

Fight against Crime - Criminological Perspective

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ABSTRACT: The fight against crime aims to prevent the impact on social values. This preventive approach must be based on the principle of legality and should be carried out on the basis of pre-established procedures. At present, criminality has a diverse typology that implies not only a permanent adaptation and diversification of procedures, but also a rigorous definition that must reflect as accurately as possible the hypothesis, disposition and sanction for each type of crime. From a criminological perspective, a series of concepts such as high crime, organized crime, terrorism, drug trafficking, or trafficking in human beings can easily highlight defective definitions. However, there are a number of concepts and philosophies surrounding these types of crime. We propose a review of how crime is defined in order to assess to what extent the identified operational definitions can or must imperatively be improved.

KEYWORDS: Criminology, law, organized crime, prevention, typology

Introduction

The crime and its author have preoccupied the great thinkers well before the nineteenth century, a convincing example of which is Cesare Beccaria, who in the monograph *Dei Delitti e dele pene*, has revolutionized the legal thinking, opening up new horizons in the issues of crime and of criminal justice. In this time the principle has been enshrined, of the lawfulness of incrimination and the sanction, according to which no one can be prosecuted, investigated or sanctioned otherwise than in accordance with the legal norms.

From these ideas, according to which the criminality is a real concern for society, which must in turn react adequately to the phenomena emerging in social plan, we started the elaboration of the present criminological study, which will address drug trafficking, trafficking in persons and terrorism, topical subjects that are as complex as they are dynamic and therefore difficult to define. These criminal phenomena are to be addressed from a criminological perspective in an attempt to identify, within the available data, their theoretical and practical particularities in order to identify how these concepts are defined.

The study aims at presenting the analysis of these types of crime, which are classical and essential forms of objectivity of organized crime, on the coherent definition of which it depends in criminological plan the delimitation from other forms of criminality with which it resembles or the identification of the crime type in the criminal plan. The three forms of crime are very widespread worldwide, very lucrative, but at the same time representative of the poor way in which they have been defined. On a general level, it may be noted that between the rigid definition given to certain types of criminality that can fail to catch some forms of manifestation and a generic definition which lists some actions by which the criminality can manifest itself, the less rigid definitions of the analyzed types of criminality are enjoying a greater popularity.

1. Trafficking in drugs

The notion of *trafficking* is not recent, it being used for the first time in the 16th century as a synonym for trade. Thus, in its basic meaning this concept was not used in a negative sense. However, in the XVIIth century, trafficking began to be associated with illicit or unfair sale of goods. Though, at first, through the trade, the sale of drugs and weapons was largely understood, to the XIXth century this notion also included the trade in human beings treated as goods and sold in slavery.

The criminological studies that have approached this issue have started from the relationship that can be established between drug use and crime (Brochu 1995). Reanalyzing the casual consumer, the drug user and the drug addict, the quoted study concludes that the relationship of the

drug to crime is not easy to understand as it would appear at first glance, this being a triangular relationship between a person, a product and a behavior.

In international law, drug trafficking was defined in *the Single Convention on Narcotic Drugs* of 1961, as amended by the 1972 Protocol. This document mentions, under Art. 1: “*Illicit trafficking means the culture of narcotics or any trafficking in narcotics, which have purposes contrary to those provided for in this Convention*”, and under Art. 19 letter (a) “*quantities of drugs to be consumed for medical and scientific purposes*” (Buzatu 2012, 141).

The definition of drug trafficking is also found in *the Convention against Illicit Traffic in Drugs and Psychotropic Substances* of 1988 which, under art. 1, letter m) provides that “*The expression “illicit trafficking” means the offenses referred to in paragraphs 1 and 2 of Art. 3 of this Convention*”.

According to art. 3 item (1) of the Convention, the signatory countries must, in accordance with their national law, confer the character of criminal offenses to some intentional acts regarding the narcotic drugs and psychotropic substances, that is to say to that acts committed in violation of the provisions of the 1961 Convention. In an interpretation *per a contrario* of the provisions of the Convention, it can be said that it is about those acts with narcotic drugs and psychotropic substances made for purposes other than medical purposes or for scientific research. The acts are expressly delimited in three categories, each category containing several subcategories.

The Convention provides, under art. 3 point 2), that the possession and cultivation of the drug for own consumption be classified as drug trafficking. Subject to the constitutional principles and fundamental concepts of its own legal system, each signatory may take the necessary measures to confer the character of a criminal offense to the act committed intentionally with respect to the possession and purchase of narcotic drugs and psychotropic substances and the cultivation of narcotic drugs for personal consumption, in violation of the provisions of the 1961 Convention and amended in 1972. The cited legal instruments do not provide a proper definition of drug trafficking but list drug-related operations that are forbidden.

The increase of trafficking in drugs after 1989 led to the emergence of a legal framework clearly superior to the previous legislation. The current national legal regime of drugs is Law no 143/2000 on the prevention and combating of illicit drug trafficking and consumption (Republished in the Official Gazette of Romania, Part I, no 163 of March 6, 2014). This is an operative normative act that is at a level similar to the Western countries, which emerged precisely as a result of the harmonization of national legislation with international legislation. This law was drafted to meet the requirements of the Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1989, to which our country adhered by Law no 118/1992.

Art. 2 par. (1) of the Law no 143/2000 includes in the field of drugs the “*cultivation, production, manufacture, experimentation, extraction, preparation, transformation, offering, offering for sale, selling, distributing, delivering with any title, sending, transporting, purchasing, buying, holding or other operations regarding the movement of risk drugs, without right*”, the enumeration of the facts being not limitative (Law no 143/2000 on combating illicit drug trafficking and use, published in Official Gazette no 362 of 3 August 2000, republished in Official Gazette no 163 of March 6, 2014).

Also, Art. 4 para. 1 criminalizes the deeds regarding the *cultivation, production, manufacture, experimentation, extraction, preparation, transformation, purchase or possession of risk drugs for their own consumption, without right*.

There are also sanctioned other operations of trafficking in (risk and high-risk) drugs which presupposes the mere possession of the drug – as the material element, without right:

the introduction in or removal from the country, as well as the import or the export of drugs; as well as the physician intentionally prescribing high-risk drugs without it to be necessary from the medical viewpoint, the deliberate release of high-risk drugs on the basis of a prescribed medical recipe or a fake medical recipe, or getting high-risk drugs by using a prescribed medical recipe or a fake medical recipe; the administering of high-risk drugs to a person, outside legal conditions; providing, for consumption, of toxic chemical inhalants to a minor (Law no 143/2000 on

Combating Trafficking and Illicit Drug Use, art. 2-8). The operations listed are actions contained under the dome of the same offense.

The most severe incrimination is provided under art. 9 and refers to the *financing of the commission of the deeds stipulated under art. 2-5*, this article targeting those who finance and/or organize drug trafficking. As can be seen from the above, neither the Romanian law expressly defines the drug trafficking, but lists drug-related operations that are prohibited, as well as the sanctions provided for them.

However, we emphasize the similarity with the definition of illicit trafficking in drugs used by the 1988 Convention, namely the fact that, by *drug operations done without right*, those actions with drugs must be understood, which are contrary to the purposes set out in art. 19 of the 1961 Convention.

2. Trafficking in human beings

At the end of the 19th century the notion of trafficking in human beings referred to the trade with human beings treated as goods and sold in slavery, and this trade was outlawed at the beginning of the 20th century when it was defined as the movement across the international borders of women and children for the purpose of sexual exploitation (The Paris International Agreement for the Suppression of the White Slave Trade in 1904). In the 1990s, trafficking in human beings meant prostitution and the exploitation of women and children, and currently it is understood as the trafficking in women, children and men for sexual exploitation, forced labor, organ harvesting, both the trafficking by using force or deception, and the trafficking with the consent of the victims, both inside and outside the borders (Under the Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, adopted by the UN on 15 November 2000).

As with the drug trafficking, there is no unanimously accepted definition of trafficking in human beings. At the international level, according to art. 3 of the Protocol on the prevention and punishment of the trafficking in persons, especially women and children, the trafficking in human beings means: the recruitment, transportation, housing, or receiving of persons by threatening or even using force or other means of coercion, by abduction, fraud, fraud, abuse of authority or a vulnerability, or by offering or accepting payments or benefits for obtaining the consent for the purpose of exploitation.

In the same way, at the level of the European Union art. 4 of the Convention of the Council of Europe on measures against trafficking in human beings, adopted in Warsaw on May 3, 2005, the expression “trafficking in human beings” means: the recruitment, transportation, transfer, accommodation or reception of persons by threat of by using force or other forms of constraint by abduction, fraud, deception, abuse of authority.

In the Directive 2011/36 / EU on the prevention of and fight against trafficking in human beings and the protection of its victims, the notion of trafficking in human beings is defined differently in the sense that the States are required to take into account the UN definition but certain actions such as the exploitation of labor in construction or agriculture, forced begging and its exploitation, or adolescence and forced marriage to be also considered as trafficking operations.

At national level, trafficking in human beings has been criminalized as a distinct form of crime by Law 678/2001 on preventing and combating trafficking in human beings, which has largely taken over the definition offered by the UN.

The New Criminal Code (286/2009 Law regarding the Criminal Code, published in the Official Gazette 510 on 24th of July 2009 with subsequent additions and modifications) enshrines for the first time a distinctive chapter, in the special part, dedicated to the crimes in the field of trafficking in human beings, meaning Chapter VII The Trafficking and exploitation of the vulnerable persons from the 1st Title, Crimes against the person (Buzatu 2018, 226).

3. Terrorism

The Nation of *Terrorism* comes from the Latin “terror” which means terror, fear, horror, intentionally provoked. Terrorism is a complex concept and the definitions formulated by antiterrorist, political, governmental and security institutions have failed to be unanimously accepted.

Numerous military academies or universities have offered more than 100 definitions of terrorism. They can be established as true statistics, on the basis of which the criteria can be synthesized through which the phenomenon can be identified, such as strength and violence, politics, terror, threat, psychological effects, anticipation of reactions etc. (Canadian Center for Intelligence and Security Studies, *Tendencias en terrorism - Le terrorism and crime: Liens reels et potentiels* 2006).

Although there is no universal definition of terrorism, the United Nations Security Council, regional organizations and the governments of the Member States have mentioned numerous armed groups as “terrorist” groups. The Security Council has imposed sanctions on 80 groups and over 380 persons linked with Talibans, Al Qaeda and Islamic State of Iraq and Levant (ISIL) on the ground that they are involved in terrorist activities or who support such of activities. The Talibans, Al-Qaida, ISIL and Boko Haram affiliated company accounted for 74% of all the deaths caused by terrorist, insurgent and non-state armed groups in 2015 (The World Drug Report 2017).

It is important to note that terrorist acts may be committed by a single author. In the context of globalization, there are important changes in the profile of the “new terrorist” (Stănoiu 2012, 21), he/she often adopting the tactic of *the lonely wolf*. The means by which terrorists act are visible, extremely violent, often directed at public figures, reference targets, or social symbols, to maximize panic among the citizens.

The primary purpose of terrorist acts is to generate the state of terror and chaos in society, and then, by claiming the attacks, the authors to create an identity that could give Them, at some point, the possibility of claiming certain claims political or ideological plan.

The Convention of the Council of Europe on the Prevention of Terrorism, signed in Warsaw on 16 May 2005 (Ratified by Law no 411 of 9 November 2006 on the ratification of the Council of Europe Convention on the Prevention of Terrorism, adopted in Warsaw on 16 May 2005, published in Official Gazette no 949 of November 24, 2006), updated on 22.06.2018, under art. 1 para. 1 mentions that “*For the purposes of this Convention, a terrorist offense means any of the offenses falling within the scope of one of the Treaties listed in the Annex to this Convention as defined in those Treaties*”.

We appreciate that neither the concept of terrorism has been fully elucidated nor has it been given a clear definition despite the abundance with which it is present in legal instruments.

Conclusions

From the foregoing, we appreciate that from a criminal perspective, the typical nature of the offenses mentioned in exemplifying terms by them results with difficulty. From a criminological point of view, we consider that some conceptual clarifications are necessary, in order these notions to be used in a coherent and scientific way in certain contexts, along with notions such as “Great Criminality”, “Crime Globalization”, “Crime Mondialization” or “Organized Crime”.

The mentioned offences are difficult to analyze particularly in view of the interaction with the great criminality, as this concept has been defined in the literature, (Stănoiu 2012, 20.) but also taking into account the dynamics specific to the phenomena in their entirety. In the vast majority of cases, the drug and human beings trafficking offenses cover the form of transnational organized crime.

As an example, we mention that the drug trafficking is the typical example of “*mondialization of crime*” (12th International Congress of Criminology, *Crime and Justice in an Evolving World: Perspectives in Asia and the International Community*, Seoul, August 24-29, 1988) or “*globalization of crime*” (International Criminology Course *Consequences of Globalization on Crime Evolution*, Miami, 6-8 September 1999).

The phenomenon of economic, cultural and socio-political globalization brings with it what we call the obscure face of globalization, namely a globalization of crime (Pless and Couvrat 1989, 358, quoted by Gassin 1993, 380). Drug trafficking includes elements of extraneity.

The existence of offenses that integrates one or more elements of extraneity with respect to a certain determined state is not a new phenomenon. This is a phenomenon known long ago debated in the doctrine of the international criminal law. But it would be erroneous to believe that the globalization of the crime is not distinguishable from international crime. The differences are both quantitative and qualitative. Between the two types of crime there is an essential difference. This difference consists of the fact that, with regard to classical international criminality, the foreign elements are occasional, sometimes accidental, while in the case of globalized criminality, the foreign elements are structural and are the essence of this kind of criminality (Gassin 1993, 381).

The international criminality is a very appropriate term to describe the acts committed in the habitual international framework. The vocabulary is sometimes too poor to adequately describe the globalized delinquency. We can think of terms such as “world crime” / “global crime” or “transnational crime”. The first term has the inconvenience of letting an uninformed person to believe that foreign elements must be spread throughout the world for such a crime to exist. The expression transnational crime is undoubtedly less equivocal, but on condition that the prefix *trans* refer to the vertical concept of transcendence related to the States concerned, while the prefix *inter* in international crime to evoke, in horizontal manner, the juxtaposing of the constituents of a criminal act overlapping one or more frontiers. The term transnational is also the term used in the conventional international law (UN Convention against Transnational Organized Crime of 15.11.2000).

Trafficking in drugs and persons are forms of organized crime in which extraneous elements are structural and are related to the essence of this type of crimes. Moreover, from the point of view of the foregoing, we assert that these are current forms of *organized transnational crime*. We believe that the referred offenses must also be examined from the perspective of international criminal law, as extraneous elements related to the essence of this type of crime. While maintaining the generic criterion of classifying criminalization in crimes, delicts and offences, the trafficking in drugs and persons was placed in the specialty literature in the category of international crimes (Bassiouni 2008, 121-123).

The quoted author, in his study on incrimination in international law recalled a potential classification in the international norms of a number of 28 type crimes, incriminated in 267 international treaties. In a potential hierarchy of these, the incriminations in paragraphs 1 to 11 (aggression, genocide, crimes against humanity, war crimes, the possession and illegal use of nuclear weapons, nuclear material theft, mercenary, apartheid, slavery, torture and experimentation on human subjects) are international crimes. Incriminations under points 12 to 24 (piracy, air piracy and operations against air safety, illegal acts against maritime navigation and the safety of platforms on the high seas, threat and use of force against internationally protected persons, crimes against the United Nations and its associated personnel, civilian hostages, illegal use of mail, attacks with explosive substances, *terrorism financing, drug trafficking and related crimes*, organized crime, destruction/theft of patrimony objects and illegal acts against internationally protected environmental items) are international delicts. The remainder of the incriminations set out in paragraphs 25 to 28 (international trafficking in obscene material, counterfeiting and falsification, illegal interference with underwater international cables and bribery of civil servants) are the international offences in the perception of the author.

Professor Cherif Bassiouni also proposes definitions for each of the three categories of international incriminations with which he operates. International crimes represent, in the author's view, those normative prescriptions of international criminal law the breach of which is likely to affect the peace and security of mankind or is contrary to the fundamental values of mankind, or which is the product of a state's action or of a favoring state's policy. International delicts are in the view of the same author those normative prescriptions of international criminal law that affect an internationally protected interest and the perpetration of which involves one or more states or are

harming victims from several states. Last but not least, international offenses are any other crimes that do not fall within the previous definitions.

Starting from the above criteria and definitions, also taking into account the criterion of gravity mentioned in the literature (Deteşeanu 2016, 153-166) we consider that the crimes of trafficking and terrorism can be classified in the category of international crimes, since now these types of crimes affect international peace and security, are against the fundamental values of humanity, the drugs, trafficking in persons and terrorism affect the life and health of millions of people, and not at last the trafficking is the product of state's favorable actions.

From the foregoing it follows that the definitions are outlined at the same time with the evolution of the typical nature of the crimes, and any attempt to define as accurately as possible a certain crime may omit certain circumstantial situations that would have the effect of impossibility of some impairments brought to the social values to be prosecuted and sanctioned. It is no less true that a defective definition may leave free the imagination of law professionals, be they criminal investigation bodies, judges or lawyers.

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