

Organized Crime and Legislation against crime

Arben Shehu PhD Candidate
University of Tirana, Albania

Abstract

“Today, organized crime is affecting every segment of our society. It is a disease which infects everything that comes into contact with it. It is an insult added to every law-abiding citizen. It is high time our governments made a note and, moreover, took immediate action. Perhaps tomorrow will be late.”¹

Organized crime is a form of criminality manifestation, perhaps its most specific type. It is a phenomenon that causes horror as much as wonder about the way it works and, at the same time, a sort of lure for its mystery and the particular way of comprehension. For years and years it has inspired volumes of writing, plenty of which have become best-sellers, or have produced blockbusters, arousing amazing mass interest. That is because criminal organizations and their activity have been to society both a tangible everyday reality and a remote thing, beyond comprehension. Many authors have researched into organized crime and criminal organizations, pointing out their characteristics and specifics. They attribute such features to it as a perpetual connection of many people engaged in criminal activity, an organizational hierarchy with a great power of the leaders, the domination of rule and order, discipline and responsibility among the members, imposed solidarity, maintaining the secrecy of activity and of the organization, and the international character of their activity.²

Unfortunately, there are a large number of worldwide notorious criminal organizations. Over time, they have been discovered and studied by various criminologists, who have managed to provide sufficient information on the specific features of each of them, the activities on which they focus and the territories in which they operate.

But what means should we use in order to face organized crime today?

It is necessary that differentiated strategies be studied according to the type of the mafia organization against which a concrete operation is to be launched. The strategy should also be coordinated not only in national level but also internationally, because the international character of organized crime is already an established fact.

Key words: organized crime, organization, penal, legislation

¹ Interpol Director: Statement, Brussels, August 2003

² Halili R.: Format e Manifestimit te krimimit, ‘Kriminaliteti’ (Criminality Forms of Manifestation, in ‘Criminology’), Pristine, 2002

Introduction

The most important sources of international legislation against organized crime are the various conventions and bilateral or multilateral agreements between countries. In the framework of the community right, the directions, recommendations, and results issued by the General Assembly of the EC have played an important part.

Another way by which countries have expressed their resolve to combat organized crime is constituted by various declarations, which, even though without a normative character or part of the national legislation, yet offer explicit information as to the proposed strategies, as well as the main principles of international collaboration.

The manner in which different countries follow the agreements they adhere to depends on whether they apply a dual or a mono system. What is meant by a mono system, is the international right norm has direct power over national legislation, and that it can be turned to directly as a legal norm in this legislation. This option is, nevertheless, subject to two conditions:

- a) In the case of an international convention, the international right norm should have been ratified and regularly publicised by the government authorities.
- b) In addition to that, the international right norm should have a direct effect on the internal right subjects.³

Organized crime has traditionally been a national juridical and procedural problem for every state. However, the inter-dependent development of countries, the rapid progress of means of transport and communication, the growth of international trade and the dramatic appearance of the global market have all changed the context in which organized crime operates. It is no coincidence that a similar deep change has happened in the nature of organized crime.⁴

It is precisely the countries' sovereignty that has hindered success in the war waged against organized crime. It would be impossible for the police of one country to act in another country's territory, for that would infringe the latter's sovereignty. The establishment of such a structure as INTERPOL was an appropriate in-between way out, which would save sovereignty, on the one side, and bring about satisfactory results in the war against international organized crime, on the other.

INTERPOL is an organism of international character, established in the framework of the United Nations Organisation, different from EUROPOL, which operates at a regional, European level. Owing to the greater opportunities for exchange of information and

³ Zaharia P.: Statusi i Kartes Europiane... (The Status of the European Charter)

⁴ Shishani L.: Kompetenca dhe struktura e organiziamit te Interpol (Competence and Organizational Structure of INTERPOL) Konferenca boterore mbi kriminalitetin e organizuar nderkombetar. (World Conference on International Organized Criminality)

collaboration between countries without the territory restrictions, the intensity and effectiveness of this organisation is greater than that of EUROPOL.

1. The fight against organized crime

Organized crime at a European level has drawn the attention of all countries. Each of the European countries has adopted its own individual specific strategies against the activity of criminal organisations. Economic crime has come to assume great importance as a form of organized crime.

Has Europe's war against organized crime known a progress or regress?

The General Assembly, based on Resolution 1147 (1998) and Europe's war against economic crime, has been authorized 'to regularly observe the work of the Council of Europe against economic crime' and expresses their opinion that the situation, described as critical in that Resolution, has deteriorated still more. European democracy, justice, as well as the very political and economic stability of Europe have been placed in jeopardy in such a situation.

Economic crime, in all the variety of its forms, has become ever more internationalised, more complex in structure and activity, technologically sophisticated, economically powerful, and now ready to get infiltrated into the democratic institutions. By the time all this has been transformed into a political influence, Europe's political ability, and willingness, to fight the phenomenon will only be modest, and the battle will, unfortunately, be lost.

The Council of Europe, moulded out of the member countries' will, and based on frequently mentioned principles, has a key role to play in this battle, in collaboration with other organisations such as OECD (the Organization for Economic Cooperation and Development), World Bank, EUROPOL, etc.

The Assembly welcomed the signing of the Convention against Trans-national Organized Crime and the additional protocols by 124 countries, 41 of which are members of the Council of Europe. It calls upon all the members of the CE to ratify these instruments as soon as possible. It also greeted the inclusion into these instruments of a clause prohibiting the reservations of the signing countries. This clause is based on recommendation 15, addressed to the Financial Action Task Force on Money Laundering (FATF), in July 1999.

Decisions of this kind, taken at such a level as the Council of Europe, are essential for an effective fight against all forms of crime, which are, in fact, countless and may include:

- The traffic of human beings for such purposes as illegal emigration, exploitation of their labour, begging, sexual exploitation, or to support criminal activity like illegal transportation of arms, drug, etc.;
- Corruption, bribery and commercial influence: in this context, the Council of Europe, namely the Assembly, has issued the Convention of the Penal Law on Corruption (ETS 173), signed by 39 countries and ratified by 9, as well as Convention of the Civil Law on Corruption (EST 174), signed by 27 countries and ratified by 3;
- Money laundry, a phenomenon that may undermine the integrity of national economy and democratic systems; illegal drug production and dealing, which are causing severe consequences on European youth and on the future of the continent simultaneously;
- Smuggling of goods, especially arms, works of art, alcoholic drinks and cigarettes;
- Turning out fake and pirate products, helped by modern technology, which go to the detriment of the patent or copyright holder and also bring about great problems for the consumer;
- Environmental crime, causing irretrievable damage to ecosystems and public health, especially as environmental pollution takes no notice of such things as national borders;
- Cyber-crime, which, by accessing and manipulating nets or systems, can cause considerable damage to the respective right-holders, but also dramatically increase stealing and fraud. The European countries need to come to agreement and be based on common legal principles and sanction, and also take part in collaboration, sharing of information, and other forms of mutual support, with a prospect of reaching a special convention on this particular form of illegal activity.
- Tax evasion continues to assault the economic resources of different countries in Europe. A fiscal paradise is not only attractive to frauds for the fiscal system they prefer, but it is even more luring to them because international legal assistance has always been lacking in this field.

2. The fight against organized crime at a European level

United Nations conferences bring together into a single forum a wide variety of participants such as state delegations, inter-governmental and non-governmental organisations representatives, UN specialised agencies and entities, as well as specialised experts in the field of penal justice.

From 1955 onward, its congresses have been in different countries of the world held every five years, tackling a wide range of issues. They have exerted a powerful influence on both national policies and the professional practice, all the time promoting the pooling and sharing of knowledge and experience in particular fields; formulating international strategic courses of action, facilitating collaboration between countries and the professionals in disciplines and sectors related to justice and criminality; they have encouraged new, efficient approaches that can update and improve the existing systems; they have the support of public opinion, finally finding the most efficient ways. The continuity and persistence of these guidelines is particularly important since they lay stress on public security and effective justice.

The globalization of most of present-day problems, criminality included, has made international collaboration an indispensable instrument, particularly in the war against organized crime.

That is why these congresses serve as catalysers stimulating worldwide exchange of information and concrete proposals. The formal channels, as well as the informal networks, that such events put to action, lie at the foundation of strengthening international collaboration against the growth of criminality.⁵

The European Community has assisted bringing into force very important international instruments like the UN Convention against international organised crime, the Protocol for the prevention and punishment of human beings traffic, of women and children in particular, the Protocol against the exploitation of illegal emigration via land, sea or air, and has also made strenuous efforts to accomplish the framework of community European legislation.

3. Convention against organized crime.

The Convention against international organised crime has been compiled in accordance with Resolution A/RES/55/25, passed on 15 November 2000 during the 50th and 55th sessions of the UN General Assembly.

The UN Convention against international organised crime constitutes, at a world level, the fullest and most important reference in the war against trans-national organised crime and its forms of expression. Although efforts to clear a path towards a multi-lateral international collaboration in various areas of criminal activity had been made before (as the 1988 Convention of Vienna on the narcotic and psychotropic substances), there is no doubt that the Palermo Convention marks a real change in the history of world action against trans-national organised crime. The term very 'trans-national', used to signify criminal organisations activity which is carried out in more than one country, as different from the term 'international', originates from that convention.

⁵ Begeja S.: "Mesdheu Deti i Krimet të Krganizuar" (The Mediterranean: the Sea of Organised Crime)

The goal of boosting cooperation in this area constitutes an essential value for the entire Convention. The materialization of such an aim is possible through planning steps to strengthen judicial and police collaboration, in order to improve their ability to prevent trans-national organised crime.

The Convention has a remarkable contribution in the efforts to put forward definitions for which the adhering countries have adopted common terms of reference, such as the definition of organised crime, or the specification of the trans-national character, which constitutes the goal of that international commitment. The Convention also previews a series of measures in the material and procedural aspects, like the obligation of the Convention member nations relating incrimination, criminal sanctions criteria, measures in witnesses defence and assistance to organised crime victims, collaboration with the police, modern investigation techniques as infiltrated agent, forms of electronic observation, and procedures of judicial assistance between member countries.

In the framework of the great efforts on the part of the adopting countries of this convention, in which the processing of various natures instruments is accompanied by the improvement of collaboration level, reaching common definitions on the term 'serious crime' assume special interest, with respect to the countries' obligation to establish a common standard against organised crime. The classical way of judicial assistance given by one country to another on request, used to be limited within the bi-literal relations between those two countries, and related to certain procedural issues. The insufficiency of a single approach, of that sort of traditional common action, in face of the sophistication and perfecting of modern crime, led to the achievement of a political consensus to adopt a convention, irrespective of the existing variance between the national judicial regulations on issues concerning organised crime. That was a consensus, which could not fail to recognise the concrete hardships in the judicial solutions implemented by each of the countries. The convention had to be close to the traditions and systems of the member countries, bringing them to a common denominator.

Among the normative standards previewed by the convention, the one connected with suing criminal organisations is of particular interest. This document provides a judicial basis which is in a position to overcome the theoretical difficulties met in tackling with the problem in question. The crowning of the efforts to define participation in a criminal organisation, for example, came as an intertwining of two bodies of thought. For one, it is important that the danger of the criminal organisation be evidenced; for the other, it is the criminal behaviour and acts that the member countries should punish.

The main aim of each criminal organisation remains making illegal material profit, a thing which remains of primary interest in the agreement made between the members of the organisation; it is precisely to achieve their aim in the most profitable way that they join their energies and strategies into a common criminal activity. Thus, this kind of pooling of illegal acts comes to produce such results that, considering the time in which they are produced and the amount in which they are produced, they could not be achieved by a single person, or, less likely, through legal activity.⁶

The connection between organised crime and illegal profit is so close that, for a very long time, it has conditioned the debate on the notion of organised crime and its frequent identification with economic crime.

It is important to avoid confusing phenomena that have points of contact but also key differences (the methods of organised crime are terror, systematically used violence, etc.). However, a strategy of fighting organised crime would be of no avail, if it failed to address the connections with the material gain arising from this sort of activity. Particular attention should be paid not only to the direct profits made through illegal activities, but, above all, to seemingly legal activities, which are, in fact, funded by organised crime activity.

The Palermo Convention laid special emphasis on member countries straightforward combating illegal profits and the properties gained through them, by both sequestering or confiscating them and by punishing money laundry.

For a long time, Europe, and the Balkans in particular, have been regarded as bases of organised crime. The Balkans, with its known social, political and economic problems, has offered a favourable ground for the growth of criminality. European officials of the highest level for security issues have drawn attention that the Balkans has turned into 'one of the gates of crime to Europe'.⁷

The participants of a conference held by the British government, 60 delegations from EC and Southeast Europe, consisting of internal affairs ministers and other high officials for the security issues, observed that organised crime has turned into a very profitable activity for the smuggling of drugs, arms, cigarettes and the traffic of illegal emigrants, as well as for prostitution. Where there is penury, there prospers crime.

4. Albania and fight against organized crime

This is a fact that we are all witnessing. Unfortunately, Albania too has recently started to be mentioned ever more frequently for its criminal organisations, for the rising level of organised crime and the sophistication of its means and ways of operating.

⁶ www.fondazionealcalone.it

⁷ www.oservatorioballcani.it

The existence of organised crime in Albania has been ignored for years, for all kinds of reasons that are not hard to divine. Maybe because of ignoring the phenomenon, or because of the belief that Albanians would be unable to get organised in such criminal formations, Albanian policy makers kept the existence of Albanian criminal groups in shadow for a long time.

The reality is different. According to the reports of Albanian Prosecution, not only does organised crime in Albania exist, but it has also come to have its own special characteristics.⁸

Thus, the subjects of organised crime in Albania are, as a rule, of a relatively young age. We should also emphasise that organised crime in our country is distinguished by such features of its participants as violence, high mobility, pragmatism in their decision taking; they are also know how to make good use of the handicaps in our legislative and executive systems. Another of its features is that its inner organisation is often based on blood or clan relations, but without high hierarchical levels.

There are reasonable suspicions of close links between criminal organisations and politics, as is commonly the case in the world of organised crime. If this is true, the situation is virtually grave.

Various reports and articles hint that the influence of Albanian criminal organisations is quite important in other European countries too. For example, it appears that the Albanian mafia in Slovenia has faced the Russian criminal groups' rivalry and has established its own hegemony. It remains to be seen.

However exaggerated this phenomenon might be, it remains the Achilles' heel concerning the process of Albania's integration into the EC. As long as Albania remains under the influence of criminal activity, as long as the state machine risks being influenced by the criminals' interests and shows to be weak in face of their pressure, our way towards that aim will be long and painful.

The only way to successfully and effectively combat this extremely sophisticated and dangerous criminal illegal activity is through regional and international collaboration.

The implementation of the international and European right in the penal field is the most appropriate and fruitful way to achieve the objectives in this hard fight, especially for Albania, whose experience in making anti-criminal policies is lacking and problematic.

⁸ Sollaku T.: Zhvillimet e krimit te organizuar ne Shqiperi. Format dhe tendencat Gjendja e krimit te organizuar ne Kosove, Mal te Zi, Maqedoni dhe problemet qe lidhen me te. (Developments of Organised Crime in Albania. Forms and Tendencies. The State of Organised Crime in Kosovo, Monte Negro, Macedonia, and the Problems Associated with it)