

The Evolution of the Criminal Phenomenon – Some Considerations

Carmen Silvia Paraschiv

Professor PhD, Titu Maiorescu University, Faculty of Law, paraschivcrmn@yahoo.com

ABSTRACT: The evolution of the criminal phenomenon is a consequence of the development of society, as the latest developments in society have also determined a negative evolution of the criminal phenomenon. It no longer has territorial limits and no differences regarding the mode of operation. The commission of serious, particularly serious, and exceptionally serious crimes involves a complex process that consists of several stages. In this context, the need to implement an appropriate legal framework oriented towards protecting security and territorial integrity while ensuring fundamental human rights and freedoms, becomes evident.

KEYWORDS: criminal phenomenon, criminal activity, mode of operation, social danger, serious crimes

1. Introductory Considerations. The Evolution of the Criminal Phenomenon Preliminary

The evolution in the field of criminality requires the application of specific strategies, which allow the authorities to face the current challenges and threats in an adequate way. Effective crime-fighting becomes impossible without the adoption of tactics and techniques that go beyond the limitations of ordinary judicial procedures, often requiring discreet actions and undercover investigations. Criminal activity manifests itself in various ways, which derive from the nature of the crimes and the degree of damage they cause. The commission of serious, particularly serious and exceptionally serious crimes involves a complex process that involves several stages, and in this context, the need to implement an appropriate legal framework oriented towards protecting security and territorial integrity and ensuring fundamental human rights and freedoms becomes evident.

In this context, the authorities in Romania constantly undertake considerable efforts to create safe mechanisms in order to defend the rights and freedoms of the person in the process of carrying out the special investigative activity. The existing legal framework stipulates the particularities of the activity aimed directly at detecting, preventing and combating crime by using specific methods, means and resources.

Also, the evolution of the criminal phenomenon requires the implementation of specific strategies, which allow the authorities and specialized services to properly manage the challenges and threats to the values and social relations protected by law, as well as to the attacks on them. The effective fight against crime is impossible without the use of a set of special measures and means, which lie beyond the framework of the criminal process and often involve undercover investigations.

1.1. Criminalistics. Definitions and characteristics

Forensics in the form of judicial science has been talked about since the end of the 19th century (Buzatu 2013, 1), its founder being the well-known Austrian investigating judge and professor of criminal law, Hans Gross (Stancu and Moise 2013, 5). Until the end of the Second World War, because forensic methods, means and procedures were used especially by police bodies, forensics was also known as technical police or scientific police (Cătuna 2008, 2).

Over time, both in the legal literature in the country and abroad, various definitions have been offered regarding forensics. The founder of this legal science describes forensics as a

“science of factual situations in the criminal process” (Stancu and Moise 2013, 5). The specialized literature offers us other definitions, among which we exemplify in the following: “a set of procedures applicable in the research and study of the crime in order to arrive at its proof” (Ceccaldi 1962, 6); “a multidisciplinary science that deals with the development of technical-scientific means, methods and tactical procedures for the discovery, fixation, administration and examination of evidence, for the purpose of investigating and preventing crimes” (Anghelescu et al. 1984, 48); “science, which is in continuous progress, puts at the disposal of civil courts, as well as criminal ones, new means for finding out the truth and justice makes full use of them” (Stoenescu and Zilberstein 1973, 95-96); “forensic science, multidisciplinary, whose main goals are the discovery of crimes, the identification of criminals and the scientific proof of their criminal activity, the provision of preventive measures against crime” (Cârjan and Chiper 2009, 14)” multidisciplinary science with an autonomous and unitary character that elaborates and uses technical-scientific methods and means for discovering, fixing, lifting, examining and interpreting the traces of the crime, tactical and methodological procedures for investigating crimes in order to identify the perpetrators and prevent antisocial acts” (Drăghici and Iacob 2009, 16).

Based on all the definitions stated in the lines above, university professor dr. Emilian Stancu, offering an x-ray of forensics and its investigation, formulates a definition that sums up all the characteristics listed previously, respectively describes forensics as a “judicial science, with an autonomous and unitary character, that sums up a set of knowledge about methods, the technical means and tactical procedures, intended for the discovery and investigation of crimes, the identification of the persons involved in their commission and the prevention of antisocial acts” (Stancu 2015, 28).

Referring to the same specialized literature, three branches emerge from forensics: forensic technique, which represents “the set of technical-scientific methods and means intended to discover, fix, pick up and examine traces or material means of evidence” (Stancu and Moise 2013, 6); the forensic tactic that includes a “set of procedures and specific rules intended for carrying out criminal investigation and court activities, such as on-site investigation, reconstruction, identification of the perpetrator and the victim, listening to the defendant and other persons (the injured party, witnesses), carrying out searches, picking up objects and documents, etc.” (Stancu and Moise 2013, 6); “the forensic methodology that “establishes the procedural activities that must be carried out during the forensic investigation of a certain crime, as well as the logical order in which they will be undertaken, constituting a scientific guide to the investigation of a specific crime” (Stancu and Moise 2013, 6).

When we refer to the object of forensics, “it is appropriate to refer first of all to the development and use of technical-scientific methods and means intended for the discovery and investigation of traces of crimes, starting with the specific human traces and continuing with those of weapons or tools, means of transport, of physical-chemical phenomena, in order to identify persons or objects” (Stancu and Moise 2013, 7; Suciuc 1972, 6; Mircea 1978, 5). Also, “another object of forensics is represented by the adaptation of methods belonging to the exact sciences to the specific needs of forensics, of some methods from other fields of science, such as those of physics, chemistry, biology, mathematics, in order to apply them to the specific crime prevention and combating activity” (Stancu and Moise 2013, 8; Suciuc 1972, 6; Mircea 1978, 5). Moreover, “forensic also deals with the development of tactical rules and procedures intended for carrying out criminal prosecution acts, as well as increasing their efficiency, by ensuring a scientific foundation for the investigation, but also with the study of judicial practice, with the aim of scientific exploitation and generalization of experience positive results from the activity of criminal investigation bodies in the line of crime investigation” (Stancu and Moise 2013, 8; Suciuc 1972, 6; Mircea 1978, 5). Last but not least, “when we refer to the object of forensics, we identify it through the lens of analyzing the evolution of the way criminal acts are

committed, in order to establish the most appropriate procedures for combating and preventing them, including identifying their authors” (Stancu and Moise 2013, 8; Suciú 1972, 6; Mircea 1978, 5).

Guiding us by the object identified in several forms, “a series of specific methods are applied to forensics, known in the specialized literature as forensic investigation methods: general methods of knowledge (observation, analysis, synthesis, deduction, induction, comparison), methods adapted to the specifics of forensics (physical-chemical analysis methods, biological methods, anthropological methods, optical examination methods), forensic examination methods (methods intended for the discovery and examination of traces or means of evidence, methods for identifying persons and corpses, methods of document research), tactical procedures for carrying out criminal investigation acts or technical methods of crime prevention” (Stancu 2015, 29-30). In addition to the specific object and methods of forensic investigation, forensics is also characterized by a series of aspects generically called characters. Forensic science has a judicial character (Antoniú, Bulai, and Chivulescu, according to the Criminal Law Dictionary 1976, 177, the term judicial means “that characteristic of an activity to be carried out in connection with the resolution of a legal conflict”) because the activities of research and prosecution, judgment, resolution of criminal cases are closely related to the object and methods of forensic investigation (Stancu and Moise 2013, 9). Also, forensics has an autonomous character, also through the prism of its object which is a specific and different one (Stancu and Moise 2013, 10). Moreover, forensics also has a unitary character because “it is constituted in a harmonious and unitary system, determined by the very purpose of this science, finding out the truth in the judicial process” (Stancu and Moise 2013, 10). Last but not least, the character of forensics is multidisciplinary because forensics represents “a bridge between the natural sciences and the legal sciences, through which the methods of the former find their application in the judicial process” (Suciú 1972, 11).

As we could see in the lines above, forensics is described as the process of applying scientific methods to help solve puzzles that arise in relation to crime or civil action, and this is possible because forensics provides scientific evidence that can be used in investigations criminal, involving various sciences and thus being considered a multidisciplinary subject.

In what follows, we will turn our attention to crime, so that later we can closely observe the methods of forensic investigation put into practice in relation to crime.

1.2. Criminality. Organized crime

According to specialized literature, criminality is represented by all crimes committed in a certain territory, in a certain period of time (Coman 2016, 13). Going further, according to art. 15 of the Criminal Code, the crime is the deed provided for by the criminal law, committed with guilt, unjustified and imputable to the person who committed it, it being also the sole basis of criminal liability. In this context, we can formulate a definition for crime, framing it as the set of crimes committed that violate the provisions of the law, attracting the influence of the coercive force of the state and that includes the real crime, the one discovered and the one punished, i.e. committed on a certain territory and in a certain period of time.

To exemplify actual, discovered and punished crime, the legal literature refers to the mafia and organized crime/crime. Internationally, according to the authors Giuseppe Rizzoleto and Gaetano Mosca, in the work *Mafiosi di Vicaria*, the mafia represents “a current expression, used to designate a group of individuals, arrogant and violent, united to each other by secret and feared relationships, located at the origin of criminal actions” (Stancu 2015, 729). Regarding “the definition of organized crime, also at the international level, a special resolution issued during the 5th UN Conference in 1992 on the Prevention of Crime and the Treatment of Offenders provided for four fundamental characteristics: the purpose (obtaining substantial gains); the links; the specific (the implementation of the participants' duties and service

relations) and the level (the participants occupying higher positions in the economy and in society)” (Stancu 2015, 730).

On a national level, Prof. Univ. Dr. Emilian Stancu, offers a definition for both specialized terms, the mafia being characterized as ”that criminal segment to which particularly dangerous illegal activities are reported, carried out through aggressive methods by associations of individuals with a hierarchical organizational structure and a leader authoritarian, based on a mandatory code of conduct, rituals of admission of members and a law of silence, in order to establish control over some sectors of the economy or even on some decision-making levels of society and obtain fabulous illicit gains” (Stancu 2015, 730). Regarding organized crime, the same author perceives it as ”a social reality in which legal and criminal structures are integral parts of the same corrupt, social, political, economic system, regardless of the type of actions promoted or the types of organizations of those who support this system” (Stancu 2015, 731) or as ”that criminal segment to which illegal activities are reported, likely to seriously affect certain sectors of economic, social and political life, carried out by various methods and means, constantly, planned and conspired, by associations of individuals, with well-defined internal hierarchy, with specialized structures and self-defense mechanisms, in order to obtain illicit profits at particularly high rates” (Stancu 2015, 732).

1.3. The normative framework at national and european level that regulates activities in the field of combating organized crime

All crimes that are part of the organized crime field are stipulated in the Criminal Code of our country or in various legislative acts in force on the territory of Romania. The same Penal Code also regulates the activity of combating organized crime, providing for the sanctions applied following the commission of such illegal acts.

In addition to the Penal Code, the Romanian state has adopted a series of normative acts in order to combat different forms of organized crime: the Palermo UN Convention against Transnational Organized Crime (UN General Assembly 2023); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Protocol on Smuggling of Immigrants by Land, Sea and Air; Law no. 678/ 2001 on preventing and combating human trafficking; and Law no. 78/ 2000 on the prevention, discovery and sanctioning of acts of corruption.

1.4. Criminal investigation in the field of organized crime. Methodological framework

According to the definitions provided for the notion of organized crime, at the basis of the commission of crimes in the sphere of organized crime are various criminal groups known as criminal organizations.

The criminal group is defined both in the Criminal Code and in Law no. 39/2003 on preventing and combating organized crime. The definition in the Criminal Code provides that the criminal group is ”a structured group, consisting of three or more persons, constituted for a certain period of time and to act in a coordinated manner with the aim of committing one or more crimes.” Thus, criminal organizations are structured groups that act in a coordinated manner to commit one or more crimes. From the outset, a clear distinction must be made between organizations compatible with organized crime and terrorist organizations. On the one hand, organizations compatible with organized crime “aim to obtain large profits through illegal or legal means” (Stancu 2015, 733), while terrorist organizations “act on the basis of political, religious or racial interests” (Stancu 2015, 733). On the other hand, organizations compatible with organized crime resort to violent methods of action to achieve their goals only in critical situations, while terrorist organizations prefer to use such methods to achieve their goals (Stancu 2015, 733). Over time, criminal organizations have expanded their scope of activity

from a national to a transnational level, the impetus being given by all the geopolitical, economic and social transformations worldwide. Regarding the ways of committing these criminal activities, if we refer to the first crime in the field of organized crime identified, illicit drug trafficking, at the national level, the commission of this criminal activity on the territory of our country is provided for in the Balkan Heroin Trafficking Route from Turkey to Western markets (European Report on Organised Crime 2000, 7-13). Initially, Romania was only a transit country, but later it became a storage territory and sales market (Stancu 2015, 738). The way in which illicit drug trafficking is carried out manifests itself in various ways, from hiding drugs on/in the body, in hand luggage, in personal cars or TIRs, among other goods, to putting them in containers or in a mixture with other products (Stancu 2015, 738). Also, in order to ensure the transport, criminal organizations turn to tourist companies or porters, who most of the time do not know the contents of the transport, but also to people with a precarious material situation, willing, for a sum of money, to assume the risks such an act (Stancu 2015, 738). We have to remember that drug trafficking is often intertwined with other criminal activities, such as money laundering or other equally profitable activities.

A second crime in the field of organized crime that we focus on is money laundering, an economic-financial crime against patrimony. As a way of committing this crime, we refer to the means by which fraudulent financial operations are carried out, respectively through the prism of front or even fictitious private companies (Stancu 2015, 738). In the applied sphere, structures of individuals buy companies that can no longer be maintained by the old owners, the funds used mostly coming from criminal activities in the sphere of organized crime (Stancu 2015, 738). This criminal activity takes place in direct connection with the smuggling of coffee, cigarettes, alcohol, and drug trafficking.

A third offense specific to organized crime is currency counterfeiting. At the national level, this criminal activity is carried out as a result of the high demand for currency, without taking into account the protective features of the respective banknotes (Stancu 2015, 739). Thus, international criminal organizations, with the support of domestic ones, introduce fake banknotes on the Romanian market in the form of procuring and placing fake currency, but also counterfeit national currency (Stancu 2015, 739).

International traffic in stolen cars also hides under the form of economic-financial crimes. This crime in the sphere of organized crime is carried out in several ways, among which we mention the provision of information, the counterfeiting or falsification of the identity documents of cars, the corruption of customs officers by Romanian traffickers of stolen cars, in collaboration with branches of organized crime from abroad (Stancu 2015, 739). For example, traffickers bring stolen cars into the country for which they obtain customs receipts certifying the payment of legal taxes or use repatriation certificates bought from the owners or forged to avoid paying customs taxes.

Under the auspices of non-compliance with the arms, ammunition, nuclear materials and explosives regime, we encounter arms trafficking, which is closely related to terrorism. As an example of practice, we mention the sale of weapons that are technologically outdated or worn out from a moral point of view, unusable by the country of origin (Stancu 2015, 739).

The trafficking of heritage objects takes place in specific forms, the methods applied being diverse, from the illicit export of heritage objects of inestimable values to the implementation of real programs for the purchase and removal from the country of goods belonging to the national cultural heritage (Stancu 2015, 740). With regard to human trafficking, in various forms (illegal migration, organized prostitution, pimping, child trafficking), the ways of committing this criminal activity boil down to fraudulent crossings of the state border by foreign citizens in exchange for large profits, direct (migrant trafficking) or to disguised emigration in the form of prostitution, pimping and human trafficking in general (Joița 2001, 1-5). As for this emigration disguised as prostitution, it is due to the low standard

of living, unemployment, educational factors or the family model (Stancu 2015, 740-741). As an effective way of committing the illegal act of prostitution, traffickers recruit their victims, most of the time, through false promises of jobs abroad, under the guise of the legality of modeling agencies, artistic impresarios, matrimonial offices or agencies placement of labor force abroad (Stancu 2015, 741). Also, in the case of child trafficking, illegal adoptions are implemented which, in fact, disguise activities of child pornography, pedophilia, sexual corruption or illegal organ harvesting (Stancu 2015, 741).

Another crime in the field of organized crime, in fact the one that underlies all criminal activities carried out by criminal organizations, is corruption. As mentioned in the specialized literature, corruption “has the ability to destroy the very being of the state and its democratic institutions” (Pitulescu 2000, 106-109). Examples of acts of corruption involving organized crime include illegalities in agriculture (illegal distribution of fertile land, organization of rigged auctions, falsification of documents, abusive occupation of land); illegalities committed in trade, in the field of service provision, in the sphere of public institutions (taking and giving bribes, preferential leases of commercial spaces, fictitious auctions, illegal conditioning of the issuance of import-export licenses); in the sphere of public taxes and duties; in the medical field (issuance of false medical certificates); in banking and customs.

A final crime in the organized crime sphere that we focus on is terrorism. At the international level, it is defined by the FBI as “the unlawful use of force or violence to intimidate or coerce a government, the civilian population, or a segment of it, in the fulfillment of political or social objectives” (Palmiotto 2012, 508). Among the methods of execution are bombings, fires, assassinations, kidnappings, hostage-taking, airplane hijackings, and bank robberies.

1.5. The general methodological framework of the criminal investigation in the field of organized crime

To effectively investigate crimes related to organized crime, it is essential to collect, store and process some information on criminals, their criminal antecedents, the structure of criminal organizations and their modes of operation, the connections between spheres of activity (Stancu 2015, 743).

Understanding the phenomenon of organized crime also requires a precise approach to combating its constitutive elements, which is carried out in three critical phases: informative, investigative and criminal prosecution (Lazăr 2001, 126-140). In the phase of obtaining information, the aim is to carry out knowledge and information activities regarding the activity of criminal networks (the areas in which the collection of information is carried out, the categories of persons targeted by the operative surveillance and information collection activity, the means necessary for the surveillance and collection of information, ways of analyzing and exploiting information). (Stancu 2015, 743)

In the investigation phase, it is aimed to carry out verification activities of the information collected in the first phase. During this phase, the means of evidence that will be administered in the criminal investigation phase are identified and secured (Stancu 2015, 743). The investigative activities on which this phase is based are (Predescu, Slăvoiu and Udroi 2009): operative surveillance of a suspicious person, his relations, through wiretapping or ambush, surveillance of a place, execution of surveillance photos and recording of conversations; verifying the sources of income of the suspects; verification of documents or documents, suspicious transactions or financial-banking documents; obtaining data through Interpol or other international services; the organization of filters and rays; legitimizing and identifying unknown persons, taking them to the headquarters of judicial bodies for identification and questioning.

The last phase of the criminal investigation aims to carry out certain activities enshrined in the criminal procedural law (Stancu 2015, 744): the hearing of witnesses; picking up objects

and documents; searches; disposal of technical-scientific or medico-legal findings; on-site research; call recording.

In order to highlight the elements that constitute illegal acts, flagrante is one of the safest and most complete means of analysis in this regard. The organization of a flagrante involves several stages, starting from the preparation of the actions to carry out the flagrante, passing through the penetration into the area of action and ending with the realization of the flagrante itself. (Stancu 2015, 745)

With regard to the preparation of actions to carry out the flagrante, a series of procedures take place: the data that motivates the action is analyzed and verified; the action is planned (establishing the place, identifying the people involved, corroborating all the data and establishing the concrete methods of action); the action plan is drawn up; the training of the participating forces is carried out.

Regarding entering the action area, the simultaneous fulfillment of three requirements (Stancu 2015, 746) must be taken into account: ensuring the security of the personnel participating in the action; taking measures to protect people working undercover; protecting and securing all materials used to identify criminals.

Regarding the actual flagrante act, the action of the participating forces can be of three types (Stancu 2015, 746): intervention before the consummation of the criminal act, intervention during the commission of the act, intervention after the consummation of the criminal act.

On a theoretical level, the detailed presentation of the evolution of the concept of crime/criminal activity in specialized literature, but especially in its regulation through national and international legal texts, was achieved.

“Regarding the possible future directions, it can be stated that both at the national and international level there should be a greater interest in these unconventional methods and special techniques by motivating investigators and collaborators more intensively, because everyday life it shows us that we are dealing with high levels of fear of crime. And in this fight, as we could see, there are the necessary weapons.

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