

FIGHTING ORGANIZED CRIME IN KOSOVO

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LAWS COULD
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STABILITY TO
THE YOUNG
BALKAN NATION





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Organized crime can endanger the security of any country, but particularly those with fragile democracies that lack experience effectively managing it. Such crime is a considerable threat to the security of every country in the Balkans, to the region in general and specifically to Kosovo.

Events in the former Yugoslavia in 1990-1999 created great difficulties not only for the new states that emerged, but also for their integration and development. The region is known as an “organized crime haven.” While this epithet may be an exaggeration, the truth is that for the last 20 years, while various industries have failed, the organized crime “industry” has been thriving, working day and night at full capacity.

Since 1999, Kosovo has gone through three phases of institutional transition: the United Nations Mission in Kosovo (UNMIK) period in 1999-2008; the declaration of independence on February 17, 2008; and the arrival of new European Union Rule of Law (EULEX) mission in 2009 that was established to facilitate the integration process with the EU. Nonetheless, the international community still considers the region to be fragile and challenging. This has caused a major shift in the geostrategic assessment of the Balkans’ importance. The region is now seen not for its natural or military advantages, but for the risks that it can export. Predominant among them is the phenomenon of organized crime.

For this reason, international contributions are vital to strengthening institutions in the region, which is a basic condition these governments must achieve to realize the aspiration of EU and NATO integration. An assessment of the threats and risks that result from organized crime in Southeast Europe indicates that it remains a major obstacle to progress, particularly for Kosovo.

Organized crime is among the foremost threats to public order and safety and has a direct impact on the rule of law. As an illegal activity motivated by profit, organized crime challenges the legal and economic foundations of the state. With its focus on economic and financial crime, it has become the fastest growing economic component in the world, with a global profit estimated at \$1.8 trillion per year. In Southeast European countries, there are thousands of companies and banks managed by organized crime groups. The Balkan countries, except Croatia, lose 20 to 30 percent of annual revenue to organized crime. This empowerment of criminal groups is dangerous because they are a threat to the state and peace and are potential partners for international terrorism.

BACKGROUND OF ORGANIZED CRIME IN KOSOVO

In the last century, organized crime was common in the Balkans and Kosovo. But how is it possible that within 15 years, Balkan organized crime grew at such a dizzying speed that it can now compete with even the most notorious of the world's mafias? There are different reasons, but expert analysis refers to the following factors:

Prolonged transition: With the end of the Cold War, social structures and law enforcement were destroyed. Chaos allowed organized crime to emerge.

Lack of tradition and democratic experience: The Balkan region in the 1990s was comparable to Europe in the 1950s, with one crucial difference — the Balkans lacked the political traditions and cultural foundations necessary to build a stable democracy.

Economic development: The privatization of public assets and transition to a free market economy was accompanied by abusive practices, greater unemployment and extreme poverty. At the same time, the creation of a European single market reduced trade barriers, facilitating unlawful activities as well as legal transactions.

Human smuggling: During the 1990s, Balkan countries, and Kosovo in particular, experienced the largest out-migration since 1955-1966. Approximately 30 percent of the total population, comprising 45 percent of the workforce, emigrated from Kosovo. Today 700,000 Kosovar emigrants are mainly in Germany (250,000), Switzerland (150,000), Austria (50,000), the United Kingdom (50,000), the Scandinavian countries (50,000), the Benelux countries (50,000), Italy (more than 20,000), Slovenia and Croatia (more than 20,000), and more in other EU countries, Australia, Canada, New Zealand and the United States. The West was not prepared for how far people long deprived of freedom, with unmet vital needs, were willing to venture on hopes and dreams.

Geographical position: Geographically, the Balkans have been a corridor connecting the continents of Europe, Asia and Africa. Historically, it has been an increasingly troubled boundary between freedom and oppression, backwardness and development, wealth and poverty.

The advantage of action: Organized crime has progressed rapidly in Kosovo by taking advantage of the situation, benefiting from difficulties with strategies and cooperation among newly created state institutions. Regional cooperation between law enforcement agencies is extremely slow, but there are signs of optimism based on funding and regional projects.

DEFINING CRIME

The 2000 U.N. Convention against Transnational Organized Crime defined "organized criminal group" as "a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

A key feature of organized crime is illegal financial gain; pursuing profit drives the decisions and actions of most

criminal organizations. Other features are organization, discipline and member loyalty, corruption of elected and unelected government officials, respect for hierarchy and a diversity of criminal activities. Organizational survival is another significant feature of organized criminal groups. Ties among members, who are often relatives or from the same tribe or ethnic group, are established such that the organization should survive individual misfortune to continue operations and succeed.

TYPES OF ORGANIZED CRIME IN KOSOVO

Criminal organizations cannot forgo the goals of quick profits and predominance in economic and public life. They are involved in many types of criminal activity, including drug trafficking, human trafficking, goods trafficking (weapons, stolen cars, cigarettes, etc.), as well as financial crimes such as fraud, counterfeiting and money laundering.

Drug trafficking and human smuggling: For criminal groups in Kosovo, this field is a "paradise" for criminal profits. It also undermines society and rattles political, economic and social stability. Besides weak structures and a lack of experience at state bodies and law enforcement agencies, Kosovo is especially affected by this phenomenon because of its geographical location on the main thoroughfare linking drug manufacturers in the East with customers in the West, not to mention the contributions of the Kosovo diaspora.

The so-called Arab Spring has greatly contributed to the human smuggling business. This is especially true of the Syrian conflict, where criminal groups find themselves in cooperation, dividing spheres of geostrategic interest.

Besides illegal immigration, human trafficking also includes exploitation for profit, mostly of women and children. After the drug industry, prostitution is the second-largest illicit industry in the world, with a global annual profit of \$7 billion to \$10 billion. According to a 2006 U.N. report, nearly every country of the world is affected: 127 countries of origin and 137 countries of destination were identified. Kosovo ranked high on both the origin and destination lists and also as a transit country. Victims are mostly women, girls and children — "goods" of the prostitution and trafficking industry.

In the Balkans, an entire criminal infrastructure controls the human trafficking process, as if it were a production chain, from recruitment in source countries to delivery at assorted destinations. Albanian criminal groups are quite advanced in this field and have built networks across Western Europe. Traffickers are known to use violence and deceit to coerce victims, including the use of female associates, or even offer fake marriages. In her 2007 paper, "Human Trafficking in South Eastern Europe," Lucia Ovidia Vreja shows that out of 700,000 annual trafficking victims in the world, 200,000 are transported from the Balkans. Seventy percent of women working in the so-called massage centers and 80 percent of London's prostitutes are from the Balkans and Baltic countries. Annual profits from this traffic reach 950 million euros (about U.S. \$1 billion).

Financial crimes: Money laundering is the basic mechanism for recycling monetary returns from various



Members of the Kosovo Security Forces march in Pristina in February 2016, celebrating the eighth anniversary of Kosovo's declaration of independence from Serbia.

kinds of organized crime to disguise the criminal nature of the profits and increase revenue to fund criminal activities in new areas. Like the laundries of the Al Capone era, criminal gangs run legitimate businesses as a facade. Organized crime bosses cannot resist the temptation to maintain a luxurious lifestyle, demonstrate power and occupy key positions in the social hierarchy.

A reporter from *The Wall Street Journal* noted that, when you are in the center of Pristina, it's difficult to believe that you are in the poorest country in Europe. On the one hand, the streets teem with frowning faces, stress and poverty; on the other hand, one notices the luxury shops and villas and teens driving expensive BMWs and Mercedes. This ostentatious wealth comes from organized crime.

That informal economy is flourishing in Kosovo, especially in the north, where criminal groups have exploited political problems and the absence of rule of law to turn the area into an oasis and refuge for criminal activity. There is little or no banking activity, and all criminal activity seems to involve money laundering. Financial crime and money laundering are often the main tools of corruption in public institutions, as well as in private activity.

When criminal profit becomes "clean money," it not only conceals the original crime but also opens the way for new crimes. When criminals appear as gentlemen with white collars and, with the help of ill-gotten gains, aim for positions at the top of the social hierarchy, the normal course of societal development is distorted and the social equilibrium shaken. Also, profits from sophisticated financial crimes and money laundering increasingly risk being used to finance terrorism.

Because money laundering is a basic link to organized crime, for state law enforcement the fight against this phenomenon is key to winning the battle. It begins with a simple

question at the bank counter or in the form of a property declaration: "Where was this money earned?" This battle has already started, but I think it will be painful and have consequences for Kosovo.

COVERT AND TECHNICAL INVESTIGATION MEASURES

A major change in the Code of Criminal Procedure, regarding data protection and exploitation, has come late in the legislative process at the request of EU experts. Articles 84 to 100 regulate the use of covert and technical measures of investigation. They can be applied before or after authorization of criminal investigations, whether the name of the suspect is known or not. However, to meet EU standards, all should be based on a court order. These intrusive measures include:

- Covert observation with photography or video
- Covert monitoring of conversations in public places
- Control of mail shipments
- Undercover investigations
- Recording of phone calls
- Photo or video observation in private places
- Covert monitoring of conversations in private places
- Interception of telecommunications, including text messages and other electronic messages
- Interception of communications via computer network
- Controlled delivery of mail shipments
- The use of tools for monitoring location
- Simulated purchase of an item
- Simulation of corruption
- Disclosure of financial data

EU practices allow the state prosecutor to issue a temporary order for any of these measures in emergencies when delays would jeopardize the investigation or the safety and

ORGANIZED CRIME LEGISLATION IN KOSOVO

The Criminal Code of Kosovo has laid out penalties to stop organized crime:

1. Conviction for one or more criminal offenses otherwise punishable by at least four years imprisonment, as part of an organized criminal group, is punishable by a fine of up to 250,000 euros and at least seven years imprisonment.
2. Organizing, establishing, supervising, managing or directing the activities of an organized criminal group is punishable by a fine of up to 500,000 euros and at least 10 years imprisonment.
3. When organized crime activities result in death, the perpetrator shall be punished by a fine of up to 500,000 euros and imprisonment of 10 years to life.
4. The court may reduce the punishment if, before the organized criminal group has committed a criminal offense, the offender reports to law enforcement information on the group in sufficient detail to allow for the arrest and/or prosecution of the group.

Organized crime groups from Kosovo have the following features:

- Are homogeneous, ready to communicate and cooperate with other criminal organizations to open new criminal enterprises.
- Specialize in drug trafficking, human trafficking and human smuggling.
- Act less sophisticated and less cautious than other regional crime groups but with a greater tendency to use violence, and are willing to use firearms to overcome obstacles.
- Are less territorial. Organizations do not claim an exclusive territory of operations. Several organizations operate in a single territory with mutual respect, avoiding conflicts, under the principle that “there is room for everyone.”
- Have little vertical integration or managing oversight. Each group operates independently.
- Often change bosses, passing from one group to another.
- In the West, often organize on the basis of the towns in Kosovo that members come from.
- Prefer cash to formal banking channels for money circulation.
- Are typically not careful to use aliases or nicknames during telephone conversations, sometimes leading to their exposure.

life of the victim, witness, informant or their family members, which must be confirmed by the court within a reasonably short time. There is a lower standard for investigations of money laundering, organized crime or corruption. In such cases, the disclosure of financial data, for example, may require quick turnaround for many banks with the purpose of searching or freezing of assets. The court may confirm the interim order within three days to determine the legality, *ex officio*. The order must be supported by sound probability, whereas in the previous criminal code, intrusive measures could be supported with suspicion alone.

However, evidence collected under the authority of a provisional order from the prosecutor, but not confirmed by the court, would be unacceptable if the order or its implementation were unlawful. The defense attorney can challenge the acceptability of such evidence after the indictment, and a judge will decide whether the evidence should be excluded.

Measures for the protection of data require greater notification. If a secret or technical measure was executed, the people and facilities affected should be notified as soon as possible without endangering the investigation, life, physical integrity or personal liberty of another or significant assets. Those affected may challenge the order through the court of appeals.

Data protection measures are not optional. Only after affected parties have received notice of covert measures can the decisions and documents relating to these measures be added to the case file. A concern is whether documents arising from these measures are admissible — if they can be used to seek court orders during the investigation, or if the limitation should be more narrow. It is also not clear how this will impact an ongoing investigation if a person is willing to plead guilty and cooperate.

Practitioners should take into account the definitions in Article 19. Most investigative actions should be based on reasonable suspicion, and have grounded cause of sound probability. To meet reasonable suspicion criteria, for example, Article 19 states that the prosecutor must have “knowledge of information that would convince an objective observer that a criminal offence has occurred, is occurring, or there is a substantial likelihood that one will occur and the person concerned is substantially likely to have committed the offence.”

The standard of “objective observer” requires the prosecutor to look past whether he or she is convinced by the information and determine whether most people would be convinced. It does not require possession of admissible evidence, only that the prosecutor have knowledge of the information. Definitions for grounded suspicion and grounded cause require the prosecutor to possess “articulable evidence,” which means being able to describe the supporting evidence. These three standards: reasonable doubt, grounded suspicion and grounded cause require that the prosecutor have supporting information — not necessarily admissible evidence.

The standard of “sound probability” is higher, but justifying intrusion into a person’s privacy, such as a medical check or examination, still does not require the prosecutor to have admissible evidence. However, the standard of “well-grounded suspicion” necessary for the prosecutor to file an indictment requires “admissible evidence that would convince an objective

observer that an offense has occurred and that it is committed by the defendant.”

For example, a prosecutor issued a provisional order to intercept telephone messages, and one message revealed that drugs are to be sold in a bar in the city of Gjilan in a week. But after three days, the court refused to confirm the prosecutor’s provisional order and confirmed the order ex-officio as a lawful order. If the prosecutor asked the court issuing the order to simulate the drug purchase at the bar in Gjilan, his request would be based on inadmissible evidence (the telephone message). Under Article 19, this would not be sufficient for sound probability, but would be for grounded suspicion. However, under Article 92, an order for covert and technical

measures should be based on sound probability, meaning that the prosecutor should have admissible evidence. Therefore, the court should not accept the request for simulated purchase unless the prosecutor possesses other admissible evidence supporting that claim.

INVESTIGATION PHASE

If during the initial stages of an investigation it becomes clear that an offense has occurred and the perpetrator is identified or there is a need for covert and technical measures, the state prosecutor will take over the investigation. Articles 73-83 require the police, public entities or individuals to present criminal charges to the state prosecutor, who either dismisses them, requires more information or begins a criminal investigation.

If the state prosecutor has sufficient evidence from the police, the injured party or any other source to support the well-grounded suspicion that a criminal offense occurred, Article 101 allows him to immediately file an indictment. The defendant can challenge an indictment if it is not based on well-grounded suspicion. Therefore, if there is reasonable suspicion only for the criminal offense but still insufficient for an indictment, the state prosecutor can initiate an investigation. At any stage, the defendant may plead guilty.

CONCLUSIONS

Organized crime is a fundamental problem in Kosovo and seriously impedes national security. Its harm is felt in all fields: political, economic, social and technological.

1. Politically, organized crime groups can manipulate the political system to “buy” power in elected and nonelected power structures, as well as in law enforcement. This results in disrespect for laws accepted in democratic systems, lack of stability and loss of confidence in state institutions.
2. Economically, organized crime degrades business systems and legal practices. Illicit income laundered by organized crime groups severely compromises legitimate businesses through which the funds are laundered.
3. Organized crime causes fear in the population, which has a serious negative social impact and destroys trust in the political system and law enforcement.
4. Prospects and challenges: Success in the fight against organized crime is achieved by improving relevant legislation; increasing and strengthening the organized crime fighting structures, including adding personnel with enhanced professional skills; strengthening cooperation with internal and external agencies, institutions and other law enforcement organizations; and increasing public awareness. □

A Macedonian police officer examines cocaine seized from a truck at a border crossing with Kosovo.



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