



Crime as a Business, Business as a Crime

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*"Behind every great fortune there is a crime."
Honore de Balzac*

Purpose:

This paper endorses the claim that in transitional societies the line between business and crime is elusive because weak states foster a legal order that is formalistic, bureaucratic, politically biased and prone to corruption.

Design/Methodology/Approach:

Three elements are discussed in the paper. First, the paper briefly analyses legal and institutional state of affairs in transitional Western Balkans societies that condone organised crime. Secondly, it investigates the phenomenology of the (corruptive) crime behaviour, explaining how it managed to integrate into society in the context of a weak state. Thirdly, the paper investigates why state policies and measures fail to fight crime as the business. In this part the paper contests a traditional definition of criminal organisation as a hierarchical one, claiming that mafias are not organizations in a traditional sense.

Findings:

The paper emphasizes that the fight against organised crime is not just a fight against individuals or individual criminal behaviour; but a fight to increase the efficiency of the government. The paper furthermore asserts that better understanding of the organised crime problem can occur only if its fighting and addressing happens from the point of view of a good governance. Namely, the precondition to fight against organised crime or parallel activity requires increased efficiency and capacity of governmental institutions.

Originality/Value:

This paper adds to the academic and practical understanding of the organised crime in the post-transitional settings. Apart from being instructive and up-to-dated source of information for the regional setting it deals with, the paper sheds a new light on understanding of organised crime.

UDC: 343.3/.7

Keywords: organised crime, organisation, transition, money laundering, corruption, good governance, South-Eastern Europe

1 INTRODUCTION

There has always been a trait of organised crime in business activities (see e.g. Block & Chambliss, 1981; Ruggiero, 1985, 1996; Burrows & Hopkins, 2005; Tilley





& Hopkins, 2008). However, in transitional societies the line between business and crime is particularly elusive. The moral norms from predemocratic and egalitarian communities are incapable to cope with emerging and sophisticated crime. The legal order in such societies is formalistic, whereas bureaucracy is politically biased and prone to corruption. The police and judiciary do not have enough power and authority, being accompanied with a lack of a political will to fight crime.

Common perception of organised crime usually has in mind a picture of a really big Weberian type of organization, with hierarchy, with rules, with wages, with promotion and career (compare e.g. Peters, 1988). In this paper we will prove that criminal organisations are not such a type of (bureaucratic) organization. Mafias are groups who are surviving because they are very closely connected. The hypothesis this paper attempts to prove is that it is therefore impossible to fight against organised crime by eliminating just the top of the groups since top positions are easily replaceable by newcomers. Eliminating just a few of leaders therefore is not a solution.

Second hypothesis this paper is putting forwards argues that the line between legal and illegal business activities is very flexible in countries in transition. This paper therefore emphasizes that the fight against organised crime is not just a fight against individuals or individual criminal behaviour; it is a fight to increase the efficiency of the government. The paper furthermore asserts that better understand of the organised crime problem can occur only if its fighting and addressing happens from the point of view of a good governance. Namely, the precondition to fight against organised crime or parallel activity requires increased efficiency and capacity of governmental institutions.

2 THREAT AND RISKS

2.1 Weak States and Organized Crime as a Threat to Democracy

A weak state facilitates the formation of parallel structures which have real power, organized crime and corruption. Consequently, legal, social, even physical security of citizens in these conditions is greatly threatened, while the development of civil society and democracy is prevented (compare Papić et al., 2001: 247). Organized crime therefore constitutes a real threat in new democracies. Even consolidated democracies such as Slovenia, Czech Republic, Poland, Slovakia, Hungary or Croatia do have affairs with organized crime, cases that indicate new form of criminal activities. Across South-Eastern Europe countries have been concerned with long-term waves of drug trafficking, prostitution, money laundering. Comprehensive and comparative studies of transitional economy show that flow of capital and profit from illegal activities has a considerable influence (compare e.g. Schroeder & Friesendorf, 2009; Giatzidis, 2007; Sergi & Qerimi, 2006). The studies of transitional government show that governments are weak and not capable, or are corrupted, to fight organized crime. Weak states are the most dangerous elements of instability and the most likely source of new trouble spots in the decade to come. It is therefore possible to claim that all states have organized





crime, but in some states, the organized crime has a state. In short, organized crime in transitional democracies is just not the problem of criminology and deviance. Being the problem of the weak states, organised crime causes that criminals are *doing* something, whereas the weak states *are doing* nothing or not enough.

The main problem in weak states is a weakness of state institutions, which results in the incapacity of these countries to absorb financial assistance towards the successful implementation of reforms. Deformation of democracy and democratic institutions, corruption and organized crime were identified as the main sources of the weakness of the states in the region. Without creating domestic stability, the countries have nothing to offer to one another in the process of reconstruction. Rather, they threaten one-another with the spillover of instability.

2.1.1 Systemic Conditions for the Rise of Organised Crime

In countries in transition that were recently moreover involved in armed conflicts, the line between legal and illegal business activities is very flexible. Thorstein Veblen has noted in his seminal book on leisure class that »[t]he generation which follows a season of war is apt to witness a rehabilitation of the element of status, both in its social life and in its scheme of devout observances and other symbolic or ceremonial forms [...] advancing wave of sentiment favoring quasi-predatory business habits, insistence on status, anthropomorphism, and conservatism generally. The more direct expressions of the barbarian temperament, such as the recrudescence of outlawry and the spectacular quasi-predatory careers of fraud run by certain 'captains of industry'« (Veblen, 2007: 283).

Riggs noted that »[i]n societies where formal economic and administrative models provide relatively accurate images of reality it is practical to study the models ...but where the formal models are far removed from reality such study of legal and administrative models become increasingly 'legalistic'« (Riggs, 1964). In many cases legal activity has to be supported by disobedience to the law. The people are investing a lot of efforts in order to avoid some rules, trying to bribe officers, courts or some important politicians. They do perceive as necessary such type of behaviour. This is illegal, but sometimes they are using behaviour or tools which are completely legal but not acceptable. Not just from the moral point of view but also because of open and honest competition in the market. It is therefore possible to observe the economic change in transitional countries in the Balkans through a lens of organized crime. The days of privatization, denationalization, return of property and transformation of social and legal categories in the new capitalist system can be described as the days of semi-legal activity. Formally, legalistically, those activities were not contrary to legal provisions, but in reality this produced a lot of risky situations which are actually opportunities for organized crime which has some capital to invest, influence to use, to get some advantages. Organised crime is the answer, actually organised crime has some advantages against the uncertainties we face in transition.





2.1.2 Economics of Crime

Ruggiero argues that the most influential forms of corporate and organised crime flourish exactly where wealth and power is (Ruggiero, 1996), similarly to Sutherland's claim that »wealth, rather than poverty causes crime« (ibid: 156). In transitional societies organized crime can be considered as a product of the rise of unorganized market economy. Subsequently, line between business and crime in such economies is thin (Kaufmann & Siegelbaum 1997; Kaufmann, 1998; Hellman, Jones, Kaufmann, & Schankerman, 2000; Hignett, 2010). Privatizations, denationalization, not transparent return of property, transformation of specific socialist legal categories into clear legal standard are also premium possibilities for personal gains. In intention, such transformation is welcomed by all. In reality it is misused by few. Legally everything was correct. In orderly work of enterprises and companies, the entrepreneurs try to find loopholes in legislation regarding public procurements, taxation, urban planning and permits, judicial procedures. The corruptions seem to be grease to slow administration.

The most challenging opportunity for a spread of organized crime in transitional societies in South-Eastern Europe was bureaucratically organized and purely performed privatization of state (social) ownership. The investigations after the fall of new 'tycoons' shows that the damages are enormous, the all economy is under serious threats after billions dollars disappeared in 'safe heavens' of the off shore companies. Tens of such 'entrepreneurs' were prosecuted but only a few sentenced. Formally, the big robbery was legal. In addition to this, organised crime flourished in 1990s across the Balkan peninsula due to the fact that countries of the region were involved in armed conflicts. Such a situation allowed for illegal traffic of weapons, traffic of narcotics, human trafficking, which all happened under political protection and consent.

For example, statistics of convictions and sentences in Croatia reveal that that organised crime is appearing and becoming from time to time the decisive element in economic and political competition. Organised crime has penetrated into classical centres of banking and profit: banks, tourism, state and local monopolies, and moreover, into politics. Illustratively, there were just a few sentences against organized crime in Croatia; all others are realized under a rule of 'no sufficient proof'. Two big courts proceeding against mafia were conducted in Croatia recently - for dozens of murders, drug dealing etc. The court procedure of the »trial of the decade« was a catastrophe for prosecution and public attorneys. Even the most sophisticated investigative tools - including protection of witnesses, inclusion of secret services and establishment of the Office for the Prevention of Corruption and Organized Crime (USKOK) did not suffice to produce concrete results (Čaldarović et al., 2009: 7-8; see also Skorupan, 2000). After two and a half years of proceedings, almost all of the accused were released. Only a few of them, and not the organizers and the leading figures in criminal organisation, were sentenced because of some serious offences, but received minimal punishment. It is apparent that attorneys are not capable of fighting against the big money of organised crime, good lawyers which they are able to pay and the possibility of the manipulation of public.





2.1.3 Status and Social Recognition

The case elaborated above shows furthermore that permanence of organized crime and the ineffectiveness to eradicate it is not necessarily result of its organizational superiority but consequence of economic and political, just as much of social, conditions. Namely, the society remains blind to ceremonial rituals of gangs, in a way admiring mafia subculture. In transitional countries, it is not unusual that organized crime has support in public. It is considered socially acceptable if celebrities and leading politicians are having coffee with persons of the criminal milieu. Even the leading public servants accept with a great smile people publicly accused or denounced by the media as the organizers of crime. The disappointing failure to prosecute organised crime explained above indicates that mafia is not just one company but a very active group of people willing and able to influence public opinion.

2.2 Examples of Money-Power-Spoils across the Balkans

Criminal organisations are used to legalize or launder the money and the profit from the criminal activities by investing in attractive ventures, such as tourism and other areas. The recent scandal surrounding the Hypo Bank pictures even more in detail the theoretical framework presented above. This regional Austrian bank from Carinthia managed to expand in the 1990s from a small, provincial bank into a large banking force in the neighbouring Balkans. Investigations into Hypo businesses started back in 2007, after it was taken over by BayernLB, a Bavarian bank, who soon after discovered that Hypo was reporting false business results, detecting €3.75 billion loss. The allegations that are coming out in the process of investigations range from suspicions that the bank was used to allow for political rise and survival of a Carinthian far-right populist politician Jörg Haider, governor of the Austrian province from 1989 to 1991 and again between 1999 and 2008; over being engaged in a series of curious investments in the expanding markets, to financing and organised crime activities in the Balkans.

There is an evidence that during the Yugoslav wars money from the Croatian government and the Croatian diaspora was illegally used for purchasing weapons was funnelled through the bank. The large sums remaining after the war were reinvested in Croatia by a coterie of the country's political elite (The Austrian bank at the centre of a growing web of scandal, 2010). According to the information provided in the Croatian newspapers, the Hypo Bank carried out the majority of business deals with local politicians through a middleman. One of them was an Austrian businessman Walter Wolf who was »in the 1990's ... highly respected in Croatia because of his role in helping procure weapons for the Croatian armed forces during the Homeland war.« (Biočina, 2010)

In addition, it is becoming evident that the Hypo Bank financed semi-criminal and corrupt elite in the successor states of Yugoslavia. The bank, for example, funded audacious construction projects for ex-politicians and former generals in Croatia. For example, the former Croatian General Vladimir Zagorac, accused of





embezzlement of state money and money laundering, was a prominent customer of the Hypo-Alpe-Adria Bank (Salzmann & Schwarz, 2009). Austrian press recently reported that suspected drug smuggling boss Darko Šarić laundered about EUR 100mn through loans taken from the bank for the construction of the Belville apartment block in New Belgrade (Interior minister on Hypo-Alpe-Adria scandal, 2010). In its murky Balkans-wide businesses the Hypo Bank had the support of representatives from both state and local units of government. By giving them favourable loans, it assured supreme business deals. For example, in collusion with the local authorities in the Croatian coastal region of Istria large tracks of pristine state land were bought at low prices and then sold with a 200 fold price increase, after the land was subdivided into plots.

3 IGNORANCE VS. GOVERNANCE

3.1 Organized Crime: Contesting A Concept

Empirical research on organized crime disagrees if the characteristics of groups or of criminal activities are predominant for its definition (see Paoli, 2007; Fijnaut & Paoli, 2004). The hierarchical model of criminal organization (Cressey, 1969) was accused of imposing a specious conceptual order on a diverse and analytically distinct range of actors, activities and harmful consequences. Similarly, researches on the informal and formal aspects of an organisation revealed that the formal side does not involve a determinate pattern of action (Peters, 1988). The 'problem of organized crime' has been reformulated to ask, instead, how different crimes of a serious impact and magnitude are organized, and what overlaps exist between the offences and those who commit them (Edwards & Levi, 2008). Kleemans and de Poot (2008) assume a position that group characteristics are predominant factor in defining a criminal organization. In their interpretation, relying on social opportunity structure theory, organized crime differs from terrorism, corporate crime, group crime and other types of crime by the characteristics of the groups involved. Groups are considered to be organized crime groups when they are focused primarily on obtaining illegal profits; systematically commit crimes with serious damage to society; and are reasonably capable of shielding their criminal activities from the authorities. Shielding illegal activities from the authorities is possible using various strategies: for example, corruption, violence, intimidation, store fronts, coded communication, counter-surveillance, media manipulation, and the use of experts such as notaries public, lawyers and accountants (Fijnaut, Bovenkerk, Bruinsma, & van de Bunt, 1998).

In this paper we challenge organizational aspect of a criminal organization. Namely, the definitions of organized crime enlist following qualities: durability over time, diversified interests, hierarchical structure, capital accumulation, reinvestment, access to political protection and the use of violence to protect interests. When discussing organized crime in such a way, it is necessary to agree upon a legal definition what an organization is, how many connected persons form the organization, and, finally, how to explain a hydra like organization in an





organizational sense. When talking about organizations, we often have perception of hierarchical organization in which each member has one superior, pyramid like organization with clear line and staff principles, capable, fanatic, and evil. When picturing mafia-like organized criminal groups, we often only project the picture of Weberian type bureaucratic organization, with hierarchy, with rules, with wages, with promotion and career (see Peters, 1988). Organised crime is not such a type of organization. Mafias are not bureaucratic organizations, they are not even companies.

While there are criminal groups organised along the homogeneous and hierarchical lines are not as frequent in comparison to groups that in practice are »loose networks of relatively independent members that coalesce around one or more prominent criminals« (OCTA, 2006: 12-13). The later networks take up tasks of varying structure, length and complexity according to the demand and concrete profits (ibid.). However, one should keep in mind that there are organized groups characterised by a hierarchical structure. Hierarchical structure "facilitates the inherent transnational co-operation of the groups, enhances the role of the head of the group and clarifies the allocation of tasks and responsibilities of each member. A system of negative sanctions following any failed action is complied with and respected but, reversely, positive incentives are also used to ensure group loyalty." (ibid.; compare also Fijnaut & Paoli, 2004)

In other words, mafias are groups who are surviving because they are very closely connected. This is the reason why we have a so-called mafia connected by ethnicity, origin or national identification. We are talking about the Russian mafia, about the Croatian and the Serbian mafia, we are talking about the Sicilian Cosa Nostra, the Calabrian 'Ndrangheta, the Chinese Triads and the Japanese Yakuza (compare e.g. Paoli, 2007). However, it would be too simplistic to conclude that ethnicity is the predominant social glue in the criminal organizations. There is more and more recent research on organized crime that reveals that criminal cooperation is built not so much on ethnicity as on social relationships between several individuals (Kleemans & van de Bunt 1999; Kleemans, 2007). Correspondingly, it has been researched and documented that ethnicity can be transformed from a 'trait' into a product of social position, social ties and opportunity structures (Paoli & Reuter, 2008)

The criminal organization is not better-organized than state administration. It is paradoxical to imagine that they have clear rules of internal promotion, career, wages, and merit. They are not bureaucracies but families. The relations are personal, the sympathies and subgroupings fleeting, the recruitment contingent; the rules rigid but not clear. The organization is not business like - strategies and plans are not developed, the marketing is poor and banks are not ready to give credits. Personnel in business of organized crime is neither permanent nor career oriented.

When we perceive organised crime in such a sense that challenges its organisational structure, we always have in our mind that we cannot fight against organised crime by eliminating just the top of the groups. They are a big group, and very easily are able to replace the top with newcomers, with the new people who are using the opportunity to become the leaders. Eliminating just a few of





them will not be the solution. One of the good examples from the Serbian case, even if I worry very much about the final result, is that they eliminated not just the top, but the substance of the organization. They are like a hydra; when you eliminate one head, two heads or organizations arise.

It is furthermore important to note that there is an international, or at least a regional dimension of criminal organization activities. Therefore it is necessary to establish a link between social ties, ethnicity and crime in the research of organized crime. It is not criminals that are penetrating the society, since the methods of organised crime are being imported across the national borders.

3.2 Good Policies Require Good Governance

A democratic political system does not necessarily guarantee and imply clean governance (Shen & Williamson, 2005: 329) and democracy should not be subscribed exclusively to electoral democracy. Democracy presupposes high quality of (good) governance efficiency of institutions, openness of political life, rule of law and modern state (both regional and local government). Good governance is assured through *government's accountability*, allowing for »country's citizens ... to participate in selecting their government, as well as freedom of expression, freedom of association, and free media«; *political stability* that minimizes »the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including political violence and terrorism«; *government effectiveness*, which assures »the quality of public services, the quality of the civil service and the degree of its independence from political pressures«, as much as »the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies«. In addition to those, forming characteristic of good governance imply as well *regulatory quality*, in other words »the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development«. Subsequently, what is particularly important in the process of organized crime eradication, it is essential that the governance takes into account the *rule of law*. The rule of law should be understood as »the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence«. Finally, good governance allow for a *control of corruption*, i.e. »the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests« (Kaufmann, Kraay, & Mastruzzi, 2006: 4; Moloney, 2009: 615).

Consequently, the fight against organised crime is not just a fight against individuals or individual criminal behaviour; it is a fight to increase the efficiency of the government. We can better understand the problem of organised crime if we approach it from the point of view of good governance. In short, the precondition to fight against organised crime or parallel activities requires increased efficiency and capacity of governmental institutions the majority of the South-Eastern European countries have yet not achieved.





4 CONCLUSIONS

The studies of transitional government show that governments are weak and not capable, or are even corrupted, to fight organized crime. Weak states are the most dangerous elements of instability and a cause for inefficient fight against organized crime. It has been elaborated above in the paper that mafias are neither bureaucracies nor companies, but groups and networks. They survive not because their technical organizational capacities but because they have absolute power of leaders, accompanied by weak resistance of clients and the state. Although they have a relatively short lifetime and are neither flexible nor adaptable, they manage to flourish on fertile ground of social and economic conditions that reproduce them.

The hypothesis this paper furthermore undertake to promote is that it is impossible to fight against organised crime by eliminating just the top of the groups. Being a big group, they are easily able to replace the top with newcomers; new people overtake position of a leader. Eliminating just a few of them is also not a solution. It is important that organized crime groups are not only decapitated, but that a substance of the organization is destroyed. In this paper we suggested that the most efficient way to approach organized crime in transitional South-Eastern European societies that were recently involved in armed conflicts it is necessary to strengthen and foster good governance of public institutions.

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