

**Josip Kregar**

## **ORGANISED CRIME AS A THREAT TO DEMOCRACY**

It was the 12<sup>th</sup> of December of the year 1999 and I was in Zakopane in a hotel at a conference regarding, organised crime! We had been discussing for a few days – mainly academically – organised crime in society. The next day a man by the nickname Ersik was assassinated in the lobby of the hotel. It looks like he was one of the hotel's guests but in fact he was the head of organised crime in Poland. The killers were never found. He looked like a businessman; he had a family, he had interests in hotels in Poland, he had some property in Slovakia. I am telling you this story as an introduction because at that time for us, simply because of the assassination, organised crime as an issue was not academic. Not at all. It was a serious problem in our society.

Indeed organised crime is a threat for the new democracies. Even consolidated democracies, such as Poland, or Hungary, or Croatia, or Slovakia do have some problems with organised crime. From time to time they do have scandals and affairs about organised crime. Reports about the transitional economies are showing us very clearly that organised crime is one specific part of their economies. If you look at the Freedom House reports, you will find out how mafia ties and organised crime money is penetrating the new economies actually legalizing the activities of organised crime.

In other issues, we are faced with a new wave of organised crime, or new types of crime such as trafficking, organised prostitution, drug trafficking and so on. All those phenomenon are relatively new to us. Also what is a problematic with organised crime is the fact that it is very much influencing political decisions. “Very much” is difficult to measure but in any case the leaders of the criminal organizations do have influence. For instance, investing money in elections, having permanent contact with judges and police officers.

Government studies are showing us that the problem and that will be my point today of organised crime in transitional democracies is just not the problem of criminality and deviance. It is a problem of the weak States. It is not a problem that *they* [criminals] are doing something, it is the problem of what the weak States *are not doing*. What has to be done?

All States have organised crime, but in some cases, organised crime has a State. There is no efficient police, prosecution or judiciary system to fight against it. That is connected with the topic of today's discussion. Weak States are the most dangerous element of instability and the most likely the source of new trouble spots in decades to come. Well, today I will talk mainly about Croatia. This is my country, and I know the situation. But it seems to me that many of the conclusions we can extend to other countries.

First of all, roughly about 10 to 15 years ago, we didn't have organised crime. The detection of organised crime started with some media scandals. The journalists discovered that there is a connection between gangs and competing organizations. Organizations competing for let's say market, for power, for connections with politicians and so on. The police denied for a long time that there is organised crime, but in the early 90s, the police recognized or somehow found out the connections of something they called the Albanian Mafia in Croatia. The first signal of organised crime. But that was just the tip of the iceberg. They actually failed to find out the full extent of organised crime. Politicians only recognized the problem in the *late* 90s when opposition leaders started to discuss and talk openly about connections between the top of organised crime and the top of the State. Top politicians were part of and included in some criminal activities, maybe just protecting some of the persons organizing crime because of different reasons.

I must say courts still did not recognize the problem. In spite of the fact that we had some changes in our legislation, we had just a few cases against organised criminals in the courts, unfortunately unsuccessful. There was no proof of organization but in the two biggest cases the gangsters were released or sentenced for minor offenses. I think somebody who recognized very early that Croatia had a problem with organised crime were foreign investors. They discovered that they

cannot compete with local organised “investors” or “entrepreneurs” but connected to organised crime and politics.

That was the reason that we are formulating a strategy of change to fight organised crime. First of all, in two instances, Croatia changed the Penal Code and the criminal procedures acts. Actually the last change was in May 2002, trying to speed up the procedures and in the end to introduced some measures to fight organised crime. One of the main events was organization of the so-called USKOK, the Office of Prevention of Corruption and Organised Crime in October 2001. I will talk about it more specifically.

Croatia is continuously accepting international instruments regarding impartial legal assistance and let’s say some conventions and legal standards regarding organised crime, especially the fight against organised crime in the region.

I think something that was successfully done, mainly by journalists and the media, was a kind of alert or mobilization of the public against the problem of organised crime. Nobody denies anymore the existence and the danger of organised crime in Croatia anymore.

A few words about some elements of the effort against crime. In the penal code, at the end of 90s and last year, we increased sanctions against organised crime offenses. Even before we had relatively rigid sanctions, but now Croatia is introducing long term imprisonment sanctions (over 20 years) which is actually a kind of replacement for a life sentence. We didn’t have enough specific details and definition regarding white-collar crimes or economic crimes and these are categories of crime which are expanding tremendously in the 1990s. And it is very difficult to find a balance between say, freedom of entrepreneurship and the protection of legality and honesty in the economic sphere.

Croatia has a kind of national strategy to fight corruption and also similar acts regarding the prevention of drug use and all those acts are determining a lot of interventions and the changes regard more prevention than sanction of such activities. According to some

international obligations, Croatia introduced in the penal code suppression of the financing of terrorism and similar types of organizations. Very problematic, but very efficient are the new tools that are introduced in the criminal procedure act, introducing a kind of new let's say new forms to investigate and find proofs of organised crime. For instance witness protection. We didn't have such a program and this is a crucial measure against organised crime. Also according to some international obligations we have introduced the responsibility of legal persons.

A few words about USKOK. I can talk a lot about it, but I will summarize in two parts. First of all, we had very great expectations regarding the introduction of an independent body to fight against organised crime. Actually activities started with NGO initiatives proposing to the government the organization of an independent body. The government and the Ministry of Justice accepted something that was not proposed; actually the proposal tended to imitate the Hong Kong agency to fight corruption, but they actually wanted to imitate the Italian model of some semi-military organization to fight the mafia.

In the end, because of many compromises, the final version of the law was not accepted by everybody. First of all this institution is somehow too strongly connected with the State Attorney Office, which promotes the efficiency of prosecution, but definitely focus the activities of this independent body only the court cases. The Office of Prevention of Corruption and Organised Crime has authority only on activities emanating from criminal organizations. They have the possibilities to discretely and with a great span of different tools to investigate organised crime. They have specialists for bank transactions, specialists for the investigation of financial aspects of crime, they have research and public relations departments and so on.

But in reality, I think I share the opinions of my colleagues. The results are not brilliant. First of all there is a lack of real political will to support the activities of USKOK. USKOK right now has only few of those specialists, and near the end of 2002, we had few hundreds of cases, and we see quite clearly a selection or filtering of the cases. A lot of pre investigative procedures, leading in the end to only 150 accusations. The

main part of the activity of USKOK is the fight against organised crime. 244 persons were accused of conspiracy to commit punishable acts.

The next part of activity of international instruments, but I will not delve in that too much. Suffice it to say that there is a big effort from the international community to mount a kind of new legislation and new legal instruments in the area of South Eastern Europe, and Croatia adopted almost all of them.

To me, one of the biggest effort and success is the adaptation of some bilateral agreements with neighbouring countries, especially regarding assistance in legal matters and police investigations.

Well to conclude, I think Croatia is not a case of a country in which organised crime is the most serious danger for democracy. There are many other dangers. But if we look at statistics of convictions and sentences, we shall find out that it is very dangerous to ignore the fact that organised crime is appearing and becoming from time to time the decisive element in economic and political competition. Extremely important is the warning from the big cases. We had two big cases against mafia; small mafia and big mafia. Unfortunately, after two and a half years of proceedings, almost all of the accused were released. Only a few of them, and not the organizers and the leaders, were sentenced because of some serious offences, but received minimal punishment.

In the big cases, we discovered that attorneys are not capable of fighting against the big money of organised crime, good lawyers which they are able to pay and the possibility of the manipulation of public, because organised crime is not just one company; it is a very active group of people willing and able to influence public opinion. We are very much aware that organised crime as some support in culture. Celebrities and leading politicians are having coffee with persons of the milieu. Even the leading public servants accept with a great smile the people publicly accused or denounced by the media as the organizers of crime. There is certainly the influence of public officials. Just recently USKOK discovered the relations of the Chief Attorney of Croatia, some lawyers with the people at the top of organised crime.

It is for our interest very important to note that there is an international dimension. We are importing not just criminals; we are importing the methods of organised crime and Croatia is one of the countries in which organised crime from other countries is trying to legalize the money and the profit from their criminal activities by investing in attractive ventures, such as tourism and other areas.

Is organised crime really organised? When we discuss organised crime, we always have in our mind the picture of a really big Weberian type of organization, with hierarchy, with rules, with wages, with promotion and career. Organised crime is not such a type of organization. Mafias are not bureaucratic organizations, they are not even companies. They are groups who are surviving because they are very closely connected. This is the reason why we have a so-called mafia connected by ethnicity, origin or national identification. We are talking about the Russian mafia, about Croatian and Serbian mafia, we are talking about Italian mafia. They are not organizations. The point here is that we cannot fight against organised crime by eliminating just the top of the groups. They are a big group, and very easily are able to replace the top with newcomers, with the new people who are using the opportunity to become the leaders.

Eliminating just a few of them will not be the solution. I think one of the good examples from the Serbian case, even if I worry very much about the final result, is that they eliminated not just the top, but the substance of the organization. They are like a hydra; when you eliminate one head, two heads or organizations arise. But let's keep in mind that the definitions of what is crime and what is not are changeable. In countries in transition, the line between legal and illegal business activities is very flexible. In many cases legal activity has to be supported by disobedience to the law. The people are investing a lot of efforts in order to avoid some rules, trying to bribe officers, courts or some important politicians. They do perceive as necessary such type of behaviour. This is illegal, but sometimes they are using a behaviour or tools which are completely legal but not acceptable. Not just from the moral point of view but also because of open and honest competition in the market.

With some distance of ten years, we can discuss almost all of the economic change in Croatia also from the perspective of organised

crime. The days of privatization, denationalization, return of property and transformation of social and legal categories in the new capitalist system can be described as the days of semi-legal activity. Formally, legalistically, that was not against the law, but in reality this produced a lot of risky situations which are actually opportunities for organised crime which has some capital to invest, influence to use, to get some advantages. Organised crime is the answer, actually organised crime has some advantages against the uncertainties we face in transition.

I would emphasize that the fight against organised crime is not just a fight against individuals or individual criminal behaviour; it is a fight to increase the efficiency of the government. We can better understand the problem of organised crime if we approach it from the point of view of good governance. The precondition to fight against organised crime or parallel activity requires increased efficiency and capacity of governmental institutions.

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