

## Considerations regarding cross-border crime and institutional cooperation

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### **Abstract:**

*Technological development and the socio-political evolutions from the last decades, visible especially in terms of expanding communications and increasing mobility of people, have revealed new phenomena with a high risk potential which ignore the geographical or administrative constraints of borders. Thus, cross-border crime has become, by size and also by its impact in time on people and society, a major challenge of national security and a real commitment to European institutions and organizations. Using a holistic approach, this study aims to emphasize the danger of cross-border crime to the national security of all states and also to underline the main European directions in preventing and combating this form of organized crime.*

**Keywords:** *cross-border crime, organized crime, institutional cooperation.*

### **1. Introductory considerations**

The end of the twentieth century was highlighted by a profound transformation, visible in all socio-economic areas of life, mentality, and also lifestyle, being absolutely natural that this transformation to bear down on the criminal phenomenon.

Therefore, we are witnessing a phenomenon of the globalization of financial markets, trade, protection of fundamental human rights, environmental protection.

This tendency of globalization has led to the elimination of borders between national, regional and international, world becoming a single state, and, in the same time, has led to the intertwining of political, economic and social problems, globalization expanding, in this context, also in the sphere of criminality, which caused the emergence of organized crime at transnational and transcontinental level.

Among the areas covered by this typology of criminality we can mention: drug trafficking, illicit arms trafficking, illicit trafficking of nuclear or other radioactive material, terrorism, prostitution, pedophilia, money laundering, theft and smuggling of expensive cars, looting and smuggling of cultural heritage objects, corruption in multinational companies, perversion of government officials, maritime piracy, environmental pollution and cybercrimes.

In this context, the national legislations of the states all over the world no longer can contribute in an effective manner to combating this scourge, extraordinarily harmful for society, taking appropriate measures also at the international level becoming crucial. Organised crime, by taking a globalized aspect, causes substantial prejudice to public safety, eclipses the sovereignty of states and hinders the development in optimal conditions of the activity of political, economic and social institutions [1].

It becomes clear that in this era of globalization, organized crime cannot be fought only within the borders, because the very quintessence of it is to be transnational. Given that the offenders are in a permanent motion, committing criminal acts in more than one state, the internationalization of the fight against transnational organized crime comes as a natural consequence, this representing a fundamental strategy of penal policy [2].

The evolution of contemporary societies reveals that despite the greatly expanded measures and interventions of institutions or specialized agencies of social control against acts of delinquency and crime, in many countries we can see an increase and proliferation of crimes committed with violence, but also those in the economic and banking field, fraud, extortion and corruption [3].

This constitutes a real social problem, whose way of expression and resolve concerns not only the factors of social control, but also public opinion, such offenses and crimes committed by violence and corruption tending to become, in today's society, extremely penetrating and also harmful in terms of balance, sustainability and security of state institutions, groups and individuals, being most often associated with organized crime, terrorism and institutionalized violence, typical for subcultures of violence and professionalized crime [4].

## **2. Cross-border crime - significant component of "organized crime"**

Even if the causes that underlie the intensification of violence and organized crime are extremely difficult to distinguish and prove, because of the existence of significant differences in terms of proportion and their intensity from one state to another, most experts argue that the origin of these phenomena consists in maintaining and the sustainability of political, economic and legislative forthcoming structures, in the persistence and intensification of social and economic disparities between individuals,

groups and communities and in the accentuation of social and ethnic conflicts and tensions.

Therefore, cross-border organized crime constitutes, in contemporary, one of the most important threats to the national security of all countries of the world, and the transnational illicit networks can be eliminated only by intertwining some homogenous measures taken by all state actors specialized in fighting against crime and criminality.

Cross-border crime is a significant component of what specialty literature calls "organized crime".

In the context where specialized structures of application in concrete of law are obliged to act within the law and specific regulations, cross-border crime is privileged to not carry out activities in the sphere of coercion imposed by legislation, acting not only asymmetric, but also illegal, cross-border organized crime being the beneficiary of a wide mobility and a varied spectrum of options. In this regard, continuous progress of the instruments and mechanisms which allow cooperation between EU Member States, in order to neutralize organized crime and the harmful effects for society caused by it, becomes a sine qua non condition.

The fundamental principle of cross-border cooperation is establishment in border zones of some contractual areas in order to discover common solutions to similar problems, the state entities recognizing, with respect to their marginal communities, the specificity of the proximity difficulties that these collectivities might encounter.

It takes shape, thus, both the need to ensure continuity of regional identities, and the need to ascertain that the process of European construction takes advantage of the dynamism and particular genius of local and regional authorities, located on either side of a border, when these are struggling to jointly develop a authentic partnership, fully consistent with the idea of an united, diverse and competitive Europe.

Among the factors that contributed decisively to the expansion of the transnational illicit networks in the European area we can mention the geographic characteristics of Europe, and here we refer particularly to the small and medium dimension of Member States, the socio-cultural-economic diversity, as well as to the tremendous development of communication networks.

### **3. The necessity of institutional cooperation**

In the same time, we also can distinguish a creative benefits vision in relation to security requirements of all states forming part of European Union. Under these circumstances, we can talk about an overriding need to attain some concrete actions in identifying the phenomenon of cross-border crime by setting the correct instruments in compiling the statistics, capable to highlight in an objective manner this kind of activity in each Member State, which would lead to the identification of some optimal solutions in relation with the interests, fissures and fragilities of European states, but also to a certain distinction regarding the duties of law enforcement institutions, institutions capable of distinguishing between different phenomena of criminality and to provide all the necessary resources for ample actions, common to several Member States.

Institutional cooperation involves, in reality, the allocation of human resources, extremely well trained, who possess the capacity for synthesis and analysis of the criminal phenomenon at transnational level [5].

The scientific literature has grouped, based on common characteristics, the forms and methods of inter-state cooperation within the European Union: traditional cooperation, cooperation relying on networking in a rather formal way or on an ad hoc basis, co-active cooperation, trans-border cooperation, the establishment of shared institutions (for example: Europol) or the establishment of shared databases (for example Schengen Information System), collaboration based on the principle of mutual recognition [6].

The police and judicial cooperation, both concepts circumscribed to prevention and investigation of cross-border criminality, represents major aspirations of criminal policy for each Member State of European Union.

A significant contribution to the development of police cooperation in the European area it has Maastricht Treaty, by adding the Third Pillar - Cooperation on the field of Justice and Home Affairs, designed to facilitate and secure the free movement of persons across the European Union territory. Title VI of the TEU- Provisions on cooperation in the fields of Justice and Home Affairs - extends the scope of cross-border law, the main concern of this chapter of the Treaty on European Union being the internal security of the European Union.

The policy of elimination the controls at national borders was accompanied by the requirement of rethinking the common policies of the European Union on non-EU nationals, asylum or visa applications and considering the problem of illegal immigration. The Member States of EU have concluded that by the disappearance of ability to perform controls at their common borders, has enhanced the cross-border organized crime potential.

#### **4. Building up a legal arsenal regarding institutional cooperation**

The regulations introduced by the Maastricht Treaty were shown to be deficient and inadequate, because of the various fundamental positions adopted by Member States of the European Union, expression of concerns in terms of emptying the content of the concept of national sovereignty and expression of the differences between the organizational structure of the police and judiciary in the Member States, the voices who were calling for increasing the efficiency level and the democratic control being hesitant and, somehow, anemic.

Amsterdam Treaty reformulated the content of the Title VI of the Treaty of Maastricht, renaming it Provisions on police and judicial cooperation in criminal matters. In the same time, some of the areas that belonged under the Maastricht Treaty to the third pillar of the Union have been moved to the first pillar (free movement of persons, asylum, immigration, etc.). So, in Title VI of the Treaty on European Union have remained activities to prevent and combat racism and xenophobia, terrorism, human trafficking and offenses against children, drug trafficking, arms trafficking, corruption and fraud.

The Council of the European Union adopted, on 29 May 2000, the European Convention on Mutual Assistance in Criminal Matters, which aims to encourage and modernize the cooperation between judicial, police and customs authorities from the European area, by supplementing provisions of the existing legal instruments, by respecting, in the same time, the European Convention on Human Rights adopted in 1950, and which, also, confers a new vision of cross-border police and judicial cooperation in the European Union.

The title V, Chapter IV from the Lisbon Treaty states that the European Parliament and the Council may establish minimum rules concerning the definition of

criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Also, the European Parliament and the Council, on the basis of developments in crime, may adopt a decision identifying other areas of cross-border crime that meet the criteria specified in the Treaty and may establish measures to promote and support the action of Member States in the field of crime prevention.

The Internal Security Strategy for the European Union approved by the European Council on 25 and 26 March 2010 sets out the main crime-related risks and threats facing Europe today and which adapts extremely quickly to changes in science and technology in their attempt to exploit illegally and undermine the values and prosperity of European societies. According to the Strategy, these are: terrorism, serious and organized crime, drug trafficking, cybercrime, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption, trafficking in arms and cross-border crime.

Through European Agenda on Security for the period 2015-2020, the European Union has created a set of instruments to help Member States law enforcement agencies strengthen their capacity to fight terrorism and criminality, the success depending on the effectiveness of cooperation between institutions and agencies of European Union, of the one part, and the Member States and national authorities on the other. Abovementioned instruments can be better used due to the Agenda on Security because this will create the premises for a greatly improved information exchange and an increased cooperation.

## **5. Conclusions**

In the view of failures and weaknesses in the institutional structures of the EU member states, and not only, organized crime constitutes a serious threat to the national security of each state, to the harmonious and balanced development of the rule of law, to the sustainable economic and social development, consistent and harmonious, as well as to the citizens of these states right to live in safety.

In order to increase efficiency and effectiveness in preventing and combating transnational organized crime it is stringent the creation of optimal conditions for

strengthening the investigative capacity of the organizations empowered for that purpose and for the operative tracking of the offenses characteristic of serious crime, for fundraising and the development of human resources in the field of police and justice, for increasing the capacity of identifying illegal transactions, for improving demarches of confiscating the resources arising from offenses, for facilitating the exchange of best practices with the institutions and competent authorities of other Member States of the European Union.

Only the experience generated by a jurisdictional framework, well-defined, alongside a newly approach judicial practice, in conjuncture of renunciation at the internal borders within the European Union, can support an effective management of the specialized agencies in combating and preventing the different forms of cross-border crime.

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