



## ANTIMAFIA: THE ITALIAN EXPERIENCE IN FIGHTING ORGANISED CRIME

Policy Brief No. 31, October 2011 r.

In recent decades the Italian authorities implemented a number of measures and policies as a direct response to the threat of organized crime. These new measures were intended to expand the scope and the number of law enforcement and judicial instruments and were **an attempt to complement the conventional approaches**, which were no longer effective in light of the persisting mafia influence against public institutions. This is why the Italian experience is specifically<sup>1</sup> valuable for countries like Bulgaria, which are vulnerable to corruption and organized crime.

The key measures, adopted by the Italian government included new legislation targeting new types of criminal activities (like complicity in organised crime activities), broadening the powers of the investigative authorities, preventive confiscation of mafia assets, introducing the figure of 'collaborator of justice', as well as special legislation for prosecuting of mafia members.

Italy also reconsidered the sanctions proceedings (the scale of sanctions, the penitentiary regimes and the confiscation of criminal assets). All these new instruments allow the law enforcement authorities not only to impose **measures of repression**, but also

### KEY POINTS

The Italian approach to countering organized crime encompasses a number of complementing measures, which are tailored to the specific threats posed by the mafia.

- Specialised legislation for facilitating and accelerating of pre-trial and judicial proceedings against mafia leaders and members
- Harsher penalties and special penitentiary regimes against high level members of organised crime groups, which pose a serious threat to society.
- Preventive confiscation allowing for expropriating mafia assets in favour of the society and the state.
- Holistic antimafia policies have been pursued in the infiltrated by the organised crime municipalities and provinces. These policies include dissolving of the mafia controlled local authorities and implementing programs for improving security and economic development in Southern Italy.

---

<sup>1</sup> „Antimafia”. The Italian experience in fighting organized crime. Sofia. Center for Study of Democracy, 2011.

to use a number of **prevention measures**, like wiretapping, protective custody, confiscation of assets, operations with undercover officers, use of special intelligence information.

These preventive measures could be based on evidence from judicial corroborators or wiretaps on telephone conversations. The enforcing of the prevention measures is accompanied by investigations of the assets of suspects. The confiscation measures could be imposed on all kinds of property – real estate, land, enterprises, financial assets, etc. These measures are implemented as an independent action and regardless of the outcomes of the trial against the suspects.

Another specific of the Italian approach is that freeing from guilt of a mafia member does not lead directly to lifting the judgment for social threat of his activities. Furthermore this judgment gives ground for imposing measures for confiscating of suspect's property, and these measures can be extended even after he is freed of guilt by the court. This is a rare example of approach, which cannot be found in the other western democracies.

There are also specific legislative norms, which target suspicious financial transactions and money laundering. The attempt to conceal the illegal origin of cash, property or other economic or financial assets could be linked to organized crime, as well as other more conventional violations of law. The aforementioned legislative norms allow increasing the effectiveness of countering money laundering through infiltration of police officers, active involvement of banks and other financial institutions.

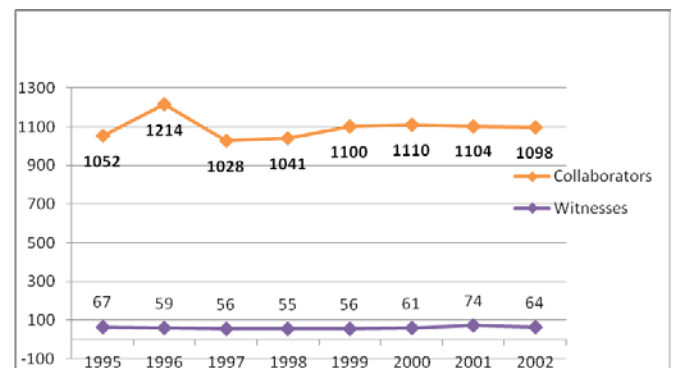
The broadening of the powers of the Italian authorities for fighting organized crime has been accompanied with establishing of **specialised institutions and structures** like the National Directory Antimafia and the Antimafia Investigation Directory.

Their experience is of specific value to the similar units within the Bulgarian police and prosecution.

### ***Collaborators of justice***

A key development in the policies for countering organized crime in the 90's is the introduction of the so called 'collaborators of justice'. The new law amendments delineate their protection and involvement in the judicial proceedings as witnesses and victims of mafia-related crimes. The collaborators are usually persons, which have been involved in mafia activities, but at certain point of time (usually when arrested) have decided to collaborate to the police and the prosecution. The legislative norms specify that a collaborator should testify not later than six months after he declares his will to collaborate to the law enforcement or prosecution authorities.

**Figure 1. Number of collaborators of justice in Italy (31.12.1995 - 31.12.2002)**



This approach has led to significant results, but together with this has brought a number of problems related to increased risks of mafia revenge to collaborators and their families. Taking into account these risks, the law provides for witness protection program, which could be offered to the collaborator. The prosecutor who documents the testimony of the collaborator and is responsible for assessing the credibility of the evidence, could offer such protection.

The witness protection program provides for that the collaborator (and family) to change his / her residency, to be transferred to a special penitentiary regime with the right to change his penalty with alternative measures. In exceptional cases the collaborators are allowed to acquire new identity and together with this to receive substantial reduction to their sentence and financial aid. Yet, the law introduces a rule that a collaborator is supposed to serve at least ¼ of his / her sentence, before s/he would be allowed to change it with alternative measures.

### ***Legal proceedings against the Mafia***

Changes were made to facilitate the documents' circulation between related legal proceedings in order to speed up the lawsuits against hundreds of members of organized criminal groups and to guarantee better use of the available evidence without infringing the requirements of confidentiality and the procedural norms on Mafia-style crimes. According to these norms, the depositions of the indicted persons may be effectuated virtually via videoconference communication in order to avoid their transportation to the courts; they also require that the arrested defendants should be kept in separate locations to avoid any contact between them.

*Law 63/2001* guarantees "fair proceedings" and introduces some general rules, related to the legal procedures against the Mafia. It defines the legal figure of the "**defendants-witnesses**" in the cases where a defendant repents about his crimes. Past experience shows that often collaborators were accusing other persons and giving evidence as witnesses, but at the same time avoided answering difficult questions asked by the prosecution, referring to their inalienable right not to give prejudicial evidence that will harm them. According to the new law however, when a defendant-witness decides to

accuse another person, s/he will be treated as a common witness, who will be held responsible for his / her depositions according to the law.

In addition to the testimonies of the collaborators of justice, which the magistrate in charge has accepted as a valid and sufficient evidence, 'hearsay' type of testimonies could also be accepted on condition that the individuals who provided the witness with the information are either deceased or could not be summoned to witness before the court. The ensuing practice however shows that this legal text is seldom applied in order to avoid possible misuse. Instead, the prosecution is asked for additional evidence in order to back its accusations.

Another new element is the use of the so-called 'external complicity' in Mafia type criminal activities (which is applied when there are numerous participants in the same criminal act). This legal category is enacted in legal proceedings of white collar criminals – professionals, entrepreneurs or politicians, who nurture relations with the Mafia. One of the most well known judicial processes using the accusation of collaborators was against the former Italian PM Giulio Andreotti.

### ***Penalties and prison regimes***

Both the penalties and the prison regimes of the persons convicted for Mafia-style crimes are strict. These persons cannot make use of alternative forms of serving their sentences. In addition, the contacts between those persons and the outside world are strictly limited in order to avoid the possibility of Mafiosi entertaining relations with other criminals, including their collaborators who remain at large. This strict prison regime (in accordance with article 41 par. 2 of the *Law of the Penitentiary Administration*) discriminates those Mafiosi, whose position is higher in the hierarchy and whose role is deemed more destructive for society. *Law*

279/2002 introduces such a regime for other convicts, in addition to the members of the Mafia (it defines the concrete conditions, which permit a convict to apply for a lighter regime thus limiting the prison administration discretion in deciding against the strict regime of a convict; it also stipulates that the daily open-air prison stroll could not surpass four hours and that the maximum number of the group of convicts should be limited to five persons).

### **Confiscation of Mafia assets**

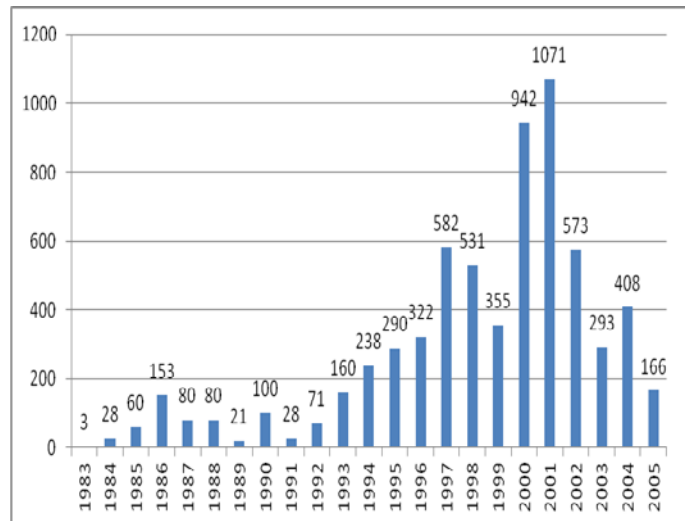
*Law 646 (1982)*, supplements the Penal Code with article 416, par. 2, which incriminates participation in a Mafia type organization. When a sentence for this crime is pronounced the profits from it or the assets acquired should be confiscated (art.416, par.2, 7) Another special measure is introduced with *Law 504* adopted in 1994, which supplements *Law 356/1992* with article 12, par.6. This special form of confiscation is applied to persons, convicted for crimes usually linked to the activities of organized criminal groups. According to the Italian Minister of the Interior Roberto Maroni, in the period 2009-2010 the seized assets in Italy are valued at more than 21 billion Euros. After the pronouncement of a verdict the assets in possession of the convicted person that cannot be justified with the amount of his income or from the profits of his business activities are confiscated.

A preliminary expropriation could also be applied in all the different types of confiscation resulting from criminal proceedings. This possibility is introduced by article 321, par.2 of the *Penal Code*, which stipulates: “the Judge could also decide to proceed with a preliminary expropriation of the assets, which are to be confiscated”

The above mentioned *Law 646 (1982)* alters substantially *Law 575 (1965)* and widens the “preventive measures against persons”, that include special monitoring motivated by public security and

the arrest of persons, which are suspected for participating in a criminal group and deemed dangerous for society.

**Figure 2. Number of the confiscated assets. Final number of confiscations by year (1983-2005)**



In addition to these measures, civil confiscation (called *confisca di prevenzione*) may be applied against the aforementioned dangerous persons. The preventive measures against organized criminals and their assets undertaken before and without relation to the criminal activity are aimed to prevent eventual new offences they may commit. Such measures are undertaken without reference to previous offences by a person.

The confiscation warrant usually follows the preventive measure undertaken against a person. Pursuant to *Law 575* the income sources of the people suspected of involvement in criminal activities should be assessed with regard to their way of life, finances, properties and economic activity. This measure not only provides for investigations of suspects but also of their spouses, children and the persons they have lived with officially over the past five years. Furthermore, each

legal or natural entity or other entity that benefits directly or indirectly from the criminal in question might also be the subject of such financial investigations. The application of measures with regard to freezing and confiscation are regulated in article 2, paragraph 2 of the *Law*. During the proceedings related to the application of the measure against the person on trial the court might rule out seizure of defendant's assets. Two conditions are required in order to apply this measure. The first one is the assets in question to be at the direct or indirect disposal of the defendant. The second one is: 1) discrepancy between the wealth of the defendant and the low level of his official income or economic activity, or 2) sufficient evidence that the property in question was acquired from criminal activity or resulted from such activity. Along with the application of the measure the court rules out confiscation of the assets whose legal origin the defendant cannot prove.

Following a complex procedure the real estate is handed over to: a) the state to be used by the judiciary, law enforcement or civil protection bodies; or b) local authorities for institutional or social purposes. Company property is also handed to the state to be sold, liquidated or rented out. Private property and stocks are sold and collected proceeds along with the money from the sales, rental fees or total sales of company property are invested in a special fund to finance social programs.

### ***Dissolution of local municipal bodies***

One of the most radical measures to counter organized crime is the option to dissolve a municipal or regional body as a result of identified infiltration of mafia structures (the measure also includes termination of the mandate of municipal and regional councilors, as well as this of the mayor and the president of the respective province). This measure

was applied intensively in the period 1991-2004 when 141 local authority bodies were dissolved, the majority of which in the Provinces of Campagna, Sicily and Puglia.

These measures are intended only for political positions and this brings around the necessity to implement corresponding measures for compulsory reallocation and suspending from position to the regular officers, which have bonds with mafia. The dissolution of municipal and regional bodies comprises substantial political risk, as it puts the government above democratically elected local governing bodies. Apart from that, the practice shows that assigning commissioners on elective positions in combination with the disruptive actions of the mafia controlled municipal companies often leads to poor socio-economic results, which backfires on political level.

### ***Indirect policies against mafia***

Together with the repressive measures for countering organized crime, the Italian government cooperates closely with the European Union in order to accelerate the economic development of South Italy as a measure for limiting the mafia influence there. The financing of these measures is provided from the European funds through Operational Program "Security for development 2007-2013". The operational program is focused at enhancing security in the regions with high levels of organized crime like Calabria, Campagna, Puglia and Sicily<sup>2</sup>. The three pillars of this program are security, economic development and the rule of law. So far, 1158 million Euro have been allocated for the implementation of this program and 50 % of the

---

<sup>2</sup> Programma Operativo Nazionale "Sicurezza per lo sviluppo - Obiettivo Convergenza 2007 - 2013" (<http://www.sicurezzasud.it/>).

funding is covered by the European Fund for Regional Development. In order to improve the socio-economic cohesion in this region the European Union is financing a number of activities matching the objectives set by this national operational program through its Structural funds. The overall goal of the program is to create better conditions for assuring security, justice and rule of law in the regions, where the mafia restricts economic development.

### ***The impact over the organized crime***

The fact that a large number of influential mafia leaders have faced trials in court is a significant result of the 'Antimafia' policies. Most of the well-known leaders of the mafia, as well as a large number of 'officers' and 'soldiers' from the organized crime groups are in prison and their property is seized or already confiscated. All these results bring major changes in the public perceptions and attitudes. The affiliation with mafia no longer brings prestige, because of the impunity. This also affects the overall strategy of major organized crime groups, which prefer to get more covert. Another indicator for the effectiveness of these policies is the fact that some mafia bosses, who have been put in total isolation in prison, are now offering deals to the prosecution in order to receive alleviation of their penalty.



With the financial support from the Prevention of and  
Fight against Crime Programme of the European Union  
European Commission - Directorate-General  
Home Affairs