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ORGANIZED CRIME IN POLAND - CRIMINOLOGICAL AND LEGAL DILEMMAS

ABSTRACT - *The article shows organized crime as a problem that requires difficult choices between various options in understanding, studying, and countering of this non-traditional category of crime. The author highlights the lack of a single definition of the term “organized crime” in criminology and in criminal law, which affects assessments of organized crime and selection of measures aimed at preventing and combating it. The article demonstrates the need to study organized crime using different criminological methods in order to determine its credible and real outlook. The author focuses on the role of the state and the society in countering organized crime and notes that both entities must be willing to influence it. The state plays a critical role as it has adequate legal instruments for countering organized crime. It should be noted that many dilemmas will be resolved after a transparent system of measures, both legal and criminological, aimed at countering organized crime is created.*

The subject of this paper is the phenomenon of organized crime. The purpose is to demonstrate the complex nature of this problem and the various measures required to reduce it in Poland. The paper aims to address the following questions:

1. What is organized crime?
2. How should effective measures to counter and combat organized crime as an non-traditional criminal activity be selected?
3. How should legislative works to address organized crime be directed?

Effort to find answers to these questions should take place in the fields of criminology and criminal law. Such approach will make it possible to depict the phenom-

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enon of organized crime as a problem that requires difficult choices from among different possibilities. The first step is to develop a definition of organized crime on the basis of its characteristics. The next step is to demonstrate its unique nature, current tendencies, and the threats it poses to the Polish state and society. This paper shows these problems, as well as the difficulties in understanding, studying, and diagnosing this non-traditional criminal activity that demands effective actions. The final part of the paper will focus on the ability of penal law to contain organized crime, including the range of activities that are subject to criminalization and the ways to penalize activities related to organized crime. The discussion aims to indicate the needs for legislation serving the purpose of countering and combating organized crime in Poland and the directions of its future development.

PROBLEMS WITH DEFINING ORGANIZED CRIME

The problem of organized crime is very important to the contemporary state and society, especially that the perception of organized crime is affected by many common but frequently mistaken opinions and views. The misuse of the term “organized crime,” especially by the mass media and politicians, for the purpose of manipulating the society’s sense of security, has resulted in misunderstanding of both the essence and the manifestations of the problem.

There is no single definition of organized crime. Many members of Polish and foreign government institutions and organizations, as well as scientists in the fields of penal law, criminology, etc., have made efforts to define the phenomenon of organized crime. Their efforts have not always been successful and their results have not met the expectations. Various researchers had different understanding of organized crime, as they focused on different aspects of the problem. Still, as H.J. Schneider highlights in his work¹, a single definition of organized crime “is needed for both the science of criminology and practical applications of law enforcement,” as “[both fields] need to know what they are looking for, to what and how they need to react, and what they want to study.”

The definitions that have been formulated are either criminological or legal in their nature. Because “organized crime” is a criminological term, most definitions that have been developed are criminological. Despite the differences in opinions that have lead to different solutions, the definitions that have been developed indicate the

1 H.J. Schneider, “Przestępczość zorganizowana z międzynarodowego kryminologicznego punktu widzenia” [Organized crime from the international criminological point of view], *Prokuratura i Prawo* [Prosecution and law] 10 (1995): 7.

elements that are typical of organized crime and are supported by both scholars and practitioners. This is confirmed by the analysis, performed for this paper, of selected definitions of organized crime² which made it possible to select the most frequently repeated characteristics of this phenomenon. These characteristics include:

- presence of extensive and hierarchic organizational structures that are characterized by high internal discipline,
- planned nature of criminal activities aimed at gaining profits or power,
- reaching goals through both legal and illegal means (e.g. blackmail, violence, or corruption),
- presence of protectors, or persons who shield operations of criminal groups, provide advice and assistance in the area of law, economics, taxes, or information technologies, and who are often employees of law enforcement agencies or administration of justice institutions.

The above features of organized crime are undoubtedly very important and essential to any efforts to define the phenomenon. Nevertheless, they do not constitute a complete set of its characteristics, especially that an analysis of many definitions confirms that not all of these elements need to occur simultaneously for organized crime to exist. Some of them are considered obligatory while others are just facultative characteristics of organized crime. Similar problems with defining organized crime have been present in the international arena. For example, according to the Europol and the Organized Crime Committee of the Council of Europe,³ the obligatory features of organized crime are: cooperation of three or more persons for an unspecified period of time, and perpetration of serious offenses in order to gain profits or power. The remaining characteristics of those in the list above are regarded as optional. This may suggest that there are two types of definitions of organized crime: a

- 2 E. Pływaczewski, *Przestępczość zorganizowana i jej zwalczanie w Europie Zachodniej (ze szczególnym uwzględnieniem Republiki Federalnej Niemiec)* [Organized crime and fight against it in Western Europe (with particular focus on the German Federal Republic)] (Warsaw, 1992), 10-34; Z. Rau, *Przestępczość zorganizowana w Polsce i jej zwalczanie* [Organized crime in Poland and the fight against it] (Kraków, 2002), 39-52; C. Sońta, „Normatywne pojęcie zorganizowanej przestępczości. Zorganizowana grupa i związek przestępczy w polskim prawie karnym na tle teorii i orzecznictwa – zarys problematyki” [Normative definition of organized crime. Organized group and criminal association in Polish criminal law on the background of theory and sentencing - a sketch of the problem] *Wojskowy Przegląd Prawniczy* [Military legal review] 1 (1997), 19-23; A. Marek, *Problemy penalizacji przestępczości zorganizowanej* [Problems with penalization of organized crime], in: L. Tyszkiewicz, ed., *Problemy nauk penalnych. Prace ofiarowane Pani Profesor Oktawii Górniok* [Problems of the penal sciences. Works dedicated to Professor Oktawia Górniok (Katowice, 1996), 120-122; A. Marek, *Przestępczość zorganizowana. Zarys problematyki* [Organized Crime. A sketch of the problem], in: A. Marek, W. Pływaczewski, ed., *Kryminologiczne i prawne aspekty przestępczości zorganizowanej* [Criminological and legal aspects of organized crime] (Szczytno, 1992), 29-32; M. Płachta, W. Zalewski, „Kontrowersje wokół pojęcia przestępczości zorganizowanej na gruncie Konwencji ONZ z 2000 r.” [Controversies concerning the definition of organized crime on the basis of the UN Convention of 2000], *Przegląd Sądowy* [Court review] 5 (2003): 5-6.
- 3 E. Pływaczewski, “Wokół strategii przeciwdziałania przestępczości zorganizowanej w Polsce” [On the strategy to counter organized crime in Poland], *Biuletyn CE UW* [The bulletin of the European Center of the University of Warsaw] 3-4 (1999): 58.

full one and a simplified one, and two two scopes of the phenomenon itself: a broad one and a narrow one. However, the goal is to strive to develop one objective, clear, and unequivocal definition.

In spite of these ambiguities, there is no doubt that the basic criteria for regarding criminal activities as organized crime are the existence of criminal structures and their activities consisting in committing crimes. However, these criteria need to be clarified and made more precise. The term “criminal structures” is a certain catch phrase that, according to criminologists, includes criminal groups, associations, and organizations, and whose exact meaning has not been defined. The use of these terms often depends on the nomenclature of a given criminal code.

The second element, “committing crimes,” raises the question whether all offenses should be taken into consideration. Of course not. Only those offenses should be included that are a manifestation of purposeful activity directed against various values of the state and the society and aimed at gaining profit or power. The possible way to resolve this problem is to make a specific catalogue of offenses pertaining to organized crime. Such efforts have been made, among others, in Poland (the act on protection of commercial activity of 1994) and in the USA (the RICO act of 1970). Unfortunately, because of the broad scope of activities of organized crime that makes it impossible to include all crimes in such a catalogue, these efforts have brought the expected results. One should also remember that the agility of organized crime would require a continuous modification of the catalogue.

Another problem in defining organized crime is related to the diverse descriptions of the phenomenon due to the specific characteristics of the particular regions. The understanding of organized crime is different in the United States and in Europe.⁴ A direct translation of American understanding into the European circumstances one will not produce a true picture of European organized crime.

The above considerations lead to the conclusion that, in the presence of criminological inconclusiveness, criminal law may be the right venue for defining organized crime. It is criminal law that should establish precise normative justification based on clear and precise terminology. Such practice would “liberate” entities who apply legal norms of the burden to eliminate uncertainties of interpretation. The introduction, in 1994, of the notion of organized crime into the Polish penal law constituted an effort to do so. The 1994 law on protection of economic activity defines organized crime by restricting its scope to selected forms: trade in stupefying sub-

4 This problem has been indicated by, among others, G. Maziej, in “Banda, zorganizowana grupa czy mafia?” [A band, an organized group, or mafia], *Gazeta Sądowa* [Juridical gazette] 6 (2002): 44.

stances, forging money or securities, extorting ransom, and trading weapons. Unfortunately, this has not eliminated uncertainties of interpretation and has not led to the acceptance of a single definition of the term. To the opposite, it demonstrated that the phenomenon of organized crime cannot be circumscribed by a list of specific offenses and, as E. Pływaczewski highlights, that organized crime has several dimensions that cannot be accounted for by traditional legislative efforts. The key ones are: internationalization of crime, huge accumulation of wealth, both domestically and abroad, and economic power that leads to political power⁵.

Poland's Supreme Court has not worked out a definition of organized crime in its sentencing, either. Although the Court determined the characteristics of secret criminal association, leader's perpetration, as well as leading and participating in a criminal group, which certainly contributed to more precise understanding of the phenomenon, the it has not undertaken the task of making a complete legal definition of organized crime.⁶

The brief review of the various approaches to defining organized crime and the resulting problems leads to the questions, Who and according to what criteria should define the term? Should it be the legislator, the sentencing, or the doctrine? The answer that comes to mind is that, due to the lack of objective criteria to evaluate organized crime, none of the above can make a comprehensive definition of the term. The problem is not their ineptitude; it is the nature of the phenomenon, its diversity, its multi-layer character, and the variance of its occurrence and impact. Another hindrance is the lack of criteria to tell if a definition is correct or incorrect. Any definition would have both its imperfections and its advantages.

Another important issue is worth highlighting. It appears that making a national definition of organized crime would not be very useful due to its limited flexibility. From the criminology standpoint, one should first develop a structure of the term and only then determine the mutually related criteria.⁷

In spite of a number of doubts related to the issue, based on the various criteria, the following definition of organized crime has been assumed for the needs of this paper: *“all crimes committed by criminal structures of a certain degree of organization, who strive to achieve and to maximize profits by using violence or the*

5 E. Pływaczewski, *Wokół strategii* [On strategy], 56.

6 Z. Rau, *Przestępczość zorganizowana* [Organized crime], 52.

7 This approach is recommended by H.J. Schneider in *Przestępczość zorganizowana z perspektywy kryminologii porównawczej* [Organized crime from the perspective of comparative criminology] in: B. Holyst, E. Kube, R. Schulte, ed., *Przestępczość zorganizowana w Niemczech i w Polsce. Zwalczanie i zapobieganie* [Organized crime in Germany and in Poland. Fight against it and its prevention] (Warsaw, 1998), 9.

threat of violence, and by taking advantage of corrupt relations with representatives of authorities”.

The above discussion aims to bring the reader's attention to the negative consequences of the lack of unequivocal definition of organized crime and the resulting problems with diagnosing the phenomenon and selecting methods to counter it in the field of criminology, and to combat it in the field of criminal law.

PROBLEMS WITH STUDYING AND DIAGNOSING ORGANIZED CRIME

As E. Plywaczewski⁸ has rightfully said, a diagnosis of organized crime, i.e. its condition, dynamics, and structure, requires most of all an adequate definition of the phenomenon. This is not an easy task, as demonstrated above. Thus, one has to wonder if, due to the lack of a precise definition, the discussion even touches the essence of the problem, and if organized crime is not an artificial invention. On the other hand, problems in defining organized crime indicate that there is a need to profoundly analyze the phenomenon in order to understand it well. Such understanding should be achieved through broad criminological research focused on explaining the essence of this type of crime, the organization of its criminal structures, and the types of offenses committed by criminal organizations. Such research would make it possible to demonstrate the unique characteristics, the tendencies, and the threats that organized crime poses to the state and the society.

Researchers who undertake the task of diagnosing organized crime face a huge challenge to determining the way to study a phenomenon which, by its nature, is a secret one.⁹ Despite such difficulties, academic reliability requires both quantitative and qualitative research to be performed. Such research can take advantage of various methods: studies of court records, analyses of statistical data collected by the police, the public prosecutor's offices, courts, the or the Headquarters of the Prison Service, as well as through questionnaires, interviews with members of criminal groups and officers who prosecute them. The multitude of different methods raises the questions of which are the best, which will help in the in-depth study of the phenomenon, which will be possible to use in practice. Each of these methods has its

8 E. Plywaczewski, *Wokół strategii* [On strategy], 57.

9 See the discussion on this subject in: O. Krajniak, *Wstępny zarys metodologii badań nad strukturą i sposobami działania zorganizowanych grup przestępczych* [Initial draft of methodology of research on the structure and methods of operation of organized criminal groups] in: P. Wiliński, ed., *Prawo wobec wyzwań współczesności* [Law and the challenges of today] (Poznań, 2004), 320-325.

pros and cons that can make the research either easy or difficult. Several problems with selecting the methods require our attention.

A lot of information on crime is obtained by interpreting statistical data, mostly collected by the police, which is supposed to depict the phenomenon that is the subject of study. Nevertheless, a diagnosis based solely on statistical data may turn out to be incomplete and not credible. Statistical data is often blemished with a lot of imperfections, such as incompleteness, and the problem is even more profound because of the “dark number”¹⁰ of a given criminal activity. Consequently, studying a phenomenon only on the basis of statistical data does not produce the full picture. An analysis of information contained in records of criminal cases, interviews, and reports of activities of institutions who are in charge of prosecuting organized crime will be a more useful and credible way to gain knowledge of organized crime tendencies. The process will require work not only with documents but also with practitioners who fight organized crime and with members of criminal groups.¹¹

Obtaining knowledge from these sources is especially important, and difficult, that the researched has to do with non-traditional crime which is significantly different from ordinary crime and thus creates new threats. This is confirmed by the data obtained from the Police Headquarters which indicates that the tendencies of current organized crime in Poland are worrisome. These tendencies are:

- activity of criminal groups in a growing number of criminal areas,
- increasing degree of organization of criminal groups,
- consolidation of groups and enlargement of their areas of operation,
- involvement of criminal groups in drug-related crimes and economic crimes,
- activity of local groups in large cities and close to national borders.

As for specific kinds of crimes, currently the most worrying is the growth in economic offenses (in the motor fuel and tobacco sectors, money laundering, tax beguilement, and in hiding proceeds from criminal activities), narcotics-related offenses, felonious offenses (offenses against life and health, illegal car trade, and forgery), and criminal terrorism. In the recent years, Poland has become more and more important to international organized crime, mostly due to the growth of production

10 See: B. Hołyst, „Ciemna liczba” przestępczości zorganizowanej [The “dark number” of organized crime] in: B. Hołyst, E. Kube, R. Schulte, ed., *Przestępczość zorganizowana w Niemczech i w Polsce i jej implikacje społeczno-ekonomiczne* [Organized crime in Germany and Poland and its social and economic consequences] (Warsaw - Munster - Łódź, 1998), 176ff.

11 The research of Z. Rau conducted among immunity witnesses was very interesting. See Z. Rau, *Przestępczość zorganizowana* [Organized crime], 205-221.

and trafficking of narcotics, tobacco products, and alcohol. Poland is now both a transit and a target country for many illicit products.

These tendencies have resulted in a number of threats to the state and the society, such as: lower sense of security among citizens, fear of criminal activities, weakening of stability of the state and its structures, risk of economic instability and of financial losses. These factors lead to the involvement of organized crime in politics and the involvement of public officials in criminal activities.¹²

PROBLEMS IN THE FIELD OF CRIMINOLOGY WITH SELECTING METHODS TO COUNTER AND COMBAT ORGANIZED CRIME

The above-mentioned tendencies of Polish organized crime and the resulting threats to the state and the society require effective methods to counter and combat this phenomenon. Considering these problems and the complex and non-traditional nature of organized crime, any actions directed against organized crime need to be supported by adequate measures. These measures ought to be selected only after a profound analysis of factors that hinder prosecution of organized crime, which will allow to indicate the possibilities and the range of application of measures needed to constrict the phenomenon. According to some criminologists (among others B. Hołyst), the selection should take into consideration the factors related to organized crime's:

- social character,
- organizational character, related to the work of law enforcement and administration of justice,
- financial character,
- psychological character,
- international character.¹³

As to factors related to the social character, one should say that organized crime, like any other type of criminal activity, is a social phenomenon and that the society is both its source and the user of its products. Crime fulfills the demand of a part of the society for illegal services and goods. It brings certain material benefits, which

12 E. Pływaczewski points at similar threats in E. Pływaczewski, *Przestępczość zorganizowana z punktu widzenia polityki, teorii i praktyki* [Organized crime from the point of view of politics, theory, and practice] in: E. Pływaczewski, ed., *Przestępczość zorganizowana. Świadek koronny. Terroryzm. W ujęciu praktycznym* [Organized crime. Immunity witness. Terrorism. A practical approach] (Kraków, 2005), 118-119.

13 B. Hołyst, *Czynniki utrudniające zwalczanie przestępczości zorganizowanej* [Factors hindering the fight with organized crime] in: B. Hołyst, E. Kube, R. Schulte, ed., *Przestępczość zorganizowana w Niemczech i Polsce* [Organized crime in Germany and Poland], 306-329.

makes it difficult to change the attitudes towards organized crime. Selection of adequate measures to counter organized crime depends, to a large extent, on how effectively the morale of the society can be affected. However, its effect may still remain beyond the control of institutions of the state.

One should remember that the state has at its disposal a number of agencies that constitute executive tools that can be used for the task of containing organized crime. The state establishes these agencies and equips them with adequate instruments. The state should select them in a way that matches current requirements and allows them to resolve the issues with countering organized crime. Consequently, the state should, first of all, assure that the persons serving in these agencies are equipped with adequate weapons and means of communication and transportation, that their personal safety is protected, and that their language training is adequate. The state has to be aware that state-of-the-art technical equipment significantly increases the effectiveness of these agencies in combating organized crime.

Containing organized crime cannot happen without good organization of services responsible for their prosecution. Notably, there are several institutions in Poland involved in fighting organized crime: the Police, the Border Guard, the customs services, the Internal Security Agency, the Central Anti-Corruption Bureau, the Internal Intelligence Service, and the Internal Counter-intelligence Service, as well as tax inspection agencies. Unfortunately, this overabundance of services focusing on the problem of organized crime causes a lot of issues such as competition between the services, redundant competences, or monitoring of the same cases by different services. Even though the National Criminal Information Center (a data bank on criminals and offenses) has been established, special services have been exempted from the requirement to file their information in the Center and, consequently, it does not contain complete information on criminals and offenses. Moreover, frequent changes in the organization and the structure of the services, and the high turnover of their staff, have had a negative impact on their effectiveness. In this situation, the state should assure a higher sense of stability and safety of the personnel of these services.

Many of the above-mentioned instruments that guarantee effective fight with organized crime are related to another one - the financial instrument. The government has to realize that security comes with a price and requires adequate outlays on salaries, equipment, and computers. Only motivated people can effectively combat organized crime.

Moreover, the activity of those agencies are adequately equipped with the above-mentioned means of technical support will be even more effective if the society feels less threatened by organized crime as fear keeps people from cooperating with bodies of law enforcement and makes them refuse to provide information. In order to improve the situation, social trust in law enforcement services has to be fostered.

The international character of organized crime and the tools used to counter and combat it require international cooperation. The goal for Poland is to participate in international conventions, to assure their speedy ratification, and to develop and maintain contacts with the counterparts of Polish law enforcement bodies in the member states of the European Union and the countries of Eastern Europe. Nevertheless, Poland's influence on the selection of methods on the international arena is limited.

The above discussion shows that the selection of methods depends, to a large extent, on the strength of the state in various areas. It is the state that should account for the cost of criminal activities to both the state and the society, and the benefits of preventive and repressive actions that are taken. Not only material costs and benefits should be considered. The expenditures should be constantly monitored in order to assess their utility and effectiveness in fighting the constantly changing and evolving organized crime that devises new methods to commit crimes and new ways to obliterate their traces.

PROBLEMS IN THE FIELD OF LAW WITH SELECTING METHODS TO COUNTER AND COMBAT ORGANIZED CRIME

Effective reaction to organized crime is possible only after a complex system of measures to counter and combat this phenomenon is implemented. Legal measures are an essential part of this system.

In the Polish criminal law, most legal measures have been included in the Penal Code of 1997, the Code of Criminal Procedure of 1997, the Act on immunity witness of 2006, and in statutes that grant special powers to law enforcement agencies, mainly the Police, the Internal Security Agency, the Central Anticorruption Bureau, the Border Guard, and the customs services. One has to admit that these legal measures have been developed in a systematic way. The changes were shaped by current tendencies of organized crime and by the difficulties in limiting it. The selection of

methods has been influenced by real problems with the prosecution of organized crime. This paper focuses solely on relevant provisions of the penal code.

One should remember that, while criminology deals mostly with the problem of understanding the structure and the dynamics of organized crime and of countering it, and takes steps in those areas, the key purpose of criminal law is to combat organized crime by establishing adequate repressive measures. Our goal is to check how the Polish legislator has structured this issue. In order to do so, the scope of criminalization of activities related to organized crime and the principles of sentencing their perpetrators have been assessed.

The legislator criminalizes activities closely related to organized crime only in two articles of the detailed part of the Polish Penal Code of 1997¹⁴ - art. 258 and art. 259. According to art. 258 of the Penal Code it is an offense to:

- take part in an organized group or association which has the purpose of committing a crime or a fiscal offense,
- organize or lead a criminal group or a criminal association.

Nevertheless, this provision raises doubts concerning the definitions of an organized group and a criminal association, which have not been unequivocally specified either by the legislator, or by the doctrine, or by the sentencing.¹⁵ Consequently, these terms are often defined by analyzing the sentencing and the doctrine. On the basis of multiple approaches, B. Kolasieński¹⁶ defined “a criminal association as an organization consisting of at least three persons who have made an agreement on the common goal of committing crimes, even if at the moment of establishing the association the crimes were not specifically determined. The characteristics of an ‘association,’ according to the penal law, are durable organizational forms established by its leaders and a discipline imposed on the association’s members. A criminal asso-

14 *Penal Code - act of 6 June 1997, Dziennik Ustaw* (Journal of statutes) 88, item. 553 (with amendments).

15 See K. Laskowska, “Teoretyczne i praktyczne podstawy odpowiedzialności z art. 258 kk.,” [Theoretical and practical bases for responsibility under art. 258 of the Penal Code], *Prokurator* [Public Prosecutor] 1 (2004): 20-25; M. Bryła, “Porozumienie, zorganizowana grupa, związek przestępczy jako formy organizacyjne przestępczości zorganizowanej” [Understanding, organized group, and criminal association as organizational forms of organized crime], *Prokuratura i Prawo* [Public prosecution and law] 3 (2000); M. Klepner, “Pojęcie ‘zorganizowanej grupy’ i ‘związku przestępczego’ w świetle polskiego prawa i orzecznictwa” [The definition of ‘organized group’ and ‘criminal association’ in Polish law and sentencing], *Czasopismo Prawa Karnego i Nauk Penalnych* [The periodical of criminal law and penal sciences] 2 (2000); C. Sołta, “Zorganizowana grupa i związek przestępny w polskim prawie karnym na tle teorii i orzecznictwa – zarys problematyki” [Organized group and criminal association in Polish criminal law on the background of theory and sentencing - a sketch of the problems], *Wojskowy Przegląd Prawniczy* [Military Legal Review] 2 (1997).

16 B. Kolasieński, *Wybrane materialnoprawne aspekty zwalczania przestępczości zorganizowanej* [Selected substantive law aspects of fighting with organized crime] in: S. Stachowiak, ed., *Współczesny polski proces karny. Księga ofiarowana Prof. Tadeuszowi Nowakowi* [Contemporary Polish criminal process. A book dedicated to Professor Tadeusz Nowak] (Poznań, 2002), 112.

ciation is characterized by defined rules of recruitment and removal of its members, a hierarchical nature of powers of particular members of the leadership, and a division of labor among members of the association, a defined plan and forms of activities, defined rules of obedience to members of the leadership and of observance of the discipline, as well as specified organizational sanctions for not following orders. There is no need for a formal confirmation of the above-mentioned organizational forms, the scope of powers, or the rules of discipline.”

According to B. Kolasiński¹⁷, “an organized criminal group is characterized by a lower degree of organization than a criminal association. A group can be defined as an agreement of at least three persons whose organization consists in a division of the participants’ roles and coordination of their activities in perpetration of crimes. The goal for such a division is to assure effective operations and to hinder detection of the crime. The members of a group do not have to know each other personally or to conclude the agreement as a group; it is enough that each of the members is aware of his participation in an organized criminal group.”

It appears that it is reasonable to abandon the term “criminal association” as it is extraneous because its legal consequences are identical as those of a “criminal group.” Moreover, there is no relation between the gravity of crimes committed by criminal organizations and their structures.

In art. 258 of the Penal Code, the legislator criminalizes three basic and apparently most essential activities related to being a member of a group or an association: participation in the group, founding of the group, and leading the group. However, despite the growing role of various consultants and protectors who are not members of criminal structures, the assistance of such persons, who are often public officials, is not criminalized. This issue certainly needs to be addressed in the future.

The offenses defined above are not subject to high sentences¹⁸ but the Code makes a distinction between the roles of various members of groups or associations. Notably, members of groups or associations who commit offenses in relation to their membership in such groups also face criminal responsibility for these crimes.

17 B. Kolasiński, *Wybrane materialnoprawne aspekty* [Selected substantive law aspects], 113

18 Participation in an organized group or an association faces the penalty of imprisonment between 3 months and 5 years. If the structures are of armed nature, the penalty of imprisonment is from 6 months to 8 years. Founding and leading such structures (including armed ones) is subject to penalty of imprisonment between 1 year and 10 years.

Besides defining the scope of criminal responsibility, the legislator has provided for the possibility that some prerequisites allow for an obligatory exemption from punishment for an offense under art. 258 of the Penal Code.

In order to take advantage of the institution of active repentance stipulated in art. 259 of the Penal Code, the offender must voluntarily desist his participation in a criminal association or group, and to meet one of the two prerequisites, i.e. reveal to the body in charge of prosecuting the offense all the relevant circumstances of the perpetrated offense or prevent the perpetration of a planned offense. It is important that the following circumstances be present: the desistance must be voluntary, all relevant circumstances must be revealed, and the perpetration of a planned offense must be really prevented.

The introduction of the impunity clause has lowered the restrictiveness of the legal provisions. This belief is confirmed by the fact that those persons who set up and lead organized criminal groups or associations can also take advantage of the exemption from punishment. Such provision should be considered as too lenient for this category of perpetrators because it gives them the possibility to easily avoid responsibility despite their significant participation in the setup and operations of criminal structures.

The above discussion shows that in the detailed part of the Penal Code the legislator has provided for two ways to influence offenders who are members of existing criminal structures. One of them is the penal reaction taking the form of restrictions, the other is possible exemption from criminal responsibility.

After analyzing the scope of criminalization of activities related to organized crime, it is necessary to discuss the principles of sentencing in cases involving offenders who are members of criminal groups or associations. These principles are described in art. 65 of the general part of the Penal Code where the legislator provides for penal consequences to participation in an organized criminal group or association that are equal to those in the cases of multiple recidivists and professional criminals. Also, the legislator has determined that in the presence of prerequisites stipulated in art. 65 of the Penal Code, the sentencing of an offender has to follow specific sentencing guidelines.¹⁹ Based on these guidelines, the court pronounces a sentence of imprisonment for the committed offense that is higher than the mini-

19 To learn more, see: B. Kunicka-Michalska, "Nowy kodeks karny wobec przestępczości zorganizowanej" [The new penal code and organized crime], *Przegląd Prawa Karnego* [Review of criminal law] 17 (1997); Z. Cwiągalski, "Wybrane problemy wymiaru kary za przestępczość zorganizowaną" [Selected problems with sentencing in cases involving organized crime], *Prokuratura i Prawo* [Public prosecution and law] 12 (2001).

imum sentence provided by the statute, but may also pronounce a sentence equal to 1.5 times the statutory maximum sentence. The increase of the maximum sentence limit does not apply to felonies (art. 64 § 3 of the Penal Code). Deferment of punishment does not apply to the perpetrator of a crime who acts within organized crime structures, except for cases justified by their circumstances (art. 69 § 3 of the Penal Code, the first sentence). A conditional stay of the carrying out of a sentence does not apply to offenders listed in art. 65 of the Penal Code, in whose case extraordinary mitigation of punishment has been applied due to their cooperation with law enforcement agencies, in accordance with art. 60 § 3-5 of the Penal Code (art. 69 § 3 of the Penal Code, the last sentence). In the case of an extraordinary stay of the carrying out of a sentence of imprisonment, the probation period is between 3 and 5 years, and probation is mandatory (art. 70 § 2 and 73 § 2 of the Penal Code). Only after serving three-fourths of their prison sentence can convicts apply for an early release. In the case that the offender is convicted for an offense under art. 65 of the Penal Code, the court pronounces a forfeiture of the benefit or its equivalent.

The above principles show the harsh treatment of members of criminal groups and associations provided for in the Penal Code and evident in the possibility increase the sentence of imprisonment, to limit the application of probationary measures, and to impose an obligatory forfeiture of benefits.

Another important legal provision on sentencing related to the possibilities to counter organized crime is art. 60 § 3 of the Penal Code. The legislator assumed that this article would serve the purpose of breaking the solidarity between members of criminal groups and induce them to cooperate with law enforcement agencies. This legal provision allows the court to use an extraordinary mitigation of punishment or even a conditional stay of execution of the sentence in the case of an offender who cooperates with other persons, if the perpetrator reveals all information on persons participating in the crime and on relevant circumstances of the crime to the agency charged with prosecuting the crime.

This legal provision is criticized because of its stipulation of a broad group of persons towards whom it can be applied (members but also founders and leaders of criminal structures), its lack of requirement of that the perpetrator should voluntarily reveal the commitment of the crime and that the information should contribute to preventing the crime.

The legal provision, included in the general part of the Penal Code and aimed at cutting the financial roots of organized crime, also ought to be mentioned. Article 45 of the Penal Code provides for an obligatory forfeiture of financial benefits derived,

even indirectly, from a crime. This regulation uses the principle of the so-called reverse burden of proof and requires that the offender prove that a given property has been acquired in a legal fashion.

As we can see, the legislator assumed a two-way solution to punishing felons involved in organized crime: on the one hand he set harsh punishments, and on the other - lenient treatment of some offenders.

The possible conclusion is that, with respect to regulations concerning organized crime, the Polish Penal Code is based on the following principles:

- perpetration of a crime by persons operating in organized groups is treated as an extraordinary circumstance that aggravate the criminal responsibility, regardless of the type of offense committed,
- efforts are made to break the solidarity among criminals by introducing privileges to those offenders who cooperate with law enforcement (active repentance and mitigation of punishment),
- efforts are made to deprive the offenders of the benefits they derived from their criminal activities.

The above principles determine the following directions for the development of penal laws aimed at combating organized crime in Poland:

- criminalization of a small number of activities,
- adjusting the principles of sentencing (those demanding harsh punishment and those that guarantee impunity or lenient treatment under certain conditions) in order to break the criminal group,
- efforts to deprive the offenders of the benefits from crime, even indirect.

These directions are extremely important because a system of adequate measures will contribute to disintegration of criminal groups and to breaking their links with the national economy, as well as to separation of the leaders of criminal organizations from their groups' economic infrastructure.

The directions of the current developments in the Penal Code, in relation to organized crime, should be considered as satisfactory, both with respect to increasing harshness of punishments and to mitigating responsibility. It is understandable that the society regards no forms of mitigation of penalty towards members of organized criminal groups as acceptable, but it is the state who should weigh the pros and cons of the policy to punish those criminals.

In conclusion, the variety of problems related to the possibilities and needs concerning countering and combating organized crime in Poland brings about many dilemmas. Some of them constitute a challenge to the penal law, and some - to criminology, while others remain beyond the control of the state and the society. Nevertheless, the one thing that is for sure is that a clear strategy to counter organized crime,²⁰ a systemic use of measures, both criminological and legal, is needed in Poland. Only such approach can be effective and bring positive results in a short time.

20 It has become even more important after Poland's accession to the European Union and to the Schengen zone. See T. Safjański, „Wpływ integracji europejskiej na zjawisko przestępczości zorganizowanej” [The impact of European integration on the phenomenon of organized crime], *Przegląd Policyjny* [Police review] 4 (2004), 148-155.