

LAW nr. 39/2003

On preventing and combating organized crime

The Romanian Parliament adopts the present law:

CHAPTER I

General Provisions

Art. 1. –The present law regulates specific measures for the prevention and the combating of organized crime at a national and international level.

Art. 2. - In the present law, the terms and expressions below have the following meaning:

a) **organized criminal group-** is a structured group, formed of three or more persons that exists for a period of time and acts in a coordinated manner to the purpose of committing one or more grave offenses, in order to obtain directly or indirectly a financial benefit or another material benefit. An “organized criminal group” is not the group formed occasionally to the purpose of immediately committing one or more offenses and which has no continuity or definite structure or pre-established roles for its members inside the group.

b) **grave offense-** is that offense which is part of one of the following categories:

1. homicide, second degree murder, first degree murder;
2. illegal deprivation of freedom,
3. slavery;
4. blackmail;
5. offenses against patrimony, which have brought about particularly grave consequences;
6. offenses regarding the trespassing of regulations regarding weapons and ammunition, explosive substances, nuclear substances or other radioactive substances;
7. coinage forgery or forgery of other values;
8. disclosure of economic secret, disloyal competition, trespassing of stipulations regarding import or export operations, embezzlement, trespassing of provisions regarding the import of toxic waste and residual matter;
9. procurement;
10. games of chance;
11. offenses regarding drug traffic or/and precursors;
12. offenses regarding traffic of persons and offenses connected with traffic of persons;
13. traffic of migrants;
14. money laundering;

15. offenses of corruption, offenses assimilated to these, as well as offenses directly connected with offenses of corruption;

16. smuggling;

17. fraudulent bankruptcy;

18. offenses committed through digital or communication systems and networks;

19. traffic of human tissues and/or organs;

20. any other offense for which the law stipulates the punishment of prison whose specific minimum is at least 5 years.

c) **offense of transnational character**- is any offense, which, as the case presents itself:

1. is committed on the territory of a state, as well as outside its territory;

2. is committed on the territory of a state, but its preparation, its planning, its charge or control take place, completely or partly, on the territory of another state;

3. is committed on the territory of a state, by an organized criminal group that operates criminally in two or more states;

4. is committed on the territory of a state, but its results are produced on the territory of another state;

d) **informer**- the person who has knowledge about an organized criminal group and provides the judicial organs with information or data relevant to the prevention, discovery and sanctioning of the committing of grave offenses by one or more members of this group.

CHAPTER II

The prevention of organized crime

Art. 3. — The public authorities and institutions, non-governmental organizations, as well as other representatives of the civil society carry out, separately or in cooperation, sustained activities of prevention of organized crime.

Art. 4. — (1) The public authorities and institutions carry out the activity of prevention of organized crime within the Central Group for Analysis and Coordination of activities of prevention of organized crime, which is part of the National Committee for the Prevention of Crime, founded by the Government Order no. 763/2001.

(2) The Central Group for Analysis and Coordination of activities of prevention of organized crime takes the necessary measures for the elaboration and the periodical update of the National Plan of action for the prevention and combating of organized crime, which shall be approved by a resolution of the Government.

Art. 5. — The Ministry of Internal Affairs, the Ministry of Justice and the Public Ministry shall conduct periodical studies to the purpose of the identifying the causes determining and the conditions favoring organized crime and initiate informing campaigns regarding this phenomenon.

Art. 6. — (1) The Ministry of Internal Affairs, through its specialized structures, shall put together and keep updated the database regarding organized crime, shall monitor and evaluate this phenomenon periodically, taking into account the categories of persons which are part of the organized criminal groups or are connected with such groups, as well as the victims of organized crime.

(2) Statistic information and evaluation reports shall be made public annually by the General Romanian Police Department, with the approval of the Ministry of Internal Affairs.

CHAPTER III

Offences

Art. 7. — (1) The initiation or constitution of an organized criminal group, or joining or supporting in any way such a group, shall be punished by prison from 5 to 20 years and the interdiction of certain rights.

(2) The punishment for the deeds stipulated in paragraph (1) may not be bigger than the sanction provided by the law for the most grave offense within the purpose of the organized criminal group.

(3) If the deeds stipulated in paragraph (1) have been followed by a grave offense, the rules pertaining the concurrence of several offenses in one action shall be applied.

Art. 8. — The initiating or constituting or joining or supporting in any way a group, to the purpose of committing offenses, which is not, according to the present law, an organized criminal group, shall be punished, as the case requires, according to art. 167 or art. 323 from the Criminal Law.

Art. 9. — (1) The person who, while committing one of the deeds stipulated in art. 7 paragraph (1) lays information against the organized criminal group, before it has been discovered and before the grave offense that is the purpose of this group is committed, shall not be punished.

(2) The person who has committed one of the deeds stipulated in art. 7 paragraphs (1) or (3) and who, during the criminal investigation or the trial, lays information and facilitates the identification and prosecution of one or more members of an organized criminal group, shall enjoy the reduction to a half of the limits of the punishment provided by the law.

Art. 10. — (1) The offense of receiving and concealing stolen goods, stipulated in art. 221 from the Criminal Law, if the goods are a result of a grave offense committed by one or more of the members of an organized criminal group, shall be punished by prison from 3 to 10 years. Still, the sanction applied cannot exceed the punishment provided by the law for the grave offense from which the goods concealed resulted.

(2) Concealment committed by a consort or a close relative shall not be punished.

CHAPTER IV

Procedural provisions

Art. 11. — Criminal prosecution for the offenses stipulated in art. 7 shall be carried out obligatorily by the prosecutor and shall be tried in first instance by the Tribunal.

Art. 12. — (1) The Ministry of Internal Affairs shall form specialized structures for the prevention and combating of organized crime, and it is to ensure the necessary constitutional frame as well as the training and specialization of personnel to this purpose.

(2) Within the specialized structures mentioned in paragraph (1) can be constituted, according to the law, technical compartments for the completion of the activity of obtaining, processing, verifying and storing information from this field.

Art. 13. — (1) In the case of offenses stipulated in art. 7 and 10 shall apply the provisions of art. 118 from the Criminal Law regarding the seizure of goods.

(2) If the goods subject to seizure cannot be found, their equivalent in money or the goods acquired in their stead shall be seized.

(3) The income or other material benefices obtained from the goods stipulated in paragraph (2) shall be seized.

(4) If the goods subject to seizure cannot be individualized from among the goods acquired legally, goods shall be seized until they make up the value of the goods subject to seizure.

(5) The provisions of paragraph (4) shall apply accordingly also to the income or other material benefits obtained from the goods subject to seizure which cannot be individualized from among the goods acquired legally.

(6) In order to guarantee the enforcement of the seizure of goods the security measures provided by the Code of Criminal Procedure may be taken.

Art. 14. — (1) In the case of the offenses stipulated in art. 7, banking and professional secrecy, except the professional secrecy of the lawyer, shall not oppose the prosecutor, after the beginning of the criminal investigation, nor shall they oppose the Court of Law. The data and information shall be requested, in writing, during the criminal investigation by the prosecutor, based on the motivated authorization of the prosecutor expressly designated by the General Attorney from the prosecutor's office within the Court of Appeal, and during the trial, by the Court of Law.

Art. 15. — (1) When there are solid indications regarding the committing of offenses stipulated in art. 7, to the purpose of collecting evidence or identifying the perpetrators, the prosecutor may order, for a period of up to 30 days:

- a) placing under surveillance of the bank accounts and their assimilated accounts;
- b) placing under surveillance the communication systems;
- c) placing under surveillance and/or accessing of digital systems

(2) For well-founded reasons the measures provided by paragraph (1) may be prolonged by the prosecutor through a motivated order, each prolongation must not exceed 30 days.

(3) The provisions of art. 91¹ - 91 5 from the Code of Criminal Procedure shall be applied accordingly.

(4) Within the conditions provided in paragraph (1), the prosecutor may order that documents, banking, financial or bookkeeping documents be transmitted to him.

Art. 16. — (1) The prosecutor designated by the General Attorney from the prosecutor's office within the Supreme Court of Justice may authorize, upon the request of the institutions or the organs legally qualified, the completion of supervised deliveries, with or without the complete or partial removal or substitution of the goods which are subject to the delivery.

(2) The supervised delivery shall be authorized by a motivated order which must contain, in addition to the mentions stipulated in art. 203 from the Code of Criminal Procedure, the following:

- a) the well-founded indications justifying the measure and the reasons for which the measure is necessary;
- b) details regarding the goods subject to the supervised delivery and as the case requires, the goods which shall be removed or substituted, as well as the goods which shall replace these;
- c) the time and place of delivery or, as the case requires, the route to be travelled for the completion of the delivery, if they are known;
- d) the identification data for the persons authorized to supervise the delivery.

(3) It shall not be possible to authorize supervised deliveries in the case when through these national security, public order or health would be jeopardized.

Art. 17. — In the case where there are serious indications about the committing or the preparation of a grave offense, by one or more of the members of an organized criminal group, a deed which cannot be discovered or whose perpetrators cannot be identified by other means, it is allowed to employ, to the purpose of gathering data regarding the offense and identifying the perpetrators, policemen undercover from among the specialized structures of the Ministry of Internal Affairs.

Art. 18. — (1) The authorization for the employment of policemen undercover shall be given by the prosecutor authorized by the General prosecutor from the prosecutor's office in the Court of appeal, through a motivated order, which must contain, in addition to the mentions provided in art. 203 from the Code of Criminal Procedure, also the following:

- a) the well-founded indications justifying the measure and the reasons for which the measure is necessary;
- b) the identity under which the undercover policeman shall accomplish the authorized activities;
- c) the name of the employee of the specialized structure designated as a contact for the undercover policeman;
- d) the activities permissible for the undercover policeman;
- e) the period when the authorized activities shall be accomplished.

(2) The contact from the specialized structures of which is a part the undercover policeman is obliged to give the prosecutor periodic reports regarding the activities carried out by the undercover policeman. The periodic reports shall be confidential, shall be in written form based on the information provided, to the extent possible, by the undercover policeman and must contain details regarding all the activities carried out, the data and information gathered regarding the grave offenses committed or which are to be committed and the perpetrators, as well as any other data and information necessary for the prevention of grave offense.

Art. 19. — (1) In fully justified cases, the undercover policeman may request authorization for other activities than those for which there is an authorization according to art. 18 paragraph (1), the prosecutor shall immediately reply through a motivated order in the case when this request is approved.

(2) In the case when the undercover policeman carries out activities other than those for which he has received the authorization stipulated in paragraph (1) and/or art. 18. paragraph (1), as well as if he comes into possession of information regarding the possibility of immediate danger, he shall as soon as it is possible inform his contact, who is obliged to immediately bring this information to the knowledge of the prosecutor who gave the authorization. The prosecutor shall decide immediately through a motivated order, authorizing the activities carried out by the undercover policeman or, as the case requires, withdrawing the authorization given according to the conditions of paragraph (1) and/or art. 18. paragraph (1) and taking the necessary measures, within the stipulations of the law.

Art. 20. — If by carrying out the authorized activities, the undercover policeman causes material damage to natural or legal persons who are not connected with the organized criminal group and the criminal activities of this group, the payment of the damage shall be ensured from the funds provided in art. 31.

Art. 21. — In exceptional situations, if there are serious indications that a grave offense has been committed or is being prepared, by one or more of the members of the organized criminal group, a deed which cannot be discovered or whose perpetrators cannot be identified through other means, informers may be used, to the purpose of collecting information regarding the offense and for identifying the perpetrators.

Art. 22. — Informers may benefit from financial remuneration, on the conditions established by order of the Minister of Internal Affairs, and of the General Attorney from the prosecutor's office within the Supreme Court of Justice.

Art. 23. — The undercover policeman, the informer, as well as the members of their families, may benefit from specific measures of witness protection, according to the law.

CHAPTER V

International cooperation

Art. 24. — (1) The Ministry of Internal Affairs, the Ministry of Justice and the Public Ministry shall cooperate directly within the specifications of the law, and while abiding by the obligations issuing from the international juridical instruments to which Romania is part, with the institutions having similar prerogatives from other states, as well as with international organizations specialized in this domain.

(2) The cooperation, organized and carried out according to paragraph (1) to the purpose of preventing and combating transnational offense committed by organized criminal groups may have as subject, as the case requires, international judicial assistance in matters of Criminal Law, extradition, identification, blocking, laying draisit and seizure of the products and instruments of the offense, developing joint investigations, information exchange, technical or other kind of assistance for gathering and analyzing information, training specialized personnel, as well as other similar activities.

Art. 25. — (1) Within international cooperation in the field of seizure, the authorities qualified according to the law shall take measures for:

- a) the receipt, transmission and execution of seizure decisions of the qualified foreign authorities, upon their request, uttered according to the law;
- b) the ordering of seizure of goods according to the present law, in case there is a request to this respect from a qualified foreign authority;

(2) The Court may order the transmission of seized goods according to the present article, to the qualified foreign authority that has uttered a request according to the stipulations of paragraph (1), if the following conditions are met:

- a) there is a request uttered in this respect by the qualified foreign authority and
- b) the goods to be transmitted to this authority are destined to be returned to the injured persons or to serve the justified payment of damage to these persons.

Art. 26.— (1) Upon request of Romanian qualified authorities or those of other states, on the territory of Romania can take place joint investigations, to the purpose of preventing and combating transnational offense committed by organized criminal groups.

(2) The joint investigations stipulated in paragraph (1) shall take place according to the bilateral or multilateral conventions signed by the qualified authorities.

(3) The representatives of the Romanian qualified authorities may partake in joint investigations taking place on other states' territories, while abiding by the legislation of these states.

CHAPTER VI

Final Provisions

Art. 27. — Art. 17 from Law no. 2/1998 regarding human tissue and organs drawing and transplant, published in the Official Monitor of Romania Part I Issue no. 8 from the 13th of January 1998, is modified and shall have the following contents:

" (1) Organizing or carrying out human tissue and organs drawing and/or transplant, to the purpose of obtaining any profit, from their sale, is an offense of traffic of human tissue and/or organs and shall be punished by prison from 3 to 7 years.

(2) With the same punishment shall be sanctioned also the purchase of human tissue and organs to the purpose of reselling to gain any profit.

(3) The attempt is punishable.”

Art. 28. — Article 12 from Law no. 143/2000 regarding combating drug traffic and illicit use, published in the Official Monitor of Romania Part I Issue no. 362 from the 3rd of August 2000, with the ulterior modifications and additions, is modified and shall have the following contents:

“Art. 12 — If the deeds stipulated in art. 2, art. 6-8 and art. 11 have had as a result the death of the victim, the punishment is prison from 10 to 20 years and the interdiction of certain rights.”

Art. 29. —The Emergency Government Order no. 105/2001 regarding the Romanian state frontier, published in the Official Monitor of Romania Part I Issue no. 352 from the 30th of June 2001, approved through Law no. 243/2002, is modified and shall be supplemented as follows:

1. In article 70, after paragraph (2) shall be introduced paragraph (3) with the following text:

“(3) The attempt of the deeds stipulated in paragraphs (1) and (2) is punishable.”

2. Article 71 is modified and shall have the following contents:

“Art. 71. — (1) recruiting, instigating or guiding one or more persons to

the purpose of illegal trespassing of the state frontier as well as organizing these activities is the offense of traffic of migrants and shall be punished by prison from 2 to 7 years.

(2) If the deed stipulated in paragraph (1) is likely to jeopardize the life or security of the migrants, or it is likely to subject them to inhumane or degrading treatment, the punishment is prison from 5 to 10 years.

(3) If the deed stipulated in paragraph (2) has led to the death or suicide of the victim, the punishment is prison from 10 to 20 years.

(4) The attempt to do the deeds stipulated in paragraphs (1) and (2) shall be punished.”

3. Article 71 is abrogated.

Art. 30. — paragraph (2) from article 17 of the Law no. 678/2001 regarding the prevention and combating of the traffic of persons, published in the Official Monitor of Romania Part I Issue no. 783 from the 11th of December 2001 is modified and shall have the following contents:

“(2) If the deed stipulated in paragraph (1) is committed repeatedly, the specific maximum of the sentence shall be extended by 2 years.”

Art. 31.— For outstanding actions and examples of high professionalism, the workers in specialized structures established according to art. 12 can be remunerated.

Art. 32. — The funds necessary for the development of activities of prevention and combating of organized crime shall be provided from the budgets of the Ministry of Internal Affairs, the Ministry of Justice and the Public Ministry, within the limit of the sums approved for this destination.

Art. 33. — The present law shall come into force within 30 days from the date it is published in the Official Monitor of Romania Part I.

Art. 34. — On the date of the coming into force of the present law shall be abrogated the provisions of art. 14 and art. 18 paragraph (2) from Law no. 678/2001 regarding the prevention and combating of the traffic of persons,

published in the Official Monitor of Romania Part I Issue no. 783 from the 11th of December 2001, as well as those of art. 23 paragraph (2) from Law no. 21/1999 for the prevention and sanctioning of money laundering, published in Official Monitor of Romania Part I Issue no. 18 from the 12th of January 1999, with its ulterior modifications.