

International Standards versus Domestic Law: The Case of Organized Crime in Italy

Dr. Attilio Nisco

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International Standards versus Domestic Law

- ▶ **A. Introduction**
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 - ▶ II. Implementation of the Convention into Italian criminal law
 - ▶ III. Growing uncertainty of the application of domestic law
- ▶ **D. Conclusion**

B. Domestic legislation

I. Substantial aspects

- ▶ No legal definition of "organized crime"
- ▶ The Italian criminal law relies upon a catalogue of offenses based on the element of "association"
- ▶ "criminal association" (*associazione per delinquere*, Art. 416 C.p.)
- ▶ "mafia type association" (*associazione di tipo mafioso*, Art. 416-bis C.p.), based on the "method"

B. Domestic legislation

- ▶ The offense of "mafia type association" has raised diverse interpretative questions:
 1. sociological knowledge
 2. so called "external cooperation"
 3. foreign criminal organizations

B. Domestic legislation

▶ II. Procedural aspects

1. Tendency to so called “maxi trials”
2. Special organs of investigation
3. Exceptional rules by the investigations
4. Exceptions to the adversarial system (usage of declarations of collaborators with judicial organs, so called key witnesses – “*pentiti*”)
5. Execution of the penalty and severe incarceration (“*carcere duro*”)

C. International perspective

▶ I. Palermo Convention

- Criminological background: organized crime and transnational organized crime
- Legal definition of “transnational offense”:

Art. 3 para. 2 of the Palermo Convention states:

“an offence is transnational in nature if:

(a) It is committed in more than one State;

(b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;

(c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or

(d) It is committed in one State but has substantial effects in another State.

C. International perspective

▶ I. Palermo Convention

- Legal definition of “organized criminal group”:

Art. 2 a) of the Palermo Convention states that, an “organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.

C. International perspective

- ▶ II. Implementation of the Convention into Italian criminal law
 - Law no. 146/2006
 - Substantial effects of transnational offense:
 1. Specific aggravating circumstance
 2. Confiscation
 3. Sanctions related to legal entities

C. International perspective

- ▶ III. Growing uncertainty of application of domestic law
 - Discrepancy between the concept of “organized criminal group” and “association crimes”
 - Discrepancy between the definition of “structured group” and the concept of “permanence” according to Italian law
 - Vagueness of the notion “involving”
 - Vagueness of the notions “substantial part of preparation, planning, direction or control” and “substantial effects” of an offense

D. Conclusions

- ▶ Criminal law in field of organized crime as “law of battle”
- ▶ Transnational organized crime as factor of complication of the domestic law
- ▶ Random expansion of sanctions against physical persons and juridical persons

▶ Thank you for your attention!