

# DEFINITION OF ORGANIZED CRIME - DIFFERENT DEFINITIONS OF A PHENOMENON

**Driton Muharremi**

*Faculty of Law, AAB University in Pristina, Pristina, Serbia,  
e-mail: driton\_muharemi@hotmail.com*

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**Abstract:** *The concept of organized crime is one of the concepts in security and criminal sciences that causes numerous doubts and disputes. It is obvious that scientists can agree only that the term is composed of two words and that it comes from the English-speaking world. Scientific research papers often emphasize the lack of generally accepted definition which is absolutely necessary. However, through a more complete analysis of the definition of this term in national legislation and the scientific literature it can be noted that there are only two different variations of the basic concept and the main task in this regard is the creation of a conceptual framework that should represent an adequate basis for the establishment of an appropriate legal basis for combating this phenomenon. In this paper the author considers the basic questions about what should be considered under the concept of organized crime as well as the importance of proper and complete defining of the term.*

**Keywords:** *organization, operation, organized crime, criminal policy*

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## 1. INTRODUCTION

Basically organized crime covers a wide range of criminal activity and involves criminal behavior inherent to organizations that are today more sophisticated, primarily due to the use of new technologies that allow them to jeopardize the safety of people more easily, to penetrate into different layers of civil society and cause violence, fear and injustice. The complex nature of the political, economic and technological relations in the modern age contributes greatly to the proliferation of organized crime. However, despite the different approaches to the definition of organized crime, there has been reached a consensus on the primary elements such as: the existence of a permanent criminal organization, rational criminal operation, profit making as the ultimate goal of criminal activities and the use of force or threats and resorting to corruption in order to realize the goals and preserve immunity from law enforcement. (Albanese, 2000, p. 413)

With the development of information technology, many types of crime have been im-

proved because modern information and telecommunication technologies are increasingly used both in crime and in establishing connections and mutual communication between members of criminal groups. Bearing in mind the rapid development of technology and information systems, as well as the development of transport, there is undoubtedly a risk of spreading various forms of safety disturbance, primarily organized crime, given the huge financial power and organizational structure which is at the disposal of certain criminal organizations. In other words, the circle of activities that can be classified as organized crime has greatly expanded and gained new dimensions in the modern age.

**Table 1:** Manifestations of certain forms of traditional and modern organized crime (Albanese, 2004, p. 10)

<b>Traditional model</b>	<b>Modern model</b>
Local gambling, heroin or cocaine trafficking	Gambling over the Internet (international web sites), synthetic drugs (eg. Ecstasy)
Street prostitution	Prostitution and human trafficking organized via the Internet
Racketeering and usury	Extortion of big businessmen, corruption and kidnapping of high-ranking executives
Storage of stolen goods	Theft of software intellectual property, CD-s, DVD-s

## 2. THE NEED FOR A PROPER DETERMINATION OF ORGANIZED CRIME

Definition of the concept of organized crime is necessary, among other things, because we need to optimize the performance of state bodies in the implementation of repressive measures against organized crime. The definition of organized crime at the national level is necessary because of the following reasons:

- Demarcation of responsibilities of individual government bodies in combating organized crime,
- precise definition of limits, scope and depth of the intervention of the state authorities in the fundamental rights and freedoms of citizens, when it is precisely the existence of organized crime that is a prerequisite for penetration into the protected area of fundamental rights and freedoms of citizens,
- simplified police identification of different forms of criminal activities by the leaders of organized crime,
- clear and unambiguous communication and mutual understanding of the various services and other bodies of executive power and bodies of criminal prosecution, but it is also necessary in devising an effective strategy in the fight against organized crime,
- making of the informed assessment on the state, development and scope of organized crime, as well as enabling the use of the advantages of collecting and process-

ing data on holders of organized crime at national level in accordance with its legal authority,

- fulfillment of the obligations of the international exchange of information and knowledge on the state of organized crime (Sačić, 2001, p. 12).

From the beginning organized crime is taking place from “behind the screen” (it is invisible but present, endangering and threatening), and this used to create ambiguities and contradictions regarding the phenomenon of these activities. Therefore, in recent years in many national and international conferences dedicated to organized crime there have been discussions on its content, operation methods and goals, as well as the forms of cooperation, strategy and methods of opposition. Activities of organized crime are characterized by systematic, planned and long-term crime. In this context, organized crime acts as a long-term endeavor that is rationally performed in order to create profits, as well as the various criminal activities that seek to provide charities and services for which there is great demand of the public, but they are illegal in character. (Albanese, 2004, pp. 4-5)

### 3. VARIOUS DEFINITIONS OF ONE PHENOMENON

A more complete definition of organized crime defines this phenomenon as a non-ideological association of a number of persons, who among themselves realize very close social interactions, organized on a hierarchical basis of at least three levels (rangs), in order to ensure profits and power, thanks to the participation in illegal and legal activities. The position in the hierarchy and position of functional specialization must be transferred (undertaken) on the basis of kinship or friendship or rationally transferred (checked) according to the skills of the one to whom a certain position is given. Continuity of membership is implicate, and members strive to preserve the integrity of their organization and activities in accordance with the objectives of the organization. Competition is avoided and they seek to achieve total control in certain illegal activities and in a certain area. The organization is willing to use violence or bribery to achieve the set goals. Violence is also used in order to ensure the discipline of members of criminal organizations. Membership is restrictive in character, although some members may be involved in activities in exceptional situations. There are explicit rules, either verbal or written whose application is provided by specific threat of sanctions, including murder. (Abadinsky, 1990, pp. 1-6)

Although there are many definitions of this phenomenon, we can see two approaches. The first approach, which is more comprehensive, equates organized crime with any form of organization in the commission of crimes in order to obtain illegal profit. The second approach sets this concept in a much narrower way because its proponents, apart from organizational elements, consider that organized crime must include the characteristics of a criminal organization, its structure and functioning. This is at the same time a narrower approach because the concept of organized crime in addition to the organizational elements needs to include some other aggravating circumstances. (Marinković, 2010, p. 19) Based on the synthesis of definitions of this term, organized crime is defined as “a permanent criminal enterprise that is rationally implemented in order to make profits in an illegal manner and to meet certain needs of society (prostitution, gambling, usury, etc.), and the continuity of its operation is realized through the use of force, threats, control of monopolies and (or) the corruption of public officials.” (Albanese, 2004, vol 6, No.1, p. 10)

However, there is still no uniform and widely accepted definition of the concept of organized crime. To this view probably contributes the fact that organized crime is not manifested in all countries in the same form and with the same intensity, but they are adequate for existing social relations and favorable conditions for the respective types of criminal activity. In this sense, it is often that under the same concept we classify organized criminal groups, organized criminal associations, all the way to the classical mafia. On the other hand, there are no identical positions among the authors on the necessary connection between such forms of group criminal activities of a criminal organization with the state and its organs. The analysis of definitions that have been used recently by various theorists helped us identify eleven of the most important characteristics of organized crime.

**Table 2:** Basic characteristics of organized crime (Albanese, 2004, vol 6, No.1, p. 9)

CHARACTERISTICS	No of authors
Stable hierarchical arrangement	16
Profit-making criminal activity	13
The use of force or threat	12
Using corruption to gain immunity	11
Illegal satisfaction of the specific needs of the society (eg, gambling, usury, prostitution)	7
Monopoly on certain "markets"	6
Limited membership	4
Failure to belong ideologically	4
Specialization	3
Secrecy code (code of silence-omerta)	3
Overall planning	2

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At the level of the European Union, organized crime is defined in a different way by using mandatory and optional criteria. Thus, the mandatory criteria are: cooperation of at least three persons, the cooperation of these persons for a longer period of time or within a certain duration, serious forms of criminality and the realization of profit and (or) power as the objective of the joint criminal activity. The optional criteria are: specific tasks or roles of each member of a criminal association, the existence of some form of internal discipline and control, use of force or other suitable means for intimidation of others, influence on politics, the media, public administration and law enforcement agencies, the use of commercial or business structure, involvement in money laundering and operation at the international level. When we speak about a particular case of organized crime, then it is about identifying at least six of the listed criteria, and it must be the mandatory criteria. (Council of the EU, Act 6204/2/97)

#### **4. ORGANIZATION OR ACTIVITY AS A DILEMMA**

Starting from the fact that the proper definition of organized crime contributes significantly in real terms and facilitates its prevention and suppression, almost all modern states are making efforts to define this phenomenon as precisely as possible, with the aim of identifying a series of concrete legal solutions that would prevent and combat it in a more efficient way. This equally applies to countries that are in the political and economic transition, i.e. countries where organized crime has a tendency to increase, but also to countries with a long and stable democracy based on the rule of law.

Among the determinations that contribute to the confusion on the conceptual plan a special place is held by the fact that the concept of organized crime is given at least two different meanings.

- the meaning that in the center of the study puts a group of people who are taking criminal activities and, in order to achieve their goals, they establish an appropriate organization which relies on a network of relations based on subordination and hierarchy,
- the meaning according to which the key to understanding organized crime is not the answer to the question “when?” but “what?” - activities that may be considered organized crime (Ignjatović, 2016, p.17).

**Table 3:** The definition of organized crime in the legislation of certain countries

STATE	who ? (ORGANIZATION)	what? (activity)
Bosnia and Herzegovina (Criminal Code 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06 i 55/06)	organized group of at least three persons, existing for a certain period of time	operation with the aim of committing one or more criminal offenses for which the law provides punishment of imprisonment of three years or more
Macedonia (Criminal Code 37/96, 80/99, 4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09, 51/11, 135/11, 185/2011, 142/2012, 166/2012, 55/2013,122)	organized group of at least three persons, existing for a certain period of time	the realization of direct or indirect financial or other material benefits, as well as other crimes that carry a prison sentence of at least four years
Turkey (Criminal Code of the Republic of Turkey, article 220)	organized group of at least three persons, existing for a certain period of time	illegal use, production and trafficking of drugs, psychotropic substances and substances necessary for their manufacture, smuggling of weapons, ammunition, nuclear and radioactive material, cultural and natural resources, migrants and trafficking of organs and tissues, forgery, fraud, money laundering, corruption and high-tech crime

From a historical point in Europe the observed dilemma did not exist until the end of the last century, because the key to what organized crime was in response to the question “what”. The exception is the Italian legislation which places the emphasis onto the reply to the question of “who” which can be justified by the fact that in Italian society existed various criminal groups that have had centuries-long roots, and whose function is, among other things labeled by killings of government officials. The provisions of the Italian legislation had an impact on legislation of other countries which has resulted in the abandonment of the concept of activity and move on to the concept of organization. On the other hand the introduction of the use of the terms “international”, “cross-border”, “multi-national” and “transnational” organized crime, has further aggravated the quest (wandering) in finding an adequate definition of the phenomenon. Besides this, the United Nations have played an important role in the search for an adequate

concept of the term organized crime. For example, at an international conference in Palermo there was adopted the UN Convention against Transnational Organized Crime, which included organized crime as a structured group of three or more persons acting members in the extended period of time with the aim of committing one or more serious crimes for the sake of profit. However, this approach only further complicated an adequate definition of organized crime, as it led to the conclusion that all forms of organized crime may be considered as transnational, which is in fact misleading because a significant volume of organized criminal activity has no transnational character and must not be forgotten during the determination of the phenomenon. All the above primarily confirms that organized crime exists as one of the most dangerous forms of threats of modern society. Nevertheless, in order to undertake activities that will mitigate the risk of its actions, it is extremely important that we have a clear idea of what exactly can be characterized as organized crime or in other words to resolve the above dilemma of “who” or “what”. However, this should not be a dilemma because when it comes to organized crime we should focus primarily on activity. Activities of organized crime is also a factor linking the members of the criminal organization and defines the time period of their operation. Otherwise criminal organization has no purpose of its existence and operation.

## 5. CONCLUSION

Based on the foregoing, we can give a final assessment which would state that there should not be any dilemma regarding organized crime and that there is a realistic basis for a unified approach to the definition of this phenomenon. In other words, the dilemma between the organization and the activity is unfounded and has no basis in practical purposes. Specifically, a qualified criminal organization exists to commit serious crimes, and the ultimate reason is undertaking of criminal activity in order to gain profit. In this way, it is clearly and unequivocally shown that profit is the key element for the existence of a criminal organization and also the dividing line between organized crime (property crimes) and terrorism as a political crime. The facts set out in this paper clearly and unequivocally indicate that in the definition of organized crime the only justified approach is the one based on the ways of exercising criminal activity. A different approach that focuses on the activities of a criminal organization blurs activities of a qualified organization as well as the consequences of such action. Such an approach, according to which “people are more important people than their activities” has, among other things, consequences on the criminal policy, which are manifested in changes of legal provisions as well as the structure and functioning of institutions in charge of countering organized crime. When comparing certain legal provisions of organized crime in national legislation, there is no dilemma. Preference is given to criminal activities, and in this part the differences are negligible and apply only in a different approach to this definition.

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