

Resilience of Criminal Organizations

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ABSTRACT: The evolution of organized crime presents one of the most serious threats to the security of the European Union. These became extremely professional and having a transnational character was necessary to stabilize a strategy in combating it. Strengthen law enforcement and judicial cooperation in the fight against criminal structures, with a view to eliminating as far as possible the proceeds of crime, which are the main force of criminal organizations and the response to criminal offenses to modern technological developments. The resilience of criminal organizations, as well as their ability to adapt make them have a certain longevity and gain high profits from criminal activities.

KEY WORDS: resilience, criminal organizations, plurality of criminals, European Union, translational organizations

Elements of criminal organizations

In Romanian criminal law, crimes are committed by a perpetrator or a plurality of offenders, respecting the principle of legality of incrimination in the sense that the crime is the only basis for criminal liability.

From the point of view of the plurality of offenders, we can have a natural plurality, a constituted plurality or an occasional plurality, also called criminal participation.

The perpetrators of a criminal act are those who directly commit the act, the same legal provision referring to co-perpetrators, and in the case of criminal participation we can also have instigators, who intentionally cause another person to commit a criminal act or accomplices who also intentionally facilitate or assist in any way in committing a criminal act.

The natural plurality of offenders is when those crimes can be committed only by the minimum contribution of two individuals. The occasional *plurality* of perpetrators or criminal participation is when a larger number of people participate in the commission of the deed than is necessary for its commission.

The *constituted* plurality represents the form of the plurality of offenders and is done by associating or grouping several persons to commit crimes. In the Romanian Criminal Code (OG 2009, I, no. 510) they are regulated in art. 367 regarding the establishment of an organized criminal group, art. 309 regarding the establishment of illegal information structures and art. 35 para. (1) of Law no. 535/2004 (OG 2004, I, no. 1161) on combating terrorism - *the act of associating or initiating the establishment of an association for the purpose of committing acts of terrorism or the accession or support, in any form, of such an association.*

For these forms of plurality, there must be a group of several people, being structured and acting in a coordinated manner over a period of time in order to commit crimes. From the point of view of the plurality of criminals, we should first refer to how a criminal organization is defined. The concept of "organization" in contemporary sociology was defined by Robert Faris in the Dictionary of Social Science (Gould and Kolb 1964, 661) where it is shown that a "*social organization*" is a stable set of social interrelationships between components (people or groups), which results in characteristics that are not found in this element and generates a *sui generis* entity.

It is known that criminal organizations are a special form of organized crime and have certain specific criteria such as:

- Have illicit purposes, in the sense that they are constituted in order to obtain benefits from the commission of crimes motivated by economic, social, ethnic, religious or political considerations;
- The cohesion of the criminal organization depends on compliance with the provisions which led to its establishment;
- Communication within the criminal organization depending on its closed, open or semi-open nature. Given the structure and hierarchy within a criminal organization, communication relationships are made according to the roles of each perpetrator in the organization, whether this communication is verbal, written, direct, and indirect or in a coded language.

At the European Union level, various regulations have been adopted on criminal organizations, so that by Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime a “*criminal organization*” designates a structured association established over time, by more than two persons, acting in practice to commit offenses punishable by a custodial sentence or the application of a maximum custodial sentence of at least 4 years, or by a more severe sentence, for to obtain, directly or indirectly, a financial or other material benefit. The same decision also states that “*structured association*” means an association which is not formed at random for the immediate commission of an offense and which does not necessarily have formally defined roles for its members, continuity of members or a developed structure. The decision also regulates the liability of the “*legal person*” which is any entity having legal personality under the legislation in force with the exception of States or public bodies in the exercise of public authority, as well as public international organizations.

The concept of resilience

The term “*resilience*” has been used for the first time in several studies since the 1960s, coming from psychology, considered to be the ways in which a human being faces certain difficulties in the face of stressful situations and have a good ability to cope face the challenges. Lately, in psychology, the concept of resilience refers more to that of “*power*”, and due to the experiences gained, the word “*resilience*” has changed into “*resilient processes*”, in the sense that that ability to cope with stressful situations involves a process with a multitude of factors.

Even if resilience is conceived as a psychic function, having a certain dynamic, the experiences lived by an individual make him resist and then adapt, having not only a process of defense - protection, but also a balance in front of these tensions, being able to assess and move on to personal difficulties. Translating an individual’s resilience to a social group when it is structured is normal to create a certain cohesion, an identity and the resilience of the group makes it overcome certain events and situations that somehow endanger its existence, being able to it goes on not only to survive, but to expand its influence.

With regard to criminal organizations, there is resilience in the sense not only of surviving but also of prospering, even illegally by creating sources

of resilience in the sense of resisting and adapting to change, ultimately leading to the longevity of some criminal organizations. It was found that those resilient groups are those that have a strong cohesion, are more individually oriented and are characterized by strong values embraced by all people in the group.

Resilience of criminal organizations

Despite all the legislative measures taken against European countries, the criminal structures regarding drug trafficking, human trafficking, arms trafficking continue to resist over time, in some cases leading to particularly difficult challenges. This is also due to the system of information between members of criminal organizations and their ability to adapt, learning on the fly the processes that make them maintain and even develop over time (Ayling 2009).

The structure of these criminal groups (some based on the family as in the case of the mafia), the strong ties that are created within their members, the organization in the most profitable activities and the adaptation to law enforcement (in some cases using and state-of-the-art technology) make them resilient, with a constant struggle by the authorities of any European state. In studying criminal groups, one must identify how they cope with pressure and reorganize after certain destabilizing disruptions, what is the role of, for example, spirituality, the codes established in certain criminal groups and how they are influenced by ethnic, cultural values, as well as the adaptability of organizations to the evolution of society in general.

The criminal law of a state is important in dealing with criminal organizations. If the appropriate crimes are stipulated then criminal organizations also face challenges that threaten their existence, especially when it increases the level of rigor to improve investigation, prosecution and sanctioning offenses. There is a priority at the level of both the European Union and each state to reduce the opportunities of criminal organizations, establishing in this sense a real strategy to counter them.

Thus, the Council of Europe in December 2014 drafted a “*Transnational Organized Crime White Paper – TOC*” as it considered that transnational organized crime directly threatens the internal security of all Council of Europe member states and contributes greatly to the compromise of the

law and the integrity of democratic institutions. The White Paper shows that modern crime has evolved in its own way based on three key factors:

– Mobility of goods and trafficked persons (regarding goods: weapons, drugs, hazardous waste, various counterfeit products, and in relation to persons increase in trafficking in human beings and illicit trafficking in migrants);

– Institutional and political developments, in particular the disappearance of borders in certain areas or regions (the disappearance of internal borders facilitates the free movement of persons, goods, capital but also delinquents, and illicit goods, services and capital);

– Technological developments that allow and favor fast transactions, but also the rapid transfer of illicit capital generated by criminal activity - the products of crime - for the laundering of which it is essential to find safe investments.

It was found that these organized criminal groups have both a local and a cross-border dimension, not only in their composition and organization, but also in the activities they carry out and their consequences. Due to their flexibility, these groups have a great ability to adapt their criminal devices and their mode of operation. Some organized crime groups resemble criminal enterprises with a high level of expertise, structures are developed and teams have a high level of technicality, while others have an extremely simple and flexible structure, so that the proceeds of crime are the main force of criminal organizations.

Regarding the collection of information on the activities of a criminal organization, it is necessary to resort to special investigative methods according to certain operational needs including various special investigative techniques. To these are added, for example, controlled deliveries, covert investigations, interception of communications (listening), installation of microphones in different spaces, discreet surveillance and recourse to informants and secret agents.

European Commission and High Representative of the Union for Foreign Affairs and Security Policy in the joint communication to the European Parliament, the *European Council*, the Council, the *European Economic and Social Committee and the Committee of the Regions* of 18.03.2020 in Brussels on Strengthening Resilience - an Eastern Partnership results for all show regarding organized crime that this is a common challenge in the broad field of security. For this reason, the European Union will continue to

support: (i) enhanced cooperation with EU justice and home affairs agencies; (ii) security sector reform; (iii) combating trafficking in human beings and illicit goods (in particular drugs and firearms); and (iv) integrated border management to improve the capacity of partner countries to cope with the pressures they face and to increase their resilience. The EU will also continue to cooperate with partner countries on cyber resilience.

After the European Parliament approved on 9 February 2021 the Recovery and Resilience Mechanism designed to help European Union countries combat the effects of the COVID-19 pandemic, the European Commission in a press release of 14 April 2021 - Brussels on Combating organized crime: a new 5-year strategy to strengthen EU-wide cooperation and make better use of digital investigative tools. In this regard, the European Commission has shown the need to step up cooperation at EU level to dismantle organized crime structures by supporting more effective investigations and focusing on high and specific priority crimes (e.g. combating environmental crime, especially counterfeiting of medical products), illicit trade in cultural goods and trafficking in human beings). In this regard, it is necessary to combat the practice of obtaining funds from committing crimes to expose, punish and deter crime in the sense of revising EU rules on confiscating the proceeds of crime, combating money laundering and corruption. Given that a very high percentage of crime (over 80%) has a digital component, law enforcement and the judiciary need to have quick access to digital leads and evidence, which means that authorities should also use modern technology and have the tools and skills to keep up with the modes of operation of criminal groups.

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