



# THE RESULTS OF THE “ILLEGAL FLOW OBSERVATION” PROJECT

## DRUG TRAFFICKING AND STRATEGIES OF INTERVENTION



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ISBN 9788886567107

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Printed in Italy February 2014 by Officine Grafiche Palermo

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In the cover Les Coquelicots Claude Monet (1873) Musée d'Orsay Paris

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# PREFACE

## **Giovanni Chinnici** \*

The Rocco Chinnici Foundation was created to honour the figure and highlight the commitment of the high magistrate, who was killed in Palermo, on 29th July, 1983. There are three areas in which it mainly develops its activities: judiciary, economy and finance, school and training. The basic idea is to establish communication initiatives among these three sectors, and is built on the simple observation that there will be freedom from Mafia only when we will overcome the economic and social emergencies of Sicily. The fight against the Mafia has experienced a quite effective season, in terms of repressive and judicial aspects, but the economic and social initiatives to liberate the South from organised crime are still insufficient. The culture of legality thus is still struggling to establish itself. It is the involvement of institutions acting in the economic and financial fields as well as in education and training, alongside with the judicial ones that characterises the structure and activities of the Rocco Chinnici Foundation.

We try to compare the different experiences, different requests and, with the involvement of educational institutions, to contribute to the development of a healthy social and economic fabric ordered and to the affirmation of human and social values for which Rocco Chinnici fought. They are an indispensable prerequisite for the final defeat of the Mafia and of those elements of social and cultural underdevelopment that provide fertile ground for the root of structured and complex forms of crime, such as spread small illegalities that, however, affect the smooth conduct of civil life.

In recent years, Chinnici Foundation has innovated the topic of the fight against racket through the first Italian research on the costs of lawlessness that has used scientific methods and not merely impressionistic. Downstream of a long process of interviews with judges, experts, repentant Mafiosi and entrepreneurs the first mapping of the “protection” in Sicily was built, with an estimate of the actual revenue of “Cosa Nostra”. The involvement of Confindustria (the association of business companies and which then launched a strong development action of the ethics of legality among the members) and of the business world in general, has allowed to demonstrate how to fight against the Mafia is not only right, but also convenient for the economic development.

We have shared our experience in Campania and Liguria, where we offered to institutions, law enforcement, judiciary, academics and companies the research data to understand the causes and effects of the influence of organised crime on the economy of the territories of Naples, Caserta and Genoa. The recent research effort in the management and development of companies and assets confiscated from criminality was the corollary of previous projects, allowing integrating the study of the genesis and the effects of criminal phenomena in the economy with the analysis of the activities and techniques for fighting criminal organisations and recovering confiscated assets.

We believe that this research work, together with the continued aware-

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\*Research committee coordinator Rocco Chinnici Foundation

ness in schools and in the territories, began to leave those indelible marks of a culture of legality of which Rocco Chinnici spoke so much. Today, we close the project IFO (Illegal Flow Observation), the first experience of Chinnici Foundation on the ground of Community projects. The ambition is to create a European network of organisations that, through joint projects, will be constantly exchanging ideas, information, experiences and relationships, to spread the culture of legality throughout the European Union.

We would like to, at this time of closing of the project, highlight the rigorous methodology applied, once again. First of all, we mention the research phase of training needs, which has directed the executive planning of didactics. Just as well, we would like to highlight the phase of the training, with different organisational arrangements between Italy and Spain, has exceeded all the objectives of the project, both in terms of quality and quantity. Finally, the European extension, by e-learning, of the training contents, which leads to more than 15, the number of European nations that participated in the project.

IFO represents therefore another successful experience of the Chinnici Foundation, achieved thanks to the fundamental collaboration of the University of Palermo, Department of Legal Science, society and sport, and the University of Salamanca with the department Ciencias de la Seguridad (CISE), which we would like to thank sincerely for their participation in the project. They were guided not only by scientific reasons, but also by a great shared passion for the development of a genuine and deeply rooted culture of legality, as a fundamental condition for ending the crisis.

Finally, we would like to thank DG Justice that caught the innovative thrust of the project and its great potential of European impact. With this publication, we would like to share, also for the future, our experience. We want, in fact, that the collaboration between non-profit organisations, such as the Chinnici Foundation, universities and operators of law enforcement and the judiciary, is no longer just an exception, but becomes a normal method of shared work.

Finally, let us consider this work as a new tribute to the memory of Rocco Chinnici. In the dark years of the scourge of heroin, he had to define drug trafficking as crimes “against humanity.” This is because, in his deep love for young people, felt on his conscience, of man and magistrate, the pain of every parent who saw a child die or destroy his personality because of drugs.

Through the contribution of the IFO Project for the fight against international drug trafficking, we hope that soon the poppy field returns to represent, as in the Monet painting, peace and beauty instead of drug production.



## INTRODUCTION

### **Aims, structure and development of the I.F.O. (Illegal Flow Observation) Project**

**Antonio La Spina\* - Vincenzo Militello\*\***

#### **1) The project**

The IFO project was conceived in accordance with a call by the DG Justice of the European Commission in the framework of the Prevention of and Fight Against Crime Programme (ISEC, Council decision of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme “Prevention of and Fight against Crime”, 2007/125/JHA). The Fondazione Chinnici promoted the creation of an international and interdisciplinary scientific team, with the partnership of two universities (Palermo and Salamanca).

The above said programme provided, for the period 2007-13, financial support for cross-border actions to prevent and combat all types of crime and to strengthen law enforcement and judicial cooperation. The programme targets terrorism, trafficking in persons, offences against children, illicit arms trafficking, corruption, fraud, and also the production and trafficking of illicit drugs (Just-Drugs Programme).

In the terms of the call, our project was meant to perform a training action concerning the fight against drug trafficking and drug consumption, directed to members of police forces. This training course, however, was supposed to be a prototype of an innovative research activity, based on a previous research. The aim of such research, both in Italy and in Spain, was to deepen the knowledge of the relevant phenomena and produce a state-of-the-art concerning the present situation of drug trafficking as well as of the fight against it. Another important aim of the research, which was also based on interviews and focus groups, was to elicit training needs by asking about them to expert investigators and potential trainees, in order to design the formative course accordingly. The relevant information was obtained through direct interviews with expert witnesses (judges, members of the different police forces, other civil servants, experts, on so on), as well as through the analysis of legal documents, interceptions, records, statistical data. Two short reports about the two researches that were carried on constitute the first part of this book.

Spain and Italy are indeed hot spots for the drug flows coming from

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*Both Authors participated, with their respective responsibilities, in the conception of the project as well as in its implementation. This Introduction, therefore, is the result of a joined work. Sections 2 and 3 were written by Militello; sections 1 and 4 by La Spina*

Africa, Asia and South America. This is so because of their physical location, which makes them the main gates for drug routes directed to Europe, and also for their several harbours, where huge quantities of wares pass through. The success of Italian and Spanish law enforcement activities is, therefore, crucial not only from the domestic point of view, but more generally for the whole European Union. The sharing and dissemination of new and innovative investigation techniques is, therefore, can contribute in a relevant way to that continuous process of enhancing the repressive capacity of the fight against criminal organizations engaged in drug trafficking.

We have said something about the research activity. It must be emphasized again that the main component of the project is the second one, that related to training, which included courses that were held in Palermo and in Salamanca, with the physical presence of trainees, as well an E-learning training for the whole UE. Thirdly, also promotion and dissemination are foreseen (and among these the present book), which are to the communication and the diffusion of results and good practices in Italy and Spain, but also in all the member states of the European Union.

The expected results of the research, training and diffusion activities taken together are related to the increase of relevant knowledge and the exchange of experiences among the direct beneficiaries of the activities, to the development and diffusion of appropriate investigative approaches and training techniques, and lastly with the promotion of a professional and cooperative network between the main actors involved in the activities. In the forms that were presented to the DG Justice we said that “the specific objectives of the project are the following: 1. to improve the specific competences of the beneficiaries through the realization of a training path focused on a mix of scientific investigation techniques which could be extended and used against drug trade-related organized transnational crime; to facilitate the exchange of good practices between the investigation bodies and law enforcement operators, who will provide their own key of interpretation of the phenomena and their data about the drug trade”.

The project was coherent with the ISEC Programme. Among its specific objectives article 3 of such Programme indeed mentioned: “(a) to stimulate, promote and develop horizontal methods and tools necessary for strategically preventing and fighting crime and guaranteeing security and public order such as the work carried out in the European Union Crime Prevention Network, public-private partnerships, best practices in crime prevention, comparable statistics, applied criminology and an enhanced approach towards young offenders; (b) to promote and develop coordination, cooperation and mutual understanding among law enforcement agencies, other national authorities and related Union bodies in respect of the priorities identified by the Council in particular as set out by the Europol’s Organised Crime Threat Assessment”. Furthermore, we find (art. 4) that “transnational projects, which shall involve partners in at least two Member States” were among the eligible actions, and

that “financial support may be provided for: (a) actions improving operational cooperation and coordination (strengthening networking, mutual confidence and understanding, exchange and dissemination of information, experience and best practices); (b) analytical, monitoring and evaluation activities; (c) development and transfer of technology and methodology; (d) training, exchange of staff and experts; and (e) awareness and dissemination activities”.

## **2) Aims and Structure of the Course**

The Advanced training course on “Policies and instruments to fight international drug trafficking - *Illegal flow observation*” was intended to provide an updated overview of the main profiles of a complex phenomenon that involves as much factual aspects as regulatory solutions, nationally and internationally.

The intersection of these four aspects was achieved firstly by considering the professional profiles of the recipients of the course, all law enforcement professionals, most of which are in direct contact with the forms of the final manifestation of the phenomenon. To such an audience we have tried to ensure an expansion of knowledge on the subject, through a critical path aimed at providing a more comprehensive and updated view of the problem. In particular, our effort was aimed to support, on the one hand, the knowledge of the legal instruments and of their implementation, as well as the different knowledge of the reality of the phenomenon. By doing so, we aimed at creating a substantial balance between these two perspectives.

The levels of international diffusion of the problem are given in the latest World Drug Report (United Nations Office for Drugs and Crime, Wien, 2013), which indicates an increase in the spread of new psychoactive substances and also admit that the international instruments adopted “not have eliminated the drug problem” and recognises “that, globally, the demand for drugs has not been substantially reduced. Nevertheless, they at least continue “to ensure that it does not escalate to unmanageable proportions”.

As it is well known, the size of the drug trade is not limited by national borders. It is one of the clearest examples of global illicit markets. This is a feature that can be seen clearly from the routes of the different drugs, which is traceable when they are seized in a given country, especially in international airports. We so can also detect the main trends of the various sectors of the market (cannabinoids, heroin, cocaine and other psychoactive substances), which are strongly influenced by the rates of financial return of the different substances. The presentation of this general aspect has an introductory nature, not only to give an idea of the extent of the phenomenon and its dissemination on a global scale, but also because in our view to know the evidence related to the transnational nature of trafficking should help to gain a better understanding of the multilevel nature of the regulatory responses to the phenomenon. The individual jurisdictions in fact materialise choices regarding criminal policy defined at a supranational level, although the internal implementation of the

international instruments still occurs with a variety of specifications.

### **3) The Legal Modules**

The legal modules of the course were inspired by this international dimension of the legislation. This also serves to indicate some sort of record that the subject has compared with the characteristics of the modern criminal justice systems. The fight against international drug trafficking is in fact a sector of emergence of international harmonisation of criminal law. It is a trend which is now widespread considering that the most serious crime in the contemporary world has a transnational dimension: from drug trafficking to terrorism, from cybercrime to computer crime, to the environmental crime and money laundering, ending with mafia-type organised crime itself, which often absorbs or controls other more specific illegal activities. Such trends have forced nation-States to coordinate their strategies in the fight against drug trafficking, to develop judicial cooperation and to overcome the attitudes of criminal law nationalism, rooted in the very idea of state sovereignty.

The origins of the international conventional interventions in the field of drugs date back almost a century ago (the Convention on Opium and the Convention for Limiting the Manufacture and regulate the distribution of narcotics, signed in Geneva in 1925 and in 1931). The United Nations then intervened repeatedly (the 1961 Single Convention and its 1972 Additional Protocol, the 1971 Convention, the 1988 Convention). The intervention model is common: the discipline of both the possible therapeutic uses of substances and the administrative control methods for their distribution goes together with the commitment of the Member States to regulate certain conducts related to the movement of drugs considering them as crimes. Such obligation to incriminate is extended to foresee some custodial sanction for the most serious wilful breaches of the law. On the other hand, the basically prohibitionist strategy concerning the whole drug cycle is mitigated by the knowledge that the final consumer is a person whose treatment should be separated from a sheer punitive response, especially when this is custodial. The treatment of drug takers should rather be centred on health care, rehabilitation and reintegration. This is related to a more general maturation of penal ideologies concerning the criminal response, being one of the first cases in which we observe a transition towards a rehabilitative approach, which arises from the crisis of a criminal system basically focused on custodial sanctions and a retributive idea of justice.

A specific analysis was then dedicated to the 2000 UN Palermo Convention on Transnational Organised Crime. This is in fact not only of the most recent international instrument to fight global criminal phenomena related to international drug trafficking, but also the one which for the first time defines the typical elements of these phenomena, such as the transnational nature of the related criminal organisations.

The supranational dimension was finally completed with the assistance from

the European Union in the field, with special consideration of the Framework Decision 2004/757/JHA, which is the anchor for the harmonisation of criminal laws in this area to be made by the Member States. Even if adopted before the recent reformation of the Treaties, according to which the instruments of European harmonisation mechanisms acquired a far greater effectiveness, the Framework Decision mentioned above is an important touchstone for the individual national legal systems and their responses to drug trafficking.

The following lectures were devoted to the Italian relevant regulatory framework, which is based on the Presidential Decree 309/1990, the consolidated act (*Testo unico*) of the laws on narcotic drugs and psychotropic substances. Particular attention is given to criminal behaviour, with an independent account of the association aimed at drug trafficking. On the other hand, the alternative administrative sanctioning for the conduct related to the position of consumer, as well as the artificial equalisation of the normative treatment of drugs of different nature (i.e. the substantial disregard of the difference between soft and hard drugs in terms of legal significance), were not to be neglected. Moreover, we faced the issue of the so-called precursors, chemical substances which are not prohibited per se, although they are necessary for the illicit preparation of drugs. This is crucial when we consider the spread of synthetic drugs. Therefore, we addressed not only its legal aspects, both at the European level and at the domestic one, but also the main pharmacological characteristics.

After the presentation of the domestic legislation's main features, we sketched a comparison with the corresponding Spanish legislation. This reflects the architecture of the IFO project to which the course belongs, whereby a Spanish university is our partner, and Spain is interested almost as much as Italy to drug trafficking routes, from North Africa or from South America back to Europe.

Such a comparison shows that, despite the fundamental compliance of both systems with the international obligations of incrimination, there are significant differences in terms of national legislation. One has to do with the placement of related offenses: in Spain we find them in the criminal code, unlike in Italy, where they are in the complementary legislation. Secondly, the definition of drugs in Italy is fixed by special ministerial tables, while in Spain it is instead entrusted to judicial case law interpreting supranational sources on the subject. Thirdly, Spanish criminal law distinguishes between the conducts related to hard drugs and those concerning soft drugs. Fourthly, Italy has foreseen a specific incrimination for criminal organisations working in this field. A remarkable convergence between the two systems nowadays concerns the liability of legal persons for offenses in the field. Therefore, the overall process of harmonisation of the criminal responses in the field still has plenty of space to cover. Even the Italian legislative changes of 2006 to overcome the distinction between soft and hard drugs appear to move in a direction which is opposite to the objective of a mutual convergence towards the standard es-

established by the EU with the Framework Decision of 2004. To be stressed is also for this ground the importance of the invalidation of these norms of 2006 through a very recent decision of the Italian Constitutional Court (12.2.2014) that has re-established this distinction. As consequence of this judgement is foreseeable a diminution of drug-related incarcerated, one the main factor of the actual Italian prison system crowding.

An additional module has covered the crucial aggression of the huge proceeds from drug trafficking. In an integrated strategy to fight the phenomenon, the side of the attacks on illicit wealth has become a matter of great political-criminal importance. Here, too, drug trafficking has been a trailblazer industry for a type of intervention whose significance became wider and wider. The instruments used to chase the proceeds of crime became a piece de resistance of modern criminal law (think, for instance, of the financing of terrorism). In this respect, the U.S. experience was path-breaking, when it expressly connected the problem of organised crime and drug trafficking to money laundering, introducing a specific incrimination since 1986. A similar set of the 1988 U.N. Convention on Narcotic Drugs in Vienna also contains provisions specifically aimed to fight the laundering of the drug-related proceeds. Another track of intervention against illicit wealth, trough dispossession, is already present in these international instruments and then finds a broad regulation within the Council of Europe agreement in 1990. With regard to both profiles of the double-track of intervention against the illegal proceeds, we have foreseen the teaching of a qualified expert, in order to supply a not merely theoretical view on the topic.

Also procedural instruments are of special interest when drugs are concerned. First of all it is necessary to use special investigation techniques. A module was therefore devoted to the crucial issue of undercover investigations (agents infiltrated into criminal organisations), considering both the substantial and procedural aspects. Moreover, in this thorny area we had the participation of two public prosecutors, so to expand the possibility to consider actual experiences in the field. Besides concrete cases drawn from their experience, one of them treated the boundaries inside which undercover agents are allowed to act, with regard to some recent provisions specifically devoted to them (art. 8, Law 136/2010), as well as some advisable changes in the present legislation, while the other, apart from discussing concrete examples, reviewed the relevant legal solutions which can be found in countries such a Switzerland, Denmark, France, Germany, United States, as well as some of the decisions issued by the European Court of Human Rights.

Finally, the legal modules were completed with a consideration of other specific procedural profiles. More specifically, consideration was given to the growth of conflicts of jurisdictions determined by the fight against such a transnational phenomenon, together with the related provisions of substantive law on the spatial validity of criminal law. The rules for evaluating evidence stemming from the statements of justice collaborators were also considered,



also because they are particularly important to overcome the constraints of confidentiality and mutual cooperation between the various partners in criminal organisations. Finally, we have also considered the new forms of judicial cooperation within the EU, useful to ensure greater effectiveness in fighting the phenomenon, given its transnational nature: joint investigation teams, the role of Eurojust, tools for the obtainment and circulation of evidence across the EU.

In sum, the legal section has shown that the issue of the fight against drug trafficking has been a breeding ground for some of the most significant trends of modern criminal policy, from the growing relevance of a multilevel dimension to a privileged attention to the attack on illicit proceeds related to drug trafficking. Therefore, in addition to the complementary nature of the discipline of narcotic drugs in our criminal justice system, the rules which received special consideration in the course have a more general value, insofar they indicate some recent trends and the new face of the penal system. This is a confirmation, and at the same time an explanation, of the high interest that the project has attracted.

#### **4) The Sociological and Strategic-previsional Modules**

The course also benefited from the contribution of one detective from the National Antidrug Directorate (an inter-force structure), and more specifically from the Arma dei Carabinieri, as well as that of another detective from the Guardia di Finanza in Palermo. The former discussed in depth the South-American routes concerning cocaine, the Asian routes concerning heroin, the production and trafficking of cannabinoids and synthetic drugs. Another relevant subject which was treated is that of strategic-previsional analysis with regard to the various criminal organisations (from the ‘Ndrangheta to the Mexican cartels, the Serbian and Montenegrin, Albanian, Nigerian and Chinese groups). Strategic-previsional analysis must also be applied to the new routes as well as to new emerging trends in the modes of trafficking, such as the use of the Internet for drugs supply and for communications between members of criminal groups. The latter, after having hinted at the different routes for heavy and light drugs, presented some of the investigative instruments and related problems, from wiretapping to the attacks on assets, financial transactions and money laundering connected to the business of drug trafficking. Another section of the course was then devoted to the attempts at estimating the volume of the business of drug trafficking, especially when mafia-type criminal organisations are involved.

Several modules presented the application of the sociological approach in the study of the relevant phenomena and in the prevention and repression of undesired conducts. One of them was devoted mainly to the different habits of consumption and to other related deviant behaviours, distinguished on the basis of the type of substance they use, but also to the issue of the social and legal definition of certain conducts as deviant, and certain ways of consumption

as an abuse, also with regard to mass communication, possible dramatization by the media and management of social alarm.

The strategies of urban security pursued by local councils, schools, police forces, grass roots movements frequently include the prevention of drug abuse, especially with regard to consumers and retail sellers. The issue of urban security is strongly felt in Italy, with a correspondingly growing demand of territorial control through the use of the police and the surveillance of video cameras on roads and public places. Cities such as New York had their security strategies inspired by the “zero tolerance” idea: even minor violations and urban degradation (“broken windows”) should not be tolerated. Drugs, in the perception of the ordinary citizen, are linked to both to organised crime and to the degradation of social spaces where you encounter drug dealers, consumer groups, abandoned syringes, unsafe behaviour related to drug use (e.g. sick consumers, or drivers under the effects of hallucinogens), and addicts looking for money. The alarm is also associated to the presence of local nightclubs, discos, pubs, game rooms and places where young people gather. More specifically, situational prevention includes measures to reduce the opportunities of specific crimes. Through the management, design or alteration of the environment in which the crime could take place, by making it physically more difficult, or more risky or less profitable. For example, video cameras, if their presence is advertised and specifically indicated, might increase the chance that an offender is caught in the act, and therefore lead him to desist. In addition, by analysing video recordings of what happens in certain areas, police can learn more about them. In some cases, however, there may be disadvantages: a “delegation” to the cameras, which might produces disengagement, or the discomfort that these represent for the honest people, who do not like to be shot. And so on.

Social programs are to be designed properly, starting from their general objectives. The first step should be the definition of the problem as well as of its empirical weight and dislocation (through secondary and primary problem analysis, sometimes victimization surveys, qualitative and quantitative information, proper theories about its causes). The second is the identification of effective and feasible strategies of intervention, taking into account the possible perverse effects. The third is the planning of actions, at the same time choosing expected outcomes and performance indicators. The fourth is the coordination between responsible subjects and the implementation of the intervention, which should be monitored. Finally, there should be and *ex post* evaluation, to see whether the expected outcomes were reached, without undesired consequences.

In our case, the intervention would aim at the reduction of drug consumption in a given population. In turn, such an outcome is supposed to be correlated to the reduction of damage and dependence for consumers; to the reduction of mental illness and more generally of health problems, connected to the use of drugs (with benefits for the national health service); to the reduc-



tion of crime.

Some theories about the consumption of drug emphasise social-economic need and family problems as driving factors, but they are contradicted by the fact that many consumers are wealthy and/or come from apparently non-problematic families. Other theories which rather emphasise the influence played by the reference groups, that is the circles of people (friends, colleagues, peers) to which the actor belongs or in which he or she would like to enter. Another pull factor is the intrinsic attractive capacity of the various substances.

In concrete terms, an intervention program should be based on the analysis of the problem. The data are secondary, when they are produced by others, or primary, when they are produced by the same organisation that is responsible for the program. Quantitative information can derive from criminal statistics (crimes denounced, people who committed the relevant crimes, people in jail with such charges, and so on) but also from victimisation and self-confession surveys, in order to correct official statistics through a proper estimate of the dark number. Qualitative information (to be gathered, for instance, through interviews, participant observation, analysis of judicial documents) might regard ways of consumption and trafficking of the various substances, real dislocation of pushing in space and time, role played by educators, criminal organisations involved, and so on. Appropriate causal theories about the phenomenon lead the program designers to the choice of appropriate intervention instruments. One of the most important steps is the definition of the target population, to which the intervention is addressed (on the basis of variables such as territory of residence, age, parents' job, schools attended, ethnic group, etc.). It is then necessary to estimate the exposure to risk as well as the actual consumption of the substances in that population. The specific objectives are those that the program is meant to achieve. Their achievement gives a more or less relevant contribution (however always partial) to the fulfilment of the general objectives. Specific objectives should always be precise and unambiguous referred to a specific time span and expressed as quantified *expected results* of the intervention. When choosing the strategy of intervention, program designers should consider also its organisational impact and feasibility, taking into account also the expected collaboration by other subjects involved, different from consumers and pushers (i.e. families, teachers and other staff at school, owners of bars, pubs or discos, etc.).

The choice of appropriate indicators is a crucial passage in the definition of an intervention strategy, because a wrong indicator will reflect from time to time activities, outputs or outcomes in an unreliable way, and also because an indicator can influence virtuously or viciously the behaviours of the people in charge of the implementation. If – just to make an unrealistic and strained example – the main indicator considered is the number of consumers apprehended, this will incentive this specific activity at the expense of others. Activities are conducts accomplished by the people in charge of the interven-

tion. Outcomes are modifications of the external world, which should be mostly caused (in ordinary cases) by activities. Flying squads patrolling a given area are performing an activity. The possible reduction of pushing in that area due to that patrolling is an outcome. Not only is it necessary to choose sensible outcome indicators. It is also necessary to evaluate if and how much a given outcome is actually the effect of the accomplished activities (that is, whether and how much it would have occurred also in their absence).

In a program concerning urban security, we typically find multiple participants: the police, the local authorities, sometimes grass roots actors. Their coordination can be problematic. It is necessary to guarantee it through appropriate agreements. The scheduled intervention should begin and finish within a fixed time span. Let us imagine that, having been identified on the local jurisdiction concerned 30 places of habitual pushing, the specific objective of the intervention is to uproot the pushing in at least half of them in a year. A possible side effect is that pushing dislocates itself in other places of the same jurisdiction or in areas belonging to neighbouring jurisdictions. It is then necessary to forecast this possibility, keeping the side effect under control. Otherwise, the intervention could be less than useless.

After the start of a scheduled intervention, this should be submitted to monitoring both to verify that the scheduled activities are actually done, and to evaluate the pertinence of the model of intervention designed and the advisability of possible adjustments in progress. Generally speaking, monitoring can lead to organisational modifications of a program. It might also lead to a partial reconsideration of the model of intervention. If, for example, the side effect of the previous example (the dislocation of pushers to other sites) was not expected *ex ante*, it could emerge during the monitoring, with resulting corrective actions.

Once the intervention is ended, an *ex post* evaluation would be needed. In principle this consists of a comparison between the expected outcomes and those actually observable. It is necessary to take in consideration also the other causal factors operating in the context, which sometimes produce part of the expected results (so that the «merit» of this success should not be ascribed to the intervention only for a fraction), and some other times prevent, totally or partially, the achievement of desired outcomes.

It is essential that the *ex post* evaluation focuses itself especially on the *final expected outcomes*, instead of focusing only, or mainly, on activities, outputs, or even immediate outcomes. In the above examples, the expected outcome is a certain reduction of drugs consumption and pushing, as well as the weakening of related criminal associations. Suppose that the program includes some educational activities, aimed at spreading knowledge so to reduce harm as well as consumption. Suppose that a given number of days of such educational activities are actually supplied. If we count them, this will be an activity indicator. Suppose that we survey what the students who attended such seminars actually learned about the phenomenon. This would be an indicator of the immediate outcome. But the final outcome that the program was supposed to be is the reduction of consumption.

Therefore, the consumption level is what must be detected eventually.

At the end of the course some lectures were devoted to some promising research techniques, which on the one hand allow a more advanced the knowledge of the phenomena, and on the other might help investigators as well. The first is the automatic analysis of text, which can be fruitfully used when the records of telephone and environmental tapping run for millions of pages. The second is social network analysis, which can facilitate the understanding of criminal phenomena through the study of the relationships which exist between members as well as between one or more member and people external to the organisation. The third approach is that based on simulation models, executed on the computer, in order to re-create a simplified (but rather complex) situation in which artificial actors modelled on real ones act in a predictable way. Apart from individual cases and trials, which can be studied through some of the above said techniques, they also allow to synthesise vast amounts of data as well as to make predictions which might be very useful in strategic previsions. Therefore, a systematic use of social research methods and techniques might improve the effectiveness of the fight against organized crime as well as that of prevention.

## Development of the IFO project on the fight against international drug trafficking in Spain

**Directors: Fernando Pérez Álvarez \* & Laura Zúñiga Rodríguez \*\***

The IFO project has been developed and orchestrated through the Security Sciences Project at Salamanca University by a working party made up by Pérez Álvarez, Laura Zúñiga Rodríguez, Lina Mariola Díaz Cortés, Cristina Méndez Rodríguez, José Aróstegui Moreno, Ana García Alfaraz, Mariluz Gutiérrez Francés (Salamanca University), Gregorio Álvarez, Alicia González Monje (Judiciary), Miguel Botello García (Civil Guard), and Javier Peña Echeverría and Gustavo Fernández-Balbuena (National Police Force). The work undertaken between September 2012 and March 2014, in coordination with the Chinnici Foundation and Palermo University, has provided some extremely interesting results in the field of research and training for a more effective fight against international drug trafficking, generating synergies between the experts involved in this task, who have formed interdisciplinary work groups.

The working methodology has above all fostered information sharing and discussion among the legal practitioners and police officers involved, sometimes producing differing perspectives that have prompted an exchange of views and reinforced synergies in the analysis of crucial topics, reaching significant conclusions that merit due consideration.

### **1. Scope of the research and its phases**

The project began with the holding of qualitative interviews and focus groups involving magistrates, judges and police officers, creating the instruments for hands-on research that was far removed from unsubstantiated hypotheses, thereby providing the foundations for highlighting those topics of special interest for legal practitioners and officers in the frontline of policing, as the setting for some of the more crucial issues in the criminal investigation of international drug trafficking.

The most pressing and topical issues were identified, being therefore the ones most in need of analysis, among which the highlights were those linked to the use of the instruments of police investigations with the greatest impact on fundamental rights, such as phone tapping, search and entry, and the evaluation of informants' testimonies, among others. Furthermore, the international nature of the research called for the addressing of topics related to the transnational nature of drug trafficking, such as the recognition of evidence gathered abroad, legal cooperation, and police cooperation, as issues widely considered in international agreements signed by Spain and Italy, as well as in the European Union's proposals and rules, which in practical terms provide myriad questions that need to be resolved.

The arrangement of the interviews and focus groups enabled us to observe that the demands for training made by legal practitioners and police officers alike

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were highly specialised, involving very specific topics, calling for the involvement of expert instructors in each subject, not only from the perspective of their analytical skills, but also in terms of their personal experience. We should not forget that we are dealing with an eminently practical field of knowledge, whose variables are way ahead of the theory.

Thus, police officers have to deal with a complex and changing reality that requires them to adapt quickly and effectively to the ever-mutating nature of organised crime. Unfortunately, criminal law and legal practitioners are outflanked by this reality, often having their hands tied by other judgements and other legislation that are clearly outdated: we have noted accordingly that the developments in jurisprudence have in some cases been the ones that have provided the “rules of the game” in the face of a legal vacuum, as has been the case in search and entry warrants. As a way of explaining this anachronism, it should be noted that Spain’s Criminal Proceedings Law dates back to 1889, and its first amendment for the introduction of the appropriate investigative instruments for the fight against organised crime was not made until 1989, or the fact that the reform of the Criminal Code to specify the types and categories of criminal organisations and groups dates from 2010. There is no doubt that this legislative state of affairs has not only hindered criminal investigations in this field, but has also contributed legal uncertainty to many of the scenarios in the fight against this phenomenon.

Specifically, organised crime involving international drug trafficking, which is the lawbreaking activity that has developed the most in recent times on the back of the enormous illicit earnings it generates, shows us there is a need for the comprehensive professionalisation of judges, police officers and tax authorities, because the appropriate instruments for combating this criminal activity are deemed to be extraordinary and, therefore, subject to special rules that differ from ordinary ones.

Within this context of training challenges, a programme was arranged with the following Training Course Modules to cater for these specific needs in analysis, classifying them according to the issues to be resolved, being as follows:

Module I: European and national regulations on international drug trafficking.

Module II: European and Spanish regulatory considerations in matters of transnational organised crime.

Module III: Money laundering and the investigation of wealth in drug trafficking.

Module IV: Dynamics and regulations in the matter of informants and operational investigative methods and means.

Module V: Technical-legal aspects of the gathering and validation of evidence in Spain and Europe.

Module VI: Legal and operational instruments in the fight against illicit international drug trafficking: discussion points.

The dynamics of the Training Course were also based on the information garnered from the interviews and focus groups, as it was deemed important to

include instructors who had proven theoretical and practical experience, as well as encourage a dialogue between speakers and audience at the congress. As the latter, too, were specialist professionals, they would highlight the most debated issues and, within the context of workshops, they could jointly address possible solutions. The dialogue inherent to collaboration, intersubjective consensus and the common language of the legal practitioners and police officers involved constitute the point of departure for the design of an effective battle plan in the fight against international drug trafficking.

The purpose behind this course has been to generate and contemplate common solutions to the real issues detected in a prior consultation phase.

## **2. Training/Research approach**

The Training Course was held between 20 and 24 January 2014. Based on the successive lectures and presentations, as well as on the debates held over the course of these sessions, it may be affirmed that major progress has been made in the analysis of the issues involved, given the high level of the contributions made. Accordingly, although it involved a training course, the truth is that it has also given rise to an interdisciplinary and interprofessional working environment in the treatment of the topics, with extremely innovative proposals.

There follows a summary of the main conclusions reached in the different modules considered.

It should be noted that the issues were addressed from a domestic Spanish perspective, analysing the reality of its criminal activity, its legislation and its institutions, seeking to lend meaning to the discourse aimed at providing viable solutions, bearing in mind that the course was attended by senior officials responsible for both prevention and the control, investigation and prosecution of cases related to the transnational illegal drug trade. Likewise, the structure of independent modules did not impede the mainstreaming of the analysis of the issues, given the interlinking nature of the topics involved and the interest of those attending.

- In Module I, on drug trafficking, emphasis was placed on the complicated and thorny issue of Spain's legislation on this matter, as contained in its Criminal Code, with highly questionable criminal formulas, from both a dogmatic and a criminal-political perspective. On the other hand, specific mention was made of the current progress and success in the fight against international drug trafficking, tackling the changes made in the mechanisms for smuggling drugs (routes, players involved, police operations, etc). Spain's geographical location, nonetheless, continues to be a crucial factor.

- In Module II, on transnational organised crime, the focus was on the difficulty involved in dealing effectively with criminal organisations, both in technical and operational aspects and in legal and judicial matters, in which internationality underpins these difficulties. The importance of evidence, its gathering and validation in court, analysed also from the perspective of the dissimilar and debatable jurisprudence involved, was the main focus of the module's attention, together with the legislation regarding criminal organisations.

- In Module III, on money laundering and the investigation of wealth, it was stressed that because the ultimate aim pursued by criminal organisations is the laundering of the money obtained from the illicit gains involved in the drug trade, it has now become one of the more important focal points of investigation for uncovering the existence of the same. The tracking of illicit wealth leads to a criminal organisation, and not the other way round. This interest in neutralising the financial cycle involving drug-related wealth, by squeezing it dry, prompted an analysis of recent measures, such as the broader powers of seizure introduced in criminal legislation. The different types of companies or businesses drug traffickers use to conceal and launder their earnings may be controlled by a Public Register that provides the names of all company shareholders.

- Module IV, referring to the legal treatment of informants and undercover officers, was especially revealing. The absence of legislation on informants, and the fact the court’s evaluation of the testimony they provide on their operations depends on each judge, highlighted the unacceptable level of legal uncertainty in this matter. Accordingly, special note should be taken of the proposal for regulating the issue of informants and undercover officers, considering that these techniques are extremely important for dismantling criminal networks, but their legal treatment does not then do justice to the vital role they play. Likewise, another matter pending involves a review of the legislation on protected witnesses, given that informants tend to end up becoming protected witnesses, but Spain has no provisions or measures to guarantee effective protection.

- The focal point in Module V, dealing with the valuation of evidence, was the legal vacuum in certain key strategies for gathering the proof required to dismantle criminal organisations, such as phone tapping, search and entry involving private homes, and controlled deliveries. All the rules have responded to “jurisprudential creation” and to the principle of proportionality. The principles of jurisdiction, appropriateness, necessity and strict proportionality govern all these operating rules. Stress was placed on the importance of formal requirements to avoid court hearings being rendered null and void, with the consequent missed opportunities and the wrong message sent out to drug traffickers. Judicial discretion was highlighted in the practical analysis provided by the speakers: both police officers and judges and prosecutors stressed that there could be a huge difference in the application of the principles by one judge or another when allowing or refusing phone monitoring or house searches. Judges with little experience were significantly more reluctant to issue the corresponding warrants. By contrast, at Spain’s Supreme Court, the Audiencia Nacional, with a jurisdiction that specialises in complex proceedings, warrants were easier to obtain, albeit without compromising the tutelage of fundamental rights.

- Finally, in Module VI, on police and judicial cooperation, it was noted that the coordination between security forces and the courts was becoming increasingly more fluent. The police and court networks in Europe and Latin America perform well, as does cooperation with the DEA, Interpol and Europol. Giant steps forward have been made in these matters in recent years. The same cannot



be said for those cases involving the acceptance of court rulings in foreign countries, the acceptance of evidence, or the recognition of sentences. The treatment given to these issues varies enormously depending on the countries involved. In Europe, for example, the 2008 Framework Decision on the recognition of sentences has yet to be transposed into Spanish law. Nevertheless, any future progress in the fight against international drug trafficking will require the introduction of clearer rules on the matter.

The working party is very satisfied with the way the project has unfolded. There is no question that we are facing a powerful “enemy” in the form of transnational criminal organisations, which have the major resources required to neutralise the persecution of their criminal activity. It is a powerful enemy that is well-versed in committing crimes that have a major social impact. Our satisfaction is not informed by the importance of the challenges, but instead because the research conducted by the team at Salamanca University has provided a network for collaboration among all its members that will ensure the continuity of this new work commitment. This commitment will lead, through the study and cooperation of all the players involved, to the analysis and design of viable answers. Some of this progress can be seen, for example, in the major achievements made in the uncovering and prosecution of illegal drug trafficking in our country. Spain is no longer an open door for drugs on their way into Europe, as it once was in the 1990s. Criminal organisations have now been put on the back foot, thanks to the major endeavour shown by police controls in terms of both investigation and persecution, as well as by the courts, thereby highlighting the efficacy of the institutions involved. Through these lines we should like to express our thanks to those institutions, which have furthermore generously contributed to the project and the working party. If, as Beccaria once said, a fair, prompt and certain sentence is the best prevention, the challenge remains to reinforce this efficacy by also reconciling it with the guarantees that have to legitimate the justice of any criminal response. As that response inevitably involves an international dimension, our thanks to the Chinnici Foundation and Palermo University for including us in their transnational approach and for their personal warmth, which has made it all the more easier to undertake this journey.



## **The I.F.O. (ILLEGAL FLOW OBSERVATION) project in practice**

**Giorgia Petrotta \***

The studies on the problem of drug trafficking in Europe deliver a specially alarming picture: in recent years, the European drug market has become more fluid and dynamic, expanding the illegal trade in new routes and new substances. The international drug trafficking continues to be the main activity of organised criminal groups, which have managed to develop, in recent years, greater coordination, growing pervasiveness and in size.

It is in this context that was created and developed the European project IFO Illegal Flow Observation, integrated initiative of research, training and promotion, funded by the General Justice Directorate as part of the JUST-DRUGS PROGRAMME of the European Union.

Promoted by Rocco Chinnici Foundation in partnership with the University of Palermo - Department of Legal Science, society and sport, and the University of Salamanca - Department of Ciencias de la Seguridad (CISE), the IFO project is set up as an innovative training intervention for law enforcement professionals, including magistrates and investigators, with the aim of enhancing the specific skills in the activity of fight to cross-border crime linked to drug trafficking.

The project, in particular, is part of the idea of an innovative training, based on a preliminary and careful work of training needs analysis, which aims to provide a set of skills and operational tools for immediate use, that can actually support the action of fight of law enforcement operators involved. The decision to promote and create a network of international cooperation Italy-Spain was born considering the two nations as strategic territories for drug trafficking from Asia, Africa and South America. Therefore, the interaction between the two countries has encouraged the strengthening of expertise in the fight against drug trafficking and the exchange of knowledge can be transformed into good practice, both of the direct participants to the course and also of the training players, involved in the implementation of the project activities, useful, among other things, on a European scale.

IFO has provided an integrated set of activities, organised into “work packages” (Work streams) with interrelated specific objectives and results, carried out in 18 months of activity, distributed between September 2012 and March 2014.

In short, we show below the summary of the activities in the two countries (1. Preliminary research before the training, 2. Training, 3. Promotion and dissemination), and the results achieved, referring to the following pages of the book for a technical and content detail of about of what has been developed as part of the project.

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*\* Project manager and educational designer at SDI Soluzioni d'Impresa srl – IFO Project manager*

### **Preliminary research before training.**

Preparatory phase of the training activities; such research has resulted in a work of listening and analysis of the training needs of the beneficiaries and of the two territories Italy and Spain, in order to identify the optimal learning path really in accordance with the knowledge and operational needs of the operators of Italian and Spanish security forces, potentially involved in the training. With this purpose, it was adopted a research methodology based on a qualitative approach that involved the creation of semi-structured interviews with judges and members of the police forces, and in addition focus groups or group interviews. In particular:

In Italy, were carried out 40 in-depth interviews with judges and members of the State Police, Carabinieri, Guardia di Finanza and the State Correction Officers. The two focus groups were conducted with the involvement of operators of the four police forces;

In Spain were carried out 48 interviews with representatives of the police and the Spanish Guardia Civil (37 in all) coming from more Iberian regions and judges of various courts of Madrid, Salamanca, Barcelona and Valencia. In addition, there are 4 in-depth interviews with privileged witnesses of the same security forces and the judiciary. And again two focus groups, one of which exclusively dedicated to a group of agents of the police and the other to a mixed group of officers and members of the judiciary. The results emerged in terms of needs and skills to be developed are described in the following paragraphs.

In this phase of the project, it was also produced in connection with the findings of the preliminary research, the legal and jurisprudential educational material on the subject of drugs, made available to participants in Italian and Spanish, as research material of the training sessions. This educational material was published in the e-learning platform and was available to the participants of the project, also after the closing of it. In detail, this is a large in-depth analysis on the fight against drug trafficking in the national and supranational legislation, investigative techniques, money laundering and confiscation, proceedings Tools and international cooperation (by the researchers Dr. Alessandra Vetri, Dr. Licia Siracusa, Dr. Micaela Raimondo).

### **The Training**

Focus of the IFO project is the creation of the “Specialisation course on policies and instruments to fight international drug trafficking” in Italy (Palermo) and in Spain (Salamanca), for a total of 40 hours of training on teaching specific and consistent content with the preliminary stage of research. The courses offered in the two countries were characterised by a unique and shared plot, in general, while providing space for customisation tailored to the needs expressed by the interviewees. The formators involved, in virtue of the interdisciplinary approach to knowledge and skills that characterised the learning activities, were both professors of the two universities and experts

from law enforcement and magistrates, personally involved in law enforcement operations against drug trafficking. The contribution of experts in the field has made the course not a unidirectional place of learning, but the source and the result of an exchange of ideas and expertise. Documents that refer to rules and “theoretic” tips were in fact supported by more direct means, such as testimonies and analysis of case studies, in an active learning process.

In Italy, the course took place in the fascinating classrooms of Palermo Faculty of Law, and was addressed to more than 70 participants in all (compared to 20 expected from the project), members of the State Police, Carabinieri, Guardia di Finanza and the State Correction Officers. The 40 hours of training have been structured according to the following training program carried out by the teachers-experts below:

1. The fight against illicit drug trafficking in supranational legislation (*V. Militello; L. Siracusa*)
2. The fight against illicit drug trafficking innational legislation (*V. Militello; L. Siracusa*)
3. Urban security (*A. La Spina*)
4. The Geography of the illegal trafficking (*G. Panzarella*)
5. Tecniche investigative: aspetti applicativi (*G. Panzarella*)
6. Toxicological problems related to drugs (*A. Argo*)
7. The fight against the illicit proceeds in the national and supranational legislation (*A. La Spina; V. Militello*)
8. The fight against the illicit proceeds in the national and supranational legislation. Applicable experiences (*A. Balsamo; V. Militello*)
9. The investigative techniques: undercover operations (*A. Mangiaracina; L. Siracusa*)
10. Undercover operations: applicable experiences (*V. Militello; S. Barbiera*)
11. Analysis of anti-drug operations (*S. Barbiera; G. Campobasso; C. Ferrara; A. La Spina*)
12. Dynamics and deviants related to drug use (*C. Rinaldi*)
13. Procedural instruments and international judicial cooperation and application experience (*A. Mangiaracina; V. Militello*)
14. Research methods: analysis of textual data, social network analysis, simulation (*G. Frazzica; V. Punzo; A. Scaglione*)

The group of teachers-experts involved:

- *Prof. Antonina Argo*, Associate Professor of Forensic Medicine at the University of Palermo, Department of Bio-pathology and medical biotechnology and forensic
- *Dr. Antonio Balsamo*, President of the Assize Court of Caltanissetta

- *Dr. Sergio Barbiera*, Deputy Public Prosecutor, Court of Palermo
- *Colonel Giuseppe Campobasso*, Bari Provincial Command of the Guardia di Finanza
- *Dr. Calogero Ferrara*, Deputy Public Prosecutor, Court of Palermo
- *Dr. Giovanni Frazzica*, Researcher of Sociology of the cultural processes at the University of Palermo, Cultural Heritage-Cultural Studies Department
- *Prof. Antonino La Spina*, Scientific Coordinator of the Project, Professor of Sociology and Professor of Public Policy at LUISS
- *Dr. Annalisa Mangiaracina*, Researcher of Criminal Procedural Law at the University of Palermo, Department of Law, Society and Sport.
- *Prof. Vincenzo Militello*, Scientific Responsible for the Project for the University of Palermo; Professor of Criminal Law at the Department of Law, Society and Sport
- *Captain Giuseppe Panzarella*, Attorney, Central Directorate for Anti-Drug Services (DCSA), Strategic Analysis Section
- *Dr. Valentina Punzo*, PhD in Sociology and Methods of Social Sciences, Researcher-assistant at the Department of Law, Society and Sport of the University of Palermo
- *Dr. Cirus Rinaldi*, Researcher of Sociology of Law, of the Deviance and Social Change at the Department of Law, Society and Sport of the University of Palermo,
- *Dr. Attilio Scaglione*, Researcher-assistant at the Department of Law, Society and Sport of the University of Palermo
- *Dr. Licia Siracusa*, Researcher of Criminal Law, Department of Law, Society and Sport of the University of Palermo, Juridical Science of the society and sport Department

In Spain, over 64 participants were involved (compared to 20 expected from the project), representatives of the police forces, civil guard and judiciary, in the course which took place in the historical and picturesque University of Salamanca. The 40 hours of training have been structured according to the following training program carried out by the teachers- experts below:

1. Drug trafficking: special investigative means and bounds (*J. Gomez Bermudez*)
2. European and national regulatory issues concerning illicit drug trafficking:  
European and national decision illicit drug regulatory aspects (*C. Mendez Rodríguez*):  
- The sea routes of cocaine trafficking to Spain (*M. Muñoz Pintos*)

- Involvement of the secrecy of communications from the point of view of the Trial Judge (*J.L. GarcíaGonzález*)
- 3. European and national regulatory aspects in relation to transnational organised crime:
  - European and national policy issues relating to transnational organised crime (*L. Zúñiga Rodríguez*)
  - The prosecution of drug trafficking organisations. Reality. Procedural means (*A. Salazar Larracochea*)
  - Sources and means of illicit evidence in the field of investigation of drug trafficking crimes (*J. GarcíaSan Martín*)
  - The banned evidence in investigations of drug trafficking (*G. Fernández-Balbuena González*)
- 4. Confiscation of capital and asset investigation into drug trafficking:
  - Money laundering and asset investigation into drug trafficking (*J. Aróstegui Moreno*)
  - Operational aspects of money laundering (*F.J.Borja Pastor de La Morena*)
  - Requirements of motivation of resolutions to organised crime (*J.R. González Clavijo*)
  - Confiscation and recommendations from the international community (*F.J.Camacho Herranz*)
  - Money laundering by organized criminal organisations involved in drug trafficking (*A. De la Torre Fernández*)
  - Capital companies as an instrument of tax fraud and money laundering (*M. Gallardo Macias*)
- 5. Dynamic and legislation on confidants and operational methods and means of investigation:
  - The technology applied to the criminal investigation and its application to Fundamental Rights (*M. Botello Garcia, L. Valles Causada*)
  - The use of special investigative techniques in the fight against cybercrime (*A. González Monje*)
  - The boundaries between the undercover agent and the agent provocateur in the prosecution of crimes of drug trafficking (*J. García San Martín*)
  - Controlled delivery and undercover agent (*C.R.Cadiñanos Antón*)
  - The occasional incidental finding or occasional discovery in the field of criminal investigation (*J.García San Martín*)
  - Efficiency and regulation of the confidant as an investigative technique (*G. Fernández-Balbuena González*)
  - Active Sources: Informers (*F. Sacristán París*)

6. Technical and legal aspects of obtaining and validation of the evidence at national and European level:
  - Technical-legal aspects in obtaining and validation of the evidence at national and European level (*J. Aróstegui Moreno*)
  - The evidence obtained abroad and their incorporation into the Spanish criminal proceedings. Jurisprudential analysis (*A. González Monje*)
  - The anonymous testimony as evidence in criminal proceedings (*G. Fernández-Balbuena González*)
  - Possible annulments in the taking of evidence in crimes against public health. Doctrine of the Supreme Court (*J.R. Berdugo Gómez de la Torre*)
  - Research methods in the use of new technologies by organised crime (*J.A. Martínez Cortés*)
  - The interception of communications to the Convention on Mutual Assistance (*A. González Monje*)
  - Forensic expert evidence in investigations against organised crime (*J.A. Martínez Cortés*).
7. Judicial cooperation, national and international police cooperation:
  - Police Cooperation Centre of Algeciras (*G. Álvarez Álvarez, J.A. Lozano Laso*;) )
  - Fight against drug trafficking and related offenses (*J.A. Berlanga Varo*)
  - Consequences of a foreign conviction for illicit drug trafficking. Cooperation in obtaining this information (*A. Palomo del Arco*)
  - International police cooperation (*J. A. Mellado Valverde*)
  - Questions about the arrests in the field of international cooperation (*J.R. de Prada Solaesa*)
  - Questions about the interception of communications in drug trafficking crimes on a large scale in the field of International Cooperation (*M. Pestana Perez*)
  - International cooperation in bank research on money laundering (*J. Á. Rollón Bragado*).

The group of teachers-experts involved:

- *Prof. D. Gregorio Álvarez Álvarez*. Magistrate Judge of Salamanca, Salamanca University Professor
- *Prof. Dr. D. Aróstegui José Moreno*. Research Professor, CISE
- *D. Gustavo Fernández-Balbuena González*. Professor of the Department of International Centre for Advanced Studies of the National Police
- *Hon. Mr. D. Juan Ramón Berdugo Gómez de la Torre*. Supreme

Court of Justice

- *D. José Alberto Berlanga Varo*, Chief Inspector. Head of the Mobile-Brigade Police Transportation (Algeciras)
- *D. Francisco Javier Pastor Borja de La Morena*. Group Captain of Money Central Operational Unit of the Civil Guard
- *Lieutenant Miguel Botello Garcia*. Technical Unit of the Judicial Police Drug Group of the Guardia Civil
- *D. Carlos Ramón Cadiñanos Antón*. Chief Commander of the Group of Drugs Central Operational Unit of the Civil Guard
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- *D. Adolfo de la Torre Fernández*. Professor of National Police School of Ávila
- *Hon. Mr. D. José Ricardo de Prada Solaesa*. Judge of the High Court
- *Prof. Dr. Ms. Lina Mariola Diaz Cortes*. CISE Research Professor
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- *Hon. Mr. D. José Luis García González*. Judge of the Court of Instruction No. 1 of Salamanca
- *Prof. Dr. D. Jerónimo García San Martín*. Professor of Legal Consequences of Crime at Pablo de Olavide University of Seville and Deputy Judge
- *Prof. Dra (c) Ms. Ana Isabel García Alfaraz*. Research Professor CISE
- *Hon. Mr. D. Javier Gómez Bermúdez*. National Court Judge
- *Hon. Mr. D. José Ramón González Clavijo*. President of the Provincial Court of Salamanca
- *Dr. (c) Alicia González Monje*. Deputy judge
- *D. Juan Antonio Lozano Laso*. National Police Inspector. Coordinator of the Police Cooperation Centre of Algeciras
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- *Hon. Mr. D. Andrew Palomo del Arco*. President of the Provincial Court of Segovia
- *D. Manuel Javier Peña Echeverría*. Chief Superior Commissioner of



- National Police of Cantabria
- *Hon. Mr. D. Pestana Mario Pérez*. Judge of the Provincial Court of Madrid
- Prof. Dr. D. Fernando Pérez Álvarez, scientific responsible for the Project for Salamanca University of Studies and Criminal Law Professor University of Salamanca
- *D. José Ángel Rollón Bragado*. Magistrate Judge at Magistrate's Court in Madrid.
- *D. Francisco Sacristán París*. Head of the Foreign Affairs and Power Commander Central Operational Unit of the Civil Guard
- *D. Larracochea Adrian Salazar*, Attorney , Superior Court of the Balearic Islands
- *Dr. Luis Valles Causada*. Lieutenant Colonel Head of Technical and Operational Support Central Operational Unit of the Civil Guard
- *Prof. Dr. Mrs. Laura Zúñiga Rodríguez*, Professor of Criminal Law, University of Salamanca

The training also provided for an e-learning activity aimed at the widespread dissemination of the project on a European scale, of the didactics and of the content processed, therefore of the objectives and of the values retrieved. The e-learning that is configured as the part of the project directed to other operators, associations and stakeholders in Europe, aimed at creating a global active network in the fight against drug trafficking, to the further development of general skills, of legal and technical ones, of the parties and to the exchange of good practice in specific areas of expertise. The distance learning achieved through an e-learning platform, accessible by password from the portal of the project, ensured (and guarantees beyond the closing of the project) the use of content, teaching materials, links and other documents useful to the participants. More than 74 operators (compared to 50 expected from the project) of European stakeholders coming from 15 EU countries were involved in; there was a significant participation of the countries Bulgaria, Hungary, Portugal and following Austria, Belgium, Romania, Czech Republic, United Kingdom, Netherlands, Ireland, and others.

### **The promotion and dissemination**

It was aimed at promoting, for all 18 months and beyond, the project activities and to disseminate the results and the good practice, both in Italy and Spain. It represents a fundamental activity of IFO Project, by virtue of the fact that being a European project must ensure pervasiveness and replicability on a European scale.

It was realised the project website [www.fondazionechinnici.it/proget-toifo](http://www.fondazionechinnici.it/proget-toifo), multilingual portal (English, Italian, Spanish), designed not only as a virtual place of information of the project and of the activities planned, but as a European area of dynamic sharing of other information, content and sources, connected to the topic of the fight against international drug trafficking.



The Communication also provided intensive promotional activities on the territories of Italy and Spain by press, both of the training activities and of the project, in general. And in addition, videos of promotion and dissemination of the educational content, accessible from the main international platforms to share multimedia files (e.g. YouTube). Finally, we would like to mention the final seminars in Italy (Palermo) and Spain (Salamanca) as further moments of replicability and dissemination of IFO results and successes.

A special contribution to the achieved results of the project was provided by Mr Ruggero Aricò, IFO web site editor. Thanks to the dynamic, updated and functional portal, as well as to an effective on line support, the e-learning course, has resulted in a Europe-wide dissemination of the initiative and achievements.

## **PART I - THE RESEARCH**

## **I.1 ITALY - The research: the phenomenon of drug trafficking**

**Antonio La Spina** \* - **Giovanni Frazzica** \*\* - **Valentina Punzo** \*\*\* -  
**Attilio Scaglione** \*\*\*\*

### **Introduction**

In the remainder of this work, we present the results of the research conducted as part of the IFO Project. The aim of the project was to transmit knowledge, tools, and innovative research techniques, borrowed from scientific research, in order to improve targeted interventions, actions and investigations against the criminal organisations operating in drug trafficking at the international level. In this regard, a study was conducted to determine the training needs to be treated and the contents to be delivered during the teaching activities. The methodology of the research adopted a qualitative approach and involved the construction of semi-structured interviews with judges and members of the State Police, Carabinieri, Guardia di Finanza and the officers of State correctional institutes (40 interviews). In addition to the interviews, two focus groups or group interviews were carried out, with the involvement of operators of the four police forces.

The chapter is organised as follows. In the second and third paragraph, we draw a brief overview of the phenomenon of drug trafficking, both on the basis of the existing literature and the results of our interviews and focus groups. In the fourth section, we focus our attention on the main Italian and foreign criminal organisations involved in drug trafficking. In the fifth paragraph, finally, we describe the main training needs emerged from the interviews.

### **I.1.1 The routes**

Given the complexity of drug trade as well as the multiplicity and diversity of the participants involved (on which we will shed the light in the section devoted to criminal organisations), the analysis regarding this topic may be particularly complex. Here we will limit ourselves to establish a picture of the main routes taken by traffickers in connection with the different substances. As reported in the annual report referred to the year 2012 by the Direzione Centrale per i Servizi Antidroga, drug trafficking appears to be the most profitable business on the illegal market globally. This traffic, in addition to presenting all its danger to the health of those who use drugs with a view to an alteration of the psychophysical organism, proves to be a major source of con-

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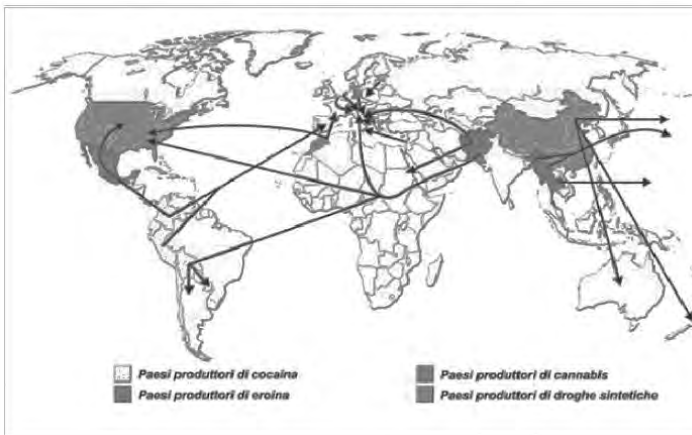
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tamination both of the legal markets and the rules of free trade, introducing significant distortion factors and fuelling the economy. Therefore, dangerous and worrisome vicious circles are created.

One of the most important topics in studying the dynamics of international drug trafficking, regards the routes preferred by traffickers. Before continuing, it is therefore necessary to remind the reader that, because of the characteristics of drug trade, the starting point to be considered is one of its main features, that is the trans-nationality. This is made possible by the collaboration of criminal organisations of different types, rooted in different countries, often thousands miles away, which come into contact with a view to obtaining their main incomes from international drug trafficking. Either in the various reports provided by the bodies which deal with the fight against the international drug trafficking, or from the analysis of the interviews that were conducted, the importance of increasing the knowledge about the main global dynamics of drug trafficking clearly emerges.

In this regard, it is worth highlighting how the majority of respondents have stressed the continued evolution and constant changes that relate to the main routes of drug trafficking. There are many factors that come into play. For example, there is a need to make substantial changes to the main routes, even if by doing so criminal organisations must face additional cost and risks. “Among the most common practices, there is the use of a route until the route remains economically viable” (expert GdF). Moreover, such changes in the-historical routes might be influenced by several “sensitive” variables, such as the “tolerance level” (expert GdF), as well as by constant comparative analysis between different carriers and between different means of transport, which is possible to have.

Fig. 1 - Main areas of production and routes of drug trafficking



Source: Italian Home Office, Direzione Centrale Servizi Antidroga

The constant updating and the accumulation of experience between those who work in the service of the legality are essential factors to put in place focused and effective actions in fighting drug trafficking. The changes that are taking place also concern the level of specialisation with reference to the type of drugs put on the market. Indeed, as revealed by the analysis of the interviews carried out, we face a growing diversification of the offer (poli-drug trafficking). Once the norm were the so-called “single-product” businesses, while today we have what we might call a “poli-drug trafficking”. These are strategic choices (so to say), taken by criminal organisations in order to satisfy more and more the consumption demand in constant change and evolution, due also to the diversification of the drug use, of the consumption occasions and of the lifestyles more frequently associated with them (poly drug consumption).

In less recent years the route preferred by cocaine traffickers was the Caribbean one, that leaving from South America reached North America and then Europe. Today it “passes through Mexico” instead (Police Operator, Anti-Drug). Heroin, on the other hand, runs, for the same crops, Afghanistan and Myanmar, “even if there are no refineries in Afghanistan. In addition to Afghanistan, other opium productions, although to a lesser extent, are in Mexico, South America and Bolivia” (DCSA expert). A new frontier of cannabis production is represented by Afghanistan. It seems that in this country the cannabis is being progressively superimposing itself on traditional crops of opium poppy. Europe is rather characterised by the production of ecstasy, which mainly takes place in the territories of the Netherlands, Belgium, Poland and the Baltics.

### **I.1.2 The substances**

The route taken by the drugs do not always meet the criteria of affordability and convenience, followed by those working in the legal markets. In addition to geographical distance or the orographic conformation of the territories to be traversed, the variables that come into play in the selection of one of many possible routes have affected over time, just to cite a few aspects, the collaboration between different criminal groups, the results achieved by prosecutors and detectives, the policies adopted by the countries of transit, etc. From the lands of South West America, therefore, cocaine is transferred to large consumer markets, towards Europe and the United States. According to the estimates of 2008 (DCSA, 2008 on UNODC data), the number of people who have made use of that substance in the world is between 15 and 19 million.

The annual report prepared by the U.N.O.D.C. on drugs (cited in DCSA , 2012, p. 10), contains a large number of references on the cocaine world production. Thanks to the time frame covered by these publications, it is possible to make an estimate of the change which is taking place. With regard to the extension of the cultivations, the DCSA, referring to the UNODC report, highlights the decline of about 5 percentage points of the areas

destined to the cultivation of cocaine: from 158,800 hectares in 2009, they passed to 149,200 in 2010, distributed for 41% in Peru, 38% in Colombia and 21% in Bolivia. Today, the changing economic conditions that have affected the markets involved have produced a new inversion of the trend that has seen a sudden rise of the areas devoted to the cultivation of coca in Peru and Bolivia: these are territories which in the meantime have also improved the techniques for the treatment of the raw material. Few or void, instead, the changes that have affected the main target markets of the substance. North America and Europe, the latter reached by the maritime connections, are the main destinations. The most common mode of transport towards Europe is the use of containers, primarily directed towards Antwerp or towards the harbours of West Africa.

As for the heroin, in a transversal way, most of the world markets, with the exception of Central-South America, buy opiates from Afghanistan. Recently, drug trafficking has been identified with China, a country that traditionally has satisfied its need thanks to the fed trafficking from the Golden Triangle, which includes the states of Myanmar, Laos, Thailand and Vietnam. "The factors that influence the choice of the various routes are manifold: the ethnic, linguistic or tribal ties, and the geographical opportunities. The common denominator is the "Ring Road", an arterial road designed in the 60s to connect the Afghan provinces with the smaller towns and on which transit consignments of opiates which reach the borders of Afghanistan. [...] The flows of opium and heroin are divided on two different levels: one on a large scale, covering large loads, and one operated by individual traffickers. The latter refers, generally, to be the one created by the so-called "barducks" (smugglers), who carry contraband between Iran and Afghanistan, carrying at the way there, medicines, kerosene and other material, and at the return heroin or opium" (DCSA, 2012, p. 21).

The report, quoted in the course of this section, estimates that the worldwide total volume of opium production during 2011 is around 7,000 tons. It is a datum of less than 2,000 tons when compared with the amount produced in 2009, but still on the rise if we compare the datum with the significant reduction that has characterised the year 2010. In this time frame, because of the damage of a parasite, that only in Afghanistan has caused the destruction of about half of the harvest, "only" 4,700 tons were produced. Afghanistan is confirmed in any way by far at the first place among the producing countries, holding more than 60% of the world's surface intended for this purpose. With reference to the countries in which the largest quantities of heroin were seized, worth mentioning are Turkey, China and Pakistan, and in particular Iran, which accounts for approximately 27 tons (more than 30% of all seizures of heroin carried out by the authorities).

Cannabis and its derivatives is today the most widely consumed drug worldwide. In particular, we distinguish marijuana, obtained by drying the female inflorescences of cannabis plants and hashish, extracted from the res-

inous components from the same plant. In the second case, the percentage of THC (tetrahydrocannabinol), the active ingredient which is intended to take, is far higher.

Given the dynamics related to the consumption, estimating the size of the flows related to trafficking in cannabinoids is not an easy task, also because often the cultivation of this plant is oriented to the satisfaction of local needs. It is sometimes cultivated areas of modest size for which only a capillary and continuous control of the territory may be useful. Among the countries most affected by the trafficking of such substances, particularly with regard to hashish, we identify certainly those that insist in the areas of the near and Middle East, South and West Asia. In areas such as the United States, instead, the operations of contrast showed a preference for marijuana. The North Africa and the Old Continent, however, do not show significant differences between the two forms of drug. In Europe, in recent years, in the face of a burgeoning market for the destination of Moroccan productions, there is an increase in the quantity produced locally, also thanks to the spread of knowledge about cultivation techniques. The difficulties with which we must confront in defining the amount of the total world production of cannabinoids inevitably affect also the identification of flows. “The outsourcing of the crops, indoor and outdoor, designed to satisfy often the demand from regional areas, does not allow in fact to fully delineate the movements of these drugs. It is possible, therefore, to examine and analyse only the most impressive transits, i.e. those originating from the major growing areas and destined to the large markets” (DCSA , 2012, p . 22). The European market meet their supply requirements applying to North Africa (especially Morocco), for what concerns the hashish. “Cannabis resin is exported mainly by sea, by means of small boats and very powerful speedboats that quickly crossing the Strait of Gibraltar or shorter stretches of the Mediterranean that connect the coasts of the two continents. The traditional routes, subsequently, through Spain, where local criminal and Moroccan groups manage drug trafficking, by storing large quantities and by tightening relationships with British, Italian, Dutch and Scandinavian organisations. The Netherlands is one of the leading importers of Moroccan hashish” (ibid.).

In a different way (and for reasons which, for many aspects, are not overlapping), with regard to the so-called traditional drugs, the task of determining the scope of drugs trafficking of synthetic type (amphetamine, methamphetamine and ecstasy) has a greater difficulty. The results of enforcement actions and achievements by the investigators return information that suggests an increase in the size of the North-American market. The DCSA mentions, in particular, in the face of a deflationary trend that has affected retail prices, a gradual increase in the consumption of ecstasy. Obviously, the available information depends on the amount seized; investigators are aware, therefore, of the critical issues arising from the fact that we are confronting with shadow economies and with participants whose purpose is precisely to

keep these trades hidden. At a global level, as it is possible to notice by looking at the picture that shows synthetically the main routes used by smugglers, the flows of methamphetamine seem to show a similar trend to that of cocaine with regard to the African continent. In particular, an essential intersection seems that between West Africa and South Africa. The relative capillary distribution of such substances, the form taken by them and the ease with which it is now possible to obtain such drugs are just some of the factors that can lead to misperceptions about their dangers. If we add that these drugs are not affected by natural production cycles and risks affecting the crops, the reasons for their increasing use appear to be less blurry: such productions are not anchored to specific geographical contexts (DCSA, 2008). In the presence of strong enforcement actions and effective repressive ones able to reveal the existence of laboratories for the production, these sites lend themselves to a sudden conversion and to be immediately moved to other territories. Furthermore, the developments in information technology and network have played a favourable role, especially with reference to the finding of the precursors useful for the production of these substances. The presence of different chemical compounds and in some cases subject to less control by the bodies, constitutes in fact another of the elements that increase the difficulty in the determination of the real volumes associated with this type of trafficking, even if the sources used agree that criminal organisations, just thanks to the massive availability of funds, seem more interested in the development of new products for which using precursors capable of giving rise to continuous changes in the flows.

### **I.1.3 The criminal organisations**

Drug trafficking is an illegal activity that, given the size of the problem and the importance of the interests of the parties involved, is carried out almost exclusively by criminal organisations. If the drug trafficking and retail can also involve individuals, the import of large quantities of drugs involves the interest of criminal groups variously structured.

First, in this regard, it is possible to distinguish criminal organisations into two groups: those found in the producing or transit countries, and those which are active in the Western countries, the final destination of drug loads. In general, compared to the first group, it is possible to find at work almost exclusively indigenous groups, such as Mexican or Colombian cartels, or Nigerian organisations, or even those Pakistani and Taliban. For example, with respect to the process of drug poli-traffic, mentioned above, among the most committed organisations we can identify groups of Nigerian origin, now more than ever regardless trafficking in cocaine, heroin and/or synthetic drugs. These organisations do not operate merely as retailers, but rather as real global distributors, being able to take advantage of the geographical location of the African continent. In the above, as regards the various segments of the supply chain of drug trafficking, as evidenced by some of the respondents, “there are rare cases in which the same organisation manages the entire sup-



ply chain, both production, refining, transportation and so on.” (Police Operator, Anti-drug). Compared to the second group, however, in addition to local criminal organisations, it is possible to identify groups, often foreign, specialised in the import and sale of narcotics.

Drug trafficking has always been one of the most important illegal activities of organised crime. Despite the severity of the penalties, applicable in the domestic and international environment, the involvement in the drug market is an essential opportunity for the leaders of criminal groups. The drug business is in fact one of the quicker and profitable channels of enrichment.

A key aspect of the drug trade is the creation of criminal networks. Considering the scale of the phenomenon and the same distance between producer countries and consumer countries, even the most modest drug business cannot be achieved by a single criminal organisation. We define, instead, a series of transactions more or less stable and continuous between criminal groups of different origin and dimension. These relationships may be of various types. They range from mere financial transactions drug in exchange for money to the establishment of genuine partnerships between criminal groups. The research action conducted by the working group highlighted at different times that the relationships between criminal organisations undergo changes and agreements relating to the management of contingencies. We should also take into account the area of jurisdiction of the criminal organisations. It must, in particular, highlight the impromptu nature of some alliances between different criminal groups and the absence of a unique *modus operandi* which performs the function of model which to apply to the control of illicit trafficking. “Even for the routes, there is not a single model” (Carabinieri expert).

Regarding the involvement of criminal organisations in drug trafficking in Italy, after an initial phase with the hegemony of Sicilian organised crime during the seventies and eighties, in later years the leading role was taken by the groups from Calabria and those from Campania. The ‘Ndrangheta and the Camorra, perhaps hidden in the shadow cone which was formed because of the shift of the attention of the public opinion on the Sicilian Mafia, have consolidated their own interests and extended the business in many regions of Central and Northern Italy. Illegal activities are handled primarily by the Calabrian ‘Ndrangheta, a privileged interlocutor of the Colombian organisations. In the 2000s when the most important Colombian cartels were beheaded, the interlocutors for cocaine trafficking became narcoterrorist organisations and paramilitary groups such as Autodefensas Unidas de Colombia and the Farc, “with which Calabrian traffickers were able to relate at higher levels, establishing relationships of trust that today are still cultivated with success” (expert, Arma dei Carabinieri, DCSA).

The ‘Ndrangheta has been inserted in 2008 by the U.S. government in the “black list” (*Foreign Narcotics Kingpin Designation Act*) of the main foreign organisations involved in drug trafficking. The international institutions, together with the results of investigative and intelligence activities, are

unanimous in considering the Calabrian organised crime as one of the most important organisations in the global trafficking of cocaine. In Italy, the Calabrian clans have been able to exploit the huge passage represented by the port of Gioia Tauro, turned into a strategic hub for the introduction of loads of cocaine into Europe. The 'Ndrangheta has exploited his position of leadership also to intensify its direct contacts with Central and South American drug traffickers, the foreign criminal gangs that are present in the peninsula and the largest Italian Mafia organisations.

With regard to the groups from Campania, instead, the anti-Mafia operations showed a strong involvement of Camorra clans. These groups also have self-supply channels and their own referents located in producing countries, in transit countries (in Spain and in the countries of Eastern Europe and of drug storage.) As the 'Ndrangheta, the Camorra from Campania has always used for the introduction of large quantities of cocaine and hashish the international maritime connections of the two major ports of Naples and Salerno. Finally, the Neapolitan market is still today one of the leading places for the sale of narcotics.

With regard to the current involvement of the Sicilian gangs in drug trafficking, "we can say that we live in a time of historic recourse. In the past, Cosa Nostra ran first hand drug trafficking, in particular USA-Sicily axis. With the harsher punishments for crimes related to drug trafficking [...], Cosa Nostra outsourced to cliques the trafficking management at the international level, so that other criminal groups were appointed to deal with the import of huge loads of drugs on the Italian territory. The Camorra, the Sacra Corona Unita and the 'Ndrangheta organised the imports and then sorted them also to Cosa Nostra members, who provided to place them locally; all this since mid-90s until 2009/2010. Today the reporting and judicial analysis compels us to reform this judgment: we notice that the Cosa Nostra, which has stringent liquidity needs, realised that managing drug trafficking from outside implied profit losses. Therefore, Sicilians are trying to come back again to deal directly and personally drug trafficking with foreign countries" (magistrate, Palermo Court): "The last operation of the judicial police, that led to the arrest of leading members of Porta Nuova district (Alexander operation), allowed to bring back this investigative assumption to the fore" (magistrate, Palermo Court). The Sicilian Mafia is, in other words, trying to regain a leading role in the international drug trafficking. However, at present, Mafia clans are of a subordinate position in the national setting. The supply of drugs is carried out mainly through contacts with other Mafia organisations, the ones from Calabria or the ones from Campania, while the sale affects almost exclusively the regional local market.

With regard to the involvement of foreign criminality on the domestic territory, it must be said that "today, Balkans are becoming increasingly important". On the basis of extensive experience in drug trafficking, "the Serb Montenegrin import large quantities of cocaine for the Italian criminal

organisations, in particular the ‘Ndrangheta” (see LOPTICE operation, the 2010 squad of Milan). Even the Bulgarians and Romanians are very active in drug trafficking, following the entry into EU (DCSA): “When it comes to large quantities, there is always a person of the foreign organisation who comes to check the delivery” (Police operator). Many surveys have also revealed the presence of colonies of Albanians who run the heroine in the Northern part of Italy, and the presence of Nigerians groups mainly in Campania. At the same time, “the economy of the Southern part of Italy increases the importance of the so-called green gold, cannabis plantations” (expert, Arma dei Carabinieri, DCSA), to which is added the discovery of numerous chemical laboratories for synthetic drugs.

If we consider the training needs, for an effective fight action, we must begin with “the analysis of the upstream flow of drug production and then of the different import channels for individual national territories. Moreover, we need knowledge of the criminal structures located upstream as well as of the local areas where the drug is imported” (judge, Palermo Court). The training needs are related to the “analysis of the production flow and to the knowledge of the downstream local territory” (judge, Palermo Court). It highlights in particular the in-depth analysis of the following aspects: in-depth analysis of the dynamics of drug trafficking on the Italian territory; identification of the main entrance passages of the drug; Nationwide Police operations reports that have achieved significant results both with respect to the activity of fight against criminal groups, and with respect to innovative investigative strategies adopted. The main criminal groups involved in drug trafficking; the different strategies adopted by criminal groups, the involvement of the Mafia organisations in drug trafficking: Cosa Nostra, ‘Ndrangheta, Camorra; the different strategies of criminal groups (in particular, the ‘Ndrangheta today seems to be the organisation that has a greater power of internationalisation of its interest); the foreign criminal groups, with some case studies (e.g. Serbian organised crime, Albanian organised crime, the Mexican cartels etc.); the measures to seize capitals and illegally produced assets of criminal organisations.

#### **I.1.4 The educational needs**

With regard to the educational needs that emerged during the interviews with the operators of law enforcement agencies, we can mention a number of subjects for in-depth analysis during the educational activities. It seems important to deepen the knowledge of the international scenarios and more specifically: the situation of drug production; the drug trafficking flows distinguished on the basis of the substances but also on the basis of criminal groups and so on; the strategic-forecast analysis and the international risk factors (such as a political crisis or a war going on ...), and the identification of sensitive junctions and the major transit routes used by drug traffickers.

Strategic analysis, which requires the knowledge of global dynamics of the drug trade, is essential, in order to produce predictive assertions about

the phenomenon under study and implement strategies that give rise to feasible actions, whose results can be evaluated at certain times. As far as the domestic scenario is concerned, however, we must stress the need for a constant and capillary monitoring and analysis of the main entrance passages. In this respect, there are in fact substantial differences emerged on the territorial plan based on the type of substance that passes. As an example, consider that “cocaine and hashish comes from the North West passage, through the Ligurian ports, of Civitavecchia and Naples” (expert DCSA); the heroin, however, arrived in Italy from the Eastern side, through the ports of Apulia. In this scenario, it seems that the groups that work in the territory of Apulia deliver a service to other organisations, committed to the way out for heroin.

Another important educational need should be considered with regard to the growing size of the international legislation. This is obviously an issue of fundamental importance for those involved in the fight against drug trafficking. The issue of international relations is addressed in some courses for heads of anti-drug units, but not in a systematic way. It would be desirable to invest more resources, assuming a constant path, in a series of activities involving the dissemination of knowledge about aspects such as: the knowledge of the conventions with different organisations and, more generally, of the international law, as well as the issues relating to regional cooperation platforms for the prevention of illicit drug trafficking by sea and available powers.

A relevant point is the fight against drug trafficking by sea, through the study of regulatory and operational techniques. In this regard, authorities of international importance may also be involved (e.g. taking into account the application profiles to art. 17 of the Vienna Convention of 1988 on the fight against drug trafficking by sea). International law must be treated alongside with national legislation in the field of drug trafficking. It would be desirable to provide periodical refresher courses, targeted, however, at individuals who have different skills, on topics such as the recent changes in case law, the criminal trial structure, the role of the prosecutors and the role of the defence attorneys.

Another related issue concerns the need to devote greater attention to the regulations of foreign countries, in particular those producing drugs, as well as to operating procedures in the fight against the drug trafficking applied by other countries. Given the dynamics of the phenomenon of drug trafficking, given the multiplicity of participants involved and on the basis of the international nature of illegal trafficking, one of the crucial concerns is the knowledge of the legal provisions on drugs that are applied in those countries with which we confront ourselves with a greater frequency. In this regard, it is very interesting to create specific ad hoc insights on individual foreign countries. It has repeatedly been underlined the need, given the characteristics of the audience to which the educational activities are targeted, to make constant reference to real case studies, emphasising the operational modalities and the investigative dynamics that led to the seizure of drugs in large amount and the

subsequent conviction of those involved. With reference to this point, it seems useful to recall that several respondents emphasised the need to involve technical experts in the field, foreign when possible. Such experts should be able to report their experiences, particularly the international ones, in the face of the inevitable problematic factors which they were called to deal upon, so to summarise the strategies followed for the solution of the problems. We found a certain interest in the experiences of foreign police forces, which could give rise to moments of exchange and comparison.

Among other educational needs emerged, the coordination of anti-drug operations deserves to be mentioned. Although not always explicitly addressed, the topic of the dissemination of information and the trust between the various law enforcement agencies apparently has its own importance. In the presence of long-term investigations, designed to intercept large quantities of drugs, and in the presence of strategies based on environmental interceptions, it may happen that the choices made by the parties engaged in the fight against illicit activities, in the absence of the necessary coordination, negatively affect the success of the operation and produce the waste of substantial resources.

The theme of the construction of the evidence has been mentioned repeatedly during the interviews. Interceptions, whereas they contain specific references to entities and facts, play a central role in prosecution. But also the observation of the flagrancy of the crime is crucial, after having obtained relevant information thanks to telephone and environmental interceptions. Then, there is the issue of techniques and investigative experiences. Many respondents highlighted the need to investigate aspects relating to investigation techniques: “we should be trained on material aspects, investigation techniques maybe taking the example of other States, what other States do, the excellences that are around the world” (Police operator, Anti-Drug services). It is therefore necessary to “make a cultural, technical, operational and logistics interchange, of what the other countries do, in order to better highlight their modes of operation and the instruments used” (Police operator, Anti-drug services). The educational needs in relation to investigative techniques and experiences are related to: the use of special technical means in the investigative activities, the modalities of intervention in the event of discovery of clandestine laboratories or plantations of drugs, the methods of concealment of drugs; the remote sensing of illicit crops; the recent legislative innovations in the field of undercover investigations; the techniques of infiltration and the relations with the surveillance team, the psychological aspects related to the stress which undergoes an undercover agent with exercises; the illustration of undercover operations and practical examples, the critical issues related to the infiltration in organised crime and mafia-type criminal organisations; the undercover activities abroad and the problems related to them.

Another aspect emphasised by our interlocutors is that of the so-called precursors and synthetic substances. The precursors are specific chem-

icals that can be acquired on the lawful market, necessary for the production of narcotic drugs and psychotropic substances. The law entrusts to the Ministry of Health the provision of appropriate decrees containing the substances subject to authorisation scheme. This is a particularly relevant topic related to the methods and techniques of recognition for the identification of new drugs - the so-called *smart drugs*.

Then, it is necessary to list a series of training needs that include: the improvement of language skills, especially English and the ones of the main producing countries (such as French for Morocco and Spanish for the South American countries), and the improvement of computer skills, learning new technologies. There is a special need for a constant adjustment of the technology available to law enforcement agencies, also following the use of communication tools that require greater specialisation (Skype, social networks of various kinds, etc.), also in the analysis of the methods of money laundering. Other training activities would be directed to the profiles of consumers.

Finally, there can be an interest in the presentation of innovative techniques borrowed from the social sciences, such as Social Network Analysis (SNA), Analysis of Textual Data (ADT), the Agent-based Simulation and the Georeferencing (GIS). The SNA is useful to support investigation activities, for example through the reconstruction of relational network of drug trafficking. The ADT can be used in a profitable way, for example in the analysis of the interceptions, whose size often requires the use of resources in quantities that go beyond the capacities of the apparatus of fight. The agent-based simulation can be used for the reconstruction of the trafficking and the development of evolutionary scenarios of the phenomenon at different levels. The Georeferencing, finally, presents enormous potential for use, considering the possibility of identifying the so-called hot spots or areas with the highest concentration of illegal activities.

## **I.2 SPAIN Training needs in the fight against illegal international drug trafficking: the Spanish case**

**Fernando Pérez Álvarez\* - Lina Mariola Díaz Cortés\*\***

### **I.2.1 Introduction**

The fight against illegal drug trafficking is an issue that appears to trigger unanimous commitment across nations. The reason for this is, among other reasons, its close ties with organised crime and, therefore, the creation of a criminal web that, among other things, comprises not only human lives, but also the very stability of national economies.

Although we consider the criminal policy pursued in this matter to be one of the clearest examples of failure in the fight against crime, and which undoubtedly highlights the need to review the international response, the role of researchers linked to Salamanca University in this project has been framed within an educational context.

Indeed, we are aware of the fact that although the University is an arena for discussing criminal politics, our role is to provide rigorous and open education. Accordingly, Salamanca University, through THE SECURITY SCIENCES PROJECT (CISE) has been involved in the project called ILLEGAL FLOW OBSERVATION (IFO), with the aim in this case being to design and develop a much needed training programme for judges and public prosecutors, as well as for the members of the National Police Force and Civil Guard involved in combating international drug trafficking.

The work of the previous CISE led to the development of a working methodology involving two key activities: a research stage to identify training needs, which provided the foundations for the second stage in which a training scheme was designed and implemented for those officials involved in this struggle.

From the project’s very outset, we were mindful of the fact that the involvement of judges and public prosecutors along with members of the National Police Force and Civil Guard was essential for the scheme’s consistency, whereby their participation is essential for enabling the research team to undertake the project. This section will be devoted solely to describing the research.

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### **I.2.2 Research stage: a quantitative and qualitative approach**

The initial step focused on identifying the problems that illicit drug trafficking poses for society today and on Spain's specific circumstances according to those collectives involved in providing responses in terms of preventing and controlling this international trade. Based on this remit, the work team has developed four specific phases for the quantitative and qualitative research, involving the administering of 37 self-completion questionnaires, four in-depth interviews and two focus groups.

We shall now provide a brief overview of the key features of this first phase:

**Phase I Designing the questionnaire: March-April 2013.** The team, through several meetings, redrafted and extended the questionnaire for each one of the categories, redesigning the Italian model. Accordingly, the questionnaires were divided into several sections, considering that each one of them described an aspect to be evaluated with a view to informing the training needs. Table 1 explains the various sections, their content and each one's overriding goals, in the development of a thread linked to the training needs of the players involved within the sphere of illicit drug trafficking.

**Phase II Administering the questionnaire: May 2013.** Once the questionnaire had been finalised, the next step involved its distribution among the members of the team linked to the Judiciary, the Civil Guard and the National Police Force, selecting those recipients according to their professional profile and, predominantly, in positions of management or coordination and their deployment in geographical areas that are especially troubled by this struggle.

A total of 37 questionnaires were administered to members of the Civil Guard and National Police Force and 10 questionnaires to Magistrates, whose composition is specified in Table 2.

**Phase III In-depth interviews: June 2013.** Once the questionnaires had been returned, and depending on the answers, the profiles of four officials were selected whose specific duties could shed light on key aspects regarding training needs, with three of them being linked to the Civil Guard and National Police Force and one corresponding to a Judge (Table 3).

**Phase IV Focus Groups: July 2013.** As the outcome of an analysis of the questionnaires and interviews, a working script was drafted for the development of the focus groups. Two work groups were formed, with the first made up of six members of the Civil Guard and National Police Force and the second of a mixed group also of six members: four from the Civil Guard and National Police Force, one Public Prosecutor and one Examining Magistrate (Table 4).

In general, the dynamics used led us to a core methodology based on interaction with the training scheme's target collective. Indeed, listening to their views within their own institutions and as regards the other institutions involved in the fight against drug trafficking provided support for the design and development of the training scheme.

The members of the research team in Salamanca took part in and observed the development of the various discussion groups.

**TABLE 1. OUTLINE OF THE QUESTIONNAIRE**

|   | <b>Content</b>  | <b>Goals</b>  |
|---|---|---|
| <b>1. Basic data</b>  | Provenance, professional profile, and prior academic and training background in the field of illicit drug trafficking.  | •Define the basic profile of the person interviewed   |
| <b>2. Assessment, evaluation of the person's prior instruction and training needs</b> | 2.1 Assessment, description and evaluation of the training received as regards illicit drug trafficking.                | <ul style="list-style-type: none"> <li>•Analyse the origin of the training in order to determine the entities involved and whether the institution itself has been committed to it.</li> <li>•Determine whether the training has considered the transnational nature of illicit drug trafficking.</li> </ul>  |
|   | 2.2. Evaluation of training needs.  | <ul style="list-style-type: none"> <li>•Determine training needs according to the development of the activity, and to the perception of the difficulties and priorities in training that have been identified both in the person's own collective and in others.</li> <li>•Description of successful cases and evaluation of the influence training has on outcomes.</li> </ul> |
|   | 2.3. Evaluation of the relations with other forces or institutions collaborating in the fight against drug trafficking. | <ul style="list-style-type: none"> <li>Description of possible training differences with officials from other national and foreign institutions.</li> <li>•Evaluation of the level of difficulties.</li> </ul>  |

**TABLE 1. OUTLINE OF THE QUESTIONNAIRE**

|   | <b>Content</b>                                  | <b>Goals</b>  |
|---|---|---|
| <b>3. Guide-lines on the content to be developed within the training plan</b> | Para Guardia Civil y Cuerpo Nacional de Policía | <ul style="list-style-type: none"> <li>•Specification of training needs according to the different types of drugs.</li> <li>•Perception of the current state of the fight against drug trafficking.</li> </ul>  |
|   | Para Fiscales y Jueces                          | <ul style="list-style-type: none"> <li>•Identification of difficulties at several points linked to the absence – shortfall in the regulation of subject areas, e.g., the need for legislation related to the gathering of evidence within the scope of the EU, the regulation of drug seizures on the high seas, the role of tax havens, the efficacy of the legislation that regulates the collaboration of financial institutions in the persecution of these crimes, the legal distinction of the penalty of imprisonment in the iter criminis, the planning of a crime, (preparatory acts, methods of attempt...) in illicit drug trafficking, etc</li> </ul> |
| <b>4. Guide-lines on the design of the training</b>                           |   | Identify the appropriate guidelines regarding thematic priorities regarding format, nature, timetables, recipients, quality of training staff, etc.   |

**TABLE 2. PHASE I DESIGNING THE QUESTIONNAIRE MAY - JULY 2013**

| <b>Universe</b>  | <b>Sam-<br/>ple</b> | <b>Composition</b>  |
|--|---------------------|---|
| Mandos y agentes de la Guardia Civil y del Cuerpo Nacional de Policía. | 37 entrevistas      | <p>•Inspector Jefe Policía Judicial de Ciudad Real •Inspector del Grupo de Estupefacientes de Ciudad Real •Inspector Jefe de la Sección de Estupefacientes de Santander •Teniente Jefe de Equipo Crimen Organizado de Málaga •Teniente de la Policía Judicial de Cádiz •Alferez de la Policía Judicial de Valencia •Capitán Jefe de Unidad de Tarragona •Teniente Coronel Director del Departamento de Análisis Criminal de Madrid •Teniente de la Policía Judicial de Madrid •Teniente Jefe de Equipo de Alicante •Oficial de la Guardia Civil de Madrid •Oficial de la Policía Judicial de Huelva •Teniente del Área de Delincuencia Organizada Antidroga de Tarragona •Policía investigador de La Coruña •Inspector de Policía Judicial de La Coruña •Subinspector de investigación de tráfico de drogas a escala de La Coruña •Inspector Jefe de Policía Judicial de Valladolid •Comisario Jefe de Brigada de Policía Judicial de Valladolid •Policía del Grupo de Estupefacientes de la Policía Judicial de Burgos •Policía de la Policía Judicial de Miranda de Ebro •Comisario Jefe Policía Judicial de Cantabria •Inspector UDYCO de Valladolid •Inspector Jefe Estupefacientes de Pontevedra •Inspector Policía Judicial de Santander •Oficial de Policía Grupo de Estupefacientes de Cantabria •Inspector Jefe Agregado del Ministerio de Interior en la Embajada de Guinea Bissau •Inspector Jefe de Policía Judicial de Toledo •Inspector Jefe de Policía Judicial de Cantabria •Inspector Jefe de Policía Judicial de Cantabria •Inspector Jefe Profesor de Investigación en la Academia de Policía de Ávila •Inspector Jefe Profesor en la Academia de Policía de Ávila •Inspector Jefe Área de Gestión de la Academia de Policía de Ávila •Inspector Jefe del Grupo de Estupefacientes de Toledo •Inspector Jefe Brigada de Policía Judicial de Burgos •Inspector Jefe UDYCO Estupefacientes de Barcelona •Inspector Profesor en la Academia de Policía de Ávila •Policía de la Brigada de Policía Judicial de Burgos.</p> |
| Magistrates, Judges and Prosecutors                                    | 10 interviews       | <p>•Magistrado de lo Penal, Consejo General del Poder Judicial, Valencia •Magistrado de lo Penal, Audiencia Provincial, Madrid •Magistrado, Audiencia Nacional, Sala de lo Penal, Madrid •Magistrado de lo Penal, Audiencia Provincial, Madrid •Magistrado de lo Penal, Juzgado de Instrucción, Madrid •Magistrado, Audiencia Nacional, Sala de lo Penal, Madrid •Fiscal, Área de Penal y Contencioso-Administrativo, Salamanca •Magistrado, Audiencia Nacional, Juzgado de instrucción nº 4, Madrid •Magistrado, Tribunal Supremo, Sala de lo Penal, Madrid •Magistrada, Audiencia Provincial, Barcelona •Magistrado, Juzgado de instrucción, Salamanca.</p>   |

| <b>TABLE 3. PHASE II IN-DEPTH INTERVIEWS: JUNE 2013</b>               |               |   |
|---|---------------|---|
| <b>Universe</b>   | <b>Sample</b> | <b>Composition</b>  |
| Commanders and officers of the Civil Guard and National Police Force. | 3 interviews  | <ul style="list-style-type: none"> <li>•Inspector de MNP de la Policía Judicial-UDYCO-Estupefacientes de Valladolid</li> <li>•Teniente Coronel Director del Departamento de Análisis Criminal de la Guardia Civil de Madrid</li> <li>•Inspector de CNP Jefe del Grupo de Estupefacientes de Toledo</li> </ul> |
| Magistrates, Judges and Prosecutors                                   | 1 interview   | •Juez de Instrucción de los Tribunales de Salamanca   |

| <b>TABLE 4 FOCUS GROUPS: JULY 2013</b>   |                |  |
|--|----------------|--|
| <b>Universe</b>  | <b>Sample</b>  | <b>Composition</b>   |
| 1. Focus group of the Civil Guard and National Police Force  | 6 participants | <ul style="list-style-type: none"> <li>•Teniente Jefe de estupefacientes de Guardia Civil de Alicante</li> <li>•Jefe de Estupefacientes de Guardia Civil de Valencia</li> <li>•Teniente Jefe de estupefacientes de Guardia Civil de Barcelona</li> <li>•Inspector Jefe Constantino García, Escuela Nacional de Policía</li> <li>•Inspector Jefe de la unidad de estupefacientes de Santander</li> <li>•Inspector Jefe de la unidad de estupefacientes de Toledo</li> </ul> |
| 2. Mixed focus group of commanders of the Civil Guard, the National Police Force and Magistrates, Judges and Prosecutors | 6 participants | <ul style="list-style-type: none"> <li>•Teniente Coronel Guardia Civil</li> <li>•Guardia Civil</li> <li>•Comisario CNP de Cáceres</li> <li>•Comisario de Valladolid</li> <li>• Juez Instrucción Salamanca</li> <li>• Fiscal Salamanca</li> </ul>   |

### I.2.3 Results linked to the orientation of the content to be developed within the training plan.

The results obtained in the phases described above were used to single out the main areas affected by a shortfall in training, which although different were very close to each other in the various collectives.

Tables 5 and 6 describe the specific needs linked to the different spheres of Judges and Public Prosecutors and members of the National Police Force and Civil Guard, based largely on six lines of instruction: aspects of European and Spanish legislation on illicit drug trafficking, aspects of European and Spanish legislation on transnational organised crime, money laundering and the investigation of wealth in drug trafficking, dynamics and legislation in matters of informants, and methods and means in operational investigation, technical-legal issues in gathering and validating evidence in both Spain and Europe and judicial cooperation, as well as cooperation between national and international police forces.

| <b>Table 5. Training needs identified by Judges and Public Prosecutors</b> |   |
|--|---|
| <b>Scope</b>   | <b>Specific needs</b>   |
| International legal cooperation  | Greater understanding of the following: <ul style="list-style-type: none"> <li>•Jurisprudence of the ECHR and the European Court of Justice.</li> <li>•International treaties on the matter.</li> <li>•Comparative doctrine.</li> <li>•Mechanisms and systems of European countries.</li> </ul>                             |
| Investigative techniques and valuation of evidence                         | Greater understanding of the following: <ul style="list-style-type: none"> <li>•Expert evidence and the proof arising from new technologies.</li> <li>•Best and worst practices in the drafting of expert reports, chain of custody, etc.</li> <li>•Latest jurisprudence on the gathering of evidence.</li> </ul>           |
| Money laundering   | Greater understanding of the following: <ul style="list-style-type: none"> <li>•Training in tax and accounting matters.</li> <li>•Techniques for concealing and laundering money.</li> </ul>  |
| Organised crime and cross-border lawbreaking                               | Understanding of the following: <ul style="list-style-type: none"> <li>•Sociology and criminology of the drug trade, toxic drugs, narcotics and psychoactive substances. •Dependence and crime associated with each one of them.</li> <li>•Internal organisation and trends in organised crime in the drug trade</li> </ul> |

**Table 6. Training needs identified by the Civil Guard and National Police Force**

| Scope   | Specific needs  |
|---|---|
| International co-operation  | <ul style="list-style-type: none"> <li>• For many of those interviewed, police cooperation is one of the most unfamiliar aspects: the drafting of letters rogatory, data-sharing with other countries, and the nature of the specific legislation in these countries on investigations and its limitations. In general, legal, operational and procedural matters.</li> </ul>   |
| Money laundering and the investigation of personal wealth in drug trafficking | <ul style="list-style-type: none"> <li>• The vast majority of those interviewed consider they do not have the proper knowledge and tools for successfully conducting investigations into drug trafficking, as this aspect of the investigation into the personal wealth involving the assets obtained from the drug trade tends to be left to one side, due to a lack of both time and resources and, above all, because it is an unfamiliar field.</li> </ul>  |
| Analysis of information: intelligence   | <ul style="list-style-type: none"> <li>• A serious lack of knowledge is detected regarding the procedure for the processing and analysis of large amounts of data and, in some cases, the overall aim seems to be to incorporate new methods of analysis that are more effective or improve the results obtained from the data gathered.</li> <li>• Difficulties in making sense of the data and their proper interpretation by the legal authorities, especially when gathering evidence.</li> </ul> |
| Investigative operating methods and means.                                    | <ul style="list-style-type: none"> <li>• Greater specialisation in surveillance and monitoring protocols.</li> <li>• Greater understanding of telephone monitoring software (called SITEL in Spain), as well as the need for a refresher course in the new technological tools used by drug traffickers (foreign operators, WhatsApp, social networks, etc.).</li> <li>• Regulations applicable to the validation of evidence.</li> </ul>   |
| Methods for recruiting sources  | <ul style="list-style-type: none"> <li>•• The recruitment of informants is also singled out as a training need, above all when gathering evidence, when no further progress can be made and no procedures have been authorised by the court.</li> </ul>   |



**Table 6. Training needs identified by the Civil Guard and National Police Force**

| Scope  | Specific needs  |
|--|---|
| Legislation applicable and reasoning when gathering evidence | <ul style="list-style-type: none"> <li>•Given the idiosyncrasies of Spain’s procedural system, officers often have to deal with what in their opinion are inexplicable refusals by judges to authorise phone tapping, or the rejection of procedures due to errors made when gathering evidence. It would be extremely useful to have a course that focuses on the applicable legislation and, above all, on practical cases in which these shortcomings have occurred, as a way of “learning” for the operational development of evidence gathering.</li> <li>•A relevant feature of this matter is related to the submission of intelligence information to the court hearings: the structuring of the information gathered, its presentation as per the prescriptive terms, and the reasoning that gives operational and legal meaning to the procedure involved in the request for court orders for acting upon and curtailing fundamental rights.</li> </ul> |
| Management and administration of work teams                  | <ul style="list-style-type: none"> <li>•The limitation on the human and material resources available to drug squads means that one of the needs identified by commanders is related to the analysis of priorities and the management of both time and resources, a task that has to be faced without any specific training in the techniques of team management, motivation and leadership.</li> </ul>  |

### **I.2.4 Other results**

The following are other essential results for the design of the training scheme: Results linked to the prior assessment and evaluation and training needs:

1. 60% of the officers interviewed referred to training as one of the variables posing the greatest difficulty in the pursuit of their duties.
2. This figure contrasts with the majority view they hold regarding their training, which they consider to be adequate or more than adequate.
3. General training: when officers first join the drug squads of the National Police Force or Civil Guard, they tend to start with a very general understanding of the subject, increasing their knowledge as a result of everyday experience and from the information their colleagues provide them.
4. In keeping with the above, training needs are to be understood as specialisation requirements. The shortcomings in training they detect refer to very specific aspects of their activity, those that in their opinion call for greater specialisation or refreshment of their knowledge in order to conduct their investigations more efficiently.
5. It is also true that they single out areas or aspects of the investigations that in their opinion call for more thorough and comprehensive training as they are not familiar with them.

6. They all admit to having limited knowledge of the tools linked to the fight against drug trafficking at international level.
7. The need for recycling courses: for refreshing knowledge, for example, in matters of new developments in jurisprudence.

Results linked to the design of training:

1. The training should be designed to encourage the pooling of experiences and foster dialogue among the players involved in investigations and the legal operators (judges, prosecutors) rather than involve teaching courses.
2. Consistent with the above, there is a need for training courses based on group discussion methods: the majority agree that instead of lectures delivered by experts in the subject, the best approach is to learn through discussion groups.

Besides the above details linked to the training, proposals were put forward on other matters outside it by members of the Civil Guard and National Police Force:

1. The shortfall in human and financial resources.
2. Current legislation is deemed to be overly protective, which hinders the conducting of investigations. In the opinion of the members of the Civil Guard and National Police Force, this is not the case with legislation of a comparative nature in other EU countries.
3. Need for dedicated courts.
4. Need for a precise regulation regarding informants and undercover officers, as the law as it stands restricts the actions of officials.
5. Absence of salary incentives. Officers in the National Police Force and Civil Guard linked to the fight against illicit drug trafficking have a very large work load, which is not rewarded in terms of their salaries, so they tend to switch groups on a relatively frequent basis. This means that after they have been trained, it is quite normal for them to ask to be transferred to another group.
6. The activity focuses on the fight against illicit drug trafficking nationwide. This implies that the fight focuses on small-time traffickers, driven by the demand for results at regional level, without tackling the huge organisations operating internationally. This means the criminal activity will simply carry on, with no change to the impunity of the major organisations.

### **I.2.5 Research team and course organisation group:**

#### **Research team**

- Prof. Fernando Pérez Álvarez. Profesor Titular Derecho Penal Universidad de Salamanca.
- Prof. Laura Zúñiga Rodríguez. Profesor Titular Derecho Penal Universidad de Salamanca.
- Prof. Cristina Méndez Rodríguez. Profesora Titular Derecho Penal Universidad de Salamanca.

- Prof. Gregorio Álvarez Álvarez. Magistrado-*Juez* de Instrucción de *Salamanca*, Profesor Asociado. Derecho Penal.
- Mr. Miguel Botello García. Teniente de la Unidad Técnica de Policía Judicial Grupo de Drogas de la Guardia Civil.
- Mr. Manuel Javier Peña Echeverría. Comisario Jefe Superior de Policía Nacional de Cantabria.
- Mr. Gustavo Fernández-Balbuena González. Subinspector. Profesor titular del departamento de Internacional del Centro de Altos Estudios del Cuerpo Nacional de Policía.
- Prof. José Arostegui Moreno. Profesor investigador CISE.
- Prof. Lina Mariola Díaz Cortés. Profesora investigadora CISE.
- Prof. Ana Isabel García Alfaraz. Profesora investigadora CISE.
- Prof. Alicia González Monje. Profesora Asociada Universidad de Salamanca. Juez Sustituta.

### **Course organising working party**

- Mr. Julio Ballesteros Sánchez. Máster en Derecho Penal y Doctorando en el programa Estado de Derecho y Gobernanza Global. Universidad de Salamanca
- Dña. Coral Hernando Ballesteros. Criminóloga Universidad de Salamanca
- Mr. Julio César Morales Cauti. Máster en Derecho Penal y Doctorando en el programa Estado de Derecho y Gobernanza Global. Universidad de Salamanca.

The working party then went on to hold a 40-hour course attended by delegates from the public service agencies involved in the international fight against drug trafficking.

The coordination with the Italian group provided the project’s own specific synergies; although still pending is a comparison of the surveys and focus groups with that team in order to reinforce the international dimension and a possible test protocol for collaboration between the countries to cater for those common aspects of concern to the agents in both countries.

## **PART II - THE TRAINING**

## II.1 ITALY

### II.1.1 The geography of illegal trafficking

**Giuseppe Panzarella \***

#### **The production and routes of cocaine**

South America - particularly Peru, Bolivia and Colombia - is the world's largest producer of **cocaine**. The potential production of 2011, referred to these countries has been estimated at about 800 tonnes overall. On average, from 500 kg of coca leaves it is possible to get 1 kg of cocaine, which will then be “cut” with other substances to reach 4/5 kg on consumer markets.

With regard to the international routes of cocaine, in recent decades there has been a decline in the flow to North America and a doubling of that to Europe, where consumer markets has increased and trafficking is more profitable (1 kg of cocaine wholesale - that in the areas of production costs about \$ 1,500 - in USA, it costs about \$ 27,000, while in Europe ranges from about \$ 32,000 in Luxembourg and to about \$ 77,000 in Britain, and in Italy it is worth between 33,000 and 45,000 EUR). In particular, with regard to:

- The American continent: there has been a gradual increase in the importance of the so-called isthmus route (to the U.S. via Mexico) and Mexican organisations, which are now among the “cartels” of the most important and dangerous international drug traffickers;
- The African continent: the drug traffickers have, in recent times, used West Africa as a strategic region for the transit and storage of cocaine coming from South America. In particular, from 2005 to 2009, there were made numerous and significant seizures, therein. The routes with African *step* (e.g. the so-called route of the Sahel through Mauritania, Mali, Niger, Chad, Sudan) can be a dangerous point of contact between drug trafficking organisations and terrorist therein;
- Italy: cocaine comes mainly from the western side and by sea, from Liguria to Gioia Tauro Port, which is the main “gateway”.

#### **The production and routes of heroin**

The **heroin**, according to the purity that reaches, can be of type “brown” (15-40%) and “white” (purity of 45-70%); difference that is reflected in its price considerably, both wholesale and retail. In Italy, 1 kg of “brown” heroin wholesale costs between about 19,000 and 25,000 Euros, while the “white” one between 28,000 and 36,000 Euros. The main production areas are: for “white” heroin the Golden Triangle (Laos, Thailand and Myanmar) and Colombia, for the “brown” one the Golden Half Moon (Afghanistan and Pakistan). In Italy, comes mainly Afghan heroin. From 500,000 poppy flowers, it is possible to get about 7 kg of opium, and then 1 kg of heroin. The potential

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production of 2011 was estimated at about 470 tonnes overall. From Afghanistan, by far the world's largest producer, the heroin goes towards:

1. Iran and then to Turkey and the Balkans ("Balkan route") and Europe, in Italy arrives mainly on the shores of the Adriatic Sea, especially in Puglia, the natural outlet of the aforementioned Balkan route;
2. Pakistan, and then: to India, China and other Asian countries through land routes, to Africa - especially from the port of Karachi - ("African route"), in particular, to the "Horn of Africa" (Somalia and Ethiopia), Kenya and Tanzania; these coasts of East Africa are becoming more strategic importance, not only for the heroin but also for some of the cocaine that reaches, after having landed on the coast of West Africa, across the African continent.

### **The production and routes of cannabinoids and synthetic drugs**

Regarding **cannabinoids** (hashish and marijuana), not only their consumption is the most common worldwide, but also their production is the most extensive, involving approximately 200 countries worldwide. In particular, in Asia productions of hashish in Pakistan, Afghanistan and India are outstanding; in the Mediterranean, hashish in Morocco and Lebanon, and marijuana in Albania; in the American continent, the marijuana in Mexico, USA and Colombia. Such a value and increasing spread is more important for the cultivation of the "indoor" type of cannabis, allowing a production even in areas with less favourable weather conditions and with a high quality (a seizure inside a long tunnel of 1 km in the heart Rome led to the seizure of 340 kilograms of marijuana). The routes affecting all continents and seizures are especially important quantitatively.

In our country, hashish from Morocco comes, especially by sea (on the western side of the Italian peninsula) and the Albanian marijuana (on the shores of the Adriatic, primarily in the ports of Apulia), while the cultivation of cannabis is widespread and especially in southern Italy. Wholesale 1 kg of hashish in Morocco costs about 500 Euros, while in Italy is between 1,500 and 3,000 Euros, instead of 1 kg of marijuana worth about € 350 in Albania before being sold in Italy between 1,200 and 1,800 Euros.

As regards **synthetic drugs**, at the international level, UNODC uses the acronym A.T.S. (amphetamine-type stimulants), which includes two main groups:

- That of amphetamine: central nervous system stimulants, including amphetamines and methamphetamines (the latter with the most dangerous effects, such as the so-called "ice" or "shaboo");
- The "ecstasy" group with hallucinogenic and stimulant effects, MDMA ("ecstasy") and its variants (e.g. MDA - called "love drug", MDEA - called "EVA", MBDM - called "TNT").

The production of synthetic drugs is widespread globally. In Europe, there is primarily a production of amphetamines and ecstasy. Methamphetamine is

produced mainly in Asia, particularly in Southeast Asia, Mexico, North America, Iran and Oceania. The ecstasy group drugs are produced in Europe, North America, Southeast Asia and Oceania. Although the quantities of synthetic drugs seized may seem modest, compared with many tons of the other drugs seized, are very important, because just think that they are sufficient a few milligrams of the active principle to prepare a single dose. In addition, there was a very numerous and continuous proliferation of new synthetic drugs with narcotic-like effects.

### **Strategic-previsional analysis: The criminal organisations**

The **'Ndrangheta**, inserted in 2008 by the U.S. government in the "black list" (*Foreign Narcotics Kingpin Designation Act*) of the main foreign organisations engaged in drug trafficking, as the leader of the world's cocaine trafficking, as confirmed by the results of investigative and intelligence activities. In recent years, the Calabrian Mafia took advantage of the huge traffic of goods at the port of Gioia Tauro (RC), turning Italy into a strategic centre for the cocaine trafficking into Europe. In 2008, the report of the Anti-Mafia Parliamentary Commission states that the realisation of one of the most important investments ever thought of industrial policy for the South had been preceded by a prior agreement with the 'Ndrangheta, "The multinational Con-ship Italy would have agreed to pay 1, 5 \$ for each container passing through Gioia Tauro and the agreement is still valid, allowing the gangs to use port facilities for trafficking."

The **Mexican Cartels** control about 2/3 of the drug in the American market: not only cocaine but also cannabis, methamphetamine and heroin, of which Mexico is a producer. Approximately 90% of the drugs produced in South America and destined to U.S. transits from Central America, especially through Mexico. It is no longer just intermediaries for Colombian traffickers, but autonomous organisations of international drug trafficking, due to: decline of Colombian cartels hegemony; difficulty of use (because of the control of the U.S. and international Authority) the traditional route to the U.S. through Florida; indiscriminate use of violence with which they control large areas of the Mexican territory and of the border with the U.S. and legitimisation campaign to get support from the local population.

Significant is the so-called Project Reckoning from US DEA (Drug Enforcement Administration) against the Gulf Cartel, which has led to the seizure of 40 tons of drugs, \$ 60 million and hundreds of weapons. The project involved Italy with *Solare Operation* that allowed to arrest members belonging to families from Calabria that, through the offshoots of New York, entered, on behalf of the Ionian-Reggine clans (went into partnership to finance massive imports of cocaine) into a preferential agreement with the Gulf cartel for the supply, by air and sea (the port of Gioia Tauro), of drugs from South America to Europe, via Calabria.

**Serb-Montenegrin** Crime deserves a special attention in the sce-



nario of trafficking in cocaine. With the experience gained in smuggling to evade the international embargo during the period of the conflict in the ex-Yugoslavia, it is affecting the maritime trafficking of cocaine to Europe, diversifying the Atlantic routes, involving countries (e.g. South Africa and Uruguay) used so far to a lesser extent, and in part by moving the centre of gravity from the Iberian Peninsula to the Balkans. The Serb-Montenegrin groups are widespread in the Americas, Europe and South Africa and are characterised by organisation, methodology, mindset and military equipment, arising from the prior membership of many of their members in the Special Forces and/or intelligence or para-military units. Moreover, they are particularly popular, because they provide large quantities of cocaine and of high quality, they assume the risks in the transportation and do not enter into the further supply chain of drug trafficking.

The **Albanian crime** is very dangerous since it is formed by groups that physically occupy the territory with violence, and operate in parallel and joined together with very strong ethnic/or parental links, patriarchal model and very strong cultural-traditional values: it is, therefore, more difficult to penetrate. In Italy, it represents for the indigenous Mafia clans privileged channels of supply. It also deals with: Turkish traffickers to supply heroin, Colombian Cartels, that have chosen Albania as a place of storage and/or transit of cocaine destined for Europe (also Albanian groups are present in South America), Spanish organisations, with which exchanges hashish and marijuana with cocaine and immigrants pushers, mainly from the Maghreb. A very important role in the scenario of drug trafficking covers **the crime in Nigeria**, which is composed of many groups branched globally, controlled by force and tribal rites, with a strong sense of belonging and organised in network with fluid, dynamic, and occasional alliances. They are dedicated to the “poly-traffic” of different drugs; they make heavy use of ovulatory-couriers of many nationalities that are used in the so-called “Rain” trafficking system that is very widespread and with rapid diversification of routes.

The **Chinese crime** has not the drug trade among its main interests; however, his involvement in this field is favoured by several factors: the possibility to use already tested illicit trade routes (for example, see the already tested contacts with the Camorra for the traffic of counterfeit products), widespread worldwide diaspora, substantial financial resources, production of synthetic drugs and precursors in China and Asia, in general.

### **Strategic-previsional analysis: new routes**

In recent years, it is recording a maritime trafficking of cocaine, in addition to the traditional gateways to Europe (Iberian Peninsula, the Netherlands and Belgium), also to the **Balkan area** (Adriatic Sea and the Black Sea), especially in the ports of Bar (Montenegro), Varna (Bulgaria), Constanta (Romania), Koper (Slovenia), Albania, Croatia, even in those of Gioia Tauro (Italy), Odessa (Ukraine) and Piraeus (Greece). The expansion in the Balkan area of cocaine trafficking is favoured by a number of conditions:

- Politics instability and corruption;
- Progressive liberalisation of movement of people and goods (entrance in the EU and the Schengen area);
- Many ports (sea and river) on the Adriatic and the Black Sea;
- Increase in traffic in the Mediterranean (Tangier, Piraeus, Suez, Port Said, Izmir);
- New consumer markets in Central and Eastern Europe;
- Increase of repression on the part of international organisations (e.g. MAOC-M. from Lisbon) in Western Europe and West Africa, which since 2008 has resulted in a decrease in the importance of West Africa in the international routes of cocaine;
- Established routes ("Balkan Route") and transnational criminal networks, traditionally involved in heroin trafficking, but also hashish, marijuana and chemical precursors.

The **port of Gioia Tauro** (halfway of the trade routes from Asia of goods production to the Western ones of consumption), already, because of the 'Ndrangheta, the main gateway for cocaine in Italy and one of the most important in Europe, could become a hub for the international trafficking in heroin, synthetic drugs and chemical precursors, from Asian production. This is because the already mentioned Calabrian port is placed in a strategic way (in terms of cost and time) in the master plan of institutions and companies related to the development of international trade routes between east and west.

In such globalised and computerised world, the **Internet** plays an increasingly important role also in the field of drugs. In addition to the existence of a multitude of websites, forums and chat rooms that allow to easily acquire or exchange quickly the most varied information on the different types of psychoactive substances, it is possible to "surf" the net (not only in the so-called *darknet* or the so-called *deep web* - that is a huge, anonymous net accessible with special software, but still easy to find and use - but also in the so-called *open web* of shared access), to discover a wide range of drugs supply. This trade on line allows, besides an easy purchase with home deliveries by national and international couriers, a wide and varied range of drugs.

## II.1.2 Deviant dynamics related to drug use

### Cirus Rinaldi \*

The European market scenarios of drug offer and consumption are, according to the recent reports from EMCDDA, the most widespread socio-cultural, economic and technological phenomena observed globally. The relevant aspects can be listed as follows: a) the increase in the levels of youth unemployment,

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b) a reduction of services and intervention processes (related to reductions in overall of welfare in the neo-liberal society), c) the appearance on the market of new synthetic drugs (and, as a result of new patterns of consumption, especially in low-and middle-income countries), d) the processes of globalisation and the development of information technology that allow the “network” to play a role of interconnection is both with respect to the offer and to the consumption.

The most commonly seized drug is cannabis with a value equal to 80% of total seizures, followed by cocaine (10%), heroin and amphetamine (4%), ecstasy and methamphetamine (1%). Cannabis is the most available substance and is widespread in Europe. Its consumption has seen a sharp increase compared to historical standards, especially among children and very young people. The supply of a synthetic variety, imported from China, across Russia till in Europe (where the transformation takes place), is also on the increase.

Cocaine is the second most common substance used in Europe, with regional differences in consumption and types of consumers (occasional, regular, socially integrated, regular marginalised, addicted). Its concentration of use is restricted to certain countries of Western Europe; this is the second most seized substance, in particular in 2011 6 tons were seized in Italy. The consumption of opioids (heroin), especially by parenteral, shows a decline, although the Community scenario is quite varied (replacement with other synthetic drugs). Recent are a series of HIV epidemics in Greece and Romania related to the consumption by parenteral. The synthetic drugs (amphetamine, methamphetamine, ecstasy) are those mainly consumed after cannabis. Their consumption is concentrated mainly among young adult males (last year, prevalence among young patrons of nightclubs and discos). The overall estimates on the use and consumption of hallucinogens, GHB and ketamine are lower than the previous ones. Between 2005 and 2011, 164 new psychoactive substances often marketed by online commerce (in 2012, 693 stores online were intercepted, in 2011 they were 314 and 170 in 2010) were officially notified, sold as “fertilizers” or “research chemical products.”

If we adopt a historical and socio-cultural perspective, - and not purely biochemical and/or legalistic - we understand that the issue of drugs and their consumption is a matter of definition. The World Health Organisation labels as “drugs” all those natural or artificial substances capable of altering the mental, psychological and organic states of individuals. However, if we look at two substances, such as theine and heroin, both contain a psychoactive principle (the first is a stimulant while the second is a drug). What changes in the two substances are the social meanings attributed to their quality and consumption (a good drug vs. a dangerous drug; tea is drunk during the afternoon chatting amiably vs heroin which is consumed by deviant individuals) and their forms of regulation (legal substance vs. illegal substance). Therefore, to focus on the biochemical principle only hides the socio-cultural processes that underlie drug use.

The definition depends on a general consensus: that by the values, beliefs, representations that people have with respect to the ability to alter the physiological and psychological functions that a substance is believed to possess. A string of processes of attribution, of socially defined roles and statuses which affect reality (we are more likely to consider the unregulated consumers of caffeine, for example, less "addicted" than those who consume cannabis; we would never call a diabetic an insulin addict, and so on) derive from these definitions. The processes of social definition have a strong impact also on the dynamics of consumption, which therefore must be understood as multi-dimensional: the biochemical characteristics of the substance (clearly objective) interact with the experience of its consumption and with the meanings attributed to its consumption (the so-called sets) and with the social, cultural and regulatory environment in which consumption takes place (the setting). A similar analysis allows us to avoid determinism and to discover how the concept of the use, abuse, and addiction, as well as the consumption types, are conceptual categories sometimes inadequate or uneven. Also the medical, legal, psychiatric categories of the abuse and of the addiction are historically and culturally determined products.

If we stick to the socio-cultural perspective, this allows us to consider "use" and "abuse" within the analysis of the violation of social rules deemed as binding (does the person who uses the substance, however, manage to be a socially integrated entity or not? Are the social experiences related to the use of the substance "normal", or rather they lead to processes of stigmatisation? Is the consumer able to hide to others the fact that he makes use of a substance? Who are the people variously involved in the use of illicit drugs or stimulants? Unemployed youths of the suburbs of a big city, businessmen, doctors, policemen and so on).

Consumption is a heterogeneous process, which does not depend on prevailing methods or specific categories of individuals, but rather on dimensions related to the characteristics of consumer identity, on cultural processes of social definition associated with the consumption of drugs, on the political and legislative processes related to the regulation and the control of substances. Compared to a construction of models of consumer, the research must take into account the size-related substance (quantity, frequency of intake, types of substances taken, intake modalities); the experience of consumption (when, where, and with whom, for what time) and the styles of consumption (experimental consumption, regular/problematic consumption; dependent consumption). These dimensions imply that with respect to the use and consumption of substances, the main effects derive from the capabilities and characteristics of consumers (financial, judicial, social and health problems), from the type of sanction (formal control vs. informal control), from the type of social definition with respect to the substance and methods of consumption, from the type of identity resources (probability of being caught), symbolic and material (social class, education, community context).

The processes of social definition help to identify drugs as a social problem (drugscares) when the following conditions are met: dramatization of the media; epidemic proportions; a substance that produces high dependency and portraying the worst case scenarios associated with its use, generate or exaggerate the public alarm with respect to the substance, lobbying the legislator to intervene; existence of powerful interest groups, such as doctors, pharmacists, professionals that treat addictions to alcohol, the control agencies, and/or churches who claim professional and specialist knowledge and who claim to have the best remedy to the problem (which means, and does not seem to be a coincidence, that the public sector will have to grant him ample resources). The third phase is related to the moment when the drug emerges or is widely used in a context where there is evidence of significant a cultural or social conflict. For example, the alarm of drug during 60s (marijuana as a “grass killer”) was caused in part by the public anxiety for the participation of young people in the political struggles of that time (civil rights battles, the Vietnam War).

We also consider the association between drugs and dangerous classes: the drug use is associated with a “dangerous class” (considered as a threat mainly by powerful elites). For example, it was not the alcohol problem in itself that had animated the push for Prohibition, but the behaviour and the morality of those that the dominant groups considered as the dangerous class of immigrants, class workers, Catholics, of the urban areas. Similarly, the problems associated with cocaine use were not the only factor that gave rise to the alarm during the 80s. Rather, a type of cocaine which might have been smoked made his way through the African-American and Latino underclass. When the elites establish a conceptual connection between a given drug and groups that are considered dangerous or discredited, they find easy scapegoats. By inducing public opinion to focus on the use of drugs that occurs within specific groups, they divert the attention from some of their troubled assets (e.g. corporate crime or government corruption).

### **II.1.3 Toxicological problems related to drugs, with particular reference to chemical precursors**

#### **Antonina Argo \***

This presentation comes from a process of scientific collaboration, research and didactics with a laboratory of medicinal chemistry, in Milan. Since this collaboration is part of the allocation of resources that we shared among universities of our cities, for the comparison of data, I felt, with the permission of the head of that laboratory, professor Veniero Gambaro, to your attention. Seized material arrive and each laboratory is organised according to

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a traceability path that has already been transfused, because that is what the international legislation prescribes and also relates to a process of scientific credibility and further provability in retrospect. It is not only the traceability of the path that the material seized, arrived at the laboratory, will follow, but also the insurance of a chain of custody. This is a very important issue: the laboratory undertakes the majority of its resources in trying to make transparent, fluid and reportable the management of the chain of custody. Whatever the act of lab that has a value in medical and legal purposes must fulfill a documented traceability. The assessment of the laboratory, however, often entails, and cannot be otherwise, the destruction of a portion of this sampled material. So, the observant lab technician, according to the guidelines, which then become validated protocols, must be able to manage wisely the rate of the sample. When there are large batches of material seized, it should be possible to assess the homogeneous assessment, a distribution as much more capillary and representative of the whole corpus.

First of all, we proceed to the description of the “case”, the material seized, i.e. everything that is transported by the law enforcement in the container, with a brief description of the case/cases. After this first passage, which is very important, as soon as the sample is developed, we proceed to a sort of a preliminary test, which is an introductory analysis, used to verify how to proceed: powder, leaves, solid material, which allows immediately approaching the analysis. The path of transformation, of material camouflage, means that there is not a correspondence between the case appearances and that we would expect as a result of the analysis. In the assessment of drug seized is always extremely useful this first stage of the laboratory analysis, which is the qualitative analysis by TLC. After this first stage of the analytical path, the further moment of critical assessment is that of the qualitative analysis of the possible sample which contains the drug through chromatography on gaseous layer. It indicates, in this case, a tool (the chromatograph) with revealing columns, while the transport system of the chromatography is given by gas, although is still chromatography, based on a principle of distribution of an acidic or basic substance that is conveyed through a conductor system, by sharing it between different phases: if the chromatography is liquid, the conductor system is liquid, if it is gaseous - the substance is distributed in one or in the other part – it goes there because of the entered carrier gas (helium, nitrogen, etc.). Forensic chemical-toxicological analysis of qualitative type is the first investigation as it allows saying that in the material seized there is a specific substance, it detects the quality of the substance; the subsequent stages will have then to identify with certainty which one is that substance. Obviously, as the law identifies some steps that are numerical coefficients, it will be necessary to proceed at a rate of identification, of qualitative assessment: it then makes a quantitative determination of the substance that is the active principle to which the law gives relevance.

The identification of the support material, represented by substances



carrying the active principle which the law gives relevance, is constituted by diluents or adulterants. The diluent is a material, mostly inert, which enriches and helps to compose the overall involucre of the substance for sale in the illicit trafficking. It is inert, but it is not said that it is not harmful to human health, because it can carry many elements of different nature, organic or inorganic, which biologically damaging the human being. Then, there are the adulterants: they are substances that interfere with the drug and enhance the effects of the drug itself, ready to be sold. The effects are varied and the trafficking is enriched by all the different areas of medicine, veterinary medicine, biological substances: from strychnine to levamisole which is very harmful to the human lung. In order to create the drug in the laboratory, are often used substances that evaporate: the process is amplified to the maximum in the new techniques of preparation of synthetic cannabinoids. These carriers and solvents allow identifying the purity and tracing the possible geographic location of origin. The seized material is photographed and then the first packaging is removed. This is therefore the first stage, i.e. the description of the case with the most varied forms: sometimes all the packaging is – per se – the drug. The packaging materials are varied. Let's examine a case (see slide no. 10). The drug is in the wrapping paper. Under the wrapping paper, there is a vacuum polythene bag and then a film; and again under it a layer of dark-grey fat made up of calcium soaps, starch and black pepper. This type of casing is inert substance that had to prevent the leakage of the effluvium and, at the same time, create such a conditioning to hide and protect the substance present inside it. We see that it is adhesive tape, transparent film, a layer of black rubber and again transparent film.

This is another case (slide no. 11): in this case was a suitcase. We find a layer of black polyethylene, carbon paper that carries with it the ink material which makes it more difficult the chemical-toxicological analysis, transparent film, fat layer, and again transparent film and heat-sealed polyethylene bag. This is another type of seizure (see slide no. 12), much more frequently, they are small pills, small tablets of the most different calibre, size, weight, packaging, often placed on the market for young people in recreational settings, which may contain everything. Sometimes, the powder material is bunched up in fanciful shapes (see slide no. 12) that make it difficult to recognise the origin of the powder. After the description that must be the most comprehensive and complete for the future use, comes the organoleptic test. After the preliminary tests, the first real analytical step dating back to the last century, but still absolutely valid: the chromatographic plates, the assessment essay with liquid chromatography. For the routine two types of plates are used: the indicator plates of fluorescence for adulterants drug, plates without fluorescent indicator for adulterants and diluents. The fluorescence indicator is a chromophore, a chemical compound that binds to some part of the molecule of the drug and then it is viewed with a UVA light system (see slide no. 16).



## II.1.4 An overview of the legal module on illegal drug trafficking in the Italian and European criminal law and on substantive aspects of undercover operations

**Licia Siracusa \***

1. The fight against illegal drug trafficking in Europe – The Framework Decision 2004/757/JHA, which lays down minimum provisions on the constituent elements of crimes and penalties in the field of drug trafficking, and which was adopted in October 2004, can be considered as the first initiative adopted by the European legislator in the criminal law area. The FD was aimed at strengthening the fight against drug trafficking, by overcoming any possible deficiencies in the criminal legislation of the Member States, often inadequate and unable to ensure effective levels of protection, especially in relation to the transnational dimension of the phenomenon. The purpose of the act was therefore to set common minimum standards on criminal rules and sanctions, with regard to the most severe forms of trafficking in drugs, in order to ensure a common and uniform standard of criminalisation of these illegal activities across the EU in the field of drugs. The instrument has not (yet?) been replaced by a new Directive and therefore it still maintains its validity and legal effect. Therefore, it is worth to examine the content of this measure, in order to acquire a better understanding of the policy, adopted by the European Union in the fight against drug trafficking, within the criminal law area.

With regard to the sanctions, there is a standard protection, both in terms of the type of criminal sanctions that the Member States must adopt (imprisonment), and in terms of quantity of the punishment, which however is indicated only for the conduct referred to in Article 2 (maximum duration 1 to 3 years), and not for the conduct referred to in Article 3 (incitement, complicity etc.; for these crimes the discretionary power of the national legislator is maximum). It is also provided that the most serious forms of illegal drug trafficking should attract a minimum custodial sentence between one and three years.

The European legislator does not, however, set the amount of penalty for other less serious conduct – such as those of incitement or complicity – so to ensure to national legislators a greater discretionary sanctioning power with regard to conduct of less social alarm.

Finally, the Framework Decision requires Member States to increase the maximum term of custody to a minimum of ten years, when the offences are committed by a criminal organisation, as defined in the Joint Action 98/733/JHA. Among the mitigating circumstances contemplated by the European instrument, it is of crucial importance the provision which establishes

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the right of the national criminal systems, to reduce the penalties if the offender renounces criminal activity and gives his collaboration, provided that such conduct consists in providing information that the administrative or judicial authority would not otherwise have been able to obtain; this information is useful to prevent or mitigate the effects of the crime, to identify and bring to justice the other offenders, to find evidence or to prevent the commission of further offences, referred to in Articles 2 and 3 of the Framework Decision.

2. A comparison between the Spanish penal law and the Framework Decision 2004/757 - At a quick glance, the Spanish criminal legislation is broadly consistent with the provisions of the European legislation in the field of drugs, with regard to the amount of penalty and the type of conduct punished. The difference in the level of penalties, in relation to the nature of the drug provided by the European text, can be found also in the Spanish law, which punishes more severely the illegal drug trafficking that cause or may cause serious harm to health (Article 368 of the Criminal Code; see Article 4 letter b) of the Framework Decision). Moreover, there is also a certain correspondence in terms of the different penalties in relation to the amount of drugs, object of the offence: the aggravation of penalty imposed by article 4 letter a) of the Framework Decision is to be found in the Spanish legislation in article 369 CriminalCode, which providing for an increase of punishment in the case of "cantidad de notoria importancia" - in article 370 CriminalCode - which provides a further aggravation of penalties, whereas the amount of drug greatly exceeds the one commonly thought of "notoria importancia". In particular, in the first part, it indicates the object of the crime, as it provides a notion both of drug and of psychotropic substance and finally of precursor. In the second part of the text, instead, the punishable conduct is described. It is listed in detail and it coincides with the acts that normally make up the whole "drugs cycle": production, manufacture, sale, delivery, etc.; an exception is personal consumption, of which is not given any definition, with the clear intention of giving freedom to the States about the possibility of attributing also to this type of conduct some criminal significance. Finally, the Spanish legislation seems to comply with the European FD also with regard to the provisions, relating to conduct performed in the context of a criminal organisation (Article 4 paragraph 3 Framework Decision, article 369 bis), which is constructed as aggravating circumstances of the main offence and not as independent criminal offence. The Spanish legislation does not seem to deviate from the guidelines outlined by the European law on either side of the selection of punishable conduct. As the Framework Decision, also the Spanish Criminal Code criminalises the whole drug cycle. It is to underline that with regard to the crime of precursors illegal trafficking (Article 371 of the Criminal Code), the Spanish legislator - like the European legislator - requires the specific awareness by the author of the crime of the destination of the precursors to the production or manufacture of narcotic drugs or psychotropic substances.

3. Illegal drug trafficking in the Italian criminal law -The Conso-

Consolidation Act on drugs provides the fundamental system of criminal law on drugs (introduced by Presidential Decree dated 1st October, 1990 no. 309). The key points of this instrument are: 1) abandoning the concept of small quantity introduced by the previous legislation, 2) maintaining the punitive system of the so called 'double track' according to which both criminal and administrative sanctions can be applied, and 3) eliminating the distinction between soft drugs and hard drugs, introduced within the legislation of '75. With regard to the concept of small quantity, in the Consolidation Act, it was originally replaced by the concept of average daily dose, which traced the line of demarcation between the offence of possession of lawful drugs, which were used for personal consumption and the offence of possession of drugs considered as illegal, because used for supplying and trafficking purposes. As it is known, a referendum held in 1993 led to the abolition of the concept of average daily dose, so that, in the current legislation, the difference between personal drug use, which is not punished under criminal law and the possession of drugs with the aim to supply and sell - which is criminalised - depends not only on the amount of drug, but also on the purpose of the conduct itself, which must be proved according to the indices described in paragraph 1 bis of article 73 Cons. Act. (Quantity of the drug, i.e. verification of the possible excess of the quantitative limits of the active principle, as indicated in a specific Decree of the Ministry of Health; submission of substances: Gross weight, fractionation in doses ready to sell and other circumstances of the conduct).

In order to complete this overview on the criminal legislation on drugs, we cannot neglect to consider the profile of the criminalisation of a conspiracy aimed at drug trafficking. Article 74 Cons. Act on drugs punishes the conduct of association for the purpose of committing one or more of the offences mentioned in article 73 of the same Cons. Act. The constitutive elements of the relevant criminal conduct: 1) the permanent agreement between three or more people; 2) the specification of the punishable conduct.

4. Undercover operations: substantive aspects - With the term "agent provocateur" is usually indicated the person (who belongs to the police or who is a private citizen) who in various ways, participates in a criminal act with the aim to gather evidence of a crime and ensure possible that offenders are brought to justice. Originally, there was only one figure of agent provocateur, which was the figure of qualified instigator: a person who, soliciting the commission of an offence by somebody provokes the commission of an offence with the intent to catch the offender red-handed or at least to identify and punish him. This notion, however, has gradually undergone a process of gradual expansion, up to include the following figures:

- a) The infiltrate of large criminal organisations, whose conduct constitutes an observation and maintenance (in this regard, it is more appropriate the French term “mouche” - fly - which probably alluded to a not visible listener or viewer - which could be a fly stuck to the ceiling - of secret conversations or of criminal scenes);
- b) The fictus emptor (fake buyer) as part of the so-called crime-contract (it is the case of a fake buyer of drugs).
- c) The fake passive subject, acting in order to expose the offender especially in relation to certain categories of offences (the crime of bribery or the fraud).

From a criminal perspective, the legal problems raised by the figure of the agent provocateur concern mainly the legal assessment of the offence committed, as a result of the intervention of the agent provocateur and the possible criminal liability of the agent provocateur for the induced conduct. Briefly, it can be said that the incited conduct is generally punishable as attempted crime (Article 56 of the Criminal Code), while the conduct of the provocateur is considered criminally irrelevant as it lacks required intention of the crime committed.

### **II.1.5 Collaborators of justice, undercover operations, joint investigative teams**

**Annalisa Mangiaracina \***

#### **The rules for the evaluation of evidence given by collaborators of justice (“pentiti”)**

A key rule in the evaluation of the statements of collaborators of justice is art. 192 3 of the Code of Criminal Procedure, which provides that: *“The statements made by persons co-accused of the same offence or by persons accused in related proceedings pursuant to article 12 are considered along with other types of evidence that corroborate their reliability.”* It is to say that the Criminal Procedural Code does not use the term collaborators of justice; the above mentioned provision, applies also to the statements given by collaborators if they fall within one of the categories provided by the legislator in art 192 3 and 4 of the Code of Criminal Procedure.

The statement given by collaborators of justice (who may just accuse other persons or also admit their responsibility) has probative value if corroborated, by other evidence. For the assessment of these statements it is relevant the Marino case (Court of Cassation, ON, 21.10.1992, no. 1123), which established the criterion of “three stage” verification of the statement: a) the credibility of the “witness” by considering his personality, his socio-economic

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conditions and family, his past, the relations with the accused, and the reasons which led him to admit liability or to accuse the accomplice b) the intrinsic reliability of the statement, according to the criteria of precision, coherence, consistency and spontaneity, c) the verification of the reliability of the statement, through the examination of external elements .

As recently clarified by the Supreme Court (see, Cass., ON, 29.11.2012, no. 20804), the sequence “crystallised” in the Marino case does not have to be interpreted as strictly . In particular, the declarant’s subjective credibility and the objective reliability of his story, influencing each other (...), must be assessed together (...). With specific regard to the collaborators of justice undergoing the protection programme, who are called to give evidence in fulfilment of a contractual obligation and in anticipation of , para-procedural and extra-procedural, it is not possible to apply some of the principles developed in relation to the assessment of the intrinsic credibility of the statements pursuant to art. 192, such as the indifference to accuse, the spontaneity of the statements and the absence of resentment reasons against the accused (see Ass. Catania, 12.05.1995 Santapaola). With regard to the elements outside the statements (so called “extrinsic elements”), these need to be individualize a) being designed directly to the person of the accused, b) having demonstrative eligibility in relation to the specific conduct attributed to him (Court of Cassation, United Sections, n. 45276/2003, Andreotti, no. 35327 / 2013; see, also, Court of Cassation, no. 12195/2012).

The legislator has not specified the object of these extrinsic elements. In this regard, the jurisprudence has established the following principles: 1) the evidence used can be of any nature, both representative and logic (the so-called principle of “Freedom of the evidence”); 2) they must not prove the criminal act and the mens rea of the accused, because, otherwise, the rule of law, would be totally pleonastic; 3) they must be independent from the statement, that is, they must come from sources other than the accused himself, so as to avoid the so called phenomenon of “circularity of information” and to avoid that is the accuse to validate itself; 4) multiple statements given by different collaborators can serve as mutual corroboration (if it is proved that they are spontaneous and that each one is independent from the other), but, in this case, the judge have to check the credibility and the trustworthiness of each statement.

Also the statement “*de relato*”- concerning circumstances not perceived by the declarant personally, but reported to him by others - can be used as evidence even when the primary source cannot be heard (because the accused in the same proceedings does not request to be heard or does not give his consent) or exercise his right to remain silent (e.g. defendants in proceedings relating to or connected) or cannot longer be heard because of death, disability, unavailability; also this kind of statement is subject to the criteria established by art. 192 3 of the Code of Criminal Procedure; it is necessary to find “convergent and individualising external elements related to the fact that

is object of the charge and to the criminal conduct of the accused, being necessary, for the indirect nature of the statement, a more rigorous and deepened check on its content and on its demonstration effectiveness” (Court of Cassation, United Sections, no. 45276/2003 Andreotti). According to the case-law, in front of a statement “*de relato*”, not confirmed by the direct source, it is possible to use, as a single external element, to affirm the criminal responsibility of the accused, another (or more) statement *de relato* (Court of Cassation, United Sections, no. 20804/2012).

### **The undercover operations: procedural profiles**

Undercover operations are an investigative tool of great relevance in the fight against drug trafficking. It is significant that this subject was first regulated in the nineties in virtue of article 97 of Presidential Decree 09/10/1990, no 309 on narcotic drugs and psychotropic substances. The matter, which was originally regulated by a plurality of law sources, has been rationalised as a result of two successive legislative measures: article 9 L. 16.03.2006, no 146 (“Ratification and implementation of the Convention and the Protocols of the United Nations Convention against Transnational Organised Crime, adopted by the General Assembly on 15.11.2000 and 31.5.2001”) and article 8 of Law 13.08.2010, no 136 (“Special Programme against the Mafias, as well as mandate to the Government in the field of Anti-Mafia legislation”). This law has introduced specific procedural rules to be applied to the members of the Italian and foreign judicial police and to the private collaborators who have been engaged in undercover activities.

Thus, according to Article 115 *bis* of the Implementing Provisions of the Code of Criminal Procedure (IPCCP) the fictitious identities assumed by undercover officers or agents of Judicial police must be recorded in writing on the notes and reports drafted by the police in the course of preliminary investigations; Article 497.2 *bis* of Code of Criminal Procedure requires the disclosure by judicial police and private collaborators who are examined as witnesses in the course of criminal proceedings of their coverage identity used during the undercover operations; finally, article 147 *bis* (IPCCP) provides for the adoption of appropriate measures to be taken at the examination hearing to protect undercover agents or private informers who give evidence, such as to hide their faces or to use, as a standard, the instrument of videoconference. These provisions, which create a sort of “anonymous” witness – where “the real identity of the persons giving evidence is concealed to the judge, to the accused and to his defense (while it may be known to the prosecutor) – seem to create some problems of compatibility with the case-law of the Strasbourg Court.

Among the relevant issues raised on trial the following must be reported: a) what is the role of the undercover agent in the trial (if co-defendant or defendant in proceedings relating to or connected, or witness, with all the relative consequences on the assessment of the relative statements by the



judge), b) whereas he is heard as a witness if he can testify on what he has learned on the defendant during his investigatory activity, c) if the phonographic transcript of the conversations between police officers and their informers, carried out on initiative of the former and unbeknown to the latter can be used in court d) if, it is possible to apply to the undercover agents article 195.4 Code of Criminal Procedure. Finally, it is important to establish what will happen to the results of the investigation acts, acquired by the undercover agent in violation of the law.

**Joint investigative teams, coordination of investigations and Eurojust role, as well as on the gathering and use of evidence at European level.**

Cooperation between police forces is essential in the fight against transnational crime: special importance is given to the joint investigation teams (JITs), units formed by investigators from several States and called to carry out their activities on the territory of all the countries concerned. This investigative instrument, regulated by article 13 of the Convention on Mutual Assistance in Criminal Matters of 29.5.2000 and by the Framework Decision of 13.6.2002 (never implemented by our country) poses some problems in relation to our domestic law, because of the absence of relevant provisions regulating the use of the evidence gathered (in according with the *lex loci*) in the targeted legal system.

With regards to the coordination and cooperation among national authorities of individual Member States in the field of cross-border crimes of particular gravity, a prominent role is assumed by Eurojust, established by the Council Framework Decision of 28.2.2002. The following Framework Decision of 16.12.2008, enacted with the objective of strengthening Eurojust, has not been implemented by some Member States (among which stands also Italy). Looking ahead, starting from Eurojust, it will be possible to create the European Public Prosecutor's office to fight crimes affecting the financial interests of the European Union (Art. 86 TFEU). The Eurojust Report for the year 2011 casts lights and shadows of this body. In particular, Eurojust in 2011 became home to the newly established JITs Network Secretariat and, in the same year, prosecutors, judges and police officers at Eurojust participated in the work of about 30 JITs. Eurojust has a specific role in the evaluation of the profiles related to the subsequent use of investigative measures; it draws up and transmits letters rogatory; it identifies the relevant national authorities and provides advice on their evidentiary requirements of individual Member States. Also, in 2011, there has been an increase of operational cooperation with Europol and an increase of 35% of the exchange of operational data (911 exchanges) through the secure connection dedicated for the communication. Both organisations have applied common principles relating to data protection. Amid the difficulties encountered by Eurojust, there is a delay in the execution of requests for judicial cooperation, sometimes due to the incom-

pleteness of the requests transmitted; the lack of computerised databases to gather information on bank accounts or other assets; the differences in the description of the offences between Member States.

The system for gathering evidence at the European level is governed, mainly, by the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20.4.1959, with its Additional Protocols of 8.11.2001 and 17.03.1978; by the Convention for implementing the Schengen Agreement of 14.6.1985 on the gradual abolition of checks at common borders dated 19.6.1990; by the Convention on Mutual Assistance in criminal Matters between the Member States of the European Union of 29.5.2000 and its Additional Protocol of 16.10.2001 (although this Convention, in force since 23.8.2005, has not yet been ratified by Italy). In virtue of the “conventional” system of judicial assistance, the State (through the central authority, which is normally the Minister of Justice) “requires” assistance to another State (with no direct communication between the authorities concerned, except in cases of urgency), which may be refused on the basis of certain grounds (such as public order and essential national interests); the evidence is gathered in conformity with the *locus regit actum* principle, which could create problems in the field of admissibility in the requesting State.

It is to say that first, the Schengen Convention (Articles 51 and 53), and later the Convention on Mutual Assistance of 2000, have made significant innovations in the system of mutual assistance. In particular, Article 4 of 2000 Mutual Assistance Convention provides that the requested Member State has to comply with the formalities and the procedures expressly indicated by the requesting State, unless otherwise provided in this Convention, and provided that such formalities and procedures are not in conflict with the fundamental principles of the law of the Member State required, thus facilitating the admissibility of evidence in the requesting State. The application of the principle of mutual recognition of judicial decisions also in the field of evidence led the European institutions to adopt new regulatory instruments - the EU Council Framework Decision of 22.7.2003 on the execution in the EU of orders freezing property or evidence; the EU Council Framework Decision of 18.12.2008, on the European evidence warrant for obtaining objects, documents and data for use in criminal proceedings - which, in a first step, would have complemented the traditional conventional instruments. Finally, in the perspective of using a single system for obtaining evidence - in order to avoid the regulatory fragmentation and to reduce delays in the execution of letters rogatory caused by conventional discipline - some Member States have launched the Proposal for a European investigation order (currently under negotiation). This instrument, despite the improvements made during the discussions in the Council, continues to pose major problems with regard to the effective protection of the rights of the person under investigation.



## II.1.6 The undercover operations: *Ratio* and limits of new investigative tools in the fight against organised crime

**Sergio Barbiera \***

Article 8 of Law 13<sup>th</sup> August 2010, no. 136, modifying the previous regulation in art 9, Law no. 146/2006, regulates, from the basis, undercover activities, introduced for the first time in the field of drug investigations. The rule provides, first of all, the ability to carry out undercover activities “*for the sole purpose of acquiring evidence*”, in proceedings for offenses in respect of falsification (Articles 473 and 474 of the Criminal Code), extortion, kidnapping, usury, money laundering and reinvestment of capital (648 *bis* and *ter*), offenses against the person (slavery, child prostitution and child pornography, child sex tourism), for offenses relating to weapons, ammunition and explosives, immigration (of which the Consolidated Act of provisions about the regulation governing immigration and the status of foreigner), for crime offenses committed with the purpose of terrorism or subversion and on drugs.

Overcoming the atavistic reluctance usually shown by the countries of *civil law* against the acts performed by the undercover agent, “*guilty*” to arise, “manipulating it,” the other’s criminal purpose and therefore to influence the will of those who would otherwise had not committed any crime (*agent provocateur*), the current regulation discriminates the conduct of undercover agents that “*even through a third party, provide shelter or otherwise assist the associates, acquire, receive, substitute or hide money, weapons, documents, drugs or psychotropic substances, goods or things which are object, product, profit or means to commit the crime or otherwise hinder the identification of their origin or permit the use or perform prodromal and instrumental activities.*”

However, the first question asked by the rule in question, which also follows the previous regulation provided for by art. 97 Presidential Decree 309/1990 (“*Drug simulated purchase*”), is that related to the beginning of the undercover infiltrator’s activities who must tend and be oriented “for the sole purpose of acquiring evidence”, related to a series of crimes specifically provided: this is the *ratio* why the rule was introduced into a positive system; this is the purpose which must tend in practice the activity of the *undercover agent*.

In other words, it must not “instigate”, should not, that is, never induce others to commit crimes. The practical distinction, however, is not simple. The key to understanding must, therefore, be found in the existence or not of a crime prior to the “provocative” intervention of the Judicial Police and the degree of evidence of it. If, in fact, it requires a certain proof, judicially expendable at the hearing, the intervention of the undercover agent would have no reason to exist, as it is sufficient the proof of the offense “upstream” - that

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we could call, in a non-technical sense, assumption – i.e. ontologically already demonstrated (in its exact structural connotations, *subjective and objective ones*).

So, the solution, in practice, could be that, before undertaking an undercover activity, the investigative body must be in possession of evidence, or only merely circumstantial evidence, such as to indicate not only that a crime has already committed under Law 136/2010 (or that this offense is currently in place), but that just through contact with the “hooked” subject can, in some way, identifying those responsible for the said offense: the original circumstantial compendium must be at least “sufficient” and not necessarily strong (“serious”).

In consideration of the above on the previous “level of evidence”, it is necessary to check what activity is “authorised” (correctly: discriminated) from the rule and what are the limits that meet the criminal conduct in the proper sense of the undercover agent. Few issues have been the subject of debate and controversy as the undercover activities carried out in implementation of investigative initiatives specifically arranged. First of all, as to the accuracy of terminology, we must distinguish between “undercover agent” (so-called “undercover”) and “agent provocateur”, on the basis of doctrinal elaboration and, what is more, jurisprudential. The first is the one who inserted organically in the Police Force or collaborating with them (the “*extraneous*”), arises - in the scope of an official investigation – a conduct of “mere observation, of control and pure containment others’ illegal activities.” This behaviour occurs normally in the presence of suspects who constitute the responsibility of one or more persons, in relation to an activity of preparation or commission of one or more offenses. The agent, the so-called “Infiltrator”, is inserted, then, in one or more activities criminally relevant with the sole purpose of gathering evidence of crimes, or against any persons who had committed them, or to facilitate the capture in flagrancy of those responsible for committing one or more crimes, but not never taking an active role as instigator or creator in the commission of the same (or rather: “determiner”).

The “agent provocateur”, however, is the one who, despite being in the same conditions of the “infiltrator” agent and despite being animated by the same genuine investigative will, unlike the first, gives rise to an “active” conduct, i.e. *induction, conception and execution* of one or more criminal offenses, that *without his decisive intervention would never have occurred* in the ontological reality. The figure of the so-called “Infiltrator” did not never raise particular problems, on the contrary, instead of the so-called “Agent provocateur”, whose figure was, on the contrary, always been characterised by a high degree of distrust in both the domestic laws and in the context of European law.

The activity of the agent provocateur discriminated according to the canons of art. 51 of the Criminal Code, can never fit with causal relevance in the *iter criminis* (going to meet otherwise to express violation of the penal

precept: Cass. I, 14<sup>th</sup> January, 2008, no. 10695 , RV 239704), having to own an "ontological and structural ineffectiveness" (Court of Cassation VI, 27<sup>th</sup> September, 89, n . 17758 RV 182 915), irrelevant with respect to the criminal purpose of the agent, having set up its action in a simple extrinsic factor that limits itself to uncover an existing criminal intent, albeit at a latent state (Court of Cassation , VI, 24<sup>th</sup> January, 2008 n. 16163 RV 239640 and Cass., III, 3rd June 2008, n. 26763 RV 240270)," while, on the contrary , it is criminally prosecutable, just like a contributor *ex art.* 110 of the Criminal Code, the person who performs a specific activity or incitement, however, an activity which took etiologically determinant or con-causal effect in the planning and commission of the crimes (Court of Cassation, IV, 6<sup>th</sup> July, 1990, Carpentieri, in Mass. Cass. Pe. 1991 fasc. I, p. 66; Cass., VI, 31<sup>st</sup> December, 1998 n. 669, in Cass. Pen. 1999, 800).

The provision extends the cause of non-punishment even to the activities related to auxiliaries of the undercover, as agents of Judicial Police, subjects "belonging to foreign police forces" and, even, to "police informers", thereby coming to meet operational needs have arisen for the success of the undercover activities. The discriminate activities were normatively prescribed by the rule in question that allows the undercover actually to encourage the hiding of subjects and, however, to provide assistance to members, to commit activities of intercession (*lato sensu*) of money, weapons, documents (fake), drugs or body of evidence, or to perform "prodromal and instrumental" activities.

*Rebus sic stantibus*, they are absolutely excluded from the list of discriminate activities all those activities that are not strictly and intrinsically related with the main dynamics of the crime, but that, by the defendant, may in practice turn out to be necessary, useful or sometimes absolutely necessary to gain credit for the undercover within the criminal association, in which is inserted with the consent of the State. Logically, these activities, which could be discriminate, making use of the general causes of justification (Articles 51 and 54 of the Criminal Code).

However, while in other jurisdictions it is permissible - or rather: discriminate - even an "ancillary" criminal behaviour (the U.S. judicial practice allows, for example, that the undercover agent commits or allows others to commit, in order to investigate crimes of particular gravity and public alarm, maintaining intact its coverage, criminal behaviour such as the theft of a motor vehicle, the unlawful possession of a weapon with serial abraded, the falsification of documents, the sale of drug, the not serious personal injury and the like), the internal judicial practice (and EU) is limited to "allow" (or, better yet, to "tolerate", given the cultural ruling for such operations) those carried out strictly and objectively instrumental, etiologically aimed directly and immediately to the collection of evidentiary material that has been ordered the undercover operation.

*De iure condendo*, it would be desirable to express a further (innova-

tive) regulatory intervention that allows the “discriminability” of certain illegal conduct not necessarily correlated with the dynamics of “main” crime to be revealed, and therefore “instrumentally” related to it, but also those border line activities, which legitimately authorised or, better still, allowed by law, prove absolutely essential for the “accreditation” of the undercover within the criminal circuit in which is or has yet to infiltrate. And, given the sensitive nature of the situation, it could be put to the discretion of the judge to assess the operation of discriminating even outside of the close bond of “competence”, in order to allow even illegal activities necessary for the assessment of the main case, according to a criterion of adequacy and proportionality.

In this way, it could be considered discriminate also those illegal activities carried out of the undercover with the sole purpose of demonstrating his “criminal depth” and to enjoy the trust of the internal members; because of such activities, such as the sales of large quantities of drugs or possession of weapons with serial abraded and the like, allow easier development of the undercover activity, allowing to achieve better and more meaningful investigative results: this, however, always respecting the principle to “balance” of the conflicting interests and legal interests, and without prejudice to the inviolability of the inviolable rights of the person.

### **II.1.7 Profiles of comparative law in terms of anti-drug investigations and significant decisions of the echr**

#### **Calogero Ferrara \***

The subject of the fight against drugs is one in which, more than any other, we find profiles of internalisation of investigation and in which the knowledge of the compatibility of the Italian system with that of other States and the regulations provided for therein appear to be essential. In the European overview, one of the first anti-drug law was that adopted by the Federal Republic of Switzerland, right by the law of 3rd October, 1951 (then modified in 1975), in relation to the figure of the police officer who takes on the guise of offender under the fight against drug trafficking. In particular, article 23 of the Law of 20<sup>th</sup> March 1975 (which amended the law *Betaubugsmittelgesetz* of 3rd October 1951) provides for a special exonerating for the officer that for “investigative purposes agrees in first person or through others an offer of drugs or receives personally or through another person some drugs.”

Later, this rule was changed in even stronger terms, allowing such officer the assignment of a fictitious identity that can keep even in the testimony in order to protect both the officer with respect to the risk of subsequent retaliations, and for use the expertise acquired by the person in any subsequent investigation.

In Denmark, Sec. 754A Administration of Justice Act of 1986 legalised

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the overall figure of the agent provocateur and it makes the operation on three conditions:

- The well-founded suspicion that a crime is about to be committed or is being attempted;
- The inadequacy of other investigative tools;
- The specific gravity of the crimes for which we investigate (for those which are expected to imprisonment for not less than six years, or crimes of smuggling of significant size).

Moreover (Sec. 754B), the figure of agent provocateur may be taken, except in exceptional circumstances, only by a police officer, and his activity is strictly subject to the reasoned judgements of the court (Sez.754C).

The French law 19<sup>th</sup> December, 1991 no. 91-1264 on the fight against drug trafficking has introduced a general clause that excludes the punishability of the judicial police agents and customs agents which operate (inactive) surveillance in the production of drugs or plantations classified as narcotic drugs or who purchase, hold, carry or deliver these substances, or make available to offenders in drug-related legal and logistical means. In the first hypothesis, it is sufficient the prior information to the public prosecutor or the investigating judge, while in the second case it is necessary a written permission. The French investigative practices in the field of drugs had developed three distinct patterns of activity:

- 1) “*le livraisons surveillées*” (purely passive activity that is limited to follow and document the illegal transactions of the criminal group);
- 2) “*le livraisons contrôlées*” (active conduct of public officers involved in the different transfers of the drug, even making *de facto* acts constituting offense);
- 3) “*l’infiltration*” (integration of the agent in the criminal group with the role of trafficker).

RGKG Law of 15th July 1992, adopted in Germany, created the role of “covered or secret investigator” with the right to work in the fields of crime of drug and arms trafficking, of the forgery of money or securities as well as crimes against the legal entity of the State. The use of a secret investigator is permitted under certain conditions:

- 1) For types of offenses relating to their manifestations of organised crime;
- 2) In the alternative in the cases where the investigation of such offenses with other instrument would be futile or more difficult;
- 3) By written permission of the prosecutor.

The distinctive feature of the German legislation is, on the one hand, the elastic nature of the model prepared and, on the other hand, the wide discretionary in the conditions of use, including the possible acquisition of a different identity of the covered investigator, under which the agent performs

the entire investigative activity both from a substantive level (to provide a formal coverage to the agent in the fulfilment of legal transactions), and on that trial being connected with the possibility of avoiding the direct testimony of the investigator, since at the hearing his direct examination may be replaced with a witness *de relato*.

The legislation is different from that of Europe in the United States, where it is recognised the usability of the undercover agent for all federal crimes and all criminal types. One of the most discussed issues in the U.S. system is the technique of the so-called entrapment: induction to commit the criminal act on the part of the agent provocateur. The U.S. Courts have repeatedly spoken about the responsibility or not of agents provocateurs and it has come even to exclude the punishment of the guilty as induced and instigated by the agent provocateur. The boundary for the assessment of such behaviour lies in the psychological aspect of the crime: the determination of the criminal, stimulated by the entrapment, is embodied in the understanding whether the defendant, if not instigated, failed to commit the criminal act.

The survey instruments described above are particularly invasive investigative tools, in which appears thin the boundary between the decision and the induction to transmit the crime and about that the European Court of Human Rights has repeatedly been requested with respect to the compatibility with the Charter of Human Rights. In summary, the case law of ECHR considered a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the use of investigative techniques that result in a real pressure or inciting the commission of the crime by the person subjected to undercover investigations.

National laws have dealt with undercover agents essentially in a profile of substantive criminal law, with reference to the causes of non-punishment, the European Court has instead always addressed the problem from the point of view of the trial, and in particular, in terms of compatibility of the intervention of the undercover with the principle of a fair trial (Article 6, paragraph 1 of the Convention). The judgments in this field have dealt with the problem in two ways:

- A) The intervention of agents provocateurs that could cause that “the use during the trial of the evidence obtained as a result of a provocation” cannot be procedurally permissible;
- B) The opportunity for the accused to examine the agent provocateur, right also provided for the conventional principle of a fair trial.

In judgment *Ludi vs. Switzerland* 15.06.92, the Court found a violation of the right to a fair trial in the refusal of the authorities to meet the requirements to obtain a direct comparison with the undercover agent, and the consequent conviction essentially based on a report prepared by the latter. The Court considers incompatible with the Convention a criminal conviction based solely, or to a decisive extent, on statements made by a witness to the investigative bodies that the defendant has never had the opportunity to



cross-examine and to overcome this antinomy have been developed various solutions: a closed hearing to examine the witness, which has its appearance hidden; providing an interrogation by videoconference, hiding its appearance or authorising its anonymity. Such methods of hearing are not incompatible with the principles of fair process and, moreover, this type of guarantees of hearing has been adopted by various international tribunals also in the UN.

In judgement *Van Mechelen and Others vs. Netherlands* of 04.23.97, the Court laid down the principle that anonymity can be admitted only if the measure has a mandatory requirement and no other measure could be considered as effective and this requirement must be justified by the domestic court adequately. In addition, anonymity should not apply to the judge, who must be given an opportunity to verify the identity of the undercover agent, in order to carry out the examination on the credibility that is precluded to the defendant.

In judgment *Texeira de Castro vs. Portugal* of 06.09.98, the European Court started from the principle that, in modern democratic societies, the function of investigative bodies is to protect the community against existing crime, not even that of creating, in turn, crime. A provocative tactics, in fact, is acceptable in a social-preventive view of criminological positivism from social defense, not in a legal system where there is the principle of guilt for which everyone is liable only because of his self-determination to commit a crime. The corollary of what said is the recognised violation of the principle of the fair process in the case where the agent provocateur is not limited to an observation and containment operation, but goes so far as to cause criminal behaviour that otherwise would not take place (principles reiterated in the decision no. 15100/06 of 21st February 2008 - *Pyrgiotakis vs. Greece*).

In judgment *Calabrò vs. Italy* of 03.21.02, the specific case concerned a German undercover agent, who had only to make known its willingness to import and sell drug and the complainant had contacted such person, had paid him money and had arranged a meeting to deliver the drug. During the trial, the Court had unsuccessfully sought to examine the German agent, but these attempts were unsuccessful. The European Court has stated the non-violation of article 6, because he found only the action of an undercover agent that he had only to make known its willingness to import and sell large quantities of drug and the contact had been made with a convict who already gravitated in criminal circles. In addition, the attempts made by the Italian authorities to ensure the presence of the agent provocateur in court, and the fact that the complainant's conviction was not based solely on the statements of the undercover agent, led to exclude any violation of the principles of fair process.

### **II.1.8 Geography of international drug trafficking, police techniques and capital countermeasures**

**Giuseppe Campobasso \***

Today, the geography of drug trafficking has a supranational character. Europe is interested in the west from the transit through the Iberian Peninsula, whose geographical position makes Spain strategic both for the so called “heavy” drugs trafficking, coming from South America, as well as for the so-called “light” ones, coming from North Africa and Balkans. In Italy the ‘Ndrangheta is the dominant criminal organisation in the trade of drugs: drug traffickers belonging to the Calabrian clans operate both in the North and in the South Italy. Sicily, instead, is characterised by a market designed to satisfy for the most the local consumption, rather than the transit towards other markets.

With regard to the types of drugs, South America remained the main channel of supply of cocaine, where the phenomenon is on the rise in Venezuela, Argentina, Brazil, Mexico and Dominican Republic. As far as the “light” drugs are concerned, the transit that happens towards Europe and Italy is made of consignments coming from African countries bordering the Mediterranean. More specifically, in recent times large batches produced in Morocco and Algeria are transferred to the border between Libya and Egypt, to be then transported by sea in the Old Continent. Finally, other consignments of hashish, marijuana and heroin affect the traffic towards the Adriatic coast, with loads that come from Albania, Montenegro and countries of the ex-Yugoslavia.

With regard to the fight against the phenomenon, various levels and techniques of intervention exist: ranging from the simple stakeout for the repression of the “retail” trafficking, to the more complex and technical interventions in the hierarchy of the fight to the outright trade. Fundamental tools are wiretappings, as well as the environmental and telematics interceptions (communications via Whatsapp, Facebook, Skype), which are more and more meant to take the upper hand over traditional telephone tapping. In the telematics ones the target terminal is insinuated with a virus that intercepts messages before they are transmitted over the air, when they are encrypted, allowing to renounce to the needed protocols for decryption that telephone operators do not give. This type of interceptions are, however, still very complex and operationally of questionable usability, because not yet fully regulated by the legislator.

Strategically, the activities to fight drug trafficking, should put themselves “vertically”, assuming to attack organisations and individuals at the top in the sale, so as to dislocate with “a ripple effect” even the lowest levels. Alongside such a “vertical” approach, there is also a “horizontal” one, which hits the economic interests of the chain of sale at any level. Guardia di Finan-

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*\* Lieutenant Colonel, Bari Provincial Command of the Guardia di Finanza*



za anti-drug sections work primarily just on the economic interests linked to drug trafficking. The results of investigation on the economic aspects can be collected basically with three legal instruments. The first one consists of the provision of the penal code that affects the money laundering or the reuse of the proceeds of unintentional crimes (Article 648 bis and 648 ter of the Criminal Procedure Code). The second one is the article 19 of the Anti-mafia Code, which provides the possibility of carrying out, on request by the judicial authority, investigations about the assets of the “suspected” subject as well as on the family and household members over the last five years. This activity, however, is usually performed after the commitment for trial and then late, as the person concerned by the time is aware of the investigations. Article 19 of the Consolidated Act is completed by Article 20, with the possibility of confiscation, whereas they are not proportionate to illicit income or justified in their origin.

The last legal instrument to attack the assets of the organisations is that which derives from the application of article 12 *sexies* of the Law-Decree 306/1992, relating the fight to organised crime or its equivalent forms. It indicates as compulsory the confiscation of all those financial, economic and patrimonial assets, which are not, even in this case, justified by the illicit income of the person concerned. This has been done through the final judgment, referring to the final confiscation or arising from plea bargaining. It is a legal instrument that is likely to be applied only after many years, because it is linked to a sentence, which must be final. The article, however, can be applied in conjunction with art. 321 Code of Criminal Procedure, to give life to a real measure of prevention in which the *Preliminary Hearing Judge* (in Italy, G.I.P. – Giudice per le Indagini Preliminari) can apply the rule before the definition of the judgment.

### II.1.9 Methods of research Textual analysis

#### Giovanni Frazzica \*

In this paragraph, we are going to introduce the potentiality of some techniques, which is possible to apply to the telephone tapping and environmental tapping analysis, relying on the relevance of their profitable use in support of enforcement actions of criminal conduct and of those involved in drug trafficking. In particular, we will focus on the automatic analysis of texts. As it has been said elsewhere (Frazzica, 2010), the amount of textual data, obtained either through the use of environmental tapping or through telephone tapping, has allowed us to obtain relevant information and shed light on the dynamics that characterise the conduct of criminal organisations.

It should be emphasised that sometimes these texts were produced in

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the unawareness of the fact that it can be heard. Sometimes, it comes to texts that are the result of a careful selection, by the intercepted subjects, the terms to be used, just in order to reduce the risk of getting caught. In telephone tapping, which see as protagonists the subjects devoted to drug trade, it is unlikely to find specific contents and explicit references to drugs *with which one has to do* or to other illegal trafficking. This circumstance makes the work of those who are devoted to the contrast of criminal organisations significantly more difficult.

The experience and deep knowledge of the criminal gangs are the most significant variables. We noticed that, if the characteristics of such texts make them attractive for the conduct of an analysis of the automatic type, the excessive fragmentation of these documents makes their computer-assisted processing very difficult, when the potentialities of these tools are not fully known. The analyst in most occasions has to do with interrupted texts. At a first glance, to take the path of the automatic treatment seems a particularly complex endeavour, although not without utility. It is in fact the same extension of the texts to suggest the use of special programs. On the other hand, a purely qualitative analysis, which involves the careful reading of all the fragments which make up such data, may still occur and be helpful in the process of ambiguity reduction of certain expressions. A careful reading of the textual data is ultimately required. Therefore, the role of the analyst is indispensable and cannot be substituted by the program. Having said this, it is nevertheless relevant to use a computer assisted analysis.

We can now focus on some of the most relevant functional techniques to manage the complexity of the texts. As it was possible to notice during a previous research (Frazzica, 2010), we can investigate the spoken topics (and/or about the themes that instead are exactly avoided), underlining the correlation between some members and the roles covered by them. The development that has affected the analysis of texts and the aid provided by information technology has enabled the advent of investigative procedures until very recently unthinkable. The analysis of lexical correspondences (ACL) [Lebart and Salem, 1988; Amaturò, 1989 Bolasco 1999], for example, allows the analyst to answer cognitive questions, related to the identification of the sense of a *corpus*, in a more profitable manner when compared with the classical analysis, of which is presented as an evolution. Other analytical techniques (that have nothing to do with the ACL) are made possible by the so-called CAQDAS - for the qualitative analysis - (e.g. Atlas.ti).

In a very different way when compared with traditional content analysis, which was based mainly on the count of the words in a text, underestimating in some ways the influence of the context, the ACL is based on the “differences” and not merely on “measures”. Summing up, the ACL considers that the meaning of a word is about the relationships that it has with other words: one word is all the more “significant” as it is specific to certain groups of people. As several authors point out [cf. For example, Trobia, 2005], ACL

is a quantitative technique for qualitative data. It is precisely on the analysis of the differences that we will focus more attention. Consider that the analysis of lexical correspondences is an exploratory technique that allows identifying the hidden dimensions of meaning within a text or set of texts, allowing, at the same time, to look to them giving up the traditional coding operations. The procedure starts from the construction of a matrix that we will call *lemmas* matrix for texts. This matrix of contingency thus constructed contains in row the *lemmas* and in column the variables, which in this case are constituted by different texts.

It is easily possible to carry out the analysis by pushing it at different levels, providing in output some scatter plots, which represent the factorial space on which the elements are projected, i.e. the *lemmas* and the modalities of the used variables for the construction of the factorial axes. Each factorial axis represents a dimension of latent sense. In certain cases, it is possible to deepen the analysis using another technique. We summarise, therefore, the thematic analysis of the elementary contexts, a technique that is closer to the objectives of the analysis of the classical content (which made the mere word count), since it allows to shed light on the most recurring themes within a corpus allowing, consequently, to direct more attention to the context within which we find the *lemmas*. This technique also provides a factorial plane on which are projected the thematic clusters. This analysis has the aim to summarise the complex content of the whole *corpus* in a few and significant clusters, each of which is composed of a set of sentences that are about themes relatively homogeneous; the identification of these themes is made possible by the examination of the lexical units and, wherever possible to find the presence also of the variables and of the relative modalities that characterise the different elementary contexts. The analytical procedure therefore allows creating clusters of themes. Each cluster can be inspected either by the reading of the *lemmas* that characterise most (using the chi-square test) and by the observation of elementary contexts contained in it. At the end of the process, it is possible to estimate the weight of each theme within the text by observing the distribution of the elementary contexts in the thematic clusters and then read the size represented by the factorial axes also in the light of the latter. The use of the T-Lab\* software allows to provide a concrete example of what has just been presented and to understand what could lead to an analysis that follow this path.

With reference to the techniques of qualitative analysis, instead, while not entering into the regarding of the different addresses that the method followed in the recent years, it is important to remember that the path followed by this research tradition is set up as a choice that remains anchored to the *datum*, whose collection does not follow a predetermined path. In terms of

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\*An interesting link to the website: <http://www.tlab.it/it/presentation.php>

the qualitative analysis, the tools are many and include the family of software that are defined through the use of the acronym CAQDAS (Computer Assisted Qualitative Data Analysis Software). These programs show all their usefulness since they enable the recording and storage of all material collected during the survey (for an interesting example see: <http://www.atlasti.com/index.html>). They allow an agile data encoding, facilitating the recovery and the connection of the codes assigned during the process of texts organisation, could also benefit from the associated functions with hyperlinks. One of the most popular programs is certainly ATLAS.ti, the program used to conduct several studies (see, for example, Trobia, 2005). It is a tool that, as summarised by Muhr (1997) in the acronym VISE allows the visualisation, the integration, the serendipity (finding something while looking for something else) and the exploration. The program allows the analyst to work on the so-called primary documents and codes defined by him in line with the approach to be followed for the survey. The analysis uses the use of memos: it will write down, for example, impressions, captions, theoretical points, which act as information emerging at a time when some beliefs begin to take shape.

### II.1.10 The simulation models

#### **Valentina Punzo \***

The social simulation is a technique of quali-quantitative research [Trobia 2001; 2005], which consists of the use of models “precisely specified (often) formulated and executed on a computer, to (re) create and study essential aspects of society and natural societies (human and non-human) and artificial” [Conte, 1997: 287-288]. The purpose of the simulation is to understand the reality re-creating it on a computer [Parisi, 2001: 33]. The question to ask in the planning of a simulation study, observe Conte and Gilbert, is not “what happened” or “what will happen”, but rather “*what are the necessary and sufficient conditions for a certain phenomenon to occur*” [Conte, Gilbert, 1995: 3].

The idea of society and artificial cultures was born in Europe in the mid of 90s [Gilbert, Earl 1995] and then be absorbed rather quickly in the United States [Epstein, Axtell 1996] when social scientists, scholars of complex systems, theorists of networks, cognitive scientists began to use the simulation method to analyse and understand social phenomena and also to plan interventions on these same phenomena.

In particular, the agent-based model well suited to the study of phenomena and the so-called *complex* systems [Macy, Willer 2002].

Any agent-based simulation experiment consists in the following steps: “place an initial population of agents in a spatially appropriate environment, let the agents interact with each other, according to simple decision

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rules and thus to grow, then “generate” the macroscopic regularity from below [Epstein, 2006: 7].

The analysis of crime appears to be a major challenge for social simulation [Liu, Eck 2008; Birks et al. 2012; Fici, Punzo 2011; Punzo 2012, 2013]. In the criminal case analysis, the macro-micro-macro interdependence is expressed in the ability to implement simulations aimed at the analysis of a given regularity at the collective level, such as spatio-temporal pattern of certain criminal events, as the product of the actions and interactions between individual autonomous and heterogeneous agents.

Typically in the criminal sphere we find the actions of criminals (with related motivations), agents of the security forces (with their objectives), potential victims (associated to specific characteristics) [Groff 2007], which guide their actions in a local area (e.g. urban context, roads, social networks, etc.), highlighting how the macro output depend on the interactions of agents in certain environments.

The main argument in support of the use of simulation method in the field of criminology focuses on the need to overcome the limitations inherent in the current empirical research, hampered by the inability to conduct field trials. It refers to the use of agent-based model as a virtual laboratory to conduct “virtual experiments” [Liu, Eck 2008; Townsley, Birks 2008], in which manipulating one or more components of a system by examining the consequences of the conditions postulated in the model.

Among the issues of interest in the criminal sphere, there is an examination of the factors influencing the emergence of so-called hot spots in certain urban contexts and dynamics that characterize the geographical distribution and evolution [cf. among others Furtado et al. 2007]. Some recent studies are oriented towards the integration of agent-based simulation systems (ABM) and georeferenced information systems (GIS) [Groff, Mazerolle 2008; Liu, Eck 2008], in order to include in the simulation, both time and space. These instruments represent a useful support of control agencies and police forces that can allocate at the best resources in areas where there is more likelihood that crimes occur.

Some interesting applications can be made to the drug phenomenon, with regard to both the aspects related to drug trafficking and the dynamics of its use.

On the one hand, under the *Drug Policy Modelling Project* (DPDM) sponsored by the Drug Centre in Melbourne, the researchers implemented a simulation model called *SimDrugPolicing* agents (Dray, Mazerolle, Perez, Ritter 2008), in order to investigate the related impact of different law enforcement strategies, as part of a market for archetypal dealing, defined from data extracted from the city of Melbourne (Australia). *SimDrugPolicing* models the complex interactions between users, dealers, retailers and police forces, analysing different indicators (e.g. the number of crimes committed, the number of overdose of drug dealers and users, etc. ..) in order to evaluate the effec-

tiveness of law enforcement strategies in weakening the drug market at the local level. Vice versa, the model of Drugtalk by Michael Agar (2005) focuses on drug addiction (heroin) as a phenomenon emerging from each individual experiences and the evaluation and communication of these experiences through social networks. The model reproduces the trend of real epidemiological curves. The agent-based simulation is thus an effective tool to explore the complex dynamics of the use and dissemination of the drug within a given population as much as those involving drug trafficking.

### **II.1.11 Methods of research The use of network analysis in the study of organised crime**

**Attilio Scaglione \***

In recent decades, the interest in the activities of criminal analysis applied to the police investigation has increased dramatically. Even in Italy, although the role of the crime analyst has not yet been institutionalised, the use of survey instruments borrowed from university research is a growing phenomenon. Research techniques and powerful software, now able to quickly analyse huge quantities of data and information, developed within sociology, criminology and psychology, can be extended to the understanding of complex criminal scenarios, of the realisation of comparative studies on different phenomena, of forecast of evolving criminal trends (strategic analysis), but can also be a valid support to the investigations on single criminal events, to the activities aimed at seeking evidence and the identification of crime perpetrators (operational analysis). In the light of what said above, in this short chapter we will focus our attention on the significant potentialities of network analysis (Social network analysis, SNA) as a research technique able to facilitate the understanding of criminal phenomena and to improve the effectiveness of fight and prevention of the criminality.

This brief chapter proposes: first, to outline the theoretical framework of the analysis of social networks and the main operational techniques of research, and secondly, to describe some practical cases published in the literature on the possibilities of SNA use in the activities of police investigation and criminal analysis. Most of these works are based on the use of data related to telephone communications intercepted by the police. It is evidently of recent applications of network analysis techniques which, however, have already achieved significant results. There are of course a number of difficulties associated with the collection; processing and analysis of data that we cannot deal with in this paper (refer to Scaglione 2011).

The analysis of social networks is a theoretical and methodologi-

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cal perspective that deals with the study of social relations (Salvini 2005; Trobia and Milia 2011). At the basis of this perspective, there is in fact the assumption that society may be considered as a complex web of social relations. Every social phenomenon can be analysed and interpreted starting from the reconstruction of relations links that structure it. The study of social relationships can be achieved by the graph theory, from which derive the statistical measures to describe the structural characteristics of the *reticula*. Around the metaphor of the network, has developed a wide range of studies. Within the fundamental assumptions of the network analysis is the idea that the explanation of social phenomena is to be found not only in the attributes of the units of analysis (the classic sociographic variables such as age, sex, level of education), as in the relations between them. The SNA is ultimately a set of techniques designed to measure the social relations that form in society.

In the sociological literature (Scott, 1991; Chiesi, 1999), the German sociologist Georg Simmel is widely recognised as the precursor of the relational approach to the study of society. For Simmel, the task of sociology is to describe the relational forms practiced by individuals in their constant relationship of interaction. However, it is Jacob Moreno who develops the rudiments of the analysis of the network. Moreno, a Gestalt psychologist, who escaped from Nazi Germany moving to the U.S. in the Thirties, became interested in the study of the structural social configurations. The scholar devised a quantitative method, the so-called sociometry, in order to investigate the organisation, the development of the groups and the location of individuals within them. To represent these forms of social configurations, Moreno devised the sociograms, diagrams in which individuals were represented by dots and relationships by lines.

In the following years, the analysis of network developed through his studies at Harvard University. The SNA was profoundly influenced by the studies, which have become classics, from Mayo and Warner. A few years later, during the 50s, in Europe, at the University of Manchester, gathered a large group of British anthropologists, among them distinguished themselves Gluckman, Barnes, Bott and Mitchell, who deepened in particular the analysis of the conflict and the power size within the networks of relationship. These scientists also defined a set of fundamental concepts such as density, intensity, degree of connectivity, reachability, etc. aimed at measuring the structural properties of social organisations, and therefore useful to the description of the networks. In the 60s and 70s, the analysis of network developed further starting from the studies of researchers gathered at Harvard around the figure of Harrison White. The Harvard group developed his numerous works by following a mathematical approach, with the aim of building models of social structures. Towards the end of the seventies, finally, Wellman founded the International Network for Social Network Analysis (INSNA), which is still the main point of



reference, at an international level, for scholars who deal with the analysis of social networks.

In the literature, there are many works that have used the network paradigm as an approach to the understanding of the typical models of the organised crime and in particular of the drug trafficking. In the final part of this chapter, we will mention only some of these works, without any pretence of completeness.

*Tab. 1 - Some applications of the network perspective to the study of organised crime*

|   | Strategic analysis  | Operational analysis |
|---|---|----------------------|
| <i>The network as a theoretical concept</i> | 3. Bruinsma, Bernasco (2004)<br>4. Kenney (2007, 2008)      | -                    |
| <i>The network as a research technique</i>  | 5. Krebs (2002)<br>6. Gimenez (2011)<br>7. Scaglione (2011) | 8. Calao (2004)      |

Kenney (2007, 2008), for example, has applied the concept of network to the study of Colombian criminal organisations involved in cocaine trafficking. After resizing the myth of Pablo Escobar and destroy the idea of the Colombian cartels as monolithic and hierarchical organisations, the American scientist has rebuilt two ideal types of traffickers networks. The first model, called the “Wheel Network” is a type of network within which it is possible to identify a central organisation and a number of smaller criminal groups. The core organisation coordinates and supervises the activities of the single peripheral groups in the different phases. The second model, called the “Chain Network”, is instead a kind of network more dispersed and fluid, characterised by the absence of a central group.

The drug passes from one group to another through various stages without following a precise path. Compared to the first model, the chain networks are obviously more difficult to detect and dismantle, but also less efficient and less performing, because transaction costs are greater. The network concept is used at the theoretical level also in a study signed by two Dutch researchers (Bruinsma and Bernasco 2004). This work analyses, in a comparative perspective, three different illicit markets: the heroin import from the Middle East by Turkish groups based on family, trafficking in women for purposes of prostitution, trade in stolen cars from the Netherlands towards developing countries. The study reconstructs the ideal-typical characteristics of criminal networks, identifying the main similarities and differences.

The network concept has been applied, as well as a theoretical perspective, also as a research technique, and then through the use of the techniques of SNA. In comparison with strategic analysis, in this work, we would like to point out: the study from Krebs (2002) on the networks of 9/11 attackers; the contribution from Giménez (2011), who reconstructed the *reticula* of four criminal organisations involved in drug trafficking; our study (Scaglione 2011) on the Mafia clans which highlighted the organisational differences between a Sicilian criminal group and one from Campania. Finally, with respect to the possible applications of network analysis as support to the operational analysis activities and then to the single investigations, we think it is useful to quote the interesting dissertation from Calao (2004), who made the most of his experience gained as police detective with the knowledge acquired through his university studies.

### **II.1.12 The monitoring and the evaluation of stakeholders' satisfaction of the educational activity**

**Paola Grasso \***

The monitoring of a project involves the whole articulation of it and increases the value of its outcomes, related to the set of the objectives. Evaluating, then, means to investigate the processes, in order to identify strengths and weaknesses, aiming at improvement. In this sense, a monitoring system - which includes the definition of the *status quo*, an ongoing evaluation and a final evaluation - should be strongly anchored to the vision of the project as well as to the results that it should achieve.

An essential part of this system is the analysis of stakeholders' satisfaction: indeed, this is one of the ways to measure the effectiveness of actions, and at the same time an important source of information in order to observe, consider and when necessary revise the project structure, depending on the achievement of objectives. The IFO Project, having provided a structured monitoring system, has obviously focused the attention also on one of the most important aspects of the actions envisaged: the fact that the training course was addressed to operators of security forces, on the basis of the results of a research previously carried on the fight against drug trafficking.

In order to gather a complete picture of the students' perception about the quality of the training, we have identified three areas that have subsequently led to the construction of a customer satisfaction questionnaire. This can be a quite effective tool in order to focus the monitoring on the aspects considered appropriate to carry out a systematic evaluation of the final action. In this sense, three areas to investigate were chosen, each of them related to three elements which are essential for the success of an educational activity:

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\* *Educationalist, Tutor of Italian training course*

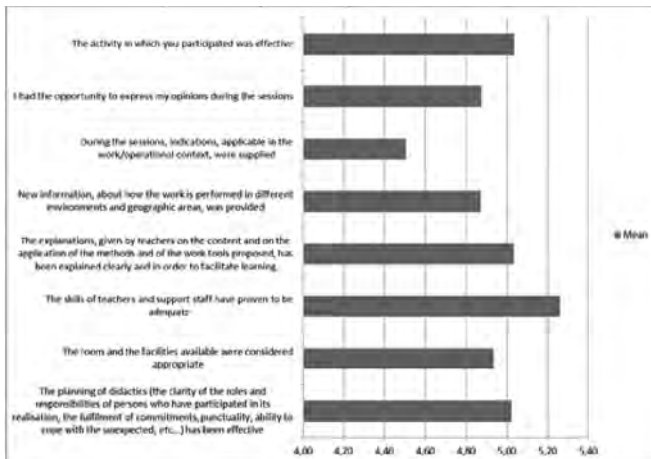
1. The organisational aspects of the training days;
2. The teaching approach, in terms of trainers' competence and the facilitation of the learning;
3. The contents, in terms of added value compared to the professionalism of the onlookers and the operational implications within their business.

The questionnaire included of 8 questions - to be answered by expressing a numerical rating on a scale between 1 and 6, whereas 1 corresponded to strong dissatisfaction and 6 to strong satisfaction - and a free space for each question. It was composed of rather synthetic questions and centred on the objectives of the course, compared to the three areas described above. It was distributed in the middle of the course and then again at the end of the training sessions.

The questions were about the structural quality of the training environments and about the didactic tools used, leading the trainees to express gradually an evaluation on the educational environment and on the effectiveness of the inputs offered in terms of acquisition of operational expertise, information and new points of view to integrate in their background, providing also a judgement on the adequacy of the professionalism of the trainers and on the effectiveness of the learning in a group setting.

The results of the questionnaires were processed within a table, and subsequently analysed.

We report a synthetic graph that displays the average of the results of the questionnaires given at an intermediate stage and at the end of the course. From the analysis, carried out by the project team, appears how positive is the overall perception of the stakeholders, both with respect to the organisational-didactic area and to the training one: there is a positive integration between the two aspects which. In our opinion, this shows that perform the activities were carried in a rather linear and efficient way. There were also some criticisms placed on aspects that in many cases we were able to improve during the course. We can say that the opinions expressed were taken into account and used in view of a continuous improvement.



## II.2 SPAIN

### II.2.1 General Considerations

The specialization course “Legal and operational instruments in the fight against the international trafficking of illegal drugs” is conceived as a key activity within the European ILLEGAL FLOW OBSERVATION (IFO) project led by the Fondazione Rocco Chinnici, in collaboration with Palermo University and the Security Sciences project (CISE) at Salamanca University.

Based on the results of the research phase, which involved carrying out surveys and setting up focus groups with those undergoing the training, the CISE research team designed the course, which aimed to cover in six workshop modules the different topics highlighted as vital areas for study and analysis for the officials taking part in the process.

Given the practical nature of the course, as unanimously requested by the group of participants in the research process, it was designed in collaboration with magistrates, judges, prosecutors and members of the Civil Guard and the National Police Force, through a series of conferences and presentations.

This section provides an overview of the main issues discussed, identifying the individuals involved. Given the limitations of space here, over the coming months CISE will be publishing a book with all the working material prepared by teaching staff, researchers and the magistrates, judges, prosecutors and members of the Guardia Civil and National Police Force who took part in the debate.

### II.2.2 European and national regulations on international drug trafficking: introductory framework and discussion points\*

**Moderator: Cristina Méndez Rodríguez\*\***

#### *II.2.2.1 European and national regulations on international drug trafficking: introductory framework*

**Cristina Méndez Rodríguez**

This module will examine the provisions that deal with the crime of international drug trafficking as committed by organized crime.

Basing our analysis on the crime of drug trafficking (Art. 368) and the elements that define it in relation to trafficking, we shall examine exacerbating factors which give importance to the amount of the substance involved (Art. 369.1.5) and to the fact that the guilty party may also be involved in other organized activities or activities which are facilitated by the crime in question

\* The summary of the presentations featured in this section has been undertaken by Dr. Cristina Méndez Rodríguez – Professor in Criminal Law at Salamanca University

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(Art. 369.1.2). We go on to examine the added elements of membership of a criminal organization (Art. 369 bis) and of the extreme gravity of the offence (Art. 370) and, finally, the existence of previous trafficking offences (Art. 371).

Until 2010, the Spanish penal code contained no specific regulations on organized crime, except as an aggravating circumstance for certain crimes. With a view to harmonizing the legislation of Member States and to complying with what was agreed at the United Nations Convention against Transnational Organized Crime in the year 2000 (the “Palermo Convention”), the Council of the European Union adopted Decision 2004/579/EC on combating organized crime, meaning that the legal systems of Member States had to include the crime of membership of a criminal organization as part of their legal framework. On 22 June 2010, therefore, Spain passed Organic Law 5/2010, with the criminal code contemplating membership of a criminal organization (Art. 570 bis) and membership of a criminal group (Art. 570 ter).

The same reform of 2010 also includes a provision (Art. 369 bis) which considers the crime of drug trafficking (Art. 368) as more serious when it is committed by an individual who belongs to a criminal organization. The crime is also considered to be aggravated when it involves drug trafficking via international networks engaged in such activities (Art. 370), as well as Art. 369 1.2, which takes into account whether the guilty party is involved in other organized activities or activities facilitated by the offence.

The offence of drug trafficking committed by a person who belongs to a criminal organization (Art. 369 bis) requires the existence of such an organization as defined in Art. 570, and this organization must also, according to the jurisprudential pronouncements on this provision, fulfil a number of requirements: it must be made up of at least three people; those who belong to the organization must perform the acts described in Art. 368, namely, cultivation, processing or trafficking, or the promotion or facilitation of the consumption of illegal substances; the organization must be stable in character or established for an indefinite period; there must be a concerted and coordinated distribution of tasks or functions with a view to the committing of crime; the membership of the organization must not be equivalent to a one-off contribution to it, but must be more or less repeated, and not be equivalent to the existence of relations with said organization; or to a mere agreement to commit a crime among several individuals.

In other words, participation in a crime committed by an organization does not make the participant into a member of that organization, as when an individual collaborates on a certain occasion, but without any desire for more or less permanent integration in the organized group. For the crime to be considered as an aggravated offence, then it is necessary for the offence to be committed as part of the activity of that organization, by a member of the organization.

An overall assessment of the existing regulations is, however, a negative one, given that it refers to the way in which the legislation views the committing of these offences by criminal organizations and via international networks. In its eagerness to take into account all possible ways to commit such offences on the part of criminal organizations, the legislation has spaw-

ned a mass of provisions which, besides the existing aggravating circumstances, includes the new offences of belonging to a criminal organization (Art. 570 bis) and to a criminal group (Art. 570 ter), as well as the offence of drug trafficking committed by a person belonging to a criminal organization (Art. 369 bis), which is causing extremely complex problems of competing crimes and regulations that are not conducive to the speed and efficiency required to combat this serious form of criminal activity.

### ***II.2.2.2 The right to the secrecy of communications from the perspective of the examining magistrate***

**José Luis García González\***

Among the duties performed by an examining magistrate, one of the more complex involves fundamental rights and, among these, the one referring to the right to the secrecy of communications. The only way counsels for the defence may proceed to avoid their clients being found guilty in court is to attack the legality of those court orders that affect the secrecy of communications, as these are decisions that are governed by an extensive jurisprudence, but not specific legislation that delimits their requirements, despite the fact there are international rulings that have declared Spanish legislation to be insufficient (ECHR, Fourth Section, sittings of 18 February 2003 and of 30 July 1998). The nullity of the proceedings pursued in breach of those rights entails the nullity of the evidence based on them.

It is therefore extremely important for examining magistrates to be suitably instructed and have the necessary quiescence to make these decisions in a due and proper manner, otherwise the actions of the police, of the Public Prosecution Office, of expert witnesses and of the sentencing court will amount to nothing, leading the public at large to experience a sense of impunity. Nevertheless, these decisions are often made by duty magistrates in response to a police request that requires an almost immediate response.

Current legislation on the Court of First Instance, in general, and on the role of duty magistrates in particular is not helping to resolve this issue. The reform of the Law on Criminal Proceedings (LECr) which came into force in 2003 (Law 38/2002, of 24 October on the partial amendment of LECr) regulated the current system of fast-track trials and immediate penalties, with the former being held, and the latter imposed, during the brief period of duty because they are minor infringements and easy to investigate, whereby it is often the case in practice that supposedly minor tasks, given their high number, considerably reduce the time involved and allow attending to other matters of greater importance that require quiescence for their resolution.

This situation is compounded by the statutory reforms implemented by the General Council of the Judiciary, which assigns duty magistrates tasks that involve replacing not only other jurisdictional bodies with criminal jurisdiction (Courts sitting on Domestic Violence, Minors, with special duties in

\* *Magistrate - Judge of the Court of First Instance No. 1, Salamanca*



the matter of criminal sentences, and criminal proceedings), but also those involving administrative proceedings (very urgent matters involving foreign nationals, permission for administrative entries and public health), the Civil Register and substituting the Chief Judge.

On the other hand, among the major issues regarding the adoption of these rulings, the following should be highlighted: the involvement of the Public Prosecution Office in the moment prior to the adoption of the ruling that affects the secrecy of communications. Section 19.6 of Circular 1/2013 issued by Spain's Crown Prosecution Office on the guidelines related to the proceedings for monitoring communications states that although there is legally no prior procedure available to the Prosecutor for the issue of the judgement on the appropriateness of the measure, this transfer is pertinent and consistent with the status of guarantor and protector of the fundamental rights that the Law assigns to that Office.

This intervention by the Prosecutor prior to the ruling is especially valuable given that, in the majority of cases, the Public Prosecution Office will be the only one to pursue criminal proceedings and, therefore, will have to justify in court and during the different proceedings the appropriateness of the measure restricting fundamental rights.

Secondly, of considerable practical importance in these investigations is the existence of a fluent relationship between the examining magistrate and the Security Forces, who in most cases will be the ones to seek measures of this kind. The officers responsible for the investigation will need to remember that the doubts and reluctance expressed by the examining magistrates before agreeing to a measure of this kind are in response to the risk that, as noted above, unjustified monitoring of communications will disqualify all subsequent investigations, even when they may have been successful in strictly policing terms.

Thirdly, a practical aspect of considerable relevance to the proper conducting of the investigation involves the control over telephone monitoring by the examining magistrate throughout the time the measure is in force. Although article 579.3 of Spain's LECr specifies that the monitoring of communications may be permitted for a period of three months, in practice it tends to be imposed for a period of one month, largely because this is the timeframe foreseen for the secrecy of actions in article 302 of the LECr, whereby both timeframes are made to coincide.

Spain's Constitutional Court has ruled that judicial control over the monitoring of communications integrates the core content of the right to the secrecy of the same (Constitutional Court Ruling number 9/2011, of 28 February, 165/2005, of 20 June). Based on this consideration, Circular 1/2013 issued by Spain's Crown Prosecution Office states that an examining magistrate may not simply order the measure, delegating to the police all subsequent decisions, as this would involve a total lack of protection for the person subject to the monitoring.

Furthermore, there should ideally be only one judge or magistrate overseeing these actions from start to finish, and it is vital that they liaise with the police force when monitoring these measures, whereby the rendering of



accounts and requests for an extension of the authorisation will not be made during those periods in which the judge assigned to the case is absent (holidays, leave, illness, etc.) as the incorporation of a replacement may lead to a breakdown in the management of the agreed measures. Based on the above, the author of this presentation understands that the judge who has authorised the monitoring, who is receiving regular reports from the police and who has agreed to, as appropriate, one or more extensions of the authorisation, is the one who can truly provide a greater degree of assurance in the control of the measure and its legal grounding.

### ***II.2.2.3 Maritime routes for the traffic of cocaine to Spain***

#### **Muñoz Pintos\***

The criminal police in matters of drug trafficking should focus more on stopping shipments by sea, as this is the way large amounts of cocaine come into Spain.

This traffic involves both non-commercial vessels and merchant ships, as in the case of the containers shipped from numerous countries in South America.

The problem of the wholesale traffic in cocaine (tonnes) does not only affect Spain, although there was a time when Spain was the gateway to Europe for South American cocaine, but rather that there are now international gangs of many nationalities (citizens from the Balkan countries, Italy, the UK and France) that are operating both in Spain and throughout the rest of Europe.

According to the UN, the annual production of chlorohydrate of cocaine in the Andean countries today amounts to between 800 and 1,000 tonnes. Calculations have been made using satellites that take aerial photographs of the cultivation areas. From these, and again according to the UN, around 250 tonnes are sent to Europe, although this is only an approximate figure given that no accurate calculation can be made.

Spain has seized 50% of the overall cocaine confiscated in Europe in recent years. Seventy percent of the cocaine that reaches Europe does so by sea.

The year 2003 signalled the beginning of a boom in the sending of large shipments of cocaine to Spain, above all by Colombian traffickers. In 2013, between 70% and 80% of the cocaine that reached Spain did so via shipping and containers. From the 35 tonnes seized aboard ships in 2003, the figure dropped to only nine tonnes in 2013. This points to a change in trend, whereby most of the cocaine is now being sent in containers.

According to Europol, the shipment of cocaine to Europe involves three routes: the northern route (above the Azores), the central route (between the islands of Cape Verde, the Canaries and Madeira), and the African route, whose destination is the Gulf of Guinea and the African coastline towards the south. There are in fact many other routes, such as the Mediterranean one,

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\* *Chief Inspector, Intelligence Centre against organised crime of the National Police Force*

which is used above all by leisure craft and yachts that enter the Mediterranean and berth in marinas, with their cargo of 200 or 300 kilos being unloaded 10 kilos at a time, making it much easier to organise a vessel for the shipment.

In 1986 and 1989, two yachts carrying small quantities were seized for the first time, one with a cargo of 60 kilos in the Spanish port of A Coruña, and the other was boarded in the Straits of Gibraltar with 100 kilos on board. The 1990s witnessed the appearance on the scene of Galician groups that had previously been involved in smuggling cigarettes and now began dealing above all with Colombian cartels, with whom they were soon involved in large-scale operations. These involved drug smugglers who neither bought nor sold. As of 2003-2004, these organisations diversified, and gangs of other nationalities began to appear, many of whose members had settled in Spain, and above all nationals from the Balkan countries (Serbs, Bulgarians and Romanians), who used mainly smaller craft.

Faced with greater control by the Spanish police and security forces and customs officials in the Atlantic, where furthermore the use of satellite technology led to the seizure of up to 15 vessels in a single year, the routes for the shipment of cocaine to Europe were modified in several ways. Firstly, instead of large consignments sent by ship, containers were used that involved smaller caches and required a smaller infrastructure.

This change in trend has not only affected Spain but also Europe as a whole according to the data provided by European countries themselves. This has meant that from 2008 onwards there has been a significant drop in the amounts of cocaine seized because the shipments are now being sent inside containers.

It should be noted that in terms of the seizure of cocaine in caches of more than five kilos, 50 tonnes were confiscated in 2003, and in 2005 and 2006 the amounts confiscated were close to that figure. At that time, each shipment consisted of two, three and up to five tonnes. Today, although fishing vessels and cargo ships continue to be seized, the amounts have fallen to one or two tonnes.

This drop in seizures is also related to the fact that the routes have been diversified and that shipments are now being made to other countries throughout the world, such as Syria, Japan, Jordan and Australia, where containers carrying large amounts have been seized. Over the past four or five years, cocaine has spread throughout the world. The South American cartels that exported to Europe, and from there to other countries, now send their caches directly, avoiding transit countries. This means that Spain is ceasing to be an export country. There has also been a rise in the number of seizures in the countries of origin throughout South America, such as Brazil, Colombia and Peru, where there is stricter control at both ports and airports.

Containers have been seized originating from all the countries in Central and South America. In 2013, 53 containers have been seized in Spanish ports. In sum, the aim has been to shed light on the change that has taken place in the shipment of cocaine by sea to Spain, as well as stress that an essential factor in the fight against these criminal organisations involves closer collaboration between the police forces of different countries and the sharing

of information. Such international collaboration is lacking today, and although it has improved in Europe, the same cannot be said for South America.

### **II.2.3 European and Spanish regulatory considerations in matters of transnational organised crime: introductory framework and discussion points\***

**Moderator: Laura Zúñiga Rodríguez\*\***

#### ***II.2.3.1 European and Spanish regulatory considerations in matters of transnational organised crime: introductory framework***

**Laura Zúñiga Rodríguez \*\*\***

This presentation addresses the main issues facing legislation and Criminal Law when dealing with transnational organised crime:

1. What is organised crime? The term has its roots in criminology and sociology, but not in Criminal Law. Criminal liability is a personal matter, which is why it is so difficult to legally pursue criminal organisations.
2. The transnational nature of criminal organisations poses a major difficulty. There is no provision made accordingly in the Criminal Code, simply the aggravating circumstances stipulated in art. 370 for drug trafficking crimes. Likewise, art 23.4 of Spain’s Organic Law on the Judiciary contemplates the principle of universal justice in drug trafficking crimes, human trafficking crimes and those related to prostitution. Spanish legislation has the classical concept of the crime of illegal organisation or conspiracy - *asociación ilícita* (art. 515), and 2010 witnessed the introduction in the Criminal Code of the crime of criminal organisation (art. 570 bis) and the crime of criminal group (art. 570 ter).
3. Overlapping of concepts and, therefore, of legislation. There is no systematic treatment of organised crime. Spain’s legislators have left outdated concepts and introduced new ones.
4. What is criminal association? This criminal category has been applied rarely because it conceals a historical prejudice through its association with political persecution. Can the interpretation of criminal association apply to an organisation that occasionally commits a crime, such as a company?
5. What is a criminal organisation? The new crime of criminal organisation states in art. 570 Bis: “they are intrinsically criminal associations”, according to the Preliminary recitals. This concept is broader than the

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\* The summary of the presentations featured in this section has been undertaken by Prof. Laura Zúñiga Rodríguez – Professor of Criminal Law at Salamanca University

\*\* Professor of Criminal Law, Salamanca University

\*\*\* Professor of Criminal Law, Salamanca University

Palermo Convention and the Framework Decision, because it criminalises repeated offending. Involvement is extended to include any collaboration of an economic nature or of any other kind.

6. What is a criminal group? “Without fulfilling any one of the characteristics” of a criminal organisation. Punishment applies solely to those who constitute, finance or join one. This is an attenuated form regarding the type of criminal organisation.
7. Distinction with shared delinquency: a criminal group is more difficult to distinguish from shared delinquency. A criminal group has to have at least some form of stability and structure in order to distinguish it from shared delinquency. The latter case tends to involve specific crimes, while criminal groups commit non-specific crimes.
8. Distinction with conspiracy to commit a crime. The existence of a stable structure will also be a key feature for distinguishing a criminal group and a criminal organisation from a simple conspiracy to commit a crime.

My proposal for *lege ferenda* focuses on two aspects: consider changes to Criminal Law, with recognition of unjust organisation. In the General Part, introduce a rule that regulates the committing of crimes through an organisation as an aggravating circumstance.

Many crimes today are committed through organisations. There are therefore individual responsibilities and corporate responsibilities. We are dealing with professional delinquency. Furthermore, reoffending, and repeated offending, could be catered for through the introduction of a rule on unjust organisation.

### ***II.2.3.2 The criminal persecution of drug-trafficking organisations. Reality. Legal process***

#### **Adrián Salazar Larracochea \***

Based on his experience as Anti-Drug Prosecutor for the Balearic Isles, a “hot spot” given that drugs are shipped in by sea, Mr. Salazar considers the real difficulties prosecutors face when pursuing criminal drug-trafficking organisations.

The speaker indicates that the trial involves a conflict of a procedural nature and the validity of evidence. Lawyers tend to argue issues of nullity, which means that most of the matters brought up in court are procedural questions. By invoking the doctrine of the fruit of the poisonous tree, lawyers repeatedly question the validity of evidence. Once the evidence is deemed valid, the outcome tends to be a guilty verdict.

As regards possible evidence, there are “fashions”: the arguments once dealt with controlled deliveries, entries and searches, while the focus now is on the chain of custody.

Judges tend to be placed under a great deal of pressure by lawyers.

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\* *Prosecutor, High Court of Justice of the Balearic isles*

As some are clearly part of the criminal organisations themselves, the lawyers tend to boycott the evidence.

The accused may invoke the right to remain silent. The accused person has a right to remain silent, but it may be subject to evaluation, if their innocence can be invalidated by other means. The statements made to the police are not valid, they are merely allegations. Hence the reason police officers at oral hearings are present as witnesses and need to reproduce the evidence. It is important for the officers to have the events very clear in their minds, as the statements they make are often the only evidence for the prosecution and are ideal for invalidating the presumption of innocence.

Chain of custody: this matter is covered by the Supreme Court’s ruling STS 23-6-2011, whereby the presumption is that any information collected or provided by the judge, experts or witnesses is the same as that later used as evidence, unless it can be proven to have been manipulated by an individual or officer. Thus, the party that challenges the expert evidence needs to prove such manipulation has actually taken place.

A large part of the investigation involves monitoring telephone conversations. Spain was condemned by the ECHR because there were no regulations in place to cover telephone interception. All the rules applied are of jurisprudential creation.

There are three basic requirements: suitability, necessity and proportionality. The antidrug prosecutors of the Balearic isles have reached an agreement. As regards the Drugs and Organised Crime Unit (UDYCO), the initial instruction will be submitted to the prosecutor so that they can both present it to the judge. The prosecutor verifies the principles of suitability, necessity and proportionality of the measure. If there is an informant, ensure the person is trustworthy. A prior step will have involved a series of investigations into personal wealth, luxury cars, life styles, and similarly pertinent police records. Regarding this point, it is very important to draw up an official document in which the examining magistrate records that not only has said information been provided, but the magistrate has witnessed this in person. As regards personal wealth, this is to involve information provided by banks and the tax authorities. Once all this information has been collected, the instruction is submitted to the prosecutor with all the prior data. The writ needs to be substantiated.

### ***II.2.3.3 Illicit sources and means of evidence within the scope of investigating crimes involving illegal drug trafficking***

**Jerónimo García San Martín\***

The doctrine of illicit evidence has travelled a long way. The Constitutional Court ruling STC 114/1984: it imports the US doctrine of the fruit of the poisonous tree. In this first ruling, it lays down that no measures of enquiry that are in breach of fundamental rights may be used in court. Furthermore, if

\* *Professor of Legal Implications of Crime, Pablo de Olavide University of Seville, and Reserve Judge*

the evidence involved is the only proof forthcoming, it will not invalidate the presumption of innocence.

Art. 11.1 of Spain's Organic Law on the Judiciary stipulates that no evidence shall be admitted that has been directly or indirectly obtained in breach of fundamental rights. The Supreme Court is required to interpret this precept and modulate it, with this speaker being of the opinion that it has been emptied of content.

This doctrine on illicit evidence was observed for a period of fourteen years. This lasted until Constitutional Court ruling STC 81/98, which led to a point of inflection and a corresponding change in the jurisprudence. This came about because in North America and Spain it was noted that in especially serious cases, the material truth did not coincide with the legal truth and went unpunished. The public at large could not understand this, so a step was taken to change the interpretation.

The Supreme Court has ruled that the illicitness of the reflex or derived proof will not be automatic, but will instead depend on the connection of unlawfulness. This requires not only a factual connection, but also a legal connection: from both an internal perspective and an external perspective. From an internal perspective, an analysis is made of the extent to which the fundamental right has been breached in the primary evidence, with a study of the relationship of causality with the secondary evidence.

The aim is to verify whether the relationship between the pieces of evidence is strong enough or sufficiently relevant for the case so as to necessarily consider that the secondary evidence is contaminated and, therefore, invalid. Regarding the external perspective, account should be taken of the need for tutelage of the right violated in order to verify whether or not the exclusion of the evidence in question, in this specific case, has a dissuasive effect; in other words, whether it constitutes a sufficient guarantee for the effectiveness of the right violated.

These double perspectives need to exist in order to render the reflex proof licit. Furthermore, there are four further theories that reflect the connection of unlawfulness. The Supreme Court has gone so far as to distort the aforementioned TS art. 11.1 by making what the regulations consider to be the general rule into something exceptional.

The rulings of the Supreme Court and of the Constitutional Court are based on one or more of the following doctrines:

- Doctrine of good faith: the secondary evidence may be considered valid if the officers acted in good faith. The speaker considers that good faith does not have anything to do with the theory of the proof. Good faith may help to inform the assessment of a witness, but it cannot be used to support the evidence for the prosecution.
- Doctrine of independent source: There are numerous rulings. They consider that the connection between primary and secondary evidence should be a real connection, and not merely a potential one.
- Doctrine of inevitable discovery. This first appeared in North America. The criminal proceedings may involve evidence obtained illicitly, if the same evidence obtained in a lawful manner would have allowed reaching

the same conclusion. For the speaker, the preceding is a view of foreseeability, of future, and this renders it uncertain.

- Doctrine of attenuated causal nexus or compensated error flaw. Very much in use, like the preceding one. The probatory validity of secondary evidence may be extended when there is self-incrimination made with suitable guarantees. García San Martín disagrees, because a confession may only confirm the accused person’s involvement in the facts, but not the facts themselves. What’s more, such self-incrimination must necessarily involve informing the accused person that the original evidence is illicit. The doctrine could be valid if applied in oral hearings, and the accused will be aware of the entire background to the case.

### ***II.2.3.4 Inadmissible evidence in investigations into drug trafficking***

#### **Gustavo Fernández-Balbuena González.\***

Based on his personal experience as a legal operator, this speaker addresses operational matters involving inadmissible evidence in police investigations.

The flexibility of organised crime and its dynamic operations mean that we, too, need to be flexible and adapt to those changes. Whenever we act, they improve their *modus operandi*.

They are believed to be well-structured organisations, with clearly defined roles, but this is not the case. In practice, criminal organisations are highly volatile, with all their members seeking power, to move up, so there is “back-stabbing” and betrayals. It is a highly changing environment in which nothing is stable.

This means that police forces need to be as flexible as possible, as does the justice system.

We accept that we can improve, but we also need to change the mindset of the other players involved. For example, politicians are the ones responsible for bringing about changes in the law. It is unacceptable to be still using a Criminal Proceedings Law that dates back to the 19th century, the fact there are no clear rules on search and entry. Judges and prosecutors should also call for changes. We are all part of this common endeavour in the fight against organised crime. Search and entry, and the interception of phone calls by the police all have to be conducted according to the Law, and telephone monitoring is a vital tool. Generally speaking, criminals operate by phone, WhatsApp and email.

There are certain general principles that are contained in our jurisprudence, and which we should bear in mind:

- Principle of legality: The brief article 579 of the Criminal Proceedings Law is wholly insufficient whichever way one looks at it, as already stated

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\* *Professor in the International Department at the Centre for Higher Studies of the National Police Force*



by the European Court of Human Rights in its well publicised ruling of 18 February 2003, in the case Prado Bugallo versus Spain. The ultimate aim is the sentence should be served and this is what has to be worked on.

- Jurisdictional principle: this is a demand that should not be adulterated through the choice of the examining magistrate. If one court has said no, that decision is final and no other court should be involved.
- Principle of proportionality, according to which three requirements are made:
  - a. Suitability: the aim is that the measure should be appropriate and effective, providing us with the outcome sought. It should be an adequate measure of proof for returning a conviction.
  - b. Necessity: It needs to be explained that the means of investigation is required; in other words, there are no other less intrusive ways of gathering the evidence.
  - c. Proportionality in the strictest sense of the word: weighing up what is to be lost against what is to be gained.
- Execution of the measure: There is also a need to avoid overzealousness in the execution of the agreed measure, due either to any unnecessary prolongation of the interception or to unjustified interference in other areas that have no bearing on the investigations behind the request for the measure in question. Being careful with chance findings that require a new court authorisation.

Finally, this control should seek to avoid any kind of defencelessness for anyone subject to the measure, due to a lack of notification.

## **II.2.4 Money laundering and the investigation of wealth in drug trafficking: regulatory framework and discussion points\***

**Moderator: José Arostegui Moreno\*\***

### ***II.2.4.1 Introductory Framework***

**José Arostegui Moreno**

The delivery of this presentation involved a study, adopting both a doctrinal and jurisprudential approach, of the nature of the typical features of the crime of money laundering, ending with an analysis of the evidence for proving this crime has been committed. Prior to the analysis of the typical features, the speaker provided a background review that covered the first references to this crime and the reasons that led criminal lawmakers to define it.

Regarding the analysis of the target definition, emphasis should be

\* The summary of the presentations featured in this section has been undertaken by Prof. José Arostegui Moreno, Research Fellow at CISE

\*\* *Research Fellow at the Security Sciences Project (CISE)*

placed on the reference made in the presentation to the extensive draft of article 301 of the Criminal Code that defines the crime of money laundering, wherein, it was noted, the specialised doctrine considers it is undertaken to encompass the greatest possible number of money laundering circumstances. The definition of the crime in question as described in article 301 of the Criminal Code is so broad that the specialised doctrine has even reached the conclusion that, in the manner in which it is drafted, there would be nothing to stop accusing and convicting of money laundering a lawyer who, after defending a drug trafficker in court, accepts having his or her professional fees paid using money that he or she knows comes from the committing of a drug-trafficking crime.

Adopting a subjective view of the matter, the presentation referred to the two aspects that give structure to the crime in question. Special emphasis was placed on the issue of “knowing that the money laundered proceeded from the committing of a crime”. Reference was also made to the second of these: “proceed with the laundering with the intention of concealing the money’s illicit origin”, with the conclusion being reached that, in the absence of either one of these two considerations, no crime has been committed.

In addition, and from the perspective of criminal proceedings, the presentation also addressed the analysis of evidence. The conclusion was reached that direct evidence in money laundering crimes, given the special circumstances that concur in the committing of this crime, is practically impossible to come by, given that those individuals who commit this crime implement a series of mechanisms that are designed precisely to conceal the illicit origin of money laundering operations.

In view of the circumstances described above, proving a crime has been committed requires resorting to circumstantial evidence, which, it was noted, is acknowledged by the jurisprudence of both the Second Chamber of the Supreme Court and the Constitutional Court, as valid for invalidating the principle of presumption of innocence and providing the necessary proof for a conviction.

#### ***II.2.4.2 Operational aspects of money laundering***

##### **Francisco Javier Borja Pastor de La Morena \***

In his presentation, Mr. Borja Pastor stated that the crime of money laundering involves several methods of investigation, among which are the following:

1. Basic investigation. This investigation focuses on identifying a main crime in which there is an economic component involved.
2. Comprehensive investigation. This investigation is based on the basic investigation and focuses on the economic component.
3. Specialised investigation. This investigation encompasses corporate and tax crimes and money laundering, among others.

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\* *Captain of the Money Laundering Group of the Civil Guard's Main Operating Unit*

The speaker then went on to refer to the investigation of personal wealth, which involves three types of investigations:

1. Basic investigation of personal wealth. This investigation is conducted by compiling a catalogue of assets to be submitted to the courts. The purpose of this investigation is to guarantee, when a sentence is passed in the criminal proceedings, that the wealth contained in this catalogue and which has been submitted to the courts for freezing may be used for paying compensation for any losses or damages incurred by the crime committed.
2. Investigation of economic wealth. The aim of this investigation is to track the economic pathway of the suspect's personal wealth. This investigation is used for, among other matters, identifying those people who do not work but have significant personal wealth. The result of this investigation can be used as the basis for the granting of court orders for intercepting telephone calls and post with a view to discovering how that wealth has been accumulated.
3. Investigations into money laundering through transactions. This investigation involves detecting unusual operations in the purchase or conveyance of assets that may reveal signs of money laundering.

The speaker went on to list some of these signs of money laundering. Accordingly, he referred to shell companies, in which their stated business involves, for example, the export of some or other product, and it turns out that the goods or products do not exist. Likewise, another sign to be taken into account is the absence of customers that register major financial transactions. Another sign involves those companies that record a minimum or no consumption in their electricity, water, gas or internet bills. As another sign of laundering operations, mention was made of the existence of companies with a headcount that is not consistent with their financial turnover.

The presentation was enlightening because the speaker explained police investigation methods that may uncover money laundering operations that need to be subject to further investigation.

### ***II.2.4.3 Requirements for the reasoning behind court rulings in the case of organised crime***

#### **José Ramón González Clavijo\***

In his presentation, Mr. González Clavijo stressed that both the Supreme Court and the Constitutional Court require a high level of reasoning in court rulings that, according to the speaker, conditions the prior investigation conducted by the police forces in matters of organised crime.

The speaker likewise noted that on those occasions when a case is dismissed in criminal proceedings, this is because the reasoning, as required jurisprudentially, needs to be fully watertight, as determined by the due process

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\* *President of the Provincial Court of Salamanca*

of law and the principle of the presumption of innocence.

The reasoning behind rulings in cases of organised crime, added the speaker, constitutes a control of the parties and the court of appeals. The speaker affirmed that the reasoning behind rulings is no place for moral or value judgements, but only for legal judgements.

As regards the lack of reasoning, the speaker referred to a variation that arises when the facts proven are not cut-and-dried. In the cases of a weakness in the reasoning, consideration is given to the fact of whether there is a lack of due process of the law or application is made of the principle of the presumption of innocence. The Supreme Court’s criterion in response to this issue is not clear. The majority opinion is that the ruling is annulled and the court is called upon to issue a fresh judgement. There is another current of opinion that considers that acquittal should be made in these cases.

Along these lines, the presentation explained that the level of reasoning required in rulings means that investigations need to be fully tied up with no loose ends. Finally, and as a conclusion, the speaker said that we should not mistake immediacy for reasoning. Immediacy is a means of accessing information. Through immediacy, a judge is directly exposed to the evidence; accordingly, it is one thing for judges to hear the evidence for themselves and another that they are not required to say what they have perceived or how have they have assessed it.

This has been an important presentation because it has enabled students to understand the assessment process that a criminal court pursues to pass judgement on either a drug-trafficking crime or a money laundering crime within the scope of organised crime.

#### ***II.2.4.4 Seizure and the recommendations of the international community***

##### **Fernando José Camacho Herranz \***

The presentation’s main focus was on the subject of the seizure or confiscation of property. The speaker affirmed that organised crime is like a company that seeks to make a profit by committing drug-trafficking crimes, and which, in the logical sequence of the pursuit of their criminal activity, its members subsequently hope to enjoy. Organised crime achieves this goal through money laundering operations that, he stated, have a major impact on a country’s economy.

The speaker stressed the threat posed by organised crime for society at large, and the fact that the fight against this type of criminal activity is hampered by globalisation; so the speaker noted that international police cooperation is vitally important in this struggle.

The presentation referred to the cost the State incurs in investigating drug-trafficking crimes, noting that the fight against this crime needs to be centred mainly on the financial resources these organisations have at their di-

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\* *Financial Crime Group of the Technical Unit of the National Crime Squad*

sposal, in other words, on their ill-gained profits. The aim should be to ensure that these profits are returned to the State; only in this way will these organisations be stopped from committing more crimes.

The speaker affirmed that any money from organised crime that is returned to the State would be used in the fight against this criminal activity. This approach would restore public trust. It was stated in the presentation that this revenue could be obtained either through the method of preventive embargo or by means of seizure or confiscation.

The presentation referred to the Camden Assets Recovery Interagency Network (CARIN). This is a network in which every country has an office whose remit is to provide information on assets obtained from crime and everything to do with freezing and seizure. Finally, the speaker noted that, if operated properly, asset recovery offices could lead to self-financing by the State of the fight against organised crime.

The topic was original, as it described the undertaking of an activity by the police that highlighted the complexity of the investigation of the crimes committed by criminal organisations and the weakest points of this criminal activity.

#### ***II.2.4.5 Money laundering by criminal organisations involved in organised drug trafficking***

##### **Adolfo de la Torre Fernández \***

The presentation by Mr. De la Torre Hernández began by referring to EUROPOL's 2013 report in which it stated that Europe has 3,600 criminal groups. These groups tend to commit a series of indeterminate crimes and are made up of people of different nationalities, with the crimes of choice being drug trafficking and fraud.

As regards money laundering, the speaker stressed that it is the tool applied by criminal organisations to use the profits obtained from their criminal activity and introduce them into the financial system.

The speaker cited the Report by the European **Monitoring** Centre for Drugs and Drug Addiction (**EMCDDA**) to note there are four million consumers of cocaine and heroin. The report also states that twenty-four tonnes of cocaine were produced in 2009, and that this is the second most widely consumed drug.

The presentation highlighted the key role that expert advisers in financial matters play in criminal organisations. Mention was also made of the fact that the Office of Drugs and Organised Crime has indicated that the earnings from drug trafficking tend to amount to around 0.4 and 0.6 percent of the global GDP and that half of these gains are laundered.

Regarding the methods used for money laundering, reference was made to electronic transfers into accounts abroad. Mention was also made of another laundering method, namely, cash smuggling, meaning the money

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\* *Professor at the National Police Academy in Ávila*

that is illegally carried across borders or invested in different businesses (hospitality, restaurants).

It was explained that money laundering operations involve experts (auditors, economists) who are the ones who plan these operations; so the speaker recommended investigating all the transactions that take place in tax havens.

Based on the figures the speaker provided on the effects of organised crime, the presentation enabled those attending to become aware of the size of the problem, and that prevention is important in this fight.

#### ***II.2.4.6 Capital companies as an instrument for tax fraud and money laundering***

##### **Miguel Ángel Gallardo Macías \***

The presentation began by noting that there are two taxes affected by money laundering crime operations. One involves profits or fiscal gains and the other refers to indirect taxes.

According to the speaker, money laundering may concur within the general field of corporations with the crime of the misrepresentation of facts in a public record as provided for in article 390 of the Criminal Code and, specifically, with the crime of misrepresentation, as regulated in company legislation. The speaker likewise noted that from the perspective of Company Law, the mechanism use for committing this crime is the use of trading companies.

The presentation addressed the different ways in which companies are used to commit money laundering crimes and tax fraud. One such method is through the facilities that company legislation itself provides to stop the naming of shareholders in trading companies.

It was also noted that major money launderers employ expert tax consultants. The speaker stated that money laundering in the corporate work necessarily requires an organisational structure, through which the corresponding operations are undertaken.

In his conclusion to the presentation, the speaker adopted a practical perspective and used different case studies to analyse how crimes can be committed in both money laundering and tax fraud through the use of companies. One of these mechanisms involves the statement of fiscal obligations through the modular system. This system, the speaker remarked, favours fraud because there are companies that resort to the private individuals in the modules. These people are involved because the modular system involves a limit on invoicing per year and the payment of a fixed quota for income tax on profits, as well as a set amount for VAT, regardless of the amount of VAT collected and paid. This system encourages fraud, affirmed the speaker, because with these modules, if the payment involves a fixed amount and the amount invoiced is below the ceiling, the amount remaining up to the module's ceiling is used by companies that resort to these private persons to invoice them, which means

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\* *Lawyer specialising in Company Law. Tax Consultant*

the public coffers are losing out because the difference that has not truly be invoiced by the private person is being deducted by the company, as it pays a tax rate of 30 percent.

## **II.2.5 Dynamics and regulations in the matter of informants and operational investigative methods and means\***

**Moderator: Miguel Botello García\*\***

### ***II.2.5.1 Technology applied to criminal investigation and its impact upon Fundamental Rights***

**Luis Valles Causada\*\*\***

The opening presentation in this module was delivered by Dr. Luis Valles Causada, a member of the Civil Guard, who spoke about the use of technology in criminal investigations and how this might affect fundamental rights. The presentation described how the resources technology brings to criminal investigation tend to be used from the earliest stages as instruments for gathering operational intelligence designed to fulfil two goals: firstly, guide and structure the actual investigation itself and, provide a legitimate channel for obtaining relevant evidence for criminal proceedings under the auspices of the Rule of Law.

Officers of the National Crime Squad are required to apply the utmost professionalism in order to submit evidence to the oral hearings, with a view to invalidating the presumption of innocence and achieving “equality of arms”.

Linked to the effects of today’s globalised society and the mass use of new technologies, whose most visible consequence is the transfer of a large part of people’s physical lives to a virtual environment, the speaker stressed the need for the ability to operate in this latter scenario in a similar manner under the Rule of Law in the pursuit of criminal activity. The legal instruments and resources of all kinds need to adapt to the demanding reality in which they are deployed. A reality, furthermore, that is heavily conditioned by a clear and concerning shortcoming in virtual space, as the Law should prevail there with the same effectiveness as it does in the physical world.

A further issue addressed was the key role the National Crime Squad plays in any investigation and the jurisprudential disparity there is today in this field that hampers the part played by those Officers in numerous investigation.

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\* *The summary of the presentations featured in this section has been undertaken by Mr. Miguel Botello García. Lieutenant of the National Crime Squad’s Technical Unit of the Civil Guard’s Drug Squad*

\*\* *Lieutenant of the National Crime Squad’s Technical Unit of the Civil Guard’s Drug Squad*

\*\*\* *Lieutenant Colonel, Head of the Department of Technical and Operational Support of the Civil Guard’s Central Operating Unit*



### ***II.2.5.2 The use of special investigative techniques in the fight against cybercrime. Special reference to the European Council's Convention on Cybercrime, of 23 November 2001***

**Alicia González Monje** \*

Dr. Alicia González Monje, a Reserve Judge in Salamanca, delivered a presentation on the Council of Europe's Convention on Cybercrime of 23 November 2001. The speaker made a detailed review of the articles and stressed the spirit of this regulation that encourages States to use special investigative techniques to tackle the threat posed by organised crime.

Nevertheless, despite that spirit and the coverage provided by the Convention itself, there are still many countries, with Spain being one of them, which are not taking the necessary steps to adapt their legislation to the provisions of this Convention. It was ratified by Spain only as recently as 2011, which testifies to the little interest our country has shown in the fight against this type of criminal activity.

The Convention is the first international treaty on crimes committed over the Internet and other electronic networks, which specifically considers infringements of copyright, internet fraud, child pornography, hate crimes and hacking. It also contains a series of competencies and procedures, such as the search for IT networks and legal interception.

Its main objective, which is specified in the preamble, is the application of a common criminal policy designed to protect society from cybercrime, especially through the adoption of suitable legislation and the fostering of international cooperation.

The Convention seeks more robust cooperation against crime through the following goals:

1. Harmonisation of the key aspects of the provisions of substantive criminal law on crimes and the related provisions linked to the field of cybercrime.
2. Harmonisation of the provisions of procedural law, the means and instruments required for the investigation and prosecution of such crimes, as well as of other crimes committed by electronic means or evidence forthcoming in electronic format.
3. Introduction of a fast and efficient system of international cooperation.

The following crimes are defined by the Convention: illicit access, illegal interception, interference with data, interference with systems, improper use of devices, falsification of IT, IT-related fraud, crimes related to child pornography and crimes related to copyright and related rights.

In addition, other topics of procedural law addressed include the mandatory safeguarding of stored data, the mandatory safeguarding and partial disclosure of data traffic, the order of production, the search for and seizure of electronic data, the real time monitoring of data traffic and the interception of

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data content. Furthermore, the Convention contains a provision on a specific type of cross-border access to the electronic data stored that does not require mutual assistance (through consent or because they are publicly available) and provides for the creation of a 24/7 network for ensuring rapid assistance between Collaborating Parties.

### ***II.2.5.3 The boundaries between an undercover officer and agent provocateur in illicit drug-trafficking crimes***

#### **Jerónimo García San Martín\***

Professor Jerónimo García San Martín delivered a presentation on the boundaries between the figures of undercover officer and agent provocateur in the persecution of illicit drug-trafficking crimes, highlighting several instances of jurisprudence that draws the line between the activities permitted of an undercover officer and the crime committed.

The reasons behind the legal creation of the figure of undercover officer are basically ones of efficacy in the investigation, within the framework of increasingly more organised and better equipped perpetrators of criminal activities, and the provision of legal coverage for police operations that were devoid of it until that moment.

The great problem facing this issue in Spain was that undercover police work was not considered as such in the country's legislation, which led to a series of shortcomings that Organic Law 5/99, of 13 January, has eased through the inclusion of a new article, 282 bis to Spain's Criminal Procedures Law, although this concept had been regulated since 1984 by several instances of different jurisprudence. Special mention was made of the difference between an undercover officer and an agent provocateur, with the latter concept not being legally regulated, and only in some cases contemplated through jurisprudence.

An agent provocateur is a police officer whose involvement will trigger what is referred to as a police provocation, with this conduct being protected by the Spanish Constitution and the country's laws, with its purpose being to bring to light previously existing criminal behaviour, gathering evidence on the criminal activity and its perpetrators. This conduct is endorsed by legislation and jurisprudence, in a succession of rulings made by the Supreme Court, with the police actions being considered licit, even though use may have been made of misleading procedures and false intentions, when no in-existent crime is committed, but rather that this leads to the uncovering of one that had already been committed beforehand.

An analysis was also conducted of the clash between the figure of undercover officer and certain fundamental rights, specifically the right to domestic privacy and the right to the secrecy of communications.

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\* *Professor of Legal Effects of Crime, Pablo de Olavide University of Seville, and Reserve Judge*

### ***II.2.5.4 Controlled delivery and undercover officer***

#### **Carlos Ramón Cadiñanos Antón\***

The Commander-in-Chief of the Civil Guard, Mr. Carlos Ramón Cadiñanos Antón, also addressed the figure of undercover officer from a more police-based perspective, explaining the practical issues an undercover officer faces due to the scant legislation and jurisprudence on the matter in Spain.

The speaker conducted a review of the legislation regulating this concept, reminding the audience that this device should be used solely to tackle a criminal organisation that already exists, composed of at least three members, which is constantly or repeatedly involved in committing one or more of the crimes that are specifically listed in the law, which are as follows:

- Crime of kidnapping as provided for in articles 164 to 166 of the Criminal Code.
- Crimes related to prostitution as provided for in articles 187 to 189 of the Criminal Code.
- Crimes against property and the socio-economic order provided for in articles 237, 243, 244, 248 and 301 of the Criminal Code.
- Crimes against workers' rights as provided for in articles 312 and 313 of the Criminal Code.
- Crimes of smuggling endangered species of flora or fauna as provided for in articles 332 and 334 of the Criminal Code.
- Crime of smuggling nuclear and radioactive material as provided for in article 345 of the Criminal Code.
- Crimes against public health as provided for in articles 368 and 373 of the Criminal Code.
- Crime of counterfeiting money as provided for in article 384 of the Criminal Code.
- Crime of smuggling and stockpiling weapons, munitions or explosives as provided for in articles 566 to 568 of the Criminal Code.
- Crimes of terrorism as provided for in articles 571 to 578 of the Criminal Code.
- Crimes against the nation's historical heritage as provided for in article 2.1e) of Organic Law 12/1995, of 12 December, on the persecution of smuggling.

It is clear that this is a very long list of crimes, but we should remember that the key factor is that they are committed by an organised criminal gang. The agent that has literally infiltrated it is authorised to break the law, as under their assumed identity they may acquire or transport the items and effects of the crime, indefinitely delaying their confiscation.

The speaker explained the different methods currently used for infiltrating an agent into a criminal group and the different phases, prior and subsequent to the infiltration, and their preparation. All this involves a high level of training on the part of the future undercover officer, who needs to undergo

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prior instruction and fulfil a series of highly specific personal and professional characteristics.

The agent will be exempt from prosecution for those actions classified as crimes that are required to advance the investigation. The agent's assumed identity enables them to carry out perfectly valid acts both within the sphere of the investigation and in terms of their social relations or in legal matters.

When the time comes for the agent to testify in court, once their time undercover has ended, they may remain anonymous, provided that the Judge or Court rules in favour by means of a reasoned judgement.

Undercover officers will also be entitled to all the other witness protection measures provided for in Spain's Organic Law 19/1994. Along these lines, special note was taken of the effective limitations of this Law as regards the true protection of the undercover officer, highlighting the differences with other national legislations that have consolidated plans and programmes for the protection of witnesses and undercover officers with a major allocation of funds, and which are an assurance of their comprehensive safeguarding, such as, for example, the regulations laid down in the United States and Italy.

### ***II.2.5.5 Incidental findings or a chance discovery within the field of criminal investigation***

#### **Jerónimo García San Martín\***

Professor Jerónimo García San Martín continued the module with a presentation on incidental findings or a chance discovery within the field of criminal investigation.

The speaker began by explaining that incidental findings or a chance discovery refers to the sources of proof of the committing of one or more crimes, obtained within the framework of the procedures undertaken when investigating one or more different crimes, as well as the sources of proof of the committing of one or more crimes by a third party other than the person or persons who were being investigated within the framework of the measures of inquiry during which they were obtained; in other words, the appearance of unexpected probative evidence of the committing of crimes other than the evidence that informed the undertaking of the measures of inquiry in which it is uncovered, or else committed by a person or persons other than those being investigated. Cases of incidental findings or chance discoveries, which solely come to light during the course of the procedures involving entering and searching private homes or during telephone monitoring procedures, in which the fundamental rights that underpin them are removed by the corresponding court order.

The speaker went on to analyse and describe the jurisprudential and scientific doctrine in the case of incidental findings or chance discoveries, as regards the undertaking of the two aforementioned measures of inquiry, noting, on the one hand, the lack of legal regulation on the matter and, on the

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\* *Professor of Legal Effects of Crime, Pablo de Olavide University of Seville, and Reserve Judge*

other, the absence of a single and uniform body of doctrine to legitimise the right to challenge it or the probative evidence obtained in this way, highlighting its shortcomings and more debatable aspects.

The speaker stressed the importance accordingly of the principles of speciality and proportionality. These principles are crucial to resolving the conflicts presented by cases of incidental findings.

The principle of proportionality is understood to be the prohibition of excess, through the principles of suitability, necessity and proportionality in the strictest sense of the word (or appraisal of interest). It involves grading the nature of the crime, its seriousness, the possibility or not of its discovery by other socially less costly means that are individually considered and, finally, assessing all the other concurrent circumstances. It requires deliberating upon the conflict of rights; of the basic rights challenged in court: the defendant’s right to be defended and the State’s right to the identification and persecution of crime, with the need to assess the interest that should prevail in each case, especially the public interest and public safety underpinning the effective persecution of criminal acts”.

Traditionally, the Supreme Court’s jurisprudence has defended two diverging standpoints on the matter: thus, on the one hand, the consideration of the nullity of the discovery, bearing in mind that the court order was issued for the investigation of a specific crime (as exponents of this position, the Supreme Court Rulings of 2 July 1993 and 21 January 1994); and, on the other, the recognition of the validity of the items and evidence obtained, as there is a warrant (as exponents of this position, the Supreme Court Rulings of 28 October 1992 and 18 October 1993). In reference to a midway position between the two, special mention was made of the Supreme Court Ruling of 4 May 1994, which stated that “it is one thing to close the doors to the slightest violation of a fundamental right and that any suggestion of defencelessness should be removed, and quite another that which renders it impossible to conduct the investigation that leads to the discovery and subsequent prosecution of the crimes that correspond in each case. When a police procedure uncovers something that is totally unrelated to the court order, the appropriate step is to immediately inform the judge and await their decision, unless the urgency of the measures to be adopted, of a precautionary nature, advise otherwise”.

The current jurisprudential doctrine regarding incidental findings or a chance discovery, the exponent of which is to be found in Supreme Court Ruling 25/2008 of 29 August, cited by many others and more recently, such as Ruling 818/2011 of 21 July, which all coincide in their affirmation that the legal solution to these chance discoveries is not uniform in the doctrine, going on to mention the following points:

1. If the evidence uncovered is linked (art. 17 Criminal Procedures Law) to that subject to the investigative proceedings, the findings will be valid in terms of both the investigation and subsequently as evidence.
2. If the evidence uncovered by chance is not linked to the reasons given for approving the measure and appear to have sufficiently serious criminal implications to accept their proportional adoption, it shall be

considered as merely a *notitia criminis* (a notice **conveyed to a** prosecutor **that a crime is** alleged **to have occurred**), and testimony will be concluded, following the rules of territorial competence and, as appropriate, those of distribution, for the start of the corresponding proceedings.

Therefore, the principle of speciality prevails that justifies the procedure solely as regards the crime investigated (Supreme Court Ruling of 3.10.96) but the chance evidence of criminal activity uncovered is simply *notitia criminis*, without prejudice to the fact that in the same or other proceedings the measure may or may not be extended to continue investigating the new crime (Supreme Court Rulings of 31.10.96, 26.5.97, 19.1 and 23.11.98). In this sense, the Supreme Court Ruling of 792/2007 of 30.5 provides a reminder that, as indicated in ruling 276/96 of 2.4, in those circumstances in which a specific crime is investigated and another different one is uncovered, no waiver may be made of the *notitia criminis* fortuitously uncovered during a procedure designed for another purpose, although this may require a new or specific court order or give rise to a different investigation to the one under way. It would be another matter altogether, for example, if no punishment were to be applied in the case of a serious murder discovered during the search of a home or the monitoring of a telephone call agreed to discover drugs for trafficking or locate stolen goods. The aforesaid ruling states the following: “Speciality; a principle meaning that “no allowance should obviously be made for ordering a telephone interception for the purpose of discovering, without due specification, criminal acts” and that “it is not appropriate when granting permission to issue what is tantamount to a blank cheque”, with the requirement being the specification of the reason for the measure and that it is not exceeded. This has also been qualified in the sense that there is no breach of the speciality and this occurs when there is no novation of the nature of the crime investigated, but instead an addition or summation (Supreme Court Rulings of 2 July 1993 and 21 January 1994); as well as the fact that no waiver may be made of the investigation into the *notitia criminis* fortuitously uncovered during a procedure designed for another purpose, although this may require a new or specific court order or give rise to a different investigation to the one under way (Supreme Court Ruling of 15 July 1993)”.

Finally, the speaker referred to certain jurisprudential pronouncements that address the issue from the perspective of the possible impact upon the fundamental rights of privacy in the home and the secrecy of communications, following the uncovering of the new probative evidence during the course of the measures involved in the search and entry of homes and the interception of communications, respectively.

### ***II.2.5.6 Efficacy and regulation of informants as an investigative technique***

#### **Gustavo Fernández-Balbuena González\***

Mr. Gustavo Fernández-Balbuena Gonzalez, a member of the Spanish State security forces continued the module with a presentation called “Efficacy and regulation of informants as an investigative technique”. The speaker explained how an informant becomes a key tool in the fight against organised crime. Nevertheless, and in view of the lack of legal regulation regarding this concept, informants are very difficult to use, as it is very hard to include their activities and the information they provide in the investigate procedures that constitute part of the criminal proceedings.

According to the speaker, there are three types of informants:

- Those who are outside the criminal organisation and are not involved in any criminal activity: these could in fact take part in the proceedings as witnesses.
- Those who are outside the criminal organisation but are indeed involved in criminal activity: these individuals cannot be included within the proceedings nor can they be applied any protective measure.
- Those who are inside the criminal organisation and are also involved in criminal activity: this is obviously the type of informant who will provide the best information.

It should be remembered that all informants are driven by some form of personal motivation, that is, they are seeking their own gain and often use deception to interact with their environment, which includes members of the security forces. It is therefore essential to train police officers to deal with human sources.

Finally, the speaker noted that Spanish jurisprudence does cater for the use of secret evidence in proceedings, although it has yet to address the concept of informants.

### ***II.2.5.7 Human sources: informants***

#### **Francisco Sacristán París\*\***

Finally, and to close Module IV of the Course, a presentation was delivered by Mr. Francisco Sacristán París, a member of the security forces and with protracted experience in the handling of human sources or collaborators.

The speaker explained how on a daily basis the security forces have to deal with a criminal phenomenon that is ever changing, amorphous and difficult to define, which in a best case scenario, involves tracking down crimes that until

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only recently were unknown or non-existent, whose beginning or end take place beyond Spain's frontiers and which make use of the latest technologies to avoid the hand of the law.

One of the greatest challenges we now face today, without taking anything away from others, is the phenomenon of organised crime, both that referred to as "transnational" and our home-grown or "national" variety. This type of crime is tackled not only using numerous technical measures that cannot be revealed here, but also legal tools, such as the use of undercover officers, human sources, controlled deliveries, etc.

One of the biggest problems we have to face is the lack of regulation or, depending on the case, the total absence of regulation in Spanish legislation. This lack of regulation may have two effects, on the one hand, its reach falls short, stopping the development of effective police operations due to a lack of legal empowerment, or otherwise, a lack of clarity leads to excesses that will need to be corrected in the future through jurisprudence, or even the prosecution of police officers who have overstepped the mark. The control of information has gradually become vitally important as a means of preventing and identifying risks. Warding off threats by making the most of opportunities the environment may provide, through the use of intelligence resources, is a necessity that has remained unchanged over the course of the centuries. Nevertheless, what has changed enormously are the ways and means of obtaining information.

Information-gathering sources are myriad and of a highly varied nature, but the prevalence of human sources over technical ones lies in the need to access information that is available solely within the hazardous, disperse and very restricted circles of the structures, networks and cells in which organised crime is orchestrated. They are hard to detect by any other means and even more difficult to penetrate. The arrangement of how human sources of this kind should operate, their regulation and development, and above all how to submit the information or intelligence they have gathered to court proceedings, is one of the problems Spain has yet to resolve, in contrast to our neighbouring countries that have already introduced systems, and more importantly, legally regulated their operations.

As an option in any future regulation, mention should be made of the Italian case, providing everything related to human sources in the fight against organised crime and other criminal networks with the protection afforded by Law 9/1968, of 5 April, governing Official Secrets or a specific regulation such as article 203 of the Italian Procedural Code. Under this protection, any dealings with human sources would be wholly police-based, with the police being in complete control of any information deemed appropriate and expedient for the criminal proceedings, giving these sources the same treatment as the intelligence services, and including the possibility of using their information in court proceedings through what is referred to as "expert intelligence evidence".

The most noteworthy aspect, from a policing perspective, is that, while at the same time as being involved, or offending, as a member of any organised criminal group is expressly prosecuted as behaviour that "contributes to the achievement of the organised group's criminal purpose" the police are also authorised to partake in undercover operations, in which, at certain times it is very easy for police officers to infiltrate or investigate, facilitate or contribute to the commit-

ting of multiple crimes before dismantling the organisation. Accordingly, the New York Convention of 2000 (in force in Spain since 29 September 2003), like the 1988 Vienna Convention before it, leaves it up to the Party States to regulate, in accordance with their own domestic legislation and without devaluing the Convention’s aims, what they deem convenient, expressing, nonetheless, in Art. 5.2 of the New York Convention, exactly the same wording as that used in Art. 3.3 of the 1988 Convention.

In these cases, the action of a collaborator who proceeds under the supervision and protection of a police force should not be designed to provide a witness for the prosecution in court, but instead the informant’s actions should be used to provide the investigating police with key information for gathering the objective or sufficient evidence by other objective means, being of importance the validity of their legal capacity to act as provided for by the European Court of Human Rights.

It should be specified that these collaborators should not be used to invalidate the presumption of innocence, but instead the information they provide, complemented by the police’s own investigation, should be included in a report that is submitted to the oral hearings, either by the collaborator’s “controlling officer”, or by the head of the operation, as “expert intelligence evidence”.

Together with the legal extension of the assignments to be undertaken by these individuals, it is essential to furnish our criminal-proceedings system with a witness protection programme, similar to the one in our neighbouring countries, with sufficient scope to respond to the needs that also today exist in that matter, as although we do have a law, albeit somewhat stunted, and without a developed secondary legislation, it is no less true that witness protection measures are being applied that in most cases depend on the “ingenuity” of the official involved.

## **II.2.6 Technical-legal aspects of the gathering and validation of evidence in Spain and Europe \***

**Moderator: José Arostegui Moreno\*\***

### ***II.2.6.1 Introductory Framework***

#### **José Aróstegui Moreno**

In Module V, regarding the subject matter covered by the presentations, the introduction to the module’s general content involved a doctrinal and jurisprudential analysis of the two inquiry methods most often used by the National Crime Squad in drug-trafficking crimes. We are referring, on the one hand, to the procedure of search and entry involving private homes and, on the other, to the procedure of intercepting postal and telephone communications.

The analysis and study of the procedure for searching and entering

\* *The summary of the presentations featured in this section has been undertaken by Prof. José Arostegui Moreno, Research fellow at CISE*

\*\* *Research fellow at CISE*

private homes considered its legal regulation and those cases in which exclusion was made of the observance of the fundamental right to the privacy of one's home, which included such circumstances as when the owner of the property gave their consent, the existence of a court order, cases of flagrant lawbreaking and the concurrence of a justification. Also considered were the requirements made, from a jurisprudential perspective, for restricting that fundamental right.

Along these same lines, the study of the procedure for intercepting postal communications involved delimiting those areas afforded constitutional protection as regards the term "postal communication". The speaker also analysed the requirements that need to be met in the court order that allows those fundamental rights to be restricted, which basically involves two: on the one hand, the court order needs to be duly substantiated, and, on the other, a crime has been committed in which the restriction on the right to the secrecy of postal communications is required because there is no other way of investigating the crime.

As regards telephone communications, the speaker analysed the conditions to be met by the court order – both those involving ordinary legality, and those affecting constitutional rights – in order for the procedure to be lawful. The speaker emphasised that any breach of constitutional legality would render the evidence null and void with no possibility of rectification, in contrast to what happens in the case of any infringement of ordinary legality, which although it does indeed render the evidence null and void, it may be re-established by resorting to other means of proof.

In short, the first session involved conveying to the students attending the course the bases, considered according to a jurisprudential analysis, of the legal requirements to be met to curtail either the fundamental right to the privacy of the home or the right to the secrecy of postal and telephone conversations. We consider that it is essential to understand these issues in any investigation of drug-trafficking crimes, as it should be remembered, regarding the pursuit of these investigative procedures, that they will provide the proof that will be used to prosecute the crime of drug trafficking and which will later be used by the sentencing court in the oral hearings, firstly, to decide whether the evidence has been obtained in a lawful manner, and if this is indeed the case, to proceed to its appraisal for determining whether it proves a crime has been committed and that the defendants have been involved in it either as perpetrators or accessories.

## ***II.2.6.2 Evidence obtained abroad and its inclusion in Spanish criminal proceedings. A jurisprudential analysis***

**Alicia González Monje\***

The speaker began the presentation by highlighting a very important issue in drug-trafficking crimes, namely, the fact that the investigation of a crime of this nature often involves considering the dynamics for including any evidence gathered abroad into the criminal proceedings undertaken in Spain in response to the persecution of the crime. Concerning this issue, it was noted that there is no doctrine on the acceptance of evidence gathered abroad. What there is, the speaker explained, is a principle of mutual recognition of the evidence whereby the receiving State is not going to question the evidence obtained abroad.

Regarding the issue in question, the Supreme Court has stated that it is not the custodian of the legality of procedures undertaken in another EU country. In other words, the evidence obtained in other countries cannot be subject to verification according to Spanish legislation. Along these same lines, and with a view to clarifying this situation, mention was made, as an example, of the procedure involving the opening of a package in another country. The Supreme Court evaluates this procedure according to article 3 of the 1959 European Convention on Mutual Assistance in Criminal Matters, which states that it is the legislation of the country that performs or obtains the evidence that is to prevail regarding the manner in which this procedure is to be undertaken.

Furthermore, the speaker likewise added regarding those criminal proceedings pursued in Spain in response to drug-trafficking crimes, that questions are raised over who ordered the opening of the package as a reason for invalidating the evidence. Accordingly, in those cases in which the order to open the package came from an administrative authority, doubts are cast on the legitimacy of this operation as in Spain a package can only be opened in response to a court order. The Supreme Court, and along the same lines as noted initially, applies the criterion of not judging how evidence is gathered in other countries. The Supreme Court considers that it is assumed that the opening of the package was undertaken with all the legal safeguards required by law. It is assumed that the information has been obtained in the country of origin in keeping with the precepts of the legislation in force there.

Finally, the presentation referred to the characteristics of intelligence evidence. The Supreme Court considers this to be expert proof, as the officials in those units that operate with evidence of this kind are highly specialised and base themselves on practical experience in data analysis. The speaker noted that it was a specific type of evidence that should only be used in complex proceedings, such as terrorist crimes or organised crime. The speaker concluded by saying that such evidence is not binding for a judge and its valuation is subject to the principle of the free evaluation of evidence.

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The analysis conducted in the presentation is important when we consider the phenomenon of globalisation, which has a major impact on the committing of drug-trafficking crimes and organised crime, as the crime, in its *iter comisivo*, may involve several countries. The manner in which the Spanish criminal process treats evidence obtained abroad is therefore an important issue.

### ***II.2.6.3 Anonymous testimony as evidence in criminal proceedings***

#### **Gustavo Fernández-Balbuena González\***

The presentation basically addressed the topic of anonymous testimony for use in police investigations. The speaker noted that an anonymous accusation as a reason for initiating an investigation is not an issue as regards the verification of the circumstances reported. Whenever they receive an anonymous complaint, the police are required to investigate the circumstances reported. Nevertheless, the speaker noted that an anonymous complaint cannot be used as evidence for invalidating the principle of the presumption of innocence.

When dealing with an anonymous complaint, the speaker added, the National Crime Squad may proceed to check the truthfulness of the same by any means.

Another important issue addressed by the presentation involved anonymous testimony in court. Accordingly, and as regards this matter, it was noted that it is not proscribed by law, although it is considered inadmissible evidence. Nevertheless, as regards this testimony, it was noted that it is mistrusted because there is no control over its truthfulness, as it may remain concealed.

Concerning the concept of informant, the speaker explained that concealing an informant's identity needs to be offset by the right to question the individual directly. The speaker said that informants are required to attend court, if and when summoned, and they are to be questioned directly, with immediacy. Such immediacy does not mean they have to be seen or that no measures are taken to stop them from being identified.

The presentation went on to state that an informant's testimony should not be the only evidence used for a conviction. It was also noted that a person's identity needs to be known to the Prosecutor (as required by the ECHR) and by the sentencing court. The person's identity may not be withheld from them; that is the difference between confidential testimony and anonymous testimony.

The topic covered by the presentation was especially significant, as anonymous testimony is a concept of particular importance in the investiga-

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tion of drug-trafficking crimes, above all in terms of their evaluation, or not, as a means of proof, and, as appropriate, the manner in which it is gathered, so from this perspective, the presentation has been enlightening because it has addressed the main points regarding these issues.

#### ***II.2.6.4 Methods for investigating the use of new technologies by organised crime***

##### **José Alberto Martínez Cortés\***

The speaker began the presentation by affirming that new technologies now occupy a major place in our lives, to the extent that they now actually condition them. The speaker noted that, likewise, criminals, and especially organised crime, use new technologies in their lawbreaking operations. The methods they use include the concealment and encoding of data, a process that is especially important because it stops the police accessing the information that is stored in an encoded format on any computers seized, as to do so they require a password that is known only to the user, thereby rendering any investigation into a crime that much more difficult.

Another form of criminal activity involving new technologies is to be found in financial transfers over the internet, or by means of hacking, phishing and pharming. Concerning phishing, the speaker remarked that the procedure involves obtaining bank account or credit card numbers, which is achieved by sending bulk emails in which the recipients are asked to provide their current account number or card PIN, pretending to be their bank that requires his information to upgrade its data. Pharming is a similar method. The criminal pretends to be a bank, rerouting the user's communication, not to the legitimate website, but instead to the criminal's site, and thereby obtain the data in a fraudulent manner.

The speaker went on to describe how criminal organisations use new technologies to propagate the organisation. It was also revealed that new technologies not only facilitate scams and fraudulent operations, but also provide a breeding ground for committing crimes involving child pornography and the corruption of minors, as this is a lucrative business that can easily be relayed around the world through peer-to-peer applications, which cater for the sharing of child pornography.

Finally, the speaker explained that drug traffickers use, among other technological devices for committing their crimes, onboard GPS, Blackberry, handheld GPS or satellite phones with inhibitors.

To conclude, we may affirm that the presentation has been especially interesting because new technologies have an important role to play not only in criminal activities but also in their investigation.

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\* *Inspector, Head of the Electronics and Mobile Phone Forensic Squad of the section of Forensic IT at the General Headquarters of the Scientific Police*

### ***II.2.6.5 Possible nullities when gathering evidence in crimes against public health. Supreme Court Doctrine***

**Juan Ramón Berdugo Gómez de la Torre\***

In his presentation, the judge provided an extensive review of the casuistry arising from the performance and gathering of evidence of drug-trafficking crimes at the inquiry stage in the investigation, with this evidence subsequently being used in the oral hearings. In the presentation, the judge applied legal rigour to the analysis of a large number of the more contested issues that arise in the performance and gathering of evidence and how they were resolved by the Second Chamber of the Supreme Court. The following were the more salient issues the judge addressed:

Gathering evidence abroad. As regards this matter, the judge remarked upon the interest of the criterion applied by the Supreme Court. Accordingly, he noted that the Supreme Court considered that Spanish courts are not the custodians of the evidence gathered in other countries.

The speaker mentioned that, among other debated issues that arise and are resolved by the jurisprudence of the Supreme Court, there was the distinction between illicit evidence and inadmissible evidence. The speaker made a number of important observations regarding these two types of evidence, indicating that illicit evidence constitutes a breach of ordinary legality; in spite of this, he added, the outcome could be endorsed by calling upon other evidence. By contrast, the speaker pointed out that in the case of inadmissible evidence, this constitutes a violation of fundamental rights, with the evidence being rendered null and void without any recourse in the manner in which it is undertaken with the illicit evidence.

Other topics the judge addressed involved those associated with an evaluation of the statement made by a co-defendant, the refusal by a co-defendant to declare, the evaluation of the different statements provided in the summary, the anonymous witness and the concealed witness, the nullity of intercepted phone calls, the gathering by the police of IMEI and SIM numbers, the use of GPS in police investigations, the chain of custody, the analysis of drug samples, the number of experts required to draft an expert witness report in drug-trafficking crimes, the analysis of drug purity and chance discoveries.

This was an important study because it enabled students to listen to one of the foremost legal minds regarding how to resolve controversial issues when gathering and validating evidence in drug-trafficking crimes, and the difficulties the courts face to assess evidence when there are irregularities in the way it has been gathered due to the failure to uphold either the requirements of constitutional legality or those of ordinary law, which are key pieces in the admission of the evidence that is to inform the conviction sought by the investigation.

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\* *Supreme Court Judge*



### ***II.2.6.6 The interception of communications in the Convention on Mutual Assistance in Criminal Matters among EU Member States of May 2000***

**Alicia González Monje\***

In her presentation, the speaker referred to the Convention on Mutual Assistance in Criminal Matters among EU Member States. She stated accordingly that the Convention’s aims are, on the one hand, to improve legal assistance, making it quicker, more flexible and more efficient, fostering the direct transmission of requests, the use of mail for notifications and sending documents and the application of the law of the State requesting the enforcement, and on the other, to modernise legal assistance. In keeping with the aforementioned aims, the Convention dedicates its Title III, articles 17 to 22, to specifically regulating the monitoring of telecommunications, through awareness of the need to adapt legal assistance in criminal matters to new technologies.

The speaker stressed the need to emphasise that the 2000 Convention does not provide a definition of telecommunications for the purpose of its application. This is not a fortuitous omission; the Convention’s specific Explanatory Report, approved by the Council on 30 November 2000, indicates that after studying the matter, the Council has understood that there is no need to define the term “telecommunications”, which is not restricted solely to telephone conversations but also, by contrast, it should be interpreted in its broadest sense. Given this lack of definition, it goes without saying that the provisions regarding the interception of telecommunications may be applied to all forms of communications enabled by current and future technologies.

The speaker went on to consider, once acknowledgement had been made of the groundbreaking nature and, on the other hand, expediency of the regulation of the interception of communications provided by the 2000 Convention on Mutual Assistance in Criminal Matters, whether it has any actual practical use. The speaker noted that according to the scant data provided, it may be deduced that the most widely used system involves the interception, recording and eventual submission of the recording to the requesting State (Type 1), which, we should not forget, the 2000 Convention on Mutual Assistance in Criminal Matters relegates in its regulation to an exceptional application, committing instead to interception and immediate transmission (Type 2) as the general rule for legal cooperation in this matter; regarding this second type, some Member States stress the technical difficulties involved in making an immediate transmission to the requesting State, without “tapping” taking place in the State to which the request has been made.

The topic addressed is of considerable importance given the significant role the interception of communications plays in investigations.

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\* *Professor of the area of Procedural Law, Salamanca University, and Reserve Judge*

### ***II.2.6.7 Expert forensic evidence in the investigation of organised crime***

**José Alberto Martínez Cortés\***

The speaker defined forensic IT as the scientific field involved in capturing, saving, obtaining and presenting data that have been electronically processed and stored on electronic and IT media, whose basic operations are governed by the laws of physics, electricity and magnetism. The presentation went on to affirm that within an investigation, several stages can generally be identified:

1. Identification of an illegal activity.
2. Operational investigation.
3. Police and legal intervention.
4. Submission to the units of forensic IT analysis.
5. Drafting of the Expert Report by the forensic IT expert.
6. Presentation of the Expert Report at the oral hearings by the expert.

It was likewise noted that the Judicial Authority will be the one to clearly and precisely define the report's purpose.

Concerning the structure of the Expert Report, article 478 of Spain's Criminal Proceedings Law stipulates that it is to be based on a clear and precise description of the matter to be analysed, its status and condition, with a detailed list of the operations undertaken regarding it, with their results and, finally, the conclusions reached, according to the principles and rules of the science or art in which that person is an expert.

The speaker mentioned that one should not forget the support that forensic laboratories receive from such centres of knowledge as universities. In Spain, as in the rest of the EU, agreements are constantly being reached between the security forces, forensic institutes and different universities nationwide for the purpose of furthering technical and training projects that respond to the needs of these organisations.

Reference was made in the presentation to an important point in the drafting of expert reports. We are referring to those cases associated to expert evidence gathered through laboratory procedures ordered by the courts, but without the presence of the corresponding court clerk. Appeals have been lodged regarding the absence of a court clerk during the preparation of an expert report. The rulings that been made, said the speaker, reject these allegations and approve the techniques in question, accepting the performance of a forensic copy in an official laboratory, provided authorisation has been made by the court, furthermore accepting the view that the presence of a court clerk during the technical procedure of copying the evidence is no greater assurance than the due diligence of the forensic experts and their prescriptive procedures.

As regards the presentation as a whole, it should be noted that the content of the same was highly instructive because it referred to some of the more pertinent issues in the drafting of expert reports.

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\* *Inspector, Head of the Electronics and Mobile Phone Forensic Squad of the section of Forensic IT at the General Headquarters of the Scientific Police*

## II.2.7 Legal and operational instruments in the fight against illicit international drug-trafficking: discussion points\*

**Moderated: Gregorio Álvarez Álvarez\*\***

### II.2.7.1 The Police Cooperation Centre in Algeciras (Spain)

**Juan Antonio Lozano Laso\*\*\***

The speaker began by saying that by virtue of the Agreement between the Government of the Kingdom of Spain and the Government of the Kingdom of Morocco in matters of cross-border cooperation in policing, adopted ad referendum in Madrid on 16 November 2010, and which came into force on 20 May 2012, the concept of Police Cooperation Centre was created between the two countries.

Police Cooperation Centres are units for sharing information that are attached to the Secretary of State for Security at the Ministry of the Interior, being responsible for police cooperation between Spain and Morocco, being therefore at the disposal of any investigative group or unit of the National Police Force and Civil Guard that, for operational reasons and in order to undertake its policing duties, requires certain specific data or information related to Morocco.

The speaker indicated that although this unit has only recently been created, it may be assumed that the future of the Police Cooperation Centre will be to become another police tool at the disposal of all the units or groups of Spain's security forces because, as is well known, in terms of the perpetration of crimes, the nationality of those individuals actively involved in crimes committed in Spain encompasses a wide range of States, which sometimes because of physical proximity and at others because of cultural proximity make our country a melting-pot of cultures and nationalities.

The speaker stressed that networks involved in the cross-border smuggling of vehicles and international drug trafficking are currently the two main focal points for the gathering of information by this Cooperation Centre. Practically half the requests for information deal with these two areas, having collaborated in the detection and location in Moroccan territory of vehicles stolen within the Schengen Area.

Concerning international drug trafficking, the speaker said that mention should be made of the fact that the actual Spanish units involved in investigations of this kind may not only submit requests for information, but also simply disseminate information following the conclusion of an operation in which Moroccan nationals have been involved, or tie up the so-called loose

\* The summary of the presentations featured in this section has been undertaken by Prof. José Arostegui Moreno, Research fellow at CISE

\*\* Examining Magistrate-Judge in Salamanca, Professor at Salamanca University

\*\*\* Inspector of the National Police Force, Coordinator of the Police Cooperation Centre in Algeciras

ends of the investigation, as these may lead to subsequent investigations at source, in other words, in Morocco.

The speaker stated that the disclosure of information on missing people or fugitives is dealt with through the information channel this Centre provides.

The presentation was interesting because it addressed an original topic, as is the operation of police cooperation offices, which are a vital part in the fight against drug-trafficking crimes.

### ***II.2.7.2 Fight against drug trafficking and associated crimes: the commitment and involvement of producer and transit countries***

#### **José Alberto Berlanga Varo\***

The speaker addressed the issues surrounding organised crime in Mali which, lying within the Sahel-Saharan strip, is currently one of the continent's most troubled spots, where the struggle to strike a security balance in Western Africa is currently being played out, with the implications this has for Europe in general and for Spain in particular, given its strategic proximity and influence.

The speaker referred to the problems facing Western Africa and said that it was a region that provided a setting for numerous illegal activities that pose a serious threat to regional security and development, with one of them being the trading of cocaine from Latin America on its way into Europe.

The speaker noted that the cocaine from South America has been diversifying its entry methods: from the use of a Boeing for the transport of large amounts (the case of Bouren in northern Mali), the cargo containers that exploit, on the one hand, the weak policing of quaysides in Africa and, on the other, the difficulty the West has in seeking compatibility between the control of goods and a highly competitive market, which has required the use of increasingly more sophisticated detection methods and information sharing between the agencies involved in the fight against drugs. The speaker also mentioned a non-stop trickle of modest amounts introduced by organised networks, above all in Nigeria, on commercial flights using couriers or "mules", with the Mali-Spain connection being the one most often used (33% to Madrid, 18% Barcelona, 2% Palma de Mallorca and 2% Valencia), with the Netherlands (Amsterdam) in second place with 25%, along with such original methods as submarines or helicopters.

The speaker also mentioned that every summer, coinciding with the holiday exodus of North African citizens living in Europe, INTERPOL, EURO-POL and the European agency FRONTEX sponsor a campaign in Algeciras, and in the area around Gibraltar, involving an operation called "PASO DEL ESTRECHO" (Crossing the Straits) and "MINERVA" with a view to policing the frontier crossing by identifying those vehicles and individuals suspected of

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\* Chief-Inspector, Head of the Flying Squad- Transport Police (Algeciras)

carrying drugs, illegal immigrants, stolen cars, making the most of the crowds and heavy traffic that are commonplace at that specific time of the year. Very positive results are recorded every year in terms of the recovery of vehicles and the persecution of illegal activities.

Regarding information sharing, the speaker also stressed that lines have been set up for reporting on crimes and criminals, with modern equipment being deployed in the fight against organised crime. In 2008, Spain and Mali signed a cooperation agreement in the fight against organised crime, and there was a proposal supporting the creation of a Coordination Centre for Combating Terrorism and Organised Crime, similar to the Spanish Ministry of the Interior’s National Centre for Anti-terrorist Coordination (CNCA) and the Intelligence Centre against Organised Crime (CICO).

The presentation was received with great interest because it addressed key issues in the fight against organised crime and those that affect the relations between police forces and international organisations that also have the remit to fight against organised crime.

### ***II.2.7.3 Consequences of a conviction abroad for Illicit Drug Trafficking. Cooperation in obtaining this information***

**Andrés Palomo del Arco\***

Regarding the consequences of being convicted of a drug-trafficking crime in another country, and in clear reference to article 36 of the Single Convention on Narcotic Drugs, the speaker noted that the provisions of this precept meant that someone could be prosecuted for the same crime in two different countries, considering that in one of the countries they were accused of importing drugs, while in the other one they were accused of exporting the same cache.

Faced with situations of this kind, there was a need to implement the UN agreements on this matter. Accordingly, Mr. Damáso Ruiz Jarabo, a lawyer, was called upon to draft a report that stated that the Convention’s articles have a historical context. It was concluded that the import and export of the same cache constituted the same circumstances. This consideration was made by virtue of the principle of the free movement of people; in other words, a person need not worry about leaving a country under the threat of being prosecuted for the same crime in another one. Finally, and still on this point, the speaker that in order to uphold the principle of *non bis in idem*, it was established, firstly, that two lawsuits should not be filed; and if they have been initiated, a verdict of not guilty should be returned in one of the cases and, if a guilty verdict has been returned in both cases, only one of them should be taken into account as regards re-offending. The outcome of this doctrine is somewhat curious: if it is produced regarding a third country, article 23 of Spain’s Organic Law on the Judiciary prevails. The speaker affirmed that there are punitive damages, a credit for time served.

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\* *President of the Provincial Courts of Segovia*

The speaker noted that any change in the prosecuting State should be reported to the State to which the guilty person belongs in order to effect that change. The speaker alluded to the system for administrative recording that provides support for the administration of justice and which manages the Central Register of Precautionary Measures [*Registro Central de Medidas Cautelares*], Warrants, unconfirmed sentences, the Central Register of Convictions [*Registro Central de Penados*], the Central Register of Convictions for victims of domestic violence [*Registro Central de Penados para víctimas de violencia doméstica*] and the Central Register of Sentences and criminal liability [*Registro Central de Sentencias y responsabilidad penal*] and, in addition, the Central Register of fugitives from justice [*Registro central de rebeldes civiles*].

The presentation also referred to the fact that in the period falling between 27 April 2012 and 1 March 2013, the Central Register has submitted to other EU Member States a total of 25,600 convictions involving foreign nationals and received 6,375 convictions involving Spanish nationals abroad.

Regarding legal cooperation, Spain has received 4,395 requests and has submitted nearly 900.

The presentation addressed a significant issue that often arises in legal proceedings involving drug-trafficking crimes (prosecution in foreign countries for criminal activities of this nature). It covered the manner in which the courts proceed when these convictions are notified, and how the controversial issues that arise are resolved.

#### ***II.2.7.4 International police cooperation***

##### **José Antonio Mellado Valverde\***

The speaker indicated that Spain's geostrategic position in the world makes our country a key piece in the fight against drug-trafficking and other illicit smuggling operations. This circumstance means that Spain's role in the struggle against transnational organised crime, and drug-trafficking in particular, is essential, as is its geostrategic position and its cultural and historical ties with Europe, Africa and the Americas.

The presentation referred to the instruments of cooperation in the fight against drug-trafficking crimes. It was noted accordingly that international cooperation begins at home and, therefore, cohesion at national level should be a pre-requisite. The speaker also alluded in this section to the instruments of international policing and legal cooperation, among which are the following: Interpol, Europol, the SIRENE network of offices, Eurojust, Iberred, Asistencia Judicial Directa (Direct legal Assistance), Police and Customs Cooperation Centres, Joint Investigation Teams, Joint Analysis Teams, Prüm, a Swedish Initiative, Liaison Officers, etc.

Also within the environment of cooperation, the speaker referred to

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\* *Lieutenant-Coronel, Head of the International Area of the Technical Unit of the National Crime Squad*

bilateral cooperation, which is the most recurrent example and the one that is normally the quickest and most effective, and guarantees operating performance. As regards this cooperation, the speaker noted the special importance of bilateral agreements, which are an extremely useful tool for developing cooperation in security matters.

The presentation referred to a key instrument for investigating organised crime, namely, the so-called Joint Investigation Teams (JITs), although the speaker commented that at present their use is not very widespread. Eurojust and Europol are two agencies that can be called upon for assistance to set up a JIT, including funding. Within the framework of Eurojust in 2012, 48 JITs were created, with Spain being involved in five of them.

A JIT is, as stipulated by Spain’s Law 11/2003 of 21 May, “a specific and binding instrument that enables States to undertake coordinated and agreed actions through joint investigations that are conducted in two or more States”. Their purpose is to permit the conducting of simultaneous investigations. Their remit is to create a streamlined dynamics of collaboration, capable of replacing other equally formal mechanisms that are less agile. Reference was also made in the presentation to Joint Analysis Teams (JATs), which are designed to be a functional body whose operations are based on mutual trust and the principles of flexibility and agility. They constitute a direct channel for information and intelligence sharing on the matters they address. The presentation conveyed a key notion in the fight against organised crime, whereby the international cooperation of police forces is an essential part of this fight, because without such cooperation the efforts to eradicate this type of criminal activity would be rendered useless.



## **Part III – The organisations**



### **European Commission Directorate-General for Justice**

Justice, fundamental rights and citizenship policies are based on Europeans’ most cherished values and principles, such as democracy, freedom, tolerance and the rule of law. In today’s Europe, millions of citizens are involved in cross-border situations - either in their private lives, through their work or studies, or as consumers. The creation of the **Directorate-General Justice** reflects the new opportunities of the Lisbon Treaty to improve the everyday lives of EU citizens. We offer practical solutions to cross-border problems; so that citizens feel at ease about living, travelling and working in another Member State and trust that their rights are protected no matter where in the European Union they happen to be. **The mission: Building a European area of justice.** The European Commission wants to make life easier for people by building an EU-wide area of justice.

## **THE PARTNERS OF THE IFO PROJECT**



### **The “Rocco Chinnici” Foundation**

Promoter of the IFO Project, it was founded in Palermo on 24<sup>th</sup> July 2003, in memory of the Judge, victim of the Mafia. The activities of the Foundation are directed not only to the judicial environment, but also to the economic and financial environments, to schools and training. The involvement of economic and financial institutions, in addition to those characterising the judicial activities, characterise the Rocco Chinnici Foundation’s activities in trying to compare the different experiences, different instances, and with the involvement of school, to contribute to the development of a healthy social-economic and orderly society, made up of the culture of legality for the achievement of which Rocco Chinnici fought. This is a prerequisite of the final defeat of the Mafia not only understood as a criminal organisation but also the “Mafia: unacceptable element as culture of the island.” The Rocco Chinnici Foundation has an extensive experience in researches related to the topic of the training program IFO (ILLEGAL FLOW OBSERVATION), having carried out research on the national territory, e.g. “The costs of the illegality” in Sicily (2006-2008) and Campania (2008-2010) and an analytic study started in the city of Genoa (2011-2012).



UNIVERSITÀ  
DEGLI STUDI  
DI PALERMO

### **The University of Palermo – Department of Law, Society and Sport**

The department of Studies on Politics, Law and Society was born on 30<sup>th</sup> December 1987. It brings together academics of political, legal and social phenomena, belonging to different disciplines, in order to promote and develop research that explore the connections between these phenomena, their foundations and in order to promote and coordinate the training of operators on cultural, political, legal and social issues. The Department takes care of the promotion of culture in the various fields, related disciplines well beyond the university. The Department organises seminars, conferences and conventions of a scientific nature, in connection with similar organisations in Italy and abroad, and provides for the dissemination of research results. The Department is a library open to the public, structured so as to encourage the study of the interrelationships between disciplines, political science, law, sociology and philosophy.



UNIVERSIDAD  
DE SALAMANCA

### **The University of Salamanca - CISE (Ciencias de la Seguridad) Department**

CISE (Ciencias de la Seguridad) is an academic project that brings together at the University of Salamanca the training on Security, Research and Emergency. Teaching is delivered through Diplomas (Specialist in Security, Private Investigator Diploma, Diploma in Criminology, Criminalistics), Continuing Education Courses (Management and Administration of Safety, Superior University Course Management and Civil protection Coordination) and Special Courses. Over eighty teachers and professionals from various fields (Members of the Security Forces, Private Detectives, judges, prosecutors, Prison Officers, Brokers, Security Managers, Civil Protection Technicians and Emergencies, etc..) are committed to the educational work. The qualifications are endorsed sixteen years of work and are offered with less attendance for class and most of it can be done online.

*“I believe in young people. I believe in their strength, their clarity and their integrity. I believe in young people, because maybe they are better of mature people and because they start to feel higher and dramatically true moral incitements. And in any case, it is the young people who will take the destiny of the society in their hands, and so it is right that they have clear ideas.*

*When I speak to young people of the need to fight drugs, in reality I indicate them one of the most powerful ways to fight the Mafia. In this historic moment, in fact, the drug market is undoubtedly the most important instrument of power and profit.”*

**Rocco Chinnici (1925-1983)**



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