

**WORKING GROUP
ON
INTERNATIONAL COOPERATION**

**LEGAL AND PRACTICAL CONSIDERATIONS REGARDING
INDICATIVE ISSUES IN LIGHT OF THE ANTICIPATED WORK
UNDER THE MECHANISM OF THE REVIEW OF THE
IMPLEMENTATION OF THE UNTOC AND THE PROTOCOLS
THERE TO**

VIENNA 5-6 JUNE 2024

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HANDLING OF MULTIPLE EXTRADITION REQUESTS FOR THE SAME PERSON SOURCES

- Inter-American Convention on Extradition (A 15)
- London Scheme for Extradition within the Commonwealth (S 19)
- Southern African Development Community Protocol on Extradition (A 11)
- Riyadh Arab Agreement for Judicial Cooperation (A 46)
- European Convention on Extradition (A 17)
- Framework Decision on E.A.W. and surrender procedures (A 16)
- EuroJust Guidelines, Court of Justice EU case-law, Council EU conclusions
- Bilateral Treaties

HANDLING OF MULTIPLE EXTRADITION REQUESTS FOR THE SAME PERSON SCENARIOS

- Same offence
- Different offences
- Prosecution
- Enforcement of a custodial sentence or a detention order
- European Arrest Warrant
- Extradition request

HANDLING OF MULTIPLE EXTRADITION REQUESTS FOR THE SAME PERSON FACTORS

- Place or date of commission of the crime
- Most severe penalty, oldest sentence
- Order of reception of the requests, dates of the requests
- Seriousness of the offences
- Citizenship and ordinary residence of the person (EU)
- Legal basis
- Interests of the respective States
- Most affected interests
- Nationality of the victim
- Possibility of re-extradition to another State
- Existence of a bilateral Extradition Agreement
- Others (jurisdiction, impact on proceedings, prescription, potential transfer of prisoner or proceedings, social rehabilitation, temporary extradition)

HANDLING OF MULTIPLE EXTRADITION REQUESTS FOR THE SAME PERSON PETRUHHIN JUDGEMENT

- Scenario (extradition request and EAW, also to be issued)
- Pre-condition (no extradition of citizens to TC involved)
- Cooperation Mechanism (Consultations, EAW issuance)
- Subsequent judgements
- Criticalities

...PETRUHHIN JUDGEMENT

Subsequent judgements

Cooperation with TC and right of free movement

Fair balance between conflicting interests (no impunity)

Other measure less prejudicial than extradition to right of free movement

Criticalities

Competent Authority (domestic legal framework)

Confidentiality (specific request from TC)

DUAL CRIMINALITY REQUIREMENT FOR EXTRADITION THE ORGANIZED CRIMINAL GROUP

- ARTICLE 2 – Use of terms

“Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit

- ARTICLE 3 - Scope of application

Offences established in accordance with articles 5...of the Convention - Serious crimes
Offence transnational in nature

- ARTICLE 5 - Participation in an organized criminal group

- ARTICLE 16 - Extradition

...provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party

DUAL CRIMINALITY REQUIREMENT FOR EXTRADITION THE «'NDRANGHETA»

ACTIVITIES

- Trafficking of narcotic substances, in particular, cocaine, imported in enormous quantities into Europe thanks to consolidated relationships with the most powerful criminal groups of various South American Countries
- Laundering of profits deriving from this trafficking and from other criminal activities managed both in Calabria and practically all the regions of central-northern Italy, as well as in several other Countries
- Implementation of a sphere of influence to safeguard its criminal operations and increase its wealth and power (relationships with apparently legitimate businesses and corruption practices, aimed to obscure the identification of illicit activity)

...THE «'NDRANGHETA»

- STRUCTURE

Criminal association with a hierarchical-pyramidal organization, characterized by the existence of a plurality of groups, often family-based, the <<'ndrine>>, each of them can have its own operational autonomy within well-defined territorial districts of Calabria and can be guided by a plurality of subjects, with different roles

- COLONIZATION

Transfer of Calabrian associates to other territories of Italy, especially in Northern regions, with the creation of new articulations of that same criminal organization, called 'locali', with the rituals, operating rules, roles and functional structures similar to those adopted by similar delinquent groups operating in Calabria

- ABROAD

The above scheme also applies with regard to the operations of the 'Ndrangheta abroad, in Europe and in various other Countries around the world, with the creation of local articulations, constituting the projection of the original association, characterized, however, by a limited degree of decision-making autonomy, limited to what can be defined as "ordinary administration", beyond which the choices must necessarily be shared with the "*Crimine*" in Calabria (the body responsible for managing strategic choices for the association and preserving those rituals – relating, for example, to the new affiliations or to the evaluation of correctness of the conduct of the associates – which characterize the 'Ndrangheta as an unitary organisation

DUAL CRIMINALITY REQUIREMENT FOR EXTRADITION FOREIGN DECISIONS

The reference to the ‘Ndrangheta, as a criminal organization of a mafia-type, can be found in judgements rendered by non-Italian judges or in other official documents, for example:

- in the United States, in May 2008, a Presidential decision identified the ‘Ndrangheta as a foreign entity implicated in international drug trafficking pursuant to the Kingpin Act and included it in the Specially Designated Nationals and Blocked Persons List (SDN List), where it is still present in the consolidated version of the list
- In Switzerland, in November 2018, a judgement rendered by the Federal Tribunal stated that, from an objective point of view, the ‘Ndrangheta corresponded to the notion of criminal organization as it was developed by the national jurisprudence and doctrine and that it was a criminal organization pursuant to article 260^{ter} of the Criminal Code
- In Canada, in February 2019, a ruling of the Superior Court of Justice sentenced two persons to several years of imprisonment for conspiracy to traffic cocaine, expressly stating that one of them was a high-level member of the ‘Ndrangheta, an organization whose criminal and mafia-type nature had been ascertained during the trial