

TIE – Tackling Illegal Economy

Conference: "Legal Instruments and Technical Tools against Organized Crime - Confiscation Today and Tomorrow"

Berlin, February 6th – 7th, 2014

Conference Protocol

In the framework of the project *TIE – Tackling Illegal Economy*, funded by the European Union and coordinated by *Libera*, the German association *Mafia? Nein Danke!* hosted in Germany's capital city, Berlin, on February 6th and 7th, a conference "Legal Instruments and Technical Tools against Organised Crime- Confiscation Today and Tomorrow".

The conference was inaugurated with greetings by Sandro Mattioli, the president of the association *Mafia? Nein Danke!* and by the Italian Vice-ambassador in Germany, Giovanni Pugliese. The pivotal topics of the event were the seizing and the confiscation of criminal assets, as crucial instruments in the fight against organised crime. Seminars followed one another in a *crescendo* of interesting debates that gathered the opinions of international experts from all over Europe in a single round table.

Confiscation: introduction to the *status quo* in Europe

The forum was opened with an intervention by Professor Jesús Palomo, of University Rey Juan Carlos, Madrid. Palomo highlighted the opportunistic nature of organised crime, which basic aim is the quest for profit. The professor offered an interesting analogy between medicine and organised crime, centring it upon the similarities among the two different fields in research. Such analogies can be particularly observed between a team of physicians investigating and collecting information concerning a given type of cancer, and the scholars studying organised crime. Once the type of tumour has been identified, the team shares the information and strives to find a cure. Exchange of information is vital. The same mechanism can be applied to those who investigate *mafioso* phenomena. In this case too, information and basic research are important: one needs to identify the type of phenomenon being investigated, and once it has been identified, it is possible to find a solution to fight it. An interesting metaphor to highlight the importance of the awareness of the phenomenon's scope, of studies, of above all of the need for international cooperation. The focus was put on the need for collaboration between law enforcement agencies, prosecutors and researchers in criminal matters, that – united – become an effective instrument of prevention.

The European legal context of confiscation: after the CRIM final report

Sebastiano Tinè, the chief of the Financial Crime office at the Directorate-General Home Affairs of the European Commission, gave voice to the Commission's important initiatives in the fight against organised crime. He focused the attention on the Proposal for a Directive on the confiscation and freezing of proceeds of crime, under discussion and which legal procedure will be concluded at the end of February. Pivotal points: the possibility of confiscate assets in the absence of conviction, applicable in case the accused flew overseas or are unable to attend the trial due to illness; third-party confiscation and extended power of confiscation, that will allow to confiscated assets beyond the direct proceeds of an individual crime. The intent is to provide a set of common rules, applicable to all EU Member States, thanks to which it will be possible to achieve an improvement of international cooperation, crucial for the elaboration a global strategy in the fight against the mafias. To this purpose, Tinè mentioned the important role played by the CRIM Committee report in the discussion and final drafting of the Directive.

Based on the 2010-2014 Stockholm Programme, that placed among its objectives the need to attain a common security policy for the Member States of the European Union, the fight against economic and financial crimes and the fight against corruption, Tinè underlined the current effort by the Commission, the Council and the Parliament in the elaboration of a new plan to pursue the Programme's objectives.

He debated the sensitive matter of the social re-user of assets confiscated to criminal

organisations, spotlighting the difficulties, particularly deriving from the issue of management of such assets. The critical nodes and the challenges for the future are therefore the precautionary seizure, the management of confiscated assets and the identification of the actual beneficiaries of illicit proceeds.

Ms Laura Garavini, an Italian Member of the Parliament (PD), elected in the Europe district and a member of the Anti-Mafia Committee at the Parliament, clarified the crucial nodes at the European level in the matter of confiscation. The need for a harmonisation of the laws collides with some difficulties, she said, such as the Euro zone crisis, forcing entrepreneurs to a cash shortage, the Arab Spring crisis that fostered consistent migratory flows towards Europe, and last, but not least, the Balkan crisis. The mafias find big profit opportunities in such crises. Criminal organisations became global – this is why it is necessary to think to a global fight strategy. In this sense, the European Directive drafted in 2012 represents a very good instrument for the fight against organised crime, although an important tile is still missing: precautionary confiscation.

The debate was moderated by Hella Gerth, as the representative of the association "Cultura Contro Camorra" based in Brussels.

The use of technical tools to trace organised crime investments and the problem of data protection

The second day opened with the intervention by Michele Riccardi, a collaborator of Transcrime, the inter-university centre of the Catholic University "Sacro Cuore" of Milan and of the University of Trento, where he works on economic and financial organised crime, anti-money laundering and re-use of confiscated assets. The focus of his intervention: the analysis of the investments of organised crime in Italy and in the world. The investment of illicit proceeds in the legal economy, he explained, is a form of "territory occupation" that meets the mafioso groups' need to recycle their dirty money, maximise profits and control the territory, under both the physical and political-territorial points of view. Therefore, the most effective action to fight the criminal organisations is to strike their investments. How? *In primis*, improving the knowledge and strengthening research. The projects carried on in recent years, aimed at locating the mafioso group's investments and estimating the amounts confiscated from them, are several – OCP for one, Organised Crime Portfolio. Thanks to such projects, it was possible to achieve a mapping of the mafias in the world, from which a very large diffusion results, both in terms of activity sectors and of organisations. However, the absence at the European level of accurate data concerning the confiscation poses many problems for research – problems of a more operative nature, such as the lack of resources for law enforcement, the difficulty of access to registries overseas and the absence of a common registry. Problems of a more juridical nature always are there, related to the weakness of the legislative instruments Europe has available, or rather, does not have available. In Italy, the majority of the assets confiscated are real estate, whereas out of Italy cash and auto-mobiles are mostly confiscated. The confiscation of companies proves particularly complex, when it comes to make them operative on the market again. This is why it is important to think of new instruments that make the confiscation of companies effective as well. Another problem treated concerns the protection of sensitive personal data, an issue introduced by Alexander Dix, a jurist and the Commissioner for data protection and the freedom of information in Berlin. The focus moved to Germany, to the collection and processing of personal data. Dix focused on the sensitive issue of warrants for telephone wire-tapping, and reported accurate data concerning the situation in Berlin. Starting in 1994, he said, wire-tapping cases steadily grew in numbers. According to the statistics, out of 20,000 cases analysed in 2012, half were related to drug trafficking, a minimum to cases of child pornography, and the rest to organised crime. Dix underlined the importance of discerning between the protection of natural persons' data and that of legal persons' data; he restated the importance of protecting the citizens' personal data as a fundamental right, but he asserted the importance of the free circulation of personal information, an issue under discussion at the European Commission, included exactly in the reform of the data protection legislation. In the matter of organised crime, which he defined as "serious", he said that the investigations carried on so far were never actually hindered by missing consent to the data protection authority's preventive authorisation. The trend in Germany, he continued, is of a still unclear distinction between "serious" organised crime and

common criminality. What often happens is that the same mechanisms used for example in fighting terrorism are applied as well to organised crime phenomena.

The day was concluded with the interventions by Valentina Fiore, Bernd Finger, Pierpaolo Bruni, Petra Leister and Nando Dalla Chiesa, in two seminars that drew a comparison between the Italian and the German experiences in the matter of confiscation and social re-use of assets.

Are there any new legal instruments to be introduced in Germany?

Valentina Fiore, the General director of the Consortium *Libera Terra Mediterraneo cooperativa sociale ONLUS*, and the Vice-president of the Cooperative *Placido Rizzotto Libera Terra s.c.s.*, retraced the history of the association *Libera*, born in 1995 as a reply to Cosa Nostra's slaughters, and depicted its long struggle for the re-use of confiscated assets. Starting from the premises of the 1982 Law Rognoni – La Torre, *Libera* in 1995 launched a signature collection campaign to promote a law proposal to include the re-use of confiscated assets for social purposes, and initiative that brought to the introduction of the Law 109/1996, which gave recognition to the role played by many associations as managers of confiscated property, that they are assigned with loans of use. An example is *Libera Terra*, that strived in years to make confiscated property become an opportunity of development for a just and legal economy, and especially a job opportunity. A Type B social cooperative (finalised to the job inclusion of disadvantaged persons), *Libera Terra* currently manages 1,200 hectares of confiscated farmlands in the province of Palermo, involving 140 workers who belong to disadvantaged categories. Many are the products marketed – pasta, olive oil, legumes, wine, sweet and salted conserves. From this intervention emerged the importance of the cooperative nature of such initiative, an important instrument that provides the nexus between confiscation and civil society awareness-raising.

The floor was then given to Bernd Finger, the former director of the Berlin Police LKA7 organised crime unit, who began by underlining the fact that the *Libera Terra* project, as important as it is, cannot find fertile ground in Germany as of now, because there is no awareness on the issue of organised crime, few are the spontaneous initiatives, and at the national level there is nothing as structured as *Libera* is in Italy.

Nevertheless, something is moving, starting from the role played by the *Große Koalition*, that recalled the need to fight organised crime in Germany too. Extremely important, besides, the 2014-2019 European Action Plan against Organised Crime, that could constitute an excellent instrument to foster greater attention to the *mafioso* criminal phenomenon in Germany.

How should the best practice look like?

The telephone conference call with Pierpaolo Bruni, a public attorney at the Anti-Mafia District Directorate in Catanzaro, opened the afternoon session. The state's attorney returned to the theme of confiscation and told about his own experience in Crotona, where he coordinated the inter-force group that worked to retrace the capitals accumulated by the *mafioso* criminal groups in the Calabrian province. Bruni agrees upon the fact that confiscation is a trenchant instrument in the fight against the mafias, but maintains that it cannot be used in an exclusive fashion, reminding about the importance of another instrument, the so-called 41-bis, the hard prison (Translator's note: from Article 41 bis of the Criminal Code that provides for hard penalties for mafia members.) Bruni then reflected on the need for a harmonisation of the laws at the European level, because bilateral agreement between nations are no longer sufficient vis-a-vis a global phenomenon.

The intervention by Petra Leister, a German public attorney, held different tones than the previous interventions. She stated she is strongly convinced that the problem is not really of improving the normative instruments at the international level, because as far she is concerned the existing ones are more than adequate to fight organised crime in Germany. She continued explaining that the problem is rather of a shortage of personnel working on specific themes, due to the invisibility of such phenomena, and maintaining that in the Land Berlin there are other priorities. Concerning the confiscation of assets, she declared her scepticism regarding the application of such a procedure in Germany, due to the long bureaucratic processes required.

The seminar was closed by Nando Dalla Chiesa, a full professor of Sociology of Organised Crime at the University of Milan, a politician, a writer, and *Libera's* honorary president. He dwelled on the importance of striking the enterprising mafia accumulating illicit capitals. Germany at this time, he affirmed, is the same as Lombardy during the 1980s, when the "invisibility" of the mafia allowed it to expand and settle. An important comparison to highlight the strong need to raise a better consciousness of the extent of the *mafioso* phenomenon on German land. We need to become aware of what is happening in Germany, as well as in Spain and many other Countries; Dalla Chiesa called for more attention to the *mafioso* phenomenon. He reiterated the importance of the aim of the provision of confiscation and seizure of assets: striking the legitimacy and the impunity of the *mafioso* criminal organisations is the fundamental instrument to fight them, to take away from them the historical legitimacy they built around themselves. He then recalled the problem related to the confiscation of real estate, already mentioned by Mr Riccardi. The compelling need is to think an effective re-use of the assets confiscated to the mafias. In the case of confiscated land, *Libera Terra's* example represents a victory for legality. In the case of companies, many problems persist. The *mafioso* enterprise has its character of competitiveness, it is more competitive on the market because it intimidates the competition, corrupts the public administration, offers black labour. The new company should be put in the condition of being just as competitive, it must convert its criteria for competitiveness. The need emerges of creating a market Mr Dalla Chiesa defines as social. It is necessary that the State "socially accompanies the companies", following the same mechanism spontaneously adopted by the civil society. Just as with farmlands, the re-use of real estate should be as well a means of creating job opportunities. An idea for better use could be that of assigning such assets to the city administrations, that in turn, through a call for proposals, assign them swiftly to cooperatives, to not-for profit projects that will make a social use of them, creating jobs. He concluded with a reflection on the issue of confiscated property burdened with mortgages, dwelling on the modalities, sometimes unclear, the banks use for giving credit, strongly affirming that a law should be introduced by which the assets confiscated to the mafias, even if mortgaged, should however be available for assignment, thus making the banks more responsible.

An incentive-rich conference that created synergies between the representatives of the institutions, the academia, the magistrature and the association such as *Mafia? Nein Danke!*, that paved the way to possible future collaborations. An active audience, interested and informed, giving confidence to the associations that fight to raise the awareness of civil society.