

MEASURES TAKEN BY THE D.I.O.C.T. IN VIEW OF COUNTERING CROSS-BORDER CRIME

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ABSTRACT

Cross-border crime stands at the moment as a particular threat to every state of the world, and in order to prevent and counter it, a specialized body was established at a national level, namely the Directorate for Investigating Organized Crime and Terrorism – D.I.O.C.T.

The main attributions, tasks and measures performed by the D.I.O.C.T., as established by Romanian legislation, are as follows:

- *organizing criminal prosecution for unlawful activities that qualify as organized crime;*
- *notifying the appropriate courts to take legal measures and judge the cases regarding organized crime activities;*
- *analysing the causes that determine cross-border crime activities, the conditions favouring them, drafting proposals in view of removing such causes, as well as improving the existing criminal laws with regards to such aspects.*

The measures taken by the D.I.O.C.T. to prevent and counter cross-border crime shows the important role that this institution plays in coordinating the activity of the other organizations involved in countering crime.

Keywords: organized crime, crime, wrongdoing, damages, criminal

JEL codes: G23, G28, G38, H26, K34

1. General Aspects Regarding Organized Crime

Preventing and countering organized crime is particularly important because of how topical and threatening this phenomenon is, as organized crime equally affects every state of the world by deteriorating the economic and social environment of those countries that are affected by this plague.

Establishing the scope of the concept of organized crime has been – and still – the focus of research for most specialists, theorists and practitioners with an interest in this field. The reason behind such research is the stringent need to comprehend the size and social implications of this plague, so as to identify and implement the most effective fighting strategies and set up an appropriate legal and institutional framework.

At the 5th U.N. Conference on “Crime Prevention and Treatment of Criminals”, a special resolution was drafted – Crime as a business activity – which underlines four defining criteria for organized crime, which are as follows:

- purpose: obtaining considerable profits;
- connections: well-structured and hierarchically established within the group;
- specific nature: using the participants’ professional attributions and relationships;
- level: participants occupy senior positions within the economy and society.

The general report presented within the Economic Committee of the North Atlantic Assembly, entitled “Transnational Organized Crime – an Ever Increasing Threat to the Global Market”, classifies the groups and organizations of transnational crime based on the following criteria:

- orientation towards criminal activity;
- hierarchical structure;
- willing to use violence, threats and corruption to obtain profits;
- forced to launder their illicit profits by infiltrating into the legal economy;
- cooperation with other groups pertaining to transnational organized crime;
- permanently seeking a legal cover for their unlawful activities;
- able to infiltrate into government institutions.

As far as the Romanian legislation is concerned, the concept of criminal group was defined through the Law no. 39/2003 on preventing and countering organized crime, which states that an organized criminal group is “a well-structured group of at least three people that exists for a given period of time and acts in a coordinated manner with the purpose of committing one or several serious crimes, in view of directly or indirectly securing a financial benefit or some other material benefit”.

In order to fight organized crime at a national level, several institutions have been set up; however, the main body specialized in countering organized crime activities and terrorism is the Directorate for Investigating Organized Crime and Terrorism – D.I.O.C.T., part of the General Prosecutor’s Office attached to the High Court of Cassation and Justice.

2. D.I.O.C.T.'s involvement in preventing and countering organized crime

The D.I.O.C.T. is a body established to enforce the law and carries out its attributions throughout all of Romania through specialized prosecutors trained in countering organized crime and terrorism, and is coordinated by the General Prosecutor's Office attached to the High Court of Cassation and Justice. As established by the Romanian legislation, the main attributions of the D.I.O.C.T. are as follows:

- organizing criminal prosecution for activities that classify as organized crime;
- managing, supervising and controlling criminal investigation activities carried out upon request of the prosecutor by the officers and agents of the criminal investigation department coordinated by the Directorate for Investigating Organized Crime and Terrorism;
- notifying the appropriate courts to take legal measures and judge the cases regarding criminal activities that fall within the jurisdiction of the D.I.O.C.T.;
- managing, supervising and controlling the technical aspects of criminal prosecution, which involve specialists from various fields, such as economy, finances, banking, customs, IT, as well as others;
- analysing the causes that determine organized crime activities, drug trafficking, cyber-crimes and terrorism and identifying the conditions favouring them, drafting proposals in view of removing such causes, as well as improving the existing criminal laws with regards to such aspects;
- building and updating the database of criminal activities that qualify as organized crime and terrorism;
- carrying out any other attributions established through the Code of Criminal Procedure and special laws.

Whenever there are solid grounds for assuming that an organized crime activity is underway, in order to collect evidence or identify the criminals themselves, the D.I.O.C.T. may request a series of special measures such as:

- placing bank accounts and other associated accounts under surveillance;
- intercepting, recording or placing under surveillance various communications;
- gaining access to IT systems.

Also, the D.I.O.C.T. prosecutors may request to see either copies or original documents containing any data, information, records, bank documents, financial or accounting documents, and other similar papers, from any person who owns or issues such documents, and that person has no choice but to comply with the request.

The law also states that, in order to verify bank accounts and other similar accounts, it is necessary to obtain a formal request from the prosecutor who is conducting the criminal investigation for that particular case; under such circumstances, bank confidentiality and the professional confidentiality of bank employees can no longer constitute obstacles for either the prosecutor or the appropriate court, once the procedure for criminal prosecution has been initiated.

Another special measure aimed at countering cross-border crime is that of using undercover investigation, usually whenever there are solid grounds for suspecting that a criminal activity is either under way or being planned, if said activity or the people involved cannot be identified by other means, all the while, of course,

in compliance with the provisions of the Code of Criminal Procedure and those of special laws.

The undercover agent, the informer, as well as their family members, may qualify for special witness protection measures, as provided by the law.

This measure translates into a specific document, namely the prosecutor's order that authorizes the use of an undercover investigator; said document includes the following data:

- the solid and real grounds that justify the measure and the reasons why such a measure is necessary;
- the activities that the undercover investigator may carry out;
- the identity that is to be assigned to the undercover investigator to allow him to carry out the authorized activities;
- the people who are subject to suspicions regarding criminal activity;
- the period for which the authorization is granted;
- other information required by the law.

In order to facilitate criminal investigations and the identification of those involved in organized crime activities, the law states that any person involved in such unlawful activities who accepts, during the criminal investigation, to denounce and help identify and prosecute other participants to criminal activities, benefits from a reduction in half of the punishment provided by the law.

For criminal activities to fall under the jurisdiction of the prosecutors within the central body of the D.I.O.C.T., they must be performed by people who belong to criminal groups or associations or any other groups or associations established specifically with the aim of committing criminal acts, and they must fulfil one of the following conditions:

- if the activity of such groups or associations may harm Romania's national safety;
- if the criminal activity was carried out or was planned to have results in several places, falling under the jurisdiction of several appellate courts;
- if the damage exceeds the RON equivalent of Euro 1 million;
- if it threatens to cause or has already caused significant trouble with regards to social relationships within a given community.

An important structure within the D.I.O.C.T. is the Office for Data Collection, Coordination and Analysis and International Judicial Assistance, which takes the following measures aimed at preventing and countering cross-border crime:

- it organizes the database of organized crime activities;
- it coordinates, analyses and processes the data and information that are relevant from an operative point of view, regarding organized crime activities carried out at a national level;
- it drafts studies regarding the causes that generate and the conditions that favour organized crime and it submits proposals aimed at countering this phenomenon, as well as regarding improvements to the currently applicable criminal law;
- it plots and permanently updates the country's crime map, illustrating the areas with a higher potential for organized crime and establishing internal crime routes, as well as cross-border connections, so that such maps may be used as benchmarks for future activities;

- when completing the above-mentioned tasks, it works directly with similar Romanian and foreign bodies, through mutual information exchanges and any other acts of international judicial assistance within this domain;
- it keeps records of conventions that refer to the principle of reciprocity within this domain, it prepares and keeps all documents and formalities required for solving requests of international judicial assistance in criminal matters, regardless of whether they are requested by competent Romanian or foreign authorities;
- it prepares necessary formalities for solving requests regarding international commissions, as well as regarding the transmission of other procedural acts, issued by Romanian or foreign authorities, with regards to requests for provisional placement under arrest, requests for active extradition, as well as those regarding the transfer of criminal investigation procedures.

At the same time, all the territorial bodies of the D.I.O.C.T. are also involved in coordinating, analysing and processing the data and information either held personally or obtained from other organizations involved in fighting corruption and organized crime, thus functioning effectively as a data room in the field of corruption and organized crime activities.

3. Analysis of D.I.O.C.T.'s activity and its results in 2012

The strategic responsibilities assigned to the Directorate for Investigating Organized Crime and Terrorism – as the single structure within the Public Ministry that is involved in countering organized crime and terrorism – have made it necessary to maintain in 2012 the same general priorities, with regards to carrying out the organization's investigative and operative activity, as had been applicable during the previous years, namely:

- countering the illicit activities of organized criminal groups – either internal or transnational – specialized in committing serious offenses;
- establishing and securing an internal status of regional safety, and, at the same time, implementing common external strategies, whether at an European or North-Atlantic level, aimed at countering organized crime;
- recovering the losses suffered as a consequence of serious crimes.

These general priorities were completed with more specific ones, derived from the exact nature of the investigative activity, specific to the D.I.O.C.T. and necessary for the organization to properly carry out its activity, as well as to maximize the current activity.

In 2012 the number of cases to be solved was of 16,984, which, when compared to the 15,878 cases recorded in 2011, represents a 6.96 % increase.

With regards to the number of cases actually solved, in 2012 they amounted to 8,936, out of which 6,255 cases were solved by issuing solutions, whereas 2,681 cases were either declined or assimilated into other cases.

As compared to the 9,717 cases solved in 2011, this number represents an 8.03 % decrease.

The cases presented by the prosecutors involved investigating a number of 16,885 people, as compared to 2011, when 19,392 people were investigated, which represents a decrease of 12.92 %.

With regards to the number of indictments, the situation in 2012 was as follows:

Period	2011	2012	Comments
Indictments	961	964	+3.54 %
Defendants	3,315	3,906	+17.82 %
Arrested defendants	1,609	1,906	+18.45 %

The activity carried out by the Directorate for Investigating Organized Crime and Terrorism in 2012 has been, in terms of quality, as positive as during the previous years, which is a result of both the activity of prosecutors from the department of criminal investigations and the special effort and contributions of those involved in the stage of judicial representation.

On the other hand, the quality of the activity carried out by the D.I.O.C.T. prosecutors must be analyzed by taking into account the major complexity of the cases that were investigated, the fact that most cases had a transnational character, the scope of the organized crime groups involved in such cases, as well as the technical nature of some of the offenses committed.

The main aspect of the qualitative analysis refers to the number of defendants who were acquitted upon solving of these cases; even though this number represents a slight increase relative to 2011, it must be analyzed by taking into account the higher number of defendants formally indicted (representing a 17.82 % increase relative to 2011), as well as the fact that, for some of the defendants who were definitively acquitted, the resolutions were issued in compliance with the provisions of article 181 of the Code of Criminal Procedure.

The judicial representation activity has seen significant increases in 2012 too; the D.I.O.C.T. prosecutors were involved in judging a total of 29,169 cases (as compared to 24,630 cases in 2011) and verified, in view of resorting to appeal procedures, a total of 10,559 court decisions (as compared to 10,284 such court decisions in 2011).

The criminal cases recorded a total number of 1,068 appeals and retrials.

In 2012 the status of cases investigated by the Directorate for Investigating Organized Crime and Terrorism was as follows:

Definitively acquitted defendants:

- 55 defendants were acquitted definitively, for 32 cases, out of which:
- 47 defendants were acquitted based on article 10, letters a – e of the Code of Criminal Procedure;
- 8 defendants were acquitted based on article 181 of the Code of Criminal Procedure.

Out of the 3,906 defendants who were indicted, the percentage of defendants acquitted was of 1.20 % (1.38 % in 2011).

In 2011, 49 defendants were acquitted definitively, out of which 3 defendants were acquitted based on article 181 of the Code of Criminal Procedure.

Out of the total number of defendants, 5 people were placed under provisional arrest, all of them being major defendants.

Definitive restitutions - 8 restitutions for 34 defendants, with cases being on trial for a period between 6 months and 7.10 years.

In 2012 the courts pronounced 6 restitutions for 86 defendants.

Conclusions

The activity carried out by the Directorate for Investigating Organized Crime and Terrorism in 2012 has been *very good*, and characterized by the following:

1. *Increases displayed by the main statistic parameters:*

- cases to solve – 16,984 – a 6.96 % increase;
- indictments – 964 – a 0.31 % increase;
- defendants – 3,906 – a 17.82 % increase;
- defendants placed under arrest – 1,906 – an 18.45 % increase.
- cases solved – 8,936 – an 8.03 % decrease;

2. *A lower number of definitively acquitted defendants*

Based on article 10, letters a – e of the Code of Criminal Procedure, a total of 47 defendants were acquitted definitively, which, relative to the total number of 3,906 defendants who were indicted represents a 1.20 %. 8 defendants were acquitted based on article 181 of the Code of Criminal Procedure.

3. A significant increase in the activity of the judicial sector – 29,169 participations of the prosecutors to the cases submitted to trials.

4. The total value of the drugs confiscated in 2012 amounts to EURO 10.5 million.

5. The total value of the losses caused by economic and financial offenses was of EURO 77.5 million.

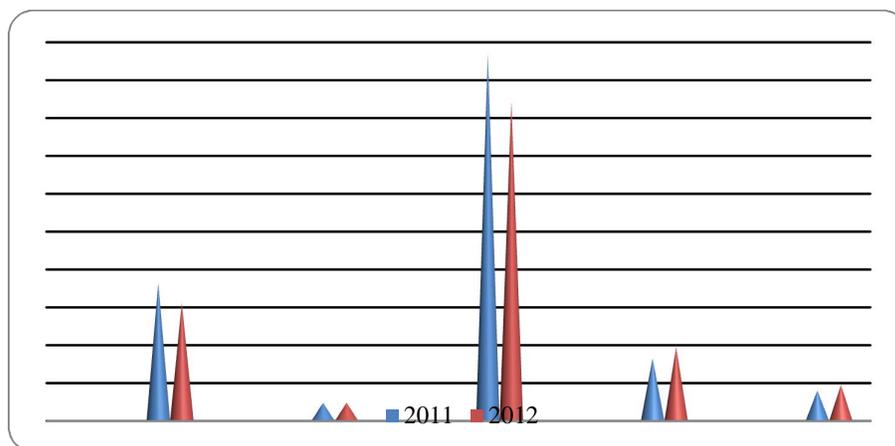


Figure no. 1. Status of the results obtained in 2012 as compared to 2011

The measures taken by the D.I.O.C.T. to prevent and counter cross-border crime demonstrate the important role played by this institution in coordinating the activity of the other bodies involved in fighting corruption and crime and in cooperating with similar institutions and bodies from other countries that have subscribed to the General Convention on Corruption and to the United Nations Convention against Transnational Organized Crime.

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