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PhD DISSERTATION

"CHARACTERISTICS OF ORGANIZED CRIME IN ROMANIA"

ABSTRACT

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CONTENTS

INTRODUCTION

The evolution of contemporary society brings out the fact that, despite the increasing state activity for preventing and combating crime, we witness a new and extended wave of violent and aggressive acts against persons or patrimony, represented mostly by serious deeds committed by persons from well-structured groups with both national and international criminal connections. For this reason, the current concern for organized crime investigation, incrimination and punishment is more topical than ever, since most legislative creations on organized crime in general and its specific sub-domains – drug trafficking, human trafficking, arms trafficking, terrorism, money laundering – are relatively recent, therefore liable to improvement.

The fact that in Romania, like in the whole world, criminal environments are becoming increasingly professionalized, Mafioso structures are strengthening and typical organized crime cases are developing is a reality that cannot be ignored. From this perspective, the authorities' response must be, more than ever, firm, unbiased, unequivocal, and professional. The first chapter, entitled THE NOTION AND CHARACTERISTICS OF ORGANIZED CRIME, tackles the emergence and evolution of organized crime, as well as its specific features.

The second chapter, REGULATION AND DEFINITION OF THE CONCEPT OF ORGANIZED CRIME, approaches the effects of globalization on organized crime and provides a concrete analysis of the definition of the international view on organized crime, respectively the concept of organized crime in Romanian criminal law.

Once the guidelines for the notion and characteristics of organized crime, as well as the regulation and definition of the concept of organized crime have been established, chapter 3, entitled SPECIFIC FEATURES OF ORGANIZED CRIME IN ROMANIA. INCRIMINATING NORMS, analyses the situation of organized crime in Romania, beginning with some preliminary remarks, with emphasis on both international and national forms of organized crime.

Chapter 4, NATIONAL INCRIMINATING NORMS FOR ORGANIZED CRIME OFFENCES, deals with the constitutive content of drug, human and immigrant trafficking, IT crime, terrorism and its financing sources, business crime, as well as money laundering in Romania. The analysis of legal incrimination was performed starting from judiciary doctrine and practice, with practical examples of cases built by prosecutors and tried in court.

Chapter 5, SPECIFIC MEANS OF INVESTIGATING ORGANIZED CRIME OFFENCES, and Chapter 6, ELEMENTS OF COMPARATIVE LAW REGARDING THE FINANCIAL AND CRIMINAL LEGISLATION ON PREVENTING AND FIGHTING ORGANIZED CRIME OFFENCES, present specific investigation means such as: telephone and audio-video interceptions; undercover investigators, collaborators and informers; witness protection; surveilled deliveries/authorized drug acquisition; IT searches and IT traffic interception; bank account surveillance as well as some aspects from the EU member countries' legislation and regulations on preventing and fighting organized crime offences in other parts of the world.

In the final part of the dissertation, CONCLUSIONS AND PROPOSALS, I made proposals for legislation alterations consequent upon the analysis of the organized crime problem range from chapters 1-6, problems identified in judiciary practice, as well as predominantly European legislation.

Although it aims at being ample and well-documented, the current scientific approach does not cover the whole problem range of the organized crime phenomenon, which is a particularly vast, dynamic and complex field.

Given my professional experience in fighting organized crime, I deemed it most topical and necessary to investigate this phenomenon bearing in mind its evolution, which tends to stay ahead of any limiting or counteracting measures. I have approached the organized crime phenomenon from a juridical standpoint, adding a few personal remarks resulted from my position, which allowed me to make pertinent proposals of legislative improvements. If approved and implemented, such improvements could contribute to preventing the extension of organized crime.

CHAPTER 1
THE NOTION AND CHARACTERISTICS OF ORGANIZED CRIME

Section I
Emergence and evolution of organized crime. Determining factors

Besides the juridical phenomenon as such, the debate on the organized crime concept is closely related to the existence of a sociological organized crime phenomenon. Neither of them is easy to quantify and, more important, to define, because, apart from some common features, the nature, reasons and origins of organized crime differ from one country to another. The geography, demography, cultural diversity, social layers are different and engender different conceptual approaches as regards both organized crime and the social reaction. States experience various forms of organized crime and implicitly, various approaches to a definition.

We consider relevant that particular definition of the organized crime phenomenon according to which "crime is an objective product of the social structure, born at the same time as the latter, and consisting of all the offences committed in a certain period of time in a well-determined location."[1]

The global context of international organized crime may be defined in relation to a number of elements, such as: the new post-Cold War world architecture, production and economic market liberalization; technological development; business globalization and travel liberalization; the extending activity of organized crime groups; the diversification of criminal organizations; the implications of the connections between extremist-terrorist groups and organized crime actions; corruption and political-criminal relations.

Section II
Characteristics of organized crime

The common features of all forms of organized crime are[2]:

- the existence of an associative relation, not necessarily stable;
- the intimidation effect resulting from this relation;

[1] Tudor Amza, *Criminologie*, Editura Lumina Lex, Bucharest, 1998, p. 28 and the following.

[2] Niccolo Polari, *Tehnica delle inchieste patrimoniali per la lotta alla criminalita organizzata*, Edizioni Laurus Robuffo, Rome, 1993, p. 19 and the following.

▪ the submission(subordination) and fear situations deriving from it;
▪ the existence of a pyramidal organization system.

Starting from these principles, criminal organizations have managed to turn from land-owning mafias to genuine crime enterprises, the passage from rural to industrial mafia being consequent upon the introduction of drug trafficking as a basic activity of the organization.

CHAPTER 2
REGULATION AND DEFINITION OF THE CONCEPT OF ORGANIZED CRIME

Section I
The effects of globalization upon organized crime

In specialized literature globalization has been given various definitions, often according to the interests represented by the respective personalities or commercial societies[3]. As a rule, the fairly different meanings ascribed to globalization have included its impact on international law and relations, based on the rationale that only within this context can the phenomenon be understood.

Organized crime is directly linked to economic development, political evolution and scientific progress. Organized crime takes very fast and efficiently advantage of the scientific and technological progress as well as of the contradictions and gaps resulting from normative disparities. Globalization has allowed criminal organizations to perfect their activities by delocating the offence stages (preparation, offence proper, payment, illicit financial product laundering).

Financial globalization, materialized in a unique world money market, has accompanied the phenomenon of production, commerce, services and communications globalization, with more brutal and unexpected forms, as well as negative regional and world effects. "*Global financial markets are, to a great extent, outside the control of national and international authorities*."[4]

The effect of economic and financial globalization has materialized in the transnational industrial and financial companies' possibilities of borrowing or placing unlimited amounts of money wherever they want and whenever they can efficiently exploit the whole range of financial instruments. "*Capital is the most mobile production factor. It is directed to the location where it is best rewarded. Each country is interested to attract it*."[5]

Financial capital mobility is supported by the rule of the three "D"s[6]: disintermediation/ deregulation/ defragmentation.

Disintermediation – means giving up intermediaries in performing placement or borrowing operations.

Deregulation – is considered the engine of financial globalization. The monetary authorities from the main industrialized countries have abandoned exchange regulations in

[3] In his study, *Recrearea internaţionalismului*, Alain Gresh makes a thorough analysis of the "context for the extension of globalization", pointing out the characteristics of the process in the present system of international relations.
[4] George Soros, *Criza Capitalismului Global*, Editura Nemira, 2001, p. 42.
[5] *Idem*, p. 61
[6] Dominique Plihon, *Mizele globalizării financiare,* in the collection *Modernizarea dincolo de mituri*, Editura Trei, 2001, pp. 65-73.

order to stimulate the international capital flow. The deregulation process initiated by USA in the late '70s resulted in an increasing geographic mobility of capital and a higher interchangeability of the financial instruments.

Market *defragmentation* defines the abolishment of frontiers among traditional markets:

- money market (short-term money);
- exchange market (currency exchange);
- term market (goods purchased and sold in order to be delivered at a later date).

We consider it the duty of each and every state (big or small, developed or underdeveloped) to identify the extent to which the economic or financial system is used for money laundering. Exclusive focus on the so-called uncooperative countries or fiscal paradises might encourage crime, which could freely proliferate in so-called "honorable" countries.

Section II
The international outlook on organized crime

Since the main objective of this paper is scientific research on a complex and dynamic phenomenon such as organized crime, I have deemed it appropriate to define the terms and concepts used in most juridical systems.

Thus, organized crime may be defined as *a social phenomenon designating all criminal deeds incriminated by criminal laws and by special laws with criminal provisions, committed in a society in a certain period of time.*

From the standpoint of its intensity and potential social danger, crime may be:

- ordinary (petty crime);
- average crime;
- organized crime.

The crime phenomenon has a national dimension (that is, the total number of offences committed on a state's territory, without transnational crime cooperation aspects) and a transnational dimension (the total number of offences committed by cooperation among criminals acting on the territory of several states).

One of the first definitions of organized crime was given by the US law enforcement bodies, when FBI defined organized crime as "that particular organization (larger or smaller group) which uses and perpetrates criminal conspiracy, has an organized structure, bases its existence on fear, terror, corruption and illicit manipulation, with the aim of obtaining financial benefits and other advantages."[7]

The weaknesses of international society and the power of transnational criminal structures that have managed either to extend their influence to other states or to conclude strategic alliances with other criminal organizations have determined international mobilization, leading to the adoption of the UN Convention against Transnational Organized Crime and the Protocols Thereto (15 November 2000, New York). Regarding this *Convention*, mention should be made that the new dimensions of organized crime mobilized the states, which concentrated their efforts on fighting this scourge, so that between 12-15 December 2000, in Palermo, over 120 UN member countries signed the *UN Convention against Transnational Organized Crime and the Protocols Thereto.* [8]

[7] National Security Council, *International Crime Threat Assessment*, www.terrorism.com/documents /2006.
[8] The Convention was signed by Romania on 14 December 2000 in Palermo and was ratified by Law 565/2002.

Likewise, the Protocol against the Smuggling of Migrants by Land, Sea and Air defines the following expressions: "illicit immigrant trafficking", illegal entry", "travel documents", "navigation". As a completion, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, defines expressions like "human and child trafficking".

In Romania, the provisions of the UN Convention against Transnational Organized Crime were taken over by Law 39/2003[9] on preventing and combating organized crime, by which the Romanian Parliament regulated specific measures meant to prevent and combat national and international organized crime.

Mention should be made that, given the evolution and extent of world organized crime, the 5th UN Conference on crime and the treatment of offenders drew up a *Special Resolution – Crime as Business, where organized crime is defined by four main criteria*: purpose – to obtain substantial gains; connections – well-structured and hierarchically delimited within the group; specifics: using the participants' work attributions and relations; level – occupying higher positions in economy and society.

On the other hand, Art. 2, Line 1 of the *Convention against Transnational Organized Crime and the Protocols Thereto* defines the syntagm "*organized crime group*" as being "*a structured group made up of three or more persons, existing for some time and acting by agreement in order to commit one or several serious offences mentioned in the present Convention, with a view to obtaining, directly or indirectly, a financial benefit or some other material advantage."*

We must notice that before adopting the *Convention against Transnational Organized Crime and the Protocols Thereto* in Palermo, December 2000, there had been no unanimously accepted definition of organized crime.

Section III
The concept of organized crime in Romanian criminal law

The definition of the concept of organized crime is influenced by Romania's position in Europe, therefore special importance is attached to the geo-political characteristics of south-eastern Europe, which engender a number of specific features in the organized crime groups from this area. The analysis of transnational crime characteristics also indicates that Romania tends to become a "target" country for illegal immigration, drug trafficking, trafficking in stolen cars, arms, ammunition, explosive materials and dangerous waste, as well as for other organized crime forms such as human trafficking, increasing drug abuse and trade on the domestic market, possibly even terrorist acts.

From the viewpoint of the organized crime concept in Romanian criminal law, we notice the lack of a consistent terminology, which leads to confusion both in the theoretical approach and in the concrete fight against such a complex phenomenon. The confusion is amplified (or maybe explained) by the fact that in two equally powerful normative acts – two laws elaborated and enforced only 30 days after each other – the syntagm of criminal group or organization is defined in two distinct ways.

Thus, Art. 2, Line 1 from *Law No. 682/2002*[10] on witness protection defines the "*criminal group or organization" as "a structured group made up of three or more persons, existing for a certain time and acting in a coordinate manner with a view to committing one or*

[9] Published in Monitorul Oficial, Partea I, nr. 50/29.01.2003.
[10] Published in Monitorul Oficial, Partea I, nr. 964/28.12.2002, enforced on 27.01.2003.

more serious crimes, so as to obtain, directly or indirectly, a material advantage." In the second thesis of the same Art. 2, lett. a, as if for demonstrating the clarity of the definition given in the first thesis, the law-maker defines what is not an organized crime group, so as to dissipate any confusion.

Far from being clarified, the confusion is enhanced by another syntagm defined differently in the two normative acts, namely "serious offence".

Thus, *Law No. 682/2002* Art.2, lett. h defines "serious offence" as an offence falling into one of the following categories: crimes against peace and mankind, state and national security, terrorism, murder, aggravated murder, manslaughter, drug and human trafficking, money laundering, money and valuables counterfeiting, crimes related to arms and ammunition regulations, crimes related to nuclear and radioactive materials regulations, crimes of corruption, crimes against the patrimony with extremely serious consequences, as well as any other crime for which the law stipulates at least 10 years of prison or longer.

Law No. 39/2003, Art. 2, lett. b defines "serious crime" as "*an offence falling into one of the following categories:* murder, aggravated murder, manslaughter*, illegal deprivation of liberty, slavery, blackmailing, crimes against the patrimony with very serious consequences, crimes related to arms, ammunition, explosives, nuclear or radioactive materials,* money and valuables counterfeiting*, disclosure of economic secrets, unfair competition, infringement of the provisions regarding import-export operations, embezzlement, infringement of the provisions regarding waste and residue import, proxenetism, crime related to gambling, drug or drug precursor trafficking, crime related to human trafficking and immigrant smuggling, money laundering, corruption, crime assimilated or directly linked to corruption, smuggling, fraudulent bankruptcy, crime committed by means of IT or communications systems and networks, trafficking in human tissue or organs and any other crime for which the law stipulates at least 5 years of prison."*

Consequently, we consider that the essence of the organized crime juridical framework is established mainly by *Law No. 39/2003,* which regulates the specific measures for preventing and combating national and international organized crime.

CHAPTER 3
SPECIFIC FEATURES OF ORGANIZED CRIME IN ROMANIA. INCRIMINATING NORMS

Section I
Preliminary remarks

Law No. 39/2003 on preventing and fighting organized crime sets in agreement national and international instruments, namely the provisions of the UN Convention against Transnational Organized Crime, acknowledged as the most comprehensive international regulation in this field. Law No. 39/2003 stipulates that the prosecution of crimes committed by an organized crime group is mandatorily performed by the prosecutor.

The competent body for carrying out prosecution is the Directorate for Investigating Organized Crime and Terrorism (DIICOT), the only structure within the Romanian Public Ministry with exclusive attributions in investigating cases of organized crime, terrorism and its financing sources.

Section II
International forms of organized crime

In this section we presented a few of the best known international crime groups, namely: American *Cosa Nostra*[11], the triads and other Chinese criminal structures[12], *Tong* crime organizations, Japanese *Yakuza*[13], Columbian cartels, organized crime in the former Soviet Union.

Section III
National forms of organized crime

Before discussing about national forms of organized crime we deem it imperative to state Romania's place on the map of European and international organized crime.

Thus, most analysts, as well as Interpol and Europol experts, place Romania in south-eastern Europe or in the western Balkans[14], the "Balkan routes" for illicit traffic between western Europe and Asia.

According to the yearly Europol Report for 2008, "*drugs and human trafficking represent the most profitable business towards EU, while on the opposite route, the most trafficked goods are high-risk drugs, arms, forged documents, counterfeited currency and stolen vehicles*".[15]

Romania is situated on the well-established northern Balkan route, used for opiates such as opium, the basis for morphine and heroin, from Afghanistan to Central and Western Europe.

Drug trafficking also implies external violence acts and feeds the prostitution networks, just like money laundering is the final stage of all trafficking forms.

Romania "asserted itself" on the human trafficking map very soon after the Revolution, between 1992-1993, when a great number of foreigners started crossing the frontier, "*finding here a real El Dorado*. It was a virgin territory *and there were many naïve people, eager to make a lot of money out of the blue. Therefore, the perfect victims*."[16] Romania started to turn from a drug transit country into a consumer market, as acknowledged by police officials.

Given the increasingly aggressive forms of organized crime, it is necessary that the whole international community should stand up against them, in permanent search of the best response. The enemy is strong and steadily perfecting, so as to keep up with the evolution of the law-obeying society.[17]

Obviously, the organized crime phenomenon witnesses an unprecedented expansion and its new forms, its better and better organization, the danger it presents and its international

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[11] *Raport anual asupra fenomenului criminalităţii organizate pentru anul 1992*. The Italian Ministry of Interior, edited in Rome, May 1993, p.9.

[12] Supreme Council of National Defence, National Council of Action against Corruption and Organized Crime, *Cartea Albă a Crimei Organizate şi a Corupţiei*, 1998, p. 46 and the following.

[13] *Cartea Albă a Crimei Organizate şi a Corupţiei*, edited by the Supreme Council of National Defence (SCND), 1998, p. 64.

[14] Roland Kubb, *The World of Organized Crime*, Editura Smart, London, 2008, Patrick Smaller, *Organized crime and the Europe*, Editura Star, Berlin 2008, *European Organized Crime Threat Assessment (OCTA) 2008*, European Police Office.

[15] *European Organized Crime Threat Assessment (OCTA), 2008*, European Police Office

[16] Dumitru Licsandru, *Raport al Agenţiei Naţionale Împotriva Traficului de Persoane (ANITP),* 2008

[17] *Idem.*

character represent an ever greater threat to the human community, to democratic institutions, to the state as a whole. Within the same context, mention should be made of the fact that Romanian criminal legislation contains the terms of active, respectively passive corruption, in keeping with the EU Criminal Law Convention on Corruption (signed in Strasbourg, on 27.01.1999 and ratified by Romania by *Law No. 27/16.01.2002*[18]).

In the chapter on job-related crime, criminal law incriminates four corruption offences: giving bribes, accepting bribes, accepting undeserved benefits, traffic of influence (Art. 254-Art. 257), without mentioning the word "corruption".

Law No. 78/2000[19] *on revealing and punishing corruption deeds*, modified by *Law No. 161/21.04.2003, on certain measures for ensuring transparency in official positions, public functions and business, on preventing and punishing corruption,* regulates 3 categories of offences considered as being corruption deeds, plus a fourth, offences against the EU financial interests. Modified and completed, *Law 78/2000* refers to the following categories of offences:

- *corruption offences;*
- *corruption-assimilated offences;*
- *offences directly related to corruption or corruption-assimilated offences.*

The provisions regulating the procedure for prosecuting and bringing to court corruption offences are to be found in the Criminal Procedure Code and in special laws. The Criminal Procedure Code regulates the criminal lawsuit rules applicable to all offences, including corruption, unless excepted by special laws.

A new institution has been introduced, that of undercover investigators, who may be used in case of extremely serious offences, among which corruption deeds, since the Criminal Procedure Code makes special mention of the offences stipulated in Law 78/2000 on preventing, revealing and punishing corruption deeds, which contains, besides substantial law norms, the procedure applicable to corruption deeds.

Law 161/18.04.2003[20] *on certain measures for ensuring transparency in official positions, public functions and business, on preventing and punishing corruption,* also known as the "anti-corruption package" created the efficient juridical framework for preventing high-level corruption and ensuring good governing.

In order to avoid using illicit funds, Law 43/2003[21] was adopted, on financing political parties' activity and electoral campaigns. This law regulates a number of aspects related to the financing sources of a party's activity, the control of political parties' financing as well as the maximum expenses they are allowed. The public institution controlling the setting-up and spending of the political parties' funds is the Court of Auditors. At present, similar provisions are to be found in Law 334/2006, Art. 35, Line 1[22].

Law 52/2003[23] on decisional transparency in public administration lays down the minimal procedure rules meant to ensure decisional transparency with central or local public administration authorities, in order to enhance the responsibility and transparency of public administration as well as to stimulate the citizens' involvement in the decision-making process. The principles underlying this law are: notifying the citizens, consulting them and

[18] Published in Monitorul Oficial, Partea I, nr. 65/30.01.2002
[19] Published in Monitorul Oficial, Partea I, nr. 219/18.05.2000
[20] Published in Monitorul Oficial, Partea I, nr. 279/21.04.2003.
[21] Published in Monitorul Oficial, Partea I, nr. 54/30.01.2003.
[22] Published in Monitorul Oficial,Partea I, nr. 632/21.07.2006.
[23] Published in Monitorul Oficial, Partea I, nr. 70/03.02.2003, enforced on 04.04.2003.

ensuring their active participation in making administrative decisions and drawing up administrative document drafts.

CHAPTER 4
NATIONAL INCRIMINATING NORMS FOR ORGANIZED CRIME OFFENCES

Section I
General remarks

The increasing criminal activity in Romania after 1989 is consequent on both the impact of serious socio-economic problems, typical of the transition to market economy, and the misinterpretation of democratic liberties by certain persons, besides perpetrators' tendency to extend their criminal activity to a world level by creating relations with other countries.

In the Romanian legislation *the juridical status of organized crime is presented mainly in Law 39/2003*, which regulates specific measures for preventing and combating national and international organized crime, while stipulating a number of offence categories pertaining to the *class of serious offences*.

Apart from Law No. 39/2003, there are some other normative acts with norms focusing on a multitude of offenders. For instance, the Criminal Code comprises several norms related to categories of perpetrators, such as Art. 23-31, Art. 167 and Art. 323 in the Criminal Code. Likewise, murder, aggravated murder, manslaughter are incriminated in Art. 174, Art. 175, Art. 176 of the Criminal Code; illegal deprivation of liberty in Art. 189 of the Criminal Code; slavery in Art. 191 of the Criminal Code; blackmailing in Art. 194 of the Criminal Code; smuggling, tax evasion in Law No. 86/2006 on Romania's Customs Code, with further alterations and completions.

In the following sections I have attempted to tackle in detail the most important categories of serious offences mentioned by Law No. 39/2003, which actually represent the most widespread organized crime offences on Romania's territory.

Section II
Drug trafficking in Romania

In the first part of this section I presented chronologically the main international unitary approaches to drug trafficking and abuse, namely *the Shanghai Conference of 1909; The Hague Conference of 1912; The Geneva Convention, signed on 13 July 1931; the Geneva Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, 26 June 1936; the Paris Protocol of 19 November 1948; the Single Convention on Narcotic Drugs, adopted on 25 January 1961 and enforced on 13 December 1964; the Convention on Psychotropic Substances adopted in Vienna in 1971; The UN Convention against drug and psychotropic substances trafficking adopted in Vienna in December 1988 and enforced on 11 November 1990.*

These are only a few of the most important world-scale moments meant to set up a common language, especially at a juridical level, regarding drug trafficking and abuse. The decisions adopted on such occasions have been implemented in the legislation and administration of most countries, in keeping with the local and regional characteristics and interests.

We also presented the evolution of the measures against drug trafficking and abuse adopted in Romania in the course of time, beginning with the *Regulations for improving the protection of lawful order by Bucharest police, 6 July 1830; the regulations of police municipality, adopted in Iaşi, at 14th October 1831 etc. until the Regulations regarding drugs and the sale of raw medical substances from 21st April 1921; The Law for counteracting the use of drugs from 1928; The regulation of state monopoly over drugs from 24th June 1933; Decree no. 456 from 18th December 1952; Law no. 73 from 29th December 1969 regarding the abuse of drug products and substances from 1979; Law no. 300 from 17th May regarding the legal status of precursors used in the illicit fabrication of drugs*[24]*; Law no. 339/2005*[25] *regarding the legal status of plants, substances, and drug and psychotropic mixtures;* as well as the conventions Romania adhered to, together with the international bilateral agreements sign by Romania in order to make international cooperation in counteracting this plague more efficient.

It is evident that, without issuing adequate legal means, both modern and solid, anti-drug fight would be only formal. That is why, together with passing Law no. 143/2000, Romania adjusted and consolidated the procedural dispositions stated by prior legal acts. Currently, Law no. 143/2000 contains 4 tables which mention all the drugs and precursors that are under national control and which are under the special dispositions stated by Law no. 300/2002.

The widely accepted characteristic for the transport of large quantities of highly risky drugs is that Romania remains mainly a transit state and not a direct destination, a market for the important groups of drug smugglers.

Between 2000 and 2012, a constant increase in the quantity of drugs confiscated and their market value was registered, statistical indicators reaching in 2009 a historical value for Romania, when the quantity of 1.2 tones of 90% pure cocaine was confiscated.

The value of this quantity of highly risky drugs exceeds 270 million Euros[26].

Period	Value of confiscated drugs
2006	3 million Euros
2007	5,6 million Euros
2008	20 million Euros
2009	167 million Euros
2010	4,2 million Euros
2011	15 million Euros
2012	10,5 million Euros

Table no. 1. Value of drugs confiscated between 2006-2009, from *Rapoarte de Activitate ale Direcţiei de Investigare a Infracţiunilor de Criminalitate Organizată şi Terorism*, 2006-2012, www.diicot.ro

[24] Published in Monitorul Oficial, Partea I, nr. 409 from 13.06.2002.
[25] Published in Monitorul Oficial, Partea I, nr. 1095 from 05.12.2005.
[26] *Raport de Activitate al Direcţiei de Investigare a Infracţiunilor de Criminalitate Organizată şi Terorism*, 2006-2012, www.diicot.ro

Section III
Human and Immigrant Trafficking

Human trafficking is a violation of human rights and of the dignity and integrity of the human being, a threat to personal and moral security. According to the National strategy against human trafficking for 2012-2016, adopted through Governmental Act no. 1142/2012[27], human trafficking, as well as corruption, underground economy and financial fraud, has taken huge proportions for the modern society at international level, becoming a major problem both at national level and international one as one of the widest forms of criminality.

The definition and incrimination the phenomenon regarding human trafficking and migrants were performed through the Palermo *Convention from 13th December 2000, The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially, Women and Children, additional to the United Nations Convention transnational Organized crime, European Council Convention on human trafficking adopted in Warsaw, at 16th May 2005.*

Internally, with the adoption of the National strategy to prevent and suppress human trafficking, institutions with attributions in the field and inter-institutional cooperation rules were established.

In Romania, the framework law that regulates the crime of human trafficking, crimes connected to human trafficking and other connected institutions is Law no. 678/2001 regarding the prevention and suppression of human trafficking. The Law contains, besides incrimination norms and definitions, dispositions regarding the prevention of human trafficking, special dispositions regarding reducing penalties, legal procedures, protection and assistance of victims and international cooperation in the field.

There are no legal precedents similar to the current law (Law no. 678/2001), even if Romania has been a member in two international conventions for many years. We are talking about *Convention for the suppression for the traffic in persons and of the exploitation of the prostitution of others*[28] *and International convention for the suppression of the circulation of and traffic in obscene publications.*[29]

Currently, the activity of prevention and suppression of human trafficking, together with the activity of protection and assistance of trafficking victims is done according to the dispositions of Law no. 678/2001, application regulations of Law no. Law no. 678/2001, approved through Governmental Act no. 299/2003[30] and of the National action plan for the suppression of human trafficking, approved through Governmental Act no. 1216/2001[31].

According to the statistics of the National Agency against Human Trafficking[32], institution that functions within the General Inspectorate of Romanian Police, stated that between 2004-2009, the total number of trafficking victims exceeded 10.000, as follows:

[27] Published in Monitorul Oficial, Part I, no. 820 from 06.12.2012.
[28] Romanian Stated adhered to the convention through Decree no. 482/1954, published in B. Of. no. 46 from 10 December 1954.
[29] Romanian Stated adhered to the convention through Decree no. 2333/1926, published in B. Of. no.188 from 24 August 1926.
[30] Published in Monitorul Oficial, Part I, no. 206 from 31.03.2003.
[31] Published in Monitorul Oficial, Part I, no. 806 from 17.12.2001.
[32] Annual Report 2009 of the National Agency Against Human Trafficking

Period	Total number of victims	Tendency compared to the previous year
2009	780	-37%
2008	1.240	-30%
2007	1.780	-22%
2006	2.285	-10%
2005	2.551	+30%
2004	1.960	

Table no. 2. Victims of human trafficking from 2004-2009, Annual Report 2009 of the National Agency Against Human Trafficking

Section IV
Cybercrime

Cybernetic criminality is that deed under the criminal law, committed with guilt by a person or a group of persons who use a computer and, with the help of cable communication, commit a crime that pose social danger which brings prejudice to a person, a commercial enterprise or state interests.

Incrimination of information crimes in Romania is done through the Law no. *365/2002*[33]*, regarding combat of cybernetic crime in the field of electronic commerce.* This establishes both the conditions of furnishing services in the field of electronic commerce, but, as well, incriminates and sanctions other crimes committed in the cybernetic space, such as the unauthorized use of electronic payment devices or use of fake ID information in order to make financial transactions.

Law no. 365/2002 regarding electronic commerce defines in its content the modalities in which the crime can be committed.

Section V
Terrorism and Its Financing Sources

The defense of national security is established by Law no. 51/1991[34] regarding national security of Romania and is performed by knowing, preventing, and suppressing all threats of the kind.

The interests of the Romanian law maker have gone towards both incriminating and sanctioning the terrorist acts, and sanctioning other forms of support or financing of terrorism.

The first steps were made through passing The Governmental Emergency Ordinance no. 141/2001[35], modified by Law no. 472/2002[36], regarding the sanction of terrorist acts and disturbance of public order, completed through The Governmental Emergency Ordinance

[33] Published in Monitorul Oficial, Part I, n0. 483 from 05.07.2002, reprinted in Monitorul Oficial, Part I, no. 959 from 29.11.2006.
[34] Published in Monitorul Oficial, Part I, no. 163 from 07.08.1991.
[35] Published in Monitorul Oficial, Part I, no. 691 from 31.10.2001.
[36] Published in Monitorul Oficial, Part I, no. 524 from 18.07.2002.

no.159/2001[37], adopted through Law no. 466/2002[38] for the prevention and suppression of the use of banking and financial systems in order to finance terrorist acts, legal regulation that first sanctioned these kinds of crimes.

The approach, incrimination, and cumulative sanction of all these categories of facts were made through the adoption of Law no. 535/2004[39] regarding their prevention and suppression of terrorism, moment when previous laws in the field were abrogated.

This law is the most complete, modern and complex legal act in the field, and its adoption made it possible a real unitary legal framework in the fight against terrorism.

Al national level, cooperation in the field is done through the National System for the Prevention and Combat against Terrorism – NSPCT – with the participation of The Ministry of Administration and Interior, The Ministry of National Defense, Ministry of Justice, Ministry of Agriculture, Forests and Rural Development, Ministry of Environment and Forests, Ministry of Transport, Construction and Tourism, Ministry of Health, Ministry of Communication and Information Technology, Ministry of Public Finance, Ministry of European Integration, Protection and Guard Service, Foreign Intelligence Service, Special Telecommunication Service, The Prosecuting Magistracy affiliated to the High Court of Cassation and Justice, National Bank of Romania, National Agency for Export Control, National Office for the Prevention and Control of Money Laundering, National Committee for the Control of Nuclear Activities, all these benefiting from the technical support of the Romanian Intelligence Service.

It also involves the Antiterrorist Operational Coordination Center – CCOA – founded before, at 15th February 2004, which ensures technical support to NSPCT.

Section VI
Business Crime

In our opinion, the fundamental purpose of organized criminal structures is the continuous capitalization, the accumulation of resources through illegal means. Organized crime thrives in a weak financial and institutional field: crises situations, failure in reforms, armed conflicts etc. It develops an entire arsenal which leads to an increase in the vulnerability of societies.

Besides the legal market, an illegal one exists together with a parallel one. Thus, illegal markets are those that produce and sell illicit goods, whose production, sell, and consumption are forbidden (drugs, certain types of medicine, child pornography etc.), while parallel markets are those that sell illicit goods legally obtained though smuggling (cigarettes, alcohol, coffee, electronic goods, computers etc.) as a result of avoiding legal procedures regarding the declaration of goods and the payment of related taxes[40].

In our opinion, based on the analysis of frauds instrumented in the last years, the main evolution of criminal groups is seen in their financial power, due to the accumulation of profits. They have adapted rapidly, following the economic and political evolutions, and integrating perfectly into the legal world.

[37] Published in Monitorul Oficial, Part I, no. 802 from 14.12.2001.
[38] Published in Monitorul Oficial, Part I, no. 523 from 18.07.2002.
[39] Published in Monitorul Oficial, Part I, no. 1161from 08.12.2004.
[40] P. Broyer, *Criminalitatea financiară*, D'Organisation Publishinbg House, Paris, 2002, pp. 8-9.

Section VII
Money Laundering in Romania

The definition of money laundering phenomenon has been made by explaining in a few words the action way and the purpose of operations of money laundering, which, in time, after signing and ratifying *"The United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substance*" from Vienna, in 1988, became a law in most world states: *money laundering involves the conversion or transfer of goods for the purpose of dissimulating or disguise their illicit origin.*

Internally, Law no. *656/2002*[41] *for the prevention and sanction of money laundering* registered as incriminating one of the following activities: exchange or value transfer, knowing that they originate from the commission of a crime, to the purpose of hiding, dissimulating their illicit origin, as well as hiding or favoring the persons involved in these activities or who allegedly avoid the legal consequences of their acts; hiding or dissimulating the real origin, ownership, order of money movement or their right, knowing that it comes from the commission of crime; obtaining, possessing or using goods, knowing that they come from committing such crimes.

Though the same law, a national organism was created with exclusive attributions in the field – ***The National Office for the Prevention and Control of Money Laundering*** – which works as a special organization with judicial person, subordinated to the Government, and which activates in: *"prevention and combat of money laundering and financing of terrorist acts in order to receive, analyze, process information, and announce The Prosecuting Magistracy affiliated to the High Court of Cassation and Justice, and if the financing of terrorist acts is recorded, it announces the Romanian Intelligence Service regarding the suspect activities of financing terrorist acts. "*

CHAPTER 5
SPECIFIC MEANS OF INVESTIGATING ORGANIZED CRIME OFFENCES

Section I
Preliminary Remarks

Special investigation techniques are vital instruments in the fight against serious crimes. They involve, through their activity, **intrusion** into the right to privacy, thus having to obey the European standards of protection stipulated in art. 8 of the European Convention for the Human Rights.

According to art. 138 of the new Penal Code, special techniques of surveillance and research are considered the following:

- intercepting telephone conversations and communication;
- accessing an information system;
- performing video, audio or photo surveillance;
- localizing and tracking through technical means;
- obtaining the phone records;

[41] Published in Monitorul Oficial, Part I, no. 904 from 12.12.2002, reprinted in Monitorul Oficial, Part I, no. 702 from 12.10.2012.

• retaining, delivering and checking letters;

• requesting and obtaining according to the law of information regarding financial transactions as well as financial information of a person;

• using undercover investigators;

• discovering an act of corruption or signing of an agreement;

• supervising a delivery;

• identifying the subscriber, owner or user of a telecommunication system or an access point to a computer.

As resulting from the dispositions in art. 53 from the Constitution[42] special investigation techniques in art. 20 from Law no. 535/2004[43] are imposed by the necessity to defend national security, being subordinated to the role intelligence services must play in society, as they have a preponderantly preventive function in special situations that endanger national security. Special investigation techniques stipulated in art. 20 from Law no. 535/2004 are components of the intelligence activity for protecting national security, them being of administrative nature[44].

In the field of organized crime, special investigation techniques, regulated by the Romanian Law, Criminal Code and special laws, are the following:

►***Surveillance, interception and recording of conversations, access to information systems:***

▪ Criminal Code;

▪ Law no. 39/2003 regarding the prevention and combat of organized crime;

▪ Law no. 508/2004[45] regarding foundation, organization and functioning of DIICOT within the Public Ministry;

▪ Law no. 656/2002 regarding the prevention and sanction of money laundering, as well as instating prevention and suppression measures against financing terrorist acts;

▪ Law no. 143/2000 regarding the prevention and combat of drug trafficking and consumption;

▪ Law no. 678/2001 regarding the prevention and combat of human trafficking;

▪ Law no. 161/2003, Title III, regarding the prevention and combat of information crimes.

► ***Undercover Investigators***

▪ Criminal Code;

▪ Law no. 39/2003 regarding the prevention and combat of organized crime;

▪ Law no. 508/2004 regarding foundation, organization and functioning of DIICOT;

▪ Law no. 143/2000 regarding the prevention and combat of drug trafficking and consumption;

▪ Law no. 678/2001 regarding the prevention and combat of human trafficking.

► ***Use of information and collaborators***

▪ Law no. 39/2003 regarding the prevention and combat of organized crime;

▪ Law no. 508/2004 regarding the foundation, organization and functioning of DIICOT.

► ***Supervised delivery***

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[42] Published in Monitorul Oficial, Part I, no. 233 from 21.11.1991 and came into effect while being approved through the national referendum on 8th December 1991.

[43] Published in Monitorul Oficial al României, Part I, no. 1161 from 8 decembrie 2004.

[44] See I. Doltu, *Considerații în legătură cu sistemul probator în dreptul procesual penal*, in *Dreptul,* no. 6/2001.

[45] Published in Monitorul Oficial, Part I, no. 1089 from 23.11.2004.

▪ Law no. 39/2003 regarding the prevention and combat of organized crime;
▪ Law no. 508/2004 regarding foundation, organization and functioning of DIICOT;
▪ Law no. 143/2000 regarding the prevention and combat of traffic and illicit consumption of drugs;
▪ Law no. 656/2002 regarding the prevention and sanction of money laundering, as well as instating prevention and suppression measures against financing terrorist acts.

► ***Supervising bank accounts***

▪ Law no. 39/2003 regarding the prevention and combat of organized crime;
▪ Law no. 508/2004 regarding foundation, organization and functioning of DIICOT;
▪ Law no. 656/2002 regarding the prevention and sanction of money laundering, as well as instating prevention and suppression measures against financing terrorist acts.

► ***Witness protection***

▪ Criminal Code;
▪ Law no. 682/2002 regarding witness protection;
▪ Law no. 508/2004 regarding foundation, organization and functioning of DIICOT.

► ***International legal cooperation tools***

▪ Law no. 302/2004[46] regarding international legal cooperation in criminal matters.

Section II
Telephone and Audio-Video Communication Interception

According to art. 53 of the Romanian Constitution, the exercise of rights or freedoms can be infringed by law in the interest of national security, of order, health and public morality, or out of reasons regarding the need to defend right or freedoms of citizens or criminal investigation. The way in which interceptions and audio and video recordings were regulated are under this constitutional disposition, the infringement not being meant to harm the very existence of law and being directly proportional to the situation that triggered it; moreover, according to art. 91^1 line 7 C.p.p., the prosecutor is forced to dispose the immediate cease of the interception, right before the expiring date of the authorization, if the reasons taken into account are no longer valid, informing about this the Court that issued the authorization.

The legal status of audio and video recordings is stipulated in Romania both by the dispositions of the Criminal Code (art. 91^1 – 91^6, art. 109 align. 2, art. 131 align. 3), and by special legislation which has certain criminal procedural dispositions (Law no. 51/1991 regarding Romanian national security;. Law no. 14/1992[47] regarding the organization and functioning of the Romanian Intelligence Services, with further modifications and additions; Law no. 535/2004 regarding the combat against terrorism; Law no. 298/2008[48] regarding the retention of data and their analysis by providers of electronic communication services or public communication networks as well as the modification of Law no. 506/2004[49] regarding the processing of personal data and protection of privacy in the sector of electronic communication – declared unconstitutional through decision no. 1258 at 8.10.2009 of the Constitutional Court, published in the Official Gazette, Part I, no 798/23.11.2009). Law no.

[46] Published in Monitorul Oficial, Part I, no. 594 from 01.07.2004, republished in Monitorul Oficial, Part I, no. 377 din 31.05.2011.
[47] Published in Monitorul Oficial, Part I, no. 33 from 03.03.1992.
[48] Published in Monitorul Oficial, Part I, no. 780 from 21.11.2008, caming into force at 20.01.2009.
[49] Published in Monitorul Oficial, Part I, no. 1101 from 25.11.2004.

51/1991 regarding national security (art. 13) took into account the possibility of interception and recording of phone conversations which pose threats to national security. Law no. 26/1994[50] regarding the organization and functioning of the Romanian Police extended this possibility to the case of organized crime and other serious offences if necessary for the criminal investigation.

Interception and record of conversation and communication, as a special investigation technique, is provisioned by the law on international legal assistance (Law no. 302/2004 regarding the international criminal legal cooperation).

The assistance request has to contain: confirmation that an interception warrant exists, information that will allow the identification of target interception, record of the interception date and technical data, especially the network number.

Through Law no. 141/1996[51] regarding the modification and completion of the Criminal Procedure Code, only the recording procedures were regulated, them not being possible without interception.

According to the doctrine[52], interception is not probative evidence, but a probative action. Other authors [53] state that consider interception as probative evidence. In the field of criminal procedures, the procedure regarding the interception and audio-video recording is regulated in art. 91^1-91^6 from the Criminal Procedure Code as it was amended through Law no. 281/2003[54], Law no. 356/2006[55], and Governmental Emergency Ordinance no. 60/2006[56]. In Title III of the general part of the Criminal Procedure Code, through Law no. 141/1996, Section V^1 was introduced under the name „Interception and audio-video recordings".

As a result of alterations through art. I line. 47 from Law no. 281/2003, Section V^1 of Title III from the general part of the Criminal Prosecution Code regulated in art. 91^1-91^3, the authorizing procedure and performing interception and recording of phone conversations or communications, and art. 914 show that the same procedure can be applied in „the case of recording conversations made through other telecommunication means."

Later on, Section V^1 went through further alterations by the entrance into force of Law no. 356/2006, so currently, interceptions and recordings refer not only to conversations and communication made by phone or by any other electronic communication means (art. 91^1), but also conversations and communication in the ambient media (art. 91^4), limiting their action and strengthening the legal framework in which they can be used.

Audio or video recordings or those with sound and image represent modern technical means, with revolutionary character in the field of probative system, which have the advantage of rendering the situation rapidly and accurately, of being administered in real time, and used in the majority of criminal environments.

The new Criminal Procedure Code of Romania, approved through Law no. 135/2010, published in the Official Gazette no. 486 din 15.07.2010, regulates in art. 138, as a special technique for surveillance and research, the interception of conversation and communication. Line 2 of article 138 defines this technique as the interception, access, monitoring, collection, or recording of conversations or communication made on the phone, through an informatics

[50] Published in Monitorul Oficial, Part I, no. 123 from 18.05.1994.
[51] Published in Monitorul Oficial, Part I, no. 289 from 14.11.2006.
[52] G. Theodoru, *op. cit.*, p. 402.
[53] A.Țuculeanu, *Câteva considerații asupra interceptărilor şi înregistrărilor audio sau video*, in *Dreptul*, no. 5/2004, p. 21.
[54] Published in Monitorul Oficial, Part I, no. 468 from 01.07.2003.
[55] Published in Monitorul Oficial, Partea I, no. 677 from 07.08.2006.
[56] Published in Monitorul Oficial al României, Part I, no. 764 from 07.09.2006.

system or any other communication means, as well as recording traffic data that indicate the source, destination, hour, dimension, length of the period of time or type of communication made on the phone or through an informatics system or any other communication means.

Section III
The Undercover Investigators, Collaborators, and Informers

A new institution of criminal procedural law introduced for the first time in Romania under Law no. 143/2000 is the one of the undercover investigator.

Art. 21 alignment 1 from Law no. 143/2000 gives the prosecutor the possibility to authorize and obtain probation evidence in the situations in which there is solid evidence that a crime was committed or is about to be under the present law.

Before the alteration of the special Law no. 522/2004[57], the activity of collecting evidence by undercover investigators is limited by the possibility to investigate only the case they participate in, after having been authorized by the prosecutor.

The current regulation offers a great freedom of action to the undercover investigator, allowing him, for a determined period of time, under a false identity and with the prior authorization of the prosecutor, to take specific actions to identify the perpetrators and collect evidence regarding the commitment of a crime that breaks the law of drugs.

Later on, by Law no. 281/2003, regarding the modification and completion of the Criminal Procedure Code and special laws, the institution of the undercover investigator was mention distinctively in the dispositions of the Criminal Procedure Code, by introducing the articles 224^1-224^4, modified later by art. I line 124, 125 from Law no. 356/2006 (art. 224^1 line. 2 şi 3; art. 224^2 line 1).

Similarly, art. 17 line 2 from Law no. 508/2004 regarding the creation, organization, and functioning within the Public Ministry of the Directorate for Investigating Organized Crime and Terrorism refers to institution of undercover investigators, qualifying them as officers or police agents assigned for this purpose who, with the motivated authorization of DIICOT prosecutors, can make undercover investigations in the case of crimes under the law. The papers signed by the undercover investigators and their collaborators are probation evidence.

Other dispositions, even if they do not use the same terminology, regulate the institution of the undercover investigator. So, Law no. 302/2004 regarding legal cooperation for penal matters uses the notion of undercover agent, in the legal dispositions that regulate the undercover investigations (art. 168), giving the assigned agents the possibility to intervene under a secret or false identity, with the condition to obey and apply legislation and procedures of the state on which territory they activate.

Similar dispositions are also encountered in Law no. 39/2003 regarding the prevention and suppression of organized crime that uses the notion of undercover policemen, involved in similar specific activities. According to art. 17, from Law no. 39/2003, when there is solid evidence that a serious crime has been committed or is about to be by one or more members of an organized criminal group, which cannot be discovered or whose perpetrators cannot be identified using other means, undercover policemen from the specialize structures of the Ministry of Interior can be used to collect data regarding the commission of the crime and the identification of the perpetrators.

[57] Published in Monitorul Oficial, Part I, no. 1155 from 07.12.2004, came into force in 07.03.2005.

Similarly, the dispositions regarding the undercover investigators are encountered in art. 22 from Law no. 678/2001, regarding the prevention and suppression of human trafficking, art 27^1 from Law no. 656/2002, regarding prevention and sanction of money laundering, as well as for taking preventive measure to suppress the financing of terrorist acts.

Section IV
Witness Protection

In the trail, the judicial organs take cognizance of and establish the fact situation by means of evidence. Within the evidence administered in the trail, an important place is taken by the depositions or witness stories. The evidence with witnesses, also known in specialty literature as testimonial evidence, the witnesses' depositions are the common way to inform the legal organs, fact which became known after the famous Bentham's phrase: „the eyes and ears of justice".

Within the legal measures taken against organized crime, also anticipated by other prior depositions engulfed in special laws[58], The European Council recommended the adoption of Law no. *682/2002* regarding the protection of witnesses, through which the law maker attempts to create in Romania for the first time, a legal system of hearing witnesses covered by the anonymity in criminal matters, introducing a series of measures in order to ensure protection and assistance to people whose life, bodily integrity or freedom are endangered because of their having a piece of information or data regarding the commitment of a serious crime, that they have already furnished or agreed to furnish to the legal organs, and which has a crucial role in discovering the perpetrators and solving a case[59].

Law no. 281 from June 2003 regarding the modification of the Criminal Procedure Code and some special laws introduced for the first time in the Romanian Criminal Procedure Code some special procedure dispositions regarding the protection of witnesses in art 86^1-86^5 (texts that came into force on 1st January 2004). Later on, they were further modified through Law no. *356/2006* (art. 86^2 lines 1 and 2, art. 86^2 line 3^1 – introduced through this law, art. 86^2 line 4 and 7, art. 86^3 – abrogated by this law). They refer to the following: protection of witness' identification data; special surveillance means of the witness; checking of the surveillance means of the witnesses; protection of witness' transportation.

From the content of the regulation regarding the protection of witness' identification data, it results first that, the protection measures introduced in the current Criminal Procedure Code through Law no. *281/2003* are not conditioned by the inclusion of witnesses in a protection program under Law no. *682/2002*. This means that those who can benefit from protection procedural dispositions are both witnesses that are part of the program, and to whom the rules apply, completing those dispositions from Law no. *682/2002*, and witnesses that are not, but fall under the provisions of the Criminal Procedure Code as follows:

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[58]Law no. 678 from 21 November 2001 regarding the prevention and combat against human trafficking (published in the Official Gazette of Romania, Part I, no. 783 from 11th December 2001), which includes for the first time in our legal system detailed provisions regardin the protection in a separate chapter (cap. V), with the title „*Protection ans Assistance of victims of Human Trafficking*". Later on, with the adoption pf Law no. 39 from 21 January 2003 (published in the Official Gazette of Romania, Part I, no. 50 from 29 January 2003) it is especially stated (in art. 23) that „the undercover policeman, informer, as well as his family members can benefit from special protection measure of witnesses, according to the law".

[59] L.C. Lascu*, Protecția martorilor Noutate de reglementare în legislația românească*, in *Dreptul*, no. 7 /2003, pp. 18-19.

▪ the existence of a situation that would endanger the life and bodily integrity or freedom of the witness or another person;

▪ the situation should result from solid evidence;

▪ the existence of a trial that has commenced or is in progress.

These conditions give the regulation a procedural character in contrast with the one from Law no. *682/2002* that refers to the foundation of a witness protection program, which mentions measures that apply, on a case by case basis, before, during, or after the trail.

Even if Law no. *682/2002* does not affect directly the framework of dispositions included in the Criminal Procedure Code, it refers to all the forms of witness protection known by current criminal legislation, respectively protection in front of legal authorities in trails, and non-procedural protection.

In comparison with Law no. *682/2002*, provisions of the Criminal Procedure Code have a larger application regarding the measures taken for witness protection. Such a difference is normal, taking into account that the special law institutes a witness protection program, while the Criminal Procedure Code contains only procedure dispositions. The Criminal Procedure Code is not limited to the sheer enumeration of the protection of identification data of the witness, it also involves the possibility of surveillance of witnesses by the legal organs, under another identity than the real one or through special techniques to distort the image or the voice so that the person will not be identified or attribution of another identity under which they will appear in front of the legal organ.

Law no. 682/2002, regarding the witness protection is, undauntedly a complex, modern law, which is part of the general process of harmonization of national legislation with European ones and its adaptation to exigencies of the state of right[60], exploiting the tendencies of other states with tradition in organizing and implementing special witness protection programs (it is about the legislations in Italy, the USA, Canada, and Germany).

Section V
Surveilled Deliveries/Authorized Drug Acquisition

V.1. Surveilled drug deliveries

Law no. 143/2000 regarding the prevention and combat against traffic and illicit consumption of drugs regulated a new legal institution, never before seen in Romanian criminal procedure legislation, respectively, surveilled delivery, a legal tool that has as its main objective the identification and discovery of a criminal chain, characterized by tight connections between manufacturers-distributors-buyers.

In order to establish surveilled delivery, it is first necessary to fulfill some essential conditions[61]:

► the first condition refers to the existence of prior request from the institutions or authorities in the matter, respectively the specialized structures from the Prosecuting Magistracy affiliated to the High Court of Cassation and Justice, The General Inspectorate of

[60] Such an endeavor is authorized by the United Nations with the occasion of the 8th Congress for the prevention of crime and treatment of delinquencies (Resolution no. 42/159 from 07.12.1997 of the General Assambly of the United Nations), establishing that the states have to take measures and policies regarding the ensurance of efficient protection of witnesses against terrorist acts and that the states which have experience in witness protection programs should examine the possibility to provide assistance to other states which are about to start such programs.

[61] L.C. Lascu, *Dispoziţii procedurale prevăzute in Legea nr.. 143/2000 privind combaterea traficului şi consumului ilicit de droguri. Livrările supravegheate*, in *Dreptul*, no. 11/2002, pp. 195-199.

Police, The General Inspectorate of Boarder Police and National Customs Authority from Romania:

► the second necessary condition refers to the existence of prosecutor's authorization, the competency lying with the prosecutor from the Directorate for Investigating Organized Crime and Terrorism, which functions as a structure with judicial personality, specialized in the suppression of organized crime and terrorism, within the Prosecuting Magistracy affiliated to the High Court of Cassation and Justice.

V.2. Authorized drug acquisition

This probation method can apply in the case of drug trafficking crimes, being regulated only by the special law to suppress the consumption and drug trafficking.

Law no. *143/2000* through art. 22 states that policemen from specialized groups, who operate as undercover investigators, as well as their collaborators, can procure drugs, chemical substances, essentials and precursors, with the prior authorization of the prosecutor, in order to discover criminal activities and identify the people involved in such activities. Therefore, for the prosecuting authority to be able to procure drugs, chemical substances, essentials and precursors, certain cumulative conditions have to be met[62]: the person who procures such substances should possess the quality of undercover investigator or a collaborator of his; the prior authorization of the prosecutor; the purpose of procuring such substances is to discover criminal activities or identify the persons involved in drug trafficking.

Law no. *39/2003 regarding the prevention and combat against criminal organization* extends the material object of this specific means of investigation and procurement of other goods and forbidden substances, other than drugs and their precursors (armament, explosive materials, counterfeit money, counterfeit ID cards, bank cards, surveillance devices or software whose possession is forbidden etc.) in order to give the prosecuting authorities the possibility to investigate other categories of crime within those committed by organized crime, others than drug trafficking.

If authorized procurement of drugs is mentioned by the law and used in the activities to deconstruct criminal networks, authorized selling, introduction in the civil world in an authorized way of drugs are totally excluded without the special law clearly mentioning such an interdiction.

Section VI
IT searches and IT traffic interception

The IT search is a probative action consisting in searching an IT system or a storage support for IT data, in order to discover and collect evidence necessary for solving the case (sampling digital evidence – electronic information with probative value stocked or transmitted in digital format – regarding a crime, preserving by copying the IT data containing the traces of crime in case there is a danger of losing or modifying it)[63].

The necessity of protecting a person's private life has led to imposing supplementary guarantees in case of IT searches. Thus, by art. 56 line 4 from Law no. 161/2003, the lawgivers establishes that in case of IT searches, the same guarantees are applicable as in the

[62] See I. Gârbuleț, *op. cit.,* pp. 286-287.

[63] L.C. Kovesi, *Accesul şi supravegherea sistemelor de telecomunicații sau informatice. Mijloace de probă*, in *Dreptul* Magazine*,* nr. 7/2003.

case of house searches. So, by IT search, the provisions of the Criminal Procedure Code referring to house searches will be applied.

The access to an IT system, provisioned for in art. 57 from Law no. 161/2003 presupposes entering an IT system[64] or a part of it (for instance, accessing the email) or in a support of storage of IT data[65] in order to obtain evidence.

Once Law no. 281/2003 came into force, in the matter of interception and audio or video recording, the dispositions of art. 91^1-91^6 in the Code of penal procedure became applicable. Thus, starting January 1st, 2004, the authorization for accessing an IT system (also taking into consideration the fact that the efficiency of this measure is ensured by recording the identified IT data) can be disposed according to common law procedure with respect to interceptions and audio-video recordings stipulated in the Criminal Code. Therefore, access to an IT system is dictated only by a judge, at the prosecutor's request who will perform prosecuting, during an interval of maximum 30 days.

Section VII
Bank account surveillance

Putting under surveillance bank accounts, as a special investigation technique in organized crime is regulated by Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for instituting prevention measures and combating financing terrorist acts, Law no. 39/2003 regarding prevention and combating organized crime and Law no. 508/2004 regarding the founding, organizing, and functioning within the Public Ministry of the Directorate of Investigating Organized Crime and Terrorism.

The goal of this investigating process is to verify the amounts of money circulating the accounts of physical persons of juridical persons which are the object of research in cases of organized crime, money laundering or financing terrorism in order to collect evidence or identify the criminal. This measure is dictated by the prosecutor, in the stage of prosecuting, by motivated degree, for a 30-day period. This can be prolonged for serious reasons, each prolongation not being able exceed a period of 30 days while the maximum duration of the measure being no longer than 4 months.

In case of money laundering crimes, as well as in case of crimes of financing terrorist acts, the banking secrecy and the professional secrecy are not contrary to the prosecution bodies, art. 34 from Law no. 656/2002 eliminating the phrase „after beginning the prosecution" (before the alteration brought to art. 27 by Law no. 230/2005, Law no. 656/2002 stipulated that both the banking secrecy and the professional secrecy are contrary to the prosecutor and the bodies of criminal investigation, after beginning prosecution by the prosecutor, regardless whether they perform prosecution or only supervise its performance).

Regarding the request for banking, financial, or accounting documents, taking into consideration the provisions of art. 16 in Law no. 508/2004 corroborated with art. 97 from the Criminal Procedure Code, art. 27 line 4 in Law no. 656/2002 modified and completed by Law

[64] By IT system we understand any device or series of interconnected devices or being in a functional relationship, among which one or several ensure the automated processing of data, with the help of an IT program (see art. 35 line 1 letter a in Law no. 161/2003). The IT system is open, when it is interconnected with other systems and may be accessed by an undetermined number of users, or closed, when it works in a strictly delimited domain and can be accessed by a determined number of users.

[65] By IT data we understand any representation of facts, information, or concepts that can be processed by an IT system. This category also includes any IT program which may determine realizing a certain function by an IT system (see art. 35 line 1 letter d from Law no. 161/2003).

no. 230/2005[66] and art. 52 in Law no. 58/1998, republished (abrogated through O.U.G. no. 99/06.12.2006, which through art. 114 establishes that the respective documents could be requested in a criminal cause after the beginning of prosecution) we consider that the documents referring to opening a bank account and the banking operations performed during a determined period of time, can also be demanded in precursory stages, as the phrase „criminal cause" does not involve the beginning of prosecution.

With respect to the regulations operated through the legal provisions mentioned above, putting under surveillance the bank accounts and the accounts assimilated to these can be done by the banking institutions, at the prosecutor's request, without triggering prosecution against the person whose financial circuits are checked, under provisions of Law no. 656/2002, unlike their supervision, under provisions of Law no. 39/2003 and Law no. 508/2004, situation which imposes the beginning of prosecution.

We also have to mention the fact that, according to art. 114 from OUG no. 99/2006[67], crediting institutions are compelled to provide information related to banking secrecy, after the beginning of prosecution against a client, upon the written request of a prosecutor or court of law or, as the case may be, the organs of criminal investigation, with the prosecutor's authorization.

CHAPTER 6
ELEMENTS OF COMPARATIVE LAW REGARDING THE FINANCIAL AND CRIMINAL LEGISLATION ON PREVENTING AND FIGHTING ORGANIZED CRIME OFFENCES

Section I
A few aspects from the EU member countries' legislation

The European Union member countries have, in recent years, embarked upon an ample legislative activity, materialized in the adoption of unprecedented legislative decisions, the normative acts elaborated aiming at modifying the criminal codes, new regulations regarding certain economic domains (finance, banking, insurance, competition, fiscal issues, stock market, chattel values societies).

These normative acts, although sometimes incoherent and imperfect, have allowed the configuration of normative definitions of organized crime, criminal organizations, business criminality, IT criminality, finance-banking criminality.

In this section we presented aspects regarding combating organized crime in European legislation, more precisely in Germany, Belgium, Italy, France, Holland, Greece, Great Britain, Spain, Serbia.

[66] Published in Monitorul Oficial, Partea I, no. 618 from 15.07.2005.
[67] Published in Monitorul Oficial, Partea I, no. 1027 from 27.12.2006.

Section II
Regulations on preventing and fighting organized crime offences in other parts of the world

According to INTERPOL[68] definition, organized crime refers to any association or group of persons who undertake continuous illegal activity, whose main goal is making profit without respecting national boundaries.

The Federal Bureau of Investigations (FBI)[69] from USA defines organized crime as „a continuous self-supporting criminal conspiracy, with an organizational structure maintained through fear and corruption and motivated by greed".

We notice that the operational definitions, formulated by the law-enforcing authorities, have been elaborated long before the normative definitions included in the main or special criminal legislation.

In this section we briefly presented a series of regulations of criminal legislation in a series of states from other areas than the European Union: Russia, Serbia, Croatia and USA.

A separate assessment was also performed in case of USA's own legislation, adopted right in the aftermath of terrorist attacks in 2001. A few days after those attacks, President George Bush and the Minister of Justice John Ashcroft came forward to the Congress with a package of „anti-terrorist" measures submitted for approval. Minister John Ashcroft required rapid action from the Congress, describing the strongest government in world history as being extremely fragile when confronted with Al Qaeda terrorists. In these circumstances, the new legislative package would have represented, according to Ashcroft, an essential condition for ensuring America's national security.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001**,** or briefly, ***USA Patriot Act,*** was signed by President George Bush, on October 26th, 2001, thus becoming a law. Patriot Act passed through the Senate with a majority of 98 to 1 and the Chamber of Representatives with a majority of 357 to 66. Patriot Act amends a series of previous laws, covering subjects such as supervision procedures related to crossing the boundaries, money laundering, or compensating funds for the victims.

CONCLUSIONS AND PROPOSALS

The activities encompassed in **organized crime** have a secret and well organized character, reason for which they have an extremely negative social impact, in many states being the real **„treacherous cancer"** weakening society's power, threatening the governments' integrity, determining an increase in taxes added to the price of merchandise, endangering the citizens' security and jobs, bringing damage to competing economic agents, controlling syndicates through the power of money, in the end having a powerful influence in economic, social and especially political life[70].

As we have mentioned before, synthesizing, organized crime could be defined through:

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[68] Le Doran Serge and Rosé Philippe, *Cyber-Mafia*, Editura Antet, Bucureşti, 1998, p. 32.
[69] Emil Hedeşiu, *Contracararea crimei organizate transfrontaliere*, Editura Universității Naționale de Apărare, Bucureşti, 2005, p. 15.
[70] www.mpublic.ro/juriprudența

● **the main features of organized crime:**

• stability within the criminal association;

• a certain internal structure and division of roles among the members of the association;

• continuity and systematization of criminal activity;

• the main goal of criminal association being that of obtaining important benefits;

• a professionalized criminal activity;

● **types of manifestation:**

• organizations specialized in illegal fund extortion;

• organizations specialized in drug trafficking;

• organizations specialized in smuggling;

• organizations specialized in swindling (hoaxing);

● **organizing principles:**

• establishing criminal unity;

• the existence of a leader and a subordination hierarchy;

• a system of neutralizing social control;

• a permanent preoccupation for corrupting respectable persons from legislative or executive bodies, justice and police;

• severe defense of conspiracy and secrecy of actions;

• planning criminal activity;

• specialization deriving from the sharing of functions;

• concentrating the purpose of their activity on obtaining large profits, laundering dirty money and investing it in official economic activities;

• using financial means, if the case may be, for political goals.

Section I
A *lege ferenda* proposal for the setting-up, organization and functioning of the National Council for Preventing and Combating Organized Crime

The National Council for Preventing and Combating Organized Crime, hitherto referred to as **CNPCCO** is meant to be an institution of public law, under the control of the Romanian Parliament, invested with organizing and coordinating in a unitary manner matters of studies on issues regarding the prevention and combating of organized crime.

Section II
Proposals for financial legislation alterations, criminal and criminal procedure legislation

In the current context, of a deep world crisis and recession in most European Union states as well as that of an unprecedented crisis in United States of America, we consider it appropriate to have the **analysis of fiscal responsibility – as a proposal of *lege ferenda.***

In our opinion, the opportunity of adopting in Romania a law of fiscal responsibility, meant to trace the limits within which the fiscal-budgetary policy is framed within the long-term objectives of the EU, as well as the standards it must fulfill in order to bring added value to the stability and economic grow the of the EU as such results at least from the following aspects:

First of all, we are dealing with principle issues. From a principle point of view, a law of fiscal responsibility would establish “boundaries” of fiscal action (in point of norms,

administration etc.) which would guarantee the fact that Romania will not export financial instability to the other member states. We consider that such a law would be a relevant example which could „testify" with respect to Romania's intentions of really contributing to the continuation and development of integration of member states economies, of contributing to the application of the provisions of the Growth and Stability Pact and, more generally, of contributing to structuring and institutionalizing the degree of deepening the European Union (in the sense of deepening mentioned above).

Although a common fiscal-budgetary policy is yet a desiderate to be accomplished in a distant future, a deep harmonization in the domain may be a short term and medium term objective.

Secondly, we are dealing with contingent issues. From a contingent point of view, such a law would serve as warning related to the occurrence of law breaking at the level of nominal convergence criteria, as we can see that happened in case of some of the new member states in the extension wave from May 1st, 2004 and even in Romania's case in 2008, and as we can see it happening in case of some of the EU founding member states – which also founded the numerical values of the nominal convergence criteria. Although the Growth and Stability Pact presupposes sanctions (fines) given to member states for not accomplishing the nominal convergence criteria, it is obvious that these sanctions will not be able to ensure the necessary financial discipline.

In the third place, we are dealing with issues related to pro-cyclicity versus anti-cyclicity of fiscal-budgetary policy. The fiscal dominant which seems to gain more and more ground in Romania, especially in the current circumstances of the effects of financial and economic crisis, on the background of a descending trend of economic growth, creates an imminent danger regarding the occurrence of pro-cyclicity of fiscal-budgetary policy. Moreover, the whole philosophy of the Growth and Stability Pact is that the fiscal policy should be anti-cyclical. A law of fiscal responsibility would prevent this pro-cyclicity, accepting the fiscal dominant only if and only to the degree that it does not have a pro-cyclical character.

Fourthly, we are dealing with taking into account, in designing the public budget of complete occupation, the automatic fiscal stabilizers. ***The law of fiscal responsibility must impose the design and functioning of automatic fiscal stabilizers to the detriment of discretionary interventions of the normative authority in fiscal-budgetary matters.***

In this respect, automatic fiscal stabilizers must assume essential functions exactly in the sense discussed above, of ensuring the anti-cyclical character of fiscal adjustment. Probably, the initiation of a debate on the subject of proposing a law of fiscal responsibility (including by bringing to attention such a law which is already functional in some states),would be really useful in order to crystalize the basic coordinates on which such a normative act may work. Among the basic provisions of the Law of Fiscal Responsibility, we may mention the following:

1. the compulsoriness of elaborating in a multi-annual vision the system of public budgets;

2. the compulsoriness of substantiating budgetary allocations on the criterion of the effect of being run in the economy (budgetary multiplier) and that of increasing efficient fund absorption;

3. the necessity of ensuring a budgetary surplus in years with significant economic growth, to be used in years with a deficit of economic growth (according to the recommendations included in Maastricht Treaty);

4. the necessity of ensuring an anti-cyclical character of fiscal policy;

5. the necessity of separating (and maintaining) the structural and functional separation of fiscal policy from fiscal administration.

In the context in which, at present, organized crime has known an unprecedented extension, its types of manifestation being ever more varied and spectacular, and the volume of monetary mass involved in the underground economy larger and larger, we consider that in Romania we need a national strategy of combating organized crime, focused on nowadays realities, as well as an efficient management of combating organized crime.

Thus, in the following pages, we will try to present, as propositions of lege ferenda, a project of strategy of combating organized crime, as well as a personal opinion upon the aspects that need to be included in the management of combating organized crime.

In our opinion, **the management strategy at the national level of fighting against organized crime** must be built on principles and rules established by international and European bodies, as well as on the national particularities related to the general state of society.

In the phase of preparing the elaboration of a management strategy it is necessary to give clear answers to the following questions:

- Is the organized crime phenomenon defined from normative, criminological and operational points of view?
- Does the organized crime phenomenon comprise, in its substance, priority components necessitating a special approach? Which are these components? Can we establish a certain order in which to approach the various components of this phenomenon?
- Which is the degree of sensitivity of the public opinion towards the organized crime phenomenon?
- Is there an updated legislation in the domain of preventing and combating organized crime?
- Is the institutional pillar able to manage the complex issues implied by this phenomenon?
- Is there a certain statistics which may show correctly the results obtained in applying the law in the concrete activity of combating this phenomenon?
- Are there deep-rooted mentalities regarding this phenomenon which block the efficiency of the actions of combating it? Which are they and which are their effects?
- Do the current logistic means (be they financial, material and human) allow taking efficient action for combating this phenomenon?
- Do politicians have the availability of supporting and encouraging the fight against the phenomenon?
- Do the authorities with a decision power acknowledge the negative impact of organized crime upon the general state of society?

Obviously, one may formulate also other questions, especially with respect to the attitude each state's authorities adopt in combating this phenomenon, in our opinion the most relevant being the following:

- Is there a state of danger, a real threat to social order deriving from organized crime?
- Is there a conviction that there is an evolution of the process of professionalization and intellectualization of organized crime and professionalization of structures specialized in fighting against this phenomenon?
- Do the authorities agree on the transnational character of organized crime, of hermetical and impenetrable character of criminal structures as well as on the fact that national criminal structures are integrated in the large European and international combinations?

- Do the authorities believe that there is a chance of avoiding the current amateur-like character of actions taken for combating this phenomenon? How?

- Do the authorities believe that we are facing a global phenomenon, very well organized and structured, extremely threatening to all and everyone?

In our opinion, elaborating a management strategy for combating organized crime is conditioned by going through the following stages:

1. **Knowing the phenomenon** – it must focus on the following aspects:

• the real dimensions of the phenomenon, its real magnitude;

• its concrete ways of manifestation, the domains in which the most numerous and significant crimes occur;

• the causes and circumstances which generate, favor and amplify the phenomenon;

• the representative protagonists in the business and political world who are involved in such crimes;

• the connections among different criminal phenomena manifest in the sphere of organized crime (terrorism, drug trafficking, IT crime, human beings trafficking, macro-economic and financial crime etc.);

• the effects generated by the phenomenon on an economic, social, political levels upon public order and national security;

• the possibilities of phenomenon evolution function of the dynamics of crime-favoring factors;

• the connections between national phenomenon and similar manifestations produced on a regional, continental, and international level;

• the reaction of society with respect to the dimension and effects of the phenomenon;

• the reaction of the authorities for applying the rule of law with respect to the manifestation of the phenomenon.

2. **Analyzing and assessing the results obtained in combating organized crime** – this is the stage in which conclusions must be drawn with respect to the organizational structures habilitated to act in this domain, the efficiency of the activities undertaken, the shortcomings of the process of investigating and searching the phenomenon. The high complexity of the phenomenon imposes a profound analysis made by each structure habilitated to undertake activities of prevention and combating it, finalized by making a centralized study by the National Committee of Crime Prevention, founded through Government Decision no. 763 from July 26th, 2001.

In our opinion, this centralized study must tackle three main issues:

► the normative – legislative framework, still characterized by an excessive „production" of normative acts, still incoherent and inarticulate regarding the normative internal and community fund. Analysts must establish and propose:

• a normative simplification by finalizing the activity of coding the norms incriminating crimes in the domain of organized crime;

• a normative correlation with the community law in this matter;

• a possibility of eliminating parallelism regarding the authorities competent in preventing and combating this phenomenon;

► an essential revision of specific procedures allowing the operative research and investigation of organized crime. ***This objective is related to criminal procedure, fiscal procedure, banking procedure, privatizing procedure, the procedure of using specific instruments of criminal investigations (the under-cover agent, witnesses protection, monitored deliveries, access to bank accounts, procedures of confiscating the products***

obtained through criminal activities, capitalizing on the evidence obtained by using electronic equipment and audio and video surveillance equipment, etc.);

► the existing institutional framework must be reformed substantially, taking into account the large number of bodies that have attributions in combating the phenomenon, the existence of parallelisms, the overlapping of competences and the dispute between some of these structures with respect to the ways of investigating and enquiring crimes.

The institutional reform in this highly complex domain of preventing and combating organized crime must be aimed especially at the judiciary system which must be approached in an unitary manner: informative, operative-investigative and of criminal investigation, of judging and executing court decisions.