

EUROJUST CASEWORK ON MAFIA-TYPE CRIMINAL ORGANISATIONS

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Abstract

Since 2012, more than 145 Eurojust cases dealt with Italian mafia-type OCGs, such as Cosa Nostra, Camorra and 'Ndrangheta. The casework at Eurojust confirms the transnational dimension of the Italian mafia-type OCGs, which over the years have consolidated their global partnerships with other criminal groups worldwide, active particularly in the areas of drug trafficking and money laundering.

Keywords: criminal organisations, Eurojust, security, crimes, police cooperation.

1. INTRODUCTION

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;

Sub-definitions:

“Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

“Structured group” shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure;

“Proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

The term “Mafia”, first used only to define a Sicilian phenomenon, is now used to describe any organized criminal group and it is certainly one of the words in the Italian language that is the best known and most used internationally.

This is not only due to the influence of the media, who tend to simplify reality with labels which are often incongruous and misleading. The phenomenon called “Mafia” as developed in Sicily, presents some characteristics which have made it a sort of paradigm, or frame of reference for similar organizations which have developed elsewhere in more recent times.

2. EUROJUST CASEWORK ON MAFIA-TYPE CRIMINAL ORGANISATIONS

Mass media represents the Mafia as a sort of universal Evil, the “octopus” that controls all criminal activities: from drug to arms trafficking and now even radioactive substances. In reality, the Sicilian Mafia can be considered a “winning model” of Organized Crime (at least until now) due to its complexity and long-standing role in society, but care must be taken against stereotypes that always see the octopus’ tentacles everywhere.

The Mafia’s strength lies in its capacity to be both local and international and transnational, in the sense that it grew to a worldwide level without losing its roots in Sicilian society. Its strong-point has historically been the capacity to combine continuity with innovation: it has never abandoned its traditional activities (extortion for example) but knew how to choose the most profitable activities and become a part of them.

Mafia structure:

- Commissione (Cupola);
- Capo-mandamento;
- Capo famiglia (Cosca);
- Capo-decina;
- Picciotti/Soldati.

Characteristics of Mafia tipe organisations:

- Local origins;
- Evolution;
- Pyramidal structure;
- Ceremony of initiation;
- Code of honor;
- Intimidation and violence;
- Activities.

Anti-Mafia strategies:

- Creation of a Pool of Specialised Prosecutors;
- Adoption of Anti-Mafia Investigative Direction (DIA);
- Legislation to grant protection to those who collaborate with Prosecutors (PENTITI);
- Strict way of life sentence enforcement.

The three main Italian mafia-style groups — the Cosa Nostra, Camorra and Ndrangheta - operate worldwide but keep a very low profile outside of Italy, making it difficult for law enforcement agencies to detect these organised crime groups.

The power the Italian mafias have resides in their control and exploitation of territory and community. The concepts of family, power, respect and territory are fundamental to understanding the dynamics of the mafias. They are capable of manipulating elections and installing their people in administrative positions even in places far from the territories they control.

Money laundering and large-scale drug trafficking are the criminal focus of these groups. However, they are also involved in corruption, currency and goods counterfeiting, and the trafficking of toxic waste.

Particularly in periods of economic crisis, mafia groups can use their immense assets to easily infiltrate the legitimate economy. For instance, the Calabrian Ndrangheta takes in almost EUR 44 billion a year (2013). These huge sums allow the groups to inject much-needed liquidity into struggling businesses.

No legitimate business can afford to compete with criminal companies that can produce goods and services

at a loss as part of a long-term strategy to take over markets. Thus, mafia groups have extended their presence into parts of Italy and Europe not historically affected by organised crime, a development that could have serious negative implications for the EU economy in the long run.

Since 2012, more than 145 Eurojust cases dealt with Italian mafia-type OCGs, such as Cosa Nostra, Camorra and 'Ndrangheta. The casework at Eurojust confirms the transnational dimension of the Italian mafia-type OCGs, which over the years have consolidated their global partnerships with other criminal groups worldwide, active particularly in the areas of drug trafficking and money laundering. In addition to laundering in foreign countries the proceeds of illicit activities carried out in Italy, these OCGs have massively infiltrated the legitimate economy of many Member States, such as Spain (particularly favoured by the Italian Camorra), the Netherlands, Romania, France, Germany and the UK, including through the presence in these Member States of dangerous Italian fugitives along with their networks of associates and facilitators. Such infiltrations are typically carried out directly by associates of the OCG or via its frontmen through real estate investments and participation in public or private contracts, particularly in the field of construction, public utilities and waste disposal. Under Italian criminal legislation, 'participation in a criminal organisation' is a stand-alone offence, punishable by long-term prison sentences under Articles 416 and 416bis of the Italian Criminal Code, as required by Article 2 of Council Framework Decision 2008/841/JHA on the fight against organised crime. Not all Member States, however, have adopted similar provisions incriminating 'participation in a criminal organisation' as a distinct offence. When they have done so, the extent of the application of and penalties attached to such offences varies greatly, and so do the possibility and requirements for applying special investigative techniques such as wiretappings. Experience shows that the existence of different legal definitions and the lack of an equivalent to Article 416bis of the Italian Criminal Code cause major legal and operational obstacles to effective judicial cooperation. Eurojust has supported successful operations by identifying judicial challenges and suggesting solutions, including enhancing the use of JITs, taking into account the different legal frameworks and prosecutorial approaches towards Italian OCGs existing at national level. The Italian authorities, with the support of the Italian Desk at Eurojust, have informed their counterparts in the Member States affected of the concrete threat posed by Italian mafia-type OCGs operating in their territory, as well as assisted in the identification and collection of evidence concerning the pre-requisite crime (frequently money laundering), and discussed and agreed on coordinated operational means to dismantle these groups, using special investigative techniques such as wiretappings, and, more recently, JITs. Several cases registered by the Italian National Desk are ongoing. An example of a case successfully supported by Eurojust demonstrates the challenges. An Italian investigation into a Camorra-affiliated OCG involved trading all sorts of counterfeited commodities (e.g. electric generators, chainsaws, drill hammers and clothing). The illicit products were produced in China, and counterfeit labels of well-known companies were attached in Italy. The goods were distributed all over the world via the Port of Naples. In addition, the electrical appliances and tools traded by the OCG did not comply with EU safety standards. The criminal activity was highly profitable (e.g. the price of an electric generator, produced in China for EUR 35, sold for EUR 400, while a legitimate brand would cost EUR 1 250). The OCG was based in the vicinity of Naples, but its illicit operations stretched through more than twenty countries in Europe, as well as Australia and Iceland. Eurojust's coordination efforts helped the Italian and other national authorities to reconstruct the OCG and to reach a common understanding of how it operated at national level. A joint operational strategy and coordinated actions were agreed. The strategy was centred on opening and conducting national investigations of money laundering, in parallel with the original investigations for participation in a mafia-type OCG, conducted in Italy. Eurojust supported the parallel national investigations and the execution of more than 30 Italian MLA requests. The successful conclusion of the operations, coordinated via Eurojust, with the analytical support of Europol, culminated in simultaneous actions conducted in seven Member States (CZ, DE, ES, FR, IT, SE, UK), resulting in the arrest of 67 individuals, the search of 143 warehouses and the seizure of more than 800 tonnes of counterfeit materials and the recovery of assets exceeding EUR 11 million. Eurojust took note of the European Parliament's Resolution of 25 October 2016 on the fight against corruption and follow-up of the CRIM resolution calling for the Commission to submit a report assessing the transposition of Council Framework Decision 2008/841/JHA on the fight against organised crime.

In Europe and at the international level the problem is to elaborate a Penal Law against Organized Crime and to eliminate the conditions which encourage the development of Organized Crime. Few examples: to adopt the crime of Mafia-type association; to abolish the prohibition of drugs, the banking secrecy and other forms of opacity of the financial system. All these aspects are linked to the general context of the contemporary society.

Contradiction between legality and reality. An example: the prohibition of drugs was confirmed at the United

Nations Convention of December 1988, but in spite of the tentatives to reduce the demand and stop drug trafficking, its use has increased and drug dealers have accumulated and continue to accumulate huge amounts of capital. The abolition of prohibition won't abolish the Mafia and the other forms of Organized Crime, that have other activities and would dedicate more time to them or find new ones, but would certainly hinder their capability to accumulate capital and would emancipate drug addicts from the slavery of drug dealers without scruples. For many years the debate on prohibition has been dominated by ethical and ideological concerns, but today the discussion places its attention mostly on concrete themes, like the cost-benefit ratio of repressive measures, overcrowded prisons, paralysis of the judicial system, the diffusion of AIDS among drug addicts, the policy of "harm reduction".

3. CONCLUSION

If we want to tackle Organized Crime successfully, we must act in many directions:

Knowledge. We need an adequate knowledge of the evolution of Organized Crime and for that purpose it is necessary to find a network among various subjects: judicial offices, law enforcement agencies, parliamentary committees, research institutions etc.

International cooperation with the harmonization of legislation, procedures and law enforcement activities.

Prevention, acting on the structural causes of diffusion of Organized Crime: poverty, conveniences offered by the economy, connections with the institutions etc.

In this way the fight against Mafia and Organized Crime can become part of a global policy for democracy, co-existence and development, ensuring the satisfaction of basic needs for all human beings (Albanese, Marinelli, 2013, 367–394; Ardizzi, Petraglia, Piacenza, Schneider, Turati, 2014a, 1555–1590; ARIEL, 2015; Barone, G., Narciso, G., 2015a; Barone, Narciso, 2015b, 98–110; Bassiouni, 1996, p.143; Bassiouni, 2008a, p.24; Buonanno, Durante, Prarolo, Vanin, 2015c, 175–202; Buonanno, Pazzona, 2014b, 75–81; Calderoni, 2011a, 41–69; Cassese, 2008b, p.98; Daniele, Marani, 2011b, 132–142; Delmelle, Opfergelt, Cornelis, Ping, 2015d, pp. 1253–1264; Ivanov, 2005, s.76; Kolarov, 2012a, s.14; Mihaylov, 2003, s. 107; Miller, 2009, 750–68; Panayotov, 2012b, s.275; Paunova, Datsov, 2010, s.73; Robinson, 2002, p.497–525; Velchev, 2015e, ss.208 – 209).

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