Fighting Organised Crime in Italy and Russia

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Stijn VAN DAEL

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Promotor: Prof. Dr. Gert Vermeulen
Commissioners: Prof. Dr. Sonja Snacken
Prof. Dr. Marc Cools
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1. Introduction

Organised crime is increasingly seen as a major threat to society. However, organised crime is not a homogenous phenomenon, characteristics of organised crime groups may vary to a large extent. The first major question I would like to focus upon is whether the differences in the characteristics of organised crime groups lead to a different approach towards and fight against the phenomenon. In order to answer this question, I have chosen to make a focused comparison about the fight against organised crime in Italy and Russia, as Italian and Russian organised crime groups are amongst the most important and best known in Europe.

In the first part, I will briefly describe some important aspects of organised crime groups themselves. This will highlight the most important structural and historical differences of both types of organised crime groups. Secondly, I want to compare the fight against the organised crime phenomenon in both countries. Two parts will be distinguished; First, an overview of the most important legislative initiatives in Italy and Russia in this field will be given. Second, law enforcement efforts to combat organised crime groups will be briefly discussed. In doing so, it will be possible to determine whether the fight against organised crime in both countries differs to a large extent or not.

If it turns out that different sorts of organised crime groups lead to a different approach, a new question concerning the explanation of these differences arises. Because it is not always possible to distinguish causes from results, this part will reflect a more personal point of view. As I have mostly focused on legal and law enforcement measures, one could assume that the international legal framework in both may be partly responsible for these differences. Therefore, attention will be paid to some of the most important international measures concerning organised crime. However, considering the international framework is not sufficient. The national framework, the broader context in which laws are generated, should also be taken into account. Concerning organised crime, this context may consist of evolutions within organised crime itself, which may have a direct influence on the measures, taken against the phenomenon. However, societal influences may also play a role and may influence both organised crime and the national legal framework designed to combat it.

In writing this dissertation, I have encountered some difficulties and restrictions. First of all, a major language problem limited my sources, because I cannot speak Italian or Russian. Secondly, I am aware of the fact that crime fighting is only a part of the fight against organised crime. Civil, social and economical measures are needed in order to change the context and origin in which organised crime takes place. However, because those measures will mostly have an indirect effect on organised crime, I have chosen not to discuss these measures and limit my focus more on the repression side.
2. Organised Crime

2.1 Italy

Italian organised crime groups are often seen as the archetypal criminal organisations. Although they have a specific history and organisation, they may differ to some extent from each other. There are four major organised crime groups in Italy: Cosa Nostra in Sicily, Camorra in Naples, ‘Ndrangheta in Calabria and Sacra Corona Unita in Puglia. The Camorra is the oldest. Nevertheless the Cosa Nostra is the most traditional. This may be because the Camorra originated in Naples and therefore sooner had to compete with the state. It had to adapt modern strategies of avoidance, while state power in Sicily remained for a long time more or less absent. In order to make the distinction with Russian organised crime groups as clear as possible, I will try to mainly describe the most traditional, typical structured group, the Sicilian Cosa Nostra. This does not mean that all four groups are nowadays still functioning completely separately. On the contrary, since the beginning of the 80s, Italian organised crime groups cooperate more and more, trying to find new opportunities and increase profits. The distinction between them has therefore become more or less.

2.1.1 Historical Framework

The Sicilian Cosa Nostra has the most unique history. During the second half of the 19th century, there were several revolutions in Sicily. The power of the barons – there was still a feudalistic regime in Sicily – was mostly located in Palermo, they were not really concerned about the rural parts of Sicily. Later on, at the end of the feudalistic era, attempts to establish some proper modern state institutions of criminal justice failed. As a result, a vacuum of power was created. This vacuum was filled by “governance from below”. Some strong families who were able to substitute themselves for the state and fulfil some of its functions. It can not be overstated that there was, at that time, no question about organised crime. The origins of mafia structures can all be seen in the framework of private

protection. The reason why Sicilian groups have the most specific structure is because the power vacuum lasted quite some time, long enough to establish and sustain this governance from below.

The fascist period and the second world war were crucial to the development of Italian organised crime groups. During the fascist era, Mussolini tried to get a better grip on society and to regain the state’s monopoly of violence. It is not surprising that this was more easy to manage in urban areas where state power had always been more or less present (for example Naples) than in the rural parts of Sicily. There, a conflict between state and mafia originated. However, Mussolini was not so popular in Sicily. There was not much industrial activity on the island. Therefore, Mussolini had fewer supporters than in Northern Italy. Additionally, fascism was typically a Northern Italian phenomenon, which again fortified the Sicilian’s opinion that they were under dominion. In order to achieve his goals, “Il Duce” used very repressive means against the Sicilian mafia. It should also be mentioned that Sicily was not that peaceful. I am convinced that the measures of Mussolini should therefore not only be seen as a political tool to fortify his power, but also as a tool of maintaining social order. He sent Cesare Mori to the island in order to fight the mafia. He was responsible for the killing, torture and imprisonment of several Mafiosi, but also socialist people suffered heavily. These measures had the desired effect in the short-term, but on a long-term scale, they led to growing sympathy towards the mafia and also caused the Cosa Nostra to fully support the American invasion in 1943.

After the war, some Sicilians involved in the mafia received some political powers because of their support during the invasion, others were able to enrich themselves by reconstructing post-war Sicily. Clientelism, a relationship where one actor delivers services and receives protection as a reward, became very important, especially when it came to controlling the political and social landscape.

It was only during the 50s that crime became a core activity of mafia groupings. Wine fraud and smuggling of cigarettes became common, together with a serious growth of the families and a

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10 SERVADIO, G., *o.c.*, p.75-76
13 DE PAUW, F., *o.c.*, 1993, p.14
movement towards the cities.\textsuperscript{16} From that moment on, organised crime became a common activity in mafia groupings. Nevertheless, I am convinced that not all families got involved in organised crime. To this day, there are still families whose core business is private protection, but they are relatively small.\textsuperscript{17}

\textbf{2.1.2 Structure}

Italian organised crime groups are, in general vertically structured. This vertical structure is characterised by the presence of family ties.\textsuperscript{18} This can be linked to the roots of Italian mafia groups, which were families who provided private protection in absence of state control.\textsuperscript{19} At least four levels (or even five) can be distinguished.\textsuperscript{20} The boss (or Don) is the one who actually makes commands. Nevertheless, he does not execute any of them himself. This makes it very hard to detect, prosecute and eliminate him. The underboss is responsible for the execution of the commands, and replaces the boss if the latter no longer has the capacity to rule. The lieutenants can be situated on the third level. They fulfil an intermediate role between the top of the organisation and the bottom. At the fourth and lowest level we find the soldiers. They are actually committing most acts, criminal and other. A vertical pyramidal structure, which looks like a military structure, is formed in this way. A fifth, special actor, is the consigliere or counsellor, who gives advice to the boss while making his decisions.

Three major remarks should be made in order to understand the way in which this vertically structured organisation works; First of all there is the presence of a so-called Commission, or Cuppola.\textsuperscript{21} Through this Commission, cooperation between clans becomes possible. The exact role of it is hard to describe. On the one hand, a Commission consists of representatives of at least three clans.\textsuperscript{22} In the beginning, those three clans were mostly neighbours. At that time, the Commission tended to concentrate on regulating matters of private protection. On the other hand, because of growing markets and bigger involvement in organised crime, it is reasonable to think that the size of these Commissions may have grown and that they are more oriented towards specific crime domains. Nevertheless, in my


\textsuperscript{17} PANORAMA, Maffia-vrouwen, Canvas, 22 december 2002, 20u25-21u00 [documentaire]

\textsuperscript{18} HESS, H., Mafia & Mafiosi: origin, power and myth, London, Hurst and company, 1998, p.85

\textsuperscript{19} GAMBETTA, D., o.c.

\textsuperscript{20} LYMAN, M. en POTTER, G.W., Organized crime, Upper Saddle River, Prentice Hall, 1997, p.46


\textsuperscript{22} CALVI, F., o.c., p.14
opinion, it would be naïve to assume that all organised crime groups are controlled by one single Commission. This would make it easier to combat organised crime groups, because they would all have links with each other.

Secondly, this vertical structure is not that universal to the same extent in all Italian organised crime groups. Clans on Western-Sicily are characterised by a strong hierarchy based on selection, while Eastern-Sicilian gangs have one strong family, surrounded by small groups with more informal ways of membership and other organisations such as the Camorra and ‘Ndrangheta have a more horizontal structure.23

Thirdly, since the Italian state began to fight organised crime systematically (cfr. infra), the presence of a vertical, hierarchical structure has become more or less some sort of weakness. At the moment one could find a quite high-ranked Mafioso willing to cooperate with the authorities, all his connections were in danger. In order to avoid such a structural weakness, soldiers only have contact with their lieutenants, very rarely with the boss himself. The presence of a vertical structure is thus only a basic concept. It may change in place and time. It appears that during the years, the traditional vertical structure of organised crime groups is increasingly being replaced by a horizontal, cellular structure.24 One should not forget that a organised crime group has similar goals as a legal company. Aspects such as maximising profits and risk management may lead to structural variations with more cooperation, for example by the use of a Commission, or less risks to be detected, for example by applying a more horizontal structure.

2.2 Russia

Russian organised crime groups have been seen as a very threatening phenomenon since the fall of the Communism. First of all, it should by mentioned that Russian organised crime groups are very heterogeneous. They contain Russians, as well as Chechens, Ukrainians, Belarussians, Kazacks, Georgians, … 25 Secondly, to get an idea of what Russian organised crime actually means, one should study its history at least from the 1930s on. Then, it is possible to detect the different actors present in Russian organised crime groups. Moreover, Russian organised crime has always had a specific link with the state authorities. Although there was no real organised crime at all in the 19th century, crime

23 LONGRIGG, C., o.c., p.12
and criminal gangs were very often revolutionists en vice versa. They played a certain role in the revolutions of 1825, 1881, 1905 and 1917. Already during the feudal period, theft was considered different if the goods were stolen from nobles than if they were stolen from farmers. There was some form of social approval of theft from nobles, so crime often had a political notion.

2.2.1 Historical Framework

During the Stalinist era, three major evolutions related to Russian organised crime took place. The first predecessors of organised crime groups in Russia originated in the 1930s, because of the repressive regime. Where ethnicity for example played a big role in the growth of organised crime in the US, this role has been fulfilled in Russia by the Gulag. Because of the conditions in the prison system, criminals made contact with political oppositionists and with each other. In this way, a special class of highly skilled, professional thieves, the so-called vory-v-zakone, who were feared and respected amongst other criminals, originated. Although these thieves originally refused to cooperate with the state, an internal conflict after the second world war changed this situation. During the war, however this was strongly forbidden by the code of the vory, some of the criminals decided to volunteer for the army, in order to be released afterwards. Nevertheless, they were often imprisoned once again after the war. Because the authorities hoped for a self-destruction of the criminal world, they did not interfere in the conflict that followed.

Secondly, there was also an evolution within the Communist Party. The governmental structure did not reward its officials sufficiently. Therefore, some officials tried to enrich themselves in informal ways. One of these ways was to maintain connections with certain criminals. I am convinced that these criminals were, at first, certainly not members of the class of the vory-v-zakone, because those

31 RAWLINSON, P., l.c., p.28-51
32 CRETIN, T., o.c., p.30
34 FINCKENAUER, J.O. and VORONIN, Y.A., o.c., 2001, p.5
were not willing to have any contact with the upper world. These public servants succeeded in their informal practices by maintaining a system of theft, bribery and extortion. They were called "avtoritety", which translates roughly as "criminal comrades".35

Finally, there was an evolution in the economical field. Next to the legal economy, a black market rose after the second world war. In this way, illegal goods, but also luxury goods, could be obtained.36 It would not be strange to assume that especially well-placed officials could afford those luxury goods. On the other hand, the black market fulfilled a more or less complementary function to the legal economy. The black market made it possible to forge and raise production figures, which made it a crucial element of the Soviet system.37 One should not forget that propaganda was very important, especially in the sphere of the Cold War.

These different actors initially operated each on their own domain. There was at first no cooperation between them and, therefore, no real threat to the Soviet system. However, after Stalin died in 1953, there was some more room for criminal activities and corruption. Little by little, the different actors began to cooperate with one another.38

2.2.2 Structure

These historical evolutions resulted in a very specific structure of Russian organised crime, which is often referred to as the “black trinity”.39 The first actor of this trinity are the vory-v-zakone. They have evolved and no longer fit the 1930s description. The internal conflict and the adaptation of modern strategies caused a major change in their attitudes.40 Only about a dozen real vory survived the

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36 FINCKENAUER, J.O. and WARING, E., *l.c.*, [WWW]
37 RAWLINSON, P., *l.c.*, p.28-51
38 LALLEMAND, A., *De organizatsiya: de Russische maffia van Antwerpen tot Brooklyn*, Berchem, Epo, 1996, p.12-14
39 RAWLINSON, P., *l.c.*, p.28-51
1940s.\textsuperscript{41} Therefore a change in the code, lifestyle and criminal activity seems, in my opinion, unremarkable, but they still fulfil the role of professional criminals.

Secondly, there are the corrupt officials. Russian organised crime groups make an estimated 30\% of their profits by bribing public servants.\textsuperscript{42} If we believe the statement that corruption was even higher during the Brezhnev period (1964-1982),\textsuperscript{43} In my opinion, it is quite obvious that making profits in an informal way is widely accepted among officials. The link between criminals and officials is an inevitable characteristic of Russian organised crime groups.\textsuperscript{44} Nevertheless, one should be cautious in making statements about corruption. On the one hand corruption at high levels is hard to study, on the other hand politicians are sometimes being accused of corruption by their political enemies. The stigma of being corrupt can thus be used as a political tool.\textsuperscript{45}

The third actor is situated in the economical atmosphere. People involved in the black market played a very important role during the Soviet era. Nevertheless, still today they are active, as some authors speak of the economy becoming criminal.\textsuperscript{46} They especially use techniques like extortion and getting paid protection money.\textsuperscript{47}

A more recent phenomenon is the presence of former KGB agents. Quite early, they were aware that the Soviet Union would fall. Therefore, they tried to use their position to gain as much profit as possible and enrich themselves before it was too late.\textsuperscript{48} After the fall of the communism, they were

\textsuperscript{42} FINCKENAUER, J.O. en VORONIN, Y.A., o.c., 2001, p.23
\textsuperscript{43} HEILMAN, R., Russian Organized Crime: An Impetus or Impediment to Political and Economic Progress?, [WWW], \url{http://www.dushkin.com/connectext/econ/ch17/article.mhtml}
\textsuperscript{44} RUGGIERO, V., Organized and corporate crime in Europe, offers that can’t be refused, Aldershot, Dartmouth, 1996, p.113
\textsuperscript{47} VOLKOV, V., Violent entrepreneurs, the use of force in the making of Russian capitalism, Ithaca, Cornell, 2002, p.27-28
\textsuperscript{48} VERMAAT, E., Het crimele web: de globaliserings van de misdaad: drugs, mensensmokkel, prostitutie, Utrecht, De Banier, 2000, p.267-268
often replaced and had sufficient skills and insights in crime to get a job on the criminal side. Nevertheless, I personally do not consider these criminals as a full-scale fourth actor, but more as a phenomenon fortifying the “black trinity”.

The relationships between the different actors of Russian organised crime groups is in fact not that clear. Especially concerning the vory-v-zakone, there is some discussion. Some authors are convinced that these professional criminals are sometimes in command of a crime group. Others in fact declare the opposite, i.e. that the vory form the smallest and most primitive groups of Russian organised crime. They are then considered not more than street criminals, executing orders from others.

Russian organised crime groups are, in general, temporary and quite horizontally structured. This is very important to bear in mind, for it could explain the previous discussion. I believe it is not that remarkable that professional street criminals sometimes lead certain operations, while at other moments, they may be executing orders. The way in which the black trinity operates may depend on the nature of the criminal operation.

This structure is not always the same. Very often there is no real hierarchy, although there mostly is some sort of leader. In some case however, for example in certain Chechen groups, a quite vertically oriented structure exist. Nevertheless, we may conclude that Russian organised crime groups are structured much more horizontally than Italian ones. This can no doubt be linked to the historical context.

50 MAHAN, S., a.c., p.182
52 LALLEMAND, A., a.c., p.19
54 VERMAAT, E., a.c., p.265-266
2.3 Comparison

Organised crime in Italy and Russia cannot be compared very easily. First of all, there are some very important historical differences. Italian mafia groupings originated as a system of private protection, an alternative for the shortcoming state. Until after the second world war, crime was only of secondary importance and was often related to private protection. After the second world war, state influence on the southern part of Italy extended, leaving less room for private protection. Only then did the organisations start to engage more in crime; criminality became their major concern. One could thus speak of an organisation that turned criminal, as the state became stronger in that region.

In Russia on the other hand, crime was the main activity. Even before the second world war, the authorities had to deal with a large amount of criminality. However, it was only under Stalin and especially under influence of the Gulag system that some sort of hierarchy originated. Next to these criminals, two other actors, namely corrupt party officials and people involved in the black market and shadow economy, also had their own way of enriching themselves. It was only after the second world war that these three actors started to cooperate with each other. So, it was the criminals that became organised, and not the other way around.

Also the role of the state was totally different at first. The origin of Italian organised crime was accompanied by a stronger state, taking away opportunities for private protection. In Russia, on the other hand, it was in fact the weakening of the state which allowed the criminals to organise themselves.

Although both Italian mafia and Russian crime had a social function, the nature of this social acceptance is not the same. Italian mafia groupings, especially the Sicilian Cosa Nostra operated as an alternative for the state at first, because the state itself was not capable of maintaining social order. In Russia, crime was accepted from an opposition against the state and the ruling political order, but the state was also present.

Secondly, these historical differences have lead to structural inequalities as well. Italian organised crime groups were quite vertically structured, kinship was an important issue and cooperation between different clans was mostly formally regulated. Organised crime groups in Russia were, on the contrary, more horizontally structured, based on single cooperation and less formally regulated.

This indicates basic structural differences. However, these differences are not to be exaggerated. First of all, some exceptions exist, such as slightly more horizontally structured Italian groups, and hierarchic Russian groups. Secondly, over time, there has been a general shift towards a more
horizontal structure in most crime groups, including the Italian ones. In this way, structural differences may still exist, but not to the same extent as they used to be. Nevertheless, Italian and Russian organised crime groups are from a different type.

3. The Fight against Organised Crime

3.1 Italy

3.1.1 Legal Framework

Since the 1980s, Italy has deliberately chosen to fight organised crime groups by defining them in the law. Already in 1982, a definition of mafia organisation was has been created by the law Rognino-LaTorre.\(^{56}\) A translation of this definition states: “A conspiracy of Mafia-type is the one whose members use the intimidatory force of the bond of membership and the resultant state of subjection and secrecy for the commission of crimes.”\(^{57}\) This definition meant in fact the start of the modern fight against the mafia and organised crime groups. Before, Mussolini also tried to combat the mafia by sending Caesare Mori to Sicily and defining organised crime,\(^{58}\) and from the 1960s on, there was an anti-mafia commission,\(^{59}\) but establishing a proper definition of mafia groupings meant the start of a new era.

During the 1990s, a new series of anti-mafia laws originated. Building further on the legal initiatives of 1982, which to this day still form the ruling legislation. In fact, the legal framework concerning the fight against organised crime in Italy can be divided in several parts.

3.1.1.1 Definition

The Italian legislator has defined mafia as a specific type of organised crime. Organised crime groups, as found in art.416 of the Italian criminal code, have been defined on basis of three aspects: associative bond, organised structure and criminal program. Mafia organisations, as in art.416bis of the criminal code, are defined more specific. The criminal organisation is of the mafia type when:


\(^{58}\) DUGGAN, C., *o.c.*, p.122

\(^{59}\) SERVADIO, G., *o.c.*, p.180
“…its components use intimidation, subjection consequentially, silence (omertà), to commit crimes, directly or indirectly acquire the management or the control of businesses, concessions, authorisations, public contracts and public services to obtain their unjust profits or advantages for themselves or others.”\textsuperscript{60}

The \textit{omertà} is defined as a system of silence and obedience, which contains not only silence towards the outside world, but also a prohibition to speak about internal matters if not needed.\textsuperscript{61}

Next to those two definitions, attention is also paid to the political influence of mafia groupings, especially by executing activities that interfere with the right to vote.\textsuperscript{62}

The core terms of those definitions have to do with the organisational aspects. It is the presence of specific groups which makes them criminal. The aim to commit certain crimes is enough, which is not the case for other crimes. In this perspective, Italy aligns itself with other Western European definitions such as the one of the German Bundeskriminalamt.\textsuperscript{63}

3.1.1.2 Repression

Next to defining different sorts of organised crime groups and punishing their members, other repressive means have also been taken. Since the beginning of the 90s, various laws have been established.\textsuperscript{64} Money laundering for example has been a crime since 1978, but only under certain circumstances. These had first been extended, but from 1993 on, it counts for every underlying crime.\textsuperscript{65} Combating money laundering is no doubt very important, for money is the ultimate goal for organised crime groups.

For more serious forms of crime, such as terrorism, extortion, aggravated robbery, detention of arms or large quantities of drugs, the maximum period permitted for the preliminary investigation was extended from 6 to 12 months. In certain cases, this could even be further extended to 18 months, and

\textsuperscript{60} SANTINO, U., The Mafia and Freemasonry, Freemasonry Watch [WWW], http://www.freemasonrywatch.org/mafia.html

\textsuperscript{61} CALVI, F., o.c., p.12

\textsuperscript{62} LECLERC, M., o.c., p.207


\textsuperscript{64} JAMIESON, A., The Antimafia: Italy’s Fight Against Organized Crime, Houndmills, MacMillan, 2000, p.72-74

\textsuperscript{65} SANTINO, U., \textit{l.c.}, Freemasonry Watch [WWW]
in the case of mafia-type crimes, to two years.\footnote{JAMIESON, A., o.c., 2000, p.42} This should give the investigation bodies (cfr. infra) enough time to complete certain complex files.

Also in the field of sentences, specific measures have been taken. In order to avoid imprisoned mafia leaders continuing to lead their business from within prison, art.41bis has been established in the penitentiary act.\footnote{LO FORTE, G., “Legislative and Cultural Strategies in the Fight Against the Mafia, Symposium on the Role of Civil Society in Countering Organized Crime: Global Implications of the Palermo, Sicily Renaissance, Palermo, Sicily, December 2000”, Trends in Organized Crime, 2000, Vol.5, nr.3, 34-38} This makes it possible for the ministry for Justice to suspend certain prisoners’ rights. Isolation is a central issue there. Visits are limited, contact with other prisoners is avoided, hours outside the cell are restricted.\footnote{PAOLI, L., Mafia Brotherhoods: Organized Crime, Italian Style, Oxford, Oxford University Press, 2003, p.205} This regime has lead to various forms of critique.\footnote{EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE, Rapport au gouvernement de l’Italie relatif à la visite effectuée par le Comité européen pour la prevention de la torture et des peines ou traitements inhumains ou dégradant (CPT) en Italie du 22 octobre au 6 novembre 1995 [WWW], Strasbourg, Council of Europe, 1997, http://www.cpt.coe.int/documents/ita/1997-12-inf-fra-1.pdf}

Other laws established parliamentary commissions, permitted the temporary use of the armed forces in support of civil police, permitted the use of video testimony in extremely complex proceedings or in the case of danger to public safety, set up assistance for victims of usury, regulated the business of public works, …\footnote{JAMIESON, A., o.c., 2000, p.72-74}

\subsection*{3.1.1.3 Witness Protection}

Organised crime can not only be combated in a purely repressive way. Because of the generally hierarchical structure, executing repression without having a good insight in the organisation is mostly not sufficient to capture high ranked individuals. Thus, the Italian state decided to try to get foot in the organisations. In 1991, the \textit{legge dei pentiti} was established.\footnote{LONGRIGG, C., o.c., p.18} This law protects Mafiosi who decided to cooperate with justice and offers them new opportunities afterwards. Conditions for the granting of protection are quite strict, which is needed to avoid the law becoming an instrument for mafia members to stay out of prison.\footnote{VERMEULEN, G., DE RUYVER, B., TRAEST, P., SIRON, N., VAN CAUWENBERGE, A., Bescherming van en samenwerking met getuigen, Antwerp, Maklu, 2000, p.20-21}
This law may, to some extent, also be considered as a social law. Members of mafia groupings have, once into the criminal world, few or no opportunities to get out anymore. This law does not prevent the initiation of new members, but it offers some possibilities for a reflux into normal society. Especially with the strongly rising opposition against mafia groupings in the 90s, which caused a decreasing acceptance of the mafia phenomenon, a polarisation and a change in the cost-benefit analysis took place. Therefore, opportunities to reintegrate in society should be established.

3.1.2. Law enforcement

Next to the legislative evolutions of the 90s, the Italian government also wanted to stimulate the practical way in which organised crime is combated. Therefore, some special institutions have been created and powers of existing actors have been extended.

3.1.2.1 Direzione Investigativa Antimafia

From the summer of 1992 on, the Direzione Investigativa Antimafia (hereafter DIA) was brought into full action. It is a part of the Public Security Department of the Interior Ministry and consists of about 1500 interagency members of the Carabinieri, State Police and Finance Police. Moreover, it also coordinates the work of investigative magistrates occupied with mafia investigations. It was also the DIA that identified the people responsible for the killing of judge Falcone.

It is an investigative body which task it is to study structural characteristics, objectives, methods, and contacts of criminal organisations. The aim of the DIA is to focus rather on the whole mafia phenomenon, rather than on single crimes, and carry out investigative tasks, especially concerning international crimes. Thereto, members of the DIA have specific powers:

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74 LECLERC, M., o.c., p.208
• they can infiltrate clandestine networks and take part in undercover operations
• they can ask a district antimafia prosecutor for phone tapping and electronic surveillance, if considered necessary
• they may ask the national antimafia prosecutor for preventive detention
• they are allowed to supply the national antimafia prosecutor with information about mafia contacts of convicted persons who might receive prison concessions
• they can conduct investigative conversations with prison inmates

The headquarters of the DIA are in Rome, and it has 12 operational departments. It is divided in three sections:

• The proactive investigations section collects and analyses information on mafia-type organised crime, in order to establish a general strategy of proactive investigation activity
• The judicial investigations section plans the investigation activities of the DIA and also verifies the results
• The international cooperation section promotes and develops cooperation and information sharing with foreign intelligence and policing organisations

3.1.2.2 Direzione Nazionale Antimafia

Next to the DIA, there is also a Direzione Nazionale Antimafia (hereafter called DNA). It is attached to the Prosecutor General of the Supreme Court and is in fact the judicial counterpart of the DIA. The DNA counts twenty judges and rules over the district antimafia directorates (DDA). The DNA only has competences in the field of Mafia offences, kidnapping and drug offences. Thus, it is clear that the DNA is not just a national prosecution service. Behind the creation of the DNA lies the conviction that mafia groupings have a centralised command structure, connected with a network

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78 JAMIESON, A., o.c., 2000, p.79-80
79 LECLERC, M., o.c., p.208
81 LA SPINA, A., l.c., 657
82 JAMIESON, A., o.c., 2000, p.94
83 LONGO, F., l.c., 373
covering political and economical sectors. This conviction has been more or less confirmed by most literature, as described above. However, exactly because of the fight against those structural crime groups, one could expect that a shift towards a more horizontal approach might follow.

The DNA encountered some difficulties in the beginning and its position is, to some extent, still quite ambiguous. It cannot carry out investigations on its own, but the focus lies on obtaining information and homogenisation of the modi operandi and interpretation of the DDA. There is a fine balance between policy management and impartial application of the laws to be made.

3.1.2.3 Regular Police

Also regular police forces have specific units to investigate mafia activities. The Carabinieri has about 1000 members in his Special Operational Group, which has competences in the field of terrorism and organised crime. 200 members of the Central Operational Service of the state police are active in combating serious crime, including financial, economic and high-tech crimes. Finally, the Finance Police has 600 people active in Organised Crime Investigation Groups. These are active in similar fields to the DIA and, although the DIA is an interagency institution, some forms of negative competition (such as the hiding of intelligence) have occurred.

3.1.2.4 Military

Shortly after the killings of Falcone and Borsellino, seven thousand military troops were also sent to Sicily. They had to set up roadblocks, guard judges and politicians and make it possible for the police to concentrate on investigative work. At first, this measure was subject to critique. However, popularity grew rapidly. Not only did this measure have practical results, the people also felt more safe and were aware of the fact that the state tried to fight the mafia phenomenon.

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84 MARELLI, F., *Studying Judiciary and Police Performance in Fighting Organised Crime in Sicily* [WWW]. Essex University, [http://www.essex.ac.uk/ecpr/events/generalconference/marburg/papers/19/10/Marelli.pdf](http://www.essex.ac.uk/ecpr/events/generalconference/marburg/papers/19/10/Marelli.pdf)

85 LA SPINA, A., *l.c.*, 657

86 JAMIESON, A., *o.c.*, 2000, p.96

87 LONGO, F., *l.c.*, 364

88 *Ibid.*, 365

89 JAMIESON, A., *o.c.*, 2000, p.79

90 *Ibid.*, p.84

91 PAOLI, L., *o.c.*, 2003, p.205

92 LA SPINA, A., *l.c.*, 650
3.2 Russia

3.2.1 Legal Framework

After Brezhnev died, Andropov and Gorbachev started to combat organised crime and corruption. The Ministry of Internal Affairs was reformed into an organisation that should root out corruption.\(^{93}\) The prosecutor’s office and the police received some extended powers and could also investigate charges against high party officials\(^{94}\). Nevertheless, this fight took place mainly within the existing legal framework. Analysis and criminal statistics were mostly lacking, because they had been forbidden for a long time.\(^{95}\) The fight against criminality was thus not that structured.

After the fall of the Soviet Union and the first years of recovery, a new criminal code was established in 1996, which came into practice in 1997. It replaced the Soviet code of 1960 and put more emphasis on property crimes.\(^{96}\) Attention was also paid to the rising activity of organised crime groups.

3.2.1.1 Definition

The most remarkable aspect concerning Russian legislation on organised crime groups is that the Russian legislator has not provided a proper definition of those groups.\(^{97}\) Instead of defining organised crime groups, the Russian legislator chose to consider crimes committed by groups as crimes under aggravated circumstances. Art.35 of the criminal code provides a whole series of circumstances in which crimes are considered to committed by a group of persons, a groups of persons under a preliminary conspiracy and an organised group of a criminal community (criminal organisation).\(^{98}\)

\(^{93}\) The Ministry of Internal Affairs [WWW]. Global Security, [WWW].


\(^{96}\) New Criminal Code [WWW], Ulfsbook, [WWW].

\(^{97}\) KOURI, J., The Russian Mob and Human Trafficking: Russian Mobsters Consort with Terrorists, Slave Traders [WWW], Men’s News Daily, [WWW].

Afterwards, if presence of criminal groups is an aggravated circumstance, it is described for each crime. This is in fact not new. In all previous criminal codes, from the 1920s on, crimes committed by groups were punished more severely. With the establishment of the new penal code, indirectly, some characteristics of those groups can be given:

“A crime shall be deemed to be committed by a criminal community (criminal organisation), if it has been perpetrated by a united organised group, set up to commit grave and especially grave crimes or by an association of organised groups set up for these purposes.”

The only clear characteristic is that the organisation has been set up to commit serious crimes. The rest is all quite vague and leaves much room for discretion.

3.2.1.2 Repression

Next to the normal application of aggravated circumstances in the case of crimes committed by organised crime groups, some additional measures have been proposed in Russia, linked to some of the main activities of organised crime groups. Unfortunately, some of them have not yet passed the necessary institutions. The draft law on corruption focused on increasing the possibilities to detect corruption. However, the state’s responses against such wrongdoings were not really discussed. In 1995, a new law was proposed. Also legal measures to combat money laundering have been taken. Art.174 of the criminal code, which defined the crime of money laundering, was refined in 2001, after being criticised for its unclarity.

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102 FINCKENAUER, J.O. en VORONIN, Y.A., o.c., 2001, p.9
104 Country Information: Russia, Anti-Corruption Gateway for Europe and Eurasia [WWW], http://www.nobribes.org/en/country_information/rc_Russia.htm#laws
105 EDEN, B., An Eye on Russia: Focus – Anti-Money Laundering [WWW], Ernst & Young, http://www.antimoneylaundering.ukf.net/papers/LEYeRussia.pdf
Concerning organised crime itself, president Yeltsin proposed a decree “on immediate measures to protect the people against banditry and other forms of organised crime”. It was widely criticised as it approved seriously intervening measures, and it was found to be incompatible with the constitution of the Russian Federation. Since 2002, there has been a new decree pending which will define some principles of official conduct for civil servants. Finally, president Putin also wanted to establish a law on organised crime. However, it has been strongly criticised for violating individual rights.

Looking at the criminal justice chain, the trial phase has been radically changed with the 2002 Criminal Procedure Code. The jury was established and was believed to have greater legitimacy and better protection against criminal influences than professional judges. Also a preventive detention for up to 30 days was allowed for persons believed to be involved in organised criminal groups. Worth mentioning is the fact that art.22 of the Russian constitution only allows for detainment of up to 48 hours without consent of the courts.

3.2.1.3 Witness Protection

Only recently, that is since 2002, has attention been paid to witness protection. Art.11 of the Criminal Procedure Code provides a set of circumstances in which accused, witnesses and victims of crimes can be protected against threats and pressure from crime groups. Possibilities vary, from omission of personal data outside the pre-trial file to monitoring conversations and being confronted with the suspect without being seen by him. This may be considered as a measure to improve the fairness of the judicial system. Moreover, the possibility to let personal data out of the dossier may reveal some awareness of links between legal and illegal actors.

References:

106 KRÜSSMAN, T., l.c., 993-994
107 GILINSKIY, Y., l.c., 1999, 187
108 Decree of the President of the Russian Federation on Approval of General Principles of Official Conduct of Civil Servants [WWW], Anti-Corruption Gateway for Europe and Eurasia http://64.49.225.236/Documents/Russia_DecreeOnConductPrinciples_02_En.doc
110 KRÜSSMAN, T., l.c., 1007
111 Ibid., 994
113 KRÜSSMAN, T., l.c., 1007
3.2.2 Law Enforcement

Law enforcement concerning organised crime in Russia is quite a difficult issue. Not only is there often a lack of material and ideological support, moreover, some members of law enforcement agencies are believed to have links with organised crime groups themselves.\textsuperscript{114} Besides that, there is some overlap between different institutions and their areas of operation.\textsuperscript{115} An improved cooperation is thus desirable.\textsuperscript{116}

3.2.2.1 Regional Organised Crime Combat Agency

This institution, often referred to as RUOP, is located in St.-Petersburg. It is together with UNON, an illegal drug operation combat agency, organised under the command of the Ministry of Interior.\textsuperscript{117} It was established in 1993 and its tasks are to combat criminal communities, corruption and gangsterism and to develop new forms of operational investigation.\textsuperscript{118}

The St.-Petersburg RUOP contains about 1000 members, of whom 200 work in a special fast reaction unit.\textsuperscript{119} They perform operative investigations and are permitted to use methods of infiltration, wiretapping, bugging, test purchases and provocation agents.\textsuperscript{120} However, further support with high-level professional staff and equipment is needed.\textsuperscript{121}

\textsuperscript{114} WALLER, J.M. and YASMANN, V.J., “Russia’s Great Criminal Revolution: The Role of the Security Services”, \textit{Journal of Contemporary Criminal Justice}, 1995, Vol.11, nr.4, found at \url{www.afpc.org/pubs/crimrev.htm}

\textsuperscript{115} TURUNEN, J., \textit{Organised Crime in Russia}, Exeter University Department of Politics [WWW], \url{http://www.ex.ac.uk/politics/pol_data/undergrad/jaakko/caserussia.htm}

\textsuperscript{116} KARAGANOV, S., \textit{Russia: Eliminating Crime}, John F. Kennedy School of Government [WWW], 1998, \url{http://www.ciaonet.org/wps/kas03}

\textsuperscript{117} BÄCKMAN, J., \textit{The Inflation of Crime in Russia: the Social Danger of the Emerging Markets}, Helsinki, National Research Institute of Legal Policy, 1998, p.68

\textsuperscript{118} BÄCKMAN, J., \textit{Russian Organized Crime} [WWW], Helsinki, National Research Institute of Legal Policy, 1996, \url{http://www.om.fi/optula/4637.htm}

\textsuperscript{119} BÄCKMAN, J., \textit{o.c.}, 1998, p.68

\textsuperscript{120} \textit{Ibid.}, p.68

\textsuperscript{121} GILINSKIY, Y., \textit{l.c.}, 1998, p.168-182
Although the people in the RUOP are high-ranked and have a lot of investigative powers, its success is quite unstable, probably caused by changing structures. Conditions in which people work are poor, causing several members leaving the service for better paid jobs.122

3.2.2.2 Militia

Investigations of all kind are performed by the Militia, as the Russian police force is called. It is divided in a Public Security Militia and a Criminal Militia, the latter being authorised to investigate crimes.123 The Russian federation has no divisions, exclusively competent for investigating organised crime. Moreover, as organised crime is not clearly defined by the Russian legislator, also regular police forces are dealing with those matters. For investigating serious crimes, the ugrovnny rozysk sub-unit is competent.124

Fighting organised crime groups has been made even more difficult, because the Ministry of Internal Affairs, the MVD, is quite isolated and the analyses are fragmented.125 Opposition from high ranked politicians and influences of organised crime groups make it hard to achieve proper analyses.126

3.2.2.3 Federal Security Service

Not only police forces combat organised crime groups, also the FSB (Federal’naya sluzhba bezopasnosti) has his own investigation methods. Although it does not really exercise police powers,127 it has competences in the field of organised crime, but also many other areas which have to do with organised crime, such as corruption, contraband, illegal migration, illegal trafficking in arms and drugs, terrorism.128 Considering the fact that the Federal Security Service is, for example,

122 DE PAUW, F., o.c., 1996, p.78
124 KRÜSSMAN, T., l.c., 1003
125 LALLEMAND, A., o.c., p.12
127 KRÜSSMAN, T., l.c., 1003
authorised to enter private residences if there is reason to believe a crime is being or has been perpetrated there, or if they are pursuing persons suspected of committing a crime, it becomes quite clear that this lies close to police operations.

3.3 Comparison

3.3.1 Legal Framework

In comparing the legal fight against organised crime in Italy and Russia, some basic similarities are apparent. First of all, the different fields in which organised crime is being repressed are comparable. Money laundering has been seriously extended in Italy since 1993, while article 174 of the Russian criminal code, which also defined money laundering, was refined in 2001. Actions related to the deprivation of liberty are to some extent similar as well. In Italy, the preliminary detention has been extended from 6 to 12 months in the case of serious crime, such as terrorism, extortion and aggravated robbery. For leaders of mafia groupings, a special prison regime can be ordered. Russian authorities allow a preventive detention for up to 30 days if persons are believed to be involved in organised crime groups, compared to only 48 hours in normal circumstances. Corruption and political influence of organised crime groups are also an important issues. The Italian legislator paid particular attention to criminal-political links and activities which interfere with the right to vote. In Russia, attempts to combat widespread corruption have encountered several difficulties, but nevertheless, there has been an important focus on corruption.

However, next to these basic similarities, some important differences appear. Probably the most important difference is the definition of organised crime. The Italian legislator established a legal definition of mafia groupings in the beginning of the 80s. By doing so, a more systematic approach towards the phenomenon became possible. It is the presence of the group, and not necessarily the crimes being committed, which criminalises the mafia groupings. Moreover, attention has also been paid to detailed circumstances, such as the omertà, the system of silence and obedience. In Russia, on the other hand, a proper definition of organised crime groups has not yet been established. The Russian legislator chose to define a series of circumstances in which a crime is considered as being committed by groups. Afterwards, for each relevant crime, committing them in a group is considered an aggravating circumstance. Nevertheless, it is the crime, not the presence of the group, which is to be punishable. This is no doubt a different method of fighting organised crime. Because a definition is situated at the beginning of the combating process, this may have major implications later on.

A second important difference is the way in which legislative measures are adopted. Italy has seen a massive growth of legal initiatives to combat the organised crime phenomenon, not only in those described above, but also measures permitting video testimonies, the temporary use of the armed forces, regulations of the business of public works, … It appears that, although some of the measures, such as the art.41bis, have been criticised, the legal fight against organised crime has been dramatically changed in a short period. In Russia, this is not the case. First of all, measures have been taken with regards to a more limited area. Secondly, opposition against several measures has often been a hampering actor. President Yeltsin for example vetoed the 1995 law on corruption. Also, the definition of money laundering has been refined. Finally, the “immediate measures to protect the people against banditry and other forms of organised crime” have been found incompatible with the Russian constitution. Without indicating that these evolutions would be exclusively negative, it is clear that they influence the efforts to combat the organised crime phenomenon. Moreover, there is, between Italy and Russia, an average gap of about ten years when it comes to measures combating organised crime.

Finally, the application of witness protection differs as well. In Italy, protection programmes have been set up for witnesses, but also under certain circumstances, for criminals who decide to cooperate with justice. These programmes not only have consequences for the present, but also for the future, by possibilities to offer new social opportunities. In Russia, the influence of the protection programmes seems to limit itself to the concealing of the identity, both in confrontations and in the files, and is only applicable to witnesses, not to members of the crime groups.

One could say that the fight against organised crime in both countries includes some basic aspects, such as combating money laundering, measures concerning corruption, witness protection and extended coercive possibilities. On the other hand however, many differences still exist, such as the major issue of defining organised crime, the pace at which measures are adopted and the application of certain initiatives, for example witness protection.

3.3.2 Law Enforcement

Because legislation needs to be brought in practice, the question rises as to whether the legal differences concerning organised crime are also reflected in the law enforcement. Italian authorities made efforts to establish special law enforcement units both on investigative and on prosecutorial level. On investigative level, the Direzione Investigativa Antimafia is a national agency which consists of about interagency members of Carabinieri, State Police and Finance Police. Its tasks are especially to study the mafia phenomenon as a whole, paying attention to structural characteristics, objectives,
methods and contacts, but also to carry out investigative tasks, especially concerning international
crimes and to coordinate the work of the investigative magistrates occupied with mafia investigations.

In Russia, the Regional Organised Crime Combat Agencies are set up, especially to perform
investigative tasks and develop new forms of operational investigation. Some important differences
with the DIA are apparent. The main task for the RUOP is to perform investigations, while for the
DIA, this is only one of the three tasks. Studying the organised crime phenomenon as a whole is no
task for the RUOP. Also, there is no real national ruling agency, with coordination of organised crime
investigations also absent. Although there is more control on the DIA than on the RUOP, they can
both engage in infiltration, phone tapping and electronic surveillance. Competences related to the two
other tasks of the DIA are not present within the RUOP. Moreover, despite the fact that both DIA and
RUOP were established in the beginning of the 90s, the RUOP is more subject to structural changes
and is more in need of further professional and material support.

On prosecutorial level, the Direzione Nazionale Antimafia is active in Italy. It is a national agency,
ruling over the District Antimafia Directorates. The DNA is only competent for specific Mafia
offences and its focus lies on obtaining information and homogenisation. In Russia on the other hand,
such a judicial counterpart of the RUOP is not present at all.

Not only special units have competences in the field of organised crime, regular police has
possibilities to combat the phenomenon as well. The Italian Carabinieri, State Police and Financial
Police all have people active in special units to combat serious crime and mafia groupings. In Russia,
the Militia’s уголовный розыск sub-unit is competent for investigating serious crimes. However, the
Militia is also a very important actor in the field of data gathering. In this way, it fulfils a task which is
performed by the DIA in Italy.

Lacking cooperation between relevant agencies occur in both countries, especially between the regular
police and the special agencies. This has not been prevented by making the DIA an interagency
institution. In Russia, also the Federal Security Service has competences in the field of organised
crimes and related areas. This causes an additional overlap in the different tasks and fortifies the lack
of coordination between the different institutions.

Both regular police and special agencies have competences in the field of organised crime in Italy and
Russia, and this sometimes leads to internal competition. However, some major differences are
present. The most important is the fact that Italy has a judicial counterpart of its DIA, while this is
totally absent in Russia. This, combined with the lack of national coordination, gives the RUOP a
more unstable role than the DIA. Moreover, some of the tasks of the Italian DIA, such as information
gathering, have been taken over by regular police forces in Russia, resulting in fragmented analyses. The Russian law enforcement agencies seem to encounter more structural difficulties and less cohesion than the Italian ones. It thus seems that the legal differences between the two countries are accompanied by a different law enforcement context as well.

4. Possible Explanations

The previous parts of this dissertation pointed out that different forms of organised crime can be accompanied by different answers to organised crime as well. This raises the question to which circumstances these differences may be linked? Two major possibilities appear; A first one, which assumes that national evolutions are to a large extent reflections of international influences, is based on a more legal approach. The second one, which will look for possible explanations within the national context, is based on a more socio-legal approach.

4.1. International Legal Framework

Because of the growing importance of international politics, measures to combat organised crime cannot be viewed in isolation from international politics in that field. Moreover, organised crime has become more and more internationally organised, requiring an international answer. Nevertheless, as international matters are very much politically inspired, it is not always easy to distinguish the influences on the national systems.

4.1.1 European Union

Since 1997, organised crime has been an important concern for the European Union. In that year, the first action plan on organised crime was proposed at the Amsterdam European Council. This meant the start of a series of actions undertaken to combat organised crime. The Council Resolution on the Prevention of Organised Crime and the Joint Action on the Participation to Criminal Organisations, which establishes a definition of the concept of criminal organisation are both built upon the action

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130 Action plan to combat organized crime (Adopted by the Council on 28 April 1997), European Union, OJ C 251 15.08.1997
plan of 1997. Several policy documents have focused on different aspects of the fight against organised crime, such as the Council Recommendation on improving investigation methods concerning organised crime and drug trafficking and the Resolution to Reduce the Harm from Organised Crime. The Millennium strategy on organised crime tried to bring those different aspects together. Within the Millennium Strategy, attention has been paid to data analysis, legislation, law enforcement and prevention. Since 2004, there has also been a focus on private-public partnerships concerning organised crime. It is thus quite clear that the European Union tries to get a grip on the general phenomenon of organised crime, not just focusing on repression. In order to do so, the EU also produces situation reports on organised crime, which give an indication on the organised crime activity in each country.

4.1.1.1 Influence on Italy

Concerning Italy, this influence may be rather limited. The European Union for example established a definition of organised crime in 1998, while this was already the case in Italy in 1982. By the time the European Union started to really focus on organised crime, the Italian legislator had already established a series of laws in various domains. It appears that, because of its experience with the threat of organised crime groups, Italy may have played an enhancing role in the establishment of a European Union policy on organised crime, rather than being influenced that much by evolutions within the Union. Not only in the field of repression, but also concerning prevention, Italy seems to

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138 LECLERC, M., o.c., p.199

139 JAMIESON, A., o.c., 2000, p.72-74
run ahead of the European Union. Italy’s “Mezzogiorno Programme” to prevent organised crime in the Southern part of Italy was established in 1994, before the European Union started to focus on it. Nevertheless, because of the influence of the Union on other countries, possibilities of improved international cooperation may also have had an influence on Italy’s fight against organised crime.

4.1.1.2 Influence on Russia

Although Russia is not a member of the European Union, the Union has a clear influence on the Russian Federation. A 1997 agreement on partnership and cooperation between the EU and Russia had a more general focus on economic cooperation, legal cooperation and customs cooperation and also paid attention to cooperation in the field of crime prevention. In 1999, a conference on organised crime between the EU and Russia pointed out a real willingness to cooperate in the fight against organised crime. Later on, in 2000, a common action between the EU and Russia on organised crime was signed. Close forms judicial and law enforcement cooperation, also with Europol, were thereby established between the EU and Russia. With the enlargement of the EU, the demand for cooperation with Russia increased once again. Taking into account these measures, it is thus clear that the European Union exercises an important influence on Russia’s fight against organised crime.


144 POTEMKINA, O., EU-Russia Cooperation in Justice and Home Affairs in the Context of Enlargement, Institute of Europe, Russian Academy of Sciences [WWW], http://www.euro.ucl.ac.be/chaires/ibl/Publications/Series/Potemkina.doc
4.1.2 Council of Europe

Since 2001, The Council of Europe has chosen to adopt a recommendation concerning the fight against organised crime.\textsuperscript{145} It contains some general aspects such as principles relating to a definition, general prevention, the criminal justice system, international cooperation and data gathering. Because this is only a recommendation and thus provides only some sort of soft law, the influence of this recommendation may be rather limited.

Perhaps even more important than organised crime itself, the Council of Europe is also active on matters related to organised crime. For example in the case of Witness protection, the Council provides guidance to the Member States who want to initiate such a programme or adapt an existing scheme.\textsuperscript{146} Other efforts have been made in the field of money laundering. Moneyval, a sub-committee of the European Committee for Crime Problems is active to conduct self and mutual assessment exercises of the anti-money laundering measures.\textsuperscript{147} The Council of Europe is also active in the fight against corruption. The GRECO\textsuperscript{148} is responsible for monitoring of the Council’s legal instruments in the fight against corruption, such as the Criminal Law Convention Against Corruption.\textsuperscript{149} This is performed mainly by mutual evaluation and peer pressure and involves a commitment of the participating member states to identify deficiencies of national mechanisms against corruption. Finally, on may 16\textsuperscript{th} and 17\textsuperscript{th} of 2005, a Summit of Heads of State and Government took place in Warsaw. The Council adopted measures in the field of terrorism, money laundering and trafficking in human beings at the summit. Three conventions in the field of crime have been opened for signature at the summit, namely on terrorism, laundering and confiscating proceeds of crime, and trafficking in


\textsuperscript{147} COUNCIL OF EUROPE, Money Laundering: Moneyval Committee, Council of Europe [WWW], http://www.coe.int/moneyval

\textsuperscript{148} COUNCIL OF EUROPE, GRECO: Group of States Against Corruption, Council of Europe [WWW], http://www.greco.coe.int/Default.htm

human beings.\textsuperscript{150} It is too early to discuss the content of these measures, let alone the influence of them. Nevertheless, it may be expected that the influence will be considerable, as it was only the third time during the history of the Council of Europe that such a summit has taken place.

As both Italy and Russia are members of the Council of Europe, the Council executes a direct influence on both countries. However, it should be first of all stated that the recommendations on the fight against organised crime only consist of soft law, which limits their influence. For example, the Council requires a national definition of organised crime. For Russia, the absence of such a definition has not been remedied by the Council’s recommendations. Moreover, these recommendations leave quite some room for interpretation and respect for national contexts, so clearly detecting their influence is not easy. Besides, neither Italy nor Russia are part of the GRECO group, which of course reduces its influence on both countries dramatically.

4.1.2.1 Influence on Italy

For Italy, a general remark can again be made that, in the field of organised crime, the country runs ahead of the Council of Europe. Therefore, the influence of Italy on the Council may perhaps be greater than the other way around. Looking for example to money laundering, the Italian state has updated its legislation in 1993 in order to create a more effective method of combating the phenomenon,\textsuperscript{151} while Moneyval was only established in 1997. Italy thus plays an enhancing role in the vision of the Council on organised crime. For example the Caserta meeting in 2000, which was the first Pan-European conference for public prosecutors specialised in cases related to organised crime, took place in, and under impulse of Italy, namely the DNA and the University of Naples.\textsuperscript{152}

4.1.2.2 Influence on Russia

In Russia, the influence of the measures of the Council of Europe have been more substantial. There has been, for example, a review of the anti-money laundering systems in 22 Council of Europe

\textsuperscript{150} COUNCIL OF EUROPE, PRESS DIVISION, Three Major Conventions by the Council of Europe Opened for Signature, Council of Europe [WWW], \url{http://press.coe.int/cp/2005/262a(2005).htm}


\textsuperscript{152} COUNCIL OF EUROPE, 2000 (Caserta) Conclusions, Council of Europe [WWW], \url{http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Conferences_and_high-level_meetings/European_Public_Prosecutors/2000%28Caserta%29Conclusions.asp#TopOfPage}
member states, including the Russian Federation. Moreover, adopting the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime caused a legal reform in the money laundering efforts of Russia. This reform has not only been stimulated by the Council of Europe, but also by the FATF. The international pressure on the Russian system should thus not be underestimated. Nevertheless, this does not mean only an international focus enhancing repression. For example in the Yukos case, where economic crime by massive tax evasion is being judged, the Council of Europe has adopted a resolution which criticises the way in which the leading executives of Yukos have been dealt with.

4.1.3 United Nations

A last important institution having an important influence on the fight against organised crime is the United Nations. For a long time, the UN have not focused strongly on organised crime itself, but on organised crime related aspects, such as drugs trafficking, weapons smuggling and trafficking of human beings. Since 1994 however, shortly after another series of legislative measures in Italy, a world ministerial conference on organised transnational crime was held in Naples. The aims were especially to strengthen international cooperation, increase reliable knowledge, provide assistance in the legislative and regulatory fields and technical cooperation.

155 KRÜSSMAN, T., l.c., 1010
157 COUNCIL OF EUROPE, PARLIAMENTARY ASSEMBLY, Resolution 1418 (2005): The circumstances surrounding the arrest and prosecution of leading Yukos executives, Council of Europe [WWW], http://assembly.coe.int/Documents/AdoptedText/ta05/ERES1418.htm
Over the years, this conference led to establishment of the UN Convention against Transnational Organised Crime.\textsuperscript{160} This is the first legally binding UN instrument in the field of crime. The Convention has two main goals. The first is to eliminate the differences among the national legal systems that often blocked mutual assistance in the past. The second is to set standards for domestic laws, hopefully leading to organised crime being more effectively combated.\textsuperscript{161}

The Convention contains several measures, which are closely in line with other international measures. Attention has been paid to definitions, money-laundering and corruption, international cooperation and protection and support of victims and witnesses.\textsuperscript{162} Moreover, through three additional protocols,\textsuperscript{163} there is also a focus on illegal firearms, trafficking of women and children and smuggling of migrants.

Both Italy and Russia are members of the United Nations. They also both signed the convention in 2000.\textsuperscript{164} Italy may have again had a very important influence on the establishment of the convention. A more symbolic sign than opening the Convention for signature at the palace of justice in Palermo, the capital of Sicily, could, in my opinion, not be given. However, Italy has not yet ratified the convention. Nevertheless, the country has shown commitment to the convention in several ways.\textsuperscript{165} Moreover, several measures are already present in Italy, such as criminalising certain offences, protecting witnesses, prevention of organised crime, cracking down on money-laundering, … The Russian Federation on the other hand, ratified the convention in 2004,\textsuperscript{166} indicating that they are


\textsuperscript{161} After Palermo: an Overview of what the Convention and Protocols Hope to Accomplish, United Nations, [WWW], http://www.unodc.org/palermo/convmain.html


willing to follow the UN approach on organised crime. However, no changes in the lack of definition have taken place so far, it may be too early to detect the direct influences of this convention on Russia.

4.2. National influences

Legislative initiatives never take place in a social vacuum, they are always triggered by specific social circumstances. For organised crime legislation, these circumstances may be partly located in evolutions of organised crime activity.

4.2.1 Italy

4.2.1.1 Criminal Influences

In Italy, legislation on organised crime has been influenced to a large extent by different organised crime activities. From the Second World War on, organised crime groups underwent several stages. Some of these went together with internal wars and new markets to be followed. In the beginning of the 1980s, one of those wars lead to the reign of Toto Riina. As a leader of the Corleone family, his reign was characterised by cruelty and bloodshed. At that time, there was also more and more financial pressure on organised crime groups. New profitable markets, such as the drug market, became important possibilities to make money. Together with those markets, however, organised crime became more and more internationally oriented. Thus, other groups, such as Asian and Columbian criminal groups, became players on the European market. In order to form a counterbalance against those groups, concurrent or cooperative, Italian organised crime groups needed to work together. The distinction between Cosa Nostra, Camorra, 'Ndrangheta and Sacra Corona Unita is, from that moment on, less important and becoming more and more artificial. The cooperation between the different Italian crime groups, and the vertical structure of those groupings required a systematic, national fight against the phenomenon. This might explain to some extent the structure of actors like the DIA and DNA.

Because of the growing importance of crime instead of private protection, the international dimension of that crime and the new markets, the Italian state became more and more an obstacle for mafia

167 STERLING, C., Opmars der criminel, Rijswijk, Elmar, 1994, p.78
168 LECLERC, M., o.c., p.200
170 CALVI, F., o.c., p.20
groupings. Working together, and under impulse of Toto Riina, organised crime groups estimated themselves strong enough to compete with the Italian state.\footnote{STERLING, C., \textit{o.c.}, p.78} This led to a situation of serious violence. Some estimates even speak of a higher body count than in Palestine or Belfast at that time.\footnote{ORLANDO, L., “Fighting the Mafia and Renewing Sicilian Culture”, \textit{Trends in Organized Crime}, 2000, Vol.5, Nr.4, 151}

In this way, a movement, which is called the mafia anti-mafia seesaw, arises.\footnote{JAMIESON, A., \textit{o.c.}, 2000, p.10} It is no coincidence that several legislative initiatives were taken after specific events. Massive drug profits made organised crime leaders intimidate and corrupt politicians, eliminating those who refused. From 1979 to 1982, several representatives of the state were killed in Sicily.\footnote{Ibid., p.25} In 1982, two murders led to the establishment of new legislative initiatives. In April 1982, Pio La Torre was murdered. He was regional secretary of the PCI, the Italian Communist Party, and an actor in a draft law defining an “association of a mafia type”.\footnote{Ibid., p.26} In September of 1982, the prefect of Palermo, General Carlo Alberto Dalla Chiesa, sent to Sicily to combat organised crime groups, was also murdered. He was a very popular police officer, even being mentioned as a candidate for the presidency.\footnote{COLIN, R.O., “The Blunt Instruments: Italy and the Police” in \textit{Police and Public Order in Europe}, ROACH, J. and THOMANECK, J. (eds.), London, Croom Helm, 1985, 185} Those two murders led to a reaction of the Italian state, defining the mafia-association in the so-called law Rognino-LaTorre.\footnote{LECLERC, M., \textit{o.c.}, p.199}

The Maxi-trial, which started in 1987, under impulse of the judges Falcone and Borsellino, exposed some important links between organised crime groups and politicians.\footnote{TRUDELL, M., “From \textit{Tangentopoli} to Genoa”, \textit{International Socialism Journal}, 2000, issue 95, found at International Socialism [WWW], \url{http://pubs.socialistreviewindex.org.uk/isj95/trudell.htm}} Mostly, these trials against leaders of organised crime groups were brought to the \textit{Corte di Cassazione}, which very often set the leaders free because of lack of evidence. However, in 1992, the Cassation Court confirmed the sentences spoken out, and for the first time, the Italian state showed it really wanted to combat the growing organised crime groups.\footnote{STERLING, C., \textit{o.c.}, p.80-81}
After the Maxi-trial, more organisational measures were taken at first, the establishment of the DIA and the DNA in 1991 being the most important examples. Nevertheless, the judges Falcone and Borsellino had to deal with some internal opposition. It is unclear whether this opposition was caused by jealousy, political-criminal links that needed to be kept hidden, or some sort of presumption of the Italian state that the threat of organised crime groups was under control. There may have been even a mole inside the procura. What is clear, is the fact that it isolated judge Falcone, making him vulnerable for violence by organised crime groups. His murder, and that of his colleague Paolo Borsellino in 1992, sent a shock wave through Italian society. New legislative measures were taken and had an impact concerning several aspects of organised crime groups, such as imprisoned members, collaborators with justice, support from armed forces, … Unfortunately, mafia laws are behind times, introduced as an emergency response and characterised by symbolism.

Moreover, also a cultural change occurred at that time. A march organised in memory of judge Falcone, thirty days after his murder, brought about half a million people to Palermo, indicating that organised crime groups could no longer count on respect from the people. One could say that mafia groupings in Italy originated as an alternative for the state, tried to take over the state and are now forced into crime, with a much lesser social acceptance.

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180 SANTINO, U., Law Enforcement in Italy and Europe against Mafia and Organized Crime, Centro Siciliano di Documentazione “Guiseppe Impastato” [WWW], http://www.centroimpastato.it/publ/online/mcdonald.htm#anchor808025
181 JAMIESON, A., o.c., 2000, p.31
183 JAMIESON, A., o.c., 2000, p.32-33
185 FALCONE, G. en PADOVANI, M., Cosa Nostra : de strijd van rechter Falcone tegen de maffia, Baarn, De Kern, 1992, p.126-129
186 SANTINO, U., Centro Siciliano di Documentazione “Guiseppe Impastato” [WWW]
187 SANTINO, U., I.c., 1999, 131
188 PAOLI, L., o.c., 2003, p.204
189 LEA, J., o.c., p.70-72
4.2.1.2 Other Influences

Of course, not only evolutions within organised crime itself had an impact on the fight against the phenomenon. Several other influences can be distinguished.

First of all, mafia groupings started to lose their social function. Originally, the Southern part of Italy and Sicily could not count on benefits coming from the state. Mafia groupings thus had a social function as an alternative for the state, a form of governance from below. After the Second World War, as several mafia members achieved political functions because of their part in the invasion of Sicily, this social function continued. However, with the establishment of the anti-mafia commission, the state gained more influence in the South and started to fight that social function of the mafia groupings. Especially with growing mobility and communication ways, the isolation of the Southern part if Italy came undone. The willingness of the state to interfere in social life grew rapidly. The violent situation at the end of the 70s and the beginning of the 80s showed that having the anti-mafia commission was not sufficient and led the Italian authorities to interfere more by bringing mafia organisations into penal law. Unfortunately, these were also times of social crises. Thus the influence of the Italian state came, for the people in the South of Italy, together with social and economical crises. This may have sustained acceptance of the mafia, although it was involved in major criminal activities.

The Maxi-trial and the confirmation of the sentences by the Cassation Court indicated that the Italian state was willing to fight the organised crime groups and made the people believe the mafia could actually be fought. The beginning of the 90s meant shifting sands for political regimes. This was also the case in Italy. Crime and security became hot topics, in fact making it more or less intolerable if the Cassation Court would have overturned the Palermo sentences. The fact that 500,000 people took part in the manifestation in memory of Giovanni Falcone indicated that mafia groupings lost their social acceptance. This was fortified when organised crime groups started to use a strategy of terrorism and killings of prominent people, the so-called cadaveri eccelente.

190 FENTRESS, J., o.c., 297p.
191 LEA, J., o.c., p.70-72
192 DE PAUW, F., o.c., 1993, p.14
193 DE PAUW, F., o.c., 1993, p.79
194 SCHNEIDER, P. and SCHNEIDER, J., I.c.
195 BORSELLINO, R., I.c., 2000, 58-63
Secondly, one could wonder why organised crime had not been combated before, for example during the 70s. However, at that time, the Italian state had to deal with forms of left-wing terrorism. The Red Brigades and other extreme left-wing organisations tried to destroy capitalist society by performing terrorist attacks and killing former prime minister Aldo Moro. Because organised crime was at that time mainly a Southern phenomenon, the terrorist threat coming from the Red Brigades was at that time considered much more important.

This terrorism caused a shift in the function of the prison, which became a maximum security incapacitating institution. Thus, the establishment of the 41bis regime in Italian prisons after the murders of 1992, fits to some extent in the ideology of the Italian prison system. On the other hand, it was in fact General Dalla Chiesa who played a major role in the fight against those terrorist groupings. For the Italian people, he was thus a hero. His murder had an adverse effect on the image of the mafia and led to a diminishing acceptance of the phenomenon.

Finally, playing a role in the unification of Europe, Italy could not afford to leave such a phenomenon as the organised crime groups untouched. Several European countries had known some left-wing terrorist movements in the 70s, but the presence of the mafia and its violence left Italy with a similar situation in 80s and even the 90s. This was harmful to the credibility of the Italian state in Europe.

4.2.2 Russia

4.2.1.1 Criminal influences

Also in Russia, as in every country, the fight against organised crime is influenced by the evolutions within organised crime itself. Nevertheless, only some general connections can be distinguished. No real specific events have yet influenced the evolutions in organised crime fighting to the same extent as was the case in Italy. The flexibility and horizontal structure of Russian organised crime groups for example make it very hard to establish a proper definition of organised crime. The absence of such a definition may thus be influenced by practical difficulties. This cellular structure of the crime groups may also ask for a more regional law enforcement agency instead of a nationally oriented one.

198 PAOLI, L., o.c., 2003, p.205
199 COLIN, R.O., l.c., 185
200 STERLING, C., o.c., p.89
A first real effort to combat organised crime has been made by Andropov en Gorbachev. Their aim was especially to re-establish trust in the system. This trust was seriously damaged under Brezhnev, as corruption was widespread and was even linked to Brezhnev and his relatives. At that time, the openness with which crime groups were connected to politicians was criticised. The efforts of Andropov and Gorbachev were thus mainly focused in the field of fighting corruption. The real range of organised crime groups was very unclear at that time, taking into account the fact that data gathering concerning organised crime was very problematic even at the end of the 90s.

The fall of the Soviet Union in 1991 created some major opportunities for organised crime groups. Most actors within the organised crime groups could profit from the switch to a capitalist system. Officials were already active in the field of personal enrichment and found themselves in a position to continue to do so. People involved in the black market and shadow economy were already familiar with capitalist principles, giving them a natural advantage. For example, it is very likely that a part of Western aid programmes up on the black market in the winter of 1992.

At the same time, the Russian state itself was struggling to reinforce itself. The abrupt transformation into a democratic-capitalist system resulted in loss of social, moral and legal foundations of the state. Examples of this struggle are manifold: the new Russian constitution was only adopted in December 1993, leaving a political and legal vacuum for two years. A Criminal Code came into force in 1997 and a new Code of Criminal Procedure was established in 2001. Even to this day, the

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203 GILINSKIY, Y., l.c., 1998, p.168-182
205 HEILMAN, R., l.c., [WWW]
206 FINCKENAUER, J.O., l.c., 1994, 251
208 TSCHENTSCHER, A., l.c.
police has yet to be reformed, indicating that the Russian Federation still has some work to do to re-establish itself as a strong state.

In maximising their profits, organised crime groups managed to infiltrate political life in Russia, making it even harder to fight the organised crime phenomenon on a legal basis. This may be reflected in the way the establishment of certain laws was sometimes hampered, for example the draft law on corruption in 1995. It is clear that, certainly in the transitional period after 1991, the Russian state could not compete with the growing activity of organised crime groups.

Finally, a major remarkable aspect in Russia’s fight against organised crime is the fact that a proper definition of organised crime has not yet been established. Although this may seem an obvious weakness, this is not necessarily the case. Russian organised crime groups have very flexible, temporary and horizontal structures. Therefore, establishing a definition of those crime groups could lead to an exclusion of a main part of those groups, or, inclusion of other forms of crime. Because of the specific structure, establishing a definition is very hard. Nevertheless, the chosen approach has a clear weakness, namely that the leaders of those groups cannot be prosecuted if they do not take part in the execution of the crimes. The definition of complicity has been seriously extended, in order to deal with this problem. Nevertheless, these categories are hard to apply, because they are not based on any criminological preconception about the content of organised crime or its structure.

4.2.1.2 Other Influences

Organised crime in Russia appears to be hard to fight, not only because of its structural aspects and the weakness of the state. Organised crime groups were, shortly after the fall of the Soviet Union, also hard to combat because of their social functions. For example the Russian Militia performed some social functions in the field of prostitution, drug addiction, migrants, ex-offenders, … After the fall of Communism, Militia had a tendency to isolate itself from the state and to create a larger distance

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211 FINCKENAUER, J.O. and VORONIN, Y.A., *o.c.*, 2001, p.4
212 KRÜSSMAN, T., *l.c.*, 996
213 MAHAN, S., *o.c.*, p.170
214 KOURI, J., *l.c.*
216 KRÜSSMAN, T., *l.c.*, 999-1000
between Militia and the citizens.\textsuperscript{218} This tendency had been triggered by the fact that people no longer feared the Militia and Militia members were now, in turn, fearing repression by certain parts of the population. One could assume that this isolation was most apparent in the social field.

This lapse of social security was filled by certain organised crime groups, who became responsible for some social and economical stability.\textsuperscript{219} They are nowadays still involved in social protection programmes, charity work and sports clubs.\textsuperscript{220} This created a sphere of acceptance among the population,\textsuperscript{221} as certain forms of criminality had always been socially accepted in Russia.\textsuperscript{222} This social function fortified the acceptance of organised crime groups, making them more difficult to combat. Moreover, because the state itself was at that time too weak to cope with the social problems, the willingness to combat those crime groups can be believed to be less strong. Moreover, the state and the shadow economy had been coexisting for some time,\textsuperscript{223} so the state was already familiar with certain forms of cooperation with crime groups. I am convinced that the social field is one of the key fields for combating organised crime in Russia, not only to prevent people getting involved in those crime groups, but also to diminish the social acceptance of those groups. Thus, establishing a state network of social security is necessary.

Next to the acceptance of crime, however, there is also support of the fight against organised crime. Although Putin’s repressive ideas generated critiques for having insufficient respect for civil rights, most Russians support his ideas of cracking down on crime.\textsuperscript{224} The restriction on civil rights and liberties is a price which most Russians are willing to pay.

The coexistence of these two views, the social acceptance of crime and the support for the repressive regime, is quite remarkable. Although no clear explanation can be found, perhaps the growing economy and the state’s recovery from transition may make people believe in the state again. Moreover, organised crime groups perform other than social functions as well. Drugs, human trafficking, contract murders,… are crime types which are not approved by the majority of the people.

\textsuperscript{218} UILDRIKS, N. and VAN REENEN, P., \textit{o.c.}, p.23
\textsuperscript{219} TURUNEN, J., \textit{i.c.}
\textsuperscript{220} VORONIN, Y.A., \textit{i.c.}, 1997, 59
\textsuperscript{221} FINCKENAUER, J.O. and VORONIN, Y.A., \textit{o.c.}, 2001, p.25
\textsuperscript{222} RAWLINSON, P., \textit{i.c.}, p.28-51
\textsuperscript{224} \textit{Ibid.}, 86-87
The impact of certain forms of organised crime on the people may perhaps cause this double relationship of acceptance and reluctance from the Russian people towards organised crime.

4.3 Comparison

4.3.1 International

The most important international legal influences are executed by three institutions, namely the European Union, the Council of Europe and the United Nations. The influence of these institutions on Italy is rather limited, because Italy has taken several measures to combat organised crime before there was an international focus upon it. Moreover, Italy may have had an important enhancing role in the establishment of international measures to fight organised crime.

For the United Nations, Russia has ratified the Convention against Transnational Organised Crime in 2004, indicating that it wants to make efforts to combat organised crime. Italy has not yet ratified the convention, but has made some efforts and already has adopted several of the measures of the convention before.

Both Italy and Russia are members of the Council of Europe and are thus influenced by the recommendations on organised crime. Again, Italy runs ahead of the Council of Europe, for example in the fields of definition, witness protection, money laundering. For Russia, these measures have extended an influence, for example in the field of money laundering, where the Council of Europe played a role in the reform of Russian legislation. Quite remarkable is the fact that neither Italy, nor Russia are part of the GRECO group, which focuses on corruption.

Concerning the European Union, again, Italy played a more enhancing role in the policy making and was only influenced itself to a rather limited extent, whereas the Russian Federation, although not a part of the Union, was influenced by certain measures, such as an agreement on partnership and cooperation, a common action to combat organised crime and improved judicial and law enforcement cooperation.

One could say that the Italian and the international policies to fight the organised crime phenomenon are similar, and that the evolutions of the Russian policy are influenced by this framework. Thus, the existing international framework cannot explain the differences within the national policies. On the contrary, for the Russian policy evolves towards a more Western approach, the international framework is responsible for the development of a more similar fight against organised crime in Italy and Russia. With the growing importance of the international context, this trend may only increase.
4.3.2 National

Because the international legal framework is insufficient to explain the different polices concerning organised crime in Italy and Russia, some other possible explanations need to be examined. Concerning national conditions, two important circumstances can be distinguished, namely criminal influences and other influences.

In Italy, a major influence comes from the crime groups themselves. Because the state became more stable, stronger and more present, the organised crime groups had to adapt their strategy and tried to take over the Italian state. Reasons for this strategy may be found in the growing importance of the European market and the growing cooperation with other crime groups. In doing so, they victimised some important actors for the Italian state, but also for the Italian people, such as general Dalla Chiesa and the judges Falcone and Borsellino. This seriously weakened their social acceptance and strengthened the state in its belief that the organised crime phenomenon could be combated. This resulted in a so-called mafia-antimafia seesaw. Several of the legislative measures to combat organised crime in Italy have taken after specific criminal events. For example the murder of Dalla Chiesa led to the first anti-mafia law. In 1992, the confirmation of the sentences of the Maxi-trial by the Cassation court led to the killings of Falcone and Borsellino, which in turn resulted in the 1992 legal reform. Thus, the organised crime groups themselves, and the way in which they openly combated the Italian state, influenced to a large extent the fight against organised crime.

The different structures of the organised crime groups in Italy and Russia may also be responsible for some differences in the fight against organised crime. The horizontal, cellular structure of Russian organised crime groups asks for a more regional approach, as reflected in the RUOP, while the cooperation between the Italian groups requires a more national oriented approach. This may explain the different orientation of the RUOP on the one hand and the DIA and DNA on the other hand.

In Russia, the fight against organised crime has also been influenced by evolutions within the crime groups themselves, but only to a lesser extent. It was mainly the corruption and the links between organised crime groups and politics which influenced the legal fight against the phenomenon. These links were in turn influenced by the more central issue of the fall of the communism in the beginning of the 90s. On the one hand, this caused growing possibilities for organised crime groups. People on the black market and the shadow economy, as well as corrupt party officials could profit from these transitions, because they were already familiar with capitalist principles and experienced less problems from the fall of communism. Moreover, certain ex-KGB officers got involved in organised crime. The social acceptance of crime groups also became more important, as they replaced some state functions of social security. On the other hand, the transitional period also resulted in a temporary weak state,
struggling to reinforce itself and unable to compete with the organised crime groups. This resulted in a specific relationship between the state and organised crime in Russia. There was a certain balance between the need to combat the organised crime phenomenon and the temporary necessity of organised crime groups for the state.

Also in Italy, the fight against organised crime has been influenced by additional societal circumstances. The international pressure rose, because an era of terrorist activity came to an end in most European countries, but not in Italy. There was also a very important diminishing social function of the mafia groupings. On the one hand, this social function diminished because the state became stronger, also in the southern part of the country. On the other hand, the growing involvement in crime also diminished this social function. Finally, some ideological changes occurred, caused for example by the left-wing terrorism of the red brigades, which led to a shifting ideology in the Italian prison system.

The criminal and social circumstances in which the fight against organised crime groups started to take place were quite different in Italy and Russia. Although criminal influences and other societal conditions cannot be cut loose from one another, Italy’s policy seems to have been more influenced by criminal evolutions. These led to a growing public willingness to combat the organised crime phenomenon, and few critiques on the new measures. On the other hand, the transitions of the beginning of the 90s found their reflections in Russia’s fight against organised crime. The following specific relationship between the state and the organised crime groups resulted in a hampered, fragmented and criticised fight against the phenomenon.

5. Conclusion

In the field of legal measures and repression, different types of organised crime groups may lead to different approaches to combat them. The Italian and Russian organised crime groups have a different history and structure. In Italy, more vertical organisations, functioning as an alternative for the state, got involved in crime after the second world war. In Russia on the other hand, the prison system led to the establishment of organisations of cooperating criminals. They are characterised by flexibility and a horizontal structure.

These crime groups encounter specific legal measures. In Italy, the fight against organised crime evolved dramatically over the 80s and the 90s. Because there was a pressure on combating organised crime, measures were established systematically in various fields and were very often not critically evaluated. Next to the legal measures, special law enforcement agencies were set up concerning a
national approach. The traditional view on the Italian organised crime groups has been reflected in the way the state decided to combat it. In Russia, the horizontally structured crime groups encountered a different fight against those groups: legal measures were often criticised and had difficulties to pass the necessary institutions, a proper definition has not yet been established and the law enforcement agencies encounter overlapping functions and lacking cooperation, between as well as within the institutions.

The most important international legal framework and national circumstances have been examined as possible explanations for these differences. The international legal framework could not explain those differences, because the influences on both Italy and Russia were to a large extent the same. Instead, the international legal framework may be responsible for some similarities between both countries. The most important differences can thus be found in national circumstances. In Italy, a major influence is coming from the so-called mafia-antimafia seesaw. In Russia on the other hand, a determining factor is the transitional period of the beginning of the 90s and the following specific relationship between crime and state. Nevertheless, as internationalisation gains importance, both in organised crime itself and the fight against organised crime, one could expect that, in the future, the legal differences between Italy and Russia in this field may slightly diminish.
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