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The Use of Legal Instruments to Combat Organised Crime

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Summary

The study is the output of the Institute of Criminology and Social Prevention's research task "*Organised Crime in the Czech Republic - Trends, Possible Criminogenic Factors, Selected Activities and Legal Instruments for Imposing Sanctions*". The work mainly focuses on the effectiveness of selected criminal instruments (in particular, operative and investigative means and the problem of using wiretaps (lawful interception) as evidence in judicial practice) in the fight against organised crime, but also in the wider context of other institutes of "non-criminal" Czech legislation governing the procedure used by authorities in the fight against organised crime.

The application of many repressive measures in both the legislative field and the activities of police and judicial authorities is not a simple matter, both in legal and practical terms. These measures must naturally correspond to the context of our legal system and they must not disproportionately interfere with the guaranteed rights and freedoms of citizens to enable the effective prosecution of crime. The study therefore focuses on achieving an effective balance between these aspects when formulating and using instruments to detect and prosecute organised crime.

Because the most effective way of combating all forms of profit-oriented organised crime is to employ measures and instruments that directly identify, secure and seize the proceeds of crime (and identify non-standard economic activities in time, prevent anonymous transactions and the anonymization of the owners of illegally gained assets and their transfer), the study also points out certain ways of concealing and anonymising assets and the related concealment of the real ownership structures of business companies.

The research project was conceived as a follow-up to previous ICSP research largely carried out in 1997 and 2010.

The *aim* of the research was to formulate proposals de lege ferenda, after analysing and determining the effectiveness of the listed legal instruments for their more effective application, and its possible use in the ongoing recodification of the Criminal Procedure Code.

Due to the limited ability to gain better understanding of the phenomenon of organised crime based on its very nature, the following *research methods and techniques* were used:

- **analysis** of existing relevant legal regulations relating to organised crime;
- **expert** inquiry carried out using both written questionnaires and direct interviews of police specialists dealing with the detection and investigation of cases with elements of organised crime. Questioned experts mainly included staff from the Bureau of Criminal Police and Investigation Service with nationwide jurisdiction, plus the General Directorate of Customs and Military Police Headquarters.

Public prosecutors working at the level of Supreme, High and Regional Prosecutor's Offices and judges from the High and Regional Courts were also approached as part of this investigation on the application of criminal law instruments;

- **secondary analysis of sources** - professional literature, materials from the Ministry of the Interior and Ministry of Justice of the Czech Republic and other open sources.

The *results* of the research are mainly addressed to the police and judicial representatives, but in a broader sense also to public administration and politicians. In a wider social context, the results can be used to design policies in the field of serious crime, in particular organised crime and serious economic crime. Based on the nature of the research findings and recommendations, the results may also be used in the legislative process to amend relevant legal regulations.

Problems identified as key issues, especially in terms of increasing the effectiveness of police instruments for combating organised crime were analysed in detail, in particular the possibility of speeding up the authorisation mechanism for **wiretapping and recording telecommunications** (including terminological definition) and a proposal to fundamentally and newly define the institute of **informer**. Last but not least, given the current trend in organised crime and efforts to establish itself in the legal economy, the study also evaluates certain existing instruments for sanctioning organised crime in the **economic field** and the adoption of appropriate new measures.

Proposals de lege ferenda:

Informer:

- to create a new institute for the documentation of criminal activity for (*exhaustively*) defined crimes as another operational investigative tool under Section 158b of the Criminal Procedure Code with the "*use of a confidant*" (i.e., a civilian obtained ad hoc in a case, who knowingly cooperates with the authorised police authority for the purpose of clarifying specific criminal conduct in specific criminal proceedings, operating in a documented criminal environment on which he/she can testify as a confidential witness pursuant to Section 55 (2) of the Criminal Procedure Code, and to lay down the rules for his/her authorisation to do so - authorisation mechanism, protection of identity, immunity, reward, etc.)

Wiretapping and recording telecommunications:

- permit the use of wiretaps with the consent of the public prosecutor on the condition of a parallel authorisation regime pursuant to Section 88 of the Code of Criminal Procedure;
- define the nature of data that can be collected under this institute;
- create new criminal procedural institutes that reflect the specificities of electronic communication.

Economic field:

- Create an information system that records indicators related to the anonymization of assets and the ownership structures of legal entities.
- Extend the principle of transferred tax liability to suppliers and for domestic transactions.
- Implement the certified procedure for the application of "Methods of Comparison Evidence" in the Czech Republic.
- Create a legal instrument to secure yields from unknown sources and place them beyond the reach of the owner/holder until the source is identified or the source is identified by the owner/holder.

Translated by: Presto