LEGISLATION AND PRACTICES OF THE REGION IN FIGHTING ORGANISED CRIME AND ILLEGALLY ACQUIRED ASSETS

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Content

Executive Summary

The organised crime (smuggling, trafficking, money laundering, etc.) and corruption are profitable activities which affect economic, political and social stability of each country. These phenomena are consistently following in one or another form all the countries of the Western Balkans, reflecting with the lack of protection of property rights, employment opportunities and the weakness of the state.

Various forms of manifestation of organised crime and its increasingly large presence, as well as its infiltration in many areas using unusable movements in social, economic, political and other areas, has become one of the destabilising, limiting and restraining factors of the overall consolidation and development of societies in transition, hence also in the Balkan countries.

What is the current situation and what are the challenges most of the Balkan countries face in the fight against organised crime and corruption? This analysis attempts to provide sufficient and very important information related to the legislation and practices of the countries of the region in the fight against organised crime and illegally acquired assets.

Croatia – Data from various reports on this country, include "National Report for Justice and Internal Affairs 2004"[1] which notes that "organised crime in the Republic of Croatia is mainly determined by three factors: geographical position, international comprehensive processes and the consequences of the destruction of Yugoslavia". The legal framework for curbing organised crime is improving more and more every time and the Croatian institutions are improving their capacities to deal with the organised crime.

Bulgaria – Legislation against organised crime and illegally acquired assets is regulated in details by several laws. These laws are expanding and improving continuously. Competences of the institutions that combat these negative phenomena are fully determined, and there exists a clear division between their responsibilities and obligations. The problem in this country is that the laws are not implemented fully in practice. There are many reasons for this: lack of financial and other resources, lack of motivation, the low number of detected crimes, etc.

Slovenia – Analysis of the legislation related to the fight against crime shows that compared to other parts of Europe, Slovenia has more adequate laws and institutions that are much more specialised for prosecution crimes, which nevertheless are not connected with one another and do not work together. The findings indicate that this co-operation is not functioning well due to personal interests of individuals that work in these institutions. Courts, which have recently been blamed that the crime rate did not decrease, do not have political representatives that can speak in favour of the independence of courts.

[1] Gluščić, Stjepan, Support on promotion of reciprocal well-understanding amongst the countries of the European Union and the Western Balkans, National Raport: Justice and Internal Affair under the Agreement of Specific Grant RELEX I-2 190202 REG 4-14, Cepor, 2004

Serbia – Organised crime in this country is present in two of its "classical" forms: as a violent crime (drug smuggling, car theft, etc.), as well as in the "new" form of organised as "white collar" crime related to the abuses with the privatisation process, tax avoidance or misuse of public resources. A meaningful element that affects the level of organised crime is the status of the transit country for several types of criminal activities. Another important factor is regional and inter-state co-operation of organised criminal groups.

Since 2003 and the assassination by an organised criminal group of the Prime Minister Zoran Djindjic, Serbia has built strong legal and institutional framework to fight organised crime, including the establishment of special bodies (prosecution, courts, police units), the possibility to use special investigation techniques aiming at combating organised crime as well as the possibility of granting the status of co-operative witness to the member of the organised criminal group.

Turkey – The main sources of illegal incomes in Turkey are closely linked to drugs trafficking, but also with smuggling, fraud and bankruptcy, falsification of documents, robberies, highway robberies and kidnappings, and serious crimes against the state. Primary methods for laundering of the funds are money transfers and other bank transactions, commercial transactions, transactions of bank accounts, and purchase of real estate.

Turkey has shown significant efforts aimed at dealing with the growing problem of organised crime in the recent years. During the EU accession process, a number of changes are taking place aiming at bringing the Turkish laws in line with the Acquis Communittaire. These include the new Penal Code of Turkey, the Code of Criminal Procedure, and the Law on Prevention of Laundering of Assets Acquired through Criminal Activities. Turkey also has signed most of international treaties.

Macedonia – This country also, though it advanced significantly in the lawmaking process in the fight against organised crime and corruption, nevertheless is not immune to criminal and illegal activities by criminal groups and corruptive activities of individuals and public officials.

Albania – For several years in Albania reactions to increasing criminal activities were weak due to the pressure, corruption, fear, and insecurity. However, there was constant pressure exerted by international organisations and by the citizens themselves making the institutions undertake measures to combat the organised crime and some of its forms, such as: human trafficking – females or children, arms trafficking, trafficking of vehicles, drugs trafficking and cultivation of narcotic plants.

Nevertheless, it should be concluded that there exists mobilisation in all the abovementioned countries to consolidate either the legal basis or even their concrete actions bilaterally or multilaterally in order for such phenomena to be strongly hit.


Croatia

Evaluation of the level of organised crime and illegally acquired assets

Background and evaluation of the level of organised crime and illegally acquired assets

The emergence of organised crime in Croatia can be traced back to the break-up of the former Yugoslavia and the arms embargo which prevented Croatia to purchase arms legally. As a result, in order to purchase weapons for self-defence the Croatian government resorted to the black market which operated throughout the former country. There was virtually no supervision over spending of the money from the state budget and raised through the diaspora, which paved the way for individuals to gain both financial wealth and political power (the most famous case which is now awaiting the trial is the so-called 'Jewel Case' with General Vladimir Zagorec)[2] .

In the early 1990s underground groups also engaged in trafficking of oil, tabacco and other goods between and across the conflicting countries. The efforts by investigative journalists who followed these cases and reported on them (Feral Tribune, Globus, Nacional) remained uninvestigated and any reporting which hinted at the links between officials and illegal activities was labelled as non-patriotic, anti-state and Yugo-nostalgic. Instead, a number of lawsuits were being filed against the editors and journalists, which were followed by court cases, physical threats, taxes being imposed and other forms of political and other types of pressure.

The 2004 Justice and Home Affairs National Report[3] notes that "organized crime in the Republic of Croatia is to a significant degree determined by three factors: geopolitical location, comprehensive transitional processes, and the consequences of the break-up of former Yugoslavia". The same reports outlines that the structure of the types of criminal offences committed by organized crime in Croatia reveals a number of areas in which organized groups operate such as smuggling narcotics, weapons, people, high-tariff products, extortion, blackmail, forced protection – racketeering, corruption, threats, and even murder. In addition, they begin to invest the illegally acquired assets in attractive real estate and certain economic activities. The report also notes that „in Croatia today the "white collar" crime becomes increasingly common, with the basic intention of investing illegally acquired capital in order to gain economic and political power". This most comprehensive report to date concludes that „the most significant and the most common traditional types of organized crime in the Republic of Croatia remain: illegal migrations, smuggling narcotics, smuggling and illegal sale of weapons, and counterfeiting and distributing counterfeited money".

On average, Croatia registers approximately 105,000 criminal offences of different types annually. According to a report of the Croatian Ministry of Interior, in 2010 the police registered 107,995 crimes in total. In 73,328 cases proceedings were initiated ex officio, in 12,448 cases proceedings failed to start due to a lack of indictments (no charges were pressed), and in 22,219 cases criminal procedure was initiated following a private lawsuit. If the crime rate is calculated from all recorded crimes there were 2,433 crimes per

[2] Dolezal, Dalibor: Organised Crime and Corruption in Croatia – A Criminological View, in: Organised Crime and the Balkan Political Context, Risk Monitor Foundation, 2010, p.63.
[3] Stjepan Gluščić, Support to promotion of reciprocal understanding between the EuropeanUnion and the Western Balkans, National report, JUSTICE AND HOME AFFAIRS, under The Specific Grant Agreement RELEX I-2 190202 REG 4-14, Cepor, 2004

100,000 inhabitants and the crime rate for which the police initiated criminal proceedings *ex officio* was 1,652 crimes per 100,000 inhabitants. Out of 73,328 criminal offenses for which the procedure is initiated *ex officio* a total of 47,267 (i.e. 48.8 percent) were solved. In comparison to 2009, the number of all reported crimes decreased by 0.3 percent, and the crimes for which the procedure was initiated ex officio decreased by 0.2 percent. Organised crime was registered in 921 cases, which makes 1.3 percent of criminal offences initiated ex officio.

Compared to 2009, this represents an increase of 22.3 percent, and 590 persons were processed (in 2009 553 persons were processed). According to the report, this increase is the result of an improved cooperation in international investigation conducted in 2009 and 2010. The most obvious result was cutting off important smuggling channels, the so-called Balkan route, which were transferred to the neighbouring EU countries. The Ministry of Interior emphasised in its report that, during the organised crime related investigation, a significant number of other crimes, which statistically belong to other areas, were registered, such as economic crime and corruption.

In international reports, Croatia is mentioned in the 2011 Organised Crime Threat Assessment (OCTA) in relation to the trafficking of weapons: „the Western Balkans are expected to remain a key source of heavy firearms trafficked into the EU, due to the large illicit stockpiles in Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, the Kosovo region, Montenegro and Serbia[4] ." According to the information available at Gunpolicy.org "unlawfully held guns (…) in Croatia are estimated to be 597,458"[5] . The same source, relying on the National Report of Croatia on its Implementation of the United Nations Programme of Action (UNPoA)to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (ALW) in All Its Aspects and the Survey of Croatia thrugh South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), establishes that the level of firearm and ammunition smuggling in Croatia is high.

The US Strategy to Combat Transnational Organized Crime, released in July 2011, does not mention Croatia specifically, but includes the Balkans as one of the regional priorities stating that „a traditional conduit for smuggling between east and west, the Balkans has become an ideal environment for the cultivation and expansion of TOC. Weak institutions (...) have enabled Balkan-based TOC groups to seize control of key drug and human trafficking routes and Western European markets. The Balkans region has become a new entry point for Latin American cocaine, a source of synthetic drugs, and a transit region for heroin chemical precursors for use in the Caucasus and Afghanistan. Excess weapons are smuggled to countries of concern. Insufficient border controls and the ease of acquiring passports enable the transit of criminals and terrorist figures to Western Europe. Cooperation between the United States and the European Union, as well as bilateral cooperation with the countries in the region to foster legal institution building, economic progress, and good governance in the Balkans, will be the key to eliminating the environment supporting TOC[6] . The same report warns that „Many of the well-established organized criminal groups that had not been involved in drug trafficking—including those in Russia, China, Italy, and the

[4] EU Organised Crime Threat Assessment (OCTA), 2011, p. 29.
[5] http://www.gunpolicy.org/firearms/region/croatia
[6] http://www.whitehouse.gov/administration/eop/nsc/transnational-crime/threat

Balkans—are now establishing ties to drug producers to develop their own distribution networks and markets" warning that „the expansion of drug trafficking is often accompanied by dramatic increases in local crime and corruption[7]"'.

Legal basis and division of responsibilities for the institutions

In Croatia organised crime fighting is regulated by the domestic legislation (the Penal Code, the Criminal Procedure Act (CPA), The Police Act (PA), The Act on the Office for Curbing Corruption and Organised Crime (AOCCOC), The Anti Money Laundering and Terrorism Financing Act (AMLTFA), The Protection of Witnesses Act (PWA), the new Act on the Confiscation of Illegally Acquired Assets (ACOAA), and international legal instruments signed and ratified by Croatia.

According to Penal Code the basis for organised crime is a criminal organisation, which is defined as a group of at least three persons working together with a mutual goal to commit one or more criminal acts in order to get directly or indirectly financial or other material gains. For these criminal acts the minimum penalty is four years of imprisonment. The Penal Code is currently being amended and during the Parliamentary session, which will start after the Septembeer 15, it should undergo the second (final) reading.

One of the most important changes in the Croatian legislation concerning curbing organised crime is the new Act on Confiscation of Illegally Acquired Assets, which entered into force on 1 January 2011. This Act enables a simpler and more efficient confiscation of illegally acquired assets – an area which was previously regulated by several different acts and international conventions ratified by Croatia.

The provisions of the new Penal Code and the CPA incorporate provisions pertaining to the security measures and illegally acquired assets. The amendments of the Penal Code enacted on 1 July 2009 envisage the consiscation of illegally acquired assets of persons found guilty of corruption and organised crime. This extends to all property belonging to the person, with the exception of assets the person can prove were acquired legally. In 2009 security measures were pronounced against 32 persons, and assets were confiscated from 40 persons. The Office for Combating Corruption and Organised Crime (USKOK) can order the freezing of property of a person suspected of acts related to corruption and organised crime. The Office can access data maintained by the Tax Authorities in checking the income of the suspect. In 2009 assets were frozen in the total value of HRK 3,960,076.70 (EUR 80,000), movable property with the estimated value of HRK 527,000, shares valued at HRK 4,400,000 and real estate with the estimated value of HRK 8,000,000. During the same period, a total of HRK 28,631,525.65 and EUR 424,484 were confiscated.

From September 1, 2011, the new CPA, which was aligned with the EU legislation by the end of 2008, entered into force. The new CPA transfers the investigation and collection of evidences from investigation judges to State Attorneys, who have larger authorities (e.g. cross examination), and it is now also the State Attorney instead of the court who makes a decision whether a case will be accepted or dismissed. The State Attorney also issues orders to the police, thus enabling a faster and more efficient collection of evidence.

[7] Ibid

Division of responsibilities for the institutions

A vertical institutional line of so-called anti-mafia action has been established, including the National Police Office for the Suppression of Corruption and Organised Crime (USKOK) and court departments specialising exclusively on organised crime and corruption.

The Office for the Suppression of Organised Crime and Corruption (USKOK) – the first specialised agency for combating organised crime and corruption – was established in 2001. The National Police Office for the Suppression of Corruption and Organised Crime was set up in June 2008 within the Criminal Police Directorate of the General Police Directorate in an attempt to respond adequately to the current trends in organised crime and corruption, and comprises the central headquarters and 4 regional centres. This model of organisation of the Criminal Police is in line with the organisation of the Office for the Suppression of Corruption and Organised Crime (USKOK), while the basic operating principles of the National Office are adaptability and flexibility. The task of the Police Office is to monitor and study occurrences of corruption and organised crime, so that the Office's police teams can act preventively, particularly in sensitive areas, on the basis on the results of analysis. At the same time, the Office enables more complex criminal investigation to be conducted in a multidisciplinary manner in co-operation with USKOK when dealing with high-level corruption cases. In 2009 four regional offices of USKOK were formed in four biggest Croatian cities (Zagreb, Split, Rijeka and Osijek) who were supposed to endorse criminal investigation on complex or organised crime, especially when interrogations are on jurisdiction of several county police administrations, when international cooperation is necessary and when most complex ways of organised crimes are in focus. These new offices were formed on basis of own experience of the Croatian police and good practices of police from EU countries. This is also proactive behaviour based on an Intelligence Led Policing concept, recognised as the key element in EU Strategy for development of area of freedom, security and justice (Hague Programme 2004-2009). In order to achieve the desired speed of action at all levels, changes to the Court Rulebook, adopted in October 2008, provide for the formation of special court departments at county and municipal courts in Zagreb, Split, Osijek and Rijeka to deal exclusively with cases falling within the competence of USKOK–the so-called USKOK courts. In addition, further conditions are envisaged to guarantee the promptness and impartiality of court procedure − obligatory security checks on judges in USKOK departments, precisely defined deadlines for carrying out certain actions within proceedings (e.g. USKOK judges have to start investigative session and main debate within seven days after receiving the indictment), confidentiality of files, statistical monitoring of corruption cases, etc. USKOK judges are appointed for a term of four years, and they receive some Euro 400higher salaries than ordinary judges. With the aim of giving priority to criminal cases involving corruption offences, the Court Rulebook was amended in September 2008 and a database on the status of corruption cases before the courts was set up within the Supreme Court of the Republic of Croatia. USKOK's activities focus on acting in a series of medium or high-level criminal corruption cases (INDEKS, ZAGREBACKE CESTE, MAESTRO, DIJAGNOZA I and II, GRUNTOVEC, and others). USKOK's pro-active approach has been strengthened, leading to the detection and processing of new cases of corruption, or to the extension of investigation in existing cases (MAESTRO, PETZVJEDICA,

GRUNTOVEC, etc.). The amendments to the Court Rulebook have ensured accelerated action in corruption cases, that is, in the commencement of main hearings.

Implementation of laws and effects achieved in practice

According to the information available in the media[8] , USKOK froze assets worth HRK 43 million in corruption cases and froze EUR 86,000 in cases connected with organised crime in 2010. In total HRK 33 million and 106,000 EUR were confiscated, out of which HRK 4 million was related to corruption cases and the remaining assets were confiscated in relation to organised crime cases.

Between November 1, 2007 and November 1, 2008, USKOK received reports on 855 persons in relation to corruption offences. Requests for investigation were filed against 226 persons. Altogether, 75 persons were indicted. Sixty-three judgments were delivered, out of which 53 were convictions. Appeals were filed in cases which were rejected or that ended with an acquittal. Interdepartmental co-operation has been strengthened with the signing of an agreement between the General Police Directorate and USKOK on mutual exchange of information. In addition, similar agreements are being implemented between the Ministry of the Interior and USKOK, and between the Tax Administration and USKOK. The co-operation of state bodies has also been ensured through the provisions of the new Criminal Procedure Act, which assigns the main role in carrying out investigations to the prosecutor, i.e. USKOK, on whose orders other state bodies will act[9] .

In 2009 (to the most recent report available) USKOK received reports on 1,118 persons in relation to corruption and organised crime, out of which 215 were related to organised crime (i.e. 19.2%)[10] . The same year, the courts passed 242 verdicts for 228 crime cases related to organised crimes (i.e. 94.2%) of which were found guilty.

The structure of the reported criminal acts is as follows: 80 persons were reported for the criminal act of „associating for the purpose of committing criminal offenses" (Article 333 of the Criminal Act), while others were reported for committing other crimes as part of the group or criminal association. During the same period, 14 persons were reported for organising criminal organisations, and only 4 persons were reported for being members of such groups[11] . Although this may seem surprising at first, as one could expect, more reports on members of criminal organisations than on their organisers, USKOK report highlights that this is largely due to the cross-border nature of these groups, with members coming from various countries, and the police focusing their efforts on identifying the organisers. Criminal groups were found to have been organised with largely the same purpose as in previous years – trafficking in narcotics, trafficking in human beings, and avoiding customs control, but also engaging in economic crime.

[8] http://www.tportal.hr/vijesti/hrvatska/124804/USKOK-je-korumpiranim-politicarima-lani-blokirao-44-mil-kuna.html
[9] The National Programme For The Accession Of The Republic Of Croatia Into The European Union – 2009, p. 43.
[10] The Report on the Work of State Attorney Offices in 2009, June 2010, p. 37.
[11] Ibid., p. 36.

It remains to be seen how the new legislation will affect the fight against organised crime. There have been some indications that the efficiency of the Act might be hindered by the fact that the Government failed to ensure all necessary resources for successful implementation of the new CPA. Namely, in the Report on the Work of State Attorney Offices[12] submitted to the Parliament, it is noted "a lack of space, equipment and human resources", which indicates that State Attorney Offices might face problems in the implementation of the new Act.

Recommendations of the European Commission Progress Report 2010

The EC Progress Report 2010 for Croatia mentions organised crime in several instances: when talking about the freedom of expression, it is noted that „There has been limited progress with threats against investigating journalists working on cases of corruption and organised crime, with the notable exception of one prominent murder case"[13] . The Report also notes that progress has been made towards the settlement of the border disputes, and that Croatia has contributed to progress in tackling organised crime in the region, inter alia through amendments to its constitution allowing extradition of its nationals. More precisely, the sections on bilateral relations with Montenegro and Serbia highlight the signing of bilateral extradition agreements which enable the countries to extradite their nationals to each other for criminal proceedings or enforcement of prison sentences in cases of organised crime and corruption.

The Progress Report recognises that „the legal framework to combat corruption has been further improved. Amendments to the USKOK Act extend USKOK's remit to tax fraud cases linked to organised crime and corruption[14] " and „there has been good progress with application of the new Criminal Procedure Code", which is „applicable to organised crime and corruption cases since 2009, has accelerated the investigation phase, with better cooperation between the police and prosecution services leading to more indictments." It also notes progress in the fight against organised crime: „The National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK) has been fully operational since September 2009. Four regional operational departments have started their work. High-profile cases of organised crime have been investigated swiftly. The Ministry of the Interior has drawn up an organised crime threat assessment (OCTA) for 2009, based on the European crime intelligence model. The ministry, in cooperation with the Office for the Suppression of Corruption and Organised Crime (USKOK), has drawn up the Plan for Priorities in the Suppression of Organised Crime and has started implementing it. USKOK has been active in prosecuting high-profile cases of organised crime. However, further efforts in this area are necessary, particularly as regards use of the new legislative framework and international agreements in practice. An agreement establishing a regional office for improving cooperation in the fight against organised crime was signed in October 2010 with Albania, Bosnia and Herzegovina, Montenegro, Serbia and the former Yugoslav Republic of Macedonia."[15]

The report is critical of Croatia noting that „there are now about 200 cases pending at

[12] Ibid., pp. 6-7.
[13] EC Progress Report 2010, p. 11.
[14] EC Progress Report 2010, p. 50.
[15] Ibid. p. 56.

the four specialised USKOK chambers at County Courts. The 54 judges working in these specialised chambers have not been relieved of their previous duties. Preparation for the enforcement of the new code for all other criminal cases from 2011 is continuing. The new procedures provide for stricter deadlines for interviewing suspects, which will require additional police resources." The report calls for more enhanced results in investigation and prosecution of drug related crime, noting that Croatia remains one of the main trafficking routes for drugs to the EU, and that no progress can be reported on customs cooperation.

Significant progress was made in the field of judicial cooperation in civil and criminal matters, notably with the amendments to the legal framework which will allow implementation of the European arrest warrant with effect from accession and with the signature of an extradition agreement with Serbia. Progress also continued in the counter narcotics policy, but results in investigation and prosecution of the drug cases need to be enhanced.[16] "

The Report recognises 'limited progress' in the fight against money laundering, particularly in investigation and prosecution of money laundering cases, and 'some progress' in the fight against trafficking of human beings. However, it warns that „regional cooperation with neighbouring countries and interdisciplinary cooperation to prevent and identify victims of human trafficking need to be intensified.[17] "

The Report also notes progress in the fight against terrorism, as well as in the fight against drugs but warns that police have targeted their activities on organised criminal groups rather than on small streetdealers. It is also highlighted that the „involvement of organised crime groups in IPR (intellectual property rights) violations is increasing", and that „violations of intellectual property are a growing concern for the health and safety of consumers", while public awareness of those topics remains low.

The role of the civil society in the fight against organised crime and the illegally acquired assets

Effective fight against organized crime and corruption often has to rely on the willingness of citizens to collaborate with the law enforcement. It is, therefore, necessary to build public trust in the institutions, and this requires demonstrating political will and tangible results of successful policy reforms. Both the institutions and their leaders must set good examples by adopting high ethical standards, establishing strict procedures, and duly processing cases related to corruption and organised crime. In many countries this was facilitated with the assistance and support of civil society actors such as bar associations and law schools. Good practices employed in various countries include establishing civil society bodies composed of a panel of lawyers and other members of the public acting as "court watchers" in cases concerning organized crime and corruption in the public sector. This practice has proven successful in enhancing the legitimacy of the judiciary in countries such as Costa Rica, Italy and the United States[18].

CSOs can also play a role in helping victims and witnesses to report their cases.

[16] Ibid. p. 58.
[17] Ibid., p. 56
[18] Buscaglia, Edgardo and van Dijk, Jan: Controlling Organized Crime And Corruption In The Public Sector, p. 28.

Conclusions

No relevant ongoing research of the organized crime is conducted in the Republic of Croatia and the evaluation of the level and status of organised crime can be based on the analysis of data collected by the police during operative work, the reports released by the State Attorney's Office, the Office for the Suppression of Organised Crime and Corruption, as well as various reports prepared over the years by international and local organisations (such as the UNODC Report or the White Paper issued by the Association of Croatian Investigative Journalists), and media coverage of these issues. Still, legal framework on curbing organised crime is getting better and better and institutions are improving their capacities to deal with the organised crime. It is expected that new CPA will enable faster procedings on criminals and make it harder for them to avoid punishment due to outdating of the trials.

Bulgaria

Evaluation of the level of organised crime and illegally acquired assets

Evaluation of the level of organised crime and illegally acquired assets in Bulgaria can be done based on the reports of two major Bulgarian organisations - the Center for the Study of Democracy (CSD) and RiskMonitor. Founded in late 1989, the Center for the Study of Democracy (CSD) is an interdisciplinary public policy institute dedicated to the values of democracy and market economy. CSD is a non-partisan, independent organisation fostering the reform process in Bulgaria through impact on policy and civil society. RiskMonitor is a non-profit, non-governmental public policy institute, that works for the reduction, control and prevention of organised crime and high-level political and institutional corruption. RiskMonitor develops independent civic expertise in the area of policies countering organised crime and institutional corruption. The organisation identifies organised crime and institutional corruption as high-risk public processes and a threat to the liberal democratic polity, its public institutions as well as the overall development of open society in the post-transition context. RiskMonitor was founded at the end of 2006 by the Open Society Institute – New York and the Open Society Institute – Sofia, and is registered as a public benefit foundation. The reports cover the main topic of organised crime. Illegally acquired assets and its confiscation is generally considered as a part of this general problem.

The last presented report on the topic was by CSD - Policy Brief 26 from November 2010 entitled "Organised Crime and Corruption: National Characteristics and Policies of the EU Member States." It contains the main conclusions and recommendations based on the information gathered during a study, which was commissioned to CSD by Directorate General on Home Affairs of the EC. CSD had to analyse the links between organised crime and corruption. The main evidence for the report come from 156 semi-structured interviews conducted across all 27 Member States. The views consulted include those of anticorruption bodies, law-enforcement, judiciary, private sector (lawyers, auditors, and fraud-investigators), academics and journalists. In depth country studies, based on a larger number of face to face interviews and more comprehensive secondary sources were undertaken in six countries (Bulgaria, France, Greece, Italy, the Netherlands and Spain).

Main points:

Based on a statistical analysis of 14 indicators (measuring corruption, organised crime, the effectiveness of government, macro economic indicators and the grey economy), seven clusters of countries emerged. Bulgaria, together with Poland and Romania, is in the last cluster, which includes countries where organised crime uses corruption the most actively and the institutional counter is the weakest.

- The report concludes that prostitution and illegal drugs markets exert the most corruptive effect in the EU;

- Political corruption is organised crime's most powerful tool;

- Local level administrative and political corruption was more commonly observed across the EU. Examples of mayors or city councilors convicted of associations with organised and white-collar criminals were found throughout the EU, including Bulgaria;

- The case studies on Bulgaria, France and Greece showed that anticorruption activities and the public visibility of political corruption are especially strong when governments change;

- Police has the most direct exposure and frequent contacts with organised crime and, as such, organised crime most often targets them;

- Corruption of customs officers mainly helps organised crime avoid detection of smuggled goods, avoid investigation (where customs possess investigatory powers) or facilitate the commitment of customs fraud (reduce import duties). It is particularly associated with the smuggling of excisable goods: cigarettes, oil and oil products and alcohol;

- Data on organised crime's corruption of the private sector was generally not available, as most governments do not collect such data. The report has provided a long list of corrupt practices related to the production, procurement and trafficking of illegal goods. For example - car dealers selling stolen vehicles in Bulgaria;

- In Bulgaria, the borderline between the legal and the illegal economies is much less clear than most of the EU MS. Organised crime generating wealth from drugs, smuggling and prostitution has merged with corporations and groups that own privatized state owned assets and has transformed its accumulated wealth into political and administrative power;

- Organised crime networks have infiltrated most public institutions, including the police, customs and prosecutors' offices. Organised crime highly influences the political elite and political parties at the local level, while some criminal structures have been able to influence MPs or national level politicians.

CSD is paying a special attention to money laundering as a big part of the organised crime, considering the problem in a special report **– Policy Brief N0. 21** from February 2010 – "Investigation of money laundering: an institutional approach". There it is noted, that the latest research by the Center for the Study of Democracy reveals that the annual revenue from organised criminal activities and corruption amounts to more than BGN 4–5 billion per year. In addition, the growing real estate market in Bulgaria made the country an attractive destination for laundering of large amounts from illicit revenues from Europe and other continents. Organised crime in Bulgaria is quick to adapt to the new realities, and by and large enters the legal economy by legalizing capital accrued from criminal activities. In Bulgaria money laundering takes on a specific form: a 'political investment'. Criminal and oligarch configurations in the country launder money from illicit activities by buying electoral votes or by sponsoring political parties. As a result, this particular type of money laundering corrupts the foundations of the country's democracy – its political system.

A report of RiskMonitor from 2011, entitled "Civil confiscation in Bulgaria (2005-2010)" summarises the results conducted by the Foundation monitoring the activities of the Commission for establishing of property acquired from criminal activity (specialized state body). The object of the monitoring is to identify the positive and the negative aspects of the Commission's activity during the first five years (2005-2010) of its work. The following conclusions can be identified:

The adoption of a special law and the creation of a Commission for establishing of property acquired from criminal activity in 2005 quickly led to an increasment of the number of legal procedures for confiscation of illegally aquired assets.

The commission has serious difficulties according to the security resources. One of them is the high intensity of staff turnover, which seriously disrupts the work of the Commission. It experiences a lack of financial resources, especially in the years of financial restrictions related to the economic crisis. In the Commission there is a lack of an adequate system for processing the huge amount of information, which is a consequence of the previous mentioned facts. The presence of these premises logically entails more harmful consequences. The most significant of them are:

- The lack of uniform methodology for evaluation of the investigated assets and the excessive dependence of the Commission on external experts in the preparation of the evaluations;

- Over the past five years the Commission's work is hindered by the inconsistent judicial practice, which is mainly oriented to the research of a causal nexus between the crime and the illegally acquired assets;

- Ineffective management of the confiscated property. During the legal procedures this property often gets intentionally or unintentionally damaged. This is the reason why later this property can not be sold or used;

The missing public control over the work of the Commission also creates problems. The Commission consists of five people who are chosen on a quota basis by representatives of the National Assembly, the Prime Minister and the President in the ratio 3:1:1. The representative of the Prime Minister is always a chairman. This model of constructing involves a weak accountability, an excessive dependence on Prime Minister, a lack of accountability and in the end - low efficiency.

Legal basis and division of responsibilities for the institutions

The legislation against organised crime and illegally acquired assets is regulated in several enactments. Art. 93, P.20 of the Penal Code contents a legal definition about "organised criminal group". Organised criminal group is a structured group of three or more persons to do the consultation in the country or abroad, which stipulates a punishment of imprisonment of more than three years. The Association is structured without any formal division of functions between participants, length of membership or a developed structure. Art. 321 of the Penal Code defines the penalty for a person "who forms or leads an organised criminal group or participates in such a grup." Art. 321a is regulates the penalty for a person who participates in the leadership of an organisation or a group which, by using force or exciting fear, concludes transactions or profit benefit.

Art. 321(1) (Amend., SG 92/02): Who forms or leads an organised criminal group shall be punished by imprisonment of three to ten years.
(2) (Amend., SG 92/02): Who participates in such a group shall be punished by imprisonment of one to six years.

(3) (New, SG 62/97; Amend., SG 21/00; Amend., SG 92/02; suppl. - SG 27/09; Amend. and suppl. – SG 26/10): If the group is armed, or formed for profit purposes or for the purpose of committing crime under Art. 142, Art.142a, Art.143a, Art. 243, 244, 253, 280, 337, Art. 339, para 1-4, Art. 354a, para 1 and 2, and Art. 354b, Para 1-4 if an official participates in it the punishment shall be:

1. under Para 1 - imprisonment of five to fifteen years;

2. under Para 2 - imprisonment of three to ten years.

(4) (New, SG 62/97): Not punished shall be a participant in the group who voluntarily delivers himself up to the bodies of the authority and discloses everything he knows about the group, before a crime is committed by him or by it.

(5) (New, SG 62/97): A participant in the group who voluntarily delivers himself up to the bodies of the authority, discloses everything he knows about the group, thus substantially facilitating the discovery and the proving of crime committed by it shall be punished under the conditions of Art. 55.

(6) (New, SG 92/02): Who arranges with one or more persons to commit crimes in the country or abroad, provided for which is a punishment of imprisonment of more than three years, and which aim at obtaining proprietary benefit or exercising illegal influence on the activity of a body of the authority or of the local independent government shall be punished by imprisonment of up to six years.

Art. 321a (New, SG 62/97) (1): Who participates in the leadership of an organisation or a group which, by using force or exciting fear, concludes transactions or profit benefit, shall be punished by imprisonment of three to eight years.
(2) Who participates in such an organisation or a group shall be punished by imprisonment of up to five years.
(3) The property acquired as a result of this activity by the organisation, by the group or by their participants shall be seized in favour of the state if the persons from whom it has been acquired or their successors are unknown.
(4) Applied in the cases under the preceding paras shall be the provision of Art. 321, para 4 and 5.

Besides these hypotheses in the Penal Code there are also qualified cases of crimes committed by or on behalf of an organized criminal group. For example Art. 116–homicide; Art. 131-causing bodily harm; Art. 142, Para 2–kidnapping; Art. 155, Para 5-persuading another person to prostitution or bawding to fornication or to copulation; Art. 156, Para 3-abducting another person for the purpose of debauchery; Art. 159, Para 5–spreading of pornographic materials; Art. 199–robbery, etc.

In Bulgaria there is a specialized criminal court under whose jurisdiction are the cases for criminal offences referred to in Articles 321 and 321a of the Penal Code. Its competence and statute are regulated in the Penal Procedure Code and in the Law of judiciary.

The Law of Judiciary, Art. 100a–100f, regulates the structure and the statute of the specialized criminal code. The specialised criminal court shall be equal to a regional court

and its seat shall be in Sofia. It shall consist of judges and shall be managed by a chairman. The specialised criminal court shall seat in panels of one judge and two jurors, unless otherwise specified in a law. The court panels shall be determined by the judge in most senior position or rank. The specialised criminal court shall have a general meeting consisting of all the judges. The chairman of the specialised criminal court shall have the competencies of a chairman of a regional court.

In the Penal Procedure Code, Art. 411a–411f, are regulated the special rules for dealing with cases under the jurisdiction of specialized criminal courts. The specialized criminal court shall have jurisdiction in cases of crimes under Art. 321 and Art. 321a of the Penal Code (crimes committed by an organised criminal group). The specialized criminal court shall also have jurisdiction in cases of crimes listed in detail under Art. 411a, Para 2. The specialized criminal court shall also have jurisdiction in cases of the above mentioned crimes which have been committed abroad. In those cases where several indictments have been raised against one person, one of which falls within the jurisdiction of the Specialized Criminal Court, the case for all the crimes charged shall be under the jurisdiction of the said court. Where two or more cases regarding different crimes against different persons are interrelated, they shall be united, if this is required by the proper consideration of each of them. If any of the interrelated cases falls within the jurisdiction of the Specialized Criminal Court, the latter shall be the court competent to hear the united case. Where a case falls within the jurisdiction both of the Specialized Criminal Court and of a military court, it shall be heard by the military court. The cases solved by the Specialized Criminal Court shall be considered as an appellate instance by the Appellate Specialized Court and as a cassation instance by the Supreme Cassation Court, which shall also hear the requests for restoration of cases of the Specialized Criminal Court.

Pre-trial authorities, as regards to cases under the jurisdiction of the Specialized Criminal Court, shall be the public prosecutor from the specialized Public Prosecutor's Office and the investigation authorities. Investigation authorities as regards the cases under the jurisdiction of the Specialized Criminal Court shall be the investigators at the Investigation Department of the Specialized Public Prosecutor's Office as well as the investigating policemen appointed by an order of the Minister of Interior. The public prosecutor shall exercise their powers within 15 days from receipt of the case file.

The cases under the jurisdiction of the Specialized Criminal Court shall be heard by a body of the court according to Art. 28 of the Penal Procedure Code herein: one judge, if a penalty to five years of imprisonment or other lighter punishment is provided for the crime; one judge and two jurors, where a punishment more than five years of imprisonment is provided for the crime; two judges and three Court jurors, where a punishment of not less than fifteen years of imprisonment or other heavier punishment is provided for the crime. While hearing the cases as an instance of appeal, the Court shall sit in a body of three judges. While hearing the cases as an instance of cassation, the Supreme Cassation Court shall sit in a body of three judges.

The participants in the court proceedings are obliged to appear at the hearing of the case regardless of any other summoning before other courts or pre-trial authorities. In those cases where a witness or expert witness fails to appear at court without serious

cause, he/she shall be brought to court by force, if necessary, on the next date for hearing of the case, fixed by the court.

The Law on the Ministry of Interior settles the principles, tasks, activities, structure and the management of the Ministry of Interior (MI), and the status of the employees therein (Art. 1). The Ministry of Interior shall be an administration with hierarchical character and centralism in the management, which activity shall be directed to a protection of the rights and the freedoms of the citizens, the national security and the public peace.

Part of basic structures of the MI is also the General Directorate on "Combating Organised Crime". The structure and activity of the Directorate are regulated in The Law on the Ministry of Interior and in the Regulation for implementation of The Law on the Ministry of Interior. According to Art. 51a of The Law on the Ministry of Interior, the General Directorate on "Combating Organised Crime" is a national specialized operative investigating structure of the MI for prevention, neutralization, investigation and revealing of organised criminal activity of local and transnational criminal structures, related to:

1. customs regime, monetary, tax and insurance system;

2. narcotic substances, their equivalents, and precursors;

3. computer crimes or crimes, perpetrated within or through computer networks and systems;

4. intellectual property;

5. counterfeit or falsified primary money, payment instruments and official documents;

6. human trafficking;

7. traffic of cultural valuables;

8. fire weapons, explosive, chemical, biological and other conventional devices and substances, and also to weapons and products and technologies of double use;

9. corruption in the bodies of state authority;

10. terrorist operations, use of conventional devices and substances, arousing fear, taking hostages, kidnapping individuals in order to get material benefits and violent acts;

11. money laundering and games of luck.

For the implementation of the tasks under par. 1 the General Directorate on "Combating Organised Crime", independently or in cooperation with other specialized bodies, shall carry out operations for:

1. prevention, neutralization, investigation and revealing of crimes perpetrated by criminal structures;

2. participation in operative investigative activity for revealing of criminal activity of criminal structures all over the country;

3. provision and application of strategic infiltration and carrying out confidential

deals through employees under cover;

4. carrying out controlled supplies;

5. gathering, processing, storage, analysis and provision of information on the situation, structure and dynamics of the organised crime all over the country;

6. study and assessment of methods of police tactic actions, applied for combating organised crimes, and preparation of proposals for improvement of work;

7. provision of training of the employees of its territorial units for enhancement of their professional qualification;

8. identification of individuals following procedures, determined by the Minister of Interior;

9. issuing opinions on drafts of legislative and other acts, regulating combating organized crime and involvement in preparation of programs and strategies;

10. participation in teams, set up in cooperation with other competent state bodies, administrations and authorities of other states and international organisations;

11. management, support and control over the implementation of the activities under items 1-10 of the respective territorial units.

The General Directorate on "Combating Organised Crime" carries out information-analytical, prognostic, control, coordination and methodological activity based on its own or of other bodies' information, according to its competency.

Police bodies shall be the bodies of the General Directorate on "Combating Organised Crime". The police bodies shall observe, establish and control sites and persons for which there is information that they are preparing, committing or have committed crimes, including in the cases of organised criminal activity of local and trans-national criminal groups or organizations (Art. 82 of The Law on the Ministry of Interior).

The statute and competence of the General Directorate on "Combating Organised Crime" are also regulated in the Regulation for implementation of The Law on the Ministry of Interior, where the structure and the activity are listed in detail again.

Since March 2005 there is also a special law that regulates the field of illegally acquired assets – The Law of divestment in favour of the state of property acquired from criminal activity. According to Chapter 1 "This law shall provide the conditions and the order for imposing securing measures and divestment in favour of state of the property, acquired directly or indirectly from criminal activity. Property, acquired directly or indirectly from criminal activity, which has not been restored to the aggrieved or has not been divested in favour of the state or confiscated under other laws, shall be subject to divestment by the order of this law. The objectives of this law shall be prevention and restriction of the possibilities for deriving benefits from criminal activity and prevention of the disposing with property, acquired from criminal activity."

The law regulates the statute and activity of the bodies for establishing of property, acquired from criminal activity (Commission for establishing of property, acquired from

criminal activity). The Commission is a specialized state body for establishing of property, which has been acquired from criminal activity (Art. 12). The Commission shall be a corporate body with headquarters in Sofia, primary administrator with budget resources. The Commission shall be collegial body consisting of five members, including chairman and deputy chairman. The Chairman of the Commission shall be appointed by the Prime Minister, the deputy chairman and two of the members shall be elected by the National Assembly and one of the members shall be appointed by the President of the Republic. The members of the Commission shall be appointed, respectively elected, for term of 5 years with right to not more than two subsequent mandates. Members of the commission can be legally capable Bulgarian citizens who have not been sentenced for intentional unqualified crimes, have higher juridical or economic education and at least 5 years practice in the respective specialty. The chairman of the commission shall be a person with higher juridical education.
In Art. 3 it is regulated that the procedures shall be conducted when it is established that given person has acquired property of significant value about which grounded supposition may be made that it has been acquired from criminal activity, and against him punitive prosecution has started for crime under the Penal Code. The different kinds of crimes are listed in detail in Art. 3. Para 1, P. 1. The procedures under this paragraph shall also be conducted when there are sufficient data about property of significant value about which grounded supposition may be made that it has been acquired from criminal activity, but:
1. the penal procedure has not started or the started one has been terminated because the acting person has deceased; or
2. the penal procedure has not started or the started one has been terminated because after committing the crime the acting person has fallen into durable mental disorder excluding sanity or an amnesty has followed.

By the order of the law shall be divested property, acquired during the period of investigation by persons against whom there has been established that the grounds of art. 3 exist and in the concrete case can be made grounded supposition that the acquired property is connected with the criminal activity of the persons as far as lawful source has not been established (Art.4, Para. 1).

The rights of the state under this law shall be extinguished with the elapse of 25 years prescription term. The prescription term shall start from the date of acquisition of the property (Art.11).

The Commission shall have territorial units which shall be with statute of territorial directorates. Bodies of the Commission in the procedure for establishing the property, acquired from criminal activity, shall be the directors of the territorial directorates and the inspectors in these directorates. Directors of territorial directorates can be only persons with higher economic or juridical education.

The Commission shall approve structural regulation with which shall be determined its activity, the staff, the regions of activity and the organization of work of its territorial directorates. The regulation shall be promulgated in the State Gazette. There is regulated the activity of the central (general and specialized) administration and territorial units which have the statute of territorial directorates.

The Commission shall take decisions on: formation of procedure for establishing the property acquired from criminal activity; submitting to the court of motivated request for imposing securing measures; submitting to the court of motivated request for divesting in favour of the state of property acquired from criminal activity; appointing of the directors of the territorial directorates and upon their proposal determine the inspectors in them (Art.13).

At implementing its authorities the Commission shall pronounce decisions taken with majority more than half of the members. The Commission shall prepare every year a report about its activity and till the end of March of the following year concede it to the National Assembly, the President of the republic and the Council of Ministers. The report shall be published in the site of the Commission on internet.

Implementation of laws and effects achieved in practice

Information about the implementation of laws against organised crime and illegally acquired assets and the effects achieved in practice can be found again in the reports of CSD and RiskMonitor. In these reports, we can find examples for the bad implementation of the laws, but also good effects achieved in practice. In Policy Brief No. 21 of CSD from February 2010 "Investigation of money laundering: an institutional approach" it is stated that "In spite of several legislative initiatives and a growing number of money laundering investigations in the last decade, the prosecution of this type of crime in Bulgaria remains insignificant. The reasons about that can be easily identified. The limited capacity of the specialized state institutions is one problem. The non implementation of the respective anti money laundering (AML) laws is also quite apparent. In the same report, there is a detailed description of the recently developed Manual for the Investigation of Money Laundering.

The main purpose of this manual is to assist prosecutors and police investigators who investigate organized crime, but have not undergone a specialized training on money laundering investigation. The main idea of the manual is to explain various techniques and methods for AML investigations. The development of the manual drew on the knowledge and experience of all relevant institutions working on money laundering, and complemented these with the expertise accumulated in the NGO and private sectors. The philosophy behind the manual was that prosecutors and police investigators see money laundering as a very complex crime and one that is difficult to prove. The preparation of the Manual gathered the expertise of all major institutions involved in the prevention of money laundering–Ministry of Interior, SANS, National Investigation Service, the Supreme Prosecutor's Office of Cassation, and the Commission for Establishing the Property Acquired through Criminal Activity. The participants presented and commented on specific and successful cases in the Bulgarian AML experience. The Manual compiles in a single document abroad diversity of institutional practices.

In the Policy Brief of CSD from 2009 - "Crime without Punishment: Countering Corruption and Organised Crime in Bulgaria" it has been emphasized that recent legislative and institutional reforms in the judiciary and law enforcement have not led to the expected and hoped for reduction in impunity for corrupt practices and organized crime

in the country. On the other hand, several positive trends have been outlined as well. For instance, administrative corruption in business has declined by 50% since the country's EU accession. Moreover, recent legislative and administrative reforms aiming to prevent conflicts of interests as well as abuses in granting concessions undoubtedly represent steps in the right direction. Finally, the elimination of duty-free trade at Bulgaria's land borders in May 2008 has had considerable anticorruption effects, which proves the willingness of the Government of Bulgaria to fight political corruption and organized crime.

A report of RiskMonitor entitled "Civil confiscation in Bulgaria" (2005-2010) indicates the positive and the negative aspects of the Commission's activity in the first five years (2005-2010) of its work. The adoption of a special law and the creation of a Commission for establishing the property acquired from criminal activity in 2005 quickly led to an increase of the number of legal procedures for confiscation of illegally acquired assets. During the first two years of its activity the Commission had submitted to the courts 50% more cases than the Prosecution in the period 1997-2005. On the other hand, the Commission has serious difficulties according to the security resources. They are the high intensity of staff turnover, lack of financial resources, lack of an adequate system for processing the huge amount of information. The presence of these premises logically entails more harmful consequences that hamper the activity of the Commission and the implementation of the law.

The role of the civil society in the fight against organised crime and the illegally acquired assets

In Bulgaria the role of the Civil Society in the fight against organized crime and illegally acquired assets is generally quite small. Only CSD and RiskMonitor periodically publish reports on the topic and organize conferences and public discussions. Namely in the reports of these two organizations we can find information about the role of the Civil Society.

For example CSD, as an independent organisation, initiates the formation of an interagency task force to develop a Manual for the Investigation of Money Laundering since money laundering is a big part of the general problem with organized crime. As already has been mentioned, the main purpose of this manual is to assist prosecutors and police investigators who investigate organized crime, but have not undergone a specialized training on money laundering investigation. The main idea of the manual is to explain various techniques and methods for AML investigations. The development of the manual drew on the knowledge and experience of all relevant institutions working on money laundering, and complemented these with the expertise accumulated in the NGO and private sectors. This activity is a sign of an active participation of the Civil Society in the fight against organized crime.

On the other hand, in the 2009 report of CSD "Crime without Punishment: Countering Corruption and Organised Crime in Bulgaria" is pointedout that Bulgaria has many of the characteristics of a state plagued by political corruption. The clearest signs for this are: sustained efforts at the capture of NGOs – one of the most important elements of

external political responsibility – by creating quasi-NGOs or co-opting existing NGOs in an attempt to soften critical voices in society.

A new element in the report is the analysis of the inroads of corrupt practices into civil society structures (NGOs), which have traditionally been considered the least corrupt compared to other spheres of socio-economic activity in Bulgaria. During the 2000–2007 period, the number of NGOs has increased fivefold, with most new organizations having been established by high-ranking state officials as instruments for ostensibly legitimate extra income, as tools for establishing political and personal circles of cronies, and as a safeguard against the loss of political power. Just over three quarters of MPs and the same proportion of ministers and heads of executive agencies, and over 90% of municipal mayors in Bulgaria are represented on NGO boards of directors.

With the gradual withdrawal of foreign public and private donors, the Bulgarian government has become a determining factor in the financing of NGOs in the country. The financial resources controlled by the government (whether budget or EU funds) allocated to NGOs in 2008 constitute nearly 40% of the total project funding available in 2006. All weaknesses and corruption risks related to strategic target-setting and public procurement have thus been transferred to this sector as well.

Conclusions

In the end we can draw the following conclusions:

- The legislation against organized crime and illegally acquired assets is regulated in detail in several enactments;

- These laws are getting constantly expanded and improved;

- The competences of the institutions that are fighting these negative phenomenons are fully determined and there is a clear division between their responsibilities and obligations;

- The problem is that the laws are insufficiently applied in practice;

- There are many reasons about that - a lack of financial and other resources, lack of motivation, the small number of revealed crimes, etc. On the other hand, and it was noted many times in the reports of the both organizations, the corruption among the officials and the authorities fighting organized crime and illegally acquired assets is widespread and it affects the final results. On the ineffective fight against organized crime and illegally acquired assets must be pointed out as a problem as well the weak role of the civil society and its small participation in this fight;

- The identification of the problems and the reasons for them is the first and most important step to achieve better results in the fight against organized crime and illegally acquired assets. The next step is to find a possible solution of these problems. And this phase should involve all parties - the Parliament, judicial and legislative authorities, ankthe civil society.

Slovenia

Evaluation of the level of organised crime and illegally acquired assets

1. Organized crime

The Slovenian working group composed of representatives of the Police and of the Ministry of Justice defined organized crime as a planned activity (with a tendency to obtain an income or the power to promote the implementation of criminal acts which have great importance) where two or more colleagues working collaboratively in an extended or limited period of time, and in this way they share work:

- by using artisanal or commercial structures,
- by threatening with force or with other means,
- by trying to influence policy, mass media, public administration, justice or the economy.

In short: organized crime is like business activity carried out by criminal organizations which use violence and/or corruption to achieve financial gain or social power (Ministry of Interior of the Republic of Slovenia, 1998).

From the tables below (tables 1 and 2) we can see proportion of organized crime compared to all criminal offences. For example, organized crime offences in 2010 represent very small amount of all reported crimes (approx. 0,004%). Although organized crime represents very small percentage of all crimes, it is for sure the most dangerous one for the country, financial situation of the country and its rule of law. The police statistics shows that unlawful manufacture of and trade in illicit drugs, illegal substances in sport and precursor substances for production of illicit drugs are the most often crimes regarding organized crime. Slovenian praxis and theory identified 15 main crimes which are conducted by organized criminals – organized groups: Manslaughter; Murder; Actual Bodily Harm; Aggravated Bodily Harm; Illegal crossing of the state border or state territory; Money counterfeiting; Illegal production of and trade in weapons or explosives; Abuse of prostitution; Unlawful manufacture of and trade in illicit drugs, illegal substances in sport and precursor substances for production of illicit drugs; Enabling opportunity for consumption of illicit drugs or illicit substances in sport; Theft; Grand larceny; Robbery; Fraud and Extortion (see table 2).

Table 1[19]

	2005	***2006***	***2007***	***2008***	***2009***	***2010***
Number of all crimes in Slovenia	84379	90354	88197	81917	87465	89489
Number of investigated crimes/offences	32896	36984	38213	36936	42247	46133
Economic crimes/offences	6115	8471	7962	7459	9259	13064
Financial harm of economic crimes (in MIL EUR))	69,4	87	106,8	112,5	193,3	505,4
Number of organized crimes	397	499	293	359	413	352
Corruption offences	18	44	19	18	231	71

[19] Statistical reports of Slovenian Police; available at http://www.policija.si/index.php/statistika-

Table 2

Organized crimes	2005	2006	2007	2008	2009	2010
Manslaughter	-	-	-	-	-	-
Murder	-	-	-	-	-	-
Actual Bodily Harm	-	-	-	-	-	1
Aggravated Bodily Harm	-	-	-	-	-	-
Illegal crossing of the state border or state territory	130	85	42	112	55	45
Money counterfeiting	3	2	6	16	4	-
Illegal production of and trade in weapons or explosives	4	22	1	8	15	4
Abuse of prostitution	4	8	-	1	8	-
Unlawful manufacture of and trade in illicit drugs, illegal substances in sport and precursor substances for production of illicit drugs	208	236	145	52	271	184
Enabling opportunity for consumption of illicit drugs or illicit substances in sport	1	6	2	-	2	3
Theft	2	10	1	2	4	2
Grand larceny	11	24	17	68	27	24
Robbery	-	6	5	3	1	16
Fraud	1	4	1	-	1	3
Extortion	9	11	18	11	-	14
Other	24	85	53	86	25	56
Total	**397**	**499**	**293**	**359**	**413**	**352**

As we can see from the table 1 financial harm of economic crimes in Slovenia is quite high. In the year 2010 it was already 505 MIL EUR (193 MIL EUR in 2009, 112 MIL EUR in 2008, 106 MIL EUR in 2007, etc.). The (official) statistics unfortunately do not show how much harm is done with organized crime.

Other measures & statistics for Slovenia regarding organized crime

EUROPOL

Europol Organized Crime Threat Assessment for 2011 (OCTA 2011) reveals that of all the hubs the South East Europe (where also Slovenia is) has seen the greatest expansion in recent years, as a result of increased trafficking via the Black Sea, proliferation of numerous Balkan routes for illicit commodities to and from the EU, and a significant increase in illegal immigration via Greece. These developments in the region have contributed to the formation of a **Balkan axis** for trafficking to the EU, consisting of the Western Balkans and South East Europe. New transit hubs are in the process of being formed in countries such as Hungary, where several Balkan and Black Sea routes converge. Albanian speaking, Turkish and Former Soviet Union criminal groups are seeking to expand their interests in the EU, and may exploit opportunities in the possible accession of Bulgaria and Romania to the Schengen Zone, and recent and prospective EU visa exemptions for Western Balkan states, the Ukraine and Moldova.

In OCTA report Slovenia is mentioned only once: In South East Europe and the Western Balkans both indoor and outdoor cultivation have been observed. Albanian-speaking criminal groups play a significant role in supplying South East Europe: cannabis grown in Albania and the Kosovo region is distributed in Greece, Italy, Slovenia, Hungary, and also trafficked to Turkey, where it is exchanged for heroin. Within the South East Europe criminal hub there is an emerging trend for outdoor cultivation by elderly citizens, whose harvest is then purchased by criminal groups engaged in polydrug distribution. As in the case of illegal migrants and individuals compromised by the economic crisis, domestic cannabis cultivation brings vulnerable groups in society into greater proximity with organised crime.[20]

OSAC – Crime and Safety Report (Slovenia 2011)

Organized crime, primarily suspected involvement in narcotics trafficking, vehicles theft, fraud, tax evasion, counterfeited goods and alien smuggling, is a problem, but less than in the neighboring countries. As a member of the Schengen area, Slovenia exerts strict control over its borders and visa issuance procedures.[21]

EUROSTAT

EUROSTAT - Eurostat Report No. 58/2010 warned that in a few southern countries such as Portugal, Slovenia, Spain, Italy and Cyprus, crime rates have risen[22]

2. Illegally acquired assets

As we can see from the table 3 below, 370 proposals for confiscation and proceeds (property benefit) were proposed in average. We found also that (official) statistics from 2008 do not show such data anymore, although legislation did not change in such a manner. Slovenian justice system did not have even one case regarding expropriation of property as the main penalty imposed for legal persons. But on the other hand we had few temporary bans of possession of the proceeds (property benefit) and temporary securing of the proceeds (property benefit) - in average 29 per year. In year 2010 we had already 58 such cases. Other statistical data are not available.

[20] https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf
[21] https://www.osac.gov/Pages/ContentReportPDF.aspx?cid=10494
[22] http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-10-058/EN/KS-SF-10-058-EN.PDF

Table 3[23]

	2005	*2006*	*2007*	*2008*	*2009*	*2010*
Proposals for confiscation of objects and proceeds (property benefit)	461	315	334	No data*	No data *	No data *
Expropriation of property - the main penalty imposed on legal persons	0	0	0	0	0	0
Temporary ban of possession of the proceeds (property benefit) and temporary securing of the proceeds (property benefit)	19	18	16	32	30	58
** Annual reports do not present such statistics anymore in the same way.*						

Legal basis and division of responsibilities for the institutions

1. Organized crime

In our opinion the Slovenian legislation is adequate to fight organized crime and to confiscate the instrumentalities and proceeds (illegaly acquired assets). In Slovenian system, the legislation to fight against organized crime is defined in different laws (Police Act, State Prosecutor Act, Criminal Procedure Act, Penal Code, Money Laundering Prevention Act, etc.) where the rights, obligations and authorities (powers) of police, prosecutor and other bodies are defined. There is no special law on fight against organized crime.

The point is that the objects of Police treatment regarding organized crime are all crimes which are enforced by criminal organizations. Criminal organizations are defined in Article 294 of Penal Code of the Republic of Slovenia: (1) Whoever participates in a criminal association which has the purpose of committing criminal offences for which a punishment by imprisonment of more than three years, or a life sentence may be imposed, shall be punished by imprisonment of three months up to five years; (2) Whoever establishes or leads an association as referred to in the preceding paragraph, shall be punished by imprisonment of six months up to eight years; (3) A perpetrator of a criminal offence from the preceding paragraphs who prevents further commission of these offences or discloses information which has a bearing on the investigation and proving of criminal offences that have already been committed, may have his punishment for these offences mitigated, in accordance with Article 51 of this Penal Code.

All "special" regulations are defined in above mentioned laws. For example the Penal Code defines higher punishments for crimes, which are committed by the criminal groups – criminal associations:

Exploitation through Prostitution (Article 175 of Penal Code):
(1) Whoever participates for exploitative purposes in the prostitution of another or instructs, obtains or encourages another to engage in prostitution with force, threats or deception shall be given a prison sentence of between three months and five years; (2) If an offence from the preceding paragraph is committed against a minor,against more

[23] Statistical reports of Slovenian Public Prosecution; available at: http://www.dt-rs.si/sl/vrhovno_drzavno_tozilstvo/porocila_o_delu_drzavnih_tozilstev/

than one person or as part of a criminal organisation, the perpetrator shall be given a prison sentence of between one and ten years.

There is also a special article regarding liability of members and leaders of criminal organisation (Article 41 of Penal Code):
(1) A severer sentence may be prescribed for an intentional criminal offence with a prescribed sentence of more than three years of imprisonment if the criminal offence was committed within a criminal organisation; (2) A member (hereinafter: the member) of a criminal organisation with at least three persons shall be punished with a severer sentence under paragraph 1 of this Article if he commits the criminal offence to implement the criminal organisation's plan in association with at least one member as an accessory or accomplice; (3) In the case referred to in paragraph 2 of this Article, the leader of the criminal organisation, who led the implementation of the criminal plan or had at his disposal illegally gained property benefits at the time of committing the criminal offence based on the criminal plan, notwithstanding whether he participated at its implementation directly as the perpetrator or accessory pursuant to Articles 20 or 37 and 38 of this Penal Code, shall be punished the same as the perpetrator. Besides the mentioned laws, we have to point out that Slovenian parliament ratified in 2004 United Nations Convention against transnational organized crime.

For the more efficient fight against organized crime, the Law on Police was amended in the way that Slovenia it established the National Bureau of Investigation (see more in next point – bodies responsible to fight organized crime).

Slovenian legislation also introduces Instructions on the work of a group of state prosecutors for the prosecution of organized crime (Official Gazette of the Republic of Slovenia, No. 53/06 and 70/08), where rules of work of special prosecutors for organized crime are defined.

2. Confiscation of illegally acquired assets

In Slovenia, the confiscation of criminal proceeds aims basically to restore pecuniary circumstances as they were before the criminal offence was committed. Confiscation is treated independently from the section of the Penal Code dealing with the sanctions for the offence committed and is not taken into account in their determination. The general legal framework is determined by:

a) Chapter 7 of the Penal Code – Confiscation of property benefits gained by committing of criminal offence (See Appendix 1), which contains detailed provisions describing grounds for/methods of confiscation of property, the protection of injured parties and confiscation from legal persons;

b) Articles 498-507 of the Criminal Procedure Act (see Appendix II), which describe the procedure of confiscation; and

c) Article 73 of the Penal Code - Confiscation of Objects Gained Through the Committing of Criminal Offence - (see Appendix III), which regulates confiscation of objects.

According to Article 498 of the Criminal Procedure Act, ["objects (…) shall be confiscated even when criminal proceedings do not end in a verdict of guilt"]. Moreover, a "court shall render the ruling on confiscation even when a provision to that effect is not contained in the judgement of conviction", particularly "where so required by the interests of public safety or by moral considerations" (see Appendix II). Besides cases where the criminal procedure ends in a judgement stating that the accused person is guilty, money or property can also be confiscated when facts indicating that they originate from criminal offences - Articles 245 (criminal offence of money laundering) and 151, 157, 241, 242, 261, 262, 263 and 264 of the Penal Code are established. In this case, the investigating judge, at the request of a pre-trial panel[24] composed of three district court judges, collects evidence and investigates all the circumstances of importance for the determination of unlawful origin of money or property or illegally given or received bribes. At the end of those investigations, the non-trial panel issues a special resolution, which is notified to the owner of money or properties confiscated and who is thus entitled to appeal (Article 498a).

Article 75 paragraphs 1 and 2 of the Penal Code provides for the main regulations applicable to confiscation (see Appendix I). Value confiscation is possible. Economic advantages or property benefit acquired through or owing to the commission of a criminal offence are estimated ex officio: courts and other law enforcement agencies responsible for conducting the criminal investigation gather evidence which is significant for estimating property benefits. When the court considers that the assessment of property benefits calls for a specialist's opinion, it may engage an expert. Nevertheless, the court may fix the amount of property benefits at its own discretion, if a precise estimate would entail excessive difficulties and the proceedings would thereby be unduly protracted.

Property may also be confiscated from persons to whom it was transferred free of charge or for a sum of money that does not correspond to its actual value, if such persons knew or could have known that this property had been gained through or owing to the commission of a criminal offence. With regard to beneficiaries, the knowledge that property derives from crimes is not necessary. A property may also be confiscated when transferred to close relatives[25] , unless such persons demonstrate that the full price had been paid for the property in question.

The confiscation of assets belonging to legal persons is provided for in Article 75 of the Penal Code (see Appendix I). Expenditures for gaining the proceeds may not be deducted.

Article 97 of the Penal Code is worded as follows: "If the injured party has been awarded his claim for damages [suffered owing to commission of a criminal offence] by the Criminal court, the latter shall order the confiscation of property only insofar as such property exceeds the adjudicated claim of the injured party". It is also provided that the criminal court may ask the injured party to bring his/her claim for damages before a civil court in cases where estimating compensation for damages caused is par-

[24] A panel of professional judges sitting in camera and who take decisions on issues related to the preliminary proceedings.

[25] Close relatives" means: a spouse, brother, sister or first cousin up to three times removed, a relative by marriage up to twice removed, adoptive parent, adopted child, foster parent, foster child or other person living in the same household as the perpetrator.

ticularly difficult and would thereby unduly delay the entire criminal proceeding. Moreover, any injured party, which has not made a claim for compensation of damages in the course of criminal proceedings, may start a civil action for the adjudication of his/her claim within six months from being notified of the confiscation order.

Interim measures are mainly regulated by Articles 109, 502 and 507 of the Criminal Procedure Act. Article 109 provides for all cases related to temporary measures aimed at protecting the interests of persons who claim compensation for damages, while Article 502 deals with procedures concerning confiscation of property benefits (see Appendix IV). Besides those provisions, it is worth mentioning that the Office for the prevention of money laundering is empowered to suspend any transaction for 72 hours, if it believes that there exist well-founded reasons to suspect a money laundering case. Legislation provides for the application of interim measures to all criminal offences.

Management of seized assets

Article 506a of the Criminal Procedure Act provides that "(1) The court, which ordered the storage of seized items or temporary securing of the claim for the seizure of the proceeds or property in the value of the proceeds, must take very quick action in such cases. It must manage the items and property used for temporary securing of the claim as well as the items or property lodged as security with due diligence. (2) If the storage of the seized items or temporary securing of the claim referred to in the previous paragraph entails unproportional costs or if the value of the property or items is decreasing, the court may order that such property or items be sold, destroyed or donated for public use. Prior to the decision the court must obtain the opinion from the owner of the property or items. If the identity of the owner is not known or if the summons to present the opinion cannot be served on him, the court shall post the summons on the court bulletin board and after eight days it shall be regarded that the summons has been served on him. If the owner does not present his opinion within eight days after the serving it shall be regarded that he agrees with the sale, destruction or donation. It also establishes that in cases where the storage of the item involves "disproportionate costs" or its value decreases owing to the seizure, the court can order that such property or item be sold, destroyed or donated for public benefit.

The "Decree on the Procedure of Managing Seized Items, Property and Security deposits" of March 2002 (changed twice in 2007 – See appendix – only in Slovenian language) regulates all the procedures related to managing items and property as defined in Article 506a. Article 3 provides that the court can order that items be deposited and managed by executors – bailiffs – appointed in accordance with the relevant law and that the management, storing, sale and destruction of items and property seized be supervised by the "Commission for seized Items", which is composed of judges, representatives of the Ministry of the Interior, and prosecutors.

Law on confiscation of illegal acquired assets

The fundamental purpose and objective of the new law is to prevent the acquisition and use of unlawfully acquired assets. Such property has to be taken from persons who have it, of course, ensuring the protection of the rights of those persons who acquired

such property legally and in bona fide. The proposed regulation establishes a special procedure for confiscation of unlawfully acquired assets, which has in criminal proceedings the starting point only in terms of suspicion of illicit origin of property. The basis for the process of confiscation of property is then provided in the special financial investigation. About temporary ban of possession of the proceeds (property benefit), temporary securing of the proceeds (property benefit), and the final confiscation, courts will decide in civil procedure, taking into account the principle of reversed burden of proof.

The law in this way provides confiscation, if the suspect will not be able to prove that he obtained the property legally. Procedure for confiscation will be in jurisdiction of specialized public prosecutor's office (present group of state prosecutors for the prosecution of organized crime at The Office of the State Prosecutor General of the Republic of Slovenia). In the new institute - a financial investigation - will be assessed whether assets were acquired legally or not (as mentioned in the context of civil and not criminal proceedings). If the suspect proves that he acquired property legally, it will be returned to him. The body, which will manage with the property, will be obliged to maintain its real value.

Law will not set up new institutions, but exploits the capacity of existing institutions in the judiciary (see appendix in Slovenian version of the proposed law).

Division of responsibilities for the institutions

We have to point out the other institutions which have important role in fighting against organized crime. These are:

- Police (Criminal Police Directorate–Organized crime divizion, Illicit Drugs Section, Terrorism and Extreme Violence Section, and Criminal Associations Section);
- State prosecution;
- Office for Money Laundering Prevention; and
- Supreme court.

a. Police

Through the Law on Police, which took effect on July 18, 1998, the police service became a body within the Ministry of Interior of the Republic of Slovenia. According to the organization chart of the Police, there is a General Police Directorate under which Criminal Police Directorate is established. From its organization chart we can see detailed structure of police units/sectors:

ORGANISED CRIME DIVISION

Illicit Drugs Section
Counterterrorism and Extreme Violence Section
Criminal Groups Section

GENERAL CRIME DIVISION

Property Crime Section
Homicide and Sexual Offences Section
Juvenile Crime Section

ECONOMIC CRIME DIVISION

Financial Crime and Money Laundering Section
Business and Public Crime Section
Corruption Section
Serious Economic Crime Section

SPECIAL ASSIGNMENT DIVISION

Undercover Operations Section
Covert Surveillance Section
Special Techniques Section
Witness Protection Section

INTERNATIONAL POLICE CO-OPERATION DIVISION

Interpol Section
Sirene Section
Europol Section
Telecommunications and Administration Section

CRIMINAL INTELLIGENCE CENTRE
COMPUTER INVESTIGATION CENTRE
NATIONAL BUREAU OF INVESTIGATION

a. The criminal police cooperates with uniformed police officers in uncovering criminal offences and perpetrators. These, due to their ongoing presence, can immediately take action and solve less serious criminal offences. Severe forms of crime, which require special investigative knowledge and technical equipment, are handled by criminal investigators.

Crime is not hindered by national borders or ethnical differences. In the last decade, with the dissolution of the eastern bloc, crime pushed its way across the iron curtain to the West. This especially applies to organized crime, weapons and illicit drug trafficking and money laundering. Slovenia is also more frequently faced with such crimes, thus it comes as no surprise that the fight against organized associations involved in in-

ternational criminal acts is a priority task of the criminal police.

The criminal police endeavours not only to keep up with criminal offenders, but also to remain a step ahead of them, therefore they constantly introduce contemporary investigative methods and techniques, suitably train and equip experts for the most serious forms of criminal offences, improve the quality provision of evidence on criminal offences, improve the use of special methods and techniques for investigating organized crime, reinforce preventive work, monitor the occurrence of juvenile crime in more depth, etc. The criminal police has established special groups of experts for combating corruption, organized crime and computer crime; this will enable facilitated monitoring of criminal movements both at home and abroad and contribute to an improvement in the clear-up rate of criminal offences, which is currently already one of the best in Europe.

b. National Bureau of Investigation was established in Slovenia in 2010. It is a specialized criminal investigation unit at the national level of the Ministry if Interior for the detection and investigation of serious criminal offences. Reasons for that are the following:

In February 2009, the working group for the preparation of a concept for a more successful and efficient response of law enforcement to new forms of criminality conducted a thorough analysis of the work of the Criminal Police at state and regional levels. The analysis of the problematic situation showed the following deficiencies that had an impact on the work efficiency of the police in the investigation of economic crime, corruption and other serious forms of criminal offences:

- Inappropriate legislation

  There was no legal basis for a multidisciplinary approach to the investigation of economic and organized crime, inappropriate provisions of the Decree on the cooperation of the State Prosecutor's Office of the RS and the Police in detection and investigation of perpetrators of criminal offences

- Inappropriate organization of the Criminal Police

  Operational and non-operational tasks in the Criminal Police is overlapping; too many tasks outside the specialized areas of investigation.

- Inappropriate personnel policy

  A number of adequate qualified personnel are too low; fluctuation of personnel as a result of underrated employment posts and remuneration.

- Inappropriate material resources

  Too slow introduction of developed technologies. Inappropriate education and training; Training system is closed.

• Insufficient inter-institutional cooperation
Disconcerted actions of all CJ institutions involved in the pre-trial procedure.

Another very pronounced problem is the temporary preservation and permanent withdrawal of the advantage acquired by the perpetrator with the execution of a criminal offence. In the period 2004 to 2009, the police conducted 365 financial investigations with the purpose of identifying the property originating from organized and economic crimes. As a result, 172 motions to temporarily preserve property were sent to the State Prosecutor's Offices by the police. In 138 cases no property or reasons for a motion to temporarily preserve property was found in the financial investigation. According to the police data, on the basis of the motions forwarded to the prosecutors (only) 17 decisions to temporarily preserve property were issued by the courts. It must be pointed out that the police do not have precise data on the issued decisions of the courts and, currently, there is no legal basis for the direct exchange of data between courts and the police. This is a clear sign of systemic problems in this field in the entire chain of justice – from the Police to the Office of the Prosecutor to the Judiciary.

On the basis of the described deficiencies and problems frequently encountered by law enforcement in their fight against economic and organized crime and corruption, a concept for a more efficient detection and prosecution in this field was formed by an internal working group. This group proposed establishment of the National Bureau of Investigation (NBI), which was indeed established in January 2010.

The NBI is part of the Slovenian police and, as an autonomous criminal investigation unit of the General Police Directorate, works within the framework of the Criminal Police Directorate. It exclusively performs operational tasks demanding top-qualified personnel and state-of the-art equipment. The Bureau is responsible for the detection and investigation of economic crime, corruption and other forms of serious crime whose complexity calls for special investigator training, organization and equipment as well as a harmonized and joint performance of tasks of various institutions at national and international levels.

The NBI project also brought an opportunity for other organizational changes within the existing organizational structure of the Criminal Police Directorate. With the reorganization of the Criminal Police Directorate, the "Crime Intelligence Centre" (CIC, Center za kriminalistično obveščevalno dejavnost) was established whose activities are mainly "Intelligence-led policing" (ILP)[26]

c. State prosecution

The Office of the State Prosecutor General of the Republic of Slovenia is the highest-ranking prosecutor's office in the country, within which there operate supreme and higher state prosecutors, district state prosecutors assigned to the Office of the State Prosecutor General for performing demanding professional tasks, and state prosecutors operating within the group of state prosecutors for the prosecution of organized crime.

[26] Source of information regarding NBI: https://www.ncjrs.gov/pdffiles1/nij/Mesko/235122.pdf; pages 243-259

The group of state prosecutors for the prosecution of organized crime is responsible for prosecuting the perpetrators of criminal offences in the area of "classical" organized crime and economic crime, terrorism, offences connected with corruption and other offences where detection and prosecution require special organization and skills, including the entire country when the State Prosecutor General so decides.

d. Office for the money laundering prevention (OMLP)

The Office for Money Laundering Prevention is a constitutive part of the Ministry of Finance, performing duties referring to the prevention and detection of money laundering and terrorist financing, and other duties determined by the Act on the Prevention of Money Laundering and Terrorist Financing (Official Gazette of the Republic of Slovenia No. 60/2007).

The Office is made up of the management and 5 organizational units, namely: a) Section for prevention and supervision; b) Section for suspicious transactions; c) Analysis service; d) Information technology servile; and e) International cooperation service.

The OMLP is empowered to suspend any transaction for 72 hours, if it believes that there exist well-founded reasons to suspect a money laundering case. According to Article 20 of the Law on Money Laundering Prevention, the OMLP may start investigating a case in which "a transaction or a particular person raises suspicion of money laundering" and also on the basis of "a substantiated written initiative" from State bodies (police, courts, Public Prosecution Office, Intelligence and Security Agency, the Bank of Slovenia, Agency for the Securities Market, Agency for Insurance Supervision, or the inspectorate bodies of the Ministry of Finance).

Value of the provisionally secured proceeds in money laundering cases

Table 4 shows data on the number of money laundering cases, where the court, during the period 2000 until 2009, ordered provisional securing for the confiscation of proceeds and their value, in different stages of criminal procedure.

Table 4: Seized funds in the period 2005 – 2009 (by foreign currencies)

YEAR	EUR	USD	GBP
2005	5.384	664.195	
2006	1 x real property		
2007	4.767.503	60.345	7.5
2008	1.925.828		
2009	3.224.615		
TOTAL	9.923.330	724.54	7.5
TOTAL IN EUR		**10.973.762**	

Table 4 shows that the courts, during the period 2005 until 2009, under the request for confiscation, ordered seizure or provisional securing of proceeds in the total value of EUR 10.973.762. Provisional securing referred to altogether 12 natural and 2 legal persons in 11 cases with regard to grounded suspicions of committing the criminal offence of money laundering. Courts ordered the afore mentioned measure as the following:

in 2005 in one case, in 2006 in one case, in 2007 in three cases, in 2008 in two cases, and in 2009 in five cases.

In year 2009, the courts (on proposal of prosecutor's offices) provisionally secured proceeds in the total amount of EUR 3.224.615. Provisional securing refers to 6 natural persons and 1 legal person in 4 cases.

Value of seized proceeds (still secured by decrees of the courts on December 31, 2009), regardless as to when the measure of provisional securing became valid, was EUR 12.360.204. Part of proceeds was on the accounts of the District Courts of Slovenia and accounts of competent authorities abroad (altogether EUR 5.612.482,03), as the seizure of EUR 1.987.637 referred to secured value of real property and several vehicles and EUR 4.760.085 were seized on the basis of Strasbourg Convention No. 141.

e. Supreme court

The Supreme Court has a special department of the most experienced and the most qualified judges who are responsible for the worst forms of crimes (including organized crime).

Besides these institutions/bodies, we have to point out also others which are responsible for international cooperation. Slovenia is a member of Europol, Interpol, SIRENE, SECI, CEPOL, MEPA, International Missions, ENFSI. It was also evaluated by Moneyval, GRECO, OECD, EU Commission, etc.

Slovenia ratified and signed many agreements, such as:

- *Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Albania on the cooperation in combating terrorism, illicit traffic in drugs and organised crime;*
- *Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Hungary on the cooperation in combating terrorism, illicit traffic in drugs and organised crime;*
- *Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Slovak Republic on the cooperation in combating terrorism, illicit traffic in drugs, psychotropic substances and their precursors and organised crime;*
- *Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the cooperation in combating terrorism, illicit traffic in and abuse of drugs as well as against organised crime;*
- *Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Czech Republic on the cooperation in combating terrorism, illicit traffic in and abuse of drugs as well as against organised crime;*
- *Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Hellenic Republic on cooperation in fighting crime, especially terrorism, illicit drug trafficking and organized crime;*
- *Act ratifying the Agreement between the Government of the Republic of Slovenia and the*

Government of Malta on co-operation in the fight against organised crime, trafficking in illicit drugs, psychotropic substances and precursors, terrorism and other serious crimes;

- *Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of Sweden on co-operation in the fight against organised crime, trafficking in illicit drugs, psychotropic substances and precursors, terrorism and other serious crimes;*

- *Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Bulgaria on Co-operation in the fight against organised crime, illicit drugs, psychotropic substances and precursors trafficking, terrorism and other serious crimes;*

- *Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Cyprus concerning the co-operation in the fight against terrorism, illicit drug trafficking and organized crime;*

- *Act Ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Montenegro on cooperation in the fight against organised crime, people trafficking and illegal migrations, trafficking in illicit drugs and precursors, terrorism and other crimes;*

- *Act ratifying the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Latvia on co-operation in combating terrorism, organized crime, illicit trafficking in narcotic drugs, psychotropic substances and precursors and other serious crimes;*

- *Agreement between the Government of the Republic of Slovenia and the Government of the Russian Federation concerning the co-operation in the fight against organized crime, illicit drug trafficking, terrorism and other forms of crime;*

- *Agreement between the Government of the Republic of Slovenia and the Government of the Turky concerning the co-operation in the fight against organized crime, illicit drug trafficking, terrorism and other forms of crime;*

- *Agreement between the Government of the Republic of Slovenia and the Government of the Italy concerning the co-operation in the fight against organized crime, illicit drug trafficking, terrorism and other forms of crime;*

- *Agreement on Cooperation to prevent and combat trans-border crime, etc.*

Implementation of laws and effects achieved in practice

By analyzing the legislation related to fighting crimes, analyzes revealed that, in comparison with the rest of Europe, we have adequate laws and a lot of specialized institutions for prosecuting crime, that however are not linked and do not work together. Findings show that this cooperation is not working well because of personal matters among individuals working in these institutions. The courts of justice, which were recently found guilty of non reducing crime level, do not have political representatives to speak in favour of the independence of courts. It should be further stressed that courts are the ones that protect human rights and weigh evidence and not the ones that should prove the guilty of criminals. State institutions, which should have more power and knowledge, seem to be losing the fight with the opposite side because they are not connected, not functional and not harmonious. A new institute is the National Bureau

of Investigation and a new law on confiscation of illegally acquired assets.

To prove that the legislation, especially on confiscation, is good, we have to point out GRECO report for Slovenia. The GRECO evaluation team (hereinafter GET) pointed out, in second evaluation report for Slovenia (Strasbourg, 12.12.2003), satisfactions and of course warnings and some recommendations:

The provisions of the Penal Code are adequate to confiscate the instrumentalities and proceeds. First of all, it is to be welcomed that confiscation of the proceeds of crime is mandatory. In addition, the GET was informed that confiscation covers everything that the offender has gained from the offence. The court must therefore not subtract the "costs" which the offender has incurred from what he has gained. This simplifies confiscation and requires no particular evidence to be provided or calculations to be made during the investigation and court proceedings. The GET regards it as positive that not only the proceeds of the offence can be confiscated but also a property equivalent to the proceeds of the offence where confiscation of the proceeds of offence is not possible. There is also satisfactory regulation of the possibility of obliging accused or convicted persons to pay a corresponding sum within two years when the proceeds of the offence or property equivalent to the proceeds of the offence cannot be confiscated. The long duration of proceedings ascertained by the GET is nevertheless detrimental, in its opinion, to the success of the seizure of assets. The GET was informed that criminal proceedings normally last three years and longer before a judgment is delivered.

The existing legal provisions of the Criminal Procedure Act are sufficient to permit provisional seizure of the instrumentalities and proceeds. The GET had the impression, however, that provisional seizure of the instrumentalities and proceeds is rarely used, and that, hitherto, only small sums have been confiscated, although confiscation of the instrumentalities and proceeds of crime is mandatory at the judgment stage if the legal requirements are met. In the GET's view, only where seizure has taken place early on can subsequent confiscation under the terms of a judgment be effectively enforced. Moreover, not all police officers, prosecutors and judges have a sufficient knowledge of the provisions concerning the implementation of the seizure of assets. In the GET's opinion, it is necessary to train them in applying the provisions concerning provisional seizure of the proceeds from criminal offences.

The GET recommended that, in order to promote the use in practice of the legal provisions on temporary seizure of proceeds of crime, 1) the prosecution service make full use of the legal provisions on temporary seizure at the very beginning of an investigation – including, if appropriate, at the preliminary stage –, 2) the Criminal investigation Department's police officers and prosecutors be given specific training in application of the legal provisions, and 3) support in the form of measures such as model documents for the provisional seizure (of bank deposits, shares, real estate etc.) be prepared and made available to police officers, investigating judges and prosecutors.

*The **GET** also had the impression that the process of starting investigations and especially using special investigative techniques is so complex that it is very difficult to obtain substantial evidence of a criminal offence and to identify or seize the instrumentalities and proceeds or equivalent assets. As a result, it is not clear, particularly in the case of complex economic offences, whether there is a simple and quick way in which the police can start the investigation and arrange the*

necessary measures, including freezing/seizure of proceeds of crime.

*Moreover, the **GET** realized during the visit that the prosecuting authorities are not always rapidly provided with sufficient documents and information to enable them to decide whether measures should be taken to seize assets and whether legal assistance measures are necessary. In the GET's opinion, in cases of economic crimes and corruption, only investigations that are started rapidly are likely to be successful. Transactions are carried out in the greatest secrecy, it is in no one's interest to be found out, often the only evidence consists of fleeting traces, offenders pass themselves off as serious individuals and witnesses seem never to have heard, seen or said anything. In many cases, therefore, investigations are only successful where there is an element of surprise. For that reason, **the GET recommended that the prosecution service be swiftly informed about investigations so that it can assume leadership thereof and speedily decide whether provisional measures for the deprivation of property must be taken.***

Of course, effects of such important »anti« organized crime regulations and regulations on confiscation of illegally acquired assets were more than good. With those, Slovenia ensured the basis to act properly against organized crime and the basis for the confiscation. More positive effects Slovenia tries to achieve from the new law on confiscation which is now in its second reading in the Slovenian parliament.

The role of the civil society in the fight against organised crime and the illegally acquired assets

As we noted, in Slovenia the cooperation between law enforcement institutions (police and public prosecutors offices) and the connection between these institutions and financial institutions was pointed out as one of the main problems. The second problem is the weak social development: this is the reason why we should develop conditions for good social interaction. Civil society through NGOs can have influence on responsibility of public mandate holders. Influence in the reduction of crime is shown in the independence of media, education and pressure on young's to do right and proper things and state new values. Civil society bears the most important role in preventing crime and can lead to better society. Civil society represents the interests of specific groups, is building partnerships between society and theirs institutions. In this way it can build the consciousness to people that the organized crime is a bad and wrong way of living. Besides civil society, educational institutions and researching journalism play a big role in combating organized crime.

We have to increase collaboration of all actors in the society to reduce crime, but the most important are law institutions, professional groups, and academic researchers, representative bodies of economy, NGOs and civil society. We must combine different interested impartial persons, who are coming from the above mentioned institutions and groups with the aim to debate how to reduce organized crime. The main role of forums about organized crime are to accept as soon as possible common concepts of reducing crime, to form new law instruments, to build better usage and to stimulate better dialog between those who are combating crime and especially organized crime[27] .
Društvo Integriteta – Transparency International Slovenia is for now the only NGO

[27] http://www.etc-graz.at/cms/fileadmin/user_upload/humsec/Workin_Paper_Series/Working_Paper_Dobovsek.pdf).

that focuses in implementing more transparency and integrity in the Slovenian society.

CONCLUSIONS

Organized crime is in many ways a developmental issue in the Western Balkan's countries, reflecting the lack of adequately protected property rights, the lack of local employment opportunities and the fragility of states. Capacity-building projects within the judicial system are as much a part of the process of dealing with organized crime as legislation. Participating informants and undercover policing operations are a critical component in combating organized crime. International assistance and conditionality must be coordinated to avoid overburdening local administrations. The countries of the region need to take a more balanced approach to gathering and collating criminal intelligence. Operations should be based on accurate threat assessments, not on political or media priorities. The international community can assist in creating the necessary expertise for this task.

The prevention and repression of organized crime is an aim which no one would dare to question. But we must control and manage the crime instead of fight against crime. Crime was always present in the history and, as it seems, it will always be there, especially in the Western Balkans. We must control and try to reduce organized crime to the minimum risk for society, since it seems utopia to eradicate it completely as we experienced in the past. In this fight it is uncertain who will win. Controlling and managing crime will help for a better society. To do that, we must focus on highest levels of criminals using cooperation. If there is absence of commitment at the top, there is a lack of moral authority to enforce laws and punish the criminals. Ambitious promises lead to loss of public confidence. Uncoordinated reforms mean that no one is committed to implement and kept up to date. Reforms that rely too much on law and enforcement leads to repression, which stimulates crime. Reforms which focus only on the ordinary people cases have no effect in general on organized crime.

Serbia

Evaluation of the level of organised crime and illegally acquired assets

The genesis of organized crime in Serbia

The issue of organised crime in particular started being discussed during the period of international sanctions and Yugoslav wars in 1990-is and after the assassination of Prime Minister Zoran Djindjič.

„The lack of free market or, rather, the fact that the communist party had a say on everything, particularly on economy, have resulted in the impossibility of certain forms of illegal business to develop. In simple terms, the party and political structures were a mafia above all others. In addition, Serbia or, rather, former Yugoslavia, differed from other socialist countries because its citizens could receive passports freely and without any limits, and the group of citizens that travelled to the West as tourists and migrants also included a considerable number of those engaged in criminal activities. This was, in a way, a "safety" valve for the state (former SFRY).

Due to the limited market and limited possibilities to earn money in Yugoslavia (Serbia), but also due to the repressive communist regime, a considerable number of criminals acted legally in the home country, whereas they conducted their illegal businesses and earned their wealth on great West European markets. The communist regime consciously tolerated that, often using such individuals to do the states' dirty work and deal with its political opponents abroad. In this way, the former SFRY, with over a million economic emigrants in the countries of the West, a considerable number of which engaged in criminal activities, had bought relative social peace. However, after the fall of the Berlin wall in 1989, when the citizens of other East European countries were free to travel to the West, the situation changed. The scene was taken over by more powerful and better-organised kriminal groups, primarily from the former USSR and Albania. It was then, when the criminals who were tolerated so far, who stayed at home spending the money earned abroad, could no longer find their way in the great Western world, thus they started their illegal business in Serbia. At the same time, professional circles of Serbia started becoming more interested in the issue of organised crime, and even the politicians begun speaking openly on the fact that Serbia was no longer immune to the problems of organised crime.

The beginning of the nineties was characterised by the tragic events concerning the dissolution of the SFRY and the war on its territory. This fact is strongly related to the come out of certain groups and actors who changed from criminals into national heroes and defenders of endangered national interests. This was also the time when both, regular and paramilitary units, on the territory of former Yugoslavia started to become heavily armed, particularly in the republics that had declared their separation from the SFRY, which until then did not have their own armed forces and weapons. These republics found different ways to obtain adequate weapons and ammunition, which implied establishing various illegal channels from abroad, using the services of domestic and foreign mafia, including foreign mercenaries, the so-called "war dogs". Tough guys and controversial businessmen, which were euphemistic terms for criminals, became very useful for the realisation of political and war objectives, particularly for parties at war in former Yugoslavia. There was, therefore, no longer a tactical and indirect,

but an open and direct understanding between state and political power in former Yugoslav republics, on the one hand, and mafia structures, on the other. To complete the paradox, mafia structures and organisations of different sides at war, despite heavy verbal, nationalistic rhetoric, had intense cooperation in the field of trade in drugs, weapons, oil and other goods that were in deficit.

General war chaos and full social anomie favoured the appearance and strengthening of organised crime, which was additionally emphasised in Serbia by the introduction of UN economic sanctions, which implied the impossibility of normal and legal supply of oil, but also of medications and other goods. This created a social and psychological atmosphere where everyone who managed to smuggle goods from abroad and to break the UN blockade was perceived as a person who realised positive and eligible social goals, not as someone engaging in illegal business and nobody was warned about the danger from the strengthening of organised crime. Moreover, in the atmosphere of general disappointment and discontent due to the sanctions and difficult living conditions brought about by the sanctions, the countries of Western Europe and USA, which introduced the sanctions, were perceived as the enemies of Serbia by a majority of its citizens and, hence, everyone who managed to break the sanctions and the blockade was treated in extremely positive terms, as heroes.

It is, therefore, not only the case of state tolerating groups engaged in criminal activities, but of the state inciting such groups. In any case, these groups experienced full social affirmation. The coupling of the state and criminal establishment grew ever stronger and more apparent, and it was just a question of time when such groups would get out of control of the Miloševič regime, which consciously tolerated and used them. Today, several years after Miloševič's downfall, numerous statements and attestations of people who participated in those events reveal that a very active and important role was played by individuals and groups from the criminal underground. Those groups escaped from the existing and, until then successful, Miloševič's control. In simple terms, the ghost was out of the bottle; organised crime was no longer under control and it became an independent, but also very influential factor in political events in Serbia. To complete the irony, what happened to Zoran Djinčič seems to be a similar sequence of events. After using the criminal structures to overthrow Slobodan Miloševič on October 5, 2000, he too postponed the time of final confrontation with organised criminal groups, partly in fear of them, but in any case convinced of being able to control and destroy them, once the conditions for it were met (once necessary legislation is passed), in a legal, regular way. However, it seems that mafia was so strong and connected to a series of centres of political power in Serbia, that it was the mafia who struck against the state first, by killing the prime minister on March 12, 2003.

This is certainly a sign of vitality and strength of what is called organised crime in theory and practice, and a message to everyone not to play with mafia, that it is hard to control, and that combat against organised crime should by no means be postponed, regardless of how expedient and pragmatic it may seem in a given moment, in political and economic terms."[28].

[28] Jovan Ciric in THE FIGHT AGAINST ORGANISED CRIME IN SERBIA From the Existing Legislation to a Comprehensive Reform Proposal Belgrade 2008 page 45-49.

Current level of organized crime[29]

It is clear that the organized crime concept in Serbia changed during last years. The time of violent criminal groups, more or less openly demonstrating their power and wealth, presenting themselves as patriots and performing dirty jobs for politicians, obviously passed.

However, it does not mean that organized crime does not exist. The "classic" forms of organized criminal groups are present also today, but are lesser known to the public. The first confirmation of that fact is the recently prepared police "white book" of organized crime groups in Serbia. Second evidence of their existence is still vivid, and seemingly, emerging market of narcotics. The abuse of drugs spread over the years throughout the country and that market could not be otherwise served, but through organized criminal groups with good links with similar groups in other countries. It seems that only very small portion of such groups is uncovered. Third evidence for the presence of violent organized crime are cases of armed robbery in the country and cases of murders involving Serbian gangsters, mostly in other countries (like recent case of I. Pukanic assassination in Zagreb, where criminals from Serbia are accused as executors or organizers).

Besides its classic, violent forms, organized crime seems to take more and more new shapes, involving financial abuses and frauds. The big distinction between two types is the fact that organizers of abuses and frauds are rarely people with pure criminal background, but rather people taking advantage of their official position and having good business (although illegal) idea. Such criminals are hardly ready to spend whole life in illegal activities, but prefer to explore opportunity and get reach in a short time. Having that in mind, it might be also problematic to name that type of crime "organized" from theoretical point of view.

Both classic and new concept of organized crime might have its clear relation with actors in public policy or civil servants at least. The most concerning factor in that sense is the obscure political party financing and lack of effective control tools over public officials and civil servants' income. No one could claim without proofs that politicians or parties are financed by organized criminal groups or that they are protecting their interests, but it is not possible to claim the opposite, until their sources of funds are verified independently. Similarly, even potentially checkable, the wealth of civil servants is not controlled and compared with their legal income, neither on permanent basis nor even in cases when suspicions are raised in press. Furthermore, some types of organized crime are suspected to be run by politicians – e.g. by directors of public enterprises making damage for the public property and by their party leaders and protectors.

The factor still not sufficiently researched until now is the role of secret and security services and their former members. Unlike other east European countries, Serbia never opened its dossiers of secret service collaborators and members and it is hard to estimate what is their influence to the public policy. In the past, Secret service itself was actively cooperating with organized crime groups and in criminal activities in country and abroad. Another concern related to security is the fact that many police officers or re-

[29] This chapter derives from the text of same author prepared within the regional research on organized crime, led by Risk Monitor, Sofia, Bulgaria

tired police officers left public service and opted to work for private security companies, providing protection. Obviously, this increases risks of corruption and creation of illicit networks among law enforcement officers and criminal structures.

The future will impose new challenges to fighting the organized crime. For example, it could be expected that visa liberalization with EU, that is effective since December 2009, will make easier functioning of cross-border crime. Other perspectives of the organized crime are internet frauds and other types of high technology crimes. Third type of the organized crime, that already exists, and that seems to be also flourishing in period to come, are frauds making damages to the public budget, whether through extracting of public monies by schemes involving state officials or through evasion of tax duties. Namely, control mechanisms of the state are just too weak to cope with the high number of cases of that kind.

However serious the organized crime is, it is for sure that state never had so powerful tools to fight it. There are special methods allowed for organized crime investigations, specialized bodies in the police to fight against it, prosecution office and court, and there are legislative preconditions to seizure proceedings of crime in efficient way. Public supports the fight against such crimes, and political will exists, demonstrated in declared priorities and sometimes also in actions. Finally, there is a chance to use international assistance, in particular the EU approaching process, to make this fight more efficient.

Legal basis and division of responsibilities for the institutions

Confiscation of assets *(Overview of the Law)*

Law on confiscation of property resulting from criminal offence ("Official Herald of the Republic of Serbia", No. 97/2008) regulates conditions, procedure and agencies competent for detection, confiscation and governance of property resulting from a criminal offence.

The provisions of that Law apply to the cases of following criminal offences:

1) of organized crime (i.e. all criminal offences where crime was committed by an organized criminal group);

2) of showing pornographic material and making use of children for pornography;

3) some criminal offences from the group of crimes against the economy;

4) of unauthorized manufacture, keeping and trading in narcotics;

5) some criminal offences against law and order;

6) some criminal offences against official duty (including those with element of corruption, like abuse of power from Article 359);

7) against humanity and other values protected by international law.

Furthermore, the law can apply to cases where any other criminal offence is suspected (the list is given in article 2), where the property benefit gained through criminal offence

and/or the value of the object of criminal offence exceeds the amount of one million and five hundred thousand dinars.

The Law defines the property as to include goods of any kind, material or non-material, movable or immovable, assessable or invaluable, and documents in any form serving as proofs of holding a right or interest in relation to such goods. Understood as property shall also be the income or other benefit stemming directly or indirectly from criminal offence, as well as goods into which it has been transformed or mixed with. The property resulting from criminal offence shall be understood to include a property of a suspect, a witness-collaborator or a testator, *which is obviously incommensurate with his lawful income*.

Agencies competent for detection, confiscation and governance of property resulting from criminal offence are the public prosecutor, the court, the organizational unit of the Ministry of the Interior competent for financial investigation, and the Authority for Governance of Confiscated Property.

The organizational unit competent for financial investigation is a specialized organizational unit of the Ministry of the Interior in charge of detection of property resulting from criminal offence, and of performing other tasks in conformity with this Law. The Unit operates by virtue of office or at the order of the public prosecutor and the court. Governmental and other agencies, organizations and public utilities are bound to render assistance to the Unit.

The Authority for Governance of Confiscated Property is an agency within the framework of the Ministry of Justice. Governmental and other agencies and public utilities are bound to render assistance to the Authority.

The Authority governs the confiscated property resulting from criminal offence, the objects of criminal offence, the property benefit gained by criminal offence, and the property given as a security in criminal proceedings; makes professional assessment of confiscated property resulting from criminal offence; store, keep and sell the provisionally confiscated property resulting from criminal offence and dispose of proceeds acquired in this way in conformity with the law; keeps record of property it governs, and of proceedings relating to decision-making regarding such property; performs other tasks in conformity with this Law.

Financial investigation could be initiated against an owner should a reasonable doubt exist as to his possessing a considerable property resulting from a criminal offence. It includes collecting of evidence regarding the property, the lawful income and living expenses of the accused, of witness-collaborator or testator, the evidence regarding the property inherited by a legal successor, and/or evidence regarding the property and the consideration given for transferring the property to a third person.

Financial investigation could be instituted at the order of public prosecutor and governed by the public prosecutor. Within the financial investigation various measures are possible to conduct, including search of an apartment or other premises of an owner or other persons, where there is a probability of finding evidence. The public prosecutor may order a

bank or other financial organization to provide the Unit with the data relating to the position of owner's business and personal accounts and safes.

Should the danger exist that a later confiscation of property resulting from criminal offence would become more difficult or impossible the public prosecutor may make a request for the provisional confiscation of property. Prior to rendering the decision on the request for provisional confiscation of property, the court shall set down an oral hearing and shall summon accordingly the owner, his defense counsel and/or the plenipotentiary, if any, and the public prosecutor. Where the summons to appear may not be served, the court appoints a plenipotentiary to the owner to act in the proceedings of provisional confiscation of property. On such hearing the public prosecutor presents the documentary evidence regarding the owner's property, the circumstances pointing at the reasonable doubt that the property is a result of a criminal offence, and the circumstances pointing at the danger that a later confiscation would be made more difficult or impossible.

After coming into force of the prosecution indictment, and within one year, at the latest, from the day of effectively closed criminal proceedings, the public prosecutor shall make a request for permanent confiscation of property resulting from criminal offence. By means of a sentence dismissing the accusation or freeing from accusation, the court shall dismiss the request for permanent confiscation of property and shall repeal the ruling on provisional confiscation of property.

Should the request be aimed at the property of the convicted and/or witness-collaborator, the public prosecutor shall put forward the evidence relating to property owned by the convicted and/or the witness-collaborator, to his lawful income and the circumstances pointing at the obvious disproportion between the property and the lawful income. After that, the convicted and/or the witness-collaborator and his plenipotentiary shall challenge the public prosecutor's points. There are simmilar provisions also related to the property of a legal successor or a third person. The Law contains also provisions about court hearing and appeal procedure.

Till the time of repealing the ruling on provisional confiscation of property and/or final termination of proceedings of permanent confiscation of property, the Authority shall govern the confiscated property by applying the care of a good master of the house and/or a diligent expert. Costs of keeping safe and maintenance of the provisionally confiscated property shall be born by the Authority. The director may decide that the provisionally confiscated property may be kept by the owner under his obligation to take care of property as a good master of the house. The owner shall bear the costs of keeping safe and maintenance of the property. Should this be justified, the director, in certain cases, and on the ground of a contract, may entrust to another natural person or a legal entity the governance of the provisionally confiscated property.

With a view to preserve the value of provisionally confiscated property, the Authority, after the approval by the competent court, may sell the movable property without delay, and/or entrust it to a specific natural person or legal entity in order to be sold. Exceptionally, the court may approve that, instead of the sale of property, the security offered by the owner or another person may be accepted. The amount of security shall be determined with regard to the value of provisionally confiscated property. After the security

is deposited, the property shall be handed over to the grantor of the security.

The sale of property shall be carried out by a verbal public auction to be announced in the "Official Herald of the Republic of Serbia", and/or other media. Perishable goods and animals may be sold without a verbal public auction. Movable property shall be sold at the price which is the same or higher than the assessed value determined by the Authority. Should the property be not sold after two verbal public auctions, the sale may be carried out by direct bargain. The sale of securities and other negotiable papers shall be carried out in conformity with regulations relating to trade of securities. The movable property not sold within one year may be donated for humanitarian purposes or destroyed. Funds acquired by the sale of property shall be kept at the special account of the Authority until the reversal of the ruling on provisional confiscation of property. These funds are used for the restitution of property and compensation of damage and costs that Authority had for their operations.

The funds acquired by the sale of provisionally confiscated property which is found not resulting from a criminal offence, shall be restituted to the owner of property, and shall be increased by an average interest at sight for the corresponding period of time.

After deducting the costs of governance of the confiscated property and settling the civil law claim of the person suffering damage, the funds acquired through the sale of permanently confiscated property shall be paid in to the budget of the Republic of Serbia, and distributed at the amount of 20% each to the court, the public prosecutor's office, the Unit and the Authority, for financing their work. The remaining funds shall be used for financing the social, health-care, educational and other institutions in conformity with a corresponding act of the Government.

International cooperation with the aim of confiscating the property resulting from a criminal offence shall be realized on the ground of international treaty or provisions of this law if there is now such a treaty. International cooperation includes assistance in detection of property resulting from criminal offence, the prohibition of disposal and the provisional or permanent confiscation of property resulting from criminal offence.

The prerequisites for extending the assistance are:

1) that a required measure is not contrary to basic principles of domestic legal order;

2) that carrying out of the petition of foreign agency would not affect the sovereignty, the public policy or other interests of the Republic of Serbia;

3) that standards of fair trial be satisfied in the foreign procedure of rendering the decision on permanent confiscation of property.

Reasons for adoption of the law

This Law is enforced since March 1, 2009. Serbia and the former Yugoslavia always had provisions regulating seizure of assets obtained through criminal activity. However, in order to confiscate such assets, it was necessary to provide evidence that assets are direct consequence of a concrete criminal offence or was used in order to

commit a concrete crime. For example, a drug dealer, sentenced because of illegal trade which value is EUR 300.000, could keep the rest of his wealth untouched, because prosecutors and police could not find evidence that the rest of his property (which value is e.g. EUR 3.000.000) also originated through illegal activities.

This Law is effectively reversing the burden of proof. Now it is the suspected or convicted person who has to provide evidence that the origin of the wealth is legal. Practically speaking, a drug dealer from the above mentioned example would have to proof that he obtained EUR 2.700.000 property in a legal manner. Furthermore, such proof could be asked from other persons related to him, i.e. those that the suspected, accused or convicted person transferred the property to.

The Law has been challenged before the Constitutional court, but also during the process of drafting and adoption. Constitutional Court of Serbia ruled in June 2011 that several challenged provisions of that Law are in line with the supreme legal act in the country. The decision does not deal with the article regulating the burden of proof, but only about the legality of temporary and final seizure and confiscation.

Law on organization and jurisdiction of Government authorities in suppression of organized crime

The activity of state authorities in this direction has begun sometime before the assassination of Prime Minister Zoran Djinčič and was the direct cause for the assassination. From the second half of 2002, when the work commenced, to date, major results can be noted in normative terms: a) new criminal substantive legislation has been passed, envisaging certain incriminations for organised crime; b) in 2002, a new chapter (XXIX/a) was added to the 2001 CPC – it governs procedural instruments for combat against organised crime; c) special statute on the organisation of state authorities (public prosecutor's office, police and court) to combat the organised crime has been passed (on July 19, 2002). A year after that, a special police department to combat against organised crime (UBPOK) was established within the Ministry of Interior. Within a short period of time, several international conventions were ratified, including the UN Convention against Transnational Organised Crime and the European Convention on Prevention of Money Laundering and all relevant conventions on international legal aid, extradition, transfer of criminal cases, etc. Necessary anti-corruption statutes have been passed, governing: prevention of conflict of interest, accessibility of information of public importance, public procurement, etc. The Government has formed "its" Council for Combat against Corruption, which has proven, on several occasions, its independence from the government.[30]

Law on organisation and jurisdiction of government authorities in supression of organised crime is published in "Official Gazette of the Republic of Serbia" No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04, 45/05, 61/05[31].

This Law governs establishing, organization, jurisdiction and powers of special government bodies for detecting and prosecuting perpetrators of criminal offences stipu-

[30] Prof. Dr. Momcilo Grubac, in THE FIGHT AGAINST ORGANISED CRIME IN SERBIA From the Existing Legislation to a Comprehensive Reform Proposal, Belgrade, 2008, Page 43.
[31] Translation used: http://www.mpravde.gov.rs/images/17__law_on_organized_crime.pdf

lated in this Law. The organised crime, in the light of this law, entails the "execution of criminal offences by an organised criminal group or other organised group or its members, for which the envisaged sentence is imprisonment of four years or more". The organised criminal group entails a group of three or more persons, which exists for a certain period of time, acts consensually in order to commit one or more criminal offences for which the prescribed sentence is four years of imprisonment or more, in order to directly or indirectly gain financial or other pecuniary gain. Other organised group is defined as a group that is not formed with the immediate objective of committing criminal offences and that does not have such developed organisational structure, defined roles and continuity of membership, but is in the service of organised crime.
Authorities in suppression of organized crime are the Special Prosecutor Office, Special Police Unit, Special Court Unit, and Special Detention Unit.

Originally, the District Public Prosecutor's Office in Belgrade is given jurisdiction for the territory of the Republic of Serbia to proceed in criminal offences of organized crime. The Special Prosecutor is appointed by the Republic Public Prosecutor from among Public Prosecutors and Deputy Public Prosecutors meeting the requirements for appointment as District Public Prosecutor, under written consent of the appointee. The Republic Public Prosecutor, following a recommendation from the Special Prosecutor, may second a public prosecutor or deputy public prosecutor to the Special Prosecutor's Office. If required by reason of conducting a criminal proceeding, the Special Prosecutor may request the competent government body or organisation to temporarily assign a person from such body or organisation to the Special Prosecutor's Office. The official in charge of such body or organisation shall without delay take a decision in respect of the Special Prosecutor's request. Secondment is conducted with consent of the employee.

A Special Service for suppression of organized crime and corruption is hereby established as part of the Ministry of Interior to perform law enforcement duties in respect of criminal offences of organized crime. The Service shall act upon requests of the Special Prosecutor's Office, in accordance with the law. The minister responsible for internal affairs appoints and dismisses the commanding officer of the Service following the opinion of the Special Prosecutor and specifies the Service's activity, in accordance with this Law. The minister responsible for internal affairs may decide to deploy an organisational unit of the Ministry of Interior - the Gendarmerie, in preventing and detecting the criminal act of terrorism.

All government bodies and services shall, at the request of the Special Prosecutor or Service, and without delay, enable use of any technical means at their disposal, ensure timely response of each of their members and employees, including superiors of the bodies or agencies, give information or for questioning as suspect or witness; hand over to the Service every document or other evidence in their possession, or otherwise deliver information that may assist in uncovering criminal offences or organized crime.

The District Court in Belgrade has first-instance jurisdiction for the territory of the Republic of Serbia in criminal cases or organized crime. The Appellate Court in Belgrade shall have second instance jurisdiction. The Supreme Court of Serbia decides in conflicts of jurisdiction between regular courts in criminal cases related to the application of this law.

A Special Department for processing criminal cases of organized crime (Special Department of the District Court) is hereby established within the Belgrade District Court. The President of the Special Department of the District Court manages the work of the Special Department of the District Court. The President of the Special Department of the District Court is appointed by the President of the Belgrade District Court from among the judges assigned to the Special Department of the District Court.

A special detention unit is established in the Belgrade District Prison for detention pronounced in criminal proceedings for offences of organized crime (hereinafter Special Detention Unit). The Minister responsible for judicial affairs shall specify the organization, work and treatment of detainees in the Special Detention Unit, in accordance with the Law on Criminal Procedure and the Law on Enforcement of Penal Sanctions.

For criminal offences of organized crime, provisions of the Law on Criminal Procedure shall apply to criminal offences of organized crime, unless otherwise regulated by this law. The special prosecutor and authorised prosecutor, the accused person and his or her lawyer, and the injured party and his or her proxy, may propose new evidence, at the latest before the expiry of 30 days from passing the ruling on undertaking the investigation. Upon expiry of the time limit the investigating judge of the Special Department of the District Court, at the final session for recording evidence shall make records on evidence that will be presented during the investigation. All procedural and other objections referring to that phase of criminal proceeding must be recorded at that session. Exceptionally, new evidence shall be proposed and objections rose after the expiry of the time limit, if the evidence did not exist before or no-one could have known about it. The investigating judge of the Special Department of the District Court shall decide on this by a ruling.

The right to examine files may be exercised from the time of passing the ruling on undertaking investigation. However, the investigating judge of the Special Department of the District Court may decide, by his or her ruling, that the right from paragraph 1 shall be used from the moment after hearing all the suspects included in the request for undertaking the investigation. The objection against this decision may be submitted to the president of the Special Department of the District Court who may decide on the objection within 48 hours.

The trial shall be audio recorded and the recording shall contain the entire trial, as well as records in the written form including data on the beginning and closure of the trial, present participants and presented evidence, as well as rulings of the president of the panel concerning the management of the proceeding. The audio recording shall be transcribed within 72 hours and represents a component of the records kept in written form. Audio recording and the transcripts shall be kept in the same manner as records in the written form.

The investigating judge of the Special Department of the District Court, namely the president of the panel of the Special Department of the District Court may reward experts' witnesses and interpreters with an amount which is double the amount they would receive in other criminal cases.

The investigating judge of the Special Department of the District Court undertakes to prescribe time limits for performance of expertise and submission of findings and reports. The time limit may not exceed 90 days. In case of not respecting the time limit, the investigating judge of the Special Department of the District Court, namely the president of the panel of the Special Department of the District Court, shall punish by fine a witness's expert.

In case the time limits are again not respected during the same calendar year, the president of the Special Department of the District Court may, besides a fine, propose to the Minister of Justice to erase the names of those witness experts from the list with the temporary ban to perform their profession for the duration of three years.

When it is not possible to secure the presence of a witness or an injured party at the main trial, they will be examined by using the video-conference. The examination of witnesses and injured party in that manner shall also be conducted through the international criminal legal assistance. Upon a justified proposal of an interested party, the court may decide on the personal data protection of a witness or an injured party.

Persons holding office and/or engaged on tasks and jobs in special organisational units specified under this Law are required, prior to taking office, to submit in writing full and accurate data on his/her financial status and the financial status of spouse, lineal blood relatives, and lateral blood relations to third degree, and relatives by marriage to second degree of kinship, in accordance with the act passed by the Government of the Republic of Serbia. This data represents an official secret. Vetting and financial status checks of persons may be conducted without knowledge of such persons prior to appointment, during the term in office and during one year following termination of office, in accordance with the act of the Government of the Republic of Serbia.

All persons engaged on tasks and duties within the purview of government authorities regarding suppression of organised crime shall treat all information and data they have acquired in performance of these duties as an official secret. The Special Prosecutor, the President of the Special Department of the District Court, the President of the Special Department of the Appellate Court, and the Commander of the Service shall specify the official secrets act in respect of the bodies they manage.

Persons holding office and/or engaged on jobs and tasks in special organisational units specified in this Law are entitled to salaries that may not exceed double the amount of the salary they would be entitled to for posts and or jobs held prior to taking office or jobs in these organisational units. Judges assigned to the Special Department of the District Court and the Special Department of the Appellate Court, the Special Prosecutor, public prosecutors and their deputies assigned or seconded to the Special Prosecutor's Office, are entitled to accelerated pension scheme whereby 12 months of work in special departments shall be calculated as 16 months of pension insurance. The application of the law started from February 28, 2003.

Official Gazzette no. 72/2009 introduced some changes on the said law. The changes that became fully effective since January 1, 2010, provide for changes in several areas. The first is establishing of competence of specialized bodies in the cases where there is

no element of organized crime, but the suspected person for the corruption criminal offence is a public official of higher rank or in cases where the proceeds from the organized crime is appx. EUR 2 million or more.

Other changes are related to the organization of judiciary bodies. Instead of district public prosecution office of Belgrade, with its special prosecution office, there is separate unit - prosecution office for organized crime. Similarly the jurisdiction of the courts is changed (e.g. Higher instead of District Court).

Other important changes are related to the term of special prosecutor and its deputies, as well as about duty of police to immediately inform public prosecutor about all cases where some criminal offence covered by this law is suspected.

The Criminal Procedure Code.

The Criminal Procedure Code ("Official Gazzette of FRY, 70/2001 and 68/2002 and "OG of RS", 58/2004, 85/2005, 115/2005, 85/2005, 49/2007, 20/2009, 72/2009 and 76/2010) envisages the special investigative techniques for cases of organized crime, corruption and other serious crime. Asside from criminal offences of organized crime, defined similarly as in other quoted legislation, special techniques may be applied for cases of abuse of power, trading in influence, bribe giving and bribe accepting, even if there is no organized crime element. Other serious crimes, where these provisions could apply, include criminal offences such as murder, ransom, robbery, money forgering, money laundering, offences related to narcotics, people smugling, international terrorism, etc. It could also be applied in cases of war crimes.

Secret audio and visual surveillance of a suspect

Acting upon the written and reasoned proposal of a Public Prosecutor, an Investigative Judge may order the surveillance and recording of telephone and other conversations or communication by other technological devices and video recording or positioning and electronic surveillance of persons for whom grounds of suspicion for some of above mentioned criminal offences.

Measures shall be ordered by the Investigative Judge, in an explained order, at the proposal of the Public Prosecutor. The order shall include data on the person against whom the measure is to be applied, grounds for suspicion, the way of implementation, scope and duration of the measure. The measures may last for up to three months and, due to important reasons, they may be extended by another three months. The implementation of a special investigative technique, or measures it is made up of, shall be terminated immediately when the reasons for their implementation cease to exist. The order of the Investigative Judge is implemented by the Police, the Security-Information Agency or Military Security Agency. Postal, telegraphic and other enterprises, companies and entities registered for the transfer of information have the obligation to enable police and other bodies to implement special investigative techniques. Recordings may be made at the order of the Investigative Judge in apartments, other premises and in the open area.

Upon the completion of the special investigative technique, the authority which implemented the order shall, without delay, submit a report and recordings to the Investigative Judge. The Investigative Judge may order the transcribing and description of all or part of the recordings obtained through the use of technical devices. The Investigative Judge shall invite the Public Prosecutor to familiarize himself with the material obtained through the use of a special investigative technique.

Other special investigative techniques, where simmilar rules to the previously mentioned cases, are:

- Rendering of simulated business services and conclusion of simulated legal affairs;
- Controlled delivery;
- Automatic computerized search of personal and other data;
- Engagement of an undercover agent, etc.

Specifically important tehnique is the **Examination of cooperating witnesses**. The Public Prosecutor may propose to the court to examine, in the capacity of a witness, a person about whom there are grounds for suspicion that he is a member of a criminal organization and who has explicitly admitted to this, against whom an order of inquiry has been adopted or a direct indictment has been raised for an organized crime offense which he has confessed in its entirety and his confession is corroborated by other evidence.

In order for a person to become a cooperating witness, he must satisfy the following conditions: that this is opportune in view of the nature and circumstances of the criminal offense for which he is suspected of having committed; that there is reason to expect that the importance of his testimony for detecting, proving or preventing other criminal offenses by the criminal organization shall be greater than the damaging effects of the criminal offense which he is suspected of having committed; that in view of the existing facts, there is reason to believe that the determination of important facts in criminal proceedings would be impossible or very difficult if the cooperating witness were not examined.

Implementation of laws and the effects achieved in practice

According to the National Strategy for Combating Organized Crime (March 29, 2009) assessment of the most common forms in which organized crime appear in the Republic of Serbia are: drug trafficking, corruption, human trafficking, money laundering.

There is progress in place in recent years, in particular in the area of fight against drug abuse. Special investigative techniques, such as secret surveillance measures and controlled deliveries, have been used increasingly by the law enforcement authorities. Significant drug seizures and dismantling of organized criminal groups have continued as a result of good inter-agency and international police cooperation at operational level. While improvements in the fight against drugs are recognized by the international counterparts, Serbia remains a transit country for smuggling drugs to Europe. As a proof of good cooperation stands the example of one of the most significant cases initiated due to a good international cooperation – the case "Balkan Warrior" which relates to the in-

terception and seizure of 2.174 kilograms of cocaine in Uruguay on October 15, 2009, together with the seizure of 235 kilograms of cocaine in the vicinity of the Italian town of Pisa on January 19, 2009. In this case, on April 12, 2010, an indictment was raised against 20 individuals charged with organizing a group in order to commit criminal offences as well as unlawful production, keeping and circulation of narcotics.

The analysis of the work done by the Organized Crime Prosecutor's Office in the period from March 2009, when the law came into power, to March 2010, shows that the Prosecutor's Office has launched financial investigations against 232 persons, filed the request for temporary seizure of property against 54 persons, request for permanent seizure of property against 4 persons and gave an order for restriction on disposal of movable assets against 7 persons. Only within a year and a half there were around 20 decisions on temporary seizure and few of them for permanent seizure of assets. The Directorate is now managing the following assets: around 70 houses, apartments or business premises, 110 cars, 9 hotels and restaurants and 2/3 of a holiday home, 1 farm and 44 hectares of construction ground, and 1 warehouse. Also, on the bank account of the Directorate and the National bank there is approximately EUR 800.000 (eight hundred thousand euro) and the monthly income from renting immovable property amounts to approximately EUR 12.000 (twelve thousand euro). At this moment, the total value of confiscated assets managed by the Directorate is of the approximate value of two hundred million euros (EUR 200.000.000).

During the last two years, the Ministry of Justice and the Republic Public Prosecutor's Office signed a number of bilateral agreements with their respective counterparts from the Western Balkans as well as countries of the European Union. Prior to these initiatives, criminals were often exploiting the traditional legal institute of non extradition of countries' own nationals. Resolved in the commitment to prosecute all criminals regardless of their citizenship,the Ministry of Justice of the Republic of Serbia initiated a series of bilateral agreements which should enable extradition of Serbian nationals who committed criminal offence of organised crime and corruption. In June 2010, Republic of Serbia signed the agreement with the Republic of Croatia, sending a clear message that the issue of citizenship will no longer be exploited as a form of protection for criminals. During the first week of November 2010 similar agreement will be signed with Montenegro and contacts with the rest of the interested countries of the Western Balkan are ongoing. Also, the Republic of Serbia is withdrawing the reservation given to the depositing instrument of ratification of European Convention on Extradition related to this issue[32] .

The[33] crimes committed by organized criminal groups may be processed whether by specialized bodies working in that area or by "regular" police and public prosecution forces. Specialized prosecution office for organized crime namely, may decide to take or not take charge for any serious crime involving organized crime element. However, for statistical purposes, the documents of specialized prosecution office are most reliable, as they should clearly cover only organized crime cases. Within the first six years of specialized prosecution office, the total of 1068 persons were indicted, for total of 2410 criminal offences, within 102 separate criminal files.[34]

[32] The text from the begining of the chapter till this point derives from Ministry of Justice's report on implementation of measures against organized crime in 2008-2010 period.

[33] The text till the end of this chapter derives from the text of same author prepared within the regional research.

The largest individual groups are "offences against public peace and order" (since organizing of a crime group is an offence itself), with a total of 898 cases (37,26%) and crimes against official duty, with total of 619 (25,68%).[35]

In 67 cases prosecution dealt with crimes such are assassinations or hard body damages, almost all of them initiated back in 2003. This fact might be the consequence of high "dark figure" of violent criminal offences including assassinations. However, it is more probably that these figures are talking about changes of nature of crimes committed by organized criminal groups in more recent times (i.e. focusing on financial abuses rather than on classic fields of organized crime). Similarly, the total of 37 crimes processed because of coercion or hijacking is also related to the first years of specialized prosecution work.[36]

Special prosecution dealt with lots of criminal offences committed against property rights (total of 221). Among them, armed robbery was most frequently charged in 2005, serious types of stealing in 2006, and fraud in 2007. Economic crimes, with a total of 182 processes, were a matter of consideration of special prosecution since 2005. The most frequent crimes from this category were smuggling (50), forgery of value marks (42), money forgery (27) and tax evasion (22).[37]

There were also 180 crimes involving narcotics production or trade during the work of special prosecution. The most of them were initiated during 2003, figures significantly decreased in 2004 and 2005 and again increased in 2008.[38]

Within the broad group of criminal offences "against public order" (898), a vast majority belongs to the criminal organizing as such. Other crimes from this group are smuggling of people and illegal border passing (81, mostly in 2006) and illegal firearm and explosive possession (71).[39]

Forging of documents was prosecuted in total of 52 cases. Corruption related offences were quite frequently prosecuted (619 cases), in particular since 2006. This includes 465 cases of "abuse of power", 72 cases of bribe-receiving, 57 cases of bribe-giving, 6 cases of judge's or prosecutor's corruption and only 2 cases of trading in influence.[40]

Recommendations of the European Commission Progress Report 2010

The informal sector, fuelled by weaknesses in tax and expenditure policies, as well as in law enforcement, including the fight against corruption and organised crime, remains large. It reduces the tax base and the efficiency of economic policies (Page 30). Capacity building has continued primarily within specialised services of the criminal police such as the services for combating organised crime, financial investigations and high-tech crime (Page 53).

[34] "Specialized prosecution for organized crime – First six years", Belgrade, 2009, page 64.
[35] Ibid, p. 65.
[36] Ibid, p. 67.
[37] Ibid, p. 70 and 71.
[38] Ibid, p. 72.
[39] Ibid, p. 76.
[40] Ibid. p. 78.

Fighting organised crime and terrorism

Good progress has been made in fighting organised crime. The action plan to fight organized crime has been adopted in September 2009 and the implementation has started. Investigative capacities and the use of special investigative techniques have been further strengthened. Specialised training of the relevant police services has continued. The work of the unit for financial investigations within the organised crime service has continued under the leadership of the Special Organised Crime Prosecutor. Confiscation of assets started in a more systematic way and confiscations were carried out in a number of cases.

Cooperation between relevant agencies has improved within the country, in the region and internationally, leading to good results in a number of high-profile investigations against organised crime groups. In these cases, a number of suspects have been arrested and illegally acquired assets confiscated. In October 2010, an agreement establishing a regional office in Belgrade for improving cooperation in the fight against organised crime was signed with Albania, Bosnia and Herzegovina, Croatia, Montenegro, and the Former Yugoslav Republic of Macedonia.

Cooperation with Eurojust improved and Serbia established additional contact points. A meeting with Eurojust representatives took place in May 2010 in order to prepare negotiations for a cooperation agreement. Protection of personal data and of classified data is key for successful conclusion of such an agreement.

However, a new and substantially revised Criminal Procedure Code has still not been adopted. The Commission for Inter-Ministerial Coordination in the field of Justice and Home Affairs has shown little activity. The capacity of the specialised police services to conduct proactive investigations and engage in intelligence-led policing remains limited due to understaffing and lack of analytical expertise. The number of final convictions remains low.

The lack of adequate control and surveillance of the administrative boundary line with Kosovo continues to be problematic in an area which is vulnerable to organised crime activities. Cooperation, implementation of the police protocol, and exchange of relevant information with EULEX need to be further improved. A uniform database on organised crime cases is still missing. Inter-service cooperation, including between the tax administration, customs and the Administration for the Prevention of Money Laundering, needs further improvement. Witness protection needs to be improved. The limited capacities of the agency for the management of seized assets and the fast auctioning of seized assets in the absence of a conviction or any risk of immediate deterioration raise some concerns.

Overall, Serbia has started to address its priorities in fighting organised crime. Recent results in investigating organised crime activities at national and international level and in the confiscation of illegally acquired assets are encouraging, but need to be followed up by transparent, impartial and effective proceedings in the judiciary. The capacities of the law enforcement agencies to use modern investigative techniques, in particular in the area of financial investigations, need to be further strengthened (Pages 54 and 55).

The role of the civil society in the fight against organised crime and the illegally acquired assets

According to the Strategy and related Action plan, civil society organizastions are important actor in the fight against organized crime. The role of civil society organizations, according to the Action plan, is informing the public about results in the fight against organized crime, public awareness raising about dangers from organized crime, building of confident mechanisms for protection of citizens reporting criminal offences of organized crime, joint participation in the projects aimed to achieve the goals of the Strategy.[41]

Conclusions

The organized crime in Serbia is present in both in its "classic" forms, such as violent crime, smuggling of narcotics, car theft etc, but also in "new", organized white collar crime related to the abuses in privatization, tax evasion or abuse of public resources. Significant element influencing level of organized crime is the status of transit country for some types of criminal activities. Another important factor is regional and trans-national cooperation of organized crime groups.

Since 2003 and the assassination of prime minister Djindjic by an organized crime group, Serbia built up strong legal and institutional framework to fight organized crime, that includes specially created bodies (prosecution, court, police unit), possibility to use special investigative techniques in order to combat organized crime (surveillance, rendering of simulated business services and conclusion of simulated legal affairs, controlled delivery, automatic computerized search of personal and other data, engagement of an undercover agent) as well as possibility to grant status of cooperative wittness to the member of organized crime group.

Another important tool to fight economic base of organised crime is reversing the burden of proof about the legality of property origin in cases where organised crime is suspected and possiblitiy to conduct an effective financial investigation. This enabled the state bodies to effectively seizure and confiscate proceeds of crime, but also other property of suspected persons and those related to them, whenever there was no evidence of legaly grounded origin of funds.

While implementation of the above mentioned measures brought significant results until now, there are new challenges as well. In some instances problems occured in cooperation with other countries, in particular when criminal offence form Serbian legislation is not recognized in that form elsewhere (e.g. abuse of power related to the managers of private sector firms), and efforts are made by Ministry of Justice and other relevant bodies to overcome it through changes of criminal legislation and agreements on international cooperation.

[41] Quoted on the basis of **Saša Đorđević Strateški** odgovor Srbije na organizovani kriminal in Bezbednost Zapadnog Balkana, volume 15, 2009.

Turkey

Evaluation of the level of organised crime and illegally acquired assets

General situation in Turkey

Organized crime is a profit making activity, intervening in the economic, political and social lives of countries. Corruption, illegal smuggling, trafficking activities and the money laundering businesses have a negative effect on the political, economic and social stability of countries.

The major sources of illegal proceeds in Turkey relate to drug trafficking, but also smuggling, qualified fraud and bankruptcy, document forgery, pillage, highway robbery and kidnapping, and serious crimes against the State. The primary methods for laundering funds are money transfers and other banking transactions, commercial transactions, accounting transactions and purchase of real estate.[42]

Europol's 2011 Organized Crime Threat Assessment shows that Turkey is a key nexus point for transit to the EU for illegal immigration. Illicit entries of migrants from Turkey have increased by over 500 per cent between 2009 and 2010. The report shows that this growing importance of Turkey as a nexus point for migrants is likely to be further exploited by Turkish organised crime groups already extremely skilled in managing routes for illicit commodities.

Apart from the geostrategic location, Turkey also has deep rooted criminal history of under world and smuggling which makes it even harder to combat these illegal activities. In order to reverse this role of hers, Turkey has taken important steps in the recent years, both at local level and international level. This paper analysis these legal changes together with the outcomes in reality and the problems with implementation with reference to evaluation and progress reports of European Commission and Financial Action Task Force.

Legal basis and division of responsibilities for the institutions

Organized Crime

In Turkish laws, organized crimes are divided into two groups: those committed for terrorist purposes and those committed for the purpose of seeking unjust profit. This paper focuses on those with the purpose of seeking unjust profit. This kind of crimes include smuggling, trafficking of drugs, arms and gold, money laundering, human and immigrant trafficking, organ and tissue trafficking, forgery and financial crimes (subvention, corruption in procurements and credits, etc.). In the Turkish Penal Code (Law No 5237) the term "organized criminal" is defined as "the person who sets up, administers, involves or commits solely or jointly on behalf of an organization."

The term "organized crime" has been used in different places in the Penal Code. The Article No. 78 defines the penalties for forming organized groups to commit crimes against humanity and genocide. In a number of articles, the crime organizations are mentioned to increase the penalty of related crime. For example according to Article

[42] This report is prepared by Hande Özhabe from Transparency International Turkey.

79/2 the punishment of immigrant trafficking is imposed by half in case of commission of these offenses within the frame of activities of an organized criminal group. Similarly, the punishments for threatening (5237/106-d), qualified larceny (5237/142-3), qualified plunder (5237/149-f), storage or delivery of hazardous substances without permission (5237/174-2) and production and trading of addictive or relieving/exciting drugs (5237/188-5) increases in case the crime is committed by a crime organisation.

The main article in the Turkish Penal Code on organized crime is the Article 220 on "Forming organized groups with the intention of committing crime". According to the Article 220, who forms or manages organized groups to execute acts which are defined as offense by the laws, is punished with imprisonment from two to six years unless this organized group is observed to be qualified to commit offense in view of its structure, quantity of members, tools and equipment hold for this purpose. However, at least three members are required for existence of an organized group. Those becoming a member of an organized group with the intention of committing a crime, are punished with imprisonment from one to three years. In case the organized criminal group is equipped with arms, the punishment to be imposed is increased from one fourth to one half. In case of commission of a crime within the frame of activities of an organized group, the offender is additionally punished for this crime. The directors of the organized criminal group are additionally punished for all the offenses committed within the frame of activities of the organized group. Any person who commits an offense on behalf of an organized criminal group without being a member of that group is additionally punished for being a member of the organized group. Any person who knowingly and willingly helps an organized criminal group although not takes place within the hierarchic structure of the group, is punished as if he is a member of the organized group. Lastly, any person who makes propaganda by praising the organized criminal group and its object is punished with imprisonment from one to three years. The punishment to be imposed is increased by one half in case of commission of this offense through press and broadcast organs.

The Code of Criminal Procedure came into force on June 1, 2005, which defines powers concerning the conduct of criminal investigations, covering issues such as search, interception of communication, covert surveillance and physical examination. Accordingly, if strong grounds for suspicion is present that the crime of "forming an organization to commit crimes" is committed, then "the ground for arrest with a warrant" may be deemed as existing.[43] The Code allows the judge or, in cases of peril in delay, the public prosecutor, may decide to locate, listen to or record the correspondence through telecommunication or to evaluate the information about the signals of the suspect or the accused, if during an investigation or prosecution conducted in relation to a crime there are strong grounds of suspicion indicating that the crime has been committed and there is no other possibility to obtain evidence. The public prosecutor shall submit his decision immediately to the judge for his approval and the judge shall make a decision within 24 hours. In cases where the duration expires or the judge decides the opposite way, the measure shall be lifted by the public prosecutor immediately. The decision of the measure may be given for maximum duration of 3 months and the judge may decide to extend the duration several times, each time for no longer than one month, if deemed necessary. Decisions rendered and interactions conducted accord-

[43] Article No. 100 of the Code of Criminal Procedure

ing to this article shall be kept confidential while the measure is pending.[44]

The Code allows the judge, or in cases of peril in delay, the public prosecutor to empower the public servants to act as undercover investigators, in cases where there are strong indications of suspicion that the crime under investigation had been committed, and if there are no other available means of obtaining evidence. The undercover agent is obliged to conduct every kind of investigation related to the organization, the activities for which he has been appointed, as well as investigations related to crimes committed within the activities of this organization.[45]

If there are strong indications of suspicion that forming a criminal organisation crime has been committed, and if there is no other available means of obtaining evidence, the activities of the suspect or the accused, conducted in fields open to the public and his working places, may be subject to surveillance by technical means, including voice and image recording.[46]

The cases related to the crime of forming a criminal organisation are tried by the criminal courts. However, Article 250 of the Code of Criminal Procedure defines specific measures for crimes committed by using coercion and threat within an organization formed in order to obtain unjust economic gain; producing and trading with narcotic or stimulating substances committed within the activities of a criminal organisation; forming organized criminal groups to commit offences against national security, constitutional order and operation of constitutional rules, national defence and state secrets and conspiracy. According to that article, these cases shall be tried by the Court of Assizes, which by the offer of the Ministry of Justice, shall be nominated by the High Council of Judges and Prosecutors and the circuit of adjudication of this Court of Assize shall encompasses more than one province. The law also includes specific measures for the phases of investigation and prosecution. The investigation of crimes, that are in the scope of Article 250 shall be conducted by the public prosecutors who have been so entrusted with the task of investigation and prosecution of these crimes by the High Council of Judges and Prosecutors.

For these cases, the normal custody period of 24 hours, shall be applied as 48 hours for individuals who have been arrested without a warrant or crimes that are under the scope of this Article 250.[47] During prosecution, these crimes are considered amongst urgent matters and cases related to them shall also be tried during the judiciary recess period. In cases where the number of the accused are very large and a portion of them are not involved in some sessions of the hearing of the court, the court may decide to conduct such sessions in their absence. However, if during the session conducted in their absence, a circumstance is revealed that affects them, the main points of spoken words and interactions, as well as affairs related to this, shall be notified to them in the following session. In order to secure the safety, the court may make a decision to conduct the hearing at another location. During these cases, a reasonable amount of time shall be granted to the public prosecutor, to the intervening party or to his representative in order to announce the charges on the merits; to the accused or to his defence

[44] Article No. 135 of the Code of Criminal Procedure
[45] Article 139 of the Code of Criminal Procedure
[46] Article 140 of the Code of Criminal Procedure
[47] Article 251 of the Code of Criminal Procedure

counsel, in order to defend himself against the charges. This period may be prolonged on its own initiative in cases where otherwise the right of defence would be restricted.[48]

In 2007 Turkey has adopted the Witness Protection Law[49] . In order to be qualified under this Law, offence should be either life sentence or imprisonment over 10 years or crimes of terrorist formation or illegal organization crimes. The witness protection measures under this law include change in the identity, address, physical protection and plastic surgery to change the physical appearance.

Turkey is a signatory party of the following international treaties:

- The United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- The UN Convention Against Transnational Organised Crime (2001) (the Palermo Convention);
- The UN Convention Against Corruption (ratified in 2006);
- Council of Europe Civil Law Convention on Corruption (ratified in 2003);
- Council of Europe Criminal Law Convention on Corruption (ratified in 2004);
- OECD International Anti-Bribery Convention (ratified in 2003).

Confiscation of Illegally Acquired Assets

The preventive side of the Turkish Anti-Money Laundering (AML) regime was originally instituted through the Law on Prevention of Money Laundering (Law No. 4208 of November 19, 1996), the Regulation supporting this law, and four Turkish Financial Intelligence Unit –MASAK- Communiqués. On 2006, Turkey enacted a new AML Law (Law No. 5549 of October 18, 2006), which replaces and strengthens a large number of the provisions contained therein.

In 2005 a new Penal Code was introduced in which Article No. 281 is on the laundering of assets acquired as a result of criminal offense. Accordingly, any person who takes away the assets acquired as a result of an offense which requires minimum six months or more punishment of imprisonment, or carries the same to a foreign country to be subject to various transactions in order to hide illegal source of these assets and to give the impression that they are acquired in the lawful manner, is punished with imprisonment from three to seven years, and also imposed a punitive fine up to twenty thousand liras. Anyone, who does not participate in the commitment of the crime but buys or uses the proceeds of crime willingly, is punished with imprisonment from two to five years. In cases where this activity is committed by an organised criminal group, the punishment to be imposed is increased by one fold.

The AML law is written with the purpose of determining the principles and procedures for prevention of laundering proceeds of crime. According to the law, anyone working in the field of banking, insurance, capital markets, money lending, historical artefacts or any such field in which money can be laundered is obliged to identify the customer and report any suspicious transaction to the Presidency of the Financial

[48] Article 252 of the Code of Criminal Procedure
[49] Law No. 5276 on Witness Protection

Crimes Investigation Board operating under the Ministry of Finance. These parties are also obliged to report any transaction exceeding the amount determined by the Ministry and when provide all related documents when requested. The law protects the obliged parties from any action done under the authority of this law. The obliged parties' compliance is ensured with the authority of the Presidency to request for an inspection within the institution and the inspectors should report any violation of obligation to the Presidency.[50] The administrative fine for non-compliance varies between 2000 to 10.000 Turkish Liras (Euros 800 to 4000) and the judicial penalty is one to three years of imprisonment.[51]

In cases of suspicion, the Presidency reports the case to the prosecutor. The Code of Criminal Procedure defines the procedure for seizure. The seizure may be conducted by the members of the security forces upon the decision of the judge or, if there is peril in delay, upon the written order of the public prosecutor; in cases where it is not possible to reach the public prosecutor, upon the written order of the superior of the security forces. Where a seizure was made without a warrant of a judge, the seizure shall be submitted to the judge who has jurisdiction for his approval within 24 hours. The judge shall reveal his decision within 48 hours from the act of seizure; otherwise the seizure shall be automatically void. The seizure shall be notified to the victim, who suffered losses, without any delay.[52] The immovable goods, transport vehicles of land, sea or air, all kinds of accounts in banks or other financial institutions, all kinds of rights and credits by legal or natural persons, valuable documents, shares at the firm where he is a shareholder, contents of the rented safe and other assets belonging to him may be seized in cases where there are strong grounds of suspicion tending to show that the crime under investigation or prosecution has been committed and that they have been obtained from this crime.[53] In cases where there are strong grounds of suspicion that the crime is being committed within the activities of a firm and it is necessary for revealing the factual truth, the judge or the court is entitled to appoint a trustee for the administration of the firm with the aim of running the business of the firm, for the duration of an investigation or prosecution.[54]

Turkey is a signatory party of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention). Turkey is a member of Financial Action Task Force (FATF) and the Group of States Against Corruption (GRECO).

Division of responsibilities for the institutions

The main institutions responsible for fight against organized crime are the police organization and the judiciary. Parallel to the developments in the fields of technology and economics experienced in the 1990s in Turkey, the professional struggle against organized crime groups that have expanded activity fields by means of making changes in their existing structures has been carried out by the Department of Fight Against Organized Crime under the General Directorate of Fight Against Smuggling and Organised Crime Depart-

[50] Law No. 5549 on Prevention of Laundering Proceeds of Crime, Chapter 2
[51] Law No. 5549 on Prevention of Laundering Proceeds of Crime, Chapter 3
[52] Article 127 of the Code of Criminal Procedure
[53] Article 128 of the Code of Criminal Procedure
[54] Article 133 of the Code of Criminal Procedure

ment (KOM) since 1998. The Department is responsible for tracking the activities of these organisations, take precautions to prevent their activities, collect statistics and develop new strategies. Under KOM, the International Academy of Turkey's Fight Against Drugs and Organized Crimes (TADOC) is established in 2000 to increase the human capacity and foster international cooperation in the fight against organized crime, within the framework of Turkey-UNODC collaboration. Overall, KOM has close to 6500 personnel and 80 subdivisions all around the country.

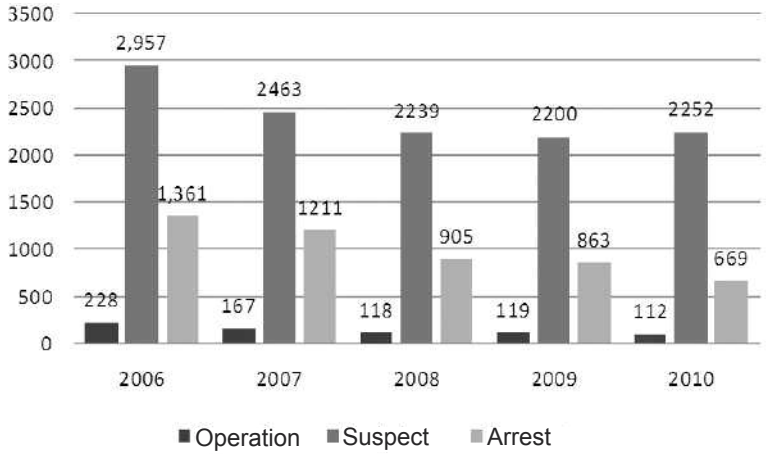
Under the judiciary, the criminal courts are the responsible courts to deal with organized crimes. Cases filed because of (a) Producing and trading with narcotic or stimulating substances committed within the activities of a criminal organization and (b) Crimes committed by using coercion and threat within an organization formed in order to obtain unjust economic gain shall be tried by the Court of Assizes, which by the offer of the Ministry of Justice, shall be nominated by the High Council of Judges and Prosecutors and the circuit of adjudication of this Court of Assize shall encompass more than one province. As of 2010, there are 20 Court of Assizes in Turkey.[55]

The Turkish Financial Intelligence Unit (FIU) – Mali Suçlar Araştırma Kurulu (MASAK) is a focal point for the Turkish AML/CFT efforts. The regulatory system is implemented and supervised by four primary agencies: the FIU, the Banking Regulation and Supervision Agency, the Capital Markets Board, and the Undersecretariat of Treasury. The AML/CFT system is overseen by a multi-agency Coordination Board for Combating Financial Crime.

MASAK receives suspicious transaction reports and develops cases that are forwarded to the public prosecutor for action against money laundering. Turkish law enforcement authorities have comprehensive legal powers for gathering evidence and compelling the production of documents, and they can also use special investigative techniques with the permission of the judge and the order of public prosecutor.

Implementation of laws and effects achieved in practice

According to the 2010 Activity Report Police Department of Anti-smuggling and Organized Crime, 744 operations have been realized within the struggle against organized crime groups in the last five years and organized crime investigations, and have been carried out on about 12,111 suspects.



Graphic 1: *Number of Organized Crime Operations, Suspects and Arrests over years (Source: KOM Annual Report 2010)*

[55] Ministry of Justice Activity Report 2010

Similar statistics regarding the number of cases opened due to the crime of forming a criminal organisation is kept under the General Directorate of Criminal Records and Statistics. However these statistics are not shared with the public on the Directorate's website and in order to receive them, an official application is required followed by a lengthy bureaucratic process.

Years/Illegal Activity Type	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of Drug Smugglers	6,121	6,209	6,527	7,493	8,350	7,934	11,109	11,979	17,127	28,734	32,101	31,524
Drug Smuggling Cases	2,737	2,857	2,952	3,544	4,147	3,736	5,164	5,714	4,850	13,692	15,433	18,073
Organised Crime Cases	191	393	466	514	323	230	328	221	228	167	118	119
Arrested Members of Organised Crimes	1,294	2,420	2,676	3,770	2,358	1,755	2,717	2,344	2,957	2,463	2,239	2,200
Human Smuggling Cases	-	115	152	331	394	263	-	-	378	375	317	305
Illegal Immigrants	-	-	95,524	95,365	78,757	56,219	61,228	57,428	51,983	64,290	62,459	34,345
Arms Smuggling Cases	227	205	507	206	114	117	255	185	165	144	139	134
Arrested Arms Smugglers	762	650	1064	579	359	341	691	560	647	598	619	196
Nuclear Smuggling Cases	1	1	1	1	1	4	-	1	1	-	-	6
Nuclear Smugglers	8	6	1	7	-	-	-	-	5	-	-	-
Number of Human Traffickers	-	-	-	-	-	-	227	379	422	308	248	301
Number of Trafficked Victims	-	-	-	-	-	-	239	256	246	148	118	102

Graphic 4: Number of Illegal Organized Crime Activities and Arrests, Turkey (1998-2009) Source: Selimoglu, F. H., "Transnational Organised Crime: How Turkey and EU Combat With It?", Master Thesis, 2010

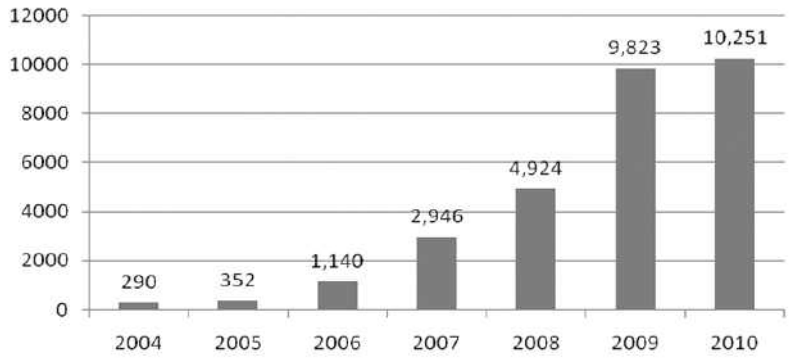
As for the fight against money laundering, Turkey has generally complete international cooperation mechanisms and sound national and international cooperation in practice. The main issues faced during the implementation on the anti-money laundering laws are as following:

• Although the competent authorities are capable and actively involved in the anti-money laundering system, the prosecutors and judges have limited awareness of anti-money laundering system[56] ;

• While the number of suspicious transaction reports submitted to MASAK has increased substantially, the level of reporting remains low when the size and nature of Turkey's financial sector is considered, according to FATF.

[56] FATF's Evaluation of Turkey, 2007

Graphic-2 The number of suspicious transaction reporting over years (Source: MASAK)



In addition, most of the reporting comes from the banks (See Graphic 3). No systems exist for monitoring and ensuring compliance of other obliged parties with anti-money laundering requirements.

Graph 3: The Sources of suspicious transaction reporting over years (Source: MASAK)

Sources of Suspicious Transaction Reports	2005	2006	2007	2008	2009	2010
Banks	351	1133	2903	4889	9480	9968
Intermediate Agencies	1	7	40	9	168	28
Those operating in capital markets	-	-	-	15	32	70
Insurance and Indvidual pension firms	-	-	3	10	129	148
Notaries	-	-	-	1	6	1
Postal Service	-	-	-	-	6	25
Exchange Offices	-	-	-	-	2	11
TOTAL	**352**	**1140**	**2946**	**4924**	**9823**	**10251**

Despite the high number of reporting, prosecutions remain low. In 2009, 23 cases were brought to prosecution compared with 42 in 2008. Convictions, confiscations, seizures and freezing of assets remain limited.

Recommendations of the European Commission Progress Report 2010

Turkey's EU Progress Reports shows that Turkey is working to fulfill the conditions of EU membership in the area of combating organized crime. Turkey has signed various agreements concerning human smuggling, police cooperation with Europol, money laundering, prevention of organized crime and human trafficking. In addition, there has been important legal changes in Turkey to strengthen the fight against organized crime and money laundering. However, according to the reports, Turkey still needs to make further developments and fully implement the agreements it has signed at a local level.

The European Commission's 2010 Progress Report pinpoints the importance of the Witness Protection Law and its implementation since November 2008. Since then, a department of Witness Protection has been established within the Turkish police force

and witness protection units in 60 provinces were established.

A need for the establishment of a fingerprint and DNA database is emphasized in the Report. The Commission welcomes the enhancement of the capacity of the special unit dealing within the department of Combating Smuggling and Organized Crime. However, the quality and reliability on law enforcement remains to be developed. Another issue of concern stated in the Progress Report is the reliable and comparable data needed to be collected in relation to law enforcement.

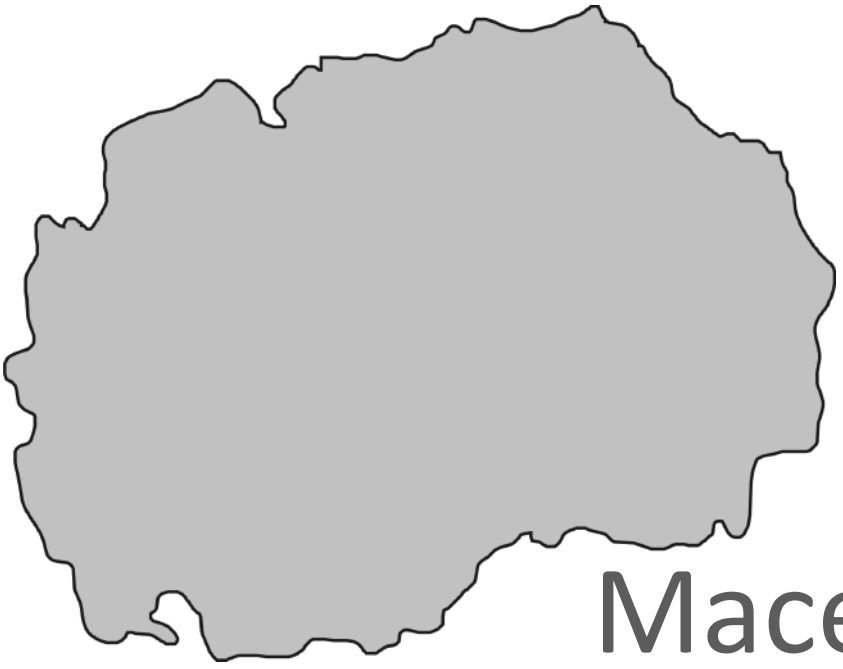
As regards the fight against money laundering, the EU Progress Report mentions particular deficiencies identified by FATF, including areas such as criminalization of financing of terrorism and an adequate legal framework for identifying and freezing terrorist assets. Turkey has not yet ratified the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on financing of terrorism (CETS 1998) although it signed it in 2007.

The Report welcomes the considerable increase in the number of suspicious transaction reports relating to possible money laundering. However, in contrast, the number of suspicious transaction reports concerning financing of terrorism decreased since 2008. The Report also notes that convictions, confiscations, seizures and freezing of assets remain limited.

Conclusions

Turkey has shown significant efforts in order to tackle the growing problem of organized crime in the latest years. During the EU accession process, a number of legal changes is being made in order to bring Turkish laws in line with the acquis. These include the new Turkish Penal Code, the Code of Criminal Procedure and the Law on Prevention of Laundering the Proceeds of Crime. Turkey has signed most of the international treaties as well.

With regard to institutional capacities, however, Turkey still faces some challenges. The international evaluations show that there is a growing need to train the judicial personnel on the anti-money laundering system. In addition, more trainings are needed for the obliged parties who are responsible to report suspicious transactions of money. The implementation of the laws remain inadequate.



Macedonia

Evaluation of the level of organised crime and illegally acquired assets[56]

The analysis of the structure and the way organised criminal groups act in the Republic of Macedonia is presented in order to illustrate the situation with the penetration of new forms of criminal actions which final goal is achieving big illegal profits. However it was not easy to obtain accurate data from official sources. On the Ministry of Interior web site there are fragmentarily presented information regarding the human trafficking.[57] The latest edition of the State Statistical Office (SSO) does not contain any information about the organized crime and its perpetrators.[58] The methodology and nomenclature the SSO is using are different than those of the Ministry of Interior and the Prosecutors' Office.

Definition of the problem[59]

Intending to avoid defining of this phenomenon, the international community adopted a list of *criteria or elements* for determining the notion that identifies the existence and actions by the traditional criminal groups and networks as well as the involvement of legal entities or professionals in serious forms of organised crime and in the "white collar" crimes. The list of criteria adopted by the European Union in regard to organised crime contains a total of 11 criteria, divided into two groups: **compelling and electing criteria**. Hence, it is believed that at least six criteria need to be present with a certain type of criminal behaviour or actions by the criminal groups to be assessed as organised[60].

For purposes of the UN Convention on Transnational and Organized Crime[61] , an organized criminal group is defined as the following: "Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other benefit. This definition is used in the Law for the Public Prosecutors[62] where the Basic Prosecutors' Office for the fight against organised crime and corruption has been established.

Recording, documenting and analysing this phenomenon in the Republic of Macedonia is based on the provisions from the Criminal Code as well as the international ex-

[57] Situation in the area of human trafficking and smuggling of migrants in 2008; Situation in the area of organized crime and activities of the MoI in the 9 months of 2009.
[58] http://www.stat.gov.mk/Publikacii/2.4.10.12.pdf
[59] The analysis is prepared based on documents from the Ministry of Interior. Part of the assessments are based on empirical and firm police data related to documented and reported cases that are in the phase of prosecuting, investigation or court procedure. No data from other sources are used. The criteria for the basic characteristics of the organised criminal groups accepted on an international level are used as the basic selective standards.
[60] These criteria incorporate the following elements: cooperation of three or more individuals for a longer or undefined period, suspected or convicted for committing serious offences (established as such within the national legislation because of gaining profit or power, where everybody involved has a task or a role; there is a form of internal discipline and control; violence and other forms of intimidation are applied; pressure is applied in politics, media, public administration, the legal system; corruption or other similar forms are applied in justice and economy; both commercial and business structures are used as well as money laundering and activities on an international level.
[61] General Assembly Resolution 55/25 of November 15, 2000, United Nations Convention against Transnational Organized Crime.
[62] Law for the Public Prosecutors from 2007, Official Gazette of the RM No. 150 from 12.12.2007

periences and the adopted criteria on the elements that make the aetiology, phenomenology and presence of organised criminal groups and their activities in a given area. After the new 1996 Criminal Code came into effect, the Ministry of Interior established a new nomenclature on the statistical monitoring of crime within the framework of which a group of offences typical for organised crime and corruption was underlined. This group monitors statistically the offences which in the legal provisions incorporate the element of organised or group actions, crimes that on an international level are accepted as most frequent in the actions of the organised criminal groups as well as the offences in the area of corruption.[63]

Criminalization of the organized criminal actions

The 1996 Criminal Code of the Republic of Macedonia[64] encompasses two provisions in two different chapters in the law that incriminate the membership of the criminal organizations: associating for hostile actions – a provision that incriminates (1) plotting, gangs, groups, or other associations of people for the purpose of committing crimes against the state as well as (2) becoming a member of such an association and the provisioned sentence of imprisonment is from one to ten years (1) and from six months to five years (3) as well as criminal associating[65] – a provision that incriminates (1) the creation of a group or a gang which purpose is to commit a crime which could be sanctioned with a sentence of imprisonment of 3 years or more, as well as (2) belonging to this kind of group or a gang. The provisioned sentence is a sentence of imprisonment of one to five years (1), from three months to three years (2), of one to five years (3). A member of the group or gang, who discloses the group, respectively the gang, before he commits some crime in it or for it, shall be acquitted from punishment (4).

The elements of these two provisions from the Criminal Code that incriminate the forming of criminal organizations or associations are:

- The duration of the cooperation (undetermined);
- Cooperation of at least three persons (the organizer and two more persons);
- Forming organizations or associations in order to commit crimes;
- Involvement in committing more than one crime;
- Involvement in committing serious crimes (which envisages a sentence of imprisonment of more than three years);

[63] Based on the nomenclature in the course of 1997 and 1998 a total of 317 offences of this group were registered which were committed by 436 offenders. Out of the total number of reported offences with elements of being organised in the manner in which they were committed (committed by groups, gangs or associations) there were 27 cases of counterfeited money, 19 cases of illicit drug trafficking, 11 cases of smuggling and 5 cases of extortion.

[64] Chapter 28 – Crimes against the state, Article 324 – Associating for hostile activities, and Chapter 33 – Offences against the public order, Article 394 – Criminal associating.

[65] Criminal association Article 394

(1) A person who creates a group or gang that has the aim of committing crimes, for which a punishment of imprisonment of three years or more may be pronounced, shall be punished with imprisonment of one to five years.
(2) The member of the group or gang shall be punished with imprisonment of three months to three years.
(3) If the group or the gang has an intention to perform crimes for which sentence of imprisonment of at least eight years can be imposed, the organizer, shall be sentenced with imprisonment of at least four years, and the member of the group or the gang shall be sentenced with imprisonment of one to five years.
(4) A member of the group or gang, who discloses the group, respectively the gang, before he commits some crime in it or for it, shall be acquitted from punishment.
(5) The objects and the means that were used by the group or the gang for preparation of the crimes, as well as their finances shall be confiscated.

- Involvement in committing special kind of crimes (for Article 324 – against the state); and
- Membership in a criminal association.

The criminal associating is an especially dangerous form of preparatory action for committing a number of offences. Its essence lies in the mobilization and organizing of a number of persons for joint action based on a previously prepared plan. With the incrimination of the criminal associating as a special act the previous phase of forming and organizing a criminal association is encompassed, as well as belonging, i.e. membership in such an association, if it is a case of a more serious crime. The forming of a criminal association has a character of delictum sui generis with the exception of plotting where the actions that are part of the associating are determined in advance. Because of the danger from the very associating in the sense of creating a threat from committing a number of crimes, this offence is of independent nature in regard to committing actions encompassed in the plan of the association so that the organizer and the members of the association respond for this action even when some of the planned crimes are committed.[66]

Membership in this kind of organization or association is a sufficient reason for somebody to be convicted for being a member of a criminal organization or association.

With the amendments of the Criminal Code from 2004[67] several new articles have extended the scope of the incriminations with defining the "terrorist organization"13 with minimum imprisonment of eight years. In 2008 the amendments have introduced criminal liability for "financing of the terrorism" (Article 395-v) and especially creating an organized group for that aim is punishable with an imprisonment of minimum four years.[68] In addition, the legislator has introduced the possibility to be treated as an organized group if it will be organized for "Preventing elections and voting" (Article 158 p.2).[69] Amendments of the Criminal Code from 2009 have additionally extended the organized group activities to the "Unauthorized use of property rights and another's company" (Article 285 p.5) proscribing a penalty of 5 years imprisonment.[70]

Significant improvement regarding the fight against organized crime and corruption has been achieved with amendments to the criminal law from 2004 that extended the criminal policy in the fight against corruption, financial crime and money laundering by establishing a new criminal offence "Covering of the origin of disproportionately obtained property" that covers public officials and responsible persons that will present untrue information for their assets and incomes or for which it will be established that their assets go beyond their legal incomes in a significant scope.[71]

Furthermore, regarding the international cooperation in this area, the provision from Article 118 from the Criminal Code is very important, which envisages that the crimi-

[66] See: Vlado Kambovski, Ibid.
[67] Official Gazette No. 19/04 03.03.2004.
[6] Official Gazette No. 7/08 15.08.2008.
[69] (2) The person who will commit the crime stipulated in paragraph (1) by the use of weapons, explosive or ther dangerous devices, by applying violence towards two or more persons or within an organized group, or on the area of two or more election locations, shall be sentenced to imprisonment from one to ten years.
[70] Official Gazette No. 114/09 14.09.2009.
[71] Article 359-a of the Criminal Code.

nal legislation for a citizen of the Republic of Macedonia applies also in cases when s/he will commit a crime abroad.

In addition, the legislation in the sphere of the fight against organized crime has been strengthened with the separate Law on the Conditions and Procedures for Intercepting the Communications[72] and the Law on the Protection of Witnesses.[73]

The Law, amending the Law on Criminal Procedure (adopted in July 2008), extends the scope of application of special investigation measures which provides an application of these measures for acts for which under four-year imprisonment sentences is also provided, without demanding an existence of organized group of at least three persons.

Confiscation and preceding measures

An important way in the strengthening of the criminal policy is the separation of criminal organizations and the criminals from the illegally obtained proceeds by means of seizure i.e. confiscation. From the aspect of money laundering the confiscation is very important having in mind that, the criminals' concern that their criminal proceeds could be confiscated, is the fundamental factor that motivates them to launder proceeds from crime.[74]

The first three paragraphs from Article 5 from the Vienna Convention cover the problem of confiscation on a national level, imposing a series of obligations for the states, without any limitations or security. The double determination of the Convention for accepting one of the two types of systems – confiscation of property or confiscation of certain value, leaves space for having difficulties with international cooperation. However, the Convention does not contain any limitations for adopting both kinds of confiscations at the same time.

The problems of this kind are overcome with the Strasbourg Convention which makes efforts to fully strengthen the efficiency of the cooperation in cases of confiscation. Even though the text of the provision from Article 7(2)(a) is similar to the text of the Vienna Convention, it still goes further in the posed requirements by demanding from each member states to adopt a legislation or other necessary measures that will enable it to respond to the two types of confiscation. These and other provisions (13(4), 18(4)) that regulate this procedure placed both systems of confiscation on the same level.[75]

The confiscation and the seizure on an international level are additionally regulated and strengthened with Article 12 of the Palermo Convention where a possibility is provisioned for applying these measures in reference to proceeds from crime obtained with criminal activities envisaged within this Convention.

Republic of Macedonia ratified all three conventions as well as the UNCAC.

[72] Law for the Intercepting of Communications, November 2006, Official Gazette No. 121/2006.
[73] Law for the Protection of the Witnesses, Official Gazette No 38/05.
[74] Money Laundering, Book, Slagjana Taseva, English language, DataPons Skopje 2007.
[75] Money Laundering, Book, Slagjana Taseva, English language, DataPons Skopje 2007.

a) Material provisions

The provisions of Articles 98-100 from the Criminal Code of the Republic of Macedonia established the possibility for seizure of profit obtained from crime from the perpetrator and from persons to whom it was transferred if they did not know – and could have known – that they originate from crimes. Furthermore, the principle of implementation of the two systems for confiscation is adopted – property and value, so if seizure is not possible, the perpetrator is obligated to pay an amount that is equal to the obtained profit.

This provision ensures quality international cooperation within the framework of the mutual legal assistance when imposing confiscation in a case of money laundering in compliance with the international documents.

A significant strengthening of the possibilities for mutual legal assistance within the framework of the confiscations has been ensured with the adoption, in April 2004[76] , of the Law amending the Criminal Code. In the amendments, the title of Chapter 7 was replaced with "Confiscation of property and profit and confiscation of items". Furthermore, in the text of Articles 97-100 the word "seizure" is replaced with the word "confiscation".[77] With this proposal the confiscation is introduced as a penal measure (not a sanction!), and from the aspect of implementation of the international standards, it is important that the court will be able to adopt a decision for confiscation in a procedure provisioned by law and in cases when, because of factual or legal impediments, it will be impossible to lead a procedure against the offender. This also resolves the dilemma whether the measure of confiscation will require a court decision for a predicate offence. Additionally, it is also important to introduce a possibility based on an international agreement for the confiscated property to be returned to another state, the confiscation from third persons, as well as confiscation from a legal entity.[78]

Confiscation of proceeds of crime committed by a legal entity is dealt with by two separate yet correlated articles of the Criminal Code: Article 96e ("Confiscation of property, property gain and seizing items") which was introduced by the 2004 amending law as part of the new Chapter VIa "Sanctions Against a Legal Person" provides that (1) Confiscated property and property gain acquired through a criminal act by a legal person shall be subject to the provisions of Articles 98 through 100 of this Code. Article 100 "Confiscation of property gain from a legal person" reads as follows: If a legal person obtains property gain acquired by the perpetration of a criminal offence, it shall be confiscated.

In this context, it is worth mentioning Paragraph 2 of Art. 96e which provides for the subsidiary responsibility of the natural persons behind the legal person (that is, investors or shareholders) in case the proceeds originally obtained by the legal person can no longer be confiscated from the said entity: (2) If no property or property gain can be confiscated from the legal person due to the fact that it has ceased to exist prior to

[76] Official Gazette No. 19/04 30.03.2004.
[77] Macedonian text uses not only two but four different terms, apparently on a random base, to designate either the permanent or the provisional deprivation of property; in many cases, the same word is used for both kinds of measures (ST).
[78] Kazneno - pravnata reforma pred predizvicite na XXI vek, d-r Vlado Kambovski, Bato & Divajn, Skopje, 2002.

the enforcement of the confiscation, then the founder(s) of the legal person, i.e. for a company the shareholders or joint investors shall be jointly obliged to settle an amount equal to the acquired property gain. Criminal Code also provides for the confiscation of property that constitutes instrumentalities as the Article 100a of the Criminal Code provides for the confiscation (in the original: "seizure") of instrumentalities as well as (debatable) objects deriving from the commission of a criminal offence.

b) Procedural provisions

As a general rule, the confiscation regime is a conviction based on the fact that, as expressed by Article 537(1) of the Criminal Procedure Code, "The court may pronounce confiscation of property benefit[79] in the verdict with which the accused is found guilty, in the decision for court reprimand or in the decision for application of an educational measure, respectively in the decision with which is pronounced the security measure."

In addition, the rigour of the substantive law is underpinned by the procedural rules as Article 533(1) CPC (former Art. 486) provides that "the property and property benefit gained by the committing of the criminal act is certified in a criminal procedure ex officio". It is also prescribed by Paragraph 2 that both the Court and any other authorities, before whom the criminal procedure is conducted, are obliged to collect evidence during the procedure and to inspect circumstances "which are important for the determination of the property and property benefit". Furthermore, Art. 536(1) of the CPC (former Art. 489) provides that as soon as the conditions for confiscation of the property and property benefit are fulfilled, the court will ex officio order temporary security measures.

On the positive side concerning the value of confiscation can be noted how extensively the procedural rules require the ex officio activity of the court in establishing the value of property benefit subject to confiscation. In addition to the provisions quoted above, Art. 535 of the CPC (former Art. 488) requires the court to "order expertise" in case the value of the property gain cannot be determined by any other means (para. 1) as well as to issue an international seizure warrant in case the property is presumed to be abroad (para. 2) and provides that the court, while gathering the needed evidence for the determination of the correct amount of the property benefit, may request additional data from state organs, financial institutions and other legal and natural persons who are all obliged to submit the requested information without delay (para 3). Republic of Macedonia has not yet introduced the reversal of the burden of proof in the framework of measures targeting the proceeds of crime.

As for the specific procedural rules referred to above, they can be found in Art. 532 (former Art. 485) and Art. 541 (former Art. 493a) of the Criminal Procedure Code. Article 532(1) provides for confiscation in rem in general terms, prescribing that "the objects which according to the Criminal Code have to be confiscated will be also confiscated when the criminal procedure will not finish with a verdict that finds the accused guilty". Thus this provision refers to cases where the criminal proceedings have been terminated but, for the above-mentioned factual or legal impediments, a convic-

[79] "Property gain", "property benefit" as well as "material gain" are used as alternate translations for the very same Macedonian original "имотна корист".

tion of a perpetrator was not possible (e.g. the offender could not be identified or the criminal proceedings need to be discontinued, etc.). It is also applicable, according to its para. 3 by the court "when in the verdict which finds the accused guilty it was failed to bring such a decision."

Further procedural rules can be found in Article 541 of the CPC (former Art. 493a) which provides that: (1) When there are factual and legal obstacles for conducting criminal procedure against certain person, the court **shall** enforce[80] special procedure for confiscation of the property and the property benefit and confiscation[81] of objects upon the proposal of the Public Prosecutor if certain conditions are fulfilled for implementation of these special measures from the Criminal Code.

In the special procedure mentioned above, the court examines the evidence necessary to establish whether or not the respective property or objects can be considered as proceeds of crime or instrumentalities thereof (para. 2). It is obvious that yet needs to be noted that both Art. 532 and 541 clearly cover the money, objects or property confiscatable under the specific provisions related to certain offences in the Special Part of the Criminal Code including, among others, money laundering in Art. 273(8) or terrorist organization ("financing") in Art. 394a(6). Confiscation from third parties is covered concerning confiscation of proceeds from crime pursuant to Art. 98(2) of the Criminal Code.

Further protection for the rights of bona fide third parties is provided for by the Criminal Procedure Code. Article 534 (former Art. 487) provides for that the person to whom the property benefit was transferred as well as the representative of the legal person shall be summoned for interrogation in pre-trial proceedings and at the trial, where they are entitled to present evidence concerning the determination of the property benefit.

c. Provisional measures

One of the two pivotal provisions within the regime of provisional measures is Art. 219 of the CPC (former Art. 203) that provides for "*temporary confiscation*" of objects:

(1) Objects which, according to the Criminal Code, are to be confiscated or may serve as evidence in the criminal procedure, shall be confiscated temporarily and entrusted to the court to guard or in another manner their guarding shall be secured.

In context of the above provision, the term "confiscated temporarily"[82] obviously refers to what one would normally call "seizure", meaning a temporary measure. As a consequence, Art. 219(1) appears to apply for any object that can be confiscated pursuant to the Criminal Code including proceeds from crime as well as instrumentalities of a criminal act and, obviously, objects having been laundered, thus being confiscable according to Art. 273(8) of the CC.[83] Because of its restrictive language, Art. 219(1) of the

[80] translation confirmed by host authorities.
[81] The dotted underlined text corresponds to the meaning of the term used in the Macedonian original. The English translation uses instead "seizure". The Macedonian original is "одземање". See also para.
[82] The Macedonian original is "привремено одземат".
[83] On the other hand, the fact that Art. 219(1) refers to "objects" but not to "proceeds" in a broader sense (or "property benefit" as it is generally used in the CPC) implies that it must have been intended to cover objects confiscable under Art. 100a of the Criminal Code as well as those falling under the scope of specific provisions like Art. 273(8) but not the proceeds of crime in a general sense.

CPC appears not to cover either intangible property items (e.g. dematerialized securities[84] or real estate). Similarly, money only appears to be covered by this article as far as it can be considered an "object" that is, primarily in the form of cash, while assets consisting of bank account money (deposits on a bank account, etc.) are unlikely to be seizable under Art. 219(1) of the CPC.

The 2004 amending law introduced a new kind of provisional measures into the Code of Criminal Procedure. According to Article 220 (former Art. 203a):

(1) The investigative judge or the council by a decision may order temporary securing of the objects and means which are related to the criminal act. The property or the means subject to securing are under the supervision of the court. The temporary securing of objects or property is understood[85] as temporary freezing, seizure, withholding funds, bank accounts and financial transaction or proceeds from crime.

The subsequently inserted Article 220 (former Art. 203a) was not properly harmonised with the already existing Article 219 (former Art. 203) which led to some overlap, thus making it difficult to determine the exact scope of the respective provisions.[86]

On the face of it, Art. 219 and 220(1) describe two separate kinds of coercive measures that are different not only in their names ("temporary securing" vs. "temporary confiscation") but also as far as their actual coverage is concerned. In this context, while Art. 219 is restricted to the seizure of objects confiscable under the Criminal Code, the scope of "temporary securing" in Art. 220(1) encompasses any objects and means that are related to the criminal act regardless of whether or not they can be subject to final confiscation. However, these articles overlap when it comes to objects that are not only related to a criminal act but are also confiscable pursuant to the Criminal Code. For such objects, it is practically impossible to determine which measure has to be applied for their seizure: the "temporary confiscation" under Art. 219(1) or the other "confiscation" which is one of the forms of temporary securing measures pursuant to Art. 220(1).

Using of the appropriate legal terminology is of great importance for the general principle of the legality and for the rule of law. In this regard it is necessary to mention that in these two articles the term "confiscation" stands for two different Macedonian terms: „*zaplenuvanje*"[87] in Art. 219 and "*odzemanje*"[88] in Art. 220(1). However, this does not mean that these measures are of different character. On the contrary, both are temporary measures, which is self-evident as regards Art. 219 but equally in case of Art. 220(1) which, according to Art. 220(3) "*can last until the end of the procedure*" at the latest, and both comprise the provisional deprivation of property items which will be deposited in the safekeeping of the court.

[84] That is, securities that are not on paper and no certificate exists (they may exist only in the form of entries in a depositories book, etc.).
[85] In this context, the expression "understood as" refers to a closed list of the applicable measures by which the temporary securing of objects or property can be carried out.
[86] TI Macedonia has submitted an initiative before the Constitutional Court to check the compliance with the Constitution of the article 203-a.
[87] "запленување".
[88] "одземање".

The only differences are that, first, the temporary securing measures, including "confiscation" in Art. 220(1) may be applied on a discretionary base while "temporary confiscation" appears to be mandatory pursuant to Art. 219 and second, temporary securing measures are only applicable by the court while "temporary confiscation" can also be applied, under certain circumstances described below, also by the law enforcement authorities.

To sum up, the correlation between the freezing measures under para. 1 and 2 is not entirely clear and leaves open a lot of questions; this is obviously the result of inaccuracies in the legislative process and not simply of mistranslation.

Further procedural rules can be found in the remaining paragraphs of Article 220, such as:

(7) The decision for freezing the financial transaction or bank account, the court delivers it to the bank or other financial institution.
*(8) No one can call upon the bank secrecy in order to escape the execution (avoid enforcement) of the court decision for temporary freezing, **seizure** or withholding of the means which are deposited in the bank.*

In the context of the last paragraph, freezing refers without doubt to money on bank accounts (Paragraph 7) while seizure ("confiscation") of means appears to target cash or other tangible means physically deposited in a bank (i.e. a safe). On the other hand, the confusion about the distinctive character of "withholding" remains.

All the provisional measures referred to above can only be ordered by a court decision as soon as the investigation has commenced: during the investigation phase by the investigative judge, after initiation of criminal charges by the court of trial (i.e. a judge or panel of judges.)

According to the Criminal Procedure Code, a criminal investigation against a concrete person is formally initiated by an investigative judge upon the request of the public prosecutor. Freezing and seizing orders can be upheld until the termination of the proceedings. This is explicitly stipulated in case of temporary securing and/or freezing measures under Art. 220 in para. 3 and 4. Concerning Art. 219 there is no such a specific rule in the CPC, nevertheless it appears obvious that the procedure is similar to that in Art. 220(3) as regards temporary securing.

The Macedonian legal system allows provisional measures in certain cases also before the formal commencement of the investigation: Art. 219(4) of the CPC (former Art. 203) authorizes law enforcement to temporarily seize objects in the course of the so-called pre-investigative procedure. In the context of the CPC, this refers, as a general rule, to the Ministry of Internal Affairs. Art. 145 (former Art. 142a) extends this authority to the Customs Administration (para. 1) as well as to the Financial Police (para. 2) in cases falling under their specific competence including, in case of both authorities, the offence of money laundering (Art. 273 CC).

Articles 144 and 157, quoted by Art. 219 para. 4 of the CPC, belong to Chapter XV of the Criminal Procedure Code which deals with the pre-investigative procedure. Article 144 (former Art. 142) stipulates the general rules for what measures can be taken by law

enforcement to discover the perpetrator, to discover and secure traces of the offence and objects of evidentiary value and to gather all information that is necessary for successfully conducting criminal proceedings. Article 157(1) of the CPC (former Art. 147), on the other hand, provides for that if there is danger in delay the Ministry of Internal Affairs (or, as seen above, the Financial Police and Customs) may even before the commencement of the investigation carry out certain investigative measures, including the seizure ("temporary confiscation") of objects according to Article 219 of the CPC (former Art. 203).

Contrary to the "temporary confiscation" (i.e. seizure) of objects, the temporary securing and/or freezing measures under Art. 220 of the CPC (former Art. 203a) including "confiscation" (para. 1) and "(temporary) freezing" (para. 1-2) cannot be carried out by the law enforcement authorities in the pre-investigative phase of the criminal procedure.

Concerning the securing of assets that constitute proceeds of crime, Article 536 of the CPC (former Art. 489) provides for a further separate measure that can exclusively be applied by the court in course of the procedure for confiscation of property and property benefit (Chapter XXX): When the conditions for confiscation of the property and property benefit are fulfilled, the court will ex officio order temporary security measures established with Article 219 of this Law.

Institutions

Apart from the quality legal framework that incorporates the international standards for prevention and fighting organized crime, an important segment of every quality anti-organized crime and confiscation regime are the institutions that will undertake activities for detecting and prosecuting. Having in mind the *complexity* of the problem, the *particularity* of the activities, the involvement of a bigger number of actions undertaken by *various persons*, that usually *act on the territory of a number of states*, as well as the difficulties in *ensuring evidence* and the initiation of judicial procedures, these activities are undertaken by a significant number of institutions.[89]

The international practice showed that the establishing of a quality regime for fighting organized crime requires special efforts by the newly created states that are in the phase of transition. Special efforts were necessary for amending the laws by implementing the international standards as well as for changing the traditional role of some of the institutions and the creation of new institutions.

More significant steps for the implementation of the new social order in the Republic of Macedonia were made with the 1996 Criminal Code as well as with the laws in the field of economy, financial and fiscal operations which role is gradually realised and assessed. What is missing in these efforts is the effectiveness in implementation of the legal framework as well as proper resourcing of the institutions. From the empirical indicators and the analysis of certain circumstances a conclusion emerges that sufficient measures for preventing criminal behaviour of any kind have not been undertaken as a result of the transition and the changes in the social order. Within this framework, an important segment is the anti-money laundering and measures for confiscation of the criminal assets, having in mind that the final goal of the criminal organisations and

[89] Money Laundering, Book, Slagjana Taseva.

individuals is to obtain proceeds of crime and their incorporation in the legal economy.

Central body expected to undertake measures against organized crime was the **Ministry of Interior** where the special Organized Crime Department has been established with the centralized authority over the territory of the whole state. For the purpose of implementing the international standards at creating special services that will be competent for the supervision, control and investigation in the area of organised financial crime in the Republic of Macedonia, specific measures have been undertaken in order to establish such services.[90]

In September 2001, after the adoption of the Law on Preventing Money Laundering, an Anti-Money Laundering Directorate was established. In November 2002, after the Anti-Corruption Law was adopted in April 2002, in November of the same year the State Commission for the Prevention of Corruption was established. In June 2003 a Finance Police was established which is today fully staffed and have started to operate efficiently. In addition, a separate unit for the Organized Crime has been created in the Prosecution Office.

The Basic Prosecution Office for combating organized crime and corruption is authorized to act for the criminal offences committed by structured group of three and more persons for which the minimum sentence is four years of imprisonment, for the offence of giving and taking bribe of significant value, for the drug trafficking offences and other types of serious crimes. It is important to mention that the public prosecutor is authorized to undertake its activities internationally when the crime committed by structured criminal group is of international nature.

The **Unit for Preventing Money Laundering** is an administrative kind of a unit that needs to implement the law on preventing money laundering. It was founded in September 2001 as a body of the Ministry of Finance.

Based on the Law on the **Financial Police**[91] a body of the public administration was formed that operates within the Ministry of Finance. The free interpretation of the aim for forming this body (which is not stated in the text of the Law) would be fighting organized financial crime.

The **Customs Administration** acts within the Ministry of Finance. Having in mind the international standards and experiences in the work of the customs administration, it undertakes steps for enhancing the work in the area of preventing cross border and organized crime, and within that framework also in the area of preventing money laundering.

The **Public Revenues Office** (PRO) is competent for controlling and collecting public taxes. The PRO is authorized to investigate and has special authorities within the framework of the control. Based on the Law the PRO is obligated to check the origin of the

[90] Separate Financial Crime Sector, Sector for International Police Cooperation, Sector for the Special Investigative Techniques, Unit for the Witness Protection and Unit for the Criminal Intelligence Analysis that will cooperate with the Financial Police, Customs and the Anti-Money Laundering Directorate.

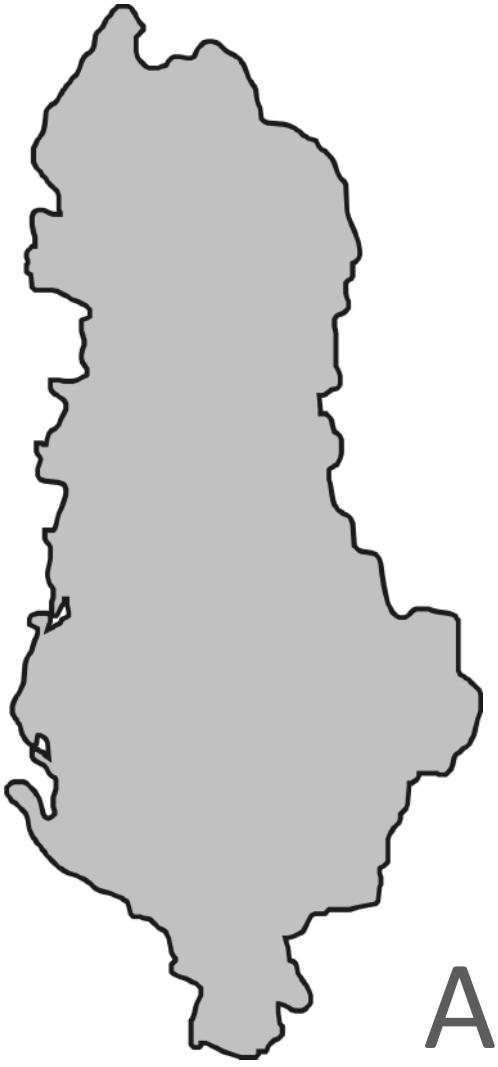
[91] The Law on the Financial Police, Official Gazette of the Republic of Macedonia No. 55 from 16 July 2002. The Law went into effects on 1 September 2002.

property of the taxpayers and to report of its suspicions of committed crimes or offences to the competent bodies for prosecution. In order to simplify the control in the area of the fiscal taxes the PRO established a system for central registration of the real-estate. In the future this database could represent a solid basis within the framework of the investigations and the analysis of the financial data.

The **Ministry of Justice** has an important role in the preparation of the laws, adoption of international documents and their implementation in the national legislation. Furthermore, this Ministry also has an important role in the international cooperation in specific criminal cases and it plays a key role within the framework of the legal assistance for exchanging documents, providing evidence, seizure and confiscation, as well as in the area of the international cooperation in cases of extradition.

The **State Commission for Prevention of Corruption** was formed in November 2002 based on the Law on Preventing Money Laundering. This independent state body consisting of seven members is competent for the implementation of the Law that establishes the measures for preventing corruption when exercising power and performing the allocated public authorities, the measures for preventing conflict of interest, as well as the measures for preventing corruption in performing activities of public interest of the legal entities related to the authorities.

The Law on Management of Seized Property, Property Gains and Objects Seized in Criminal and Misdemeanor Procedure, adopted in July 2008, was adopted as a response to the need for avoiding and preventing misuse and imprudent conduct in handling seized property, as one of the possible sources of corruption. This Law prescribes the establishment of an **Agency for Handling Seized Property**.



Albania

Evaluation of the level of organised crime and illegally acquired assets

An overview of Albanian perspective on legislation and practice in the fight against organised crime and illegal assets

The geographical position of Albania serving as a crossroad between east and west, the high level of poverty overall the country, the non-functioning of a state of law, and the lack of necessary legal instruments to fight the organized crime have been the main factors for transforming the country in a principal route for illegal trade and criminal activities. During the totalitarian regime, the siege and impossibility to cross borders, served as main reasons for the first noted organized crime activities which consisted in smuggling or criminal groups of thieves. After the 1990s, the first steps of democracy and opening of borders could not be accompanied without the importing of criminal tendencies from neighboring countries. Within a short period of time, simple criminal groups would be developed in structured and organized ones. Facing the weak functioning of state institutions and their inability to confront and combat the activity of organised criminal groups, they would lead to an aggravated situation which would rank Albania internationally among the countries with high crime rate.

The armed criminal groups and groups' activity reached the highest point in 1997 and at the same time emerged as structured criminal groups. These structured criminal groups, shared their assignments, had a steady criminal activity, intensified the serious offences, etc.

For several years the reaction toward the increasing criminal activities was weak because of the pressure, corruption, fear and insecurity. However, it was the steady pressure exerted from international organizations and from the community itself that made institutions take measures for combating organized crime and some of its forms, such as trafficking in human beings-women or children, weapon trafficking, vehicles trafficking, narcotic substances trafficking and cultivation of narcotic plants. According to the police data, in the period 2002-2006 there were suppressed about 500 criminal groups with tendencies of organized crime, among which there were also authentic criminal organizations dealing with narcotic substances, human beings trafficking and other traffics, as well as, economic crimes and money laundering. Only from 2005-2007, there were suppressed and have been finalized several prosecutions related to the fight against organized crime which have influenced positively in building the trust and raising the awareness of the community.

Currently, Albania is a member country in several regional and broader initiatives and a member of the organizations, such as SECI, Interpol,etc. It has also ratified and signed several international conventions and agreements to combat the organized crime. These provisions oblige Albania to engage in regional cooperation and good neighboring relations in order to develop joint projects on issues related to the fight against organized crime, illicit migration and trafficking including, especially, the human beings trafficking, smuggling, illicit trafficking of weapon and vehicles, borders control and safety, etc.

Reports from the US Department of State show that criminal activity has decreased overall, as exemplified by the number of recorded homicides, which has fallen from ap-

proximately 200 in 2006 to fewer than 90 in each of the last two years. It is also evaluated that Albanian law enforcement capabilities continue to improve, especially in the areas of counter-narcotics and organized crime training. During 2010, the Ministry of Interior reported that the state police investigated 1,931 cases related to corruption and financial crimes, and authorities arrested 359 persons. The government confiscated approximately 835 million Albanian Lek ($8 million) in assets. According to the Ministry of Interior, police dismantled organized criminal groups during the year. However, organized crime remains a serious problem for the development of the country.

A significant step forward in Albania's fight against organized crime is entitled with the recently introduced Anti-Mafia Law, enhancing the legal opportunities to tackle this phenomenon which has come to plague the country and its international reputation for some time now.

Legal basis and division of responsibilities for the institutions

The legal framework on the fight against organised crime is composed by these primary laws:

- Law No. 8920, dated 11.07.2002, "On ratifying the United Nations Convention against Transnational Organized Crime and the two protocols; the Protocol of Palermo of 2000 "To prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention "Against Transnational Organized Crime";
- Law No. 9749, dated 04.06.2007, "On the State Police";
- Law No. 8677, dated 02.11.2000, "On organization and operation of judicial police", amended with the Law No. 10/301, date 15.07.2010;
- Law No. 7895, dated 27.01.1995, on "Penal code" with various additional amendments mainly related to offences classified as organized crime;
- Law No. 7905, dated 21.03.1995, on "Code of Penal Procedure of the Republic of Albania" which in the recent years has undergone a series of changes and improvements related to the penal procedures for the criminal offenders and implementation of specialized inquest methods and techniques;
- Law No. 10/192, dated 3.12.2009, "On Preventing and Striking at Organised Crime and Trafficking through Preventive Measures against Assets", also known as the "Anti-Mafia" Law which repealed and replaced the Anti-Mafia Law of 2004.

The Anti-Mafia Law is divided into 7 chapters: (i) general principles and provisions; (ii) sequestration of assets; (iii) administration of sequestered assets; (iv) confiscation of sequestered assets; (v) decision, appeal and execution of preventive measures; (vi) use of confiscated assets; and (vii) final provisions. It attempts to address the challenges of combating organised crime through a modern regime of confiscating the proceeds of the related criminal activity, and builds on the experience with previous legislation on non-conviction based forfeiture in Albania, through 2004.

Article 1 sets out the object of the law which defines the procedures, competences and criteria for the implementation of preventive measures against the assets of persons who are subject to this law as suspected of participation in organised crime and trafficking. Article 2 sets out the purpose of the law as preventing and striking at organized crime and trafficking through the confiscation of assets of persons who have an unjustified economic level as a result of suspected criminal activity.

The Anti-Mafia Law enables non-conviction based forfeiture proceedings to recover the proceeds of crimes (article 3). It provides for a reverse burden of proof and gives precedence to criminal confiscation. It also provides for preventive measures, which are defined in article 4 as any measure of a property nature that the court orders in a judicial proceeding through the sequestration of assets, the economic and professional activity of persons, as well as through their confiscation. The process is civil in nature and relies upon the Civil Procedure Code (article 5). However, the proceedings are heard by the Court of First Instance for Serious Crimes (article 7) which adjudicates the requests for confiscation with a single judge. The requests for confiscation of assets are adjudicated with the presence of three judges. The Appeal Court for Serious Crimes also adjudicates with the presence of three judges.

One of the key challenges faced by legislation is the need to strike a careful balance between the powers of the state and the need to ensure that the rule of law is respected, that a fair trial is guaranteed to all parties involved. Concerning fair trial provisions, the Constitution of Albania guarantees the presumption of innocence and a right to a fair trial. The right to property is also ensured in article 42 of the Constitution, although obviously such provision does not recognise the proceeds of crime as lawful property, and for this reason may be subject to seizure and confiscation, so long as it is done ensuring the right to a fair trial and due process. The Anti-Mafia Law is applicable to assets from both natural persons and their close relatives (up to the 4th generation), and legal persons. As the proceeding will be against the person who possesses the proceeds and not the thing itself, the prosecution must link the assets to the person and to the underlying criminal activity, or the relationship that the person who has possession of the proceeds (knowingly or unwittingly) has to a person that committed one of the offences under article 3. It is not clear in the law, however, to what extent the prosecution must demonstrate it cannot prove the legal origin of the assets, and if it is sufficient for the prosecution to prove that it cannot demonstrate the legal origin of the assets.

Investigation and conduct of the litigation is the responsibility of the prosecutor with the assistance of the judicial police (article 9). There are three prosecutors with responsibility for this work and each has one or two judicial police assigned to work with him.

Regarding the administration of sequestered assets, Article 16 of the Anti-Mafia Law imposes a duty upon the court appointed administrator to preserve and to administer sequestered assets and to increase their value, if possible. Article 17 requires the administrator to make an application to the Court for authority to make loans, to sign agreements of conciliation, arbitration, promise, pledge, mortgage or alienate the sequestered assets or to perform other legal actions of administration.

The Agency for the Administration of Sequestered and Confiscated Assets (AASCA) is responsible for administering assets seized under the Anti-Mafia Law and the Law No. 9258 on the Measures against Financing Terrorism and for realising assets confiscated pursuant to the Anti-Mafia Law. Ownership of property passes to the State on the making of the confiscation order (article 29.3). The administrator appointed to manage the sequestered assets may continue to act in the name and for the account of AASCA, unless replaced by another person (article 31). The administrator is under a duty to liquidate moveable property (article 32), but the Council of Ministers is responsible for deciding what should happen to immovable and movable property that may be used for economic, commercial and professional activities acting upon a request from the Minister of Finance (article 33). Article 37 establishes a special fund for the prevention of criminality with 50% of the income generated in 2009-2010.

Division of responsibilities for the institutions

The Ministry of Interior (State Police) organizes the work for identifying and combating organized crime, arresting its authors and prosecuting them. Attached to this institution, there are established special structures for combating organized crime, as part of Crime Prosecution Department in the General Directory of State Police, with central and local organization. The Border and Migration Department also assists in this field by taking measures for guarding and controlling the border, checking and dealing with foreigners, etc. The specialists in these structures have the competency to gather information and competencies of judicial police. These structures are organized in a way to be able to gather information on the tendencies of organized crime, to control it and to provide the necessary evidence for the detention of the offenders.

The Ministry of Justice is engaged in drafting the legislation in the field of fight against organized crime and illicit trafficking and also prepares policies for seriously combating organized crime.

General Prosecutor's Office prosecutes the organized criminal activity and uncovers the entire activity of the offenders, provides legal documentation on their activity and proposes serious penal detentions. The prosecution's office overlooks the implementation of recent methods and techniques on investigating organized crime and terrorism, thus providing legal evidence on the offenders' activity.

The Courts: Article 7 of the Anti-Mafia Law defines the competences and the composition of the court. The request for seizure of preventive measures is processed in the first instance, by the First Instance Serious Crimes Court and in the second instance, by the Serious Crimes Appeal Court. The Prosecutor's Office and the Judicial Police are responsible for the precursory verification of the assets; investigation of financial assets, economic activity, commercial or professional, way of living and resources of income of the persons, which are subject to the enforcement of this law. With an authorization issued by the Prosecutor or the Court, the officers of Judicial Police can decide on the sequester of adjudicated documents based on the regulations provided on Articles 208, 209, 210 and 211 of the Penal Procedural Code.

The responsible institution for the administration of sequestered and confiscated assets is the Agency of Administration of Sequestered and Confiscated Assets (AASCA), as defined in the Article 34 of the Anti-Mafia Law.

Implementation of laws and effects achieved in practice

Implementation of the legal basis for this issue offers a number of hints to address. Secondary legislation needs to be further developed in order to support the primary legislation in place. The Anti-Mafia law contains many time limits, which are strictly applied and can lead to the failure of civil confiscation proceedings. There are obvious risks, if parties can delay and so defeat the purpose of the legislation. This issue should be addressed by ensuring that there is an effective case management system in place to track time limits and that the prosecutor and judicial police have sufficient resources and that there is sufficient court time to ensure that the necessary steps are taken in good time.

The asset register should be electronic and available to all of the relevant agencies to view and update. At a minimum, it should be able to link to the case and uniquely identify each asset recording the date seized and from whom; a description; the condition of the asset; its location; the original and current values; the amount realised on sale; and the method of disposal. If low value assets are not being entered individually on the register, they should be grouped together and appear on the register as a group. There is also a need for more complete statistics and for public reporting on the work of AASCA and its partner agencies.

Clearer regulation is needed on the possibilities of special investigative techniques, revision of the Anti-Mafia Law in that regard and expansion of the possibilities contained in the Criminal Procedure Code.

Nevertheless, the adoption and implementation of recent legislation proves to be effective. The institutions are collaborating and the number of successful cases is enhanced. During 2010, the First Instance Serious Crime Court has adjudicated around 30 decisions on imprisonments of up to 25 years and 5 decisions on imprisonments for-life, for some well known criminal organisations and international traffickers which have been considered as successful cases in the fight against organised crime, human trafficking and the smuggling of narcotics.

Recommendations of the European Commission Progress Report 2010

In the Progress Report of 2010, European Commission has explicitly evaluated that Albania has established an adequate legislative and institutional framework regarding the fight against organised crime. Reform of law enforcements authorities, as well as their adequate resources and equipment contributed to counter this phenomenon. However, effective implementation of new legislation and the professionalism of new structures and systems need to further be proven in practice. Proactive investigation needs to be ensured and cases that have been successfully investigated need to be followed by convictions. Activities of organised crime groups in Albania, having impact outside of the country, remain an issue of serious concern. Further strengthening of cooperation at the international level is necessary, including in particular with neighbouring countries. While putting an emphasis at the ameliorated legal framework with the "Anti-Mafia" Law, EC remarks that its effective implementation, in particular the effective management of seized and confiscated assets, needs to be ensured and demonstrated through a track record of final confiscations.

As per the enforcement of legal basis, EC makes an assessment related to the institutional structures dealing with the phenomenon in practice. A new police structure reflecting the priority given to organised crime investigations is in place since July 2010. Human resources have been relocated in order to increase the number of staff dealing with organised crime investigations and budgetary provision has been made for further investments. The introduction of joint investigative units to fight economic crime and corruption has proved effective. Efforts have been made to increase investigative capacity and a more pro-active and intelligence-led approach is promoted. Thus, it is necessary that common training with prosecution and other law enforcement agencies continues in order to further strengthen operational cooperation between the police and prosecution. A strong focus to be further developed refers to specialised training, in particular on the international aspects of organised crime. European Commission draws the attention that a proactive approach by law enforcement authorities is key to tackling organised crime, which remains a matter of concern for the country.

The Role of the Civil Society in the fight against organised crime and the illegally acquired assets

The fight against organised crime, being a high concern phenomenon for our country, is also followed and tackled often by the civil society organisations and international community assistance. The awareness raising and informative campaigns are considered to be a successful tool used by these organizations for informing the public on the causes, consequences and protection manners to the issue. A considerable number of NGOs offer assistance to the victims of trafficking, especially children and women. These organisations are also engaged in the social rehabilitation of victims from organised crime, therapeutic assistance and cure for users of narcotic drugs.

Conclusions

The field of combating organized crime and illicit trafficking is one of the priority fields of Albania in the context of the country's integration in European Union. Albania should engage in promoting regional cooperation and good neighboring relations for implementing joint projects on issues related to the fight against organized crime and illegally acquired assets. These efforts need to be engaged by all responsible institutions aiming the destruction of criminal groups, minimization of organized crime and the community to be free of criminality concerns, as well as to establish high security standards, to implement strictly the law and to respect the human liberties and rights.

Attention should be guided toward the monitoring of legislation put in practice, with a special focus on the investigation and confiscation of assets. The entire system should prove the transparency and adequacy to recover the proceeds of crime. State actors should provide all necessary resources to implement rigorously the National Strategy for the Fight Against Organised Crime, Trafficking and Terrorism.

British Embassy
Pristina

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