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FIGHT AGAINST ORGANIZED CRIME IN BULGARIA. LEGAL PROBLEMS AND THE NEED TO IMPROVE THE INTERACTION BETWEEN LAW ENFORCEMENT AGENCIES

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Abstract: *The article examines the emergence and spread of the fight against organized crime in Bulgaria and the role of law enforcement agencies in tackling this problem. The author emphasizes the bodies that deal with the counteraction in the country as well. The paper analyses the international and national legal regulations of organized crime. Last but not least, the types of crimes qualified as organized crime are discussed.*

Keywords: organized crime, counteraction organized crime, law enforcement authorities, national security

1. Introduction

Organized crime has become one of the most dangerous factors in Bulgarian society. It causes enormous damage to the state and citizens. The organized criminal world influences all areas of public life, incl. and on political decision-making.

The concepts of organized crime originated in the last century, as the definitions differ from one researcher to another and have different elements and characteristics. The main debate in the United States and Europe is whether the definition of organized crime should gravitate around the activity and / or around the fact that it refers to a group of people involved in crime [1]. According to Paoli and Figno, it is either a provision of illegal services and goods, or a criminal organization understood as a significant enterprise engaged mainly in illegal activities, with a well-defined collective identity and distribution of tasks among its members[2]. From the mid-1970s, the second opinion became dominant. Thus, in modern legal science, organized crime is perceived as an organizational model through which illegal activity is carried out, and not as the illegal activity itself.

- According to Mancho Manev, organized crime is: "... a form of commercial activity carried out by illegal means, using threats and physical force, extortion, corruption, blackmail and other methods of coercion, as well as by attracting prohibited goods and services. ". According to another working concept, this is: "group crime, which is in symbiosis with the official authorities, has signs of a high degree of organization, professionalism and conspiracy and is carried out in order to get rich quick and easy, to acquire quick and easy money. [3]"
- VladkoIvanov defines cross-border organized crime as "any attempt or completed act to transfer persons and groups of persons, vehicles, aircraft or vessels, goods or services across the state border, laws and sites subject to border control in violation of the law of at least

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one of the countries of destination[4]"

- Nikola Filchev defines organized crime as: “a system of crimes that are committed mainly in the economy. The main purpose of this crime is to extract property benefits. Organized crime is carried out by sustainable criminal groups, united for long-term activity in the economy for profit, which are characterized by a hierarchical structure and distribution of functions between the participants. [5]"

- At the beginning of the XXI century, the most accepted definition is that of the UN Convention against Transnational Organized Crime / Palermo Convention / of November 15, 2000. According to Art. 2 of it, an organized criminal group means: “a structured group of three or more persons which exists for a certain period of time and acts in concert for the purpose of committing one or more serious crimes, for the purpose of obtaining, directly or indirectly, financial or other material benefit ” [6].

- Bulgarian criminal law goes beyond the requirements of the Convention. In Art. 93, item 20 of the Penal Code, the organized criminal group requires the participation of three or more persons in order to commit in a coordinated manner in the country or abroad any crimes punishable by more than three years of imprisonment[7]. Group members are not required to pursue property benefits, although in practice this is the most common case. Art. 321 of the Penal Code criminalize the formation, management, and membership in such an organized criminal group. A severely qualified composition of this crime is envisaged when the group is armed, created for selfish purposes or in order to commit certain crimes specifically specified in the Penal Code. Participation in an organized criminal group is a crime. If the person commits other crimes related to his membership in the group - murder, extortion, robbery, drug trafficking, he will be held accountable in the aggregate[8].

- According to the Palermo Convention on Organized Crime, we speak when there are the following intentional acts declared crimes:

• conspiracy to commit a serious crime, for the purpose of acquiring financial or other material benefits / regardless of whether directly or indirectly /, including action taken by one of the conspirators in fulfillment of the agreement or participation of an organized criminal group;

- \- conduct of a person who, knowing about the purpose and criminal nature of the activity of the organized criminal group or about the intention to commit crimes:

- a. takes part in the activity of the organized criminal group;

- b. takes part in other activities, realizing that this participation will contribute to the achievement of the criminal result.

- organizing, assisting, assisting, inciting to commit a serious crime, with the participation of an organized criminal group;

- transformation or transfer of property with the knowledge that it has been acquired in a criminal way, the purpose of which is to conceal or conceal the illegal origin of this property;

- concealment, concealment of the true origin, location, disposition, transfer, ownership or rights to property known to have been acquired through crime;

- acquisition, possession or use of property which at the time of receipt is known to have been acquired in a criminal manner;

- participation in the commission or attempt, aiding, abetting, facilitating and inciting to commit a crime mentioned above or these are acts of laundering the proceeds of crime;

- promising, offering or providing to an official, directly or through an intermediary, a benefit which is not due to him or such for another natural or legal person, the purpose of which is to act within the scope of the official duties of that person.

• the request or acceptance by the official, personally or through an intermediary of undue advantage for himself, a third natural person or a legal entity for the purpose of performing or refraining from performing actions within the scope of his official duties;

• the use of physical force, threats or coercion, as well as the promise, offer or provision of undue advantage for the purpose of giving false testimony or interfering in the giving of testimony, as well as providing evidence in criminal proceedings for organized crime;

• the use of physical force, threats or coercion in the performance of official duties by the judiciary or law enforcement authorities in connection with organized crime;

• a serious crime, transnational in nature and involving an organized criminal group. The crime is transnational when:

a. has been committed in more than one country;

b. is carried out in one country, but the preparation, management and control is carried out in another country;

c. when committed in one state, but with the participation of an organized criminal group which carries out criminal activity in more than one state;

d. when performed in one country but reproducing an effect in another country.

The Palermo Convention and the Palermo Protocol create certain obligations for the signatory countries:

1. criminalization of certain acts - participation in an organized criminal group, laundering of the proceeds of criminal activity, corruption, obstruction of justice;

2. confiscation of the benefits acquired through the crime;

3. protection of the participants in the criminal proceedings and prevention of the possibility of re-victimization of the victims;

4. strengthening the fight against corruption

Todor Kolarov's definition of cross-border crime is common to all others: “... cross-border crime is a structured association established over time, to more than two persons acting in concert to commit crimes in more than one country or in one country, but a substantial part of their preparation, planning, targeting or control takes place in another country or in one country, but includes an organized criminal group which has criminal activity in the territory of more than one State or in one State but has a substantial effect on another State, punishable by imprisonment or detention for a maximum period of at least four years us or a more severe punishment to acquire, directly or indirectly, a financial or other material benefit[9]. ”The sheer complexity of international crime and its sheer scale make it difficult to study. However, some of its generally valid characteristics can be deduced:

• Covers both the various forms of commercial activity and production;

• Information limitations about its manifestations;

• Comprehensive and flexible;

• Transnational;

• Sustainable;

• Adaptive;

• Organized/hierarchical and bureaucratized/;

• Plays a consolidating role between individual criminal organizations;

• Innovative, with a constant desire to improve;

• Systematic use of violence;

• Has the ability to influence political, administrative and judicial processes.

Usually researchers divide the crimes of organized crime into two groups - non-violent and forceful forms / methods and tactics /.

Non-violent forms are usually more common in world practice and are classified as:

1. Bypassing the law: finding "white spots"

in legal acts, through the perfect study of the relevant legislation; using lobbying to deliberately delay certain bills.

2. Corruption: (derived from the Latin verb: corrumpo - spoil, corrupt, bribe). In the most general sense, it is an abuse of public service for personal gain.

In a more specific sense - behavior of officials, through which they or their relatives benefit illegally and illegally by abusing the power entrusted to them.

3. Addiction: different types of addictions are used as a means of extortion, corruption of people with the corresponding selfish purpose and motivation. The types of dependencies can be grouped as:

- material dependence;
- alcohol dependence;
- Drug Addiction;
- sexual, perverted addiction.

The forms of force bring organized criminal organizations very close to extremist, terrorist groups. These are gross physical assaults on the individual, the majority of which are legally defined in all criminal justice systems. Among the force forms are:

- use of means of mass destruction;
- causing major accidents and catastrophes;
- flood and arson;
- taking hostages, etc. [10].

2. Forms of Organized Criminal Activity

Most forms of organized criminal activity are provided for in the Criminal Code of the Republic of Bulgaria. At the international level, however, these acts are yet to be declared crimes. This will lead to the creation of new international jurisdictions and will generally push forward the development of international criminal justice.

Organized crime is usually carried out in secret by a group of individuals in conspiratorial form. Therefore, the investigation must also be secret, appropriate to the nature and forms of the criminal activity under investigation. This means that when investigating the manifestations of organized crime to use technical means for personal control / eavesdropping, surveillance, etc./; to introduce secret agents in criminal groups; to facilitate the disclosure of bank secrecy; to provide incentive forms for informants; to improve the exchange of information between human rights agencies, etc.

2.1. Process related to fight against organized crime.

The processes related to the fight against organized crime have a direct impact on the prosecution, not so much in terms of its powers, but in terms of its internal structural organization. In the period 2002-2015, the prosecution underwent several successive transformations.

Since 2006, it has established specialized departments, whose role is to exercise guidance and supervision of legality in the work on files and pre-trial proceedings instituted for criminal acts committed by organized criminal groups. Until 2008, the criterion for determining the crimes for the investigation of which should be supervised is the legal qualification and gravity of the committed crime, and later the markers are the persons and the organized criminal groups. The second initiative taken by the prosecution, aimed at raising the effectiveness of its actions against organized crime is the introduction of the so-called special supervision. This is a form of enhanced prosecutorial oversight, which is exercised by supervising prosecutors (superiors) and administrative heads in order to increase the effectiveness of management and oversight for the successful completion and resolution of cases on the merits of cases of special public interest. This category also includes cases of organized crime (contract killings, especially serious crimes against the person, customs smuggling, illegal human trafficking, drugs, etc.). The latest change is related to the establishment in 2009 of specialized interdepartmental teams between the prosecutor's office, the

Ministry of Interior and the State Agency for National Security to investigate organized crime cases. This step is described as entirely positive and to some extent makes the smooth transition to the constitution in 2012 of a specialized prosecutor's office for organized crime cases.

The specialized unit in the Ministry of Interior for the fight against organized crime is one of the oldest specialized institutions for the investigation of this type of crime, and since 1991, when it arose, it has undergone a number of changes, both in terms of its name and his subordination and main tasks. It emerged as an information structure, but in 1997 it also acquired investigative powers. Over the years, the place of office has often changed, with changes showing a link between them and the change of political majorities. However, in the process of all these amendments, one key institutional issue is not clarified, namely what service the CDCOC should actually be and of what nature. The frequent institutional change testifies to the lack of a concretized vision for its institutional building.

In its infancy, it seems conceived as a special operational service to work on complex cases in close cooperation with other investigative and intelligence structures. Whether the lack of strategy or deliberate political action makes it duplicate other structures. Unclearly formulated goals and constant institutional turmoil inevitably affect its effectiveness.

Two other specialized institutions that emerged in response to the expectations for more effectiveness in the fight against organized crime are the State Agency for National Security (SANS) and the Center for Prevention and Counteraction to Corruption and Organized Crime (CPPCOP).

SANS was considered because in the process of its establishment in 2007 it was presented to the Bulgarian and European public as the institutional response to the inefficiency in dealing with organized crime. It was created as a mechanical sum of three previously existing institutions - NSS (which for this purpose was removed from the Ministry of Interior), military counterintelligence and financial intelligence. As a result of the lack of a pre-developed strategy and meaningful debate, the reasons for its emergence are much more focused on the political aspects than on the institutional ones. Its emergence is interpreted as a means of seizing power from one institution and superimposing it on another as a result of internal political contradictions.

In the period 2008-2014 it underwent several successive transformations. Organized crime is sometimes introduced (2008-2009 and 2013-2014), sometimes removed from its functional mandate (2009-2013 and after 2014). It was initially set up as a combination of counterintelligence and investigative powers, which hybridized its institutional image and hampered the effectiveness of its actions. Subsequently (in 2009), it became a strictly counterintelligence agency, while with the change of political majority in 2013 year, the investigative functions are returned to her (DGCOC merges with SANS).

The dual image of the agency (in periods when it combines both intelligence and investigative powers) is a significant obstacle to achieving visible results. Hybridity does not allow to identify a clear goal, and with vaguely formulated goals, it is difficult to specify the functions of the structure. In this sense, the transformation of the agency in 2014 so far in a strictly counterintelligence institution is a positive step. It remains logically unclear and insufficiently substantiated why in certain periods organized crime enters the mandate of the agency. However, frequent restructuring is a process that negatively affects the institution building of the agency. It is forced to fall into a constant process of functional adaptation, which

creates an intense internal institutional clash, which affects several dimensions simultaneously - not only on the agency itself, but also on the other institutions with which it interacts.
CCPPOP emerged in 2010 with a decree of the Council of Ministers, because of the adopted in 2009 and 2010 Integrated Strategy for Combating Organized Crime and Corruption and Action Plan for Prevention and Counteraction of Organized Crime. Its establishment as an analytical structure with preventive powers was assessed positively, because in recent years the policies for counteracting organized crime have been mainly repressive. When Bulgarian authorities use direct institutional transfer - the centre was founded on the idea of a German expert (in the Rules of Procedure of the Center it is stated that it applies the Comprehensive Model for Combating Corruption and Organized Crime "BORCOR"). This is seen as a risk of a clash between formal rules and institutional culture. The weakness is the lack of a solid legal basis (built based on the Council of Ministers), as well as a mechanism and sufficient guarantees to ensure the effective use of the specific results of the Centre's activities. Despite the existence of a previously adopted strategy, the need for this structure has remained unproven. Although its functions are clearly defined, public expectations for its work are contradictory, and there is a critical attitude of the media towards it. Its difficult pace, the lack of concrete results in the field in which it intervenesare the reasons for its creation to be reconsidered. All these facts affect the achievement of an effective result. At the moment, the centre is merging into KPKONPI.

3. Concept of organized crime

The concept of organized crime has the power to provoke different types of research, to fill the media space, to be the focus of state strategic and political programs. But it is also able to do things that are even more important for public administration, namely, to justify the formulation of a certain type of policy. In this sense, organized crime has become both an extremely influential functional phenomenon and a concept. It is a kind of powerful political formula for implementing legislative and institutional policies.
Against the background of this finding and in summary of what is stated in the report, the following several conclusions can be made.
First, the attempt to clarify the nature of organized crime as a phenomenon leads us to its complexity, as a result of which we are faced with significant conceptual ambiguity. Organized crime is the subject of an endless quest to find a precise and universal definition, which is why many different definitions emerge in the legislative and academic space. However, it turns out that this drive for universality is rather an obstruction and prevents the authorities from finding the most adequate tools to counter this phenomenon. This is because any definition of organized crime should be considered contextually, following those historical and cultural features that each country considers most specific. The complexity of the problem stems from the fact that, on the one hand, we are faced with a concept on which different meanings are superimposed, and on the other hand, there is a need to bring the phenomenon into specific legal frameworks. It is this clash that is the reason for the emergence of a critical attitude towards it and the attempts to replace this concept with more appropriate and facilitating definitions of the actions of the authorities.
Second, there is a lack of sufficient connection between the concept of organized crime and the formulation of a certain type of policy. In the period from 2002-2015 in Bulgaria there are six specialized institutions for combating organized crime, five of which emerged in

the period 2008-2012. A key feature of these institutional policies is that they are predominantly punitive and rarely emphasize preventive elements. The importance of the phenomenon of organized crime is evident in the process of building state policies in Bulgaria - in an effort to help solve the problem of this type of crime, the Bulgarian legislator resorted to intensive institutional creativity, creating more and more new institutions. Building a completely new structure seems a priori an attractive idea. However, the practice shows that the conceptual deficits and the insufficient clarification of the specific characteristics of the organized crime at the state level in our country directly reflect on the institutional image of these newly established institutions.

The existence of this ambiguity limits the actions of the three authorities. The weakness of policies is that they are sometimes implemented in the absence of a pre-established general vision and institutional concept.

Third, the EC is a key factor in determining the institutional picture of combating organized crime in Bulgaria. Most of the institutions that have emerged in the legal space in our country are a consequence of recommendations from the monitoring reports and are in response to their criticism. As a result, however, the institutional change takes place "piecemeal" and does not follow a pre-defined general conceptual line, thus not considering the long-term effect of their adoption.

Often, in the rush to register progress, the phase of clarifying the main and specific problems that institutional changes need to address is missed. In some cases, the identified deficits are also quite contradictory. This fact is also the reason for the insufficient effectiveness of the implemented institutional policies. Fourth, there is a lack of consistency in institutional change. On the one hand, we are facing an extremely frequent change of institutional design, but on the other hand, this process does not follow a constant logic and vision. Is there is an excessive institutional inconsistency, which reflects on the effective functioning of the respective institutions.

Fifth, because of the above, the frequent institutional change does not allow specifying and outlining the goals and functions of the respective institutions. Duplication of powers and not very good interaction between these structures are often observed. This is a prerequisite for the inefficiency in the application of their powers.

Sixth, the notion of organized crime has a direct influence on the determination of the subject competence of the surveyed institutions. The legislator's approach to the individual structures is different. In some cases, a broader understanding of organized crime is used to define areas of action.

More common is the practice according to which the mandate of the institutions is defined through the narrow vision of an organized criminal group. The legislator's approach is understandable, if it is a generally accepted and functional criterion for allocating cases to specialized institutions. As a result, however, they acquire wide-ranging substantive competence, which forces them to deal with a larger volume of cases and cannot concentrate their actions on more significant cases.

Seventh, from the point of view of historical development, and if we use as criteria for effectiveness the process of constituting specific institutional mechanisms for combating organized crime, we should assume that the assessment of the effectiveness of national policies is rather positive.

4. Conclusions

The analysis of the statistics provided in the annual reports of the specialized institutions for combating organized crime also shows a positive trend - the number of identified organized criminal groups is increasing, the number of charges in organized crime cases is increasing, the number of convictions is also higher, the number of confiscated criminal property has increased in recent years. Here again, however, we need to make a connection between the phenomenon of organized crime, its normative definitions, and the impact they have on the effectiveness of institutional policies. Due to the presence in the legal world of the concept of OCG, the institutions are forced to use in the presentation of the results of their activities mainly quantitative criteria, affecting different in scope and activity OCG. And as I noted, it is good to have a clearer focus on the serious crimes typical of Bulgaria, undermining the principles of statehood itself. In this sense, the qualitative criteria for considering the effectiveness of policies in the fight against organized crime are also important. However, there are none, and this casts doubt on the above conclusion based on quantitative criteria that policy effectiveness is increasing.

Insufficient conceptual definition of organized crime raises the sociological question of how, in the light of this vague content, institutional reality can function effectively, i.e. the question arises as to how organized crime should be thought and perceived so as to support the adequate formulation of institutional policies. If we try to find a definition of organized crime corresponding to the Bulgarian reality, we run the risk of falling into the vicious circle in which, finding it, we will enrich the academic community with another definition of this phenomenon. At some point, it may turn out that it also contains deficits and the need to rethink it will arise again.

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