

The administrative approach to organized crime: Exploring the possibility of implementation in the district Borken (Germany)

Summary

Acts of organized crime make headlines regularly and fan fear amongst not only citizens, but also governments which are apprehensive of society- and economy-undermining situations.

“Examples of organized crime can be found throughout most of human history. From the roaming bandits in the earliest human civilizations, to the seadogs plundering merchant ships in the 18th century, to the cartels of the current war on drugs, individuals have long organized themselves to break society’s laws for personal gain.”(Snow, 2012, p.337)

While examples of “organized crime” can be found even centuries ago, the term *organized crime* did not become popular until the 20th century (Fijnaut and Paoli, 2006). The term *organized crime* is often described as an umbrella term due to shifting theoretical perspectives throughout the years as well as differences in the focus of crime-studies scholars (Kleemans, 2012). Also the varying emphasis of different countries on the concept of organized crime contributes to the controversy around this term (Adamoli et al, 1998). When *organized crime* first came to the attention of the broad public, it was widely associated with the Mafia. People viewed organized crime “as an activity that is dominated by centrally controlled organisations, with a clear hierarchy and strict division of tasks” (Bruinsma and Bernasco, 2004, p.79). Therefore, many people and countries did not consider themselves affected by that sort of crime (Paoli, 2002).

However, since organized crime became a prominent topic on political agendas in the 90s of the last century (Monitor organized crime,2012; Fijnaut and Paoli,2006), most countries` perception has changed. Organized crime was no longer only categorized as mafia related, many more worrying forms of it came to the attention and needed to be addressed. That realization is supported by “many scholars [who] have pointed out that there is a strong symbiotic relationship between organized crime and the legitimate environment in which it flourishes. The metaphor of a clean, innocent society that is being threatened by the evil of organized crime is definitely out of date” (Siegel and Nelen, 2008, p. 2).

An effective solution of crimes and clarification of illegal profits is mandatory in order to protect systems, economy and people from harm caused by organized crime. A lot of criminal measures like wire-taps, house searching or prosecution have already been established.

However, while there are many policies on cooperation between the judicial-/police-systems, not many countries have established cooperation between administrative or fiscal agencies and judicial-/police-agencies although an integrated approach of administrative, fiscal and criminal procedures has been researched and approved as supplement to the traditional approach by different scholars and institutions like the `Stockholm Programme` or the `Internal Security Strategy` (Spapens et al, 2015), which is an initiative of the European Council. Fijnaut and Paoli (2006, p.326) argue that

“internationalisation of policy can also throw up negative similarities between countries, not just positive ones, as is plainly evident in the neglect of an administrative, preventive approach to organised crime. Most countries do not have such an approach in place or have not properly implemented one; Italy and the Netherlands are the only two (partial) exceptions. The one-sidedness – in other words, the predominantly repressive bias – of the organised crime control policy propagated by the European institutions and/or by major countries is also reflected in the policy that many individual countries have conducted over the past few years.”

The administrative approach, also called “the non-traditional approach or non-penal approach” (Spapens et al, 2015, p.4), that Fijnaut and Paoli (2006) claim is being neglected by most countries, has become a prominent topic in organized crime research in recent years.

It draws on the assumption that criminals “do not limit their activities purely to illegal ones such as drug trafficking, fraud or property crimes” (Spapens et. al, 2015, p. 1) but that offenders also invest in legal activities.

Spapens et al (2015) argue that even if criminals do not use their legal businesses or activities for purposes of illegal activities, they still subvert the integrity of certain legal economic activities by, for instance, acting violently in case of a conflict or, due to the possession of illegal money, being less competitive as “legitimate” entrepreneurs which puts them in the position to outcompete the latter. Therefore, the governments and other national authorities have “a particular interest in preventing criminals from using the economic infrastructure to acquire a legal income or from misusing businesses to facilitate crimes and applying their criminal proceeds towards this purpose” (Spapens et al, 2015, p.1).

Administrative laws therefore have a key role in regulating economy, environment and safety by, amongst others, allowing the issuing of fines in order to maintain public order or evaluating the suitability of certain individuals for specific businesses based on earlier criminal convictions in order to prevent them from getting a new platform to commit offences.

Building on that, these scholars (Fijnaut, 2010, Spapens et al, 2015) claim, that combining an administrative approach with the traditional criminal approach, can be a

powerful measure in the fight against organized crime. A combination of administration and criminal law has first taken place in the USA in the fight against organized crime around the 1980s. This approach has become known under the term “dual /double strategy” (Siegel, 2008, Fijnaut, 2010). In the late 1990s, Jacobs and Gouldin (1999,) evaluated that strategy on organized crime, especially on Mafia families, in the USA and concluded that

“Law enforcement is not enough. Law enforcement is a necessary but not sufficient force for purging a full-blown syndicate from the economy. The use of long-term trustees to oversee the remediation of businesses and unions has been a great innovation in organized crime control. Likewise, the mobilization of government’s regulatory powers on behalf of the organized crime control effort has proven remarkably successful” (p.182).

Drawing on the example of the USA, internationally there has been a trend towards a dual strategy (Siegel, 2008) which at the same time enhances transnational cooperation in the fight against organized crime. However, different countries handle different laws and procedures which can complicate cooperation amongst states.

In order to overcome this issue, in 2010, the Dutch Ministry of Security and Justice together with Tilburg University (the Netherlands) and the KU Leuven (Belgium), supported by the Belgian Home Affairs Ministry, applied for and were awarded a grant by the Prevention of and Fight against Crime Programme of the European Commission. The aim of the grant was to conduct a “study on the potential for information exchanges between administrative bodies and traditional law enforcement organizations to support the use of administrative measures within EU Member States and at EU level” (Spapens et al, 2015, p.2).

The researchers adopted the following definition of the administrative approach (Spapens et al, 2015,p.4):

“An administrative approach to serious and organized crime involves preventing the facilitation of illegal activities by denying criminals the use of the legal administrative infrastructure as well as coordinated interventions (‘working apart together’) to disrupt and repress serious and organized crime and public order problems”

Based on the study, several conclusions have been drawn.

- 1) Information exchange between different authorities improves the fight against organized crime. However, the administrative approach alone is no replacement of the traditional judicial measures but rather complements it. “Therefore, information exchange between administrative authorities, law enforcement agencies and the tax authorities is *a condition sine qua non* for any coordinated response to serious and organised crime problems” (Spapens et al, 2015, p.548).

- 2) All analyzed Member States use certain administrative measures within their legal frameworks. However only the minority applies a systematic administrative approach and has a national policy on combating (organized) crime by administrative means in place.
- 3) The concept of `working apart together` or the multi-agency approach has proven to be a crucial factor as it has been observed in all studied states. “The key to working apart together is information exchange between administrative, fiscal and law enforcement authorities within a single state” (Spapens et al, 2015, p. 553). However, again only some of the States have established permanent or semi-permanent cooperation and platforms for information exchange in which local administrative authorities have an important role.
- 4) In all studied states, the legal framework gives opportunities for an administrative approach and a “common ground [...] is present in all the Member States” (p.557).

For these conclusions, the researchers recommend that the administrative approach should be promoted and that countries less familiar with the concept should be supported in building capacity for such an approach by countries which already have corresponding policies in place.

One example of a country which already has a systematic administrative approach to organized crime in place is the Netherlands. In the Netherlands, the government published a program to fight organized crime in 2007 (Spapens et al, 2015). That particular program contains the notion that “controlling organised crime basically requires a cross-border operational policy that in all respects represents an elaboration of the double strategy” (Fijnaut, 2010, p.48). To that matter, especially the administrative approach had to be extended. That was to be achieved by the introduction of six Regional Information and Expertise Centers (RIECs), aimed mainly at serving as information exchanges between different instances.

Since 2007, there have been several agreements and the number of RIECs in the Netherlands has risen to ten. In the year 2013 municipalities and provinces signed an agreement aimed at an administrative and integrated approach of organized crime, combat of handling-issues and enforcement of integrity-assessments¹. The agreement was signed based on the consideration that in order to create a more powerful approach to organized crime, it is necessary to establish a more integrated approach of ministries, police and other authorities

¹ Convenant ten behoeve van Bestuurlijke en Geïntegreerde aanpak Georganiseerde Criminaliteit, Bestrijding Handhavingssknelpunten en Bevordering Integriteitsbeoordelingen

charged with combating organized crime. It had become clear that municipalities needed more support in fighting organized crime and more information about criminal activities in their district (Kamerstuk II, 29 911, no 27).

As stated above, the key-function of the RIEC is information exchange. A permanent structure of information flow can contribute greatly to successes in combating crime. In a permanent structure, like the RIEC, different agencies are able to exchange information through set channels and can develop coordinated actions together in response to that information (Spapens et al, 2015, p.498).

However, there are three sets of factors which constitute obstacles to establishing a permanent structure or systematic administrative approach. The main problem is the “lack of a clear legal framework for information exchange” (Spapens et al, 2015, p.499) in most countries. That often disables a coordinated strategy to tackle a specific occurrence of organized crime and thus enables criminals to keep up their activities. Many countries enable law enforcement bodies to exchange information or administrative bodies to exchange information, but do not enable those administrative and police authorities to exchange information with each other.

Besides the legal obstacles there can also be organizational or technical obstacles. Every agency has its own back-office which “focus on the protection of their own interests, based on mutually exclusive areas of responsibility, control and political accountability” (Bekkers; 2007, p.380).

Germany does not apply a systematic administrative approach to organized crime. However, there are many regions which share a border with the Netherlands and experience acts of (transnational) organized crime. Information exchange not only between law enforcement agencies, but also fiscal and administrative agencies could enhance the fight against these crimes. Therefore the aim of this thesis is to explore which technical, legislative and organizational problems could occur if a more systematic administrative approach would be implemented in Germany.

To that matter the approaches of the RIEC-ON (Oost-Nederland) and the district Borken (Germany) will be compared in order to detect differences which can form possible problems for the implementation of a more systematic administrative approach in the district Borken.

Therefore, the research design is a comparative case study, the cases being the approach to organized crime of the RIEC-ON and the approach to organized crime of the

district Borken. These particular cases have been chosen because the two regions reportedly have detected acts of border-crossing organized crime and also have an interest in enhancing the cooperation. The approaches the two regions handle are different from each other and therefore are suitable to be compared in order to detect differences and similarities of a systematic administrative approach (RIEC-ON) and a nonsystematic administrative approach (district Borken). On the basis of this comparison, possible future problems can be detected and recommendations on the implementation of a more systematic administrative approach in the district Borken can be made.

Within the district Borken, the focus in the observation is on Gronau. Gronau is the second largest, yet by far most criminal city in the district Borken. It is situated directly at the German/Dutch border and has reportedly many difficulties with border-crossing organized crime. Due to organizational structure with regards to agencies responsible for fighting organized crime, Gronau cannot be investigated as an autonomous actor in this. Therefore, the case of analysis is the district Borken but the focus in the observation is mainly on Gronau.

The systematic administrative approach to organized crime as the RIEC-ON handles it is relatively new and unheard of in Germany, therefore it has never been studied under which conditions a similar approach could be implemented. The aim of this study is exploring which problems might occur when implementing the approach in Gronau rather than testing an existing theory. Therefore, the study is of explorative nature, aiming at investigating new possibilities.

The study was carried out by collecting data from interviews, grey literature and ethnographic observation. Interviews allow the researcher to get access to the observation of others (Weiss, 1994). Although not being physically present when organized crime is being fought by the RIEC-ON or the city of Gronau, the adoption of interview-based methods allowed the researcher to get an insight into the processes. In order to make this insight as complete as possible, different agencies which are concerned with the fight against organized crime were covered in the interviews. A total of 12 interviews were carried out, whereof seven with employees of agencies which cooperate in the RIEC and five with employees of German authorities.

Grey literature study was applied in order to fill in gaps which could not be covered in the interviews and in order to compare the outcome of the interviews to formal procedures stated in those documents. Ethnographic observation was executed only regarding the RIEC-ON during four meetings in order to take a closer look at the practice of the administrative

approach and verifying the outcome of the interviews and the literature study regarding the sharing of information.

The operationalization of `legislative, technical and organizational problems` derives from Bekkers (2007, p.379):

Problem	Type	Operationalization
Technical	Technical interoperability	Incompatibility of specific `legacy` ICT infrastructure (hardware and software)
	Operational interoperability	Different working processes and information processing process, routines and procedures
Legislative	Legal interoperability	Different legal regimes with conflicting rights and obligations, e.g. in relation to privacy and safety regulations
	Administrative interoperability	Conflicting, exclusive or overlapping jurisdictions and accountability
Organizational	Cultural interoperability	Conflicting organizational norms and values, communication patterns, and grown practices
	Semantic interoperability	The idiosyncrasy of information specifications and the lack of common data definitions
	Operational interoperability	Different working processes and information processing process, routines and procedures

Based on the outcome of the investigation of the two cases and their comparison, it became evident that Bekkers` (2007) categorization of possible interoperability problems misses one dimension in order to draw conclusions for this research. This dimension is the underlying framing based on which agents act and perceive `reality`. Without taking these underlying frames into consideration, the interoperability problems categorized by Bekkers (2007) cannot be fully understood. Therefore possible organizational, legislative and technical problems which could hamper the implementation of a more systematic administrative approach to organized crime in the district Borken depend on the underlying frames.

In the first step of implementing a more systematic administrative approach to organized crime in the district Borken, with the exception of technical interoperability all other interoperability-problems established by Bekkers (2007) can be expected. However, in order to fully understand why each problem could occur it is necessary to see the underlying frames since they determine the norms and values, grown practices, data definitions, thus in

short the aspects which account for the interoperability problems established by Bekkers (2007). Taking frame-related interoperability into account allows for not only a categorization of possible future problems like Bekkers (2007) established, but adds to the theory by showing what lies beneath the surface of these problems, thus the origin of them. The latter consequently allows for establishing (preliminary) conditions under which the implementation of a more systematic administrative approach in the district Borken could be successful.

This thesis can only be a first, preliminary step to investigate and predict possible problems for the implementation of a more systematic administrative approach in the district Borken. Due to the scope only one municipality could be observed and analyzed. Because only Gronau has been researched and the analysis is based on individuals' perceptions and statements, frames and resulting problems and conditions for systematic cooperation in other municipalities within the district Borken can differ. Therefore, before implementing a systematic administrative approach in other municipalities and regions, more scientific research on cross-agency cooperation and underlying frames in these municipalities needs to be performed.

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