

Organized crime and legal countermeasures in today society

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Abstract- As society has faced advances in technology, especially information technology, so has organized crime. The new form called high-tech crime is just proof of how flexible and operational criminal groups are and how ready they are to react quickly when it comes to social change. Organized groups usually cover new spheres of social relations much faster in which there are legal gaps, in relation to positive law, because the bulky bureaucratic state apparatus needs much more time and space to start and normatively regulate a new area. Organized crime has one and only one motive, and that is profit. Improper understanding of this point is seriously hampered by proper conceptualization in academic circles. The purpose of organized crime is neither violence nor power. Violence can be used to reach a position of power, but only as a means of obtaining or securing a source of income. Given the social cohesion of criminal activities and criminal structures, a wide range of socio-economic policies could qualify as measures against organized crime.

Index Terms- organized crime, criminal activities, high-tech crime, profit, decriminalization.

I. INTRODUCTION

A comprehensive discussion of the effects of general socio-economic policy on organized crime goes beyond the scope of many publications. The same goes for the controversial debate on the actual and potential effects of decriminalizing illegal goods and services on organized crime. Instead, the focus here is on measures that explicitly and specifically target the phenomena of organized crime. Most countermeasures fall into the category of criminal justice responses to organized crime. Within this broad category, some measures relate to substantive criminal law and to extending the scope and severity of penalties for organized crime conduct. Other criminal measures relate to procedural criminal law and the work of the police and relate to increasing the likelihood that organized criminals will be brought to justice by facilitating the collection of evidence. Under the banner of the

fight against organized crime, there have also been significant changes in the organization of law enforcement.

It is notable social cohesion of criminal activities and criminal structures; a wide range of socio-economic policies could qualify as measures against organized crime. For example, programs to reduce poverty, unemployment and discrimination can reduce the attractiveness of young people by joining a criminal organization.¹

Criminal justice responses to organized crime generally increase the risk of organized crime, both in terms of increasing the likelihood of arrest and conviction and in terms of increasing the seriousness of the consequences of arrest and conviction, for example, long prison sentences and confiscation of criminal assets. In addition to these direct effects, criminal justice measures can have other direct consequences.

In practice, they can make it more difficult to carry out illegal activities. For example, laws restricting access to precursor chemicals to methamphetamine production and making unauthorized handling of these chemicals a crime have forced illegal manufacturers to make additional efforts, such as the production of precursor chemicals themselves. Criminal justice measures can also hinder the formation, maintenance and expansion of criminal networks. For example, the use of electronic surveillance limits the ability of criminals to communicate safely with other criminals, and the use of intelligence and undercover agents forces criminals to invest more time and energy in detecting potential accomplices.²

II. SUBSTANTIVE CRIMINAL LAW AS AN INSTRUMENT AGAINST ORGANIZED CRIME

It has long been complained that traditional approaches to crime control are not effective against organized crime. Prosecuting individual organized criminals for committing individual crimes is considered a difficult part for several reasons. First, the secret nature of organized crime activities and the absence of direct victims in many cases leave crimes undetected.

¹ Reuter, P. (1995). The decline of the American Mafia. *Public Interest*, 120, 89-99.

² Shukla, R. K., Crump, J. L., & Chrisco, E. S. (2012). An evolving problem: Methamphetamine production and trafficking in the

United States. *International Journal of Drug Policy*, 23(6), 426-435.

Second, individual responsibility is difficult to establish where there are numerous conspirators and accomplices involved in a criminal venture.

This is especially true of bosses, chiefs and financiers who remain in the background and are not involved in the actual commission of the crime. Finally, at least stereotypical organized criminals use violence, intimidation, and corruption to discourage witnesses from testifying or otherwise obstruct the criminal process. Even if individual organized criminals are convicted on traditional charges, such as drug trafficking, illegal gambling, extortion, or murder, it is assumed that this is not at the root of the problem.

Organized criminals can continue to run illegal businesses from prison, where they often only have to serve short sentences; or a imprisoned organized criminal can easily be replaced by another who progresses. One of the solutions to these problems was to make substantive criminal law a more powerful weapon against organized crime by more efficiently enforcing the existing criminal law and amending the existing criminal law. Very early on, attempts were made to use conventional criminal law in an innovative way for organized criminals. It is known that tax laws in the United States have been applied against prohibition gangsters who are accused of tax evasion by not reporting their illegal income from the sale of alcohol.³

In the 1960s, the US Department of Justice launched a campaign against organized crime, which involved detecting any irregularities, no matter how insignificant or unrelated to organized crime activities, in order to obtain convictions. In one case, a search of a Chicago gangster's house resulted in charges of violating the Migratory Birds Act because 563 pigeons were found in the freezer, well above the legal limit of 24. In addition to these efforts to make fuller use of existing criminal law, the focus was on increasing the severity of sanctions imposed on organized criminals and the creation of new crimes that better capture what organized criminals do.⁴

III. EXTENDING CRIMINAL PENALTIES FOR ORGANIZED CRIMINALS

Along with the understanding that organized crime is more serious than unorganized crime, the clear response of criminal law to organized crime is the introduction of tougher penalties for types of crime believed to be organized, such as drug trafficking, human trafficking, and illegal gambling. This means, above all, that higher mandatory (minimum) prison sentences and higher maximum prison sentences are applied, and that part of the prison sentences that need to be served before a convicted organized criminal becomes conditionally released is extended.⁵

The anti-mafia movement in Sicily provides an example of a more sustainable campaign against organized crime. Initially, in the years after World War II, civil society's struggle with the mafia was largely a matter of communist-led peasants fighting for land reform against alliances of landowners, politicians, and mobsters.⁶ Then, as the violence of the mafia against the representatives of the state escalated, the social base of the anti-mafia movement expanded significantly. The key events that provoked anti-mafia feelings were the murders of Pio La Torre and Carlo Dalla Chiesa in 1982 and the murders of Giovanni Falcone and Paolo Borsellino in 1992. One visible sign of the movement's success was the election of Leoluca Orlando, a staunch opponent of the mafia, as mayor of Palermo in 1985 and again in 1993, this time as the candidate of the newly formed anti-mafia party with one question.⁷

Since the early 1980s, numerous organizations and initiatives at the local level have emerged to attack the mafia and the culture within which it is embedded. For example, on the night of Falcone's funeral, three sisters and their daughters, later called the Comitato dei Lenzuoli, hung sheets with anti-mafia slogans on their balconies in Palermo and later distributed pamphlets entitled "Nine unpleasant guidelines for a citizen who wants to oppose the mafia." In this pamphlet, the committee "called on citizens to report corruption, extortion and favoritism and to educate their children in the spirit of civic engagement."⁸ Another example of a local anti-mafia initiative is Adiopico (Addiopizzo), a community of consumers and businesses that wanted to reduce the prevalence of protection payments.⁹

Beginning in the mid-2000s, Adiopico published lists of companies that publicly declare that they do not pay money for mafia protection and lists of consumers who undertake to buy in stores that openly condemn mafia protection. The initiative seems to have had a deterrent effect insofar as protective money collectors, according to one mafia address, stay away from companies belonging to Adiopico. On the other hand, the reach of Adiopico remained limited. Business members tend to be represented only in the better parts of Palermo, and consumer activists usually come from younger, well-educated segments of society.¹⁰ This suggests a general problem of civil and political movements against organized crime. It is difficult to eradicate criminal practices and criminal structures that are deeply rooted in the social, political, economic and cultural fabric of society. This is especially true where people earn a living depending on organized crime, as in the case of business owners who profit from criminal protection or in the case of individuals who earn income from illegal activities. Measures against organized crime, in order to be successful in the long run, must ensure continued public support. For this to happen, countermeasures must include

³ Funderburg, A. (2014). *Bootleggers and beer barons of the Prohibition Era*. Jefferson, NC: McFarland & Co.

⁴ Goldfarb, R. (1995). *Perfect villains, imperfect heroes: Robert Kennedy's war against organized crime*. New York, NY: Random House.

⁵ Campbell, L. (2013). *Organized crime and the law: A comparative analysis*. Oxford, England: Hart.

⁶ Schneider, J., & Schneider, P. (2001). Civil society versus organized crime: Local and global perspectives. *Critique of Anthropology*, 21(4), 427-446.

⁷ Ibid

⁸ Jamieson, A. (1994). Mafia and institutional power in Italy. *International Relations*, 12(1), 1-24.

⁹ Partridge, H. (2012). The determinants of and barriers to critical consumption: A study of Addiopizzo. *Modern Italy*, 17(3), 343-363.

¹⁰ Partridge, H. (2012). The determinants of and barriers to critical consumption: A study of Addiopizzo. *Modern Italy*, 17(3), 343-363.

functional alternatives against the existence of illegal markets and illegal management.¹¹

IV. THE CONCEPT OF TRANS`NATIONAL CRIMINAL JUSTICE

Transnational crimes are crimes that are not international underlying crimes (international criminal law *stricto sensu*). And these are not just national offenses, which are defined as committed in the country and have effects only within one jurisdiction or have no extraterritorial connection due to the foreign citizenship of the victim or perpetrator or vessel and only of prosecutorial interest to one state. Such a definition covers all situations in which special problems arise precisely because behavior does not affect only one jurisdiction. The same approach is taken, for example, in the 2000 United Nations Convention against Transnational Organized Crime.¹²

However, from the definition of the phenomenon of transnational crime, the definition of transnational criminal law or transnational criminal justice does not follow. The complex of laws governing the investigation and prosecution of transnational crimes can be defined in different ways. On the one hand, it could be defined as the sum of existing laws applicable to transnational crime. They mainly include provisions on transnational crimes, their constitutive elements on *actus reus* and *mens rea* and the applicable range of penalties, but also rules on jurisdiction and mutual legal assistance in criminal matters (hereinafter: MLA rules). Such an empirically inductive approach includes laws on the applicability of domestic criminal law to extraterritorial conduct rules governing MLA as well as more detailed rules that can be found in so-called European criminal law, referring to the provisions on criminal law and procedures within the European Union. Alternatively, a deductive and normative approach can be taken and the use of the term "transnational criminal law" limited to those rules and legal instruments specifically designed to deal with transnational criminal matters as defined above. According to this approach, the existence of transnational criminal law presupposes that the legislature has adopted such rules. One example, in the European context, is the Schengen Implementation Convention. The so-called Schengen *acquis* includes rules on criminal jurisdiction, rules on international legal assistance and cross-border law enforcement measures for the listed crimes in the common Schengen area.¹³

The Schengen states and later most EU states have committed themselves to apply these rules whenever the alleged crime affects more than one jurisdiction in the common Schengen area. Another example is the EU criminal law on mutual recognition of judicial acts (hereinafter: MR) in freedom, security, and justice. Both approaches have traditionally taken a state-oriented stance, which does not adequately consider the interests of the individual. However, an individual is affected by cross-border investigations and transnational investigations and is a

recipient of legal norms and must coordinate his or her behavior to prevent criminal liability. This contemporary perception of international and transnational criminal law has shaped recent debates about the implications of certain MLA or MR institutions, for example when it comes to transnational evidence gathering and the use of evidence. The individual has become a subject instead of an object of cooperation, which includes that the individual has rights and obligations in relation to transnational criminal justice.¹⁴

Which approach, deductive-normative or empirical-inductive, best suits finding general principles remains to be seen and is part of many studies. The international community has addressed this issue only selectively, mainly in areas of crime that have naturally affected various jurisdictions, such as transnational organized crime. Whether such concepts will be useful for all areas of transnational crime remains to be determined, such as, for example, the definition given in the above-mentioned United Nations Convention against Transnational Organized Crime,¹⁵ which strictly refers to the transnational aspects of the commission of a crime or its transnational consequences. In addition to the deductive-normative or empirical-inductive approach, a third approach can be envisaged: for a suspect or victim, transnational criminal justice can also mean criminal proceedings if he is transnationally active in investigation (gathering evidence, arresting persons, freezing property) or prosecuting choice of jurisdiction) or execution of sanctions (transnational confiscation, transfer of prisoners).

This means that transnational criminal justice could also apply to domestic criminal cases, but with transnational criminal law activity that could affect the rights and obligations of suspects, victims, etc. The latter approach could consist of regional integration models, such as the former Schengen *acquis* or the area of freedom, security and justice in the EU; the point of reference, however, is no longer just sovereign states, but common judicial areas with relevant transnational interests, such as criminal law protecting the single currency, criminal enforcement of market funds or access to EU criminal law on trafficking. . The difference from national criminal justice is that the real transnational interests of the common area are defined as credited for transnational protection and that, little by little, the EU also recognizes that this approach may require a transnational approach to procedural guarantees and applicable human rights. However, even in the recent proposal for a regulation establishing the European Public Prosecutor's Office, this need is very poorly addressed. It follows that there are many definitions of transnational criminal justice, depending on the perspective and functionality.

Conclusion

Criminological thinking, widely understood, brings important insights into the study of criminal law. Since specific practices and legislation and legal interpretation take place in the context of broader social processes that shape not only the scope and definition of criminal law, but also certain entities in relation

¹¹ Abadinsky, H. (2013). *Organized crime* (10th ed.). Belmont, CA: Wadsworth

¹² GA Resolution 55/25 of 15 November 2000

¹³ Gless S. (2012), *Internationales Strafrecht – Grundriss für Studium und Praxis*, 2011, Rn. 567 et seq; A. Klip, *European Criminal Law*, 2012, pp. 341 et seq.

¹⁴ A.H.J. Swart (1983), *Goede rechtsbedeling en internationale rechtshulp in strafzaken*

¹⁵ GA Resolution 55/25 of 15 November 2000.

to which courts apply their legal techniques, this context is an important factor in understanding the dynamics of legal interpretation. The ideas and principles that are key to the doctrine of criminal law and its broader accompanying framework, the ideal of the rule of law, are beginning to take on a different color, as criminology helps us reduce bias and selectivity in their implementation. As an openly coercive state practice in societies that think of themselves as liberal, as composed of self-determined individuals whose rights and freedoms must be respected, criminal law faces a serious challenge of legitimation. The challenge is highlighted by the increasing scope and diverse functions that characterize the development of criminal law since the early nineteenth century and the pluralism of values and social conflict that characterize late modern societies. Criminal law seeks to respond to this challenge by setting several normative requirements that relate both to the essence of legal norms and to the process through which they are implemented.

Among the problems facing today's world, organized crime is the biggest challenge facing today's criminal law. Organized crime seeks to expand its activities to all areas of social life at the global level. It is evident that organized crime, today, has penetrated deeply into all spheres of social life.

Criminal law prides itself on applying standards of proof beyond a reasonable doubt and adapting the requirements of

accountability to a particular individual in court. How to reconcile this with extensive negotiation, uncertainty of the standard of error / responsibility or reverse burden of proof? Obviously, these legalization strategies largely depend on the ability of criminal law to maintain an aura of its separation from the politics and practicality of the criminal process. Many of the principles that are key to the "common sense" of doctrinal criminal law seem a bit fragile because this separation is eroded by little knowledge of criminal justice.

The criminal law seeks legitimacy by invoking the separate and equal application of its standards to all who come to it. How can this claim be reconciled with the prevalence of practices such as plea bargaining, which are guided by the relative power relations of individual actors in the process and the concerns of managers regarding cost-effective resolution of cases? Criminal law prides itself on applying standards of proof beyond a reasonable doubt and adapting the requirements of accountability to a particular individual in court.

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