion, because of the false image of organized crime, wrongly identify the essence and content of this phenomenon and do not make a distinction between it and other similar criminal phenomenon with which it has similar basic elements.

Wrongly identifying *organized crime* with *transnational organized crime*, *international crimes*, *cross-border crimes*, “*white collar*” crimes, or *professional crimes* concepts, as well as the interference with *organized crime group*, *mafia*, *gang*, *criminal organisation or association* as basic subjects of organized crime, is unfortunately very common within professional literature. Even though it can be asserted that, these are associated terms that certainly they have common elements that seem similar currently we are referring to totally different phenomenon and notions that shall not be confused. The exact delimitation of the above mentioned concepts towards organized crimes of a particular importance for the doctrine in general and especially for the universal and national juridical-criminal legislation.

2. Organized crime and similar terminological criminal concepts

2.1. *Organized crime*

Essentially, in our opinion, organized crime represents those activities carried out by a group, organised for a long period of time out of three or more persons, that have corruptive liaisons or of any other nature with state’s authorities and are predisposed to use violence and other ways of intimidation, having as final purpose to obtain profits and/or power by committing crimes for which the legislation provides punishment with prison of minimum four years, by the group members that have précised and clearly determined assignments.

For the necessities of this study as well for a better understanding in the theoretical analyses, respectively for an in practice easier identification of the phenomenon, the following mainly descriptive definition, will be suggested: organized crime represents those criminal activities of a certain gravity, undertaken by a group composed out of three or more persons, that are being committed in a constant, planned and conspired manner through different methods and means. Criminal associations have generally an internal well determined hierarchy, with a specialized structure and self-defence mechanisms. Organized crime is usually oriented in obtaining profit, their main purpose being a material gain at very high quotas, noting that sometimes its purpose is to obtain the power or other high social positions. In order for it to obtain the high profits, it tries to obtain absolute control over sever territories and internal and/or external markets of different products and services. In achieving these, it adapts to the concrete social-political and economic situation. Money laundering is being used in order to hide

⁵ See: Howard Abadinsky, *Organized crime*, First ed., Boston, Allyn and Bacon, INC, 1981, p. 7.

the existence, origin and nature of the illegally obtain resources assuring in such a way perfect conditions for the use of the money. It deals with illegal businesses, usually using of force, violence and intimidation, but is conducting legal businesses as well. It exponents are mingled within different state structures and authorities. It does not know borders and usually it holds an international character. It affects the country's economic, social and political life, through different illegal and forbidden methods and means. Corrupting state functionaries, judicial and political system officials and police structures is a permanent preoccupation of the organized crime.

2.2. Criminality and organized crime

Criminality can be defined in different ways, depending on the point of view of which is being looked at.

In a vaster notion, criminality represents the totality of criminal acts and facts committed within a certain period of time on a certain determined territory, being considered as "a particular case of social deviation, that encompasses the totality of acts that defy the established legal norms and violate the written codes (law) or unwritten ones (customs, public opinion's expectations, etc.) representing illegal manifestations and transgressions of the normative model of a certain society."⁶

Criminality represents that criminal segment that encompasses illegal activities, for which penal sanctions are foreseen, committed by individuals alone or relatively arbitrarily associated, throughout different methods and means, aiming diverse purposes.

The ("conventional"⁷) definition of criminality does not show the real danger it creates for the social danger degree towards the state and economic, social and political relations. In comparison with the former, organized crime does in a way contain these elements, not envisaged by criminality in the "traditional", conventional sense.

The difference between criminality and organized crime can be explained as follows: "Organized Crime includes that part of criminality that contains normative crimes under the hypothesis that it envisages the necessary requirements requested by law for its existence."⁸

As a conclusion, organized crime represents only that segment of general criminality, namely, the most aggressive and dangerous one.

2.3. Corruption and organized crime

As in the case of organized crime, corruption is part of those criminal phenomenon for which there is no agreement on its definition, notion and content. In the vaster context, under corruption can be understood "the abuse of public office for private gain"⁹. The Republic of Serbia Agency for Anti-corruption defines corruption as "the relation based on abusive use of political power, aka of its position, or social influence

⁶ Florin Daniel Cășuneanu, *Criminalitatea organizată în legislațiile penale europene*, București, Universul Juridic, 2013, p. 9.

⁷ Camil Tănăsescu, *Criminologie – Curs universitar*, București, Universul Juridic, 2012, p. 149.

⁸ Mićo Bošković, *Transnacionalni organizovani kriminalitet – oblici ispoljavanja i metodi suprostavljanja*, Beograd, Policijska akademija, 2003, p. 4.

⁹ Definition given by the World Bank, <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm>.

within the public and public sector, having as purpose the procurance of personal advantages or advantages for another.”¹⁰

Accordingly, corruption is an illegal and immoral phenomenon, committed out of greed, through abuse of the public function, position, influence or institutions, having as purpose the procurance of profit or of political, economic powers or the attainment of another interest. It represents an instrument for the achievement of certain objectives and as essence includes bribery, nepotism and abuse of power having as purpose the achievement of some personal interests.

Corrupting the public administration, politicians¹¹, police, judiciary or mass-media, represents a powerful “weapon” in the hands of organized crime. „Corruption is an instrument used by organized crime for its most efficient and profitable functioning.”¹²

The relation between organized crime and corruption is manifested by the use of different forms of corruption by the organized crimes heads, having as purpose to ascertain and maintain some relationships with the state authorities and other officials, and from the point of view of the bilateral relationship it is not important if these forms of corruption are seen as crimes.

Next to corruption that is usually used by bribing organized crime is using other methods as well, like extortion, blackmail, different services, prostitution and others. Through these, the group succeeds to attain political, economic and financial power and to insure adequate social positions, different benefits, concessions and protections for their illegal activities. In any case, the “classic” relationship of corruption between organized crime and the state representatives is the most enduring and efficient, because it’s based on common interests bringing in such a way high profits to both sides. This is one of the causes of the very high social danger of organized crime.

At first or on a short term, corruption represents expenses for the organized crime, but taking in consideration that, throughout corruption positions for the next illegal activities are being assured, and insure “immunity” from prosecution for the committed acts, the payed money for corruption represent a “good investment” for the organized crime.

From the above mentioned the following conclusions can be drawn. Corruption is the *modus operandi* of organized crime but not the form of organized crime, and as without corruption there is no organized crime, it can be ascertained that corruption is as well a *modus vivendi* specific for organized crime and it could be said that, crimes of corruption can take the form of organized crime when they are being committed by an organised criminal group.

2.4. Transnational (organized) crime and organized crime

Transnational crime is a criminological term under which several by national law envisaged crimes, can be included, that have a common attribute – they exceed the jurisdiction of a state.

¹⁰ Zakon o Agenciji za borbu protiv korupcije, „Sl. glasnik RS” no. 97/2008, 53/2010, 66/2011 – dec. Constitutional Court, 67/2013 – dec. Constitutional Court, 112/2013 – authentic interpretation and 8/2015 – dec. Constitutional Court, [art. 2, al. (1), pt. (1)].

¹¹ See: Viorel Pașca, *Political corruption and the funding of political parties*, in “Journal of Eastern-European Criminal Law”, Law Faculties of the West University of Timișoara and the University of Pécs, Edited by Universul Juridic Publishing House, 2014, p. 18-24.

¹² Darko Marinković, *Suzbijanje organizovanog kriminala – specijalne istražne metode*, Novi Sad, Prometej, 2010, p. 50.

The term of transnational crime is known within specialized literature for over three decades. It has been used for the first time by the U.N. Department for the prevention and combating criminality and penal justice, while preparing the 5th United Nations Congress in Geneva in 1975¹³, having as purpose to give an adequate notion to a form of criminality that trespasses national borders and threaten juridical systems of many countries.¹⁴

Actual organized criminality does not know borders, and criminal groups easily establish relationships in a country with other similar groups and associations from other countries, sometimes with country very far away, even on other continents.

This term was introduced because the association and criminal organization's and groups structures are not always at a homogeneity national level nor is their activity orientated towards the territory of their own country.

In conformity with the United Nations Convention against Transnational Organized Crime and the Protocols Thereto from Palermo 2000, transnational crime signifies a "(a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State."¹⁵

These are the characteristics of the transnational crimes. The followings need to be fulfilled, as well: it is necessary that antisocial behaviour is being envisaged by the national legislation as a crime (*nullum crimen sine lege nulla poena sine lege* principle), and on international level, that the activity is being considered as a criminal act by at least two states.¹⁶

In other words, the totality of criminal type acts that somehow intrude or defy the laws of several countries, are being considered transnational crimes. The transnational character can be achieved by all or almost all crimes, considering the circumstances within they were committed.

As such, transnational crime can be at the same time, but not always organized crime and vice versa. Transnational crimes can be, throughout its proprieties, organized crime and it could be said that it is a form of organized crime. On the other hand, organized crime is not by itself transnational crime. In case, organized crime extends over one territory, and obtains a transnational character the organized crime concept will "expend" and becomes *transnational organized crime*.

Easier said, the essential difference between organized crime and transnational organized crimes is being reflected by the fact that, in comparison with transnational organized crime, where some forms on trans-border activities of organised criminal groups represent a compulsory constituent element, for the existence of organized crime such acts with international character are just something that the organisation sometimes strives to. When this is achieved, organized crime becomes transnational organized crime.

¹³ UN Congress on the Prevention of Crime and the Treatment of Offenders.

¹⁴ See: Mueller Gerhard, *Transnational Crime: Definitions and Concept*, in Phil Williams, Dimitri Vlassis (eds.), "Combating Transnational Crime – Concept, Activities and Response", London – Portland, Franc Cass, 2001, p. 9.

¹⁵ United Nations Convention against Transnational Organized Crime and the Protocols Thereto from Palermo 2000, [art. 3, al. (2)].

¹⁶ See: Andre Bossard, *Transnational Crime and Criminal Law*, Chicago, Office of International Criminal Justice, 1990.

2.5. *International crimes and organized crime*

The term of international crimes is very often used as a synonym for transnational organized crime, but within criminal law and criminological signification, these two notions do not have the same meaning.

International crimes signify all those acts considered to be breaches of customary international criminal law or contract.

As such, under international crimes it's being understood those criminal activities that breach the common interest of several states or of the international community as such, but that is being fulfilled on the territory of several states.

The sources of international criminal law are those juridical international acts and national criminal laws that envisage international crimes. Their characteristic is based in the infringement or international regulations

The international crimes are those crimes of which the international community is especially interested in and theoretically, generally, are divided in international crimes in a restrictive sense and international crimes in a large sense.¹⁷

International crimes in the narrow way are composed of those acts that infringe war law norms and humanitarian law and these include crimes against peace, war crimes, crimes against humanity and genocide. The other group of international crimes concern acts that infringe norms of international law that the international community has the intention to incriminate and sanction throughout national criminal legislation, including but not restrictive to, illegal arms and drugs traffic, trafficking of persons, aggression, naval and airplane hijacking, assassinations, crimes against persons that have international protection, and others.¹⁸

In conclusion, all or almost all crimes could acquire a transnational character, while only some of them are envisaged (as well) by international law.

Taking in account that international crimes are committed under a joint enterprise or co-perpetration, acting in an organised manner under usually unique control and supervision, circumstances that make it similar to organized crime, but due to their international character it could be confused with the notion of (transnational) organized crime, with which it overlaps sometimes.

2.6. *Cross-border crimes and organized crime*

Even though in theory the notions of cross-border crimes and transnational crimes are sometimes used as synonyms¹⁹ there are certain differences between the two notions that separate them. The most significant differences are the qualifying elements of the terms.

When determining the concept of transnational criminality it has being stated that this represents the totality of transnational crimes. A transnational crime is committed as stated above when we discussed transnational criminality.²⁰ A such if a crime is not

¹⁷ The XIV Congress of the International Penal Law Association, Vienna 1989, accepted for the first time this systematisation.

¹⁸ See: Souheil El Zein, *What is international crime?*, in "Interpol: 75 years of international police cooperation", Lyon, Kensington Publications, Interpol, 1998, p. 27-30.

¹⁹ John McFarlane, *Transnational crime: corruption, crony capitalism and nepotism in the twenty-first century*, in Peter Larmour, Nick Wolanin (eds.), "Corruption and anti-corruption", Asia Pacific Press and the Australian Institute of Criminology, 1997.

²⁰ United Nations Convention against Transnational Organized Crime and the Protocols Thereto from Palermo 2000, [art. 3, alin. (2)]: "(a) It is committed in more than one State; (b) It is committed

committed in more than one state, for it to fall under transnational crimes it is required that a substantial part of the preparation, planning, supervision or control to take place in another state than where it was planned, prepared etc., or that in the commission of the crime an organised criminal group is engaged that is committing criminal activities in more than one state; respectively, the crime committed in one state to have substantial effects in another one.

None of the above mentioned is necessary for the existence of cross-border crimes. This latter notion, includes those crimes specific for the manner they are committed, like all those acts that have somehow an “affinity” with more states, but this “liaison” shall not attain the transnational criminality level

In case, a crime is not committed in more than one state, for it to be considered to be a cross-border crime it is sufficient that any part of the preparation, planning, supervision or control to take place in one state or that a crime committed in one state to have an effect in another.

It is absolutely sufficient for a crime to be considered a cross-border crime if, a foreigner commits a crime in one country or if the by the commission of the crime illegally obtained earnings or any object is being transferred over the border, or if the objects used for the commission of the crime are hidden abroad, or if finally after the commission of the crime the author runs and hides in another country.

More, it should be considered that the term “state” or “abroad” could be extended to a specific land/zone that does not fall under the sovereignty of any state, taking in account the fact that, for cross-border crimes only crossing the border is sufficient, meaning it is enough for the border of a state to be passed and it is not necessary that the frontier of another state to be passed and to enter in that state. Based on the above mentioned no parallel can be drawn between organized crime and cross-border crimes. Respectively, we consider that “organized cross-border criminality” cannot exist, and that, each organized crime act, that is being internationalized in any way is going to be considered to be a *transnational organized crime* or eventually an *act of international organized crime*. In other words, if a crime is committed by an organised criminal group, and if it contains all the necessary elements in order for it to be considered a crime that falls under organized criminality, it is going to be considered such a crime and not a cross-border crime. A crime belonging to the group of organized crimes/criminality is an act that belongs to the transnational organized crimes, or international crimes.

As a conclusion, “conventional crime” could, if certain conditions are fulfilled be considered cross-border crime, transnational or international crime, while organized crime can be transformed only in its two distinct forms – organized transnational crimes or organized international crimes.

2.7. Professional crime and organized crime

There is no easy way to draw a border between professional crime and organized crime. As the special literature underlines, the relation between these two types of criminality has changed in some historical periods, fact that complicates even more this distinction.²¹

in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State.”

²¹ See: Howard Abadinsky, *op. cit.*, p. 13.

In this case we are talking about a person usually commits crimes, a recidivist, with distinct preferences and whose developed habits are towards a certain type of crimes. His or hers criminal activity is of a continuous manner and is specialized in the commission of certain types of crimes.

Professional crime is a type of delinquency and typology of the criminogenic phenomena that deals with professional criminals. The professional criminal is a person for which committing crimes is the main activity, being his or hers main and predominant source of income.

As it is being asserted by s Dick Hobbs, most of the organized crime members belong to the professional criminal category that while committing certain crimes apply certain well established special abilities like any other “workers”²². As such Hobbs talks in the same time about professional crimes and organized crime.

Sue Titus Reid thinks in a similar manner, asserting that in many countries these two criminal types are synonyms and that organized crime is usually a professional crime.²³

As we already mentioned, the main objective of organized crime is obtaining income and that its exponents are continuously committing crimes in order to obtain capital, representing in fact their only and main source of income, and that their speciality is an important characteristic of this notion. Even so, even if these two types of crimes could be easily confused, there is one simple fact that needs to be taken in account – not all the members of criminogenic associations are professional criminals, as not all the professional criminals are part of a criminal organisation.

Certainly, some forms on professional crimes could be part of organized crimes.

2.8. “White collar” crimes and organized crime

Edwin H. Sutherland introduced the “white collar” crime notion in criminology in 1939, defining it as being “a crime committed by a person of respectability and high social status in the course of his occupation.”²⁴

Many criminologists have tried to define this term, but as in the case of the concept organized crime, there is no unanimously accepted universal definition. In this case, the following definition given by Herbert Edelhertz is being mostly applied – “an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage”.²⁵

The essential characteristics of this type of criminality are “the area in which it is being committed, (field of *business*, insurance, banking *etc.*), the criminal’s status (they belong to the highest social covers) and protection against criminal prosecution”²⁶. In conclusion we are talking about an economical segment of a criminogenic phenomenon, whose protagonists are authorised to carry out, control or to decide on the official

²² See: Dick Hobbs, *Professional and Organized Crime in Britain*, in Mike Maguire, Robert Morgan, Robert Reiner (eds.), “The Oxford Handbook of Criminology”, Oxford, Clarendon Press, 1994.

²³ See: Sue Titus Reid, *Crime and Criminology*, Holt, Rinehart and Winston, 1991, p. 393.

²⁴ Edwin H. Sutherland, *White Collar Crime: The Uncut Version*, New Haven, Yale University, Press, 1983, p. 7.

²⁵ Herbert Edelhertz, *The Nature, Impact, and Prosecution of White Collar Crime*, Washington, National Institute of Law Enforcement and Criminal Justice, U.S. Government Printing Office, 1970, p. 3.

²⁶ Đorđe Ignjatović, *Kriminologija*, Nomos, Beograd, 1996, p. 207.

operations of the business and/or financial operations within the organisations they are employed by. These illegal acts committed by the criminals while exercising their professions, without applying violence, mostly applying abuse of trust, having as purpose to obtain illegal material gains, power or privileged positions.

“White collar” criminality is a phenomenon spread within every society, its presence being actually vaster than it is being shown by statistics on detected and prosecuted (“the black number of criminality”). Because of their influence, prestige and social position, the criminals are most of the times “outside the coverage of law” and spared of criminal liability, fact totally unacceptable taking in account the by the commission of these crimes created enormous material damages to the citizens, society and state.

Crimes that fall under this criminal phenomenon are generally classified as: abuse of the detained function of those who make themselves responsible, unlawful competition, abuse of monopoly, misappropriation, falsifying and abuse of credit titles and other instruments of payment, fiscal evasion, simple or bankruptcy fraud, insurance fraud, public auction defalcation, false/ illegal procurance and abuse of credits and other benefits, different forms of corruption and others. As such, “white collar” criminality could be a form of organized crime.

As it can be observed, there are substantial similitudes and coincidences between “white collar” crimes and organized crimes, in such a way that even the “white collar” concept’s creator, Sutherland, considers that practically there is no difference between the two notions. Other theoreticians like, Mark Haller²⁷, Frank Schmallegger²⁸, or Larry Siegel, are joining Sutherland’s opinion, putting both types of crimes in the same group, considering that the unique difference between the two is that, in the case of “White collar” crimes the individuals and institutions are, initially, entering in this business having as primary purpose to obtain legal gains, while under organized crime it is being understood those illegal activities with the main and initial purpose has been the acquisition of material gains in an illegal manner.²⁹

On the other hand, there are authors that consider that we are talking about two different types of crimes. The essential base for their distinction is being found in the fact that, legally established companies do not use violence as a *modus operandi* in the procurement of the gains.³⁰

On the other hand, Hazel Croall considers that, for its maintenance, organized crime desires that through the illegal acts to create for itself sort of a cover for the illegal business and this is not the case only for “money laundering”. It is difficult in such cases to make a distinction between what is “above” and what is “underground”³¹ and because of this, most criminologists consider that theoretically and empirically it is very hard for a clear distinction to be established between organized crime and “white collar” crime.³²

²⁷ Mark Haller, *Illegal Enterprise: A Theoretical and Historical Interpretation*, in “Criminology”, vol. 28, Issue 2, 1990.

²⁸ Frank Schmallegger, *Criminology Today*, Englewood Cliffs, Prentice Hall, 1996, p. 338.

²⁹ See: Larry Siegel, *Criminology*, St. Paul, West Publishing Company, 1995, p. 351.

³⁰ See: Jay Livingston, *Crime and Criminology*, second ed., Upper Saddle River, Prentice Hall, 1996, p. 251.

³¹ See: Hazel Croall, *White Collar Crime: Criminal Justice and Criminology*, Buckingham, 1994, p. 16.

³² Nikos Passas, David Nelken, *The Thin Line between Legitimate and Criminal Enterprises: Subsidy Frauds in the European Community*, in “Crime, Law and Social Change”, vol. 19, Issue 3, Netherlands, Kluwer Academic Publishers, 1993.

We are agreeing with the authors that consider that organized crime and “white collar” crimes are two different aspects of criminality, but as well that is very difficult to make a clear and precise distinction between the two notions. In this way, we consider that, organized crime is a larger notion than the one of “white collar” crime and this is why, if, in a special case, the substantial elements of organized crime are fulfilled, the former could encompass the later. In other words, “white collar” crimes could, but not necessarily, be committed in such a manner to receive the characteristics of organized crime. In this sense, the two types of crimes could coexist, independently one of another but can as well be combined.

2.9. Crimes of abuse of power, political crimes and organized crime

The purpose of organized crime is not only to accumulate profit, but to obtain power in general.

For the existence of the crimes of abuse of power it is necessary that the person or persons hold a certain power or function within the system. Taking in account that holding these specific functions are the manner in which power is being assured, aka, institutional powers – their specific being reflected on the base of a relationship where one of the parts has the right to order the other, which is obliged to subordinate – it is justified to ask, which is the relationship between organized crime and political crimes, respectively crime of abuse of powers.

First of all, it must be accentuated on the fact that, the notion of *crimes of abuse of power* is not the same with that of *political crime*, as wrongly considered by many, but it could be treated as a special form of political crimes. *Political crime* and *crimes of abuse of power*, as a special form of the former, are different from other forms of crimes due to their active subject – the former can be committed only by those belonging to political and social dominant layers, respectively by those who hold political authority given by society.

In any case, between “classical” political crimes and abuse of power crimes there is a significant difference. The latter (as an organized crime) is a form of crimes against patrimony, in contrast with political crimes whose main purpose is not the procurance of profit.

Political crimes is established by those belonging to the high social class of a society that are using their political power in order to get rid of their political or ideological adversaries while through abuse of power crimes the criminals are abusing their powers for illegal gain of financial means. In our opinion, political crimes in their narrow notion, encompasses only those crimes committed by the political active officials, having as main purpose the achievement of political or ideological objectives and this, while recurring to violence. On the other hand, in comparison with those mentioned above, the political crimes in a larger sense include the crimes of abuse of power, exercised by the former’s representatives, through abuse of authorisation or other public authorisations, but only with the purpose in obtaining illegal revenues and without applying to violence.

Political crimes in a narrow sense can be classified in crimes committed out of political motives, like political assassinations, terrorism, sabotage, spying, while the notion in a larger sense, respectively crimes of abuse of power (and) activity related crimes, abuse of activities, abuse, crimes of corruption, and others.

It can be observed that, the crimes of abuse of powers and “white collar” crimes are practically identical. It can be said that, the crime of abuse of power is in fact “white

collar” crimes within state institutions. In other words, all we have discussed “white collar” crimes refers as well to the crime of abuse of power. The only difference between the two of them is that the former is being committed, said in a conditional manner, by business man, while the latter is being committed by the representatives of the public and state authorities. It must be underlined that, because of the above mentioned, the crime of abuse of power is a more dangerous and harmful crime than the one of “white collar”.

In any case, it is certain, that the crime of abuse of power through its nature is part of political crimes, and the reciprocal relation between organized crime and political crimes can be best explained through the notion of terrorism, as a typical form of political crimes.

2.10. Terrorism and organized crime

Not wanting to repeat ourselves, but unfortunately, there is no general consensus between the theoreticians neither on the term of terrorism.

For the present study the *United States Federal Birou of Investigations* definition is going to be applied that envisages that terrorism is „The unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”³³

So, in the most general sense, terrorism is a classical political crime, characterised through specific forms of political violence.

In many cases, public opinion but as well experts’ opinion talk about terrorism as being an organized crime, but this attitude is wrong.

Certainly these two types of crimes have some common characteristics. As such, neither of the two cannot be envisaged without the existence of the association in a group (there are rare cases where acts of terrorism are committed by persons acting individually). Similarly, their activities are resembling, because terrorists finance some specific criminal activities of the organized crime, as trafficking of drugs and human beings, money laundering, kidnappings etc. The used instruments – violence and threatening with violent acts, are of the essence of terrorism, but many times these are used by the organized crime exponents. Both types of organisations are aiming to perpetuate the existence of the organisation and to grow as much as possible its power.

Irrelevant of these resemblances and of the fact that lately organised criminal groups and terrorist groups are “getting together” more frequent, in order for their purposes to be achieved in an easier way, we are talking about two distinct and different types of crimes. Terrorism is a form of political crimes, while organized crime is a form of a patrimonial crime. Organized crimes usually, have no special ideology and their main purpose is the procurance of material gain and financial power. On the other hand, terrorism has a main characteristic the ideology and orientation that should bring to political changes or the realisation other ideological purposes (religious, extremists, fascists, etc.)

“For organized crimes, the crime represents the end of a criminal cycle that has as purpose the material gain, while for terrorist groups, the crime is a financing manner for the terrorist attacks.”³⁴

³³ FBI’s definition, <http://www.fbi.gov/stats-services/publications/terrorism-2002-2005>.

³⁴ Florin Daniel Cășuneanu, *op. cit.*, p. 120.

In other words, for terrorists, making profit is not their purpose but the manner in which they can realise it.

There are differences between the two terms as well from the *modus operandum* way. Both use violence but the level and importance is differently perceived. Criminal associations use violence as a way to obtain profit or to eliminate the competition, respectively as a mean to bend the police, prosecution or justice. On the other hand, the terrorist acts abound with violence of high intensity that is usually directed against completely innocent persons, having as final purpose the creation of panic, unsafe environment, state of terror, fear or collective horror.

And, here is where the answer hides why terrorism is not enclosed in the violent criminality but taking in account that applying violence and/or degradation of goods, on a higher measure in the case of terrorism it is the only mean that the ideological or political purposes are realized. As such, the above mentioned cannot lead to an integration.

Terrorist acts are usually being committed in public. Their purpose is for these to be observed by a high number of social and state subjects, as, as many persons have knowledge of their commission, as much panic and fear they produce, reaching the desired results. On the other hand, hiding their criminal activities is an essential characteristic of organized crim. The committed crimes are being hidden, and their purpose is for them to remain "in the shadow", away from the public's opinion eyes and those of the state authority.

REFERENCES:

- Abadinsky Howard, *Organized crime*, First ed., Boston, Allyn and Bacon, INC, 1981;
- Bossard Andre, *Transnational Crime and Criminal Law*, Chicago, Office of International Criminal Justice, 1990;
- Bošković Mićo, *Transnacionalni organizovani kriminalitet – oblici ispoljavanja i metodi suprostavljanja*, Beograd, Policijska akademija, 2003;
- Bošković Milo, Skakavac Zdravko, *Organizovani kriminalitet – Karakteristike i pojavni oblici*, Novi Sad, Fakultet za Pravne i Poslovne Studije i Prometej, 2009;
- Cășuneanu Florin Daniel, *Criminalitatea organizată în legislațiile penale europene*, București, Universul Juridic, 2013;
- Croall Hazel, *White Collar Crime: Criminal Justice and Criminology*, Buckingham, 1994;
- Edelhertz Herbert, *The Nature, Impact, and Prosecution of White Collar Crime*, Washington, National Institute of Law Enforcement and Criminal Justice, U.S. Government Printing Office, 1970;
- El Zein Souheil, *What is international crime?*, in "Interpol: 75 years of international police cooperation", Lyon, Kensington Publications, Interpol, 1998;
- Gerhard Mueller, *Transnational Crime: Definitions and Concept*, in Williams Phil, Vlassis Dimitri (eds.), "Combating Transnational Crime – Concept, Activities and Response", London – Portland, Franc Cass, 2001;
- Haller Mark, *Illegal Enterprise: A Theoretical and Historical Interpretation*, in "Criminology", vol. 28, Issue 2, 1990;
- Hobbs Dick, *Professional and Organized Crime in Britain*, in Maguire Mike, Morgan Robert, Reiner Robert (eds.), "The Oxford Handbook of Criminology", Oxford, Clarendon Press, 1994;
- Ignjatović Đorđe, *Kriminologija*, Nomos, Beograd, 1996;

Ignjatović Đorđe, *Organizovani kriminalitet – II deo – kriminološka analiza stanja u svetu*, Beograd, Policijska akademija, 1998;

Livingston Jay, *Crime and Criminology*, second ed., Upper Saddle River, Prentice Hall, 1996;

Marinković Darko, *Suzbijanje organizovanog kriminala – specijalne istražne metode*, Novi Sad, Prometej, 2010;

McFarlane John, *Transnational crime: corruption, crony capitalism and nepotism in the twenty-first century*, in Larmour Peter, Wolanln Nick (eds.), "Corruption and anti-corruption", Asia Pacific Press and the Australian Institute of Criminology, 1997;

Pașca Viorel, *Political corruption and the funding of political parties*, in "Journal of Eastern-European Criminal Law", Law Faculties of the West University of Timișoara and the University of Pécs, Edited by Universul Juridic Publishing House, 2014;

Passas Nikos, Nelken David, *The Thin Line between Legitimate and Criminal Enterprises: Subsidy Frauds in the European Community*, in "Crime, Law and Social Change", vol. 19, Issue 3, Netherlands, Kluwer Academic Publishers, 1993;

Reid Sue Titus, *Crime and Criminology*, Holt, Rinehart and Winston, 1991;

Schmallegger Frank, *Criminology Today*, Englewood Cliffs, Prentice Hall, 1996;

Siegel Larry, *Criminology*, St. Paul, West Publishing Company, 1995;

Sutherland H. Edwin, *White Collar Crime: The Uncut Version*, New Haven, Yale University, Press, 1983;

Škulić Milan, *Organizovani kriminalitet – pojam i krivičnoprocesni aspekti*, Beograd, Dosije, 2003;

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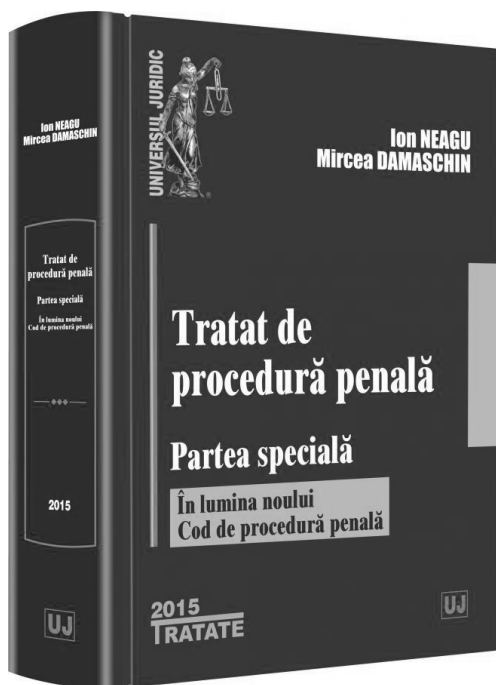
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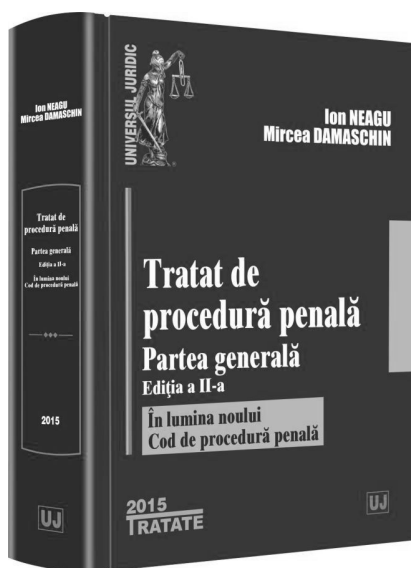
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