

THE DANGER OF ORGANIZED CRIME DEVELOPMENT AT THE EAST OF EUROPE AND ITS MOVEMENT FROM EAST TO WEST

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RESUMEN:

En este texto, que tiene como objeto la cuestión del crimen organizado, me gustaría presentar la situación actual del fenómeno en el este de Europa, así como la tendencia “migratoria” de los delitos graves desde los países europeos orientales, a través de Europa central, hasta la parte occidental del continente.

Es bien conocido el hecho de que diversas formas de crímenes organizados graves han generado preocupación en las autoridades tanto nacionales como europeas, comprometidas en intensificar la lucha contra esta lacra.

La cooperación interestatal en materia criminal a nivel europeo ha ocupado una posición central en la elaboración e implantación de algunas estrategias de control sobre el fenómeno, complementando el nivel de los estados miembros. Incluso se han creado parámetros (estándares) de prevención y control de las infracciones de criminalidad organizada, para lo cual las instituciones responsables han desarrollado esfuerzos ingentes, con el objetivo de obtener los mejores resultados.

De este modo, la ONU, el Consejo de Europa, la OTAN, la OSCE, la UE y el G8, a las que se ha añadido Europol, han trabajado conjuntamente, como actores de decisión a nivel comunitario, para armonizar la legislación en materia de criminalidad organizada, respetando el marco y los requerimientos que las convenciones y tratados adoptados en la materia les imponen.

Palabras clave: Delincuencia organizada – organizaciones criminales – criminalidad grave – control de la criminalidad organizada – estrategias implantadas – organizaciones europeas.

ABSTRACT:

In this paper, having as topic the issue of organized crime, I would like to present the current situation of this phenomenon at the East of Europe, as well as the “migration” tendency of the serious crimes from Eastern European countries, through Central Europe, to the West part of this continent.

It is well known the fact that various forms of organized crimes have concerned both the national and European authorities in order to intensify the fight against this scourge.

The interstates cooperation in criminal matters at the European level has occupied a central place in elaboration and implementation of some control strategies on the phenomenon, not only among the member states. Still, there have been created cords (standards) of prevention and control of the infractions of organized crime, for which the responsible institutions have made enormous efforts with the purpose to obtain best results.

So, the Organization of United Nations, Council of Europe, North Atlantic Treaty Organization, Organization for Security and Cooperation in Europe, the European Union and G 8, to which the Europol can be added, have worked together, as decision factors at European level, for the harmonization of the legislation in matter of organized crime, by respecting the frame – requirements, that the conventions and treaties, adopted in this matter, defined them.

Keywords: Organized crime – criminal organizations – serious crime – controlling of organized crime – implemented strategies – European organizations.

The danger of organized crime development at the East of Europe and its movement from East to West

Summary: I. The current situation of organized crime at the Eastern European Union border. II. Geo –political configuration. III. Organized crime – from national to transnational dimension. IV. The diversity of serious crimes forms. V. *De lege ferenda* proposals regarding the new aggravated special procedure.

I. THE CURRENT SITUATION OF ORGANIZED CRIME AT THE EASTERN EUROPEAN UNION BORDER

The current situation of serious infractions in the domain of organized crime is so dangerous as frequent these can be seen in the reality of the objective life, unfortunately. Many studies had as research object the general frame of the phenomenon of organized crime, but, exceeding to this, we must reflect upon such dimensions and varied forms of crimes, having the specific – *organized crime*.

Of course, besides aspects of general order, that is common to all categories of infractions, which make the delimitation of the latter of other similar, are particular aspects, which characterizes them. The specific of these forms of infractions is connected not only structural notions, but also the amplitude of phenomena itself.

All these aspects make us reflect upon diverse forms of infractions of organized crime, to analyze the amplitude of the phenomena, not only a national dimension, but more than that, a transcendence in transnational plan.

The European and international criminal doctrine, dedicated a great part of studies issued recently to this phenomenon, but, it is recognize that was not fully succeeded the exhaustion of the transnational criminality, and that there still are, many aspects regarding juridical notions and other aspects to be explored.

First of all, I consider that, from this view, it was not succeed the underlining of the aspects regarding the endanger that the development of the phenomenon of organized crime represents for the European Union, at its Eastern border and more than this, in which way, can organized criminal groups penetrate on the institutional structures of the European Union, generally, and to affect its financial interests. It is a point of view, upon which we propose to find some substantial solutions.

At present, organized crime knows an accentuation without precedent and at all levels, serious crimes containing almost all sides of the economical and social fields, unfortunately.

From this point of view, most complex crimes from the sphere of organized crime, having implications in the economic field – abstraction of great dimensions, are, as a rule, composed from grave forms of materials actions committed, most of times, by associated persons, citizens of some neighbor states.

Second of all, numerous legislative imperfections, as well as insufficient exercise of a control from the state's authorities, ignoring elementary rules of protection of major state's interests, made possible the development of the phenomena, in the geo-political

space that we refer to, by development of ample actions of contraband and tax evasion, most of times fundamental on deeds of corruption¹.

But, we do not have to forget the fact that, all these specific causes of the category of crimes must be corroborated with the general causes and frequently, the same, which do not require their structured study, being almost – known. It is all about poverty, lack of the legal frame adequate to the fight against organized crime, juridical institutions and society in transition.

The high degree of social danger that infractions of organized crime represent, impose a taught control and sanctioning them, by creation of a precise juridical frame, whose efficient national organisms, not only member states of the European Union, but also nonmember neighbor states, to fight, alongside the European ones, already existent, and not in the last time, taking some measures of educational order.

II. GEO –POLITICAL CONFIGURATION

In the present study, we do not propose to trace any territorial limits between the European Union and neighbor non-member states, but we want to approach the organized crime from the judicial and geo-political perspective².

Regarding the geo-political configuration of the serious crimes from the category of organized crime, must be realized some statements of material institutional order.

The transnational character of the organized crime supposes the identification of some pillars – frame for delimitation of the institutional area of the juridical one. This aspect is very important.

In this direction, if we observe the physical – geographical map, after the 1st January 2007, which represents the moment of the last adhesion of the two states (Romania and Bulgaria) to the European Union, its Eastern border is given by the following states: Greece, Bulgaria, Romania, Hungary, Slovakia, Poland, Lithuania, Latvia, Estonia and Finland.

In the Eastern area, the European Union has borders with the following states: Turkey, Ukraine, Republic of Moldavia, Belarus and Russia.

It is necessary to know the juridical frame to fight against organized crime from each member state or which is not member of the European Union, but situated at its Eastern border, as well as the degree of harmonization of the internal legislation the community acquis.

For example, in the legislation from Romania, there is not a precise definition of the notion of “organized crime” and not self binding settlement of the offences from this category. Crimes circumscribed to this phenomenon are positioned in the penal Code and in special laws³ and refers, especially, to fiscal criminality, drugs and contraband.

1 MREJERU,T./ANDREIU FLORESCU,D.P./SAFTA,D./SAFTA,M., *Infrațiunile de corupție. Aspecte teoretice și practice*, All Beck Publishing House, Bucharest, 2000, p. 4-5.

2 MAGHERESCU,D., “The evolution of organized crime upon the Eastern European Union border”, in AA.VV., *The knowledge based organization*, Sibiu, Land Forces Academy Publishing House, 2007, p. 126-128.

This is the official point of view of the Council of Europe, expressed in a report, published in 2005, according to which: “*fiscal criminality, drugs and contraband are the main three forms of organized crime which represents a threat at the address of the democracy from today’s Europe*”⁴.

In the acceptance of the Romanian legislator, by organized crime, we understand “*activities realized by any group made up of at least three persons, among which there are hierarchical rapports or personal ones, allowing them to become rich or to control territories, markets or sector of the economical field and internal or foreign social one, by using extortion, intimidation, violence or corruption, observing either the committing of crimes or infiltration in real economy*”⁵.

The geo-political situation determines, most of times, premises of the apparition and intensification of organized crime, being well-known the fact that, in former communist states, these are correlated with the lack of an adequate legal frame. Moreover, the tendency of expansion of committing deeds of wrong aspect, as well as consuming them is distinct⁶.

On the other side, from the geographical point of view, the matter of organized crime raises at least two problems, from which one regarding the existence and development of these forms of offences in South – East of Europe⁷, and the other concerns the exceeding of the above-mentioned territories and transit, through countries of the Central Europe to the West part of the continent.

The European doctrine has focused attention on the identification of the objective factors, as well as major causes that generate the gravest forms of organized crime, which developed intensely in the last decades in the states of the former communist block. These are, also, countries which, among others, are characterized by a series of specific elements, from which can not miss the transition period, that they pass, the social – political situation, most of the times doubtful, and not in the last place, the deficit economic situation.

The specific character of the transition period is, most of times, determined by the conjuncture in which, authorities of the state understood to adopt the system of democratic laws, to implement the principles of the rule of law and, more than that to participate at the European as well as international juridical activity. Still regarding the transition period, the “key” word which seems to define the great majority of the states, which still pass this period, element that is in connection with the theme of the present

3 Law no. 678/2001 on the prevention and combating the trafficking in human beings, published in the Romanian Official Journal no. 783 of December 2001; Law no. 105/2001 on the Romanian state frontier published in the Romanian Official Journal no. 352 of June 2001 and entered into force on 30 June 2001 had modified by the Law no. 243/2002; Ordinance no. 112/2001 on the penalizing some infractions outside country territory committed by the Romanians; Law no. 2/1998 and Law no. 39/2003 on the combating organized crime.

4 RFE/RL, FT – 26/01/05; The Scotsman, AFP – 25/01/05; European Council – 24/01/05.

5 MICLEA, D., *Cunoasterea crimei organizate*, Pygmalion Publishing House, Bucharest, 2001, p. 56-68.

6 At present, Europe is the most profitable market in whole the world, from the production and drug traffic’s point of view, that were considered one of the most important criminal organizations’ activity in some of the European Union member states. It has presented in the Rapport of Council of Europe entitled “*Organized crime a threat to European democracy*” which published on 27 January 2005. In this report, drug traffic and human exploitation proceed from some countries of Europe. Therefore, R. of Moldavia, Romania, Ukraine, the Russian Federation, Bulgaria and Lithuania are indicated as “origin source” countries in the sphere of trafficking of human beings infractions. On the other hand, the same Rapport showed that in countries such as Croatia and Slovenia, trafficking of human beings represents the main category of organized crime.

7 The present study, having as theme, organized crime, refers to the current situation of this phenomenon, which there is in the countries of the Eastern Europe, and not their presence in the Asiatic continent.

study – organized crime – in the modality in which these countries have understood to be involved in the creation of the favorable line to fight against this phenomenon, and more than that, to be known that all the other deficiencies, appeared in the good sense of the governing system, are the result of a long process, and why not, troublesome.

The economical situation of states situated in the East of Europe, creates, in a manner, the “favorable” social frame of the intensification of traffic of human beings, well known the fact that present social and economic problems of the countries from this part of Europe, represents a source to obtain some enormous profits. The notoriety of these sources of provenience of the victims of this type of infractions is required by the extension of the profile markets, especially in the last decade.

It is alarming the fact that, reported to the major causes of the tendency that is more and more alarming of the quote that the phenomenon of organized crime reached, as a rule, these people, victims of interlopers are very young: adolescents or in the first years after coming to age, are attracted by the mirage of the living level from the European states, more developed than the origin country. These social categories, to which we refer, become easily victims of the promises of the criminals to have a well paid job abroad, with minimal efforts.

At a first reading on the great majority of the studies, articles and range of papers, which treated this phenomenon, can be observed the fact that, not few times, this faces the quasi totality of the problems that the contemporary societies of the states of the Eastern Europe face. Not less true is the fact that, also for states of the Occidental Europe, the phenomenon of organized criminality represents a threat, as great as the exodus of population⁸ to the latter states, which, it is true, reached worrying dimensions.

In acceptance of the German doctrine, organized crime is defined this way: *“committing deliberately some offences with the purpose of obtaining profit and power, by two or more persons, which collaborate for a prolonged or undefined period of time, fulfilling duties that were previously established by using some commercial structures or similar to the business ones, by using violence or other means of intimidation, or by realizing some influences on politicians, judicial or economical authorities”*⁹.

At the moment, in Romania is manifested an increased preoccupation towards this phenomenon, concretized in creation of specialized organisms, tightening sanctions, cooperation with other states and international organisms as part of the program of judicial cooperation in criminal matters¹⁰.

Also, diminishing offences of organized crime supposes taking some measures of educational aspect, as well as elimination of any form of tolerance towards corruption, offence in confront of which, the ones from the first category are in tight connection and without which, sometimes, are impossible to be realized¹¹.

⁸ This is only an example, we do not want to enter the details of the serious forms of offences, fact that we will discuss in the next section.

⁹ MICLEA, D., *Cunoasterea...* cit., p. 131-133.

¹⁰ Judicial cooperation in criminal matters: mutual assistance in criminal matters between member states: Council Act of 29 May 2000 establishing in accordance with Art. 34 of the Treaty on European Union – Official Journal C 197, 12.07.2000

¹¹ During the 51th edition of the B.K.A. Autumn Conference - the German Police Federal Department, which held in Wiesbaden (to which Romania was invited and participated too), the president of Eurisc N.G.O., Mr. Liviu Muresan emphasized that *“this complex phenomenon of organized crime, terrorism, the connection which exist between them, presents interest for all of the states and it also is necessary both an coordinated action and answer; at the last time. This nexus terrorism – organized crime – money laundering – corruption, must be approached on new manner; not only by the state’s authorities, but in cooperation with Non-governmental organizations, which have an analysis value and an answer to give to this problems”*.

III. ORGANIZED CRIME – FROM NATIONAL TO TRANSNATIONAL DIMENSION

From the point of view of the objective reality, delimitation of the national character of the transnational one of offences of organized crime is especially important taking into account the fact that, beyond the “*idealization*” apparent character of uncontested proliferated aspect, an offence is more serious if the preparation deeds, execution activity and consumption of the infraction is not realized in one state, but supposes, from territorial point of view, more neighbor states¹².

This is because, an offence of organized crime is more dangerous if, having on base a transnational character, is identified with frame-work which often is presented in the most similar cases. However, we cannot talk about a new vision upon the transnational character, in this matter, yet.

The science of the European penal law¹³ devotes some theories regarding the penal responsibility for infractions of organized crime. One of the best known theories¹⁴ of this type brings to first plan of the juridical field the existence of *extra national* penal laws, involving competences of two or more states and which can make an appeal to international penal law, to great extent¹⁵.

The classical theory, preferred by the Italian doctrine¹⁶, brings in the light of the over national penal law a series of guiding principles, sanctified around the idea of a model of “*European penal law*” – *ab initio*, pattern that will have as result a comparative study of the national penal laws, through an analyze of the principles with over national character. It was aimed that this allows the precise individuality of punishments in matter of penal law, so that, special elements and the common ones, from diverse countries of the Europe, eliminate any limits and application barrier.

What was attempted in matter of European penal law¹⁷ is, in fact, a harmonization of penal legislation, which, up to present, remains a sensible moment from the political point of view¹⁸.

It is unanimously admitted the fact that, theories, which exceed the Eastern frontier of the European Union, namely the former soviet states and the former communist states, have the gravest problems of this type. The idea that shaped on the border of the problem is that, beyond official statistic data, presented by the competent authorities in that field, many causes, having as object offences of organized crime, reach the trial. Most of the times, the problem presented, is to know where they begin and especially

12 MAGHERESCU, D., “New aggravated forms of social aggression – dangers and threats” in *Lex et Scientia, International Journal*, Bucharest, No. XV, vol. 3/2008, p. 4-6.

13 PRADEL, J./CORSTENS, G., *Droit pénal européen*, Dalloz, Paris, 2002, p. 57-79.

14 *Ibidem*, p. 13-15.

15 Still, it was underlined the fact that over national penal law is a branch of the criminal law, which settles the ensemble of penal matters, which appear in international plan.

16 CHIAVARIO, M., “Il processo penale in Italia” in DELMAS-MARTY, M., *Procedure penali d'Europa*, CEDAM, Padova, 2001, p. 283-291.

17 There is the tendency, more and more frequent, to put under the sign of equality the two notions: “over national” and “European” (from linguistic point of view) in matter of penal responsibility and the appurtenance at the transnational character of crimes committed in special conditions. We do not accept the confusion of the two special notions but, we appreciated that sometimes, these appear as a coincidence.

18 To see the Regulation of the European Union no. 1073/99, the Regulation no. 1074/99, as well as the Inter-institutional Agreement OJ L 136 of 31 May 1999, similar to regional integration in criminal matter, which challenged divergent reactions both in political and judiciary sphere.

until where it is extended the national dimension, namely from where must be considered the transnational side of all these criminal activities.

And, if we observe the rapports of the European authorities¹⁹, it can be remarked the fact that, between recommendations stated as part of the Action Plan are some that the group, realized at high level, considered adequate to be elaborated under special attention of chief of states and governments, as a requirement of the committee realized at the highest level.

Moreover, from the period of pre-adhesion of Baltic states at the European Union, the European Council encouraged the European Commission to make definitive, in partnership with candidate countries from Center and East of Europe, including Baltic states, a pre-adhesion Pact regarding the cooperation in matter of organized crime, which must be based on the community *acquis* and which can contain provisions to open the way of cooperation between thee countries and Europol and under consideration of these countries to ratify as fast as possible and to implement in total-ity the instruments of the Council of Europe, which are essential in the fight against organized crime.

It must be observed the fact that, before the enlargement process of the European Union since 2004, some candidate countries, as the Baltic ones, would enjoy the privilege to be included in the Action Plan, adopted by the European Council in 1997 and which imposed, besides other liabilities, the one to intensify the fight against organized crime.

At the same time, the European Council presented the necessity and need to conclude the cooperation in the fight against organized crime, with other countries as Russia and Ukraine.

It is an action of pionerdom, which was followed by other candidate countries, as is Romania²⁰. Also this country, confronted in the transition period, immediately after the revolution from December 1989, with the apparition and development of criminal groups, which action structured in most diverse social and economic field.

The right of free movement of people, as well as other rights offered to citizens, made, as a result of the “*experience*” gained regarding the committing abroad several offences of this type, abroad, to initiate, on the territory of Romania, forms of organized crime, already existent in other geographical areas.

Concerning the Romania, being well – known the fact that, neighbors upon, at West, Republic of Moldavia and Ukraine, statistically speaking²¹, in many offences of

¹⁹ Action plan to combat organized crime adopted by the European Council of 28 April 1997 and published in the Official Journal C 251, 15/08/1997 P. 0001 – 0016.

²⁰ Romania adopted Law no. 39/2003 on the prevention and fighting against organized crimes, as part of the process of harmonization of the internal legislation to the European one. In 2004 adopted the National Strategy regarding Fighting against Organized Criminality for the period 2004/2007 and still, the Action Plan for implementation of the national Strategy regarding fighting against organized crimes in the period 2004/2007. The initiation, development and application of the strategy involved the responsibility of the Government from Bucharest to ensure institutional mechanisms, which will warrant the maintenance of the programs in the development and realization of the objectives. Between these, the most important measures adopted were the ones aiming: foundation of structures specialized in sphere of organized criminality, implementation of methods and modern technologies of control al border points to prevent the introduction and illegal transit on the territory of Romania of the illicit goods, optimization of the cooperation at international level and inter - institutional level in cases of trans borders organized criminality, improvement of the change of information with similar services in neighbor countries, states that are not member of the European Union, especially with specialized structure of the European Union and others.

²¹ www.just.ro/statistics

organized crime that are discovered at the Western border, are involved, at once, Romanian, Moldavian and Ukrainian citizens. It is not a new element the fact that, in this purpose, national criminal groups attend, and most of times succeed to gather human force from neighbor countries, with the purpose to facilitate committing facts in this matter.

At the synthetic approach of the transnational criminal phenomenon, from the point of view of special efforts of the competent institutions in this field, national as well as European, in intensifying the fight against this scourge, can be reached the conclusion that, at present, there are sufficient programs and implemented strategies, as well as an efficient legal frame that exists in this direction of action, but, must be seen to what extent all these efforts will be able "to turn over" this huge unknown of our times that appeared in the modern society, controlled completely and in everything, and which, unfortunately, manages, without our will, to control itself, sometimes, all these mechanisms and institutions that we talked about. Is it a paradox of the contemporary times? Can somebody prefigure for the future, an eventual trajectory of the phenomenon? These are pertinent questions, to which, we expect an answer and that we can not find out yet.

IV. THE DIVERSITY OF SERIOUS CRIMES FORMS

When we discuss about offences that are contained in the category of organized criminality, we take into account a multitude of varied forms of presentation that they possess. These are serious crimes, offences that, most of time, have a complex content. The complexity of constitutive elements of serious crimes is obvious, taking into account the dynamics under which is presented and not in the last place, the unchallenged aspect of the extrinsic factors that favorites its commitment.

From the strict point of view of the constitutive elements, we can not appreciate the fact that it might be delimitation between the latter and common infractions, as, in the multitude of forms that they have these are realized in certain similar surroundings. In these conditions, we propose to find out, which are the differences and resemblances that exists between serious crimes such as organized crime and common infractions.

From theoretical point of view, it is very important to know which the forms of offences manifested by organized crime are.

So, according to a Rapport of the Council of Europe²², which was published in 2005, the main three forms of organized crime are fiscal crimes, drugs and contraband and traffic of human beings. Besides major dangers, that each of the three forms of crimes present, these criminal activities are a threat at the address of the greatest part of Europe, starting from East and reaching the Western extremity of the continent. We say "from East to West" as the greatest part of the European doctrine²³ considers that states situated in the Eastern part of the continent as being the source of interlopers, especially of humans, but not only.

The organized crime having as object sexual exploitation infractions is much more common phenomenon outside of the European Union and, usually, from East Europe to the West of continent.

22 RFE/RL, FT – 26/01/05; AFP – 25/01/05; Consiliul Europei – 24/01/05.

23 LEHTI.M./AROMAA,K., „Trafficking in women and children for sexual exploitation”, in *The Criminology in Europe*, no. 2, July 2004, p. 16.

Human beings trade towards the Western Europe can be more easily and more economically organized from the Eastern Europe, taking into consideration the current social and economical problems of the countries from this side of Europe, more than in any other areas, as a source for them, like: Asia and Africa or the Latin America countries. It is known the fact that most of the victims come from Albania, Lithuania, R. Moldova, Romania, Russia and Ukraine²⁴. In countries like Croatia and Slovenia, traffic of human beings represents the main form of organized crime.

The human beings traffic in Europe and other continents, as South – Eastern Asia, Latin America and North – East of Africa, is much more restricted than in countries of Central and Eastern Europe.

The same rapport presented the situation of organized crime from the point of view of the object of activity of the criminal groups. So, if in countries like Belgium, Bulgaria, Holland and Slovakia, economical criminality is the main activity of at least a quarter of the groups and nets of organized crime, different are things in states like Estonia, Moldavia and Monte Negru. In the latter states, economical criminality occupies the main category of cases of organized crime.

Regarding another form of organized crime, production and traffic of drugs, this is considered as being the most important activity of the groups and nets of organized crime, from about a third of the member states of the European Union, according to European experts, Western Europe is the most profitable market in the world.

And, regarding movement of organized crime from East to West, Alexander Seger, one of the auditors of the rapport issued by the Council of Europe, stated that “*in fact, matters go in both senses. A part of the criminality from Eastern Europe would not be possible if offenders could not access financial sector in the Western Europe and this issue is especially valid for money laundering*”.

It must be mentioned the fact that, in rapport with this discourse with a concentrated statistic under layer, the greatest fear situated above “*impairment of our main European objectives, including supremacy of law, democracy and human rights*” declared the same European official.

Still, to analyze the unity of the forms of organized crime, it is necessary to know organization forms of the criminal activities, as, no matter their variety, between these two categories there is a connection as from cause to effect.

The doctrine attempted to impose some distinct forms of criminal organization, starting from the Mafia and Triads²⁵ – as contemporary forms of organization of the criminal activities, proved to be long-lived and maintained, in time, fight principles.

For example, in the Italian penal code are defined two forms of association to commit crimes²⁶. In one of the two cases, have been mentioned elements settled in the previous Penal Code, by introduction of the notion of “*social danger of the offence*”, for activities committed in a wrong manner by several people, in association (participation). So, art. 416 mentions the fact that “*when three or several persons are associated with the purpose of committing crimes, the ones promoting or employed in the association will be punished only for this action with imprisonment from 3 to 7 years. The simple act of belonging to association will be punished with imprisonment from 1 to 5 years. Leaders will be punished with the same punishment as organizers.*”

24 MAGHERESCU, D., „New aggravated forms...cit.

25 MICLEA, D., *Cunoașterea...*cit., p. 33-34.

26 Ch. V, art. 416 Penal Code regulates “*Associazione per delinquere*” and “*Associazione di tipo mafioso*”.

This regulation on one of the two forms of organized crime, settled by Italian Penal Code into force, generated numerous disputes and conflicts between lawyers and judicial authorities. It was appreciated the fact that, in reality, the content of the article presented has only one symbolic function in which concerns the emergency procedure, and dangerous organizations, or highbinder type²⁷ were assimilated to some simple criminal organizations.

If, regarding to the criminal justice in states of the Occidental Europe, we can state that this enjoys traditions in which concerns regulation of the mechanisms of fighting against organized crime, not the same thing might be said in the case of states from East Europe, as part of which, there is no common legislative frame, so that, each of them adopted own juridical norms, taking into account the specific of the juridical field from these countries. In other words, the national penal systems started a process of legislative reform, first of all from the desire to fight against the phenomenon and, not in the last place, to line up the internal penal legislation as part of European juridical frame.

Still, besides this “*diversity*” of juridical settlement of the offences of organized crime, we can not underline some of the similar elements between legislative systems, as, before all these, characteristic to the former communists states is the novelty character of the phenomenon of organized crime, as, the closed system in which economical – social field was realized, the means of offender’s defense were on the measure of the criminal activity.

So, before the integration in the European Union, Poland settled in the Penal Code, adopted in 1997, juridical institutions that are specific to organized crime. For the first time it was discussed the problem of committing some offences by an organized group, and of the aggravate circumstances that such offence faces. Also, the Polish penal code introduced notions of criminal activity that was realized in “organized manner” or “in common” or by “agreement”.

The problem of the organized crime was approached from the point of view of the attended material purpose, and the penal responsibility aimed not only the perpetrator, but also the organizer of execution of the criminal activity.

At the same time, the Czech penal code²⁸ distinguishes two forms of execution criminal deeds, as are realized in an organized manner or are committed in an unorganized manner. Of course, crimes from the first category are worst and, being realized in an organized manner, has the form of the organized crime.

From the subjective point of view, it is considered a serious circumstance, the surrounding that the infraction is committed as organizer as well as member of an organized band or criminal organization.

In diverse typical forms of infractions of organized crime, the code observes that criminality of drugs, illegal immigration, illegal weapons traffic and explosive substances, traffic of human beings and traffic for damage of the environment. Other have also been considered actions realized as part of organized crime, crimes like: cars robbery, corruption, theft of cultural goods and art’s opera, money counterfeiting and financial crimes²⁹.

27 Italian Penal Code, completed in 1992, is the only legislation that settles from juridical point of view the organization of mafia type.

28 It was adopted by Law no. 140/1961 and modified successively, the last modification, before the adhesion of this country to the European Union, being produced in 1995.

29 Even if, as an instance, these penal actions were qualified legally, as being common crimes, still, sometimes, these crimes, due to the serious character, were, most of times, considered by the trial instance as being serious crimes and included in the category of the organized crime.

Hungary settled in the penal code diverse forms of organized crime. What united them is the element of participation as part of which are realized. The code settles “*criminal alliance*” but not as a self-being infraction, but as a qualified serious circumstance that aggravates the applied sanction.

Preparation acts are punished in a distinct manner, the person that realizes them being condemned only if, in the definition of the action, it is mentioned expressly this issue. As a distinct infraction, it is settled in the penal Code of Hungary “*the realization of a criminal organization*”. According to this, are punished persons “*leading a criminal organization whose members commit: murder, assault, illegal retention, kidnapping, terrorist act, using drugs, money laundry, robbery, ramp*”.

The same form of organized crime appears settled in the penal legislation from Slovenia, but, the legislator put a great accent on the subjective part of the crimes of this type, as well as the purpose attended by criminal association and by realizing infractions of criminal conspiracy³⁰.

From the points of view presented above, it is observed the idea that, upon all these types of infractions of organized crime or, especially, no matter how many variants there will be, it is still characterized by a set of common elements, which converge to the highest degree of social danger – *definitive element* in the structure and object of the organized crime.

V. DE LEGE FERENDA PROPOSALS REGARDING THE NEW AGGRAVATED SPECIAL PROCEDURE

The issue of investigation and judgement of infractions of organized crime by another penal procedure and not by the common one, has appeared from some time ago. From the juridical point of view, together with the crimes in this category, the terrorism ones are given the same juridical status.

Professor Mireille Delmas-Marty, in her book called “*Procedure penali d’Europa*”³¹, speaking about the criminal investigation procedure, in correlation with the art. 5 and art. 6 of the European Convention of Human Rights, debates the subject of special penal procedure – *aggravated procedure*, which is met in matter of terrorism and organized crime.

Taking into consideration the specificity of this category of serious crimes, and taking into consideration the degree of social danger they cause, we have to refer first to judiciary implications that the consequences of such common law procedure could have, which applies also in the case of investigation and judgement of common crimes.

The unprecedented development of the antisocial phenomenon of organized crime is a very serious danger for the entire international society. It is known that, most of the times, the cause for such serious forms of crimes are very often, unknown or the way of acting and the way of organization of criminal groups make the juridical bodies incapable, as they are more and more often facing such causes.

30 Vid. JAKULIN, *Organized crime in the Republic of Slovenia Criminal Law*, I.R.P.L. vol. 69/78, p. 502.

31 DELMAS-MARTY, M., *Procedure penali d’Europa*, CEDAM, Padova, 2001, p. 11.

Moreover, the repercussions of committing infractions in the category of organized crime make us reticent towards the application of a penal penalty which is less severe than what the consequences of the infraction really are.

It is natural that when some penal acts are more serious and involve a higher responsibility of their authors towards the society, by not introducing them in the category of those crimes for which the lawmaker has considered to apply a certain procedure – a common one. In other words, common infractions, meaning those acts incriminated by the penal law, have a danger that put the perpetrators under the incidence of the common procedures of the penal procedure code.

Regarding the issue of penal procedure applied for organized crime, I consider that it is necessary to adopt some juridical regulations in the matter for regulating the juridical framework.

Taking into consideration the transnational character of the phenomenon, that I have presented herein, I also consider that there is a need for a legislative harmonization between the member states of the European Union and neighbour states, especially from the East of the continent, knowing the fact that committing such criminal acts on the territory of several states generally involves a different competence and this aspect appears as a need.

There is also a deficiency of the penal procedure code in Romania and I consider that in the future it should be met by including some regulations in the code should stipulate a special procedure, named aggravated procedure for organized crime.

At the same time, taking into consideration the increase of the organized crime phenomenon, at present, I appreciate that there is a need for a distinct regulation of the infractions from this category, either in special laws, either in the special part of the Penal Code, by establishing some measures for preventing and fighting all the actions included in the notion of organized crime.

This is because the aforementioned infractions do not include all the infractions committed in the contemporary society and have a transnational character.

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