

Full Length Research Paper

The management of legal policy on the fight against the organized crime in Kosovo and Macedonia

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Abstract

Criminality is a very complex occurrence and very heterogeneous by its forms and the causes it is created. The criminal behaviors are numerous, and may attack many of the goods and society's relations. The organized crime is treated as the most dangerous and specific form of the criminality manifestation. Organized crime has its own features; as the involvement of the same persons for long periods of time in criminal activities, an organized structure where the power goes to the leader, has its own rules, order and discipline, responsibilities of the members, imposed solidarity, keeping the secrecy of the penal actions and the secrecy of the organization's existence, loyalty to the leader etc. The organized crime and all of its forms, nowadays represents a very serious problem in all the countries in the world, despite the level of the society and the economic situation of a country. Organized crime is a phenomenon which was created due to some economical, social, historical and traditional conditions.

Keywords: Criminality, organized crime, Macedonia economy, EU influences, traditional conditions, legal policy.

INTRODUCTION

Despite its international development organized crime has its own nuances and features according to the country, on which we can identify respectively the conditions of its creation and the possible relations with corruption. We can mention some of the identifying characteristics that also personalize it such as; the diffusion scale, the institutional organized fight by the state, tradition, forms and methods of this activity, and the ethical, moral and social attitude. A characteristic of the organized crime is the exploitation of all the possible opportunities, such as economical and political crisis and all sorts of situations, in favor of its development and diffusion. Under these conditions the ex-communist countries of Eastern Europe due to the political changes, became a very interesting target for the environments of the international crime, and there was no lack of attempts to turn these weak, unstable and unprepared to criminal aggression countries into

platforms of organized crime. Organized crime tries to spread its activity in some directions, for instance we can mention; on the economic direction, on money laundry, activates criminal elements in its behalf, monopolizes and puts under control the branches of the criminal activity such; as speed-boats, drug business, robbery etc., solves conflicts between different groups and individuals; gathers revenues from killings with payment or different forfeits that business pays, tries to infiltrate in the state bodies, in justice and police institutions, in order to realize some penal actions and in their defense they try to corrupt officials, create groups of people who protect their interests, try to corrupt the media and use it in their behalf.

Conceptual and juridical model, data and definitions

Organized crime is made from some individuals in an organized group which aims to commit penal actions these groups generally do not have same number of persons and have different ways of organization. We call

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Organized groups those who have committed penalties and plan to commit other ones in the future. Generally, the aforementioned groups focus their activity on exploitation of humans, traffic of narcotic substances and traffic of weapons. These individuals often keep in touch with officials from the local and central power because without their help they can't develop some illegal businesses. Regarding the guiltiness of the members of the criminal group, they will all be convicted for every single act made from the criminal group. The Court will decide the conviction based on the facts that show who was the leader of the group, who committed the act, who helped in the realization of the act and so on, so the Court will sentence the members of a group according to their participation.

LITERATURE REVIEW AND DATA GATHERING

On jurisprudence, the European Committee of Human Rights decided that, although the European Convention of Human Rights makes no reference to a penal liability of juridical persons, it is not incompatible with such a liability. Consequently, when a penal accusation against a juridical person exists, it has the guarantee of receiving an equitable trial, ensured by article 6 of the European Convention of Human Rights. (Benness 2009) This jurisprudence is in compliance with the orientation of the European doctrine, which estimates that art. 6 and 7 of the European Convention of Human Rights do protect both physical and juridical persons. The theory of modern penal law, has formulated and supports both the negative thesis, according to which juridical persons cannot have the quality of active subjects of the felony, and the affirmative thesis, which states that juridical persons can have the quality of active subjects of a felony. (Raducanu and Cercel, Cariova 2011)

The negative thesis, according to which juridical persons can not have the quality of active subjects of a felony, is based on the fiction theory, according to which juridical persons do not have an existence organization their own, and that they are creations of the law, thus they cannot commit felonies. (Raducanu and Cercel, Cariova 2011)

The main arguments of those who cannot conceive the penal liability of a juridical person are: - The juridical person can't think and have a will, so it cannot act differently from what the physical persons which make it up might think or want to do; penal liability concerns only the physical persons which constitute the juridical person; - It is inconceivable that a punishment could be inflicted upon a community when part of its members are innocent, because they didn't think of anything wrong, were not

consulted and took no part in committing the felony;

Which is a general concept of organized crime?

When it comes to criminal organized groups even the persons who support, or the ones who know about the group's existence, who accept their rules and agree to help the organization in a criminal act or ensure the necessary materials to commit a crime are sentenced by the Court. Also the attempts for committing a penal act are convicted, even if the attempt has failed and the act is not realized, even reaching in an agreement on doing a penal act is enough to get a conviction, which means that the other person who accepted and agreed to commit the act can be sentenced. Organized crime as a term was used for the first time in 1869 in the annual report of the Association for the Prevention of Crime in New-York. In this report this term was used to define prostitution and gambling, which were activities defended by public officials. While organized crime was sanctioned by law, more concretely in the federal statutes of America, for the first time in 1968. Afterwards other countries defined the concept of "organized crime". The penal code of Canada in 1989 defined the meaning of organized crime by involving as possible forms of it 24 sorts of crimes; the Italian Code (article. 416) defined organized crime as the Mafia.

HYPOTHESES OF THE PAPER RESEARCH

European Union and juridical structures under EU influences for East Countries

The European Union through the definition of organized groups tried to give the notion of organized crime. According to the common plans of the countries of the European Union, in 21 December in 1998, a criminal organization would be; the organization that has a structure made from two or more persons that is created to act during a certain period and that commits crimes that can be sentenced at least four years or more by the law. And this is how the Penal Codes of different countries gave the definition of "organized crime".

H1: The insufficient psycho-physical development of the minors, the lack of experience, the easier attraction to committing offenses due to the lack of maturity and of the incompletely formed personality, but also the increased reeducation possibility imposed a special regulation of the penal liability of the minors and their punishment, with the purpose to protect this category of people even in the hypothesis of offense committing and total recovery.

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Figure1. The indicators of modified the current Penal Code

Code of the Albanian Republic in 1995 (article 28) defines criminal organizations and the armed bands, but does not determine the notion “organized crime”. In 11.07.2002, the Albanian Assembly ratified the convention of the United Nations “Against the International Organized Crime” with the law no.8920 and with two additional protocols; the protocol “Against the Emigrants Traffic” and the “Prevention, prohibition and punishment of human traffic, especially women and children”. The Penal Code of Kosovo views and treats the criminal groups as a specific form of collaboration in the stipulations of the general part of this penal code and dedicates more stipulations in the specific parts that treat this notion.

The general part of Penal Code in Republic of Kosovo

These specific parts of the Penal Code of Kosovo defined some penal acts that can be committed from organized criminal groups. In the general part of this Penal Code, in the first paragraph of article 26, the notion of organized criminal groups is defined as below: The individuals that secretly or openly agree with another or more individuals to commit or to stimulate a penal act which is foreseen by the law as a penal act and is convicted with five or more years, and supports or participates is convicted by the article no. 62(2). Another important aspect is to determine the exact extent of liability for the juridical person.

H2: If it is considered that the educative measure is not enough for the minor's reforming, an imprisonment of fine penalty is applied but the special minimum and maximum limits are reduced to half, these becoming the legal limits of penalizing of the minors.

The minors' special status is also distinguished regarding the system of execution of the imprisonment penalty applied to the minor, which is executed separately from the full aged criminals, in special conditions, appropriate for the specific needs of education of this category of delinquents.

In Macedonia, Rumania, Kosovo, the legislation there are two systems for determining the area of felonies for

which juridical persons might also be held penal accountable. Initially, with the new Penal Code, a system was adopted, which implied that the legislator indicated, for every felony, the possibility of it being committed by the juridical person. In the case of most of the felonies mentioned in this Code, the penal liability of the juridical person existed. (figure 1)

Later, with the law that modified the current Penal Code and by which the institution of penal liability for the juridical person came into forces there was another system for determining the felonies committed by juridical persons. Thus, in compliance with current regulations, penal liability of collective entities is organized upon the principle of general liability; according to this system, juridical persons have a penal capacity similar to the one of physical persons, and are able to commit whatever felony, in the qualities of author, instigator or accomplice.

The system of general penal liability does not suffer from the deficiencies that the system of specialized liability for the juridical person had. The major default of this system was that it excluded from the sphere of penal liability for juridical persons the felonies that they could not commit as author. Consequently, felonies committed by the juridical person in the qualities of instigator or accomplice were not penal sanctioned.

METHODOLOGY AND QUESTIONER ANALYZE

Research Goal

The number of the incriminations of a criminal organization that are determined as specific penal acts or as severe forms of this acts is relatively high in the Penal Code of Kosovo. For instance we are mentioning some of them: organization, support and participation in terrorist groups (article 113); organizing a group for committing genocide, crimes against humanity and crimes of war (article 128); organizing individuals or participation in human traffic (article 139, paragraph 3); the unauthorized production and procession of narcotic and psychotropic substances from a member of a group (article 230,

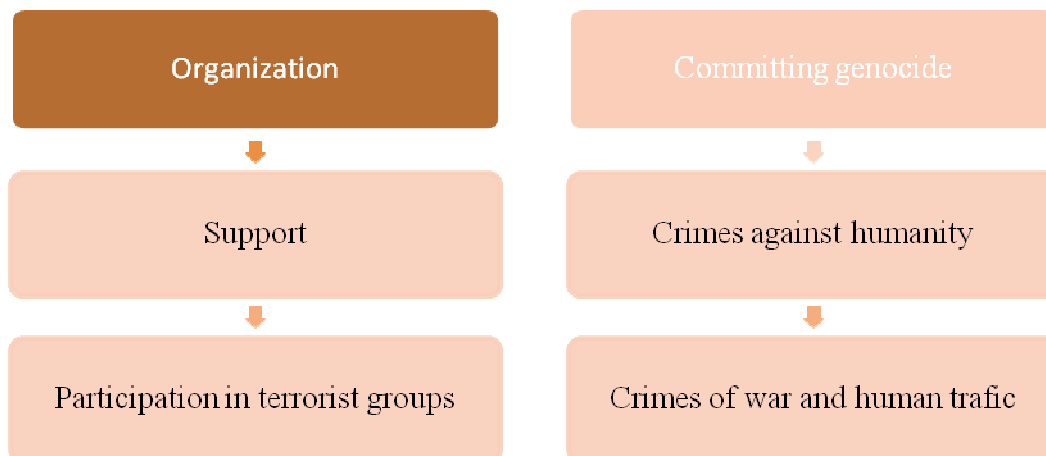


Figure 2. Diagram of the organization of pyramidal schemes and gambling (article 234).

paragraph 4, p.1); the organization of pyramidal schemes and gambling (article 234). (figure 2)

The Government of the Macedonian Republic showed special interest in fighting drugs, money laundry, human exploitation, corruption etc. In July 1996 this government brought a program against the misuse of drug commerce and from the same commission came out the incentive for the creation of a law for controlling the production, commerce and misusing drugs. In Macedonia until now, regarding the activity of organized crime were held international seminars, from which we can mention a seminar held in 1996 in collaboration with the European Council with the subject "The compatibility of rules affecting organized crime and juridical rules that regulate prosecution", held in Ohrid and the same year another seminar in Skopje with the subject "The juridical State and organized crime" in 14.06.1996.

ANALYSES AND RESULTS OF PAPER RESEARCH

At the beginning of 2005, in the framework of the Ministry of interior affairs was created the unit against organized crime. Afterwards, in the framework of the Public Prosecution of the Macedonian Republic was created another unit for the prosecution of the individuals who committed penal acts in the field of organized crime. Also, again in the framework of the law for the courts, some courts created special units who had the competence to judge the penal acts which came from the field of organized crime.

New concepts, not only juridical, but also those contributed by the sciences of sociology, psychology and, indeed penology, have been developed and must be taken into consideration in the elaboration of any criminal code which would be inspired by the principles of justice and liberty and by concern for the prevention and suppression of crime, for the welfare and, indeed, the

rehabilitation of the individual accused of crime.

The improvements in the penal code of the Macedonia Republic

Punishment cannot be avoided since it acts as a deterrent to crimes; as, indeed, it has been said, "one who witnesses the punishment of a wrong-doer will become prudent." It will serve as a lesson to prospective wrong-doers. In the Penal Code of the Macedonian Republic exist some articles that foresee punishment for those who are part of criminal organizations, those who support crimes (article 394), terrorist organization (article 394-a), hostile activities (article 416), organizing human traffic (article 418). There are some specific criminal acts that are foreseen in some articles; article (215) the organized network of drug dealers; article (277) organization of the network of sellers and intercessors for illegal commerce of works of art, article (278) organized groups of contrabands. In article (394), it is foreseen that the founder of a criminal group will be punished.

DEVELOPMENT OF HYPOTHESES

In article(394-a-) it is clearly expresses that the founder or creator of a terrorist group, band or organization who aims penal acts such as murders, kidnapping, damaging public objects like transporting vehicles, infrastructure or information systems, this article also foresees punishment for the individuals or groups who aim to steal airplanes, who produce, posses and sell nuclear weapons, biologic, chemical or any other sort of weapons and dangerous materials, also the distribution of radioactive materials, toxic substances, individuals that may cause fires or explosions, damage water-supplies, energy-supply or any other fundamental resources, and

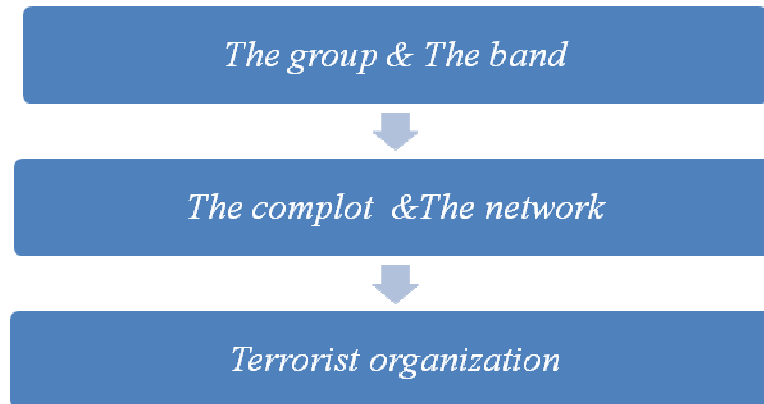


Figure 3. The professional activity plan and coordinate services hierarchy

aiming to frighten citizens and to put at risk the constitutional regulations of the country or the interests of international unions.

In the article (418; according to paragraph 1), of this article the individual who organizes a criminal group, band or organization aiming to commit penal acts will be convicted with at least eight years. These considerations apply with particular validity to penal legislation at a time when, throughout the world, the expanding frontiers of society brought about through the contributions of science, the complexities of modern life and consequent increase in the volume of laws require that effective, yet highly humane and liberal procedures be adopted to ensure that legislative prescriptions may have the efficacy intended for them as regulators of conduct. According to paragraph 2 of the same article, even the person who accepts to become member of one of the aforementioned groups is considered guilty.

Since this form of crime is very difficult to be detected from the prosecution bodies, paragraph 3 of the same article foresees that if one of the members of the group gives valid information about the other members and about the founders he may be released from the conviction. It is called organized crime because the professional delinquents during their activity plan and coordinate their acts in a specific way. In order to reach their targets they incorporate and exploit groups, associations and organizations funded before or new ones who's activity lays generally in making transactions which are not forbidden legally or formally and often this groups, associations and organizations are presented and registered respecting the law and confirm an activity that according to them it is being exercised. The law uses different terms regarding the criminal associations such as; complot, band, network, service. *The group*- is an association which aims to commit certain penal acts and divides the roles to its members. *The complot*- is a hidden association which aims to commit acts against the state. *The band*- is an association created to commit penal acts according to the place, manner and time which

is set by strong mobilizing reports that come from individuals on the top of the group hierarchy. *Terrorist organization*- it is an association made from militants, it is regulated from an interior hierarchy and a system of command and coordination, created to commit violent acts by spreading fear in a larger circle of people. *The network*- is an association which aims to commit certain acts according the rules and intensive official contacts. *Service*- it is a closed organization in the wide institutional mechanism of another state. (Figure 3)

MATERIAL AND METHODS

According to professor Latifi. V (*SEEU University*) the decisional action to undertake the fight against organized crime consists in destructing the financial potential and requires also an energetic and effective collaboration from all international countries. The instruments used nowadays in the direct fight against the criminal activities of these organizations are necessary and must be developed and enforced further. Even though until now an International Penal Code that would be recognized by all countries and that would oblige these countries to respect its stipulations and in the same time would serve as a model does not exist, we can say that there is no country in the world that does not classify the aforementioned acts as penal, there are some differences regarding the sentences and convictions regarding the maximum and minimum time for committing these acts, anyway it is clear that the penal sanctions against the delinquent changes from a country to another. It's been a while since the organization of the United Nations develops different project to make more sensible the states, for an international collaboration in fighting the traffic of narcotic substances, but this is still unnecessary because these incentives haven't led yet to the creation of an effective international collaboration network.

We must not forget that the criminal organizations do

not know frontiers and for sure act all over the world and every delay of the international collaboration in fighting and hitting these negatives occurrences goes to the criminal organization's favor. Committing this penal act with an international character from the minors as doers or simple as adjutants of their bosses is getting more and more dangerous this is why the international collaboration must be intensified further in all the possible aspects, such as; collaboration of the police institutions of different countries, the deliverance of sentenced and accused individuals, exchanging information about the penal acts, deliverance of documents, exchanging the experts opinions in given fields, deliverance of proofs and evidences of the sentenced individuals etc.

So, it is necessary that the countries treat more attentively the issues of organized crime in many aspects, like fighting the traffic of narcotic substances, trade of weapons, human traffic etc., aiming to prevent, detect and especially identify the individuals dedicated to this sort of activity, by sanctioning them and by confiscating all goods and wealth ensured from this illegal activity. A single country or some countries can't fight alone against organized crime, this fight requires more collaboration.

CONCLUSIONS AND RECOMMENDATIONS

Different policies against organized crime must be part of the engagement of all the societies and must aim the prevention and the control of this sort of crime. The penal legislations must involve the newest forms of organized crime from time to time, especially those related to human traffic and cyber crimes, because even though in our country they are not very developed, they remain very dangerous and harmful acts. Another important issue is the implementation of the penal legislation which has a major importance in the prevention and in an effective fight against the organized crime. We think that not only the penal legislation is important but also the legislation related to the economic and financial field have the same importance in hampering possible corruptive circles.

The improvement and progress of the legal infrastructure and the implementation of the principle of the legitimacy means independence of the forms of the state power and that there are no influences that come from outside. Reforms in justice, international collaboration, the role of the mass-media regarding the spread of information, the management of public finances have an important place and are presented as very also the behavior of the competent bodies regarding organized crime would help

undoubtedly in a more successful fight. Organized crime changes from other forms from the way it is committed and also from the number of the participants and members. The participants in these activities are well prepared, well equipped, and have a good and sometimes very good organized structure. A great contribution in preventing and fighting the organized crime would give also the continuous scientific approaches in different seminars, workshops, round tables etc.

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