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# Remand in Corruption Cases – a Possible Raft of the Medusa?

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## **Abstract:**

*Lately, in Romania, ever more deeds which might be classified as “big corruption”, namely those involving important state officials, politicians or even judges, are committed under the constitution of organized criminal groups. Most case files regarding such matters are based on accusations made by persons in remand. The present essay aims to draw attention towards the need to interpret such denunciations with great prudence, given the particular situation in which the persons concerned find themselves.*

**Keywords:** *denunciations, corruption cases, persons in remand.*

## **1. Introduction**

In my visits at the Louvre, each and every time, there were two paintings which I could not miss. The first one is, obviously, Leonardo da Vinci's *The Mona Lisa*, and the second is *The Raft of the Medusa*, a creation which belongs to the French painter Théodore Géricault. Besides the painting itself, which is impressive, what fascinated me was the fact that whenever I found myself in front of it, inevitably, my mind was trying to recompose the real event which had led to the creation of the painting. It is the kind of painting which “pushes” oneself inside the story, without the slightest possibility of showing any resistance. I shall briefly recall the events which had inspired the French painter.

Following the Vienna Congress (1815) and the restoration of the French monarchy, England returned to France its former colony, Senegal. In 1816, a French ship “La Méduse” left the port of Rochefort towards the former African colony, to retrieve it. The ship, a pearl of the French fleet, found at the forefront of a convoy which included three other ships, carried about 400 people. Besides the sailors, on board there were officials, soldiers, settlers; the new governor himself, appointed by Louis XVIII, was also on board. Valuables and important documents were also being transported with the same vessel.

In total contrast to the symbolic nature of the journey and the important human values and materials transported, the command of the ship was committed, based on political criteria, to Count who had not sailed for decades. Because of the captain's incompetence and immeasurable pride, which made him disregard the advice of the experienced sailors on board, the ship senselessly ran aground on a sandbank off Mauritania. After trying in vain to restore the ship afloat, the captain, along with the senior officers and the important passengers left the vessel, occupying the lifeboats. Since these boats were insufficient for everyone on board, 150 passengers were crammed unto a makeshift raft, chopped from the timber ship (the Raft of the Medusa). With a view to their survival, those 150 people received a few boxes of bread crumbs and 15 barrels of wine. The raft was to be towed by the lifeboats but, one by one, the

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moorings which tied the raft to the boats were broken, and it was abandoned at sea, without the possibility of being self-propelled. The drift lasted for 13 days. Throughout this time, the limited living space (part of the raft was underwater), the lack of food, water, and, at first, the surplus of wine, have all led to behaviours of unimaginable savagery: some passengers were simply thrown into the water, whilst others were killed, massacred and, eventually, eaten by the strongest.

The acts of cannibalism were the highlight of this sad story. Only 15 people were found alive by another French ship sent in their search. Of these, five died before being transported to shore. Basically, 10 out of 150 people survived. Some of them were charged with acts of cannibalism in a trial in which several were indicted, including the captain of the ship, together with the senior officers who, abandoning the ship and its passengers, had violated the Sailors' Code of Honour. Beyond the trial, the event created a huge scandal at the time since it brought to light issues dealing with human, political and social nature. Besides Géricault's painting, created between 1818 and 1819, and first exhibited at the 1819 Paris Salon, so quite shortly after the event, over time, Medusa's tragic story has inspired numerous books, films and even scientific studies.

## 2. Remand in Corruption Cases

Two criminological studies have questioned the state of emergency as a justifying act concerning the acts committed on the "Raft of the Medusa"<sup>1</sup>. Beyond the questionable technical and legal component, especially from the perspective of the definition of the state of emergency, the studies explore the psychological, moral and criminological component of the situation. Basically, the idea is that in extreme situations, when people feel threatened by major hazards, their behaviour can become uncontrollable, even aberrant.

The Raft of the Medusa, the painting, the story of the shipwreck and the two criminological studies (read more than twenty years ago!), have all recently come to my mind in the overall context generated by all the cases of remand in custody which were ordered lately in cases of corruption, and by the controversial procedure of the denunciation, used ever so often in such cases. Although it might seem exaggerated, I believe that, in other ratios and for other reasons, obviously, for some people, the state of remand can become a "Raft of the Medusa".

The prison environment is extremely hostile, in general, to anyone. It is known that for those people who come into contact with custody for the first time, the period of "accommodation" is long and extremely difficult. The more the remanded person had a comfortable situation in their daily life, the more unbearable would be the detention. The psychological shock caused by incarceration may be felt more or less strongly, depending on each and every personality, but there is such a shock for everyone. To the shock of the detention itself, in the case of the remand one should add the normal pressure of the ongoing investigation or investigations and, obviously, the spectre of a possible sentence. All these "ingredients" make up a "cocktail" which is extremely dangerous from the point of view of the judicial truth.

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<sup>1</sup> See in this respect: H. Schadewaldt *L'odyssée du "Radeau de la Méduse"*. Un exemple classique de "l'état de nécessité", *Revue internationale de criminologie et de police technique*, vol. XXIII, 1969, n° 2, pp. 119-134, and J. Graven, *L'état de nécessité justificatif des naufragés. A propos du "Radeau de la Méduse"*, *Revue internationale de criminologie et de police technique*, vol. XXIII, 1969, n° 2, pp. 135-146.

Let us take as a working hypothesis the situation of a person who has committed several corruption offences, who knows s/he is guilty, and their acts have been proven without any doubt. By hypothesis, such person does not have extremely high moral scruples (since s/he committed crimes of corruption). The question is: can such a person, remanded in custody, and taking into account all the “ingredients” described above, provide the judicial authorities with false information, more concretely can s/he bring false accusations against other people for the sake of improving their own situation? The answer is: definitely yes, it is possible.

The answer to the previous question gives rise to another question: what effect could such a denunciation have (“slandorous” denunciation, as called by the old Penal Code)? One possible answer would be: no effect whatsoever; in a criminal case, the evidence cannot be reduced to a simple (single) denunciation. Although it is a denunciation, not a testimony, what works here, or at least it should work, is the old Latin adage: *testis unus, testis nullus*.

Another possible answer would be: it depends from case to case. The formulated principle does not have a legislative consecration in our procedural system and therefore it needs to be put into perspective. There is, at least theoretically, the possibility that such a denunciation, a slanderous one, be read in conjunction with indirect pieces of evidence which do not point at the guilt of the falsely accused, but which throw some doubt on them. Let us assume, however, that the judge, alert and in good faith, will not accept such corroboration and, in the absence of a direct and conclusive piece of evidence, they will consider that the act has not been proved.

But what if we multiplied the assumption from which we departed? Let us suppose that there is, in the same case (or another), a second person in exactly the same situation as the first informer. Could such a person, faced with the first denunciation, confirm its “reality”? The answer is, this time too, definitely yes, it is possible. In such a situation, a false denunciation, doubled by another false denunciation, could produce effects in that it could provide enough material evidence for retaining someone’s guilt. In the case of complex files, with dozens of people investigated, the probability of having two or more false denunciations is, obviously, considerably increased. Although, apparently, the conjugation of the proposed hypotheses seems highly unlikely, it is however possible. Therefore, the idea that a false denunciation cannot take effect is, in principle, wrong.

I do not discuss here the instance of forcing someone, in one way or another, to make such denunciations, which is, in itself, a criminal activity. Surely in such a situation the risks that the false denunciations might lead to an unjust conviction would be much higher. Perhaps such a situation also deserves careful consideration, especially in light of the guarantees offered by law in order to prevent such abuses, but this is not the place to analyze it.

### 3. Conclusion

In the working hypothesis, we started from the premise of an investigation conducted by a professional, acting in good faith, and I want to point out that even in such situations the denunciations made by persons remanded in custody imply major hazards and should be analyzed with great care by the judges, irrespective of the step in the criminal proceedings.

The thought that people tangled in their own crimes, found in the anguish of the cell and under the spectrum of punishment might crush other people’s destinies should scare us. And if anyone imagines that such despicable things cannot happen, they should consider that even more atrocious “horrors” happened; they should think of “The Raft of the Medusa”...

# Disorganized Crime\*

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## **Abstract:**

*The organized crime literature is vast, consisting of thousands of titles, expanding daily. Apart from that, many authors are not very explicit in the manner they use concepts, assuming that “we all understand what we mean when we talk about organized crime”. Therefore, after the predecessors’ attempts to create some order in the conceptual chaos surrounding the study of organized crime, one author has managed to draw attention to a long forgotten issue.*

*This study is about the pioneer work of Peter Reuters and his approach to understanding organized crime starting from the economic forces that shaped out the illegal markets, an environment where organized crime flourished.*

*This approach calls for an interdisciplinary analysis of a complex phenomenon, a method which is not customary to current academic debates.*

**Keywords:** *organized crime; disorganized crime; illegal markets; economic approach; profit-driven enterprise.*

## **1. Introduction**

In the context of the fight against organized crime, a title such as the given one may stir contrary reactions. This was actually the effect generated by a book bearing this title.<sup>1</sup> The author’s intention was not to induce perplexity but to raise awareness on the difference between the commonplaces on organized crime and reality.

It may be surprising that such an approach belongs to a non-jurist. The author, an economist as a profession, has opened a different perspective on the analysis on organized crime, seriously questioning the capacity of legal discourse to pretend itself the only one authorized to debate this phenomenon.

Although the author’s study was published more than 30 years ago, his perspective seems to have a still unconsumed potential. A proof of this is that the academic debate has not until today reached a consensus as to the concept of organized crime. In their turn, legal experts, legislators and law professors came in and put forward various definitions, starting with an approach which did not focus on the economic analysis of the phenomenon.

## **2. The definition of Disorganized crime**

In fact, Peter Reuters proposes another starting point.

The commonplace definition in the area of organized crime starts from the idea, long stated but never backed up by evidence, according to which organized crime is

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<sup>1</sup> Peter Reuters: *Disorganized Crime. The Economics of the Visible Hand*, Massachusetts Institute of Technology Press, Cambridge, 1983.

essentially profit-driven. This means that a central component of the concept of “organized crime” is related to money and the economic processes that generate income.

The author made us understand the comprehension of organized crime should start, not from the criminal organization towards its criminal agenda, but the other way round, from the mechanism and dynamics of profits towards the structuring of a criminal group. Such approach is based on the analysis of the environment of the underworld. Dismantling the underworld implies for the most part the study of illegal markets. Essentially, the author sustains that a separation should be made between illegal markets and organized crime and the study of illegal market should lead of a better understanding of organized crime.

Criminals do not inhabit a social and physical world that is different from the rest of society. Nonetheless it is true that those regularly involved in illegal activities form a subculture that is distinct from the society that it is embedded in. Illegal markets are dominated, as any other market, by economic forces, meaning that the best approach to the former is but an economic one. Legal experts seem to be less privileged in this competition, as long as they ignore the economic perspective.

### 3. What are illegal markets?

Basically they are a type of market very similar to a legitimate one, parallel with the former, where the offer meets the demand in case of products and services that are not available on the legal market. All that the morals, the social consensus or the current political whim of the lawmaker prohibit does not merely vanish, but just goes down into the underground. The prohibited products and services market satisfies an endemic demand that never lowers beneath a certain level. There have always been consumers of vice, whether we refer to prostitution, drugs, weapons, infantile pornography, gambling, stolen goods, etc. All these unlawful activities are associated with huge profit, its increase being due to the fact that these are unavailable goods somewhere else and their price is monopoly determined. Prohibition of a good has an impact on the manner in which its production and distribution are organized and the mode of transaction chosen.

Consequently, the control over the places where large amount of money are generated is supposed to be the privileged playground of organized crime. Hence the idea that organized crime is intertwined with illegal markets. A study of organized crime leads to a study of illegal markets, and similarly, a concern with organized crime is an argument for systematic campaigns against illegal markets. The inference is that policies towards organized crime have to be focused on the involvement of the organized crime in illegal markets.

Furthermore, underlining the principles on the organization of illegal markets should lead to a better understanding of organized crime and dealing severely with illegal markets should be a means for reducing the powers of organized crime.

According to Peter Reuters, the belief that illegal markets are centrally controlled remains at the heart of official doctrine and policy. Historically, at least in the U.S., organized crime exerts its control through three main illegal activities: bookmaking, numbers and loansharking. In the economy of organized crime there is a primacy of illegal gambling, which is reputedly the backbone of organized crime.

F.B.I. often repeated assertion of the Mafia dominated illegal markets and this domination was the central feature of the Mafia's economic and political power. The orthodoxy found both in the public belief and in the official statements is that illegal markets are typically dominated by a single powerful group whose power rests on controlling the corrupt officials and commanding the overwhelming violence. The Mafia suppressed competition in major illegal markets, using either direct intimidation or control of corrupt law enforcement.

The use of violence for economic purposes is a distinctive feature of illegal markets arising from two consequences of product illegality:

- The victim of violence is disadvantaged in seeking police protection.
- Participants in illegal markets lack recourse to state-provided facilities for settlement of disputes. The mafia families that have a dominant reputation (in terms of their supposed capacity of carrying out violent threats) in the illegal economies of major cities in America arose through gang wars during the Prohibition era.

As far as bookmaking<sup>2</sup> is concerned, there is no evidence to support the notion that corruption is a tool for control of bookmaking business by some group within the market. No group is able to use police to harass the competitors. Bookmaking enterprises are small, compared both to the firms in the legitimate economy and to the market as a whole. By conventional economic criteria bookmaking market might be reasonably described as competitive. Instead the fact that the Mafia has a substantial presence in the bookmaking business, it does not appear to have acquired any degree of control over the conduct of the business.

The same goes for the numbers' random-turning-wheel (lottery)<sup>3</sup>. The difference is that numbers is a mass market, characterized by large numbers of customers making little "purchases" with little seasonal variation in the intensity of demand or product demanded. Bookmakers serve a relatively small number of customers, each of whom purchases a great deal of the service.

The declining significance of illegal gambling in the activities of organized crime may be the result of two simultaneous shifts: the growth in the availability of competing legal services and the decline of local police autonomy. Corruption of local police no longer provided the comprehensive protection that it did in previous eras.

Loansharking<sup>4</sup> was the second most important activity of organized crime.

In modern times loansharking has not been a major focus for police law enforcement activity. Few investigations target loansharks. Law enforcement officials believe that the use of violence and intimidation are essential and critical operating features for a successful loanshark. It is perceived as totally predatory in intent, employing usurious interest rates and unscrupulous methods to strip borrowers of all their assets and to gain control of their businesses.

There is evidence inconsistent with the assertion that organized crime controls loansharking business. People who have no organized crime connections have sustained long-term and profitable loansharking operations in many segments of the market. Further, it is quite probable that intimidation and threat are not a central part of the collective procedure for many loansharks. Instead, the possible loss of access to the lender for future loans may be the most important incentive for the borrower to make

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<sup>2</sup> Peter Reuter, *op. cit.*, pp. 14-44.

<sup>3</sup> Peter Reuter, *op. cit.*, pp. 45-84.

<sup>4</sup> Peter Reuter, *op. cit.*, pp. 85-108.

reasonably expeditious repayment. Finally it is clear that few loansharks have any interest in obtaining control of their customers' business. The dominant concern is prompt payment of interest and eventual recovery of principal.

These preliminary conclusions and the orthodoxy regarding loansharking are clearly in conflict. One reason for the discrepancy in conclusions is that the view of the police is profoundly affected by the manner in which the loansharking investigations begin. The majority of them are initiated only when a customer of a loanshark makes a formal complaint. Most complaints will come forward only when loansharks are prepared to resort to physical violence.

Of concern is not the interest rate charged but the implied method of the standard collection procedure of the debts. The changes in the financial laws alone were insufficient to eliminate the practice of loansharking, however. The need for a discrete loan for illicit purposes provided one continuing source for undocumented loans.

Success leads not to an increased number of loans, but rather to an increased seizure of loans. This is easily explicable in terms of rising concern with the prospect of arrest as lender's capital and income increase. If the loanshark does not increase the size of his loans, he can lend more money only by increasing the number of his customers. Further, he can increase the number only by lending to people he knows less about. The probability of one of his customers being an informant may rise sharply.

Loansharks create a distribution system comparable in essence to those that exist in the heroin or cocaine trade. Within that system the loansharks with greater capital lend to others with less. The character of the borrower helps determine the interest rate charged. Many loansharks have shown great reluctance to make use of violence or to have recourse to explicit threats. Violence is, in most cases, a very late stage of the collective process. Harassment is the most common first stage.

There are two reasons due to which loansharking is considered to be a more serious social problem than simply its role to be the source of income for criminal entrepreneurs. One is the use of violence in collection. The other is the assumption that loans are used by organized crime to take over legitimate businesses. First, it is considered that no one can become a loanshark without receiving permission from and paying tribute to the Mafia. Borrowers are simply less likely to attempt to defraud the lender if he is able to provide evidence of association with a group with strong reputation for violence. The probability that a borrower will make a maximum repayment effort is closely related to the fear that the lender is capable of arousing in him. A Mafia member will arouse the maximum fear and thus will generate the greatest effort to seek out the sources of funds to repay the loan.

The roles of both violence and intimidation are much smaller than the official accounts would suggest. The ties between the borrower and the lender in many segments of the market are sufficiently close that there is little need for recourse to violence and even to threats. Those who borrow from a loanshark know that they are likely to have future need for similar loans and it is not a minor matter to secure such loans at short notice. This alone may be enough to lead most borrowers to reasonably prompt repayment.

Changing the perspective to a certain extent, the question of interest is how illegality changes the organization of a market. Significant operational consequences of product illegality for participants in the trade are as follows:

- a) Contracts are not enforceable in the court of law
- b) The assets of the illegal operations may be seized at any time that law enforcement agencies identify the operations and the associated assets
- c) All participants are subject to the risk of arrest and imprisonment.



The threat of police intervention, either to seize assets or to imprison participants, and the lack of court-enforceable contracts is likely to lead to the formation of small, localized enterprises that are not vertically integrated and relatively ephemeral as to their existence. There are a few such situations need to be discussed.

In order to assure protection against seizing and / or arresting there is a need to control the flow of information about the participation in the illegal activity. Each participant must structure his activities, particularly those involving other participants, so as to assure that the risk of exposure about participation is kept to a minimum. Employees present a major threat to the entrepreneur, having the most detailed knowledge concerning his participation, *i.e.* they are effective witnesses about past dealings and informants for the police about the future dealings. The entrepreneur needs to structure the relationship with them so as to reduce the amount of information available concerning his participation and to ensure that they have minimum incentive to inform the police against him. Money and fear are the dominant strategic variables for ensuring loyal performance. Illegal enterprises seem to be quite unintegrated, because of lack of stability of enterprises and relationships in the illegal market.

Final customers are a significant threat to the illegal entrepreneur. They are many in number, have small loyalty to the enterprise and take few precautions against police surveillance. The customer is the starting point of most investigations against illegal enterprises. The entrepreneur may use two strategies to affect the customer-based threats to the enterprise. He can seek to fragment the dealings away from the rest of the enterprise. Such dispersion is costly and will grow with the scale of the enterprise, thus reducing the potential advantage cost of a larger illegal activity. On the other hand, the entrepreneur can try to use his reputation to intimidate the customers to ensure their reluctance to provide information to the police and their acting cautiously in dealings with the enterprise. A significant consequence of the entrepreneur's necessary caution in dealings with final customers is the loss of enterprise specific reputation. Simply, an illegal enterprise cannot effectively advertise in order to create loyalty in its customers. Advertising provides information to law enforcement agencies therefore it is repudiated.

The second situation is where the illegal enterprise cannot present audited books. Minimizing the extent of the recordkeeping is aiming to reduce the evidence available to law enforcement and is impossible to obtain usable verification by a reputable third party. Auditing firms would risk their entire reputational asset if they audited the record of illegal enterprises. Another consequence of the fact that there are no audible available books is the fact that a borrower with positive information about his performance cannot credibly communicate it to the lender. Those entrepreneurs who have small likelihood of arrest and are good managers cannot provide evidence to convince lenders about this. The lenders may assign all borrowers to a class risk for lack of such information. The better ones are unwilling to pay the class risk rate (higher) and decide not to borrow. Without smoothly working capital markets, the growth must be internally financed. The enterprise can grow only by financing that growth out of profits, which turns out to be a problem in most cases.

Another case refers to the fact that the lender cannot obtain collateral (guarantees) without withdrawing it from the use of the borrower. The lender cannot maintain effective control of the asset while leaving it with the borrower for its continued use. The lender cannot effectively monitor the disposition of the collateral without being involved in the management of the enterprise. The loan is to the individual entrepreneur

and not to the enterprise. This is the consequence of the fact that the enterprise has no certain existence independent of the entrepreneur. His death or incarceration will deprive the creditor of the ability to collect the loan. All this suggests that illegal activities lack the durability possessed by legal entities. The departure of the entrepreneur is likely to lead to the fact that the enterprise itself may be regarded by the market actors as terminated. This will affect the investment behaviour of the entrepreneur since he will be able to reap returns from investments in illegal enterprise only during the period he anticipates being in charge of it.

An additional restriction derives from that the illegal enterprise is expected to be only local in scope and not to include branches in remote locations. Perhaps the most significant reason is the difficulty of monitoring distant agent performance. Another factor inhibiting the growth of an illegal enterprise with more than metropolitan scope is the hazard associated with the transportation (expose agents to forfeiture by putting them together with a large amount of prohibited goods) and communication (telephones are notoriously insecure) to distant locations.

Generally speaking, the literature identifies in case of legal markets the incentive for conglomeration as the failure of external capital markets to allocate funds efficiently among enterprises. Given the failure of external capital markets for illegal enterprises, there would seem to be a considerable motivation for the growth of illegal markets conglomerates. Conglomeration would increase the exposure of illegal entrepreneur to informants and law enforcement efforts. Pure conglomeration, diversification into unrelated product lines, seems not to occur in the illegal market.

#### 4. Conclusions

For this reasons, illegal markets tend to be populated with localized, fragmented, ephemeral, undiversified enterprises. It is assumed that illegal markets are not characterized by monopoly control. The market may be oligopolistic or perfectly competitive. The orthodoxy is weakly based. Evidence shows that illegal markets are not monopolized or centrally controlled, *i.e.* there is no cartel domination.

The combination of localized, unitary law enforcement and two particular markets (liquor during Prohibition and gambling) led to centrally controlled illegal markets that were highly significant to organized crime. The mistake was to assume that there were general characteristics of organized crime rather than a particular historical experience. Statements made before the commission of investigators, about the significance of illegal gambling and the role of the mafia in it, have been treated as timeless truths rather than descriptions of social realities that are the product of particular influences in time and place.

Mafia may be a paper tiger. Instead of talking about the existence of hierarchy-based and well-organized crime groups that form the cliché image of organized crime, it would be more appropriate to talk about disorganized groups that carry out their activities in the underworld. A vast network of such groups is what remains after a realistic analysis of organized crime from an economic perspective.

Peter Reuter's approach demonstrates that there is a certain incompatibility between the forces that dominate the economic mechanisms of the market and the ability of some groups to come together into entities able to monopolistically control the illegal market.

This is an issue upon which legal experts will still have to reflect.