

The Main Weaknesses of the Management System in the State Administration of Georgia as Supporting Factors for Corruption and Money Laundering

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As a country of transition economy, Georgia is characterised by a kind of disorder in the governance system, which acts as the main reason for the growth of corruption.

In the Annual Report (2000) of Transparency International (Coalition against corruption) (Transparency International 2000), Georgia took 84–86th place together with Albania and Kazakhstan among 99 countries in terms of corruption level. 2 years later Georgia had moved to 127th place (Transparency International 2003, 5), indicating a tendency to corruption growth.

In 2000, 2001 and 2002 (The State Department of Statistics of Georgia 2000, 28–30; The State Department of Statistics of Georgia 2001, 102–105) local entrepreneurs named the following as the main obstacles to business development:

- a) Corruption in public services, 62.7%, 52.6% and 63.6% of respondents respectively;
- b) Dependence of business on government, 50.6%, 59.5% and 61.4% of respondents respectively (Figure 1).

Particularly, corrupt public servants and dominating private interests have resulted in the growth of the shadow economy. According to the International Monetary Fund, in the countries of transition economy, the share of the shadow economy of the Gross Domestic Product varies between 21–30% on average. In Georgia, the situation is worse: the State Department of Statistics of Georgia has estimated that one third of total production is not accounted for, and according to the International Monetary Fund, the proportion of the shadow economy is as high as 64% of the GDP (Schneider and Enste 2002).

The large-scale shadow economy results in a low level of tax revenue. The share of lost revenue is 13.7% of the GDP, and this figure is among the highest in CIS countries (Georgian Policy and Legal Advice Centre 2002). Tax collection is further impeded by corruption. Reduced tax income has a negative impact on state economy, which in turn restrains infrastructural development and economic growth. According to a well-known specialist, Daniel Kaufmann, low level of economic development, poor governmental structures and corruption are interrelated concepts (Kaufmann 2001).

In Georgia, the main reasons for inefficient public services are:

Inertia and inflexibility

In spite of the ongoing changes, public agencies—in terms of their form and substance—have still retained certain qualities typical to “Soviet” structures, like autocratic style of governance, which expresses itself as 900–1,300 presidential decrees each year (Figure 2). It seems that officials of different sectors try to avoid personal liability by preparing normative acts which transfer responsibility to the president. Inefficiency is further caused by low qualitative and quantitative levels of decentralisation, failure to perform governing functions in a proper manner, etc. It also seems that public agencies are not interested in solving problems of national importance, but rather in serving their particular and immediate interests.

Disorganisation

Disorganisation is expressed in numerous non-implemented orders (Figures 3, 4, 5). In fact, their number increases (on average 3.5–6%) each year.

At the present stage of transition, the disintegration of public service structures is caused by:

1. Public agencies no longer suffer from excessive control from superior State bodies, and the administrative apparatus is no longer dependent on political power. On the other hand, a new, democratic system of governmental control has not yet been built. As a result, the almost fully autonomous public agencies have found themselves in a “control-free” environment. The existence and manifestation of social control (ideological, political, religious, work-related etc.) is very important in modern society, ideally providing an effective tool for fighting economic crime and corruption. It is possible that Georgia succeeds in this goal.
2. As a result of the ongoing process of denationalising public property, the formerly government-owned enterprises have been liberated from its control. The old-fashioned public servants have been deprived of their habitual managing tasks, and instead of implementing directives and instructions of the state organs, they are now expected to devise means for creating and implementing sectoral development policies and strategies. An overwhelming majority of them lack the necessary know-how and skills.
3. Heavy administrative machine is maintained by overlapping functions at all levels: the different governmental agencies, different subdivisions of those agencies, different public servants working for those subdivisions. Such an organisational model is characterised by limited responsibility for outcomes, imbalance between official duties and responsibilities, structural overloads, and excessive functions.

Lack of proper development programme

There is no public service development strategy, nor coherent implementation programmes which would define the most optimal solutions to existing prob-

lems, including methods for building an appropriate structure. There is obvious disrespect for a key principle of management; the structure, as an implementing mechanism, is being constructed and/or perfected without any consistent strategy or objectivity, although proper attention to both external factors and potential changes are prerequisites for any good development programme. Thus it is impossible to shape a long-term development strategy and build appropriate organisational structures to implement such strategies. Experiences of developed countries should be taken into account and possible changes forecasted on the basis of current circumstances. In reality, however, executive authorities react “today” to events that took place “yesterday”. Such an approach only encourages the survival of old-fashioned, non-problem-oriented and complacent structures.

Underdevelopment of legal framework regulating public service

Major problems are associated with regulations and standards, their inconsistency with each other and with current developments. Without coherent legal framework, the normal functioning of public agencies and public servants is impossible.

Poor motivation

Public servants need both effective financial and moral incentives. Unfortunately, the average wages of public servants are below the minimum level of subsistence (Figure 6), and there are no social guarantees provided. The latter should be established without delay. If nothing is done, the normal functioning of public service, and addressing the facts connected to economic crime is impossible.

Lack of modern management style, organisational culture and proper code of conduct

A public servant is a representative of the State, whether inside or outside the country. Public agencies can portray the image of national statehood. The higher a public agency is in the governmental hierarchy, the more strict ethical requirements should be imposed on its staff. Each governmental agency should be required to formalise such requirements to a code of conduct. Such a code, consisting of both universal and national values, as well as ethical norms acceptable to any democratic society, would pave the way for harmonious relationships inside the agency, and create a very positive image of that agency in the eyes of the public.

Poor staff management

This results primarily from the lack of modern approach to staff management. Presently, there are no precise job descriptions, duties or responsibilities defined for any offices of the hierarchical or horizontal public service sector. In other words, it is not clear which professional skills and personal qualities the candidates for public offices should have. Without such criteria, it is impossible to ensure objective selection and promotion processes.

Lack of government's uniform staff training and retraining policies

Staff training and retraining policies should be consistent with the job descriptions, duties and responsibilities of each particular office. Only those with proper professional skills and personal qualities should be recruited for public services. Staff training and retraining programmes should be implemented in accordance with curricula based on uniform national standards.

These requirements have been met by more or less all developing countries that are willing to build modern governmental institutions. It should be remembered that if proper solutions to the above-mentioned problems are not found, it may increase corruption and undermine the prestige of the national government. This emphasises the need for a fundamental reform of governmental structures.

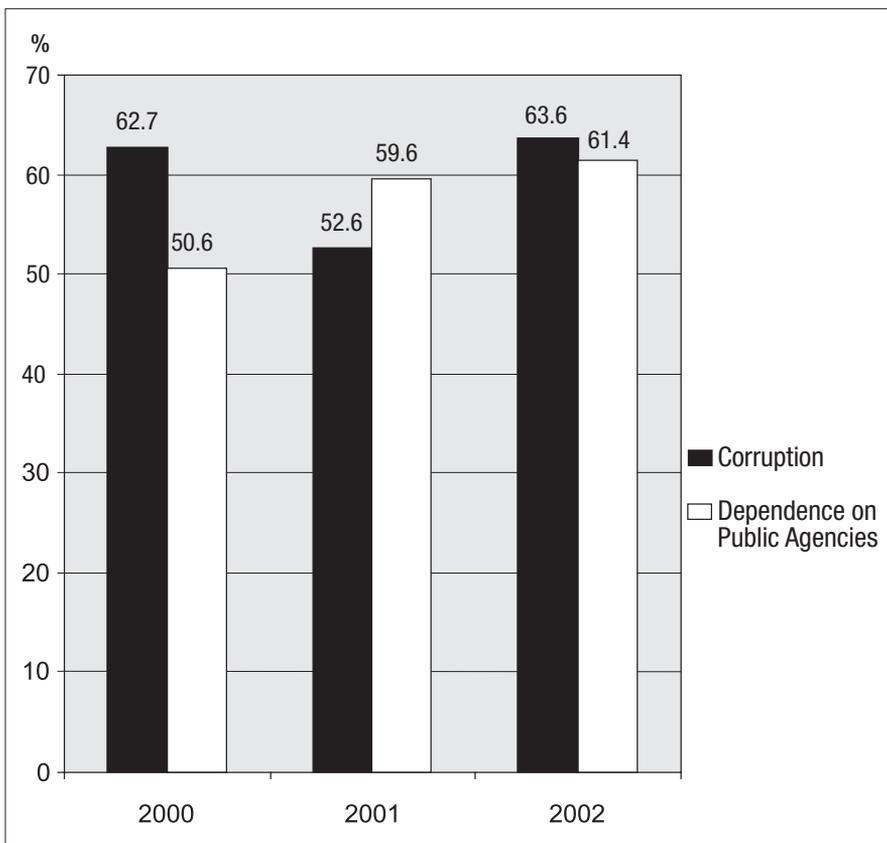


Figure 1. Primary obstructing factors for development of business (source: survey for businessmen).

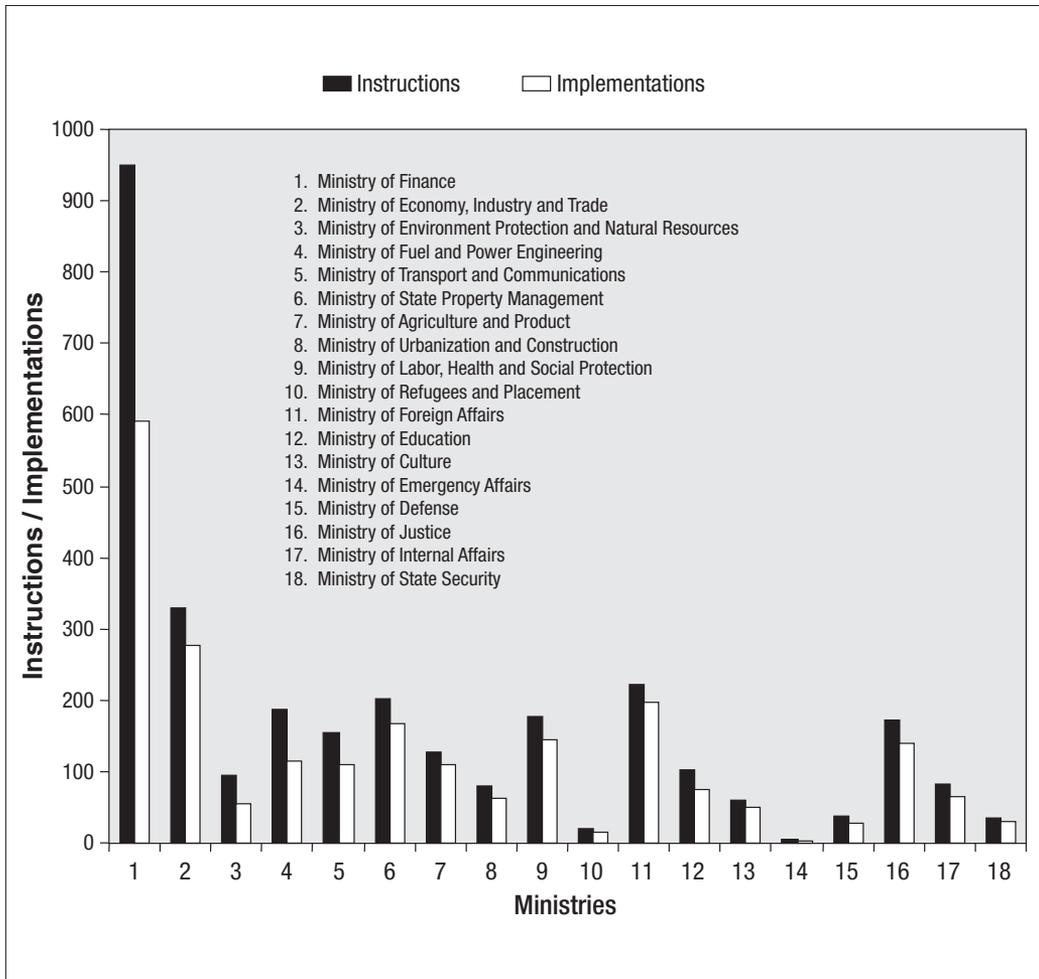


Figure 2. Implementation of instructions in Ministries (January 1, 2003).

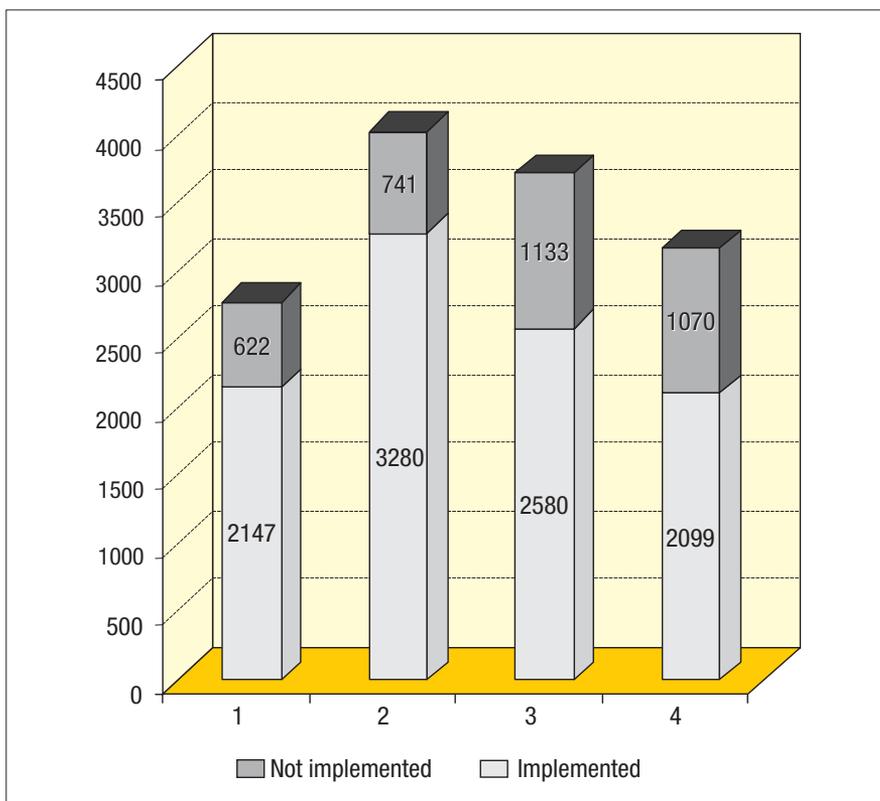


Figure 3. Dynamics of instructions for governmental structures during 1999–2002.*

Instructions issued during the first 6 months of the current year amount to 85.2% of last year's instructions. 2,299 were implemented, which is 1.5 times more than a year before, but still the percentage of implemented instructions has sunk. In 28.6% of the cases, the designated execution time was extended.

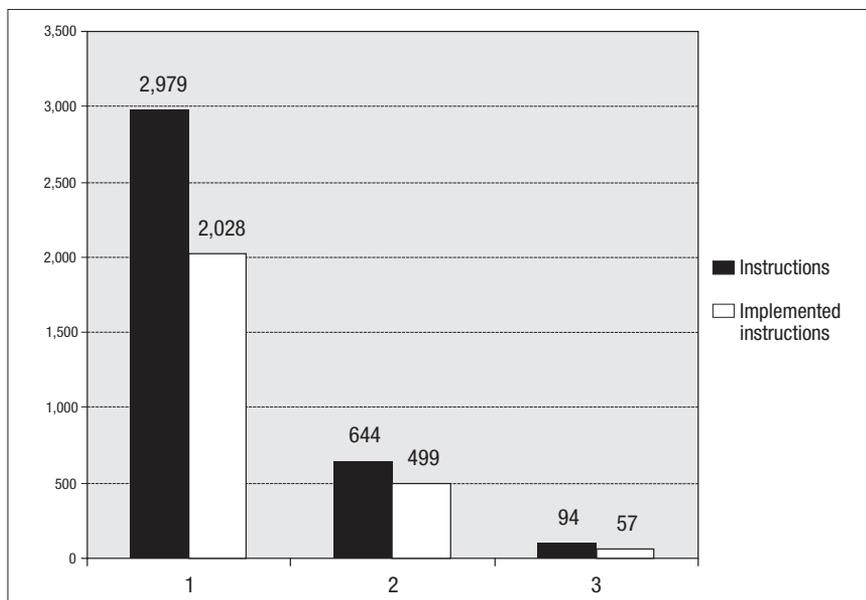


Figure 4. Implemented instructions in ministries, other agencies and governmental commissions (1.01.2003).*

* Source: research conducted with prof. Gela Grigolashvili

- 3,855 instructions were supervised by the State Chancellery. 20.4% of them were related to economic issues, from which 9% to financial-credit policy, functioning of economy and budgetary control.
- 11.5% of the instructions were related to culture, education and science, 7.5% to health and social welfare issues, 4.9% to defense, justice and corruption issues, etc.

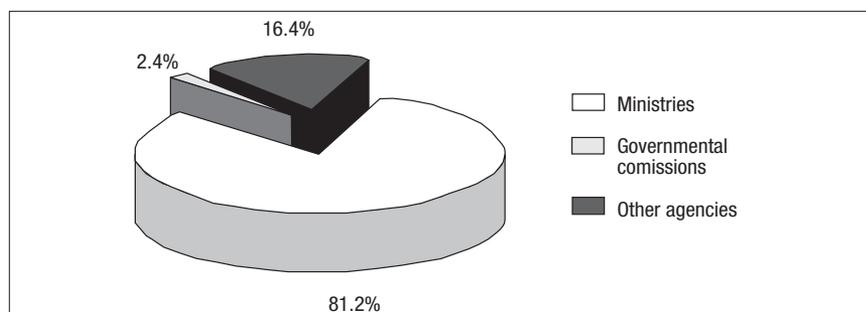


Figure 5. Instruction performance rate of all accomplished tasks of ministries, other agencies and governmental commissions (July 1, 2003).

Owing to the low volume of cases, the satisfactory performance of governmental commissions does not improve the poor overall situation. However, improvements in management and the determination of the leaders of institutional level give hope of a successful reform of the governmental management system.

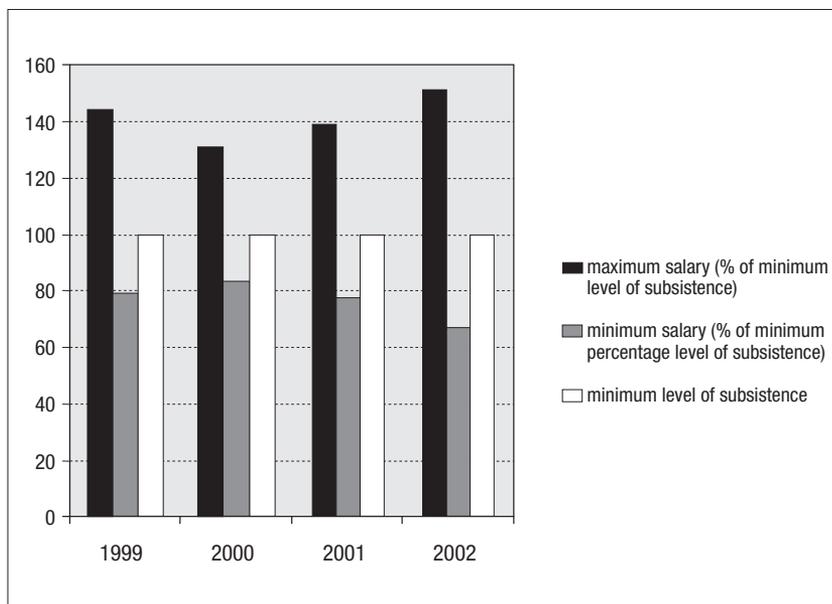


Figure 6. Maximum and minimum salary of public servants compared with minimum level of subsistence.**

** Source: research conducted with Lali Gigashvili

Recommendations

1. To achieve radical improvement in the coordination of executive governmental agencies, a coherent action plan—national social/economic development strategy should be developed.
2. The structuring of executive governmental agencies should be implemented in line with the national development strategy. This would, on the one hand, orient the agencies to solving existing problems and, on the other hand, stabilise operations and prevent functional overlaps and duplication.
3. When forming executive governmental structures, one should take into account EU requirements associated with the efficiency, transparency and cost-effectiveness of governmental structures.
4. Institutional-level agencies of executive branch should focus on conceptual issues, associated with policy implementation, action planning, prognostication, monitoring and the like. They should altogether relinquish economic functions which should be delegated to lower-level structures (regulatory agencies, legal entities under public law).

5. Within the executive branch, a strict control of sub-institutional agencies should be ensured. The need of such agencies should be determined by the following principle: how effectively can they assist the superior agencies in achieving their goals and objectives. Performance of public agencies and public servants should be measured by clearly defined criteria (Efficiency, Effectiveness, volume of work).
6. To ensure the introduction of modern governance approaches to executive governmental agencies, as much power as possible should be delegated to lower levels; in addition, job descriptions and job requirements should be prepared in accordance with the new organisational techniques; all this requires the introduction of a brand new role-based organisational discipline.
7. All executive governmental agencies should focus on the improvement of staff management procedures and practices that meet modern requirements. In particular:
 - all decisions on the recruitment, testing and promotion of staff should be based on job descriptions, job requirements and clearly defined procedures;
 - staff training and retraining needs should be assessed in accordance with the requirements of specific jobs;
 - some objective criteria for staff evaluation and promotion should be specified;
 - a database of actual public servants and reserves should be compiled;
 - radical steps should be taken to improve the quality of staff managers.
8. An effective incentive system for public servants should be developed. Adequate financial reserves for this could be found. Specifically, the legal framework for the effective use of non-budgetary incomes should be improved.
9. To overcome the existing shortcomings in financial and economic sectors, the budgeting process should be based on target funding.
10. To ensure consistency of the reform of the executive branch, the functions and responsibilities of the Public Service Bureau, which is a structural unit of the State Chancellery, should be redefined.
11. To ensure the proper operation of the executive branch, its legal and regulatory framework should be improved for the purpose of consistency and harmonisation of all legal acts with each other and with current developments.

References

- Georgian-European Policy and Legal Advice Centre. 2002. Georgian Economic Trends. *Quarterly Review*, no. 1:9–10.
- Kaufmann, Daniel. 2001. “New Empirical Frontiers in Fighting Corruption and Improving Governance – a few selected issues.” Background comments and empirics for *OSCE Economic Forum 2001*, January 30–31; available from www.worldbank.org/wbi/governance/events/2001.html.
- Schneider, Friedrich, and Dominik Enste. 2002. Hiding in the Shadows: The Growth of the Underground Economy. *Economic Issues*, no. 30 (April 2002). Washington D.C.: International Monetary Fund; available from <http://www.imf.org/external/pubs/ft/issues/issues30/index.htm>.
- The State Department of Statistics of Georgia. 2000. *Entrepreneurship in Georgia*. Tbilisi: The State Department of Statistics of Georgia.
- The State Department of Statistics of Georgia. 2001. *Entrepreneurship in Georgia*. Tbilisi: The State Department of Statistics of Georgia.
- Transparency International. 2000. *Annual Report 2000*. Berlin: Transparency International.
- Transparency International. 2003. “Nine out of ten developing countries urgently need practical support to fight corruption, highlights new index.” Statement by Peter Eigen, Chairman, Transparency International at the Foreign Press Association, London, 7 October; available from http://www.transparency.org/cpi/2003/cpi2003.pe_statement_en.html.

Representations of Organised Crime in Estonian Printed Media

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Abstract: This discourse analysis of newspaper publications over a one-year period on organised crime provides an insight into the ways in which the media constructs the said phenomenon. It reveals that organised crime is being presented as an extremely dangerous social phenomenon existing outside the community and state of Estonia. In the available publications, the existence of a large Mafia-type criminal organisation in Estonia is taken for granted. However, the idea of organised crime and criminals is strongly associated with the ethnic background of those involved in crime. The prevalent presentation of the phenomenon of organised crime in mass media is characterised as an alien conspiracy.

Introduction

Since the late 1980s–early 1990s, the problem of organised crime has been widely discussed. With the fall of communism the world faced a novel situation where there were no more clearly defined enemies. Paddy Rawlinson points out that “the end of the Cold War and the opening up of borders in the former Soviet Empire spawned a new area of international concern, that of global/ organized/ transnational/ cross border/ crime. The variety of terms betrays a lack of consensus (and, arguably, understanding) as to the nature of this new menace while the response to it displays an interesting homogeneity. . . . Organized crime has replaced Soviet communism as the new enemy of democracy and free market” (Rawlinson 2002: 295). Despite the ambiguity of the concept (or probably due to it), the amount of financial, intellectual etc resources channelled to study and combat this phenomenon was—and still is—enormous. Numerous commissions, conferences, international journals, think tanks, special foundations and institutions—all resources have been committed to this new “war”. In just a few years, Russian organised crime has become as famous as Sicilian Mafia or La Cosa Nostra.

As a rule, analytical papers try to solve the ambiguity of the given concept by providing a suitable phrase expressing the essential nature of organised crime. This has resulted in numerous new definitions and has compounded the confusion. Letizia Paoli (2002), discussing the paradoxes of organised crime emphasises that the concept of OC incorporates two notions: the provision of illegal goods and services on the one hand, and criminal organisations on the other.

According to her, what is more important is that these notions are superimposed, which produces an ambiguous, conflated concept.

In Estonia, a criminal alliance is defined as a collusion of “a stable group of three or more persons with division of labour, associated for the purpose of committing offences of the first and second degree”. This legal definition enables the law enforcement bodies to target at small-size and loosely organised illegal enterprises as well as members of big criminal organisations. Since the introduction of the definition in 1996, there has been only one case where a group of people was prosecuted for establishing and belonging to a criminal alliance. In 2001 a group engaged in trafficking in stolen cars from Europe to Estonia was brought to justice. Although there previously had been several attempts to charge groups under the criminal alliance clause, this was the first time that sufficient evidence was collected to actually do so. It is also worth mentioning that the said alliance included both law enforcement officials and car thieves.

Although organised crime is defined as a criminal enterprise by Estonian law, rather than a conspiracy of aliens, media discourse paints quite a different picture. The case discussed above generated several newspaper articles. While the official presentation of the news was rather neutral, the comments demonstrated disagreement with such an understanding of organised crime. An excerpt from a Päävaleht article below serves as an illustration of the point:

ESTONIAN MAFIOSI

Since yesterday there have been three persons in Estonia who you can call Mafiosi without the fear of being sued for libel. Who are they, the first Estonian Mafiosi?

Let me introduce to you, Merike Soots: a young woman, a border guard who, driven by banal greed, helped some rogues for 10,000 kroons to bring stolen cars over the border. In all other respects, she is a respectable family person, mother of two.

Hillar Grünbaum: For years, he was a medium-calibre actor in the world of criminals. He contrived a simple scheme, based on clear and direct bribing of a senior border guard.

Margo Liiva: an errand-boy of the former, who did not need to do any thinking himself.

Do they really befit the image of organised crime? Ironically, the capture of these small-time offenders is considered a manifest achievement of the police and the court. Seemingly, to reach high, one has to start from the lowest rung of the ladder....

(13 December 2001)

The author of the newspaper article evidently disagrees with the idea that either a “respectable family person”, “mother of two”, a “medium-calibre actor” or an “unthinking errand-boy” could be considered organised criminals. The question follows: what kind of image of organised crime and criminals does the Estonian mass media have?

Discourse analysis

The most appropriate method of looking for meanings of organised crime in the printed news is the discourse analysis. The term 'discourse analysis' is connected to a variety of approaches, but all of them share one common feature: discourse analysis rejects the idea that language is a neutral means of reflecting the reality. Instead, it holds that discourse has pivotal importance in constructing social life (Gill 2000). As said by Gill, "it is useful to think of discourse analysis as having four main themes: a concern with discourse itself; a view of language as constructive and constructed; an emphasis upon discourse as a form of action; and a conviction in the rhetorical organisation of discourse (ibid. 174)." Discourse analysis is not interested in finding out "how things really are". Instead, it looks for answers to different questions. In case of the above-mentioned article, the author is not interested in what organised crime and criminals really are, but what they are not. The more important question, however, is how organised crime is constructed in mass media, and what is meant by organised crime.

According to van Dijk (1989a), news represent a special kind of discourse. Traditional content analysis of texts concentrates on economical, political, social or psychological aspects of text processing. This orientation allows the identification of factors involved in the processes of news production and reception, as well as those influencing the news messages. In such an approach, attention is paid to the message itself, in so far as it provides information about the different contexts of its usage. The discourse analysis, in contrast, concentrates on the core of the process of mass communication. All media texts, and news texts in particular, are analysed as a special case of language use and a special kind of text. It means that news should be analysed from the point of view of its organisation. This analysis, alongside with the linguistic analysis of morphology, syntax and semantic structures of words and phrases, involves more complicated analysis of relationship between sentences, general schematic structure of the whole text, rhetoric, and style. And since discourse is not only a textual structure but a more complicated communicative act (phenomenon), the analysis of news discourse should also include the social context of communication actors and the process of news production.

In an approach like this, many factors and conditions of the production of mass communication (such as the economic context or institutional procedure of news production) could be brought into association with various structural characteristics of texts. This holds true also with the process of how news are perceived. How news are understood, memorised and reproduced should be studied by taking into account the textual and contextual properties of the communication process.

The newspaper discourse, like other genres of discourse, should be analysed at different levels. Such properties of texts as word order, clause structure, sentence meanings, local coherence, global topics, lexical style, semantic moves, disclaimers, metaphors, levels and completeness of descriptions and so on,

should be taken into account. It is clear that all categories cannot be addressed in one go. The most important question is what structures should be attended to within the limited framework of one project. The choice of categories primarily depends on the research question, and the problems and aims of the project. (van Dijk 1998)

The problem and categories of analysis

As mentioned before, the choice of structures to be analysed depends on questions one wishes to answer. My goal is to understand the meaning of organised crime as presented in Estonian newspapers. Another issue under scrutiny will be political corruption. In recent statements of high-level Estonian law enforcement officials it has often been suggested that in Estonia, organised crime has attained a new level of development: the metastases of organised crime have now reached politics and legal business. Analysis of how these processes are understood and presented by the mass media contributes greatly to the understanding of the image of organised crime in general.

Obviously, within the framework of one project, only a few structures can be analysed. In this paper I will focus on such categories of analysis which deal with meaning, and are general enough to characterise the discourse as a whole. These include the analysis of topics, lexicalisation, and the analysis of rhetorical devices (metaphors, hyperboles, euphemisms, irony etc.)

Topics. Topic is defined as the general proposition that constitutes the global meaning of a text. Topics represent what the writer (member of a dominant group) regards as the most important theme of the text. The main topics determine, in broad outlines, how people understand and remember the text. Topics influence the agenda, i.e. what people think and talk about. (van Dijk et al. 1997). The research of the structure of discourse (van Dijk 1989b) has shown that the lead and heading of a newspaper article often contain/summarise the most important information in the text. Previous research based on analysis of topics has demonstrated that topics express and reproduce major stereotypes (van Dijk et al. 1997).

Lexicalisation. One thing that can be quite easily examined is the lexicalisation of the underlying conceptual meanings. The words chosen to describe organised crime, its members and actions immediately reveal properties of discourse. Whether the group of criminals is described as “gang”, “network”, “criminal enterprise”, “Mafia”, or just “tumour” refers bluntly to the understanding and models of organised crime in discourse.

Rhetorical devices. As van Dijk (1998) suggests, rhetorical structures “regulate effective comprehension and especially opinion formation and change”. Rhetorical devices such as metaphor, irony, etc are designed to call attention, help memorising author’s point of view, and in this way, change people’s minds. Similarly to the choice of words used to describe the organised crime phenomenon, rhetorical devices contribute heavily to the construction of meaning. Since metaphors and other rhetorical features do not appear in every sentence, this kind of analysis is appropriate when analysing large fragments of discourse.

Sample

Using the search engine of the on-line version of the daily *Päevaleht*, I selected all newspaper texts where the keywords “organised crime” (organiseeritud kuritegevus), “underworld” (allilm, allmaailm), “Mafia”, “criminal alliance” (kuritegelik ühendus), “gang” (jõuk), “grouping” (grupeering) appeared. After sieving the material obtained, 195 newspaper articles were selected for analysis. Not all of them had organised crime as their main topic, but all of them gave some consideration to the theme. The articles where the organised crime-related words just appeared in a list (for example, “After re-gaining independence Estonia has faced several problems like unemployment, inequality, organised crime etc”) were excluded from the sample, as were articles that discussed organised crime abroad. Although being aware of the fact that any discussion on organised crime could contribute to the construction of the phenomenon, we decided to exclude the said texts for two reasons: Firstly, our aim was to deconstruct the meaning of organised crime in Estonia and, secondly, we wanted to reduce the amount of material to be analysed by assessing and weighing it from the viewpoint of quality. Eventually, 104 articles were approved for analysis.

Articles on organised crime appeared regularly. Some of the events like apprehension of law-breakers or gang trials were reported in one or two articles, while others triggered a series of writings. Most often such series of articles addressed the issues of corruption. The cases which aroused keen interest among the public are especially rewarding to the researcher, and worth studying in greater detail. The material available being rich, we decided to limit the question and concentrate on examining how organised criminals were constructed in the selected articles.

Three series of articles were selected for the analysis at hand. Firstly, the series on links between the Tallinn City Administration and the St. Petersburg organised crime; secondly, the articles dealing with the murder of the businessman Vitali Haitov. Although different, both series have similar features: persons involved are prominent businessmen, allegedly tainted by their affiliation to organised crime; some politicians are referred to in both cases. The ethnic background of the actors is, however, different. The third series of articles was set off by a paper on organised crime by the leading expert in Estonia, Director of the Board for Security Police (in Estonian KAPO).

“The notorious Lao sets a trap to his buddy Mõis”: articles concerning the links between organised crime and the Tallinn City Administration

The first of the selected series (13 articles in total) started with an article titled “FBI: Lao is a middleman of St. Petersburg’s underworld” (EPL 21 April 2001). In contrast to the series of writings on Vitali Haitov’s death, to be discussed later, the first article in this series was an outcome of investigative journalism, rather than information casting light on the event. The events described took place in March 2001, and the article was published in the end of April 2001. The said article, an event in itself, will be studied in greater detail; in order to understand what

a story recounts, its discourse structure needs to be analysed (Bell 1998; van Dijk 1985).

FBI: Lao is a middleman of St. Petersburg's underworld. The Reformist Party finds that Mayor of Tallinn, Jüri Mõis, should resign if the data provided by the FBI, alleging that Mõis' bosom friend Meelis Lao is the stooge of St. Petersburg organised crime in Estonia, should turn out to be true. (21 April 2001)

The lead and heading of a newspaper article are used to express the main theme or topic of the text (van Dijk 1985). As suggested by van Dijk, if there are several topics, the one that is most important or most recent is expressed in the heading while others are presented in the lead. (van Dijk 1985, 242). The message of the topic in the above piece of writing is that the FBI has information on Lao's connections with the St. Petersburg organised crime. The lead adds political dimension to this information. The reader learns that Lao is a good friend of Mõis, Mayor of Tallinn. The lead also refers to the subsequent action (also called the follow-up), i.e. what should be or will be done in the future as a consequence of the given event. This idea is further emphasised in the comment (direct quotation) of the Head of the Tallinn City Council, supporting the resignation of the Mayor, provided the FBI information should be found true. The main idea behind the resignation is actually the innuendo that the Mayor of Tallinn has connections to organised crime or, in other words, to political corruption. However, this innuendo is not expressed explicitly. Instead, by excluding the topic of Mõis' resignation/corruption from the headline, the main attention is turned to the question of Lao's possibly criminal background.

The thematic structure of the article helps to reconstruct what the story says. Thematic structure is a set of formally or subjectively organised topics. Each section of the newspaper text is organised around these topics. The reader learns that during his visit to the USA in March 2001, the Estonian Minister of the Interior received information about money laundering and economic activities of the St. Petersburg organised crime in Estonia. According to that information, the connections between the Tallinn City Administration and organised crime had made those murky activities possible. The person who allegedly had helped to establish contacts between the City Administration and the organised crime was Meelis Lao, buddy of the Mayor of Tallinn. The Minister did not inform the Government about the issue.

The text of the article does not always follow the linear structure of the topics. Instead, journalists assign different relevance value to each of the topics. This relevance is reflected in the order in which the topics appear in the text (van Dijk 1989b, 246): the later a topic appears in the text, the lower relevance value it has. In this particular text, topics appear as follows:

- a) Organised crime is involved in large-scale real estate operations in downtown Tallinn
- b) FBI's warning should be taken seriously
- c) No government official wanted to comment on the issue
- d) Minister claims he did nothing wrong when (not) processing / forwarding the FBI information
- e) Minister claims no particular names were discussed.

- f) There is no official FBI report on the issue
- g) Meelis Lao claims the information is a slander (libel)
- h) Pro Patria party (the one the Mayor of Tallinn belongs to) believes what the Minister says.

The first two topics, (a) and (b) are newspaper commentaries or additions to the main event. The general information about the economic activities of organised crime is supplemented by providing more precise description of the organised crime activities in the real estate sector (a). The next comment regarding the seriousness of the FBI information (b) actually further stresses the topic presented in the lead. Lower in the hierarchy are topics concerning the official reaction to this information. Topics (c)–(f) elaborate on the Minister’s vacuous reaction. In no uncertain terms, the Minister is being accused of “shielding” Mõis. The Minister’s explanation of the usual procedure of recording and forwarding the content of formal talks is presented (d), by which he claims that he did nothing wrong. Additionally, he claims no particular names were discussed (e) during his meeting with the FBI officials. This paragraph explicitly expresses the idea that the information presented in the newspaper article is not true. Further on, in the last paragraph (h), an official representative of the Pro Patria party claims they “trust what the Minister says”. This is quite intriguing, because what is actually believed is the implicit message.

It is worth noting that the idea of Mõis’ resignation, or in other words, of Mõis’ connection to organised crime, does not appear anywhere in the text except for one sentence in the end of the article, where it is mentioned that Mõis was not available for a comment.

Significant for this article is the use of sources. The story has an author by-line. The heading attributes the information to the FBI, but there is no indication that information was directly received from the FBI. All in all, the following sources of information or comments can be identified in the text:

- FBI
- Director of FBI
- Head of the Tallinn City Council
- Anonymous governmental source
- Police source
- Minister of the Interior
- Public relations officer from the Ministry of the Interior
- Meelis Lao (the alleged OC figure)
- Head of Tallinn Chapter of the Pro Patria party.

Each claim made in this article is attributed to some source. Such precise and even obsessive indication of sources makes sure that each claim presented in the article has a strong factual basis (asserts that the information is genuine). All sources mentioned (probably with the exception of Meelis Lao) are incumbent officials, holding high positions. As already mentioned, the core story is attributed to the Director of the FBI. The newspaper writes that the Director “drew the Minister’s attention”, “mentioned”, “warned” about the issue. The selection of

verbs is characteristic to informal advice, rather than to official statement. Direct quotation is not used, which implies that the journalist did not get the information “straight from the horse’s mouth” (the FBI), but via other channels, which is further indicated by the phrase “according to *Päevaleht*’s data”.

Perhaps the excessive reference to supporting claims seeks to make up for the weakness of not having direct FBI reports. The seriousness of the primary statement is underscored by providing background information on the authority of the FBI Director, who is “number four figure in the USA” and “if he draws attention” to an issue, “the matter is volatile”. Moreover, the expertise of the USA source is emphasised not only by the journalist herself, but by additional reference to an anonymous “police source”.

The Minister of the Interior is given a much stronger voice when compared to the suggestive character of the FBI claims. First, he is quoted directly. Second, while commenting on the issue, he “assures” the journalist (and through direct quotation also the reader) of the correctness of his actions during and after the visit to the USA. The minister also “stresses” that concrete names—implication to “Lao”—were not specified.

As a follow-up to this article we have an opinion of a high-ranking politician (representative of the Reformist party), that the Mayor of Tallinn, Mõis, should resign. Follow-ups usually concern the future, and state the consequences of an event, or an opinion of “what should be done”. As Bell notes, a follow-up is a prime source of subsequent updating of stories, that themselves are called ‘follow-ups’ by journalists (Bell 1998: 69). As I will show later, several subsequent publications were concerned with Mõis’ resignation.

On the same day, the newspaper published a comment by another expert, Koit Pikaro, the former Commissioner of Police. This comment was not included in the article “FBI: ...” but was presented as a separate piece. It is worth pointing out that the Estonian mass media hails Koit Pikaro as a legendary figure in the law enforcement landscape. Formerly the Vice-Director of the Central Criminal Police, he is considered a lone fighter against organised crime. Such a status is highly valued among the public, and explains why Pikaro, and not some incumbent police official, was asked to comment on the event. Pikaro confirmed the FBI information and stressed that this was not the first time that suspicions regarding the connections between Meelis Lao and the leader of St. Petersburg’s organised crime had been aroused. The latter’s nickname is Mogila (‘grave’ in Russian). By calling the organised crime figure by his nickname, and thereby adding savour to the whole story, Pikaro demonstrated sophisticated knowledge of the subject. Pikaro, however, refused to comment on the question whether or not Mõis could be linked to organised crime.

In sum, the article makes claims of a political corruption case and stresses the credibility and importance of such a statement by referring to high-ranking authorities. However, the accusation is made in a clear-cut fashion. This “not beating about the bush” makes it possible to shift the focus from links between the Mayor of Tallinn and organised crime to the question of whether the information about criminal links of Meelis Lao is valid or not. The follow-up articles pursue both possible tracks. Articles discuss the issue of resignation, but at the same time weigh the (in)validity of the information about Meelis Lao’s criminal background.

The headings of articles, which to some extent trace the “resignation” path, are listed below:

TALLINN CITY ADMINISTRATION DID NOT DISCUSS THE ACCUSATIONS AGAINST MÕIS. (23 April 2001)

PRO PATRIA DECIDES MÕIS SHOULD CONTINUE AS MAYOR OF THE CITY. (23 April 2001)

PRO PATRIA WILL NOT DISMISS MÕIS BY DEFAULT. (23 April 2001)
COALITION PARTNER INITIATES MÕIS’ RESIGNATION (3 May 2001)

Especially interesting are the articles that shift attention from Mõ is to Lao, the alleged puppet of organised crime:

MEELIS LAO – MAFIOSO OR BUSINESSMAN? (26 April 2001)

Despite the high credibility of the sources of the original allegation (FBI, government source, police source, and legendary former police commissioner), referred to in the first article, the subsequent articles downgrade this information by explicitly expressing disbelief. Mõ is is the first one to voice doubts.

JÜRIMÕIS DOES NOT BELIEVE THAT LAO HAS LINKS WITH MAFIA (23 April 2001)

In addition, the authority of the FBI is overruled by two even higher authorities (as if one would not have been enough), i.e. by two Estonian Ministers who downplay the importance of the FBI report:

TWO MINISTERS DO NOT CONSIDER THE REPORT ON LAO AS IMPORTANT. Minister of Justice Märt Rask and Minister of Social Affairs Eiki Nestor do not regard the report concerning the Tallinn City Administration’s alleged connection with organised crime as important. (24 April 2001)

In the whole series of articles, the juxtapositioning of “us” and “them” is conspicuously outstanding. “Us” are represented by concrete figures: ministers, politicians, and Mayor Mõis. Mõis’ personal qualities, both those of a politician and a successful businessman, are repeatedly highlighted. In addition to these “tokens of success”, by which Estonians assess the man’s achievements, his inner positive virtues such as the capacity for friendship (“a buddy of Mõis”) are presented. Mõis is referred to as a victim of the developments, unbeknown to him:

The notorious Lao sets a trap for his buddy Mõis. (24 April 2001)

“They” are vaguely represented, described in general terms of “organised crime”, “underworld”, “Mafia”. Only one trait is disclosed—“they” are from St. Petersburg, they are the “Russian organised crime”. The only exception is the nickname “Mogila” (‘grave’) of an organised criminal. This macabre *nom de plume* aside, the reader learns nothing about the said underworld figure.

Between these clearly marked borders, between “us” and “them”, is the person whose true identity remains a mystery, Meelis Lao. The question about his stature is stated point-blank: “Meelis Lao—Mafioso or businessman?” Implicitly, however, Lao is presented as one of “us”. He is characterised as “notorious” rather than criminal. Newspaper reports abound in reference to his high social position: the prominent businessman Hannes Tamjärv and the Mayor of Tallinn Jüri Mõis are his friends, his legitimate annual earnings are about one million Estonian kroons (well above the average), he receives fixed income from shares he holds in businesses, he is unable to remember how many cars he has had over the past ten years. The phrases “sinewy, light-haired sportsman” with “strong chin” allude to his sporty appearance, in stark contrast to the standard definition of Russian “mug-headed” (derivative of “mugger”) racketeers. As Meelis Lao is identified as one of “us”, he is also cleared of suspicions regarding his criminal behaviour. The tacit inference is that his friendship with Mõis is not a problem, really, and that there is no evidence of political corruption.

Before moving to the next group of articles, I would like to point out that here, “political corruption” is used to refer to alleged relationship between the city administration and organised crime. The word “corruption” is not mentioned in any of the 13 articles, which as such is interesting.

“It’s like soap opera”: Murder of Vitali Haitov

The second group of articles slightly differs from the first one, evolving around high-ranking officials’ statements on organised crime. The articles analysed in this section are concerned with the murder of a media businessman, Vitali Haitov on 10 March, 2001. The tentative analysis revealed that a subset of articles related to Haitov’s death did not contain the original news about the murder. Therefore, additional selection was made from 2001 Eesti Päevaleht publications. This time “Haitov” was used as the keyword. The search resulted in 11 additional articles. The newspaper published 23 articles in total to cover the event.

This gangster-movie-like event would be extremely attractive to any journalist. In 2000, one year before the assassination of Vitali Haitov, his son Marian Haitov was killed. The crime went unsolved. From the very beginning, the two deaths were associated; it was claimed that even the motives coincided:

VITALI HAITOV MURDERED YESTERDAY. Yesterday afternoon an offender not yet apprehended shot Vitali Haitov in front of his home, killing him. The victim, whose son Marian was murdered in spring last year was a publisher, head of the Vesti media group [...]. (12 March 2001)

EDITORIAL: BLOOD OF BUSINESSMAN HAITOV. It is too early to make conclusive statements concerning the motives for the murder of an eminent Russian businessman Vitali Haitov. However, the reason for his murder could be that he was too close to dispel the murky shadows obscuring the mystery of the murder of his son, Marian, in April last year. (12 March 2001)

ACCORDING TO POLICE DATA, THE UNDERLYING REASON FOR KILLING BOTH MARIAN AND VITALI HAITOV FOLLOWS THE SAME RATIONALE. (13 March 2001)

The murder was immediately put into the context of organised crime. Although the headlines did not explicitly reveal any linkage between these murders and organised crime, in the following texts the association was made. This was done in two ways. When describing the background of the two victims, the press claimed that they had had connections with organised crime. The following quotation serves as an example:

“However, until the end of last year Haitov, who held the position of director of the underworld-related Russian Cultural Centre, was involved in never-ending conflict with media business” (Editorial: Blood of businessman Haitov, 12 March 2001)

The majority of publications devoted to that event described the crime scene, played back Marian Haitov’s murder in 2000, deliberated on suspects etc. Two articles, however, looked at the organised crime (Mafia) phenomenon in general. One of them, published 5 days after the murder, mentioned Haitovs’ name in the lead, unequivocally relating them to Mafia.

WHAT IS MAFIA? We talk about the Haitovs and the other dénommé businessmen of Jewish descent, sporting Russian names, and call them Mafia. This is just rubbish. Do we have an inkling of what Mafia is? (15 March 2001)

The prevailing theme of the article is nicely presented in the title, and repeated in the last sentence of the lead: it sets out to define Mafia. The missing “correct” understanding of Mafia is contrasted with the entrenched idea of what “we” mean by Mafia: “the dénommé businessmen of Jewish descent, sporting Russian names”, father and son Haitov serving as an example. In the lead of the other article, one notices that once again the two murders are mentioned in the context of general discussion about Mafia. No arguments, no proofs are presented. Haitovs’ affiliation to Mafia is regarded as an obvious fact.

WHY DO WE LIKE MAFIOSI? It is a catastrophe when in one family father and son die within one year, a 9-year boy deprived of father and grandfather, in a series of related dramatic events. For the Haitov family it’s a tragedy. For someone else, it is a standard solution to a problem. For media, the unsolved murder cases are just means to boost circulation and gain profit. For the public it provides interesting reading material. It’s like a soap opera. (15 March 2001)

The topic re-appeared in the newspaper again in August, when two suspects were arrested and charged with murder.

POLICE CAUGHT SUSPECTS OF VITALI HAITOV’S MURDER. (3 August 2001)

LITHUANIAN NEWSPAPER: SUSPECTS OF VITALI HAITOV'S MURDER ARE PERMANENT RESIDENTS OF LITHUANIA (7 August 2001)

HAITOV'S MURDERER WAS CHARGED WITH CRIME (9 August 2001)

Eventually, the motive for both homicides was claimed to be the stock of the Russian language newspaper *Estonija*:

ESTONIJA'S SHARES PROVIDE MOTIVE FOR HAITOV'S DEATHS (24 August 2001)

Estonija's stock was acquired by Gennadi Ever, a local politician, and member of a political party associated with the Russian-speaking population. Due to Ever's personality, the murder was again linked with organised crime. Being the one who benefited from Haitov's murders, Ever was implicitly accused by the newspaper long before he was officially charged. In two articles focusing on Ever's background, his ethnic roots were especially stressed. In both cases, Ever's nationality was revealed already in the headline.

GENNADI EVER ALIAS GENNADI GRIGORJAN - UNOFFICIAL BIOGRAPHY (24 August 2001)

TRANSITION FROM SHISH KEBAB BAR TO SEAT OF MEMBER IN THE CITY COUNCIL (20 September 2001)

The first headline tells the reader the "authentic" name of Gennadi Ever. One learns that Ever comes from Armenia. The second title reveals how Ever started his career. The shish kebab bars in Estonia are often operated and visited by Georgians, Armenians, or Azerbaijanis. As a rule, the places are small, far from resplendent, and tend to have a shady reputation. The reference to a person working in a shish kebab bar is likely to produce an association of a fishy stranger.

Later Gennadi Ever was arrested as a suspect in Haitov's death, but was eventually released. Ever's arrest was used as a proof of what the newspaper had earlier called "Pihl's exceptional statement about the involvement of organised crime in politics" ("Underworld fastens its grip", 24 May 2001).

IS THE CONNECTION OF UNDERWORLD WITH POLITICS NOW PROVED? (20 September 2001)

Thus Haitov's deaths and the subsequent events are linked to another series of publications, the analysis of which is necessary if we wish to understand how the meaning of "organised crime" is created.

"Carcinoma is growing deeper": statement of Director of Security Police on organised crime

The series started with the publication of a full-length analytical paper by the Director of the Estonian Security Police, Jüri Pihl, titled "Security Risks Jeopardise Economy and Businesses". The article is uncommonly long (over 3,000 words)

for newspaper format. The style and structure of the article are also unusual. The paper was prepared to be delivered at the Conference on Security of Enterprise, held in Pärnu, Estonia 3–4 May 2001. The newspaper, however, provided a specific angle to its publication:

JÜRI PIHL'S REPORT ON INVOLVEMENT OF CRIME IN POLITICS. (24 May 2003)

Pihl's paper mainly deals with organised crime in Estonia as a security risk. It discusses many aspects of organised crime like drug trafficking, smuggling of alcohol, tobacco and oil products. It also discusses corruption, the investments of organised crime in legal economy and white-collar crime, political corruption, and money laundering. Due to its format, the paper itself will not be discussed here. However, the title of the publication was chosen by the newspaper with a specific purpose in mind, and therefore deserves closer attention. Involvement of organised crime in politics was the only theme (accounting for only 12% of the space of the report) the daily picked from several possible alternatives. Follow-ups on Pihl's paper mostly discussed the seriousness of the given problem and the correctness of Pihl's claims. They, too, were solely concerned with the involvement of organised crime in politics. Later that year, however, on 13 September 2001, in the wake of the September 11 terrorist attacks in the USA, another part of Pihl's report was published: his evaluation of the risk of terrorism threat in Estonia.

Here is the heading and lead of the Päävaleht editorial published on the same day as the first report:

UNDERWORLD PENETRATES DEEPER. The development of the criminal world and the society have progressed neck and neck. This cancer spreads deeper and wider, the proof to it being Jüri Pihl's sensational statement in today's Eesti Päävaleht, boiling down to the plain assertion that the criminal world has penetrated into politics of Estonia. (24 May 2001)

Since the article is an editorial, the first in a chain of publications, it will be analysed in greater detail. Its topics are presented as follows (arranged in chronological order)

1. Organised crime emerged in 1980s; at that time, its main business was racket
2. Estonia re-gained independence, legislation and economy were put in place
3. Organised crime accommodated itself to the new economy due to loopholes and lacunae in legislation
4. Organised crime attained its financial objectives, developing a smoothly operating system
5. Some prominent businessmen became cover-ups (puppets whose function was only nominal, to cover someone else's activities—"tankist" in Estonian) for organised crime
6. The need for corruption emerged for OC to function
7. Criminal world took one step further: penetration into politics

8. Penetration into politics was effected through politicians, active in financing
9. The emergence of criminals on political scene jeopardised constitutional order
10. The linkage of organised crime and politics undermined Estonia's credibility abroad
11. Possibility of sudden changes and the consequent uncertainty reduced the flow of foreign investments
12. Instability started to endanger the joining of Estonia to Western economical and security structures

Organised crime as presented here by using the expression “criminal world” suggests the size and complexity of the phenomenon. Again, “otherness” is accentuated: “our” society is contrasted with the criminal world. The editorial is built as an overview of the history of organised crime in Estonia. Basically, it says that organised crime has succeeded in getting the upper hand in all sectors of social life, and has now come close to the top—the level of politics. Especially interesting are topics 9–12, focusing on threats organised crime poses to Estonia. Of the four suggested consequences, three deal with Estonia's reputation abroad, rather than with domestic issues. A similar tendency was noted by Lagerspetz (1996, 122–124) when analysing the Estonian prostitution debate in 1993–1994: extensive references to international policies and practices were made, the West European ones being the standard against which Estonian practices were validated.

The follow-ups to Pihl's report and the editorial, presenting the said report, were mostly worried about the volatility of the situation. The following headline, for example, stresses the same idea of the force and power of organised crime:

JÜRI PIHL WARNS: UNDERWORLD FORCIBLY THRUSTS INTO POLITICS (24 May 2001)

The danger exuding from organised crime is added preponderance by the use of war rhetoric and cancer metaphors. However, the main emphasis is laid on the source of the information. The importance of the “organised crime in politics” message is stressed by the authority of the Director of Security Police. A selective extract from a conference paper is called a “sensational statement” in order to emphasise the extraordinariness of the information. The news carry the message that Pihl's position authorises him to warn this country about the impending threat. Pihl's competence is stressed in the following story, in particular:

MYTHS AND MAFIA STORIES. Tony Soprano and Vito Corleone are the embodiments of the Evil on Earth. But they are artificial, fiction, the common fantasy of media and writers - film directors. Jüri Pihl is real. The dangers spelled by him are not fictitious. He is the Chief of Intelligence in a real country. When a high official like him makes a statement, society should take it seriously.

In today's Eesti Päevaleht Pihl states that criminal underworld has penetrated into Estonian politics.

If it had been said by somebody (e.g. the proverbial Auntie M.) calling the Vikerraadio phone talk show, it would have sounded like grumbling of a stupid woman. But since it (a well-known fact by itself) is announced by the head of security police, we should pay close attention and think what he means by it.

The head of Security Police is not the press guru Daddy Jannsen from the 19th C, whose ambition was to tell educating stories to the common people. ... (24 May 2001)

The importance of Pihl's statement is emphasised three times. Comparison between fictional characters and the chief of security police gives particular prominence to realism. Contrasting the annoyingly stupid talk of Auntie M. and the facts provided by a high ranking police expert accentuate the truthfulness of the story. The third contrast to the tales of Daddy Jannsen underlines that the said information should be taken seriously. Thus the article conveys the message that the involvement of organised crime in politics is a real, true and serious threat, by no means vicarious or virtual.

Similarly to the series of articles described above, one will not find the word "corruption" here. Originally, Pihl never used that term in respect of politics in Estonia. In his paper, "corruption" is applied to cases where organised criminals establish contact with clerks (officials). He distinguishes two types of corruption: On the one hand, there is "direct corruption" meaning arrangements between the clerks (officials) and the criminals or their close relatives in order to give some companies unfair advantage over others. On the other hand, "collusion with officials" facilitates tax evasion (tax fraud) or smuggling.

However, when politicians are engaged in similar practices with similar goals of unjust enrichment, it seems not to be corruption any more, but rather "involvement of organised crime in politics", or that is at least how the newspaper presents the issue:

UNDERWORLD HAS CHANGED SWEAT SUITS TO BUSINESS SHIRT. (21 May 2001)

UNDERWORLD IN POLITICS (20 September 2001)

In sum, the series of publications on Jüri Pihl's report assert that organised crime in Estonia has reached a new level of development. That level, involvement in politics, is considered to be extremely dangerous, especially in the context of Estonia's integration into Europe. By not using the term "corruption", emphasis and responsibility are shifted towards organised crime, while the Estonian political scene remains an innocent victim, unawarely caught in the turmoil. There are striking similarities in the way the alleged criminal connections of the Mayor of Tallinn, and the general issue of politicians and organised crime are presented.

Conclusion: Organised crime and criminals in media

In all three series of publications there are common features that help to reconstruct the meaning of organised crime and criminals in Estonian media. Firstly, organised crime is presented as a dangerous phenomenon that exists and develops on its own, parallel to the development of the Estonian society. The phenomenon is presented as existing outside the society and state, somewhere in the “twilight zone”. This is done by using war metaphors (words like involvement, penetration, underworld etc) on the one hand, and metaphors of fatal sickness on the other (cancer developing metastases). Such presentation of organised crime highlights its dangerousness. The seriousness of the danger is then accentuated by using high ranking officials as sources of reference. To put it in a nutshell: organised crime is an extremely dangerous phenomenon that threatens Estonian society from the outside.

Secondly, the concept of organised crime is extremely vague. It is presented in general terms. The existence of organised crime, or rather of some large criminal organisation, is taken for granted. For example, when talking about “underworld in politics”, “director of underworld-related Russian Cultural Centre”, “Mafia” or a “representative of organised crime”, one tacitly presumes that all those activities are well-orchestrated. However, no organisation, nor its activities are described. The accusations levelled against a given person are not conclusive, but confined to castigating him for being “affiliated” to the said organisation.

Thirdly, the notion of organised crime and criminals is strongly connected to the ethnic background of the latter. Even when the context of ethnic background is not explicitly voiced, as for example in the paper by the Director of the Board of Security Police, implications of such context are slid in by the newspaper. Discussions on Ever’s personality with reference to Pihl’s statement about organised crime, or the prevailing self-explanatory “knowledge” that Mafia consists of “Russian speaking businessmen of Jewish origin” are just a few examples. People with a familiar ethnic and cultural background are considered “one of us” and perceived as businessmen (e.g. Meelis Lao), while others are more likely to be organised criminals (e.g. Haitov, Ever).

In legal discourse, organised crime is defined as criminal activities, but the mass media defines it as a big and vague organisation or a network based on kinship ties. These ties are based on common ethno-cultural background. In literature this kind of model of organised crime is called an alien conspiracy model, which in Paddy Rawlinson’s (2002) opinion reduces the complex situation to simplistic dichotomies which identify the problem as “outside” and “other”. Such a model and construction of Russians as dangerous strangers may harm the process of integration of the Estonian society. According to Rawlinson (*ibid*), such a model is also supported by large international bodies. US and EU officials target Russian organised crime as a high-level threat to Estonia. Owing to such prioritisation, the limited resources of the Estonian criminal justice system are invested in tightening the Estonian-Russian border, while other problematic areas, such as trade in steroids and amphetamines run by Finnish dealers and local Estonians, have been left without proper attention.

References

- Bell, A. 1998. The Discourse Structure of News Stories. In *Approaches to Media Discourse*, ed. A. Bell and P. Garrett, 64–104. Oxford: Blackwell.
- Gill, R. 2000. Discourse Analysis. In *Qualitative Researching with Text, Image and Sound*, ed. M.W. Bauer and G. Gaskell, 172–190. London: Sage.
- Lagerspetz, M. 1996. *Constructing post-communism: a study in the Estonian social problems discourse*. Turku: University of Turku.
- Paoli, L. 2002. The Paradoxes of Organized Crime. *Crime, Law & Social Change*, 37: 51–97.
- Rawlinson, P. 2002. Capitalists, Criminals and Oligarchs – Sutherland and the new “Robber Barons”. *Crime, Law & Social Change*, 37: 293–307.
- van Dijk, T. A. 1998. On the Analysis of Parliamentary Debates on Immigration. Working paper for the Project Racism at the Top. Second draft; available from <http://www.discourse-in-society.org/teun.html>
- van Dijk, T.A., S. Ting-Toomey, G. Smitherman and D. Troutman. 1997. Discourse, Ethnicity, Culture and Racism. In *Discourse as Social Interaction*, ed. Teun A. van Dijk, 144–180. London: Sage.
- ван Дэйк, Т. А. 1989а. ‘Анализ новостей как дискурса’. – Т.А. ван Дэйк, Язык. Познание. Коммуникация. Сборник статей – Москва: Прогресс, с. 111–160.
- ван Дэйк, Т. А. 1989б. ‘Структура новостей в прессе’. – Т.А. ван Дэйк, Язык. Познание. Коммуникация. Сборник статей – Москва: Прогресс, с. 111–160.

The Last Resort in Action: Initiatives to stop the diffusion of white-collar crime and corruption in transitional countries

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Abstract

This paper considers the feasibility of reducing the diffusion of white-collar crime and corruption in emerging markets by strengthening the international financial regulation regime. The authors analyse recent changes in legislation provided by the international and national regulatory systems, such as FATF and OECD, and evaluate the dialogue and co-operation between developed and emerging markets in handling this problem. As a case study the authors outline the Ukrainian experience with policing white-collar crime, including the help it has received from the international community, and assess the results of this collaboration.

Introduction

Over the last ten years a lot of studies have been published discussing the problems experienced by transitional countries (Fleming, Chu, Bakker 1996; Shelley 2000). A number of studies have concentrated on corruption and its impact on the development of the emerging markets (for the discussion of the so-called relationship banking see Siegelbaum, 1997; highly politicised process of loan issuing discussed by the International Bank for Reconstruction and Development & World Bank, 2001; for the case study of corruption in Ukraine see Markovskaya, Pridemore, Nakajima, 2003). All transitional countries aim to achieve sustained economic development and to establish transparent financial institutions to allocate resources and provide productivity enhancing investments. While almost all transitional countries have underdeveloped financial markets (Claessens, Djankov, Klingebiel 2000; Coffee 2001), it seems that the countries experiencing problems with political and judicial reforms tend to have a very low level of major financial indicators (De Melo, Denizer, Gelb, Tenev 1997).

Following the recent events and continuous threat of international terrorism, the global financial community has become increasingly worried about the ef-

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fectiveness of financial supervision and financial policing. The USA legislation regulating the financial sphere has experienced dramatic changes. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA Patriot Act) of 2001 imposed strict rules on US and foreign banks and financial institutions (Alexander 2002). A number of countries and international organisations, such as FATF and OECD have introduced new regulations to address the issues of international financial control and corruption of foreign state officials. Different projects have been organised in attempt to help transitional countries. For example, in February 2003, the European Commission and Council of Europe Against Money Laundering in Ukraine (MOLI-UA) launched a project aiming to support the efforts of Ukraine in establishing a fully functioning system against money laundering.

Understanding the difficulties experienced by transitional countries in fighting corruption, how feasible is it to expect that countries such as Ukraine can comply with the new rules? How easy is it to transfer the laws and regulations adopted by one country to another, and not to be deluded by the results? These questions present a serious problem to the outside world. This is partly caused by the political sensitivity of the issue.

In this paper the present authors attempt to provide a basis for discussing the impact of the requirements of the international financial regulations on the development of the financial system in transitional economies such as Ukraine.

The paper starts with a brief introduction to the banking system in Ukraine, then discusses the recent changes in the international financial regulation, and the attempts of the Ukrainian authorities to comply with the changes.

A brief overview of the banking system in Ukraine

During the Soviet time, savings were allocated through government's budget and a largely passive banking system. In 1991, with the collapse of the Soviet Union and the establishment of the independent state, Ukraine decided to use the banking industry as a tool to allocate resources to help advances in the economy. The banking system in Ukraine consists of the Central Bank—the National Bank of Ukraine, with its functions of monetary policy and banking supervision, and of commercial banks. The adaptation of the new approach towards banking allowed Ukraine to increase the number of banks from only a few in 1989 to more than 70 in 1991, and 230 in 1995 (National Bank of Ukraine 2003)³. However, rising quantity was not followed by improved quality. The creation of the 'new banking' mechanism manifested itself in an extremely liberal policy adopted by the Central Bank of Ukraine.

Many new private banks were established by enterprises and functioned as pocket banks (Kurkchiyan 2000; Siegelbaum 1997; World Bank 1999). Ukrainian banks failed to play the role of a major mediator enhancing long-term in-

3 To understand such a sharp rise in the number of banks one has to bear in mind not only the pure economic factors, but also the cultural ones. For the rich living in a transitional society, it is 'cool' to own a bank. Secondly, it is an undeniable fact that "the best way to rob a bank is to own one" (Calavita, Pontell, Tillman 1997, 58).

vestments. A study conducted by the International Bank for Reconstruction and Development in 1997 suggests that only 5% of the active enterprises succeeded in obtaining loans from the financial sector (Siegelbaum, 1997).

From 1995 to 1998 the legislation allowed the opening of anonymous accounts in foreign currency without identifying the beneficial owner. In 1995, the official view⁴ was that the legal framework for these accounts was sufficient enough to provide for anti-money laundering measures. A few years later, the use of anonymous accounts was banned in Ukraine as a result of the influence of the international community and ratification of the international treaties by Ukraine. It is easy to see that the 1990s were marked by the absence of financial regulation in the country. However, there was an attempt to regulate the financial sphere. The problem was that banking regulations were constantly changing, sometimes confusing the users and creating loopholes for the abuse of the system (purposefully in order to obtain financial gain, or by mistake due to lack of knowledge).

Transitional literature identifies the following systemic factors which led to the criminalisation of the banking industry: poor regulation and supervision, poor accounting and excessive taxation, an inadequate legal infrastructure for lending, and pervasive corrupt practices coupled with weak banking skills and mismanagement on a significant scale (Fleming, Chu, Bakker 1996).

The international financial community (in particular, organisations such as FATF, OECD, the Council of Europe), and recently, the initiatives undertaken by the United States, have all contributed to the so-called 'westernisation' of the Ukrainian standards of the financial regulation. As a study of the law on corruption (Markovskaya, Pridemore, Nakajima 2003) suggests, the biggest problem to address is the enforcement of the 'Western style' financial regime.

The following sections deal with the developments in the international financial regulations and identify the changes these developments brought to the regulation of Ukrainian banking.

The Patriot Act: international response to terrorism and its implications for international financial regulation

USA Patriot Act 2001

The attack on the USA on 11 September dramatically changed the international approach to dealing with terrorism and its financial aspects. The US Government has adopted extraterritorial financial controls on foreign banking and financial

4 Presidential Decree issued in August 1995 allowed the use of anonymous accounts in foreign currency. The idea behind the decree was that it would help liberalising the foreign currency market and improve the investment situation, so that grey money would leave 'grey economy' and be legalised. With the Ratification of the Council of Europe convention in 1990, Ukraine had to adapt measures to prevent the use of anonymous accounts, and that is why in July 1998 the President issued a decree "On some issues of the banking secrecy", prohibiting the opening and use of anonymous accounts. However, the National Bank of Ukraine adopted the instruction (Instruction No. 469, 9 October 1998) on the rules and functioning of the so-called coded accounts, where the owner of the account could restrict the number of people aware of the existence of the account, although the rules did allow the identification of the owner to the official authority in case of criminal investigation. In March 1991 National Bank of Ukraine revoked the Instruction No. 469.

institutions that facilitate transactions with, or assist designated terrorist groups. In October 2001, the US Congress enacted legislation entitled ‘the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism’ (the Patriot Act 2001). Title III of the Patriot Act deals with the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. It concerns US and foreign banks and financial institutions. Among the other provisions, Title III provides authority to take targeted action against countries, institutions, transactions, or types of accounts that the Secretary of the Treasury finds to be of prime money-laundering concern. It contains high standards of due diligence for inter-bank correspondent accounts and payable-through accounts opened at US financial institutions by foreign offshore banks and banks in jurisdictions that have failed to comply with international anti-money-laundering standards (Alexander, 2002).

Provisions of US Executive Order 13224 on 24 September 2001 together with the USA Patriot Act impose extra-territorial jurisdiction on foreign banks, companies and individuals who conduct, facilitate or assist transactions involving US-designated terrorist organisations and provides a framework to establish a set of new reporting requirements and due diligence standards for US and foreign financial institutions designed to combat international money laundering and to stop terrorist financing (Alexander 2002).

Title III of the Patriot Act is called the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. It contains the major provisions addressing not only US banks and financial institutions, but foreign financial institutions as well. Section 312 of the Patriot Act requires financial institutions to establish due diligence programmes for correspondent accounts of foreign financial institutions and private banking accounts of “non-US persons”. With regard to correspondent accounts for foreign banks, the proposed regulation requires that a due diligence programme must: first, assess whether the foreign institution presents a significant risk of money laundering; second, consider information from US government agencies and multinational organisations with respect to supervision and regulation of the foreign institution; third, review guidance from the Treasury and federal regulators regarding risk associated with particular foreign institutions; and fourth, review public information to decide whether the foreign institution has been the subject of any criminal or regulatory action relating to money laundering (Alexander 2002). Special attention is given to certain foreign institutions that operate under licenses issued by countries regarded as non-co-operative with international anti-money laundering principles (i.e. FATF).

With regard to due diligence programmes for private accounts of non-US persons, the proposed regulation requires that such programs must: establish the identity of all nominal holders and beneficial holders of the accounts, including information on their lines of business or source of wealth; identify the source of funds deposited into the account, identify whether any holder may be a ‘senior political figure’ (if it is established that account holder is a senior political official further due diligence is required), and report any known or suspected violation of law conducted through or involving the account (Alexander 2002).

The due diligence regulation is believed to be the ‘further-reaching’ regulation issued under the Title III (Gimbert 2002). If suspicious financial transactions are discovered, the institutions must report to federal law enforcement agencies and the Treasury. The reports are then entered into a confidential database. The FBI uses this database to create a list of suspicious persons and bodies, which is available to all financial institutions.

Section 313 (a) of the Patriot Act prohibits some financial institutions from establishing, maintaining, administering or managing correspondent accounts with foreign banks that have no physical presence in any jurisdiction (known as ‘shell banks’). Section 315 entitled ‘Inclusion of foreign corruption offences as money laundering crimes’ recognises bribery and other foreign corruption offences as unlawful manifestations of money laundering.

The definition of financial institutions is expanded to include foreign banks or other financial institutions operating outside the USA (Alexander 2002). The regulations issued by the Department of Treasury determine the financial institutions subject to anti-money-laundering laws. New regulations also apply to concentration accounts to prevent the financial institution’s customers from anonymously directing funds into or through these accounts.

Section 326 of the Patriot Act sets up the following rules: “all financial institutions must have a Customer Identification Program detailing its Identity Verification Program; all new accounts need to be screened against the OFAC and other published lists of suspected terrorists and terrorist organisation; any documents used to identify the new account holder, such as, driver license, passport, social security card, etc, need to be verified against a third party database to determine that the identity is valid to extent reasonable and practicable; a database of all accounts needs to be maintained that includes the account name, date of account opening, identifying information presented, and the items used to verify the identity. This information needs to be time and date stamped and maintained for 5 years following the closure of the accounts” (Penley 2002). A new obligation to identify the ‘foreign beneficial owners’ of certain accounts at US financial institutions may in some jurisdictions lead to conflicts with the privacy protection provisions.

Section 311 of the Patriot Act gives the Secretary of the Treasury the authority to designate a foreign jurisdiction, a foreign financial institution, or a type of account or transaction as a primary money laundering concern. Once designated, the secretary can require U. S. financial institutions to take appropriate countermeasures. In December of 2002, Treasury made the first designations under Section 311, identifying both Nauru and Ukraine as primary money laundering concerns. However, as a result of the important steps undertaken by Ukraine to address deficiencies in anti-money laundering legislation, the Treasury Department announced on 15 April that it had rescinded the designation of Ukraine as a primary money laundering concern pursuant to Section 311 of the USA Patriot Act.

The international response

The USA initiatives to strengthen anti-money laundering control has been regarded as highly controversial, but long-awaited in terms of establishing world-wide understanding of the danger of the abuse of financial institutions. The Patriot Act 2000 received a wide international response. Below are just a few examples of the consequent initiatives, undertaken by two international organisations, United Nations and FATF, and one country, the UK.

The United Nations adopted resolution 1373 which identifies some extra measures that need to be taken into account to prevent future terrorist acts. In Article 2 (c) it is stated that countries are required to prevent and suppress the financing of terrorist acts and to refrain from providing any type of support, active or passive, for terrorists and to deny safe haven to those who finance, plan or participate in terrorist acts.

FATF issued “Special Recommendations” on terrorist financing to establish the basic framework for detecting, preventing and suppressing the financing of terrorism and terrorist acts. Special recommendation II asks each country to criminalise the financing of terrorism and associated money laundering. Alexander (2002, 320) writes that “The ‘Special Recommendations’ supplement and reinforce the measures already adopted by the UN and create a more comprehensive international regime for interdicting the financing and commercial support of terrorists and terrorist activities.”

The UK Government adopted a number of measures to combat the financing of terrorism. Anti-Terrorism, Crime and Security Amendments to the Terrorism Act 2000 adopted in November 2001 create new offences, including offences of international terrorism, stipulating that it is illegal for a person to solicit, or to receive, money or property on behalf of terrorists if the person knows or has reasonable cause to suspect that such money may be used for the purpose of terrorism.

It is difficult to predict the implications of these new rules for the developing nations. What is clear is that financially advanced countries such as USA and UK take the issue of the abuse of financial system very seriously, and that they are willing to impose a set of strict regulations allowing the financial system to identify the terrorist finances at a very early stage. It is also important to remember that corruption of foreign state officials is now considered an offence by the US legislators. In countries where corruption is endemic these changes can cause a lot of difficulties.

Financial stability in emerging financial markets: Ukraine at the international agenda

FATF black list: the image of Ukraine

On 7 September 2001, FATF added Ukraine to the list of non-co-operative jurisdictions. Non-cooperative jurisdictions are those, which have not made adequate progress in addressing the serious deficiencies in anti-money laundering legislation identified by the FATF. In September 2001, Ukraine was deemed to meet the following FATF criteria: 4, 8, 10, 11, 14, 15, 16, 23, 24, and 25. These criteria de-

scribed are: (4) existence of anonymous accounts or accounts in obviously fictitious names; (8) secrecy provisions which can be invoked against, but not lifted by competent administrative authorities in the context of inquires concerning money-laundering; (10) absence of an efficient mandatory system for reporting suspicious transactions to a competent authority, provided that such a system aims to detect and prosecute money laundering; (11) lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions; (14) regulatory or other systems which allow financial institutions to carry out financial business where the beneficial owner(s) of transaction is unknown, or is represented by an intermediary who refuses to divulge that information, without informing the competent authorities; (15) laws or regulations prohibiting international exchange of information between administrative anti-money laundering authorities or not granting clear gateways or subjecting exchange of information to unduly restrictive conditions; (16) prohibiting relevant administrative authorities to conduct investigations or inquiries on behalf of, or for account of their foreign counterparts; (23) failure to provide the administrative and judicial authorities with the necessary financial, human or technical resources to exercise their functions or to conduct their investigations; (24) inadequate or corrupt professional staff in either governmental, judicial or supervisory authorities or among those responsible for anti-money laundering compliance in the financial services industry; (25) lack of centralised unit (i.e., a financial intelligence unit) or of an equivalent mechanism for the collection, analysis and dissemination of suspicious transactions information to competent authorities (FATF 2000).

FATF criterion 11, lack of monitoring and criminal or administrative sanctions in respect to the obligation to report suspicious or unusual transactions, needs to be explained in greater detail. According to Article 64 of the Law on Banks and Banking Activities, banks are required to identify persons involved in substantial or suspicious transactions. Pursuant to the law, the threshold for a substantial transaction is 50,000 euros, and in cash transactions 10,000 euros. Suspicious transactions are defined to have the following characteristics: (1) carried out in an unusual or unjustifiably complicated conditions; (2) are not economically justified or are against the legislation of Ukraine. Some Ukrainian researchers (Neelov, 2001) argued that observing the law would mean that a major part of transactions of legal and physical persons undertaken in Ukraine would have to be reported.

Arguments did not help. Ukraine was given till the completion of the third round of the FATF's evaluation to work on the serious deficiencies identified. Otherwise it would have to face FATF's counter measures.

The deficiencies relate to problems on various areas: financial regulations, international co-operation, and recourses available to finance public and private sector. The last-mentioned obviously derives from the poor state of the economy and state budget deficit. It has to do with the general lack of resources, while the other problems tend to be characterised by the lack of political will in the country. For example, the draft law on Anti-Money Laundering legislation was discussed in the Parliament for almost a year after FATF had identified the problem and warned Ukraine about possible sanctions.

Law of Ukraine on Prevention and Counteraction of Legalisation (“Laundering”) of the Proceeds from Crime

On 7 December 2002, Ukraine enacted the “Law of Ukraine on Prevention and Counteraction of Legalisation of the Proceeds from Crime”. According to the FATF, this legislation did not, however, address the main deficiencies detected in 2001 during FATF’s anti-money laundering review in Ukraine. In mid-December 2002, Members of the FATF decided to impose counter measures on Ukraine. Then on 14 February 2003, the FATF informed: “FATF members have decided to withdraw the application of additional counter-measures with respect to Ukraine as the result of a recent enactment by Ukraine of comprehensive anti-money laundering legislation that addresses the main deficiencies identified by FATF in 2001 and reaffirmed in December 2002. Ukraine will remain on the list on NCCTS until it has implemented effectively its new anti-money laundering legislation” (FATF 2003, downloaded from <http://www1.oecd.org/fatf/> FATF withdraws counter measures with respect to Ukraine, 14 February, 2003).

As it was already mentioned, Ukrainian Parliament discussed the draft law for more than a year. The law was finally approved by the Parliament and signed by the President only a couple of weeks before the FATF’s deadline in December 2002. This law consists of 16 articles, described under 6 sections. Section I: The General Provisions consists of three articles: Article 1 provides definitions, Article 2 gives an account of activities related to money laundering, and Article 3 describes the scope of the law. According to Article 1, the primary definitions are: profit, illegal activity which leads to money laundering, money laundering, types of financial activity, compulsory financial monitoring, and local (internal) financial monitoring. Profit is defined as any economic advantage criminally acquired and then legalised; profit shall mean money or securities, movable and immovable property, property rights, any other items covered by property rights. Illegal activity which is followed by money laundering shall mean activity which according to the Criminal Code will lead to three or more years imprisonment or activity which is considered to be criminal according to the criminal code of another country (and the same activity is prohibited under the Criminal Code of Ukraine), and as a result of which the profit is illegally obtained. Financial transaction shall mean any transaction aimed at making or assisting in transaction by means of: bank account transaction; foreign currency exchange; assisting in issuing, buying or selling of securities; giving or receiving a credit; insurance (re-insurance); giving or receiving financial guarantees; managing the securities portfolio; issuing a state or other money lottery; assisting in issuing, buying or selling of securities, payments, postal cash transaction or other means of payment; opening an account. Section II describes the system of financial monitoring in Ukraine. Article 4 of the Section II identifies two levels of financial monitoring in the country: primary and state. The primary financial monitoring units are: commercial banks, insurance and other financial institutions, agencies authorised to receive, pay and transfer money; commodity or stock or other exchanges; professional players at the securities market; investment trusts; commissions shops, gaming houses and organisations which hold lotteries of any kind; post offices, telegraph offices and legal entities that provide, in conformity with the law, services of receiving, paying, conveying, transferring money or

management of investment funds or non-state pension funds. The state financial monitoring units are represented by governmental agencies and the National Bank of Ukraine, and authorised under the law to regulate and monitor financial operations. Article 5 describes tasks and duties of the primary financial monitoring agencies. These duties include identification of the initiator of a financial transaction, detection and registration of any doubtful transactions, reporting financial transaction under financial monitoring to a special unit (reporting shall occur not later than three days from the day of transaction registration); assisting the special financial monitoring units in the financial transaction analysis; at request of the financial monitoring agencies provide additional information regarding a particular financial transaction, even if this information constitutes banking and commercial secret (information shall be provided no later than three days after the request is received); keep the financial monitoring in secret from the client. The primary financial monitoring units shall keep the file of identification of the initiator of a financial transaction under financial monitoring for five years. Article 6 states the details of the information used to identify physical and legal persons, including residents and non-residents of Ukraine. According to Article 6, identification is not necessary if the transaction is initiated by someone who has already been identified before. Article 7 gives a right to the financial institutions to refuse financial transaction. Article 10 identifies the duties of the state financial monitoring agencies, such as the National Bank of Ukraine and the authorised bodies, to control that the primary financial monitoring institutions act in compliance with the obligations prescribed by the law, and to inform a special unit of the violations discovered by financial operators.

Section III describes the financial operations subjected to compulsory and internal financial monitoring. Article 11 states that a financial operation is subject to control if its value equals to or is more than Hrv 300,000⁵, or if its value in foreign currency equals or is more than Hrv 300,000, or in case of a cash transaction, if its value equals or is more than Hrv 100,000, or if its value in foreign currency equals or is more than Hrv 100,000, and if the financial transaction has one of the following characteristics: payment is due to be made to an anonymous account abroad or is due to be received from an anonymous account abroad, and if the payment is due to be made to a financial institution situated in a country listed by the Cabinet of Ministers as off-shore zone; buying or selling travel cheques or other means of payment; financial transactions conducted with countries which do not co-operate with international organisations tackling money-laundering; transfer of money abroad with the purpose that the receiver receives the money in cash; opening account to a third person; foreign transfers conducted despite the absence of a foreign trade agreement between the parties involved; cash payments for securities purchased; lottery or casino payments; foreign currency exchange.

According to Article 12, financial operations shall be monitored if they are unnecessarily complex, or the information obtained cannot be checked (for example, changes made by one of the parties in regard to money re-allocation, etc.);

5 £1=Hrv 8.45 as on 15 December 2002, The National Bank of Ukraine exchange rates.

if the financial operation does not correspond with the business activity of the client described in related documentation; if there is a reason to suspect that the client has conducted financial operations to avoid financial monitoring. Section IV states the tasks, functions and duties of the authorised authority.

Section V of this law is of particular importance to this research because it aims to regulate international co-operation in regard to the anti-money laundering measures. Article 15 identifies the grounds for and forms of international co-operation for prevention and counteraction of legalisation (laundering) of the proceeds from crime and terrorism financing. The article states that international co-operation for the prevention and counteraction of legalisation (laundering) of the proceeds from crime and terrorism financing shall be based on the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) and other international treaties of Ukraine, this Law and other Ukrainian laws and regulations. Refusal and postponement of co-operation shall be handled on the grounds and in the manner prescribed by the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).

Article 16 describes the agencies involved in international co-operation. According to Article 16, the central agencies to carry out international co-operation for the prevention and counteraction of legalisation (laundering) of the proceeds from crime shall be the Ministry of Justice of Ukraine with regard to judicial decisions, and the Office of Prosecutor General of Ukraine with regard to investigating criminal cases. The information or evidence provided by the said agencies within the framework of international co-operation for the prevention and counteraction of legalisation (laundering) of the proceeds from crime shall not be used by authorities of a foreign state for the purposes of investigation or judicial proceedings not mentioned in the judicial request, without a prior consent of the Ministry of Justice of Ukraine or the Office of Prosecutor General of Ukraine. The authorised agency shall co-operate with appropriate authorities of foreign states for the purpose of exchanging information on legalisation (laundering) of the profits, shall co-operate with the Financial Action Task Force (FATF) and other international organisations aiming to prevent and counteract the legalisation (laundering) of the profits. Section VI states the consequences of breaching this law.

The adoption of the above-described legislation is considered to be a very important step towards international co-operation in fighting money laundering.

Discussion

The above-described law can be regarded as a victory of the international community, and FATF in particular. Without pressure from the international community, the adoption of this law in Ukraine would not have been possible. However, there are still deficiencies to be addressed to 'clear' the country's name.

Despite the achievements made in the area of international financial regulation, some researchers argue that international pressure is not always good (Porter 2001; Ward 2002). Common tendencies can be observed by considering international organisations dealing with financial regulation. These organisations

tend to represent a number of developed countries that get together and establish new regulatory arrangements which are then imposed on emerging markets. Concerns have also been voiced about the democratic principles involved in an international attempt to regulate the globalised financial services. There is a tendency to exclude developing countries from the international collaboration. Porter (2002) argues that the Basle Committee's bank regulations do not match the needs of the microfinance industry in developing countries. Ward (2002, 4) criticises the New Basel Accord, stressing the differences between countries and arguing that if "the New Accord is implemented without major adjustments it is likely to fail in developing countries". Ward (2002, 4) provides reasons for this: "greater macroeconomic volatility, greater volatility of external flows and greater vulnerability to external shocks, weak institutions, and lack of skills in developing markets."

It is important to address the special character, and social and cultural traditions of each individual country when attempting to impose regulations or laws borrowed from another country. Discussing this aspect of the international financial regulation, Rider (2002) argues that while it is understandable that leaders and politicians wish to develop ways to fight organised crime worldwide, it is by no means sensible to transport the laws and legal procedures of one jurisdiction to the legal system of another (at least not without adaptation). "The need to establish a convincing and workable balance is all the more important in the context of small, developing and transitional economies. These highly vulnerable states may well find themselves effectively deprived of the advantages and services of those more developed and stable countries that are able to espouse the sort of measures found in legislation such as the Patriot Act" (Rider 2002).

It is important to understand the complexity of international standards and regulations. Developing countries often face an interesting dilemma: If they do not implement the international standards, they will perhaps be punished. If they do implement them, they may face the risk of wasting resources, and sometimes extend the roots of corruption (Rider 2002; Porter 2002). Following the international pressure, Ukraine will shortly introduce the new structure for financial supervision that stresses the role of financial supervisors. Ward (2002) warns that supervision is a difficult issue in advanced financial markets, because it, among other things, involves personal relationships. The National Bank of Ukraine as the main supervisory body of the country has to try to create a transparent framework for supervision that guarantees equal treatment to all financial institutions. That is why the Financial Service Intelligence Unit, the foundation of which was suggested by the President of Ukraine in January 2002, has to be an independent body. Otherwise, there is a great danger that another corrupt unit will be created inside the already corrupt structure. If, as suggested, the Financial Service Intelligence unit will be established as an internal structure managed by the Ministry of Finance, it will be subjected to direct political influence and political supervision. In this case, the equality of treatment of the financial institutions in the country will remain problematic. The Financial Intelligence Unit should thus not be a punitive organisation, but a preventative one capable of providing examples of best practices.

Concerns about imposing the standards provided by a group of countries with advanced economies have been voiced before the attack on America and subsequent changes in legislation (Porter 2001). It seems as if the critical discussion of the role of the authoritative supranational decision-making has been postponed to more peaceful times. It is also difficult to provide an answer to the following questions: will the strengthening of the international financial regulation lead to better/faster response from the Ukrainian officials? If not, what measures should be provided to insure the enforcement?

Despite the criticism towards the approach adopted by the USA authorities, one thing is obvious: for a country where corruption is endemic, and where the financial institutions have not been supervised on the basis of transparent and equal rules, current changes in the international environment can provide an opportunity for reforms.

Conclusion

The last two decades of the 20th century witnessed enormous technological advances. This influenced not only the way the financial market works, but also the way high profile criminals conduct their business. Adamoli (2001, 187–188) noticed “...just as legal businesses are expanding internationally in response to the globalisation of market, so are the crime enterprises seeking to develop both their structures and crime trade internationally in order to gain access to new markets, taking advantage of the discrepancies between the national legal system”.

If allowed to participate in a modern international financial market system, emerging financial markets find themselves in an advantaged position: more experienced financial markets can provide financial and technological assistance. However, at the same time emerging markets can easily be abused by corrupt officials, criminals, etc. That is why the primary goal of a democratic government is to develop the framework for transparency of the financial institutions. Experience suggests that while some governments are not willing to accept the need for reforms, others are too eager to reconstruct the financial sector of the country. That is why it is important to establish international mechanisms to control financial institutions in emerging economies. A great number of international organisations have already been created to carry out functions of supervision by issuing recommendations and warnings to non-co-operative jurisdictions. An international agreement has been reached as to the policies each country needs to adopt to provide for laws to confiscate the proceeds from serious crime, or at least those associated with the illicit trade in drugs, the investigation and interdiction of the proceeds from such offences, the criminalisation of money laundering, the reporting of suspicious transactions, the imposition of reporting and due diligence requirements on those most likely to confront money laundering, and facilitation of international mutual assistance. However, what still needs to be considered are the most suitable ways of imposing the new rules on the developing and emerging markets, that is, to make sure that these markets will not suffer from artificial rules and standards. It needs to be remembered that international co-operation in such issues as financial regulations is very complex: if problems are ignored, there is a chance that a financial monster is created inside

the emerging financial system. On the other hand, if there is too much pressure, it is possible that the system is denied an opportunity to develop. However, research also suggest that legal framework without an appropriate enforcement mechanism can create delusions of reality. In Ukraine, the pressure of international financial community is necessary to get rid of corrupt state officials and to set a framework for good practices. Ukrainian experience suggests that reforms should start from the financial sector, and be as de-politicised as possible.

References

- Adamoli, S. (1999). Organised Crime and Money Laundering Trends and Countermeasures: a Comparison between Western and Eastern Europe. [On-line] Obtained from <http://www.transcrime.unitn.it>
- Alexander, K. (2002) Extra-territorial US banking regulation and international terrorism: The Patriot Act and the international response (pp. 307–326). *Journal of International Banking Regulation*, Vol. 3, No. 4.
- Calavita, K., Pontell, H. N., and Tillman, R.H. (1997) Big Money crime: fraud and politics in the savings and loan crisis. Los-Angeles: University of California Press.
- Claessens S., Djankov S., and Klingebiel D., “Stock Market in Transition Economies, World Bank Financial Sector Discussion Paper 2000 No. 4, 21.
- Coffee, J. C. (2001) Starting from scratch: the legal and institutional steps to viable securities markets in transition economies, *Review of Central and East European Law*, Vol. 27, No. 1.
- Gimbert, A. (2002). *Patriot Act Spurs New Anti-Money-Laundering Regulations*, [On-line], Obtained from: <http://www.frbatlanta.org>.
- Fleming, A., Chu, L., Bakker, M. (1996) The Baltics—banking crises observed. The World Bank Policy Research Working Paper 1647.
- International Bank for Reconstruction and Development & The World Bank (2001). *Ukraina: Finansovuy sector i ekonomika. Novi strategichni zavdannja*.
- Kurkchian, M. (2000) The transformation of the second economy into the informal economy, In A Ledeneva & M. Kurkchian (Eds.), *Economic Crime in Russia* (pp. 83–99). London: Kluwer Law International.
- Markovskaya, A., Pridemor W. A., Nakajima C. (2003) Law without the teeth: an overview of the law on corruption in Ukraine. *Crime, Law and Social Changes*, Vol. 39.
- National Bank of Ukraine (2003) NBU Statistics. [On-line]. Available at: <http://www.bank.gov.ua>
- Neelov, I., (2001) *Perlystraciya deneg*. Business, No.51 (466) December 2001. [On-line]. Obtained from: www.business.kiev.ua
- Penley (2002) Fast watch overview, [On-line], obtained from Penley web site. Working Paper No. 48.
- Pistor, K., Raiser, M., Gelfer, S., (2000) Law and finance in transition economies. European Bank for Reconstruction and Development

- Porter, T., (2001) Multilevel governance and democracy in global financial regulation. [On-line]. Available at:
<http://www.iigr.ca/conferences/archive/pdfs1/porter.pdf>
- Rider, B., (2002) Organized Crime and Terrorism: Tracking and Attacking the Assets of Economic Crime and Terrorism, ICC Commercial Crime Services Annual Lecture, London, June 2002.
- Shelley, L. (2000). Putin's Russia. Why a Corrupt State can't be a Strong State: Corruption in the Post-Yeltsin Era. *East European Constitutional Review*, 9 (1/2), 19–23.
- Siegelbaum, P. J. (1997). *Financial Sector Reform in Transition Economies: what have we learned. What are the next steps?* Remarks made at the 2nd Annual Conference on Bank Credit in Central and Eastern Europe, Prague, obtained from the World Bank website. [On-line]. Available at:
<http://wbln0018.worldbank.org/eca/eca.nsf/66d6f5004ed085ca852567d10022a8b8/739e52bcb715c3808525687f008117a1?OpenDocument>.
- Ward, J. (2002). The New Basel Accord and Developing Countries: Problems and Alternatives, *ESRC Working Paper* No. 40. [On-line], obtained from the ESRC Centre for Business Research, Cambridge University web-site.

To Counter Effectively Organized Crime Involvement in Irregular Migration, People Smuggling and Human Trafficking from the East. Europe's Challenges Today.

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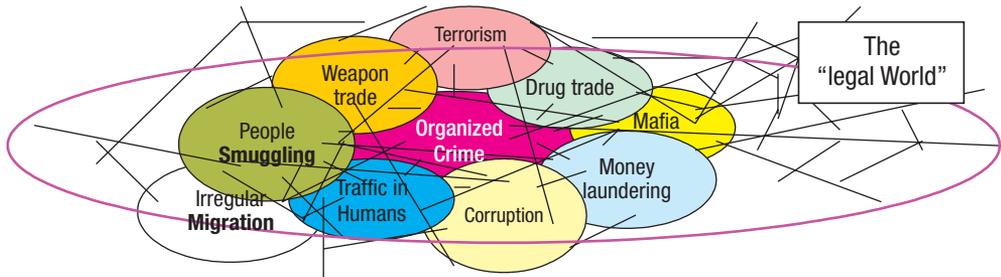
Migration is nothing new. On the contrary: we have witnessed constant migration throughout human history. It is definitely *not* a crime *per se*. In recent years, however, migration has been understood more and more as a global challenge. The alarming manifestation of *irregular (illegal)* migration, as well as some specific interrelated phenomena—most of all people smuggling and trafficking in human beings—have without any doubt become a crucial security issue. In particular trafficking in minors and young women for the purpose of sexual exploitation has become an issue of major concern, due to its brutality and rapid expansion during the past decade. These phenomena are increasing and becoming more transnational in scope and organisation.

Particular concern is caused by the *growing link* between *irregular migration*, *people smuggling* and *human trafficking* on the one hand, and *Organised Crime (OC)* on the other. We understand that these phenomena are “not a question of a few isolated cases of border crossing and smuggling—it is a serious organized crime problem threatening the majority, if not all, developed countries around the world.”² The specific danger to the State and society derives from the *OC nexus* with the legal world—including the State apparatus and the economy—through corruption and infiltration.

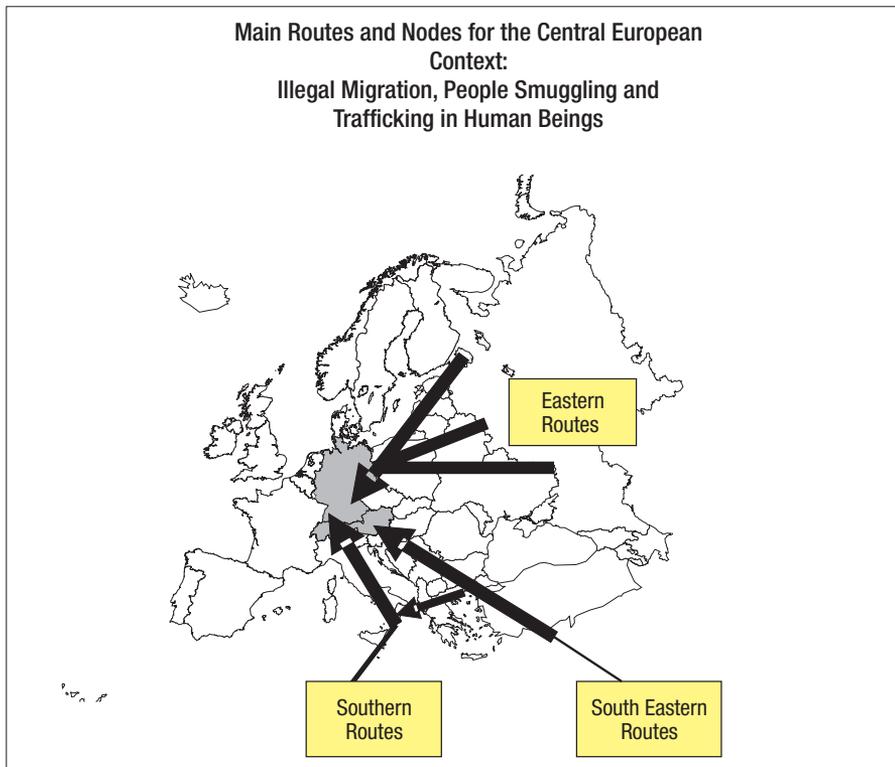
1 Dr. Robert F. Oberloher (PhD) is currently responsible at United Nations Interregional Crime and Justice Research Institute (UNICRI) for Projects focusing on the issue of trafficking in human beings in Eastern and South Eastern Europe. Disclaimer: the opinions expressed in this paper do not necessarily reflect the view of UNICRI or the United Nations. Dr. Oberloher is handing in this paper in his private quality as a researcher and in the framework of the 3rd Annual Conference of the European Society of Criminology, 27–30 August 2003, Helsinki.

2 International Criminal Police Review, No.489–490/2001, p. 3.

The OC-Nexus – a dangerous cobweb³



Especially the people smuggling and organised human trafficking from the Balkan and the Baltic areas to Central and Western Europe challenge security in a complex and comprehensive way. These regions play an important role not only in terms of the origin of the involved humans but also regarding the major routes and active crime syndicates. Germany, Austria and Switzerland are definitely among the favourite destination countries.



3 Graphic: Oberloher, cf. Oberloher: Transnational Organisiertes Verbrechen, Munich 2001.

According to national statistics⁴, citizens from Asia, Russia, the Balkans (namely Yugoslavia, Ukraine, Moldova and Romania) and the Baltic countries have in the past few years been continuously present on the list of the 10 nationalities that dominate illegal migration, people smuggling and human trafficking into Germany, Austria and Switzerland. According to IOM (2001), the Ukrainian Ministry of Interior has estimated that in Ukraine alone, some 400,000 women have been subjected to trafficking during the past decade. While the value of such roughly estimated numbers remains, of course, always somehow limited, the figures may give an idea of the dimensions behind these phenomena. OC is attracted by the businesses' potential for huge profits on the one hand, and the internationally still relatively low risk⁵ of detection, prosecution and arrest on the other. The OC-link produces a more sophisticated, aggressive and lucrative exploitation network for both the illegal migration and the sex business.

OC manages these criminal businesses regardless of any ruthless violations of the fundamental rights of the victims. Eastern and South-eastern European OC-syndicates are reported to be increasingly involved in smuggling of persons and trafficking in human beings, especially for sexual exploitation. Trafficking in young women and girls from Eastern Europe has—as found by intelligence and investigative sources, such as the German Bundeskriminalamt⁶—grown to be the biggest source of females to be exploited in the European sex industry. According to Interpol findings, OC groups are involved in the entire spectrum of activities associated to it. Local crime gangs operating in various Eastern and South-eastern European countries manage the recruitment of the victims, technical issues (from false passports and visas to transport facilities and logistics) and the transnational trafficking connections with their international counterparts. The various gangs own a lot of brothels, dancing clubs and hotels, and play a major role in prostitution rings and business. The business continues to increase—in terms of victims involved as well as in turnover and profits. A recent Europol 18-case study (in the framework of the “Falcone” programme) showed the importance of major routes emerged and developed for human trafficking from the East. Official national crime statistics from Germany and Austria⁷ confirm these findings. Apart from the important “Balkans routes”, irregular immigrants (a significant number of whom are women for sexual exploitation) that are

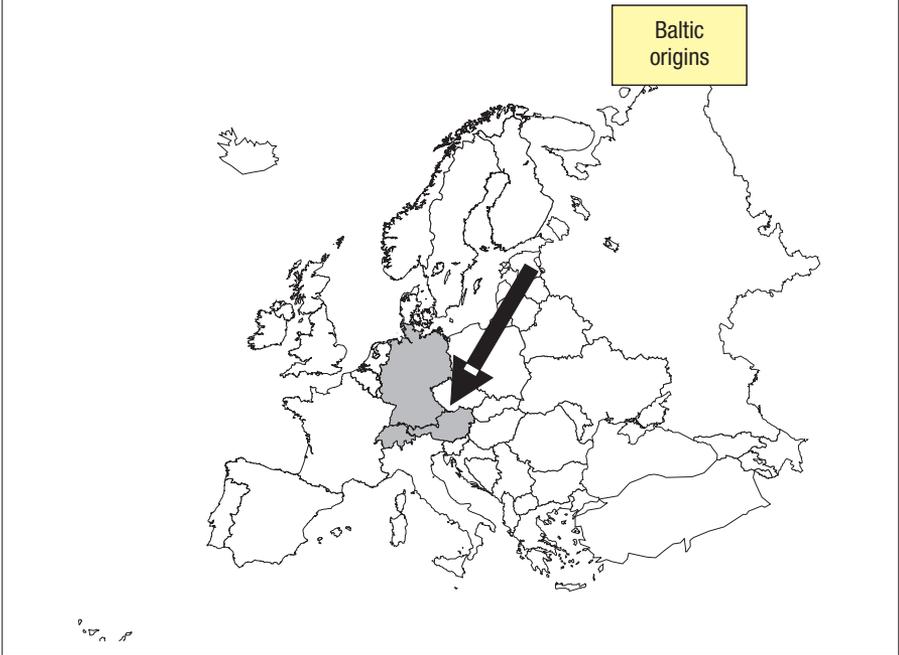
4 Cf. Bundeskriminalamt (Germany): Lagebild Menschenhandel 2000, 1999; Bundesgrenzschutz (Germany): Unerlaubte Einreise und Schleusungskriminalität, 2001, 2000, 1999, 1998; Bundesministerium für Inneres, Generaldirektion für die Öffentliche Sicherheit (Austria): Organisierte Schlepperkriminalität, 2001, 2000, 1999, 1998, 1997; Eidgenössisches Justiz- und Polizeidepartement, Interdepartementale Arbeitsgruppe Menschenhandel (Switzerland): Menschenhandel in der Schweiz, 2001. Cf. also U.S. and Ukrainian Research results, Hughes, Donna M. / Denisova, Tatyana A.: The Transnational Political Criminal Nexus of Trafficking in Women from Ukraine, in: Trends in Organized Crime, Vol. 6, No. 3&4, 2001, p. 53.

5 Cf. also Interpol, International Criminal Police Review, No.489–490/2001, p. 2; IOM: “New IOM figures on the globale scale of trafficking”, Trafficking in Migrants Quarterly Bulletin, No.23, April 2001; OSCE Economic Forum on “Trafficking in human beings, drugs, small arms and light weapons: national and international economic impact”, Prague, 20–23 May 2003.

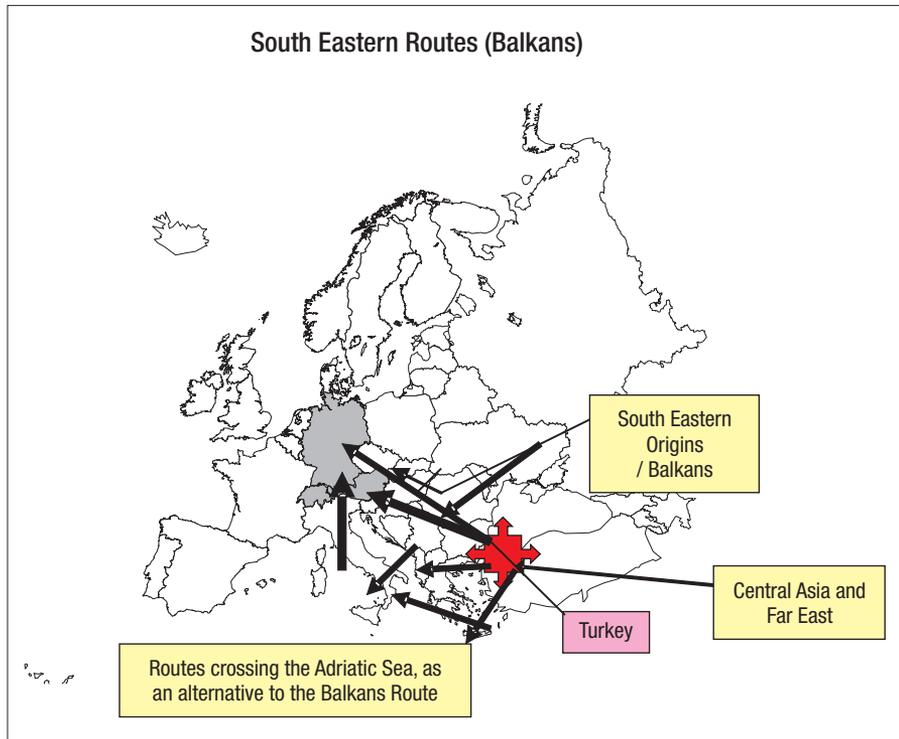
6 See Annual Reports on human trafficking into Germany.

7 German Bundeskriminalamt, the German Bundesgrenzschutz, the Bavarian Police Department and the Austrian Interior Ministry.

North Eastern Routes (Baltic origins and Russia)



South Eastern Routes (Balkans)



stopped at the Austrian or German borders come over the “Eastern routes” (among which “North Eastern Routes”).⁸

In Europe, smuggling and trafficking in people and in other “commodities” (such as drugs, weapons) are mostly organised and run by the same criminal networks. They basically follow the same routes and show significant similarities in some “typical” OC-methods. The German BND (secret service) warns that crime in general and transnational organised crime in particular spread along the migration flows. According to the findings of the different security agencies, a very important role in this context is played by the larger ethnic communities which are concentrated on preferred locations, and more and more present in certain European metropolises.⁹ OC directly and indirectly profits from migrant flows. On the one hand, ethnic communities are used by transnational crime syndicates as local bases for their criminal activities, and for infiltration. On the other hand, as national law enforcement agencies in different countries have observed, there is a growing trend of migrants turning to professional organisations and networks for illegal border-crossing and entering the EU—which makes the business big and lucrative for the organised criminals.¹⁰ In addition to that, illegal migrant flows form huge and uncontrolled black *markets* for illegal goods, commodities and services, and meet the demand for informal or black labour.¹¹ Smuggling activities as well as transportation, distribution and logistics are heavily interlinked and often provided or organised by the same criminal actors and networks. Some crime syndicates (but also a number of looser networks) operate as drug and human traffickers, or as people and arms smugglers *at the same time*. Linkages are highly developed when it comes to money laundering activities, but also to customs or border police bribery. As a consequence, logistics, organisations and the routes that supply Europe with illegal drugs and illegal migrants are basically the same.¹² For example, the Albanian OC-groups, as has been found by the Italian “Antimafia” agency, use similar routes and logistics when trafficking drugs, smuggling migrants or trafficking human beings.¹³ Also the German authorities have identified significant parallels in the routes of illegal migrants, smuggled people, trafficked humans, refugees and asylum seekers on

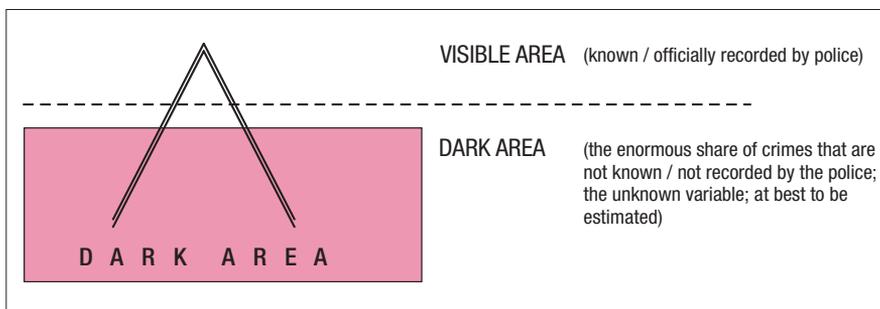
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- 8 Cf. Homepages www.bundeskriminalamt.de, www.bundesgrenzschutz.de, www.polizei.bayern.de, www.bmi.gv.at.
- 9 Cf. BND-Observation, according to *Lange: Kriminalität*, p. 7; furthermore: *Bernasconi: Kriminalität*, pp. 267f; 270–272; *Ciconte, Enzo: Mafie al Nord. Nel Salotto di Milano*, in: *Narcomafie*, No.9, VIII., September 2000, pp. 21–28; *IOM: Trafficking*, pp. 4–6, 8, 19f., 25. BND: Bundesnachrichtendienst (Germany).
- 10 Cf. *BJA* (Germany): Lagebild Organisierte Kriminalität 2001, pp. 21f.; *BMI / ETB* (Austria): Organisierte Schlepperkriminalität. Jahresbericht 1998, p. 21; *Hughes / National Institute of Justice (NIJ): The “Natasha” Trade*, p. 10.
- 11 Cf. *Oberloher: Schleusungskriminalität*, Munich 2004; *Lange: Kriminalität*, p. 7; *Hughes / NIJ: “Natasha”*, S.10; *Violante, Luciano: Preface*, 12.7.1999, in: *Jamieson: The Antimafia*, New York 2000, S.ix–xi.
- 12 Cf. *Öffentliche Sicherheit*, No.7–8/01, p. 21; *Storbeck: Kriminalität*, in: *Kaiser / Schwarz: Weltpolitik*, pp.173–185; *Martinetti: Il Padrino di Mosca*, Milano 1995, pp.102–105; *Deen, Thalif: Rights*, in: *Global Information Network, Interpress Service*, 13.12.2000; <http://www.br-online.de/politik-wirtschaft/terror/taliban.shtml> (as per: 29.10.2001, showing also the links to terrorism activities through financial and material supply); *BJA* (Germany): Situation Report on Organized Crime in the Federal Republic of Germany 1999 (May 2000), pp.16f. and *CIA*, www.cia.gov/ (as per: 10.8.2000); Annual Report 1999: International Organized Crime.
- 13 Cf. *O’Neill / CSI: Trafficking* (2000), p. 61.

the one hand, and other “commodities” such as drugs on the other.¹⁴ This may to a certain extent result from the fact that a part of the illegally brought-in migrants—as cases in past years have proven—find themselves in a hostile exploitive relationship in which they are even forced to commit crimes, for example to smuggle or deal drugs for the local destination market, in order to pay off their “debts” to the organised traffickers/smugglers.¹⁵ Drug crimes are often related to nightlife crime, prostitution and illegal migration. An explanation for this may be the fact that OC-groups involved in specific illegal or criminal businesses have not only established links of cooperation and commerce, but a lot of them are active in *several* fields.¹⁶ Parallels seem even more obvious when local geographic, economic and social opportunities for the criminals are also taken into account. These parallels and linkages need to be taken into consideration when strategies to “combat” the individual OC-phenomena are developed.

Europe’s borders within the EU are today open, the exchange of goods has risen enormously over the past decade between West and East, North and South, and the volume of migration flows towards Europe has reached unprecedented levels. All this poses, without any doubt, an *increasing challenge* to internal security politics in Europe. Experts warn about underestimating the dangers the illegal migration flows and other crime phenomena pose to the State and society.¹⁷ The high social and economic costs for society, dangers to internal security deriving from the spreading of informal, illegal and criminal practices, corruption, as well as the rise in criminal assets (and therefore *power*) and the growing shadow economy with its various black markets are not to be ignored, either. In addition to the more “traditional” fields such as drugs and arms smuggling, OC has created well-established and more and more sophisticated means for smuggling and trafficking people. The turnover of these is estimated to be as high as that of the illegal drug market, ranking them among the most lucrative OC activities.¹⁸ The real size of these criminal businesses, the dimension of illegal migrant flows, and the annual number of people smuggled or trafficked can—if at all—only be roughly estimated (based on the cases annually detected—mostly by chance—by customs or the police).

Even then, one can safely assume that these phenomena have reached a level which can be regarded as significant. The existence of a huge *black market* is crucial to most border-crossing crimes; sufficient demand is a necessary prerequisite for any lucrative business, legal or illegal. Once again these markets and businesses are linked through the actors and structures involved, through the illegal flows of dirty capital, and, in some cases, through forms of *barter-trade*: some criminal groups collaborate at times by exchanging “goods” to serve their

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- 14 Cf. *Bundesamt für die Anerkennung Ausländischer Flüchtlinge* (Germany): Reisewege von Asylbewerbern, in: www.bafg.de/ (update: 16.6.2003); *Salzburger Nachrichten*, www.salzburg.com/sn/, 17.6.2003; *BMI* (Germany), www.bmi.bund.de/; press release “Lagebild ‘Organisierte Kriminalität 1999’”; *BKA* (Germany): Situation Report (...) 1999 (May 2000), p. 17.
- 15 Cf. www.diepresse.at/, 7.12.2001; *Rupprecht*: Freiheit, p. 90; *Wocon*: Implications, pp. 1–15, 27–30; *ODCCP*: Drug Nexus, pp. 26–29, 47–49, 93f., 104–108.
- 16 Cf. *Lebed*: Observations (1999), in: *La Strada*, www.brama.com/lastrada/.
- 17 Cf. *BKA* (Austria): Organisierte Schlepperkriminalität. Jahresbericht 2001, p. 57.
- 18 However, when it comes to trafficking in human beings, we face a crime against humanity and as such also an important human rights issue.



clientele—drugs for young women, weapons for drugs, etc.¹⁹ *Strategic re-investments* of illegal profits are another relevant element in the OC-picture: buying key-businesses such as import-export companies, transport enterprises and travel agencies (for covering smuggling of illegal migrants, drugs, etc.), hotels, bars and pubs (for storing drugs, for illegally accommodating and hiding people, for dealing drugs and for offering illegal prostitution), as well as foreign exchange businesses for *money-laundering*. Police raids into certain city quarters of various cities in Europe have shown these connections.²⁰ As important are the parallels between the various smuggling and trafficking fields related to *corruption*. The spreading of corruption in general can be seen as a fertile breeding ground for the development and growth of OC. Corruption—together with infiltration—intertwines criminal world and legal businesses (e.g. banks, transporting) as well as the State apparatus (police, customs, administration, politicians). There have been some cases in Europe where even the police have been involved in local drug business and illegal prostitution.²¹

Primary routes for smuggling drugs and people to Europe follow important migration and trade routes. Significant “plaques tournantes” for drug trafficking and illegal migration are i.a. Russia (Moscow), Turkey (Istanbul) and the Balkans. Besides Greece, Italy (especially its Southern territory) plays a key role as a “Gateway to the EU”, with “motoscafi” and ferries bringing illegal migrants, drugs, weapons and other “commodities” ashore, arriving via Tunisia / North / Western Africa, or Albania / the Balkans. Other important routes run through the Balkans or from Eastern Europe via Hungary, Slovakia, Czech Republic and Poland into Germany and Austria—countries which are attractive for their economic potential and developed markets, and which to date have been most exposed to the famous East-to-West smuggling routes.²²

All this, explained by necessity in a few lines, demonstrates the complexity of the existing OC-network structures, and gives an idea why the linkages between

19 Cf. *Narcomafie*, VII, No.6, June 1998, pp. 4–19; *US Department of State: Trafficking in Women and Girls* (fact sheet), 10.3.1998; *Stoudman, Gerard* (Director of ODIHR), in: www.unhcr.ch/, 22.7.2002.

20 Cf. *BKA* (Austria): *Organisierte Schlepperkriminalität* (2001), p. 53; *U.S. Department of State (DOS)*: www.usinfo.state.gov/: *ARIAT* (2000); *AIC*, www.aic.gov.au/: *Trafficking*, 7.7.1999; *OSZE*, www.osce.org/: *Trafficking in Human Beings*, 1999/3; *O'Neill / CSI: Trafficking* (2000), p.1f.; *Da Pra Procchiesa*: *Fenomeno*, in: *Narcomafie*, No.6/1999, pp. 4–6. *BKA*: *Bundeskriminalamt*.

21 Cf. *Ö ffentliche Sicherheit*, No.3–4/01, p. 26.

22 Cf. *Le Monde*, 20.2.2001, p. 9; *The Times*, 31.8.2000, p. 14; *Corriere della Sera*, www.corriere.it/, 26.4.2002.

the different OC-fields are indeed so relevant. If we really intend to *combat* phenomena such as irregular migration and drug trafficking, it is necessary to understand that we will have to focus on the *prevention* of the phenomena—and thus on their root causes. Effective countering of Organised Crime involvement in irregular migration, people smuggling and human trafficking therefore requires, as a prerequisite, focusing on the *parallels, linkages* and *interrelations* among and between these fields and other crime phenomena, as well as between criminal actors, structures and networks operating at different levels of the criminal world, and in the grey area between criminality and legality.²³

There seems to be a global consensus of the need for action. With the supplementary protocols to the Palermo 2000 Convention against Transnational Organized Crime—the protocol against smuggling of migrants and the one against trafficking in persons—the international community has reached some important common minimum standards in addressing these challenges in the future. However, there is still much to do. Many actions have been initiated, while coordination and cooperation are still insufficient. There are many national and international, governmental and non-governmental organisations, agencies, groups and individuals actively engaged in countering the aforementioned businesses with numerous initiatives, and an even larger number of those who claim to do so. However, the current initiatives planned or launched by the different governmental and non-governmental actors at national and international levels seem to great extent underestimate the role of the OC-links²⁴, and comprehensive initiatives focusing on this aspect are thus needed. Despite the many initiatives, the fight against organised illegal migration, people smuggling and human trafficking is wanting in many aspects. Besides the failure to use clear definitions of these phenomena (which partly derives from the non-standardised criteria for collecting information),²⁵ there are other problems resulting from an inadequate system to exchange information between actors involved in the anti-trafficking field, as well as from a lack of a multi-level²⁶ vision of joining knowledge, forces and strategies to confront the challenges. It is no longer sufficient to tackle such issues only at local or at national level, nor is it very effective to concentrate solely on the international level and by so doing dismiss the indispensable national and sub-national input. Thirdly, there is not sufficient knowledge of the role of OC, and of its logistic and structural aspects. Gathering information is, of course, unlikely to be simple because, apart from the smugglers and traffickers themselves, the people who know the most about the subject are the police, and

23 Cf. *Oberloher*: The Network Connection, in: *UNICRI Journal*, 2003/II (December).

24 Which, in fact, is responsible for the fact that year after year tens of thousands of people become victims of inhumane and exploitive treatment through these phenomena. While other institutions and initiatives focus on aspects (such as awareness-building for potential victims, victim protection and assistance, shelter, repatriation and reintegration), which, from humanitarian point of view, are without any doubt indispensable in tackling specifically human trafficking, we should not fail to address also the root cause driving the mass phenomena of all three, organised irregular migration, alien smuggling and human trafficking as well as many other serious crimes—in other words, we should not fail to address *OC*!

25 While the important connections and relations have to be studied and taken into consideration when elaborating counter-strategies, it is also crucial to make the necessary distinctions.

26 *Oberloher*, Robert F.: *Moderne Sklaverei im OK-Netz. Effiziente OK-Konfrontation mittels koordiniert-kooperativer Mehrebenenpolitik*, Vienna 2003.

they may refuse to share some important data and knowledge with others (sometimes still even among themselves, due to restrictions, especially in sensitive subjects such as these). As a result of the lack of data available, effective strategies and measures to counter OC-involvement in these fields still need to be developed, and the existing analyses and assessments of the problem are far from being comprehensive.

We will have to bear in mind that human trafficking and people smuggling are only a small part of organised crime. Criminals will probably always smuggle and traffic any type of “goods” and “commodities” that prove to be lucrative. Despite the fact that everything should be done to decrease the humanitarian misery connected with these crime fields, we should understand that if we really want to “combat” OC, we have to focus more on the criminal networks, and less on their victims. We also need a better definition of ‘organised crime’ and means to distinguish it from criminals who are organised, as well as from groups operating at an unsophisticated level. If we want the police to be effective, specific training is needed to enable them to better confront these issues with special skills. Furthermore, appropriate legislation has to be in place and, most important of all, there has to be undivided political will supporting the efforts.

Initiatives that try to address such complex and important challenges will require a lot of time, a multi-level strategy and cooperation among an interdisciplinary spectrum of key actors. This may sound too much of a vision. However, improvements require visions and despite all these difficulties, efforts to improve insight into these phenomena and their crucial links and methods, as well as the elaboration of more effective, advanced and comprehensive strategies—based on sound knowledge—should remain our priority.

Impact of Transnational Organized Crime on Law Enforcement

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Global Attention on Transnational Crime

Six years before delegates gathered in Palermo in December 2000 to sign the United Nations Convention on Transnational Organized Crime, representatives to the UN focused their attention on transnational organized crime. Completion of the convention was a bold statement by the world community. It announced that this form of crime is growing in scale, scope and degree of sophistication and it showed a new commitment by nations to prevent and combat this problem.

One look at the list of countries which have ratified the convention makes it clear that transnational organized crime affects all corners of the world.¹ Yet, transnational organized crime remains difficult, if not impossible, to measure in quantitative terms. There are no statistics which measure incidents of most transnational crimes.

For example, in the area of human trafficking—there are many estimates of how many people are trafficked.² Other estimates attempt to calculate the cost of human trafficking in currency, certainly not in terms of human suffering. But these are only estimates. And those who compile the estimates will often confess, in the strictest of confidence, that the estimates are only guesses. Recently, as Federal cases on trafficking are being prosecuted in the U.S. under the Victims of Trafficking and Violence Protection Act of 2000, we have begun to see some national statistics for human trafficking in the U.S. But certainly they are not a complete picture of a single transnational crime problem in one country.

In the United States, the debate may be more basic than developing or maintaining reliable statistics on transnational crime. While transnational crime is an international issue, it takes place at the local level in the villages, towns and cities where law enforcement officers must, first, identify what they are seeing as transnational crime before they can respond. Transnational crime is often difficult to identify, particularly at the local level. It is more difficult to learn if transnational crime has any impact on these local law enforcement agencies. And, we have discovered in the U.S., it is most difficult to measure what that impact might be.

1 United Nations Office on Drugs and Crime, "United Nations Convention against Transnational Crime", www.unodc.org/unodc/en/crime_cicp_signatures_convention.html, (July 2, 2003).

2 Jay Albanese, "Nature & Scope of Human Trafficking in the U.S.", slide presentation, (May 2003).

Impact in the U.S.

While the UN was deliberating and negotiating the convention on transnational crime, the National Institute of Justice (NIJ), began to look at these crimes in the United States to determine whether and how they impact law enforcement there. Such measurements in the U.S. are complicated by the complex criminal justice system. Rather than one National police force, the United States has more than 17,000 Federal, state and local law enforcement agencies across the country. Not only does this complicate collecting and analyzing quantitative data, but it also creates definitions that vary from one jurisdiction to another.

During informal conversations with law enforcement officers, we discovered a lack of awareness about transnational crime. When asked about the types of transnational crimes they encountered in their jurisdiction, officers would ask if we meant drug trafficking. They seemed to have little, if any, awareness of the other types of transnational crime which have been defined for decades in international criminal justice circles.³

Initially, NIJ took advantage of several captive audiences and conducted a convenience sample of New Jersey prosecutors and law enforcement officers in Orange County, California, to determine how much and what type of transnational crime they encountered.

This convenience survey gave us very mixed signals. For example, the respondent might have indicated there was NO transnational crime in their jurisdiction, but that 50 foreign nationals had been arrested. Certainly, not all 50 were involved in international crimes, but it is safe to assume that some might have been.

Nationwide Survey

Because the convenience survey produced no clear results, NIJ contracted with Abt Associates, Inc., a well-respected research firm to conduct a nationwide exploratory survey to determine if and to what extent transnational crime impacts law enforcement agencies at the state and local levels.

Method

One objective of the survey was to achieve a high response rate, since poor response rates can undermine the validity of survey results with even the best instrumentation and sampling. Several alternative methods of data collection were considered and rejected. A telephone survey was selected as the primary mode of data collection to be augmented with use of mail, email and phone communication to contact, schedule and follow-up to the phone survey. This method of data collection was most likely to capture busy, mobile, upper level law enforcement managers and it was feasible to collect the data within a six month time frame.

Developing a nationally representative sample involved several steps. A literature review was conducted to identify key transnational crime problems most

3 Muller, G.W.O. "Transnational Crime: Definitions and Concepts" in *Combating Transnational Crime*. 1998.

likely to be of highest current and future concern to local law enforcement. Prior surveys of law enforcement agencies were examined for guidance on the most effective data collection procedures. As substantive issues arose, discussions were held with law enforcement personnel in police departments of large and small cities to gain clarification. A key set of transnational crime and relevant law enforcement issues, a prototype questionnaire and an outline of data collection procedures were tested on a small focus group with one Chief of Police, one Deputy Chief and one Head of Operations from representative departments. This provided critical feedback and helped refine the questionnaire and data gathering procedures. Following the focus group, a pretest of the procedure and data collection instrument was conducted with nine police departments from geographically diverse states. The revised instrument performed very well.

The questionnaire provided a working definition of transnational crime and contained instructions asking respondents to provide information only about crimes with international connections. Survey instructions were followed by a list of the more common types of transnational crime which the survey was intended to address:

- Illicit trafficking—including trade in humans (for forced labor or sexual exploitation), drugs, weapons (biological weapons, firearms, munitions, or components of weapons), stolen art or artifacts, endangered animals or animal parts and products, or stolen intellectual property (e.g., pirated CDs, counterfeit clothing, or trademarked materials).
- Illegal immigration
- Computer crimes—reaching across international boundaries, such as money laundering, identity and information theft, unauthorized access, sabotage, viruses (“hacking”), internet commerce in child pornography, or theft and illicit transmission of intellectual property (music, books, patented materials).
- Crimes related to homeland security—such as foreign organizations attempting to disrupt or destroy domestic infrastructure, threatening or killing American citizens and residents.
- Other transnational crime of local concern which respondents wished to address.

Sample

The sampling plan integrated three different sub samples to include state, county and municipal levels of law enforcement. This approach was chosen to obtain a descriptive, exploratory study to account for transnational crime not bound by geographical patterns or uneven geographical distribution among urban, suburban and small community areas and to obtain a high response rate. To maximize the information, the following sample plan of 250 law enforcement agencies was designed to incorporate three components:

- 175 local police agencies with 50 or more sworn officers
- 50 state police departments
- 25 main police departments of core cities of the 25 largest U.S. metropolitan areas

The centerpiece of this design was a random sample of 175 law enforcement agencies drawn from data in the Bureau of Justice Statistics Census of State and Local Law Enforcement Agencies. Given that relatively few truly large cities are likely to be captured in a random sample of agencies with 50 or more sworn officers, a set of 25 core cities was purposively drawn. Finally, all 50 state police agencies were included to ensure a wide geographic coverage and because state police often act as a conduit between the local and federal levels. Neither the purposive selection nor the total coverage of states will support generalizations.

Data Collection

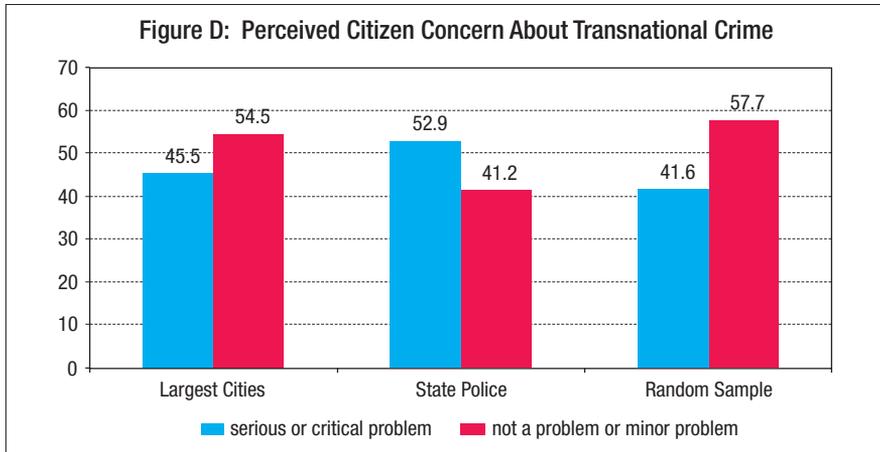
Data was collected during a 10-week period through telephone interviews which took between 30 and 60 minutes. The survey interviews addressed the following issues:

- Perceptions of transnational crime at the local level;
- Level of transnational crime activity in their jurisdiction;
- Local resources devoted to preventing and responding to transnational crime;
- Extent of cooperation among local, state, federal, and foreign law enforcement; and
- Perceptions of resource needs.

The approach to data collection, emphasizing persistent follow-up procedures using multiple media, proved to be well suited for the extraordinary conditions under which the survey occurred. Survey interviews began on March 18, 2003, one day after and one day before events which impacted the workload and priorities of local and state law enforcement. The day before data collection began, the Department of Homeland Security Terror Threat Level was raised to orange, indicating a “high risk of terrorist attack” when President Bush declared Saddam Hussein must leave Iraq within 48 hours. The day after data collection began the U.S. military campaign against Iraq began. Local agencies’ attempts to address homeland security during a time of war stressed state and local resources making data collection difficult during the first weeks.

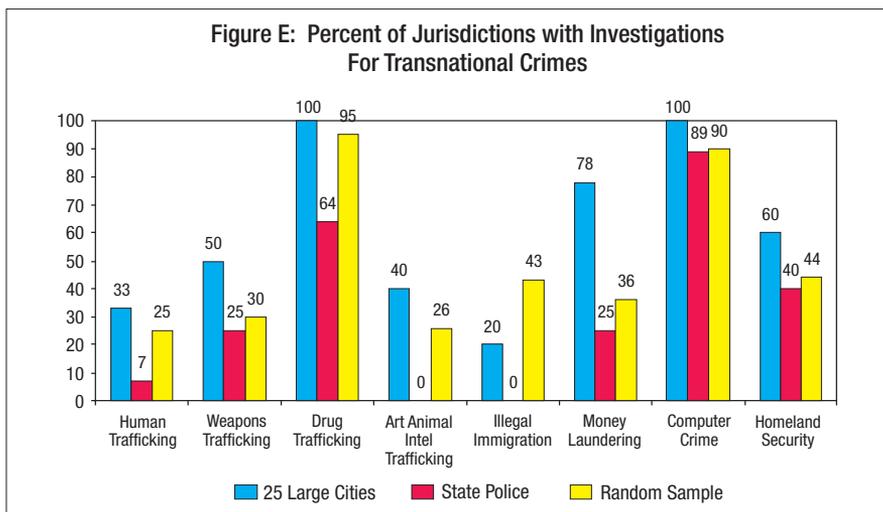
Figure A. Sample			
	Contacted	Responded	Response Rate
25 Largest Cities	25	12	48 %
State Police	50	20	40 %
Random Sample	175	152	87 %
Total	250	184	74 %

According to police surveyed, roughly half of the respondents across each sub sample said citizens within their jurisdictions view these crimes as “serious” or “a critical problem”.



Level of Activity

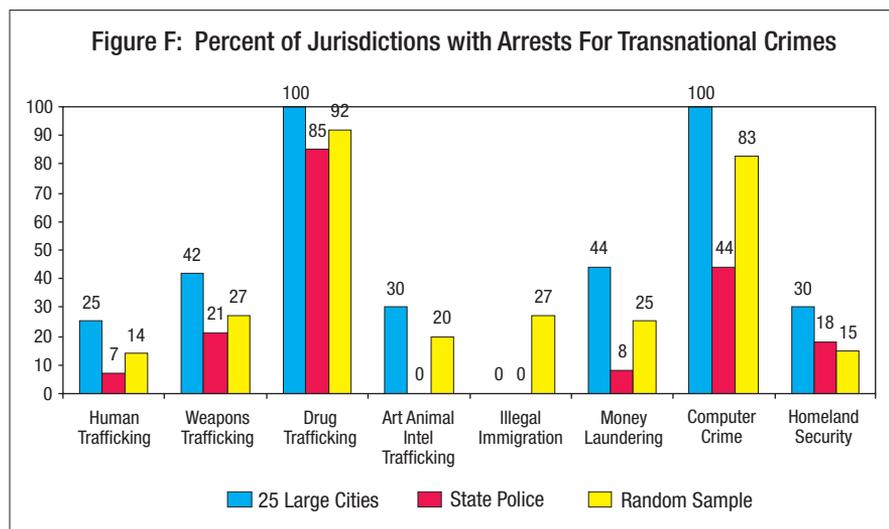
The crime itself was the deciding factor as to whether law enforcement perceives transnational crime to be increasing, decreasing or remaining the same within their jurisdiction. The trends vary across sub-samples depending on crime types. For example, police believe drug trafficking, illegal immigration, money laundering, computer crime and, to some degree, homeland security appear to be increasing. About one-fifth to one-third of respondents believe that human trafficking is increasing in their jurisdiction, while respondents in large city police departments tend to believe this form of trafficking has increased.



The data which was collected regarding the number of arrests, investigations, foreign organized crime and the country of origin for foreign nationals involved proved to be weak. The major obstacles to collecting useful data are structural and procedural. Some of the crimes addressed in this survey are not recorded by local law enforcement agencies, but are instead referred to federal agencies. Arrests and other data on these incidents are not always recorded locally. In other cases, criminal codes and data recording systems do not adequately distinguish transnational crimes from local variations of the same activity. For example, police in many locales record cases of human trafficking for sexual exploitation as prostitution, either because they have not established sufficiently that the illegal activity is part of a larger trafficking enterprise or because they are trained only to record the violation of local criminal codes and to leave the possible international connection to federal agencies. In some locations, prostitution by trafficked persons is referred to federal agencies such as the INS and the FBI and would not appear in local crime records at all. Even when the arrest data on transnational crime exists, it is not always easily accessible to staff or aggregated in a way helpful this survey. Finally, many agencies do not compile aggregate statistics on investigations, especially those categorized by crime type.

As a result of these limitations, the arrest and investigation data was collapsed into dichotomous variables, where agencies do or do not report instances of activity in each crime type. Respondents would say with confidence that there was a presence or absence of arrests or investigations into a particular type of crime, but could only guess about numbers or provide a wide range.

There were arrests and investigations for each of the major types of transnational crime across almost all crime types and sub samples. While it was not a surprise to see indications of widespread international drug trafficking, nearly all state and local agencies were conducting investigations into transnational computer crime. Other categories such as weapons trafficking, money laundering and even art, animal and intellectual property theft show a higher percentage of



arrests than might have been anticipated. However, this reported activity, raises the question of how much more of these crimes go undetected. Do local and state police really know what they're seeing?

For example, a cigarette smuggling case in North Carolina (which ultimately linked the profits to the support of terrorists) began with a local sheriff's deputy observing people coming from long distances to buy truckloads of cigarettes at a discount warehouse.⁴ In Canada, the RCMP received a complaint from a fraud victim, and while investigating this complaint, common elements surfaced linking it to on-going investigations in both Canada and the U.S. An ensuing joint international investigation ultimately led to a significant indictment for a "Nigerian Letter Scam" conspiracy.⁵ In northeastern Italy, Russian businesses became active in the purchase of clothing and consumer goods for the Russian market. Suspicious law enforcement officials investigated bank and commercial records, revealing a criminal network of primarily Russian and Italian businesses, resulting in arrests of more than 30 people in five countries.⁶ Are these cases simply "lucky breaks", or can practical investigative screening procedures be developed to look for potential transnational connections?

While the survey could not measure the amount of crime undetected, there was an attempt to determine country of origin of those foreign nationals who were arrested or investigated for transnational crimes. Unfortunately, the data collected regarding country of origin was very vague and in many cases the interviewees refused to respond saying that once the international nature of a crime became apparent the cases were referred to federal authorities and their own investigations would cease.

Similarly, when asked whether people arrested or investigated for transnational crime were associated with a known criminal organization or terrorist group, most respondents did not know, refused to answer or qualified their answers with expressions of doubt. The following is a list of those organizations identified:

Drug cartels from (country)	Al Qaeda
Gangs	Russian Mafia
Mafia	Israeli Mafia
Crime organization from (country)	Latin Kings
Bloods	KKK

Obviously the data do not support analysis that would provide a coherent profile of foreign countries or organizations linked to crime addressed by state and local law enforcement. However, enough anecdotes were gathered to suggest that transnational crime can originate virtually anywhere and reach nearly any part of the U.S. For example, one Western jurisdiction noted an ongoing problem with

4 David E. Kaplan and Monica M. Ekman, "How a Hezbollah Cell Made Millions in Sleepy Charlotte, N.C.," *U.S. News & World Report*, (March 10, 2003).

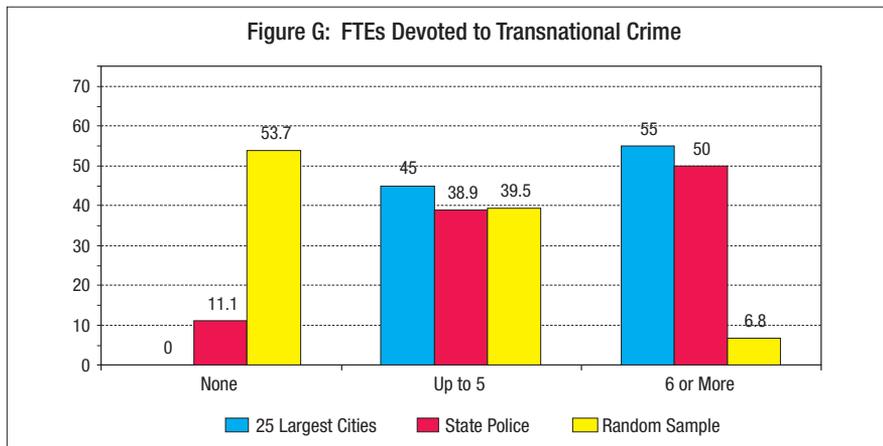
5 "RCMP, FBI and U.S. Secret Service Crumple 'Nigerian Letter Scam'", *Canada NewsWire*, (July 10, 2001).

6 Bruce Zagaris, "Arrests in Europe Indicate Progress in Russian Transnational Crime Investigations", *Transnational Organized Crime*, vol. 18 (August 2002).

poaching to provide bear gall bladders to illicit markets in Asia. In one small, inland Southern city, police identified suspected Russian Mafia operatives engaged in local trafficking in stolen auto parts, with some of the illicit revenue sent abroad.

Local Resources

The survey also addressed the nature and extent of resources devoted to transnational crime within the jurisdictions participating. All large cities and state police surveyed have some dedicated personnel for transnational crime. Most state police agencies have at least one full time equivalent position focused on transnational crime and 55 percent have six or more. Only the departments with less than 50 sworn personnel do not have a significant number of positions dedicated to transnational crime.

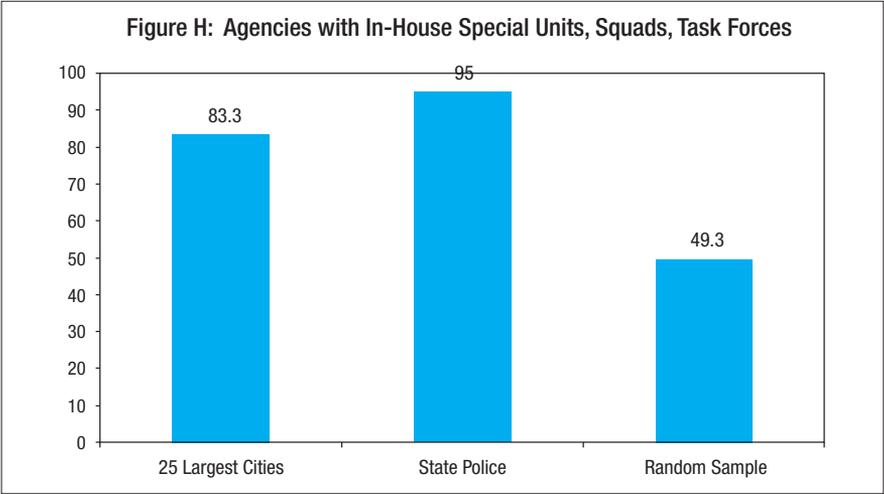


Cooperation

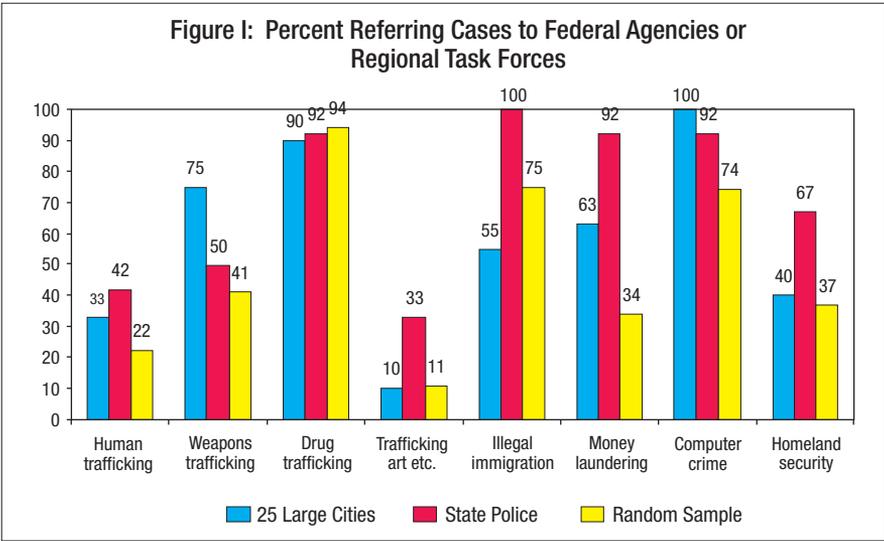
The vast majority of large cities (83 percent) and state police (95 percent) departments have special in-house units, squads or task forces devoted to transnational crime. About half of the random sample of the departments have special units. These units have a wide variety of names and focuses depending on the local needs and prevalent crime which include:

- Domestic Security Task Force
- Counter Terrorism Team
- Terrorism Unit
- Terrorist Intelligence Unit
- Anti-Terrorism Unit
- Homeland Security Task Force
- Homeland Threat Assessment
- Special Assistant for Homeland Security

- Russian Organized Crime Unit
- Port Security
- Drug Task Force
- Computer Investigations
- Special Investigations
- Special Operations
- Special Tactics and Response
- Weapons of Mass Destruction Preparedness



The survey indicated a significant amount of collaboration with federal law enforcement agencies takes place in the area of drug trafficking. Surprisingly, illegal immigration and computer crime also involve collaboration with federal law enforcement agencies. Then, in descending order we see local cases in weapons trafficking, homeland security, money laundering and human trafficking local being referred to federal agencies. Interestingly enough, the proportion of agencies referring cases to the federal and regional levels closely follows the proportion reporting investigations for most types of international crime type. This suggests that local agencies usually refer their international cases to at least one agency outside of the state.



In addition to the upward flow of investigation related information from the local and state level to the regional and national level, The only crime type in which the prevalence of downward alerts exceeded the prevalence of upward information flow was crime related to homeland security. Most state and local agencies indicated they had shared information about drug trafficking (84 percent) and computer crime (64 percent) with other local and state agencies in the previous year while sharing information on other transnational crime types were below 50 percent. Cooperation with foreign organizations is rare, ranging from two percent (trafficking in weapons, art, animal products, intellectual property) to nine percent (drug trafficking) of the state and local agencies sampled.

The level and quality of communication were attributed mainly to the personalities and working relationships between the individuals involved. In some cases, poor communication could be traced to past people and events and had become institutionalized.

Resources Needed

All respondents felt, to varying degrees, that they could use additional resources to prevent or respond to transnational crime. Respondents were asked to indicate the “percentage increase” necessary in each of the following categories to improve their response to transnational crime (1) personnel, (2) training, (3) equipment, and levels of cooperation with (4) federal, (5) state, (6) local, and (7) foreign law enforcement. Across most of the resource, respondents from large city agencies expressed the need for the greatest proportional increases, while state law enforcement indicated the need for the smallest increases. By a substantial margin, responding agencies cited the greatest need for personnel, training, and equipment to effectively address transnational crime, and indicated a need for relatively modest increases in additional inter-agency cooperation.

In Summary of the U.S. Survey

There are a number of general conclusions that can be drawn as a result of the data collected through this survey.

- Transnational crime is present and considered to be a substantial problem by local law enforcement in most U.S. communities.
- In most communities, one or two types of transnational crime stand out, cause concern and trigger investigations for local law enforcement.
- Most respondents felt computer crime is increasing and keeping up with technology is an increasingly important issue.
- There is a significant level of communication and cooperation among law enforcement at various levels—Federal, state and local—driven by the local crime issues and by relationships.
- Some large cities have started their own antiterrorism units in response to federal inaction.

- Most respondents felt their agency was at least adequately prepared to deal with transnational crime but 92 percent said they needed additional training and equipment.

While the results of this nationwide survey reported here present only summary tabulations and simple comparisons of responses to the survey, the data collected will support additional analysis. Nonetheless, these results do indicate a significant amount of transnational crime at the state and local level within the United States.

The next step is to bring law enforcement—local, state, federal—together with researchers to identify gaps and determine the next steps. These experts will analyze what we’ve learned, what we still need, where the critical gaps are and, more important, how to fill them to improve the response by local and state law enforcement to transnational crime.

What Are Other Nations Doing to Define and Measure Transnational Organized Crime

As NIJ conducted this survey, we learned there are other efforts in progress to address, and in some cases, measure or assess, transnational organized crime.

For example, the International Association of Chiefs of Police conducted a similar study and another component of the U.S. Department of Justice surveyed Federal, state and local law enforcement regarding the effectiveness of their regional terrorism task forces.

Other organizations have established programs, both formal and informal, to improve cooperation or facilitate operational investigations across national boundaries. These include:

- INTERPOL which has several operational level initiatives such as the Fusion Task Force to assist member countries in terrorism related investigations focusing on drug, human and weapons trafficking and financial crimes and the bridge project human smuggling and trafficking and the organized crime connection.
- The Financial Action Task Force on money laundering is a 31-country group to detect and prevent financing of terrorism.
- The 6-member Shanghai Cooperation Organization has a goal to strengthen regional security and stability against terrorism.
- OECD with its 30 members has a program to protect consumers from cross-border fraud through information sharing.
- EUROPOL hopes to improve cooperation in combating terrorism, drug trafficking and other international organized crime. Specific agreements have been made to that end with Estonia, Norway, Poland, Iceland, Hungary, the Czech Republic, USA, Slovenia, Bulgaria, and Interpol.
- International Money Laundering Information Network provides model laws against financial crime and tracks anti-money laundering legislation.

In addition there are a number of regional efforts underway and the United Nations Office on Drugs and Crime has a variety of programs. All are important and each is a step toward combating transnational crime.

How Are We Going to Respond?

Although this survey confirms the hypothesis that transnational crime does impact local and state law enforcement in the U.S., accurate records are not available and it is very probable that much transnational crime may go unnoticed, un-identified and unreported.

Is it possible that the situation in the United States is NOT unique?

Let us assume for a moment that law enforcement in other countries may also have difficulty in identifying transnational crime in our villages, towns and small cities. Let us assume that other countries share our difficulty in measuring transnational crime's impact and that no one really knows how much transnational crime there is or how it impacts our countries.

Should these assumptions be accurate the question is: What are we going to do about it? With the coming into force of the United Nations Transnational Crime Convention, questions about the nature and extent of transnational crime will inevitably follow. They may take the form of "how much", "what is the impact", or "is it increasing or decreasing?" But the questions will be asked. Whether the U.S. and other countries are prepared to answer is difficult to predict.

But now is the time to begin thinking about how to answer these questions and to initiate research that will provide valid and meaningful responses.

An Occupational Perspective on some Efforts to Fight Organized, Transnational Crime in the European Union¹

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According to statistics from the Swedish customs, seizures of alcohol and tobacco have increased since the middle of the 1990s. It has been claimed that this increase is actual, possibly resulting from structural changes, for instance reduced control at the borders due to Sweden's membership in the European Union. For individuals who engage in the road haulage industry, the changes manifest themselves in terms of reduced time spent at border controls. However, when large-scale alcohol and tobacco smuggling is revealed, a lorry is often involved as a means of transport. Smuggling of these sorts of goods is, for different reasons, at times associated with so-called organised criminality. The smuggling phenomenon in itself is nothing new. The liveliness of the related (political) discussion, on the other hand, may well be. The paper is based on interviews with individuals convicted of smuggling, made within a collaboration-project between Norway and Sweden, aiming to explore economic crimes from an actor-perspective within the industry. The interviewees, therefore, had a work-related role in the road haulage industry.

Background

In year 2000, a research project was initiated with the purpose of analysing economic crime within the transnational road haulage industry. The project was qualitative, and during a two-year period we conducted in-depth interviews with individuals who worked in the trucking industry.² The economic crimes we focused our interest on varied in terms of type and seriousness; some were more typical for a specific industry, some related to a specific corporation.³

Besides the interviews with people who worked in the industry, we interviewed ten persons who, through their work, were somehow connected to the industry (policemen, custom officers, accountants, trade union representatives, etc). I also participated in some fieldwork, for instance in places associated with

1 This paper is a summary of a presentation made at the ESC-conference in Helsinki, Finland 2003. An extended and developed article is under progress.

2 The project was conducted together with Vanja Lundgren Sorli, at University of Oslo, Norway at the time. We also participated in some of the interviews together.

3 See BRÅ-rapport 2002:6 for a presentation on the various types of economic crimes.

the industry, like the harbour where drivers rest, truck stops and so on. Finally, I joined two drivers at work for short periods.

In this paper, I focus on a particular and limited group of this population. It consists of individuals who have been sentenced to prison for smuggling alcohol and tobacco.⁴

This paper

In the present article, I explore a particular group of interviewees who have been sentenced to prison for smuggling alcohol and tobacco. I will outline some reflections on the issue of organised crime from two perspectives. First, the “crime-policy” context and the efforts made to combat the crime-problem with which it is associated. I concentrate on the parallel development in Sweden and the European Union in terms of universal and transnational solutions to the transnational crime-problem.

Thereafter, the “criminal actor” perspective will be presented, where the occupational context and a viewpoint of the convicted individuals in relation to smuggling are explored. The analysis will focus on the informants’ background and situation. In other words, the smuggling will be connected to a broader occupational context and the conditions surrounding the transnational, international trucking industry.

Before that I will present how the connections between the road haulage industry, smuggling and organised crime can be understood.

The road haulage industry, smuggling and organised crime

There are links between the trucking industry and smuggling of alcohol and cigarettes. The latter is often, in official reports, associated with so-called organised crime.⁵ Therefore, one might claim that the political issues of organised crime affect individuals within the haulage industry since smuggling of alcohol and tobacco is often mentioned in the Swedish discourse as an example of the activities conducted by organised crime. The haulage business, in turn, has for different reasons a central position in smuggling these kinds of goods. Most often, when the customs or police detect smuggling, the driver is caught and convicted of the crime, since lorries often are used as means of smuggling. This is not to say that the actors within the industry are particularly criminal or that the industry is problematic as such. It is rather a matter of structural conditions. For instance:

- 1) The industry is characterised by international and transnational activities.
- 2) In contrast to other vehicles, long-distance lorries have a large capacity to carry goods.
- 3) The borders are open within the European Union—the control at the borders is reduced.

4 The informants in focus are a small group. For ethical reasons, the information concerning these individuals will be presented in general terms.

5 RKP KUT rapport 2001:13

The criminal policy perspective

The first perspective is considered to be official and criminal-political. Two main issues will be shortly discussed: the development of measures against organised crime and the problems of clarifying what kind of phenomenon organised crime actually is.

Political discussion on the international, cross-border criminality has been vivid since the 1990s.⁶ It is claimed that since 1995, the seizures of alcohol and cigarettes have increased remarkably⁷, and that the increased levels are actual.⁸ This kind of criminality can be regarded as an obstacle and threat to the principles of the Union. It can also be considered as a problem for the state. For instance, it has been estimated that a lorry loaded with smuggled cigarettes equals to 15 million Swedish kronas in lost taxes.⁹

Even though it is stated in official documents that organised crime still has a low impact on Swedish society, Sweden is involved in an adjustment process towards more universal and common solutions to combat the problem of organised crime. In other words, a new international and cross-border criminality is to be fought with international and cross-border measures.¹⁰ From the Swedish point of view this means, for instance, changes in the organisational structures of the justice administration, the law and operative work as well.¹¹

Measures—against what and whom?

There seems to be an agreement within the European Union and Sweden that new measures are needed, but the question remains—against what and whom? In effort to work towards a common policy for the union, most countries have adopted a common criterion-list to determine whether a criminal action should be considered organised crime or not. This list consists of 11 criteria of which four are obligatory (1, 3, 5, and 11). In addition to these four, two additional criteria need to be met for an act to be defined as organised crime.¹²

1. Collaboration of two or more people
2. Each with own appointed tasks
3. For a prolonged or indefinite period of time
4. Using some form of discipline and control
5. Suspected of the commission of serious criminal offences
6. Operating on an international level
7. Using violence or other means suitable for intimidation
8. Using commercial or businesslike structures
9. Engaged in money laundering

6 BRÅ- rapport 2002:7

7 www.tullverket.se

8 Alkoholinspektionen 2001:1

9 Ds 1997:51

10 Ds 1997:51

11 Westfelt, 2001

12 RKP KUT rapport 2001:13

10. Exerting influence on politics, the media, public administration, judicial authorities or economy
11. Determined by the pursuit of profit and/or power.

Similar to the concept of economic crime, the concept of organised crime is somewhat vague, and the variety of criminal activities that are described as examples of organised crime indicate a lack of precision. The definition covers, for instance, a broad range of criminal acts and settings: smuggling of alcohol and cigarettes, trafficking, murder, theft and so forth. Despite these problems, the list is probably an important tool for political activities. For example, it provides a guideline to decide what kind of crimes, and who and what groups should be controlled and handled *as* organised crime.¹³

I have now outlined in a very broad and brief manner what can be considered as tendencies in the crime policy agenda in the European Union. The first perspective is seen as the crime-policy context in which this particular group of informants worked before the sentence, but also during their time in prison. I have focused on the political aspect of organised crime and emphasised that international, cross-border crime problems should be handled by international co-operation on several levels. A step toward this is the usage of the criterion-list. The list has an operative and essential function. It is likely to serve as a framework for both knowledge and political decisions.¹⁴ Despite the vagueness of what to “act against”, there is a clear ambition to act united and with common strategies against organised crime. Whether or not this in practice proves to be an adequate measure and action against smuggling and organised crime, remains an open question.

The crime-actors' perspective

I will now focus on the empirical material from two perspectives. The first deals with the haulage industry and describes some of the difficulties from a structural level. Thereafter, I will describe motives to smuggle.

None of the interviewees had entered the industry or established a business with the intention to commit crimes or to smuggle. The crimes had not been committed during the ordinary occupational duties, but rather alongside with the legal business. It should be noted that even though the informants were in prison, convicted of smuggling, this did not necessarily mean that they were guilty of the crime. Some informants claimed they were either innocent or unfairly sentenced.

Small-scale companies, with one or a few vehicles, dominate the road haulage industry.¹⁵ Several informants described it as an occupation that has stayed in the family for generations. Most of the informants had small-scale companies, and described financial difficulties they had faced. A majority stated that Sweden's entrance in the European Union has had positive effects, but they also described the competition between many countries as tough. They believed that the situa-

13 See Bay, J (1998)

14 See Bay (1998)

15 SIKA-rapport 1999:5

tion derived, among other things, from the different cost and price levels: Sweden is more expensive in many respects than other countries, and, therefore, its competitive position is weak also in the haulage business. All informants discussed their strained financial situation. Even small expenses could lead to major difficulties. They also described a sense of lack of self-determination and not being able to control or handle their everyday working life.

These are some of the factors that the informants mentioned as affecting their everyday work, things with which they had to cope somehow. A strained financial situation was a common problem among the informants, especially those with small companies. In conclusion, all informants had experienced some sort of strain in relation to their occupation.

The smuggling procedure in itself is no different from ordinary and legal transport. Alcohol and cigarettes are legal goods in society and transported on a legal basis. In other words, there is a “normality dimension” to alcohol and tobacco in contrast to narcotics. All informants distanced themselves from smuggling narcotics. None of the informants said they were “out in the cold” or stigmatised among their colleagues because of the smuggling. They could, if they wanted, get back into the industry after prison.

When asking an informant about the motives to smuggle, I was told that “it wasn’t for the excitement”. The informants’ descriptions reflect a financial dimension of smuggling. Some of them had, after a longer period of financial strain, committed a crime to remain in business. Some of them had smuggled because “hard work wasn’t enough”. A few of them had already experienced bankruptcy. Most informants expressed a sincere will to remain in the industry.

It seems that smuggling was regarded as a strategy to solve financial problems. Another aspect of financial motives was to smuggle in order to get money for a new vehicle, a vacation or something else that could be considered “extra”. Respondents said that ordinary work had not provided those possibilities. The interviews indicate that in most cases, the motive was a financial one. I believe that for most, smuggling presented a strategy to cope with financial strain, rather than to satisfy “greed”.

Conclusion

So far, I have concluded that there is a connection between the haulage industry, smuggling and organised crime, resulting from structural dispositions in the industry.

Crime political issues, and more specifically the problem of organised crime, can be analysed from different points of departure. I have chosen to relate tendencies in the political discourse to crime-actors’ perspective. In other words, two perspectives on the *meaning* of organised crime are connected to each other. First, the political perspective, reflecting the development towards common definitions and measures within the union. Second, the actor perspective including descriptions of structural difficulties in the industry and motives to commit crime.

From a crime-political perspective, smuggling, as a form of organised crime, poses some form of obstacle and threat (threat to freedoms within the European Union, resulting tax losses to the Swedish state, etc.). On the other hand, from an actor’s

perspective, the empirical material indicates that smuggling means something else. According to the interviews, the motives appear more complex. For instance, it is not possible to view the crimes as simple attempts to gain economic profit.

If we take the informants' descriptions seriously, new crime-political options emerge. A majority of the individuals have experienced different forms of strain in their everyday work, some of which have partly resulted from the situation on the European market. Hence, there are alternative and distinctive political means available, such as creating better structural conditions for people who wish to work in the road haulage industry.

Final remarks

In my future work, I will scrutinise the issues of formal control, law enforcement and regulation of the industry; including a number of institutions that play a significant role. One purpose is to examine what meaning the informants attribute to the different aspects of control, and what impact it has on their professional life. This is also linked to the informants' construction of meaning when it comes to economic crimes. The informants' experiences and descriptions are interpreted in relation to the occupational, structural and historical context of the road haulage industry.

Literature

- Alkoholinspektionen (2001) *Smuggling, hembränning och olaglig försäljning—illegal alkoholhantering*. Alkoholinspektionen 2001:1
- Bay, J. (1998) Da organiseret kriminalitet blev inført til Danmark I: Kriminalvetenskapliga texter tillägnade Vagn Greve. *Nordisk Tidsskrift for Kriminalvidenskab*. Oktober 1998, 85. Årgang. Nr. 3–4
- Brottsförebyggande rådet (2002) *Just in time. Ekobrottslighet inom svensk och norsk långtradartransport*. Rapport 2002:6. Forskning om ekonomisk brottslighet.
- Brottsförebyggande rådet (2002) *Organiserad brottslighet – lösa maskor eller fasta nätverk*. Rapport 2002:7. Forskning om ekonomisk brottslighet.
- Departementsserien (1997) *Internationella ekobrott. Rapport från internationella ekobrottsgruppen*. 1997:51 Stockholm
- Rikskriminalpolisen, kriminalunderrättelsetjänsten (2001) *Organiserad brottslighet i Sverige 2000*. RKP KUT rapport 2001:13
- Statens institut för kommunikationsanalys (1999) *Åkerinäringens kostnadsstruktur och konkurrenssituation. Redovisning av ett regeringsuppdrag*. Delrapporter 1 och 2. SIKA-rapport 1999:5
- Westfelt, L. (2001) *Organisatoriska förändringar inom svensk polis under 1990- talet*. Rapportserien vid Kriminologiska institutionen, Stockholms Universitet.

Internet

www.tullverket.se

Organized Crime in Ukraine: Contemporary Situation and Methods of Counteraction

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Organised crime, rooted in the Soviet past, is a very serious problem for all post-communist countries, including Ukraine. The main trait of all post-Soviet organised crime is the combination of corrupt civil servants and their association with shadow economy and criminal structures. L. Shelley believes that post-Soviet organised crime represents a new form of non-state based authoritarianism (Shelley 1997).

Organised crime is a very complex phenomenon that reflects only the outward appearances of a more general process. It is directly connected with integral political, economic and social relations within our society.

In this paper, I first make several observations about the notion of organised crime. It is necessary to stress that organised crime is a criminological definition, and is formulated, as a rule, on the basis of legislation. There is no consensus over this term among Ukrainian scholars, nor among the international scholarly community.

There are two major approaches to classify organised crime. The first approach is to classify groups by the nature of the offences they commit. The legislation of the USA and some other countries stipulate categories of crimes, which identify criminals as being engaged in organised crime. For example, the RICO Act applies to any enterprise involving racketeering. Racketeering is defined as an act that demonstrates a pattern of criminal offences (West's Encyclopedia of American Law, 393).

The second approach is to sort groups by the nature of their organisation. The latter approach is dominant in Ukrainian criminology. Article 1 of the Law of Ukraine "*On the Legal Foundations of the Fight Against Organized Crime*" (1993) defines organised crime as an "aggregate of crimes, committed through the creation and operation of organised criminal groups", but provides no definition of "organised criminal group". Sections 3 and 4, Article 28 of the new Criminal Code of Ukraine (CC of Ukraine, 2001), passed on April 5, 2001 and thus one of the most recently adopted criminal codes on the post-Soviet territory, fills the gap by defining the terms "organised group" and "criminal organisation". I will next like to examine these definitions.

A crime is considered to be committed by an organised group (OG), if it is prepared or committed by three or more individuals that have previously established a stable association with the goal of committing this or any other crime with a single plan, which is known to all members of the group and involves role distri-

bution among the group members in order to implement the plan.(Section 3, Article 28 of the Criminal Code of Ukraine, 2001).

A crime is considered to be committed by a criminal organisation (CO) if it is committed by a stable hierarchic association of three or more individuals, whose members or structural components have in advance organised joint activities with the goal of committing serious or very serious crimes, or who have governed or coordinated the criminal activities of other individuals, or who have supported this or other criminal organisations (Section 4, Article 28 of the Criminal Code of Ukraine).

Serious crime is a crime punishable by imprisonment of no more than 10 years (Section 4, Article 12). Very serious crime is a crime punishable by imprisonment of more than 10 years or life (Section 5, Article 12).

It is necessary to underscore that the Criminal Code definitions include many subjective characteristics and lack precise criteria. The traits of a stable association or stable hierarchic association are determined by the investigative agencies and the court, and are sometimes very difficult to prove. This interpretive nature of the Criminal Code has resulted in more than one interpretation in terms of judicial practice, and in limited ability to fight organised crime as a whole. In practice, only individual members of criminal organisations can thus be prosecuted.

I would like to point out that Article 255 of the Criminal Code of Ukraine takes into account the successful experiences of foreign countries. It criminalises activities that aim at creating criminal organisations. However, in 2002, for example, there were only 17 registered cases of creating criminal organisations in Ukraine. In the Kharkiv region, one of the largest in Ukraine, only one case was investigated under Article 255 in the said year. The causes of this situation will be discussed later.

We may compare approaches of the Ukrainian legislators with those of the law enforcement agencies of the European Union (EU). The latter classify any crime or criminal group as organised crime if at least six of the following characteristics are present, three of which must be those numbered 1, 5 and 11 (Global Report on Crime and Justice 1999, 61).

1. Collaboration of more than two people;
2. Each with appointed tasks;
3. For a prolonged or indefinite period of time;
4. Using some form of discipline or control;
5. Suspected of the commission of serious criminal offences;
6. Operating on an international level;
7. Using violence or other means suitable for intimidation;
8. Using commercial or businesslike structure;
9. Engaged in money laundering;
10. Exerting influence on politics, the media, public administration, judicial authorities or economy;
11. Determined by the pursuit of profit and/or power.

We may conclude that the Ukrainian Criminal Code differs in that it does not require “organised group” or “criminal organisation” to be involved in activities that are organised for the explicit purpose of achieving gains in wealth or power.

The first and fifth characteristics, however, are present in the corresponding Article of the Ukrainian Criminal Code.

Many scholars think that the terms “criminal business” and “criminal enterprise” better reflect the essence of organised groups’ activities. Thus a criminal organisation is to some extent a criminal enterprise. Additionally, the legislation of many foreign countries and international laws identify the purpose of “acquiring proceeds and excess profit illegally” as the major criterion that distinguishes organised crime from ordinary criminal activity.

The simplest definition of organised crime would be as follows: it is an aggregate of crimes, committed by organised groups or members of criminal organisations on a certain territory for a definitive period of time.

I will now briefly analyse the contemporary situation of organised crime in Ukraine. Official statistics from the Ministry of Interior of Ukraine depict the scale and scope of organised crime, including the number of known organised criminal groups (OG), their members and crimes committed (Department of Information Technology, Ministry of Interior, 2003, 5-1-5-13).

Years	Exposed organised groups	Registered crimes committed by organised groups
1998	1 157	9 273
1999	1 166	9 307
2000	960	7 744
2001	770	6 703
2002	721	6 463

Table 1. Organised crime in Ukraine.

Official statistics show that over the last five years, the number of exposed organised groups has declined from 1,157 to 721. This trend is consistent with the decrease in recorded cases of organised crime.

Table 2 contains more precise data on the structure of organised crime.

From the 2002 statistics, we see that 78% of the crimes committed by OGs and COs are of a general criminal nature. Of these 21% are economy-related. Only 3% of the groups are considered to have international criminal connections. Most prosecuted organised groups (75%) existed for one year, 18% committed crimes for two years and only 7% operated for more than two years (Department of Information Technology, Ministry of Interior, 2003). It is also noteworthy that in the Kharkiv region, for example, law enforcement agencies discovered only three drug-related organised groups in 2002, each with three members. Yet some experts estimate that there are as many as 20,000 drug addicts in the said area (Pitya, 2002).

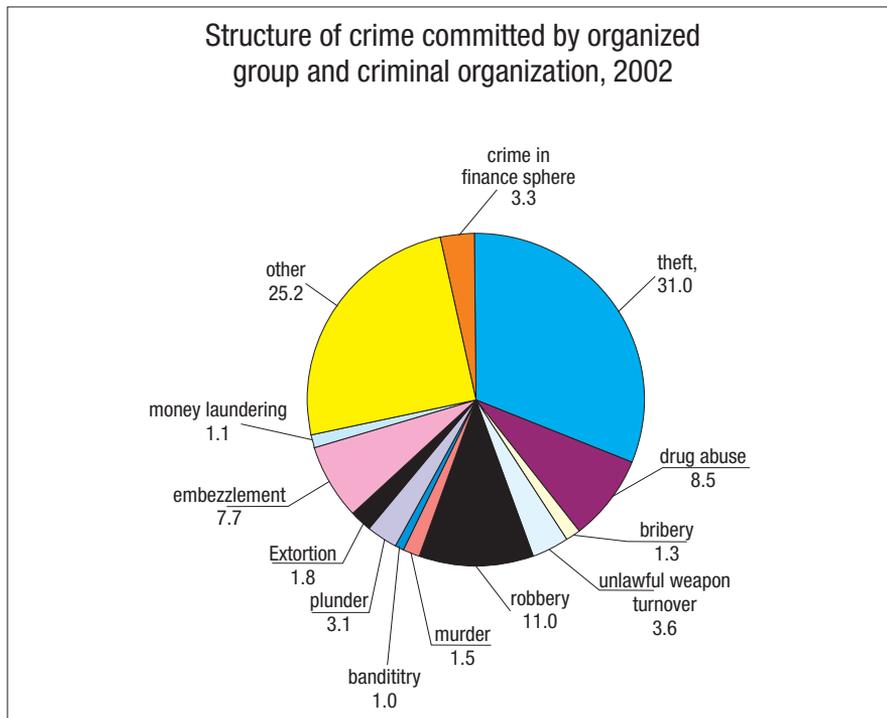


Table 2. More precise data on the structure of organised crime.

The data need to be interpreted with caution. 1. The decrease in the number of OGs and COs detected results from the following circumstances: a) before 2001, the Criminal Code of Ukraine did not clearly define these terms, and b) as a result, law enforcement personnel interpreted these terms broadly: their interpretation was based on subjective evaluation and approaches. Law enforcement agencies lacked precise guidelines for distinguishing organised criminal groups from traditional groups of criminals. For a long time activities carried out by two accomplices were considered to belong to organised crime, although hierarchy and role distribution are possible only when at least three persons are working together. (This number has been identified in many countries, such as Italy and Romania, and in international documents). It is very positive that the new Criminal Code of Ukraine reflects this definition and not the previous one. Earlier, crimes that had nothing to do with organised crime were often regarded to be committed by organised groups. Therefore, the decreased number of detected groups may be regarded as a positive tendency. 2. Ministry of Interior statistics do not contain any information concerning the number of disbanded organised criminal groups. 3. Crimes committed by the most dangerous organised criminal groups are still latent (Shostko 2002, 66). These criminal organisations have corrupt links with government officials, control shadow economy, and possess enormous amounts of criminal funds invested in legitimate, semi-legitimate and criminal business. Members of criminal associations use latest technology to prepare crimes and

cover their tracks. Such illicit activity is very hard to investigate, so only clearly visible crimes are investigated. 4. The primary criteria with which the efficiency of law enforcement can be determined are the number and percentage of crimes investigated. Therefore, law enforcement personnel who need to show results target mostly at poorly organised crimes.

Very often the activities of criminal organisations are carried out through ordinary commercial agreements, financial transactions, privatisation and legitimate business dealings. As a rule they are related to tax evasion. These activities are not included in official statistics.

Unfortunately, considering this analysis, we might conclude that the law enforcement mechanism does not work effectively

An additional problem is posed by the connection of organised crime with money laundering. Ukraine criminalised this kind of activity and began developing a legislative foundation for combating money laundering in 2001. Legalisation (laundering) of monetary assets or other assets acquired through criminal means is understood as using such assets for business and other economic activity, or as founding organised groups in Ukraine or abroad to legalise (launder) such assets (Article 209 of the Criminal Code of Ukraine)

The law *On Fighting Money Laundering* was passed in the end of 2002. The State Finance Monitoring Department was established at the Ministry of Finance of Ukraine in 2002. Money laundering comprises 0.8% of all crimes committed by OGs and COs.

The massive concealment of foreign currency proceeds in foreign banks and tax evasion worsens the economic situation in Ukraine. Although the CC of Ukraine criminalises evading taxes on currency proceeds, and illegally opening and using currency accounts abroad, in 2002 only 21 crimes committed by organised groups in the international economic sphere were investigated.

We may conclude that the most serious and sophisticated crimes and criminals go unpunished. This results from incontrollable corruption among those who are defending law and order, and from the fact that organised criminal groups often include employees of the militia, customs, tax and procuracy agencies. As a rule such crimes do not reach the trial stage.

Obstacles to counteraction

As a country in transition, Ukraine is suffering from a lack of solidarity on social and political issues and cultural values. Having democratically attained independence, the people of Ukraine are now experiencing its downsides, resulting in poverty, corruption and despair. Firstly, they are caused by the essentially totalitarian power structure in Ukraine that serves the interests of clans (influential financial and administrative groups such as those in Dnipropetrovsk, Donetsk, Kharkiv and other major cities). Law enforcement agencies often serve as tools

for such groups and act under the latter's instructions. In Ukraine there are two types of shadow groups: financial-political groups (FPG) and administrative-financial groups (AFG).

FPGs are informal shadow alliances that are comprised of representatives of government agencies, business and the criminal world. AFGs have arisen from the ruins of the Soviet administrative system and obtained access to financial resources by belonging to governmental control agencies. Belonging to AFGs gives civil servants stable and reliable income, as well as protection from audit and law enforcement agencies.

In Ukraine, the moral degradation of society has reached an apex. A survey conducted in 2003 by the Razumkov Centre shows that 21.5% of respondents under 18 and 13.7% of 40–59-year-olds ignore laws. 56% of interviewed citizens will always do their best to evade taxes (L. Shangina 2003).

The Soviet regime deprived citizens of their liberty and initiative. Unfortunately, the middle class, the foundation of a democratic society, has not become a major force in independent Ukraine. Selective justice and corruption are the main obstacles to overcoming organised crime. One peculiarity of Ukrainian corruption is that citizens have to bribe to realise their legitimate rights.

The acts of corruption are often veiled by nature. Thus it is necessary to draw attention to the following fact: At present we are observing massive building and reconstruction of court buildings, the prosecutor's office, the militia and tax agencies. In the early and mid-1990s, the lack of adequate funds and the resulting material and technical incapacity impeded law enforcement agencies' battle against crime. Now the situation has changed. Administrative buildings have been repaired, although in rural districts, the situation is not as optimistic as in large cities. How can we explain such a sharp change? Law enforcement bodies have found a method of financing their activities: they have begun to use "sponsors", mainly from business life. L. Kapelushny, an observer of the Ukrainian newspaper "Svoboda" (Freedom), argues that this type of official "white" bribery guarantees security for those who have "sponsored" law enforcement officers, and signals to others that "give money and you win". But it is the state that bears responsibility for this situation, because the level of its financial support to law enforcement agencies is so low (Kapelushny 2002).

There is a special fund in Ukraine that is separate from the budget. All donations are directed to this fund. It is very interesting that the most successful donation-collecting agencies are the Ministry of Interior with 310 million hryvnas (approximately \$57 million) in 2001, the Security Service of Ukraine with 122 million hryvnas (\$22.5 million), the State Committee on Border Guard Service—94 million hryvnas (\$17.4 million), the Ministry of Defense—95 million hryvnas (\$17.5 million), and the State Tax Administration—72 million hryvnas (\$13.3 million) (Dim'yanchuk 2002).

The question, which arises, is whether organised crime is a force that opposes the establishment in Ukraine. Or, perhaps the establishment itself is mainly responsible for criminalising its own ways of working and for the fact that it has lost control over some processes (e.g. shadow economy).

Methods of counteraction

Constant and persistent efforts in several areas are needed to solve this problem. The absence of civil society in Ukraine is one reason behind the inadequacy of measures to counteract organised crime. Anti-organised crime efforts should focus on reforming public policies and institutions with explicit high-level leadership and commitment.

Additionally, Ukraine still lacks appropriate measures to encourage fair business. As a consequence, criminal organisations are monopolising certain sectors. Some estimates state that 60% of Ukrainian economy is shadow economy. We may conclude that the state is in crisis. According to Freedom House, Ukraine has reached a development stage of “transit/hybrid regime” with its inherent autocracy and democracy. Government officials are still above social control. State functions are flagrantly excessive. Total licensing, various quota and permission systems have not yet been extirpated. As a rule decisions depend on individual officials whose actions can provide a fertile field for corruption. The economic difficulties of Ukraine attract foreign criminals, especially Russian, to legalise their profits in the most important sectors of the economy.

It is necessary to emphasise that fighting organised crime is impracticable unless provisions of the Criminal Code and other acts are applied adequately, and unless proactive activities, crime prevention in particular, are carried out.

It is also worth noting that Ukrainian criminology distinguishes two types of preventive practices: general (social) and special (criminological).

The first type—general (social prevention)—is a combination of political, educational, social and economic measures aimed at perfecting public relations. Major social measures include the reform of the political and economic system, the determination of a development strategy, and the formation of civil society able to gather “political will” to fight organised crime.

To achieve this objective it is of paramount importance to support independent press, to conduct journalist investigations, and to facilitate the widespread use of the Internet as a means of publication and communication. At present investigative journalism is impeded by offenders who use violence against journalists or bribe them.

Political censorship does exist in Ukraine. It has become the everyday reality of journalism. This is the view of 86% of the journalists surveyed by the Sociological Service of the Razumkov Centre in 2002. The 727 respondents represent various printed and electronic, state-run and private mass media agencies from all administrative regions of Ukraine. The survey demonstrates that it is very dangerous to write about criminal clans, local authorities, the President and his administration. Most of the interviewees have learned this first-hand (Yakimenko and Zhadan 2002).

In order to foster the transparency and openness of public officials, it is necessary to develop and adopt complex laws “On Civil Control of Public Activity” and “On Organized Political Opposition in Ukraine”. It is also very important to develop a special law on parliamentary control over the activities of the President of Ukraine, Prime Minister, Cabinet of Ministers, departments, agencies, de-

fence and Prosecutor's Office. Constant and persistent efforts in several areas are needed to solve this problem.

First it is necessary to create an environment that is conducive to honest business, speed up the creation of a modern legislation on competition, price formation and contract making, and carry out a tax reform. Anti-organised crime efforts should focus on reforming public policies and institutions, with explicit high-level leadership and commitment.

The first step must be to develop and enact methods of general and social prevention which would encourage public officials to fulfil their duties honestly, such as moral and material stimulation, a system of privileges, and quicker career advancement in the case of honest fulfilment of one's duties. On the other hand, it is important to inform citizens about the legal ways of solving problems under Ukrainian legislation, including initiating court proceedings in order to protect violated rights. It is necessary to remove from peoples' minds the behavioural stereotypes which connect problem-solving with money. This should be executed through special school programmes. It would be difficult for public officials to commit misuse or abuse of office or power if people were willing to disclose all facts of such misuse or abuse.

Ukraine needs an independent judicial branch. Despite the general difficulties of the third power, statistics show that the citizens of Ukraine are placing an increasing amount of trust in the court system. During 1991–2000, the number of complaints against wrongful acts committed by public administrative agencies and officials increased from 1,043 to 29,952. When in 1991 courts decided 222 cases for the plaintiffs, in 2000 the corresponding figure was 18,260 (Bulletin of Supreme Court of Ukraine 2002, 44).

Special (criminological) prevention must be aimed at neutralising and decreasing the influence of criminogenic factors that produce crime, particularly organised crime.

On the grounds of Part 2, Article 5 of the Law of Ukraine *On the Legal Foundations of the Fight Against Organized Crime*, the following public agencies have been purposefully established:

- a) Coordination Committee for Combating Corruption and Organised Crime of the President of Ukraine;
- b) Special subdivisions for combating organised crime in the Ministry of Interior;
- c) Special subdivisions for corruption and combating organised crime of Secret Service of Ukraine.

According to Section 1 Art. 8 of this law, the Attorney General's Office coordinates the fight against organised crime at the national level, and its counterparts at the regional level. But new circumstances require entirely different approaches for the organisation and functioning of law enforcement agencies that were created during soviet time.

We need to study international experience concerning the responsibility of legal entities in corruption and organised crime cases. We need to improve Ukraine's ability to combat organised crime by initiating a judicial reform which would have to include legal, administrative and organisational changes. For the

system and processes to be more efficient, they must also be made more transparent and accountable. Therefore, the creation of a transparency mechanism to enhance social control of law enforcement agencies is vitally important.

Current activities to combat organised crime in Ukraine are hampered by deficiencies in the criminal procedure laws, especially those concerning the collection and assessment of evidence. The increasing proficiency and technical capacity of the criminals dictates the necessity for legal regulation and implementation of new types of forensic technologies. International community considers the use of testimony by members of organised groups who have agreed to collaborate with law enforcement agencies as a key method of fighting organised crime. Although Section 2, Article 14, the Law of Ukraine *On the Legal Foundations of the Fight Against Organized Crime* provides such a possibility, this provision does not work in practice as long as there is no real mechanism to exonerate such individuals. At present, Part 2, Article 225 of the Criminal Code of Ukraine provides for the release of criminal groups' members from punishment, but it does not contain a similar provision for the members of organised groups. An appropriate mechanism to enforce the above-cited provision does not exist, as the Criminal Procedure Code still requires respective amendments.

Under the current Criminal Procedure Code of Ukraine, adopted 40 years ago, it is impossible to solve the investigative problems, as well as to guarantee an adequate procedure for counting the acts of organised crime. A new Criminal Procedure Code has not yet been passed.

It is necessary to specify more clearly the rights and duties of the various law enforcement and control agencies to avoid any unnecessary overlapping of their functions. We need to enforce complex laws necessary to prosecute large and sophisticated crime networks.

Conclusion

A number of systemic improvements should be brought about. However, I view this as impossible under the present government. Thus it is of primary importance for Ukraine, as a country in transition, to reach a new stage of political development, in particular to involve in public activity fresh politicians who are not burdened with the nomenclature past and who are able, first of all, to defend Ukrainian interests. Until this takes place one should not expect radical changes in law-enforcement activity against organised crime.

R. Kelly rightly states that criminal syndicates are successful "... in societies where political institutions are not particularly sensitive to or responsive to the needs of the public" (Kelly, 40). About 80% of Ukrainian citizens agree that they are not able to influence governmental decisions and actions.

If new forms of social and legal control over organised crime are created, most likely after the next presidential elections, Ukraine will be able to achieve and maintain a decrease in organised crime.

I believe that research and recommendations that take into account the experience of other countries can become an intellectual force facilitating qualitative changes in public relations.

References

- Bulletin of Supreme Court of Ukraine, 2002. No. 3
Criminal Code of Ukraine// Official Record of Ukraine. 2001, no. 21. Article 920
- Department of informational technology, Ministry of Interior, 2003. *About crime situation in Ukraine for 12 months 2002*. Kyiv
- Dim'yanchuk I., 2002. *Money of special funds - feedings trough for beau monde*. Freedom, no. 24
- Global Report on Crime and Justice, 1999. *Office for Drug Control and Crime Prevention*. N.Y.: Oxford University Press
- Kapelushniy L., 2002. *Asian eurorepair*. Freedom, no. 24
- Kelly R. *The Upperword and the Underworld; Case Studies of Racketeering and Business Infiltration in the US*.
On the Organizational - Legal Foundations of the Fight Against Organized Crime// Records of Supreme Counsel of Ukraine. 1993. No 35, article 358
- Pitya I., 2002. *Dangerous drug: vice of curiosity*. Time, no. 87, June 8
- Shangina, L., 2003. *Two generation under carpet*. Mirror Weekly, no. 17, May 8–16
- Shelley, L. 1997. *The influence of Russian Organized Crime on Economy of Post-Soviet Time*; <http://msu.jurinform.ru/conf/97002/97002-02.html>
- Shostko O., 2002. *New Criminal Code of Ukraine and Issues of Counteraction Organized Crime*. Materials of International Conference. Kyiv- Kharkiv: Urinkom- Inter
- Yakimenko, Y., Zhdanov, I., 2002 . *The twilight of Freedom of Expression (Expert Assessments of Freedom of Speech and Political Censorship in Ukraine by Ukrainian Journalists)*. Mirror Weekly, no. 47, December 7–13
- West's Encyclopedia of American Law, 1998. West group, Vol. 7

International Trafficking in Human Organs

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Introduction

The development of medical knowledge has given birth to new techniques which are the driving force of modern civilization.

Success in organ transplantation was one of the most powerful medical advances of the twentieth century. Continuous progress is clearly occurring, and future possibilities may exceed all expectations. In Italy, the development of medical technology has led to routine transplantation. Unfortunately, a concomitant reality casts a shadow over this scientific feat: there is a dramatic shortage of organs, and the situation worsens by the day.

This gap between demand and supply has opened a window of opportunity for criminal exploitation.

In the following, the authors will try to clarify the borderline between legend, myth and reality characterising this kind of crime. The focus is on kidney commercialisation since the medical skills needed for its transplantation are more elementary if compared with surgical procedures for other organ transplants.

The authors analyse organ commercialisation from a criminological and medico-legal point of view, and focus their attention on the possible difficulties which may emerge when combating the crime.

Current developments

The most consistent source of information about organ trafficking are the rumours spread worldwide with multimedia coverage; unfortunately, few of them are based on official reports or scientific analyses.

Of the official material, American literature is the most analysed since organ traffic has been thoroughly studied in the United States.

After a deep examination of the procedural protocol pursued and approved by the international transplantation societies, and considering the medical problems related to single organ traffic, it is plausible that the only possible way to surmount these obstacles is to create “medical tourism” for transplant surgery.

This “tourism” is realised through international trade routes between the would-be organ recipients, and the future vendors who to a large extent occupy the lower end of the socio-economic spectrum.

To best understand how this crime is constructed, the authors will now examine the situation in India, China and Iran.

India

India has been called a “warehouse for kidneys” or “the great organ bazaar”. It has become one of the largest centres for kidney transplants in the world, offering low costs and almost immediate availability.

On 15 January 1995, customs officers in Delhi uncovered a kidney racket where the residents of a rehabilitation colony for leprosy patients in Villivakkam near Chennai (before known as Madras), capital city of Tamil Nadu in the south of India, freely donated kidneys for money offered by agents. Then, on January 29, 1995, the police busted a massive racket in Bangalore, in which kidneys of nearly a thousand unsuspecting victims had been removed in the leading city hospital by prominent doctors. The “donors” had been lured with offers of jobs, and their kidneys removed under a pretext¹.

The official reports highlighted that the potential receivers, kidney patients from Occidental Asia, Malaysia and Singapore, were prepared to travel to India.²

After the exposure of kidney scandals in its major cities, Indian Congress passed Act 42, The Transplantation of Human Organs’ Act, in order to block the trade in human organs. This law prohibits all commercial trading and allows organs to be removed only for therapeutic purposes. Furthermore, it bans all organ transplants, except those donated by relatives specified as spouse, son, daughter, father, mother, brother or sister. The Act, however, is far from watertight. Its biggest problem is the clause which states that an unrelated donor, for reasons of affection or attachment towards the recipient may donate his or her kidney provided that the donation is approved by the Authorisation Committee. Since the Act came into force, this clause has provided a cover for hundreds of illegal cash-for-kidney deals. End-stage renal disease patients in Karnataka and Tamil Nadu have claimed blatantly false emotional and altruistic attachment to prospective donors, and made misrepresentations to the Committee in order to secure approval for what are in fact outright commercial transactions in kidneys.

The Voluntary Health Organisation of India estimates that each year more than 2,000 people sell their organs for money (compared with 500 in 1985 and only 50 in 1983).

The kidney market is not subject to inflation: the receiver spends approximately \$9,900–\$23,000 of which a small percentage goes to the donor, and the remainder is shared between the doctors and the broker.

The possible long-term consequences of this illicit activity are dramatic: in Bombay, a number of HIV-patients tried to sell kidneys in order to earn a living. Doctor Kandela says that for every donor identified as HIV-positive, five slip through the net, putting many lives at risk³.

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- 1 Rothman D.J.: The International Organ Traffic 10th Annual Conference on “the Individual vs. the State” Central European University, Budapest, June 2002
 - 2 Rothman D.J., Schepers-Hughes N., Awaya T., Rosa E. et al.: The Bellagio Task Force Report on Transplantation, Bodily Integrity and the International Traffic in Organs. *Transplantation Proceedings* 29:2739–45 1997
 - 3 Frontline Investigation Team: kidney Still for Sale. *The Hindu India’s National Magazine* 14:25 1997

China

In 1997, a task force composed of transplant surgeons, organ procurement specialists, human rights activists, and social scientists, met at the Rockefeller Conference Centre in Bellagio, Italy. This group met to define ethical standards for the international practice of organ donation, especially in light of abuses that undermine the bodily integrity of socially disadvantaged members of society.

The report produced by the Bellagio working group underlines how the use of organs from executed prisoners is systematic, accepted and institutionalised in China.

The June 1977 Protocol One Additional to the Geneva Convention of 1949 bans the use of organs from prisoners. The rationale is that prisoners are thought to be incapable to give their consent.

The precise number of prisoners executed in China is not known. Some 2,000 cases are reported in the country's newspapers, but organisations such as Amnesty International believe that there may be as many as 8,000 to 10,000 executions each year.

Some anthropologists believe that physicians in Japan, Hong Kong, Singapore and Taiwan serve as "travel agents", directing their patients to hospitals in Wuhan, Beijing and Shanghai. Foreigners do not have to wait for an organ to be available; executions can be timed to meet the market needs, and the supply is more than adequate⁴.

Descriptions of the event are dramatic: immediately before the execution, the physician sedates the prisoner. Then a breathing tube is inserted into his lungs and a catheter into a vein. The prisoner is then executed by a shot in the head; the physician immediately moves to stem the blood flow, attaches a respirator to the breathing tube, and injects drugs into the catheter to increase blood pressure and cardiac output. With the organs thus maintained, the body is transported to hospital where the receiver is waiting, and the surgery performed. The physicians have become immediate participants in the executions; instead of protecting life, they are manipulating the consequences of death.

Iran

At the beginning of the transplant programme in Kermanshah in 1989, the price per kidney was \$340 (2.5 million Rials), ranking the so-called Kermanshian kidney as one of the cheapest in the world by any standard. But in ten years time the price has risen to \$1,219 (10 million Rials)⁵.

The current availability of cheap kidneys for sale is the greatest obstacle to establishing a cadaveric transplant programme in Iran⁶.

In Iran, the Charity Association for Support of Kidney Patients (CASKP) performs all preparatory steps for arranging transplants. CASKP representatives

4 Schepers-Hughes N.: Theft of Life: The globalization of Organ Stealing Rumours. *Anthropology Today* 1996

5 cfr 5

6 Zargooshi J.: Iranian Kidney Donors: Motivations and Relations with Recipients. *The Journal of Urology* 165:386–392 2001

have admitted that CASKP is involved in more than 90% of kidney transplantations in Iran: CASKP is like a real estate agency where sellers and buyers meet⁷.

The potential donor contacts CASKP and is put on the donor list. In Kermanshah, the donor provides CASKP a promissory note of \$244. If the potential donor refuses donation after the preoperative evaluations and laboratory tests, which are done at recipient's expense, the donor pays this sum. The system prevents potential donors from refusing donation after entering the preoperative phase.

There are two contracts regarding payment. One is the official contract stating that the donor receives the equivalent of \$1,219 from the governmental budget. Payment is made immediately postoperatively.

The other contract is concluded between the donor and the recipient. Often, the recipient offers the donor extra money and, if unemployed, a job.

The emergence of this type of contracts has resulted in non-existent recipient waiting lists, open black market, extinction of living-related renal donor transplantation, and in the appearance of professional brokers.

Certain control should be imposed on any living-unrelated renal donor transplant programme for it to be even remotely acceptable. There should be no middlemen. Medical criteria should be given priority, and independent medical and psychiatric evaluations on both the donors and recipients conducted. There should be an independent team of surgeons and physicians caring for donors, long-term medical insurances for donors, external financial auditing, and ban on transplantation across countries. But there is no sign of any of this. Abject poverty, unemployment, and the lack of social security force people to sell kidneys, the only reserve they have.

According to a study of 310 Kermanshahian "donors" conducted by the University of Kermanshah, 38% of them had lost their job due to absence from work because of postoperative pain and disability. Vendors had also been rejected by their families because they were regarded as unable to earn money by other, more respectful means. 60% expected to be dialysis-dependent and eventually die of kidney failure since they were unable to pay and attend all required follow-ups⁸.

The commerce on web

Over the last years traditional commerce has been coupled with a new kind of trading. Internet has opened a door to a truly global market area where anyone can trade anything from home, even organs.

The keywords "kidney for sale" presently produce 56,000 search engine hits. They take to discussion groups, suspicious money movements, and contrasting laws on organ donation. Few years ago, a kidney was sold at eBay, the most important online marketplace, registering the highest price ever offered for a good on sale⁹.

7 cfr 6

8 Zargooshi J.: Qualità of life of Iranian Kidney "Donors". The Journal of Urology 166:1790–1799, 2001

9 <http://www.cnn.com/TECH/computing/9909/03/ebay.kidney/>

The authors browsed Google hits, and tried to investigate which of the “kidney for sale” offers were genuine and which part of the many urban legends related to this issue. Of the thousands of web pages opened, most could be classified as belonging to the latter group. On the other hand, we found numerous announcements on virtual notice boards where web navigators from all corners of the world may leave messages to which others reply by e-mail.

These messages, sent from different countries, containing similar texts, seemed to have been written by desperate people for whom selling a kidney served as the only thinkable financial reserve. The notices underlined some medical information which was thought to be useful to the buyer.

After a thorough analysis of the messages, it was realised that the majority of e-mail addresses given were not easy to trace since they had been obtained from services that guarantee e-mail anonymity. For this reason, the investigation was brought to an end. Any further research would have crossed the line of illegality; contacting a kidney broker without being traced by the police requires particular authorisation and specialised technical skills.

The findings of the investigation do not necessarily correspond with reality.

There are no concrete data verifying the existence of this crime; at this moment we are not able to say if e-commerce on organs is a mere swindle.

However, if this crime really exists, it is obvious that the number of victims will increase unless a balance between demand and supply can somehow be achieved.

Final considerations

Considering the difficulties in maintaining an organ in perfect condition for an implant, and the risk of being caught by customs of states where it is forbidden to sell organs, it seems plausible to suggest that these kinds of transplants are carried out in countries where laws are not so strict.

The primary commodity on this market is the kidney, and the reason for this must be the relatively easy surgical approach.

In a follow-up to the Bellagio Task Force, Professors Scheper-Hughes and Cohen, with support from the Soros Foundation, created an “Organs Watch”, a small, independent, ultimately self-supporting, human rights-oriented documentation centre that aims to track down global rumours on organ commerce. Anthropologist Scheper-Hughes talks about medical tourism:

“Medical centres propagate their medical services as tourist operators propagate their locations with beautiful golf camps and luxury hotels with excellent restaurants and convenient prices. These medical tour operators offer all-inclusive packets. For example, in Tel Aviv, with the collaboration of one of the most famous Israelian surgeon, an agency offers an all-inclusive trip for \$120,000–\$200,000. For this price, the Israel Medical Tour Operator offers private airplane, taxes for the custom officials, room in a private clinic, fee for the donor and transplant operation.”

Organs Watch’s experts believe that the would-be organ recipients follow routes from those countries where organ commerce is a crime to those where these kind of transplants are legal.

In February 2001, a group of American researchers obtained interesting results from Chennai, the capital city of Tamil Nadu (India). They interviewed 300 individuals who had sold a kidney there, and the results were unequivocal: Almost all participants had sold the kidney to pay debts. The amount promised for selling a kidney averaged \$1,410, while the amount actually received \$1,070. The majority of the donors reported a worsening of their economic status. 60% of the money received had been spent on debts, 22% for food and clothing, and only 11% was retained as cash equivalents. About 83% of the donors reported deterioration in their health status after nephrectomy¹⁰.

Although we cannot yet be sure of the quantification of this crime, there are few doubts as to the existence of a parallel and illegal organ procurement. This obliges us to consider which methods should be put in use to achieve a containment of organ traffic.

Important implications regard developing countries where potential donors need to be protected against exploitation. Protection might involve education concerning the likely outcomes of selling a kidney. But there are many possible means of intervention through which a collective consciousness of the immorality and dangerousness of organ trafficking can be obtained.

On the other hand, there are experts who think that the legalisation of organ commerce and creation of market models for the procurement of transplantable organs would be the solution¹¹.

The main arguments supporting organ commerce, found in literature, are either libertarian or utilitarian. Libertarians claim that since selling oneself freely to another does not involve a violation of the right of self-determination, such transactions should fall within the protected privacy of free individuals on the basis of the principle of autonomy¹². Utilitarians, on the other hand, say that as long as the current altruistic system of organ procurement is not making enough organs available, the benefits for the recipients by an overall increase in the supply of transplantable organs and the benefits for voluntary vendors would outweigh objections. It is claimed that insisting on the ethical superiority of an altruistic system of organ procurement will impose heavy costs on those patients who could benefit from the pragmatic and immediate solutions offered by a modern market system¹³.

The proposals to introduce commerce in organ transplantation have been unanimously rejected by national and international medical organisations and parliaments. The World Health Organisation has published reviews of international and national legislation, codes and other measures to combat commercialism in the use of human organs and tissues for therapeutic purposes.

Nevertheless, some arguments against paid transactions with organs reveal their weakness if scrutinised. Selling an organ is not necessarily equivalent to a commodification of the donor's body, depersonalised view of human beings, and

10 Madhav G., Ravinda L.M., Lawrence J.S., Ashwini R.S.: Economic and Health Consequences of Selling a Kidney in India. *JAMA* 288:13, 2002

11 Blumstein J.F.: The case for commerce in organ transplantation. *Transplantation Proceedings* 24:2190–2197, 1992

12 Engelhart H.T.: *The foundations of bioethics*. Oxford University Press, New York Oxford 1986

13 Brams M.: Transplantable human organs: should their sale be authorized in State status? *Amer J Law & Med* 3:183–196, 1977

an offence against their dignity, because the question of self-degradation depends on whether the person who sells an organ evaluates his/her action as self-degradation or not¹⁴.

There is, however, one argument against commercialism in organ transplantation that is beyond criticism: market models would inevitably mean the exploitation of the poorer in favour of the richer parts of society. Disparities in wealth and chances should mean that we have duties and responsibilities towards the less privileged, not that we have the right to exploit them.

The more general question of a financial *quid pro quo* for the donor of an organ constitutes one of the most controversial problems in the current ethical discussion of living organ donation. As the continuing analytic and documentary work of Daar¹⁵ has shown, there are crucial differences between rampant commercialism on the one hand, and concepts of rewarded gifting on the other. The concept of compensation does not just include compensation for the living donor's loss of earnings, but also an adequate additional insurance scheme against the risks he takes. From an ethical point of view, this seems to be something the health system owes to living donors, and in this respect a lot still has to be done. Additional financial incentives must not be permitted. In fact, it seems possible that even direct financial incentives could be restricted in ways that would still permit altruism. The boundary between compensation and incentives could be drawn on the grounds of a legal term "Schmerzengeld"¹⁶, which is defined as pain money or smart-money, a compensation for personal suffering, and which originates from the context of actions for illegal damages. The idea would be to pay an official, unified compensation for the pain and troubles an organ donor has to endure. Such a reward would still be closer to removing disincentives than to providing financial incentives, and it would preserve the socio-cultural meaning of the act of donation. This idea seems acceptable for developed countries which have enough cultural and legal resources to provide sufficient control over such a system, and to prevent it from getting on the "slippery slope" towards commercialism which could undermine public trust in the transplant system.

In conclusion, we are aware of the fact that our work on this complex topic is by no means exhaustive. We have tried to get a general idea of the actual situation. There are only few certainties: the quest for organs is continuously increasing, and the legal routes to satisfy the demand are not sufficient. The concrete risk is that illegality will prevail in organ procurement, and that organs will become smuggled goods.

There is a need for further studies that are free from banal sensationalism, and which monitor the development of the phenomenon and analyse the motivations which undermine legal measures against this crime.

Our study represents the first humble step on this winding road.

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- 14 Radcliffe Richards J.: From him that hath not. In: Land W., Dossetor J.B.: Organ replacement and therapy; ethics, justice and commerce. Springer, Berlin Heidelberg New York, 1991
- 15 Daar A.S.: Rewarded gifting. *Transplant Proc* 22:922–24, 1992
- 16 Daar A.S., Gutmann T.H., Land W.: Reimbursement "rewarded gifting", financial incentives and commercialism in living organ donation. In: Collins G.M., Dubernard J.M., Persijn G.G., Land W.: Procurement and preservation of vascularized organs. Kluwer Dordrecht, 1997

The Penal Legislation Concerning Illegal Drugs in the Czech Republic: The Right Time for Change Now?

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Introduction

After the fall of the Communist regime, there arose a need to change the legal order of the Czech Republic. The principles of democratic law were included in the new rules, from the Constitution to many laws, their amendments, and sub-laws (ministerial orders, municipal ordinances, governmental decrees). Penal law was not excluded from this development. However, freedom has been accompanied by negative phenomena, too. One of them, the interest in illegal drugs and their use, started to increase in the early 1990s, and this trend still continues. As a positive impact of this situation, the drugs and their use are no longer a taboo. Nevertheless, drugs have spread through the whole society—drug careers starting at the age of 12 or 13 and the flourishing drug market have become an integral part of Czech reality. Before 1990, the Czech Republic shared the same experience in the field of drug abuse as the other European Communist countries: there was no real drug market, “classic” drugs like heroin or cocaine were absent and substituted by popular home-made drugs (pervitin, braun), there was an enclosed drug subculture, and so on. The fall of the iron curtain led to the establishment of a similar organised and structured drug scene as in Western Europe. This development was strengthened by specific aspects like the country’s strategic position in the centre of Europe, the initial high border permeability, and the developed legal chemical industry whose procurable raw materials experienced producers were able to use for drugs production.

The most recent evaluation of the Czech drug scene in the Principal Hygienic Station’s Epidemical Report indicates that drug use is increasing. In 2002, the incidence of registered drug users (First Treatment Demand, FTD) was 4,719 persons (45.9/100,000 inhabitants), and prevalence 9,237 persons (89.9/100,000 inhabitants). The incidence of registered so-called problem drug users (PDU) was 3,472 persons (73.6 % of all FTD’s), and prevalence 7,441 persons. As PDU is considered a person, who injects drugs and/or has been using heroin or other opiates for a long time and/or has been using cocaine for a long time and/or has been using amphetamines (except ecstasy) for a long time. The estimated prevalence of all PDU’s was 34,300 persons (28,800 injecting users). More than half of the registered clients used ATS (especially pervitin, the No. 1 drug in Czech) as the primary drug. Opiates (esp. heroin) and cannabis (esp. marihuana) followed with a share of about 20 %. The male/female ratio was approximately 2.1/1. Most

FDT's were 15–19-year-olds, while the 20–24-year-olds formed the largest group among all users.

This central drug user monitoring system has been running since 1995. The figures have been on a steady rise, partially thanks to an increasing number of treatment centres included in the system. It can be stated that excepting a very small decline in the late 1990s, the incidence of ATS users has been increasing as well as that of the opiates users. These two tendencies show a mirror effect: increase in the number of ATS users has been attended by a lower number of opiates users, and vice versa. The average age of registered ATS or opiates users has been increasing (23 years), while with cannabis users it has remained permanently low (18–19 years). The increasing number of injecting drug users is considered especially worrisome.

According to the latest National Anti-Drug Headquarters' Annual Report¹, the availability of drugs is increasing on the Czech drug market, and drugs expand to smaller cities and villages. There are reports of great differences in drug quality depending on the distribution network level, and of the continuing trend of active substance quality and quantity lowering in the final drug. The Police have registered more cases of synthetic drugs consumption by young people on the dance scene and experimentation with volatile substances. The consumption of ecstasy has increased as well, partially due to its reduced price. There were also more recorded cases of hydroponic cannabis cultivation.

Drug-related crimes, including when connected to crimes against property, are a significant problem. Registered cases of medical products thefts and foreign drug-runners have increased. Multinational and foreign criminal groups are operating and trafficking drugs into the Czech Republic. Currently the Police are detecting more intensive activity among Asian criminal groups (in the framework of common goods smuggling) and deeper involvement of gypsies, women and children, in distributing drugs on the streets. At the level of organised crime, the Police have registered activity of Kosovo-Albanian groups (heroin), Arabian groups from North Africa (cannabis), Russian-speaking, Vietnamese and Chinese groups. The detection and investigation of crimes committed by these groups is more difficult because of cultural and language problems. Related illegal activities, such as money laundering through the purchase of cars, gold or foreign currency and their transfer abroad, have also been recorded. Pervitin, the traditional Czech drug, is manufactured by Czech citizens of ephedrine obtained illegally either from its official Czech producer, from medicines or from abroad, and also exported to neighbouring countries, especially to Germany. The acts committed by drug traffickers have become more and more violent, and their means more and more conspiratory. They try hard to make and maintain contacts with justice and administrative authorities, and to put pressure on crime witnesses.

1 for statistical data on drug crimes see Appendix 2

International and National Framework

The Czech Republic is a contracting party to the International Drugs Conventions (1961, 1971, 1988) and tries to keep its obligations, although their interpretation does cause ambiguous opinions among experts. This is the international aspect, the international source of Czech penal anti-drugs legislation. The legislation also has to follow general principles of law honoured in the Czech Republic, resting mainly on the principle of “ultima ratio” (principle of subsidiarity of penal repression). Some of them are explicitly expressed in the Constitution or in the Charter of Fundamental Rights and Freedoms that set constitutional limits for state intervention into the rights of individuals.

These aspects are reflected in the “National Drug Policy Strategy for the years 2001–2004” adopted by the Czech government, that is based on the comprehensive and well-balanced approach combining primary prevention, harm reduction, treatment and repression. The Strategy was drawn up by the Governmental Council for Drug Policy Co-ordination, and it follows the “Drug Policy Conception and Programme for the years 1998–2000”. With this Strategy, the Government accepted the fundamental codes, principles and aims defined for the period 2000–2004 in the EU Action Plan on combating drugs, and expressed its will to their fulfilment. The Strategy is the key document defining the basic starting points and directions for solving the problems of drug use. It is the base for creating and implementing a drug policy for individual departments and local, district, and regional public administration bodies. Its functions are:

- to mark basic principles and goals, and to set priorities of Czech drug policy
- to delimit responsibility and competencies of relevant departments and individual units of public administration, and to bind them to fulfil the given tasks for achievement of defined goals
- to define institutions and organisations working in the area of drug policy, thus enabling them to find their place and role in fulfilling the drug policy
- to mobilise civic society and to strive for incorporation of responsible institutions on all levels, local government bodies, local communities, governmental as well as non-governmental organisations, volunteers, and self-help organisations,
- for the needs of international co-operation, to inform on the form, goals and priorities of the drug policy of the Czech government. Drug policy is one of the monitored areas in EU candidate countries.

The handling of narcotic and psychotropic substances is governed by Addictive Substances Act No. 167/1998 Coll. as amended. It defines, among others, what substances are deemed narcotic or psychotropic substances, preparations containing such substances, and precursors. Each breach of this law is an illegal act—either crime or misdemeanour. The elements of relevant misdemeanours are included in Misdemeanours Act No. 200/1990 Coll. as amended.

The current penal legislation concerning illegal drugs in the Czech Republic is contained in the current Penal Code No. 140/1961 Coll. as amended. This law, adopted in 1961, has from the beginning contained specific essential elements of drug offences. However, we can say that the framework for this penal anti-drugs

legislation was set out by the Opium Act adopted in 1938 (not valid anymore), since at least the main features are the same. These features are as follows:

- self-injury is not punishable, i.e. drug consumption as such is not penalised, and
- all illegal drugs are regarded the same, i.e. offence qualification does not depend on the type of drug in question.

These two principles are still implied in the Czech Penal Code. However, over the years new aspects have emerged, especially due to the changes after 1989. Main emphasis has been laid on fighting the most serious forms of drug criminality (especially organised crime related), instead of petty offences committed by drug users or experimenters where alternative measures and principles of harm reduction should be in key role.

Drug Crimes in the Czech Penal Law

Specific drug crimes included in Penal Code are “Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons” (provisions of Articles 187, 187a, 188) and “Propagation of Drug Use” (Article 188a). As mentioned above, the basic principles were set when the current Penal Code was adopted, but naturally they too have undergone some development, as has the whole Penal Code. The main features of this development concerning drug-related crimes through amendments to Penal Code are as follows:

- essential elements of crimes have been supplemented and adapted to correspond more with the real situation and international obligations (i.e. the enlargement of forms of illegal behaviour, the prohibition of illegal disposal of precursors and preparations containing narcotic or psychotropic substance, the extension of relevant aggravating circumstances)
- the severity of punishments has been increased, especially in cases of organised production and trade in drugs
- room for alternative solutions in individual cases has been created (i.e. diversion in criminal procedure, community sanctions and measures).

As far as drug offences are concerned, the significant change in Penal Code was made by amendment No. 112/1998 Coll. This Act introduced a new provision to Penal Code—Article 187a—containing the framework for crimes involving possession of drugs for one’s own use (punishability of possession for one’s own use had been included in the original version of Penal Code, but cancelled in 1990). To commit this offence, the perpetrator has to have in his/her possession a quantity of drugs that is “greater than small”. The concrete specification of this quantity was left to judiciary. The Supreme State Prosecutor’s Office issued a chart of “greater than small amounts” for most frequently used drugs as an accessory guide for police bodies and prosecutors.² Although the final court decision

² See Appendix 3

has to follow individual criteria of each case and each person, this chart is in practice accepted even by courts. The possession of a small quantity of substance is considered a misdemeanour, and punished by a fine of up to 15,000 CZK.

First attempts to recriminalise possession for one's own use were made in the early 1990s. They were primarily motivated by the desire to fulfil international obligations and to facilitate police work in the process of evidence collection. The adopted amendment is a combination of the original proposal presented by the Communist deputy and of the following governmental version. However, it can be stated that the amendment was accepted by all parliamentary parties, Christian Democrats being the strongest supporters. Although President Vaclav Havel vetoed the law, the Parliament held its ground, and finally the amendment was adopted. From the outset this provision has had many opponents. In 1999, a proposal for its cancellation was made, unsuccessfully.³

The Penal Code contains many provisions related to and used in the prosecution of drug offenders. These include, for instance, provisions on protective treatment, provisions on insanity, provisions on community sanctions and so on. The non-thwarting of crimes described in Articles 187 and 188 is considered a crime punishable by imprisonment up to three years. Special provision exists for cases of repeated offence of possessing drugs for one's own use. The court has the right not to consider such a perpetrator a recidivist if he/she is a regular drug user. In some provisions the narcotic and psychotropic substances are put together with alcohol as "the addictive substances". This is the case with such crimes as "Threat under Influence of Addictive Substance", "Drunkenness" or "Evasion of Military Service", and with the provisions on insanity. Alternative aspects of criminal procedure are included mainly in the Code of Criminal Procedure No. 141/1961 Coll. as amended. Depending on the seriousness of the act, the prosecutor or the judge can for instance use the provisions on the conditional cessation of criminal prosecution, the out-of-court settlement or the discharge from punishment.

Recent Development

The Czech Republic is in the process of creating completely new criminal codices. They should be the culmination of the so-called Reform of Justice. It is generally acknowledged that the current codices are not in conformity with the changing social reality, and that they ensure the rights and freedoms of the individual only to a limited extent. First Commission for the re-codification was officially appointed by the Minister of Justice in 1995. In 1997, the Minister of Justice appointed a new commission of almost forty members. Its task is to complete the re-codification work within a reasonable period of time, preferably by the time the Czech Republic is accepted as a member of the EU. There are several clear reasons why the legal system of the Czech Republic must be brought into conformity with the system of the other member countries and the *acquis*

³ For current wording of relevant articles see Appendix 1

communautaire before it joins the Union, and becomes firmly established in both its concepts and practical application.

As mentioned above, the 1998 amendment to Penal Code elicited serious discussion on the consequences of criminalising drug possession for personal use in connection with the treatment of drug users, the police work, the impact on primary, secondary and tertiary prevention, and the possibly increasing level of “legal nihilism” in society. As a result, the former Governmental National Drug Commission (now Governmental Council for Drug Policy Co-ordination) carried out a three-year research “Impact Analysis Project (PAD)” on the new drugs legislation in the Czech Republic, focusing on the introduction of the punishment for possessing drugs for personal use. The project consisted in five main sub-studies and more than twenty particular sub-parts, and used the testing of five main hypotheses as a basic tool for evaluating amendment’s impact. The hypotheses were elicited from or directly cited from documents and parliamentary speeches of the presenters of the amendment. The conclusions were briefly as follows:

- the intervention represented by the introduction of the punishment for possessing drugs for personal use had hardly had any impact on drug-related problems in the Czech Republic
- the expectations that the presenters of the intervention offered or promised to fulfil had not been met; on the other hand, it was not unambiguously proven that the legislative change had brought about or impaired negative development of some indicators
- during the first two years of the application of the amendment, penalizing possession of illegal narcotic and psychotropic substances for personal use had been enforced in a very selective manner, randomly and occasionally—not under the principles of officialdom and legality (however, it remains a fact that this was the only reason why the incurred social costs were not significantly higher)
- from the perspective of social costs, enforcement of the penalisation of the possession of illicit drugs for personal use had been disadvantageous.

As a response to PAD conclusions, Government passed a resolution in November 2001. This governmental resolution charged the relevant ministries, on the basis of the PAD findings, with preparing the legislative division of drugs into 2 or 3 categories pursuant to their medical and social dangerousness, and reviewing drug offences and related punishments for the purpose of re-codification. The medical division was prepared by an experts group of the Ministry of Public Health in March 2003. It proposed a three-category division from the least dangerous to the most dangerous as follows: 1) cannabis (products containing THC), 2) “right” ecstasy, psychedelic/hallucinogenic drugs, 3) ATS, heroin and other opiates, cocaine, “false” ecstasy. This marked an interesting development and the experts, as well as the public, wondered whether the legislative approach to drug offences would change.

In July 2003, the re-codification Commission completed its work, and the bill for the new Penal Code was circulated for comments. As for drug offences, the bill proposed new names for drug-related crimes, but maintained the current approach, i. e. there was no division between illegal substances. The relevant provisions were based on current text with some modifications in wording regarding aggravating circumstances and imposable sanctions. The bill charged the Government with drawing up the decree which would define, among others, the quantity of narcotic or psychotropic substance “greater than small”. The bill’s reasoned statement said that “the originally proposed division between ‘soft’ and ‘hard’ narcotic and psychotropic substances was not implemented due to its essential difficulty or rather impossibility”...

During the circulation for comments, some experts, institutions and politicians submitted their comments to the part related to drug offences. They stated that the current legislative approach which ignores distinctions between the different illegal substances seems groundless, and that on the grounds of medical knowledge, experts opinions and foreign experience, the outlook on illegal drug handling should be adjusted. The re-codification process would provide a unique opportunity to make fundamental changes and to persuade the public to accept them. The bill includes many amendments, for instance, the formal concept of a crime (instead of the current material concept), binary categorisation of indictable offences into crimes and transgressions, and the criminal liability of legal entities. The aforementioned division of drugs for the purposes of penal law could, and should, also be included. The dangerousness of the uniform view on illegal drugs is emphasized in connection with the above-mentioned introduction of the formal concept of a crime: At present, sufficient social dangerousness is one of crime’s characteristics in the Czech Republic. When evaluating the committed act, the police, the prosecutor or the judge can take into consideration the nature of the different drugs. Interestingly enough, when Amendment No. 112/1998 Coll. was adopted, this was presented as a safeguard against unjust criminalisation of young first-time offenders. The bill would revoke this opportunity for consideration. There is a danger that the prosecution of drug-related offences will become entirely formal. This approach would be prejudicial to first-time users, experimenters and drug addicts, and omit the requirement of individualisation when prosecuting drug crimes.

The re-codification Commission took the comments into consideration and passed a new version of the bill to the Government Legislative Council in October 2003. This new text seems to be a compromise between the original version and some of the comments. It introduces a different regime of prosecution for illegal cannabis possession for one’s own use, stipulating that a higher amount of such drug is needed for the possession to be qualified as a criminal offence. While the illegal possession of a “greater than small” amount of other drugs would henceforth be a criminal offence, the condition for prosecuting cannabis possession for one’s own would be the possession “in larger extent”. Moreover, the revised version acknowledges a new crime of illegal cultivation of cannabis

for one's own use in larger quantity (or the illegal cultivation of mushrooms or other plants containing narcotic or psychotropic substance for one's own use in quantity "larger than small"). These offences should henceforth be punished more leniently than the production of other drugs (even for one's own use, and regardless of the quantity of substance produced). The definitions of "larger than small quantity", "larger quantity" and "larger extent" are left to the governmental decree. The new bill's reasoned statement says: "... we implemented the division of narcotic and psychotropic substances into 'soft' and 'hard' for practical reasons ... the purpose is to maintain the criminalisation of the possession of psychotropic plants (especially the most frequently cultivated cannabis) and cultivation for one's own use, but at the same time exclude non-problem consumers of such plants from drug market, where significantly more dangerous drugs like heroin, metamphetamine and cocaine are available..." Thus, between July and October, the bill's authors' position on the possibility to distinguish drugs according to their medical and social dangerousness made a U-turn.

Although there is still a longish way to the adoption of the new Penal Code's final version, and we can expect strong opposition to this development in Parliament, it is obvious that the Czech Government and the re-codification Commission have made a significant attempt to introduce the current findings of medical, sociological and epidemiological research into the penal law. The proposal itself is not a revolutionary step towards the liberalisation of drug policy (as some suppose), but towards reality. It can be debated what kind of usage with what type of substance should be punishable, and how severe the punishment should be, but the different nature and impacts of the various narcotic or psychotropic substances should not be ignored. It is worth pointing out that the bill maintains quite severe punishments (in the framework of the Czech sanction system) for offences comprising drugs production, export, import or supply, especially with regard to organised trafficking in drugs or to supply to children and the youth.

Appendix 1.

Current Wording of Essential Elements of Drug Related Crimes

Article 187:

1/ A person who illegally produces, imports, exports, smuggles, offers, mediates, sells or otherwise procures for a second party or possesses for a second party a narcotic or psychotropic substance, a preparation containing a narcotic or psychotropic substance, a precursor or a poison, will be punished by imprisonment for one to five years.

2/ A perpetrator will be punished by imprisonment for two to ten years, if

- a) he/she commits the act as a member of an organised group, or on a larger extent, or
- b) he/she commits the act towards a person below the age of eighteen.

3/ A perpetrator will be punished by imprisonment for eight to twelve years, if

- a) he/she gains a substantial profit from the act,
- b) he/she commits the act towards a person below the age of fifteen, or
- c) he/she causes through the act serious harm to someone's health.

4/ A perpetrator will be punished by imprisonment for ten to fifteen years, if

- a) he/she causes through the act serious harm to the health of several persons or death,
- b) he/she gains great profit on a large extent from the act, or
- b) he/she commits the act in association with an organised group operating in several states.

Article 187a:

1/ A person who, without authorisation, possesses a narcotic or psychotropic substance or poison in a quantity greater than small will be punished by imprisonment of up to two years, or a fine.

2/ The perpetrator will be punished by imprisonment for one to five years if he/she commits the act on a larger extent.

Article 188:

1/ A person who produces, procures for him/herself or others, or possesses an object intended for the illegal production of a narcotic or psychotropic substance, or of a preparation containing a narcotic or psychotropic substance, or of a poison will be punished by imprisonment for one to five years, or a prohibition of activity, or a fine, or a forfeiture of item.

2/ A perpetrator will be punished by imprisonment for two to ten years, if

- a) he/she commits the act on a larger extent,
- b) he/she commits the act against a person below the age of eighteen, or
- c) he/she gains significant profit from the act.

Article 188a:

1/ A person who entices anyone to abuse addictive substances other than alcohol, or who supports him/her in the abuse, or who otherwise incites or propagates the abuse of such substances, will be punished by imprisonment of up to three years, or a prohibition of activity, or a fine.

2/ A perpetrator will be punished by imprisonment for one to five years, if
a) he/she commits the act towards a person below the age of eighteen, or
b) he/she commits the act over the press, the radio, the television, or the computer system open to the public, or by other similarly effective manner.

Appendix 2.

Statistical Data

These statistical data show the development of drug-related crimes registered by the police, number of perpetrators and sanctions imposed. Data on the number of registered and solved crimes were obtained from the statistics of the Police of the Czech Republic, and the data on the number of prosecuted, charged and convicted persons, as well as on the sentences imposed, from the statistics of the Czech Ministry of Justice.

These data show some development trends. Above all, it is clear that the proportion of punishments not connected with the deprivation of freedom has increased, especially community service. Community service was incorporated in the Penal Code as of 1 January 1996. The changes in the number of those sentenced to community service clearly show the initial misgivings and mistrust on the part of the courts, resulting from the initially inadequate wording of the legislation and from the absence of implementing regulations.

Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons— Article 187 of Penal Code:

Table 1. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1996	1 436	1 431	99.7	706	608	283
1997	2 303	2 290	99.4	920	789	357
1998	4 056	4 034	99.5	1 185	1 029	702
1999	6 100	6 064	98.9	1 300	1 102	765
2000	3 292	2 892	87.8	1 547	1 276	819
2001	3 198	2 968	92.8	1 640	1 418	905
2002	3 359	3 150	93.8	1 603	1 444	1 007

Table 2. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1996	283	116	149	7	-*	5	6
1997	357	145	192	9	6	2	3
1998	702	279	358	17	15	1	32
1999	765	279	432	4	23	0	27
2000	819	315	441	1	34	2	26
2001	905	365	474	3	41	5	17
2002	1007	347	540	3	77	6	34

* Community Service was not recorded separately in 1996, if imposed, it is included in "Other" category

Table 3. Sentences of Imprisonment

year	Total	Up to 1 year	from 1 to 5 years	from 5 to 15 years
1996	116	39	61	16
1997	145	56	75	14
1998	279	75	180	24
1999	279	63	192	24
2000	315	46	238	31
2001	365	65	257	43
2002	347	58	257	32

*Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons—
Article 187a of Penal Code*

Table 4. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1999	228	226	99.1	130	115	18
2000	212	207	97.6	187	158	63
2001	241	231	95.9	261	215	86
2002	285	257	90.2	244	206	103

Table 5. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1999	18	11	3	1	2	1	0
2000	63	17	30	2	6	4	4
2001	86	16	45	2	18	0	5
2002	103	18	60	3	17	2	3

Table 6. Imprisonment

year	Total	up to 1 year	from 1 to 5 years	from 5 to 15 years
1999	11	10	1	0
2000	17	13	4	0
2001	16	12	4	0
2002	18	10	8	0

*Illegal Production and Possession of Narcotic and Psychotropic Substances and Poisons—
Article 188 of Penal Code*

Table 7. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1996	156	155	99.4	181	165	27
1997	101	101	100	159	140	32
1998	101	101	100	184	159	55
1999	90	89	98.9	141	119	38
2000	122	122	100	228	190	29
2001	157	156	99.4	222	195	62
2002	216	206	95.4	247	223	58

Table 8. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1996	27	7	16	2	-*	0	2
1997	32	6	23	1	0	0	2
1998	55	8	41	1	3	0	2
1999	38	7	26	1	2	1	1
2000	29	3	22	0	4	0	0
2001	62	13	40	4	4	0	1
2002	58	10	34	1	12	0	1

* Community Service was not recorded separately in 1996, if imposed, it is included in "Other" category

Table 9. Imprisonment

year	Total	up to 1 year	from 1 to 5 years	from 5 to 15 years
1996	7	6	1	0
1997	6	4	2	0
1998	8	1	7	0
1999	7	3	4	0
2000	3	2	1	0
2001	13	4	8	0
2002	10	2	8	0

Propagation of Drug Use—Article 188a of Penal Code

Table 10. Crimes

year	Crimes registered	Crimes solved	Solved %	Persons prosecuted	Persons charged	Persons convicted
1996	446	444	99.6	212	183	24
1997	449	441	98.2	256	223	30
1998	1 077	1075	99.8	407	342	45
1999	1 302	1298	99.7	513	429	70
2000	832	829	99.6	491	419	61
2001	613	607	99.0	396	332	41
2002	470	446	94.9	410	374	48

Table 11. Sentences

year	Total	Imprisonment	Suspended	Fine	Community Service	Other	Discharge
1996	24	5	17	0	-*	2	0
1997	30	4	20	1	0	0	5
1998	45	1	35	1	1	0	7
1999	70	6	46	0	6	0	12
2000	61	7	43	2	5	0	4
2001	41	10	23	1	5	0	2
2002	48	4	31	0	7	0	6

* Community Service was not recorded separately in 1996, if imposed, it is included in "Other" category

Table 12. Imprisonment

year	Total	up to 1 year	from 1 to 5 years	from 5 to 15 years
1996	5	3	2	0
1997	4	3	1	0
1998	1	1	0	0
1999	6	4	2	0
2000	7	4	3	0
2001	10	6	4	0
2002	4	4	0	0

Appendix 3.

Approximate Amounts According to Article 187a of the Penal Code of the Czech Republic

(Appendix 1 of the Supreme State Prosecutor's General Instruction No. 6/2000)

Drug Type	Weight (grams) of pure substance	
	“quantity greater than small” (Art. 187a)	“larger extent” (Art. 187a Par. 1, 2)
Heroin HCl	0.15 (approx. 5 doses/30mg)	1.5 (approx. 50 doses/30mg)
Morphine HCl	0.3 (approx. 10doses/30mg)	4.5 (approx. 150 doses/30 mg)
Methadone	0.3 (approx. 10 doses/30 mg)	4.5 (approx. 150 doses/30 mg)
Cocaine HCl	0.25 (approx. 5 doses/50 mg)	5 (approx. 100 doses/50 mg)
Tetrahydrocannabinol (THC)	0.3 (approx. 10 doses/30 mg)	7.5 (approx. 250 doses/30 mg)
LSD	0.0005 (approx. 10 doses/50µg)	0.006 (approx. 120 doses/50 µg)
MDMA - base and homologues	1 (approx. 10 doses/100 mg)	24 (approx. 240 doses/100 mg)
Amphetamine - base	0.5 (approx. 10 doses/50 mg)	10 (approx. 200 doses/50 mg)
Metamphetamine - base	0.5 (approx. 10 doses/50 mg)	10 (approx. 200 doses/50 mg)
Psilocybin	0.05 (approx. 5 doses/10 mg)	3 (approx. 300 doses/10 mg)

References

- Karabec, Z., Diblikova, S., and Zeman, P. (2002), *Criminal Justice Systems in Europe and North America – Czech Republic* (Helsinki: HEUNI).
- Samal, P., Pury, F., and Rizman, S. (2001), *Trestni zakon, komentar* [Penal Code, Commentary], (Prague: C.H.Beck).
- Travnickova, I. (2000), *Young People, Drugs and Penal Code*, (ICSP Edition).
- Zeman, P. (2003), ‘Vyvoj registrovane drogové kriminality a jejího postihu v CR v letech 1996–2001’ [Registered Drug-Related Crime and its Prosecution Development in the Czech Republic in the years 1996–2001], *Kriminalistika*, 3/2003
- www.vlada.cz (English version of “National Drug Policy Strategy for the years 2001–2004” and “Impact Analysis Project (PAD)” also available)

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