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Comparative Synthesis of Part III

Cyrille Fijnaut and Letizia Paoli

It is all too evident from the contributions in this part of the book, which focus on the policies conducted in a number of European countries with a view to coping with the problems of organised crime more effectively, that these problems have brought about important changes in the past few years at the individual country level, and not just at European Union and Council of Europe level. These changes have affected legislation in a great many areas (e.g. legislation on criminal matters, the police, customs and excise, and taxation), as well as organisation of public administration.

1. A Dichotomy or a Continuum?

Though all countries have been affected by this process of change, there are considerable country-by-country differences in both the scale on which the changes have been implemented and the extent of these changes. At first sight it is tempting to make a distinction between countries of the former Soviet Union and countries that were considered part of western Europe. This is because one might think that, in the wake of the predominantly peaceful Revolution of 1989, countries in the first category have had to make much greater efforts all around to deal with the new problems than countries in the second category.

On reflection, however, this dichotomy does not stand up to scrutiny. Amid all the revolutionary upheaval in their political, socio-economic and cultural systems, countries like Russia, Albania, Poland and the Czech Republic have undeniably gone to great lengths to formulate proper answers to the difficult questions raised by forms of organised crime of which they had little or no previous experience. If, however, we take into consideration the multifarious and far-reaching policy that has been developed in Italy to spike the guns of the various echelons of the mafia, we must conclude that this dichotomy does not hold water and that there is more to be said for categorising countries on the basis of a continuum.

If we look at the scale on which legislation has been amended in the aforementioned countries, and also the extent to which the police, judiciary, customs, etc. have been re-organised, there is something to be said for putting countries like Denmark and Spain at one end of the continuum and countries like Italy and

Russia at the other end. France and the Czech Republic, for instance, might come somewhere in the middle.

It is not easy to explain, however, the differences between the three groups of countries. To some extent these can probably be attributed to significant differences in the seriousness (nature, scale and development) of the problems of organised crime, or at least to significant differences in the way politicians, journalists and police officers define this seriousness. To some extent they can also be clearly traced back to significant differences in the general political situation in which countries sometimes find themselves. This does not just refer to the political instability to which some eastern European countries have fallen prey in the aftermath of 1989. In Spain, for example, the problem of ETA terrorists has overshadowed the problem of organised crime for many years.

2. Internationalisation of Policy

Despite the (occasional) explicative power of national factors, it is impossible to understand policy developments in the individual countries solely on the basis of the changes in their domestic political situation and, in particular, their own experience of organised crime. Previous contributions focusing on individual countries clearly show that the organised crime policies of virtually all countries were largely formulated in the context of their cooperation under the auspices of the European Union, the Council of Europe and the United Nations, or in the context of their cooperation with other individual countries – not just European states, but also the United States. Here, we are not simply talking about the ratification of conventions on police and judicial cooperation or cooperation between customs authorities, including the transposition of these conventions in national legislation and their effect on the re-organisation of national services to facilitate cross-border cooperation. There is so much more involved: the review of criminal legislation, police legislation and privacy legislation, the reform of important institutions (ministries, the judiciary) and services (the police, the public prosecution service, the customs authorities, the army, the intelligence services), the channelling of available funds to the fight against serious crime, the revision of strategies in order to curb such crime and, last but not least, the retraining of officers to ensure that all these changes are implemented in practice and do not just remain on the drawing board.

It is by no means excessive to say that, in Europe, policy on organised crime has increasingly transcended national boundaries in recent years and has become a matter of international politics and hence also of the foreign policy of individual countries. The ideas that are put forward in this respect in the recent European Security Strategy of the European Union (see the introduction to this Part) therefore tie in well with what has been happening in Europe for years, at an ever faster pace and on an ever larger scale.

This internationalisation of policy on organised crime well explains why the changes that have taken place on several fronts in individual countries are so similar, whether they involve the centralisation of the police, the judiciary and the customs authorities, or the creation of special units within these institutions, or the introduction of intrusive methods of investigation, such as phone tapping, anonymous witnesses and undercover agents.

Incidentally, internationalisation of policy can also throw up negative similarities between countries, not just positive ones, as is plainly evident in the adoption of an administrative, preventive approach to organised crime. Most countries do not have such an approach in place or have not properly implemented one; Italy and the Netherlands stand alone in this respect. The one-sidedness – in other words, the predominantly repressive bias – of the policy that is propagated by the European institutions and/or by major countries in relation to the fight against organised crime is also reflected in the policy that many individual countries have conducted over the past few years. Viewed alongside the earlier conclusion that there are considerable differences in the scale on which individual countries have revised their policy for whatever reason, this conclusion naturally raises certain questions about both the substance of the international/foreign policy that is conducted in this particular area and the way in which it came about.

The first question that comes to mind is whether the policy that is conducted by the European institutions – the European Union and the Council of Europe – is not far too uniform: one and the same policy for each Member State. Given the not insignificant differences between countries, would it not be advisable to differentiate more? For instance, should a distinction not be made between compulsory measures that all Member States must adopt because they relate to mutual cross-border cooperation and optional measures they can choose to implement, depending on the problems that actually crop up in each individual country?

The second question ties in with this last point: when determining which optional measures to adopt, is it not necessary to scrutinise more closely the policy developments that actually occur in the Member States, and not just at the national level, but also at a regional or local level? This approach at least offers some guarantee that the range of measures on offer is as wide as possible, thus ensuring that the Member States really do have a choice. It also provides some assurance that the latest developments 'on the front' are quickly incorporated into the policy that is pursued across the board.

This brings us to the third question. Precisely because organised crime is a serious problem that manifests itself locally in a variety of guises, is it not advisable that the formulation of policy should no longer be solely in the hands of representatives of national authorities in the permanent consultative bodies of the European Union and the Council of Europe, but that local authorities and important implementing bodies should be much more directly involved? Consultation can of course be organised in various ways. As far as the local authorities are concerned, one option

would be to provide a forum for local authority representatives from 25 or 40 of the largest cities in Europe to meet and share their experiences. As regards the implementing bodies, consultation between the various police forces that operate in the European Union Member States in the larger airports and seaports might be one way forward.

In any case every effort must be made to prevent the internationalisation of policy leading to a situation where this policy becomes alienated from the very problems it is designed to tackle or is not in line with the policy conducted locally to control these problems.

3. Policy on Organised Crime: By Definition Controversial

The changes that countries have introduced in their legislation and in the organisation of their national administration over the past few years are of course not all as new or innovative as they might seem. The creation of special units within national police forces is a measure that – as the French example shows – has been traditionally employed in order to combat certain problems more effectively. And the fact that in recent years many countries have incorporated so-called special methods of investigation into their Code of Criminal Procedure does not imply that such methods were not used in the past: undercover agents have been doing their shadowy work for centuries. This does not alter the fact – and the contributions in this Part are evidence of this – that in many countries the development of a policy on combating organised crime not only required a great deal of lengthy debate, but also could only really get off the ground when murders or scandals – think of Italy, but also France Ireland, and the Netherlands – had to some extent silenced heated discussions about current or future policy and had created sufficient support for new policy initiatives. This automatically raises the question as to why policy designed to combat organised crime is clearly almost by definition so controversial.

Based on the contributions in this book, the first point that can be made is that this has to do with the actual problem of organised crime. More particularly, it is by no means always clear, or at any rate it is by no means always possible to make it clear to sections of the population, whether this is actually a new problem or a redefinition of a problem from way back. Ultimately, a great deal of organised crime amounts to the production and/or smuggling and/or supply of illegal goods and/or services. And if it is possible to reach some sort of consensus on the problem, or at least on the definition of the problem, then it is often not easy to indicate how big and how serious that problem really is. In any case, the less apparent aspects of this problem prevent it from being easily recognised by the public at large. Another factor in many countries is the serious lack of empirical research into important forms of organised crime. The uncertainty that prevails about the real proportions of the problem cannot be dispelled this way either.

The difficulties surrounding the definition and understanding of the problem of organised crime can carry so much weight in policy discussions in this area, because the measures usually proposed to cope with this problem can, in turn, very easily cause serious difficulties. Measures designed to increase or tighten up investigative powers always come up against complex and sensitive dilemmas, such as that between the effectiveness of the administration of criminal justice and the rights of citizens when such powers are wielded. Consequently, these measures automatically provoke much public debate. And of course measures that have a bearing on the reorganisation of the public sector can easily jeopardise the vested interests of institutions and services, and quickly raise important questions – particularly in federal states – about the general organisation of the administrative structure. They can just as quickly incite resistance.

The various contributions in this Part of the book leave no room for doubt that all these difficulties can nevertheless be overcome to some extent. Many countries have rewritten their Code of Criminal Procedure in a number of areas and reorganised various government departments. This process usually takes up a great deal of time and energy – endless discussions, committees of inquiry – for the government, Parliament, departments, etc. And the energy expended is still not always enough to garner solid public support for the policy to be pursued. As mentioned earlier, it would need a serious incident (murder, scandal) – as well as considerable political pressure from the outside – to overcome resistance. Furthermore, it should not be overlooked that it is often not possible to say beforehand how effective certain measures will be against the targeted crime problems; nor is it possible to establish in advance how much it will cost – in terms of human, material and financial resources – to implement such measures effectively. These problems can also give rise to serious difficulties in the ongoing debate, as repeatedly noted in the various contributions.

It is worth making the point here, however, that, given how difficult it has been since the 1980s for many western European countries to put together any sort of consistent policy on organised crime, it should really not be surprising that by and large this has been an even more uphill task in eastern European countries. For one reason, after the unexpected collapse of the Soviet Union, eastern Europeans were not at all familiar with modern problems of organised crime, and for another, for a long time there was little in the way of political stability or financial resources to tackle these problems energetically. On the other hand, of course, some of these countries were put under considerable pressure by the European Union to adopt western European policy in this area – the famous *acquis communautaire* – and were also given assistance (in the form of funds and expertise) to actually establish such a policy in their own country. Several of the contributions here do, however, point out – and for good reason – that this policy remained a ‘policy in the books’ in some respects and little if any of it was actually implemented.

4. The Importance of Academic Research into Organised Crime and the Policies in This Area

This last point brings us to the fourth theme that we would like to mention in these concluding remarks: namely the fact that it is obvious from reading the country reports of Part III that there is extremely little academic research into the organised crime policies conducted by individual countries and international institutions in Europe. Apparently only the Netherlands and Germany have occasionally produced work in this area.

This of course raises the question of how it is that an issue that features so prominently on the political agenda is so little regarded by academic researchers. To some extent – there is no other explanation – the reasons underlying this neglect are the same as those given in the introductions to Parts I and II. The neglected academic assessment of organised crime control policies may well be the result of specific, additional reasons, though. One obvious example is the controversial nature of these policies: this easily deters national authorities and institutions from commissioning research into how such policies came about and how they have been implemented, because they fear that academic studies may only stir up even more controversy.

Another factor that should not be ruled out is that domestic and international government bodies have no interest in the results of such research revealing that there is a huge difference between the policy as formulated on paper and what has been achieved in practice. In other words, public bodies may well fear that independent assessments come to the conclusion that the expectations aroused at the policy presentation stage in terms of being able to control problems could only partly be fulfilled, if at all.

A third likely reason is that there are simply too few researchers who are interested in systematically analysing and evaluating the policies conducted. It is worth noting here that it is not just European researchers who usually – even in Italy (see the contribution by Antonio La Spina) – find it more interesting to write about the phenomenology of organised crime rather than about the problems of combating it. Even in the United States, a book like *Gotham Unbound. How New York City was Liberated from the Grip of Organized Crime* (New York University Press, 1999) by James Jacobs is a rarity.

Be that as it may, precisely because organised crime in Europe is still a rather intangible subject and policy in this area is such a controversial issue, the present sorry state of academic research, particularly as regards this last point, is regrettable. As a result it is more than appropriate to emphasise the importance of such research here.

Academic research into the true facts of organised crime in cities, in countries, in border regions or in subcontinents or continents is in itself of importance, if we are to create a clear picture for the public at large of what this form of crime actually

represents in society. In such an important area as this, why should a society like ours settle for snapshots in the media or for stories by journalists and police officers? It follows from this of course that a thorough analysis of this problem would provide an excellent starting point for developing a proper policy, and could also ensure considerable public support for such a policy. This last point is so important because organised crime policy is, in a manner of speaking, inherently highly controversial and the debate on the subject can easily degenerate into a political fight in which ideas and delusions about reality are more important than reality itself.

Quite apart from concern for an effective policy, thorough research into the forms and background of organised crime is also of great importance for the further development of general criminology. It can make an important contribution to reorienting the theories developed within this discipline, which in the past few decades have been so dominated by problems of safety in urban areas and growing juvenile delinquency.

The importance of academic research into the development and implementation of organised crime control policy is primarily indicated by the fact that we are concerned here with controlling a significant societal problem; it is therefore vitally important to know how the policy works and what effect(s) it has on this problem. Complementary to this, the relevance of this research is emphasised by the major interests at stake in such a policy, whether these are citizen's rights or the general organisation of the national administration. To ensure that these interests are properly protected, it is not too much to ask that academic research be conducted into the policy pursued. And of course this research should and must meet certain requirements: not just requirements relating to the progress of criminal investigations and personal privacy and safety, but certainly also requirements concerning the scope and depth of the research itself. Policy on organised crime generally covers many areas and is often legally and organisationally complex. Research into this policy must reflect this multiplicity and complexity.

Ideally, both kinds of research – research concerned with organised crime itself and research focusing on the policy conducted – would be incorporated into one single research project. This would ensure that due attention is paid to the interaction that always exists in some form between these two phenomena. How could someone research the effectiveness of policy without having a proper picture of the problem of organised crime itself? A pre-condition for an integrated research project of this kind is, however, that research groups are formed whose members are capable of productively combining normative legal analysis with empirical socio-academic research.