



Crimes Maritime Laundering and Social Rule of Law



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Submission: 📅 February 22, 2018; Published: 📅 March 22, 2018

Abstract

Sea is a mainstreaming way of laundering of various criminal activities, such as maritime piracy and antiquities looting, which can be dangerous for the development of various sciences. Some of these criminal activities have been, at least informally, duplicated, through the new branch of law, called anti-money Laundering law, in the framework of the traditional fundamental principle of rule of law, explicitly institutionalized as "social rule of law" in some national legal orders. So, there is a new challenge for forensic science in international scale.

Keywords: Antiquities looting; Hi tech solidarity social rule of law; Maritime laundering; Piracy; Trafficking of cultural goods

Introduction

Maritime laundering of criminal activities

The term "laundering" serves to declare the process and the result of presenting an illicit act as a legal one. This is an international tendency, particularly attached to other forms of criminality, which are the basic actions in comparison with the laundering process. Sea is made from water, so it is by nature appropriate to clean things. In a metaphorical way, it may be used for laundering of various activities in the field of criminal law. The hypothesis of the present study is that the sea is a mainstreaming way of laundering of various criminal activities.

Piracy laundering

In maritime law, there is a very typical tendency to personalization of ships [1]. This movement is very old while it's most strong expression is rather the one of Anglo-Saxons, which consists in humanizing the ship, in such a pitch that they attributed to it the feminine gender.

If ships look like women, pirates are private individuals, let alone men, not women, with the almost unique exception of Mary Read. This economic crime, usually having the sense of robbery against any kind of ship constitutes a diachronic activity, from antiquity and on [2]. Two elements are articulated one another, the development of practices of piracy, whose characteristics have been marked by an evolution, and the introduction of norms to cope with [3].

Piracy has various potential targets, from antiquity to date, namely it may hit the captain and the crew, the cargo or the ship itself [4]. Although the third alternative is regarded as rather anachronistic, it is not thoroughly absent from the current practice. For instance, in July 2016 the military navy of Malaysia publicized an international call for information on a ship, just arrested

by pirates. The authorities were afraid that the ship might be painted to change its identity. So, like criminals, ships are likely to change name and their identity data, a practice that enhances their anthropomorphism and highlights the importance of forensic science.

The anthropomorphism on the matter may be compared with another well-known version, although being deprived of a legal nature. It is about the anthropomorphism of animals, in the French literature, particularly before the French Revolution [5]. That technique of literature was attributed to the target to exert criticism against the authoritarian regime, in an implicit way.

Piracy and the dangers for sciences: the birth of oceanography

Piracy may be harmful not only for conventional trips of shipping but also for the development of sciences, let alone from scratch. For instance, by the end of 1872 the British corvette "HMS Challenger" starts a journey of long duration, a three-and-a-half-year itinerary, almost all over the world [6]. The scientists of that era, who were onboard, wanted to study the case of foreign people but mainly to explore the world of oceans, which was still unknown. The ship reached the South Pacific, which had been explored in a systematic way a century ago, by James Cook.

The Royal Navy of the UK, the most powerful navy of the entire planet, had sent its ship to conquer the knowledge, not foreign territories. It is about the first big research project of the Victorian period and was financed by the British government with the sum of 171.000 pounds, namely about 15.000.000euros. The mission was supposed to cover a huge maritime distance of almost 70.000 nautical miles without any conflicts with foreigners: the 20 out of 22 canons of the ship were removed, to economize appropriate spaces for the researchers. The chief of the mission, researcher Thomson,

called the exploration that he had in mind 'Oceanography'. The data gathered would be used for the systematic mapping of the bottom of the sea. Indeed, this information was important for the installation of telegraph cables.

Despite various controversies, the journey was successfully concluded and its findings would be written down in a report, made of 50 big, green volumes. In spite of some wrong scientific conclusions drawn by the explorers, it is about the mission who inaugurated a new science, Oceanography, and inspired many other missions that based their projects on the already gathered data and findings.

All these achievements could be blocked, not only by conventional attacks of foreign people like the warriors of tribe Papua, in the non-violent incident of 24th February 1875, but also by pirates' eventual raids. Anyway, it is hard for pirates to survive and keep committing piracy and the similar crimes, such as armed robbery, without social back up.

The explicit principle of social rule of law

It results important to establish and develop in practice a hardcore principle, the rule of law. This fundamental principle, which was not previewed in a general clause in the formal Constitution of Greece, has been promoted in a double way, in this legal order. On the one hand, it was codified, in the sense that it has been explicitly mentioned in par. 1b of article 25, through the revision of 2001. On the other hand, the constitutional legislator, apparently inspired by the German Constitution, in which the model of the social state of law, in a joint, explicit way had been consecrated, explicitly introduced the principle of social state. This development was combined with the aforementioned 'rule of law' principle; article 25 has been endowed with a double principle, consisting in the 'social rule of law', following the paradigm of the German constitutional tradition [7].

The principle of solidarity social rule of law

Rule of law is much more than its legal combination with the principle relevant to second generation rights (social rights). Indeed, it has also to do with the fundamental principle of solidarity, explicitly previewed as a 'debt of social and national solidarity' of all Greek citizens, in par. 4 of article 25 of the Greek Constitution. Besides, article 2 of the Italian Constitution previews the same 'fundamental duty', namely a duty of private individuals in contradiction with the 'special obligations of the State', in a more intense formulation (duty of social, political and national solidarity). It is about a self-existent principle of post-war European constitutions, which take account of the ideal of fraternity, existent in the famous triple set of 'Freedom, Equality, Fraternity' of French Revolution.

In other words, essentially it results a principle of 'solidarity social rule of law', although this development has just been suggested uniquely by the doctrine [8]. Solidarity is connected with the third generation of fundamental rights either of people in the international community or of the private individuals in the society.

The collective character of this new set of rights has to do with the notion of interests of community, which needs protection as a whole against the notion of the separate interests of each private individual or the common interest of some people. It is about a universal identity in relationship with the future of forthcoming generations of society, as implicated by the intrinsic legal tool of the principle of sustainability of the environment.

3G rights constitute a category, widely contested to date, of universal human rights, in favor of various social groups and the entire society. This group of faculties is exemplified by important rights, such as the rights to tourism, to peace, to heritage, to the natural and cultural environment, to sustainable development etc.

The principle of hi tech solidarity social rule of law

Nowadays, some scholars tend to make a reference to the existence of a fourth generation, being still under recognition. This new wave of constitutional guarantees is mainly connected with the so-called 'Knowledge age' and has begun about at the end of twentieth century or, at least, in the beginning of the current one. The doctrine signalizes that the new set of rights has to do with the technologies of communication and information, the genetic intervention and bioethics as well as the world of animals [9]. So, it is obvious that the fourth generation is strongly related to the new technologies and the application of some of them to the universe of animals. It is to point out that if the fourth generation is accepted as a separate one, the very strong similarities between it and the third generation, which is still under development, cannot be denied. In other words, the principle of solidarity is well exemplified by institutions typical for the technological rights of the current era, such as the so-called 'Information society', explicitly introduced in par. 1 of article 5A of the Greek Constitution through the revision of 2001. In the added article is consecrated the right of each person to participate in the information society whilst no use of the similar term 'Internet' is made in the entire text of the Constitution. Through various applications of Internet and similar devices, people can communicate one another and proceed to the manifestation of their solidarity, in a rhetoric or factual way, towards other private individuals or even the State, as the legal representative of public interest. So, solidarity as well as collective interest may be present in the field of the fourth generation rights.

As far as their particular identity is concerned, it is obvious that these rights have a technological content or at least a technological impact on the conventional world. So, they can be designated through the term 'technological rights' or the alternative 'hi tech rights'. However, a more substantial term, having to do with the difference of these rights, in comparison with the conventional rights of the nineteenth and mainly the twentieth century, could be 'reproduction rights' or 'reproductive rights'. Indeed, the new era of hi tech technologies enables humanity to reproduce the natural world, by creating parallel and, to an extent, autonomous universes, such as virtual reality and the artificial reproduction of human beings and, more widely, the genetic engineering.

It results a new fundamental principle in terms of constitutional law, enhancing the aforementioned concept of the principle of solidarity 'social rule of law'. It is about the hi tech (or reproductive) solidarity social rule of law, given that the reproduction power should not be a 'pirate power' against the public interests. The reproductively effect signifies that there is a functional 'autonomy' of the engineer-made universes against the conventional reality and the traditional type of society.

Antiquities looting and trafficking at the sea and the danger for sciences

The phenomenon of laundering is used to support various forms of financial crimes and fits in with criminal organizations. As for the Greek legal order, the criminal organization is defined as a structured group of three or more persons, being endowed with a durable action, which aims at committing crimes, more than one, being previewed in articles of Criminal Code (mentioned in this article) as well as in the legislation on drugs, weapons, explosive materials, protection from materials that emit harmful for the man radiations, the protection of antiquities and generally of the cultural heritage, the protection of the environment, article 41ST of law 2725/1999, as it is in vigor, as well as of more criminal infractions previewed in article 128TH of law 2725/1999.

As far as the notion of heritage is concerned, it has acquired a particular sense in the field of public law, related to the collective memory of society [10]. Antiquities looting is committed not only on land but also at the sea, that is why France acquired a legislative framework on archeological excavation on land, for the first time in 1941, and another one to protect the maritime archeological heritage, in 1989 [11]. The trafficking of cultural goods, coming from looting committed either on land or at the sea, is held at the sea and is endowed with an important dose of innovation to cope with the controls of criminal Justice authorities. According to the so-called 'Chippindale's law' "Whenever one takes an interest in anything to do with illicit antiquities, reality is always worse that what was expected" [12]. Illicit practices, such as antiquities looting and counterfeiting, cause serious problems to the research and development of archeology and history [13].

Anyway, the products of the legal commerce worldwide are transferred through merchant navy. The common itinerary for the exportation of antiquities from Greece is the maritime route of Ionian Sea to Italy. The transport on land is continued, in the territory of Italy, to Switzerland and there a famous laundering of antiquities, particularly of the Greek and the Italian ones, is held, in Geneva. In this way, the looted antiquities coming from the so-called archeological countries are placed as legal, when they reach to the Western markets by air, especially to the mainstreaming markets of the UK and of the USA.

The traditional weakness of the Hellenic Coastguard to prevent antiquities looting from the bottom of the territorial waters and the expatriation of cultural treasures to other countries through maritime routes has caused several problems, even as far as tourism development is concerned. Because of this failure and the

archeologists' serious concern on the matter, the Greek state did not allow, as a general rule, the hobby of scuba diving anywhere in its territorial waters, except some maritime regions for which this kind of leisure activity was especially permitted. Greece has inversed this status quo through Law 3409/2005 but has been reluctant to develop underwater archeological museums. To date, it is almost thoroughly deprived of any museums on land, highlighting the underwater antiquities whilst the museum of underwater antiquities in the port of Bodrum constitutes a very important attraction for tourists, in Turkey.

The criminalization of money laundering

European Union has criminalized the money laundering and has made use of four directives on the matter [14]. The first Anti-money laundering directive introduced a definition of this activity following the standard wording of the Vienna Convention on drug trafficking. It is about the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The definition of the main elements of money laundering has remained the same, to date.

Indeed, this is the case of post-Lisbon directive 2015/849 which aims to prevent the use of the European Union's financial system for the purposes of money laundering and terrorist financing. For the purposes of this new directive, the following conduct, when committed intentionally, is regarded as money laundering:

- a) The conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
- b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;
- c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity.

Participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).

European Union has not changed the definition but has extended the field of anti-money laundering law to various forms of criminality, during the past twenty-five years. Indeed, European law on the matter has moved from the prohibition of money laundering of proceeds of drug trafficking to the prohibition of laundering of proceeds of organized and serious crime, and, after the terrorist attacks of 9/11, has added the terrorist finance to the money laundering prohibition regime. The fourth directive on the matter goes, by requiring member states to treat tax offences (defined as tax crimes relating to direct taxes and indirect taxes) as predicate offences.

The doctrine has taken an approach to the anti-money laundering directives regime, consisting of the following elements:

- a. The criminalization of money laundering and terrorist finance (being a new target that may not involve proceeds of crime, opposite to the classical phenomenon of money laundering);
- b. The prevention of money laundering via the imposition of a series of duties on the private sector;
- c. The focus on financial intelligence, via the establishment and co-operation of financial intelligence units responsible for receiving and analyzing reports received from the private sector [15].

As far as particularly the Greek legal order is concerned, article 1 of Law 2331/1995 on anti-money laundering previewed from scratch the illegal commerce of antiquities as a basic crime, besides other crimes like the theft of the cargo of a ship. Afterwards, the new fundamental cultural law 3028/2002, being still in vigor, replaced this rule with a very extended one, having to do with any crime, whose object was a monument. However, Greece was endowed with the anti-money laundering Law 3691/2008, which abolished articles 1-8 of the initial law. The new text raised severe criticism as it got rid of the “National Authority on Countering the Legitimization of Proceeds from Criminal Activities”. It was about an independent administrative authority which was replaced by a new Committee, whose the nine-member composition was dependent on the government, as far as the majority is concerned. So, this datum blocks the eventual physiognomy of the Committee as an independent authority, whilst the law does not characterize, at least explicitly, this state organ as an independent one. No disposition of the European law imposed the replacement of the impartial authority, despite the claims to the contrary [16]. It is to point out that this institutional diversion confirms a ‘convention of the constitution’ of the Greek political system, having to do with a rather negative attitude of the State towards new types of state organs, exemplified by independent administrative authorities.

Article 3 of the new law repeated the list of cultural law basic crimes, as introduced by Law 3424/2005. That law had already limited down the number of crimes, by previewing that only 5 crimes were eligible, such as the theft of monuments and the illicit exportation of cultural goods, as previewed by Law 3028/2002. So, the same political party imposed restrictions initially on the content of the anti-money laundering regime (criminalization) and afterwards on the non-governmental authority itself (anti-crime organization).

Conclusion

An ambivalent liberty at the sea

The paper hypothesis is fully confirmed, given that the sea, particularly the high sea, is a mainstreaming way of laundering of various criminal activities. If in the framework of maritime law there is the diachronic rule of liberty of navigation and other legitimate activities at the high sea, it is completed by the criminalization of

maritime piracy, as a crime against humanity. Even other activities, such as illicit trafficking of goods, (especially of cultural goods) are strongly facilitated by the use of maritime routes. So, liberty at the sea is a very intense condition which has a traditionally ambivalent character, going from various legal activities, such as the navigation of merchant navy, to criminal activities.

Last but not least, piracy in the proper sense of the term (maritime piracy) has been duplicated, through the metaphorical term (intellectual property piracy) [17]. In French, the metaphorical version is endowed with a separate word, ‘piratage’ [18].

The international community is related to the ideal of international justice, mainly the last decades [19]. Particularly European Union has duplicated the law against the commerce of drugs (which is frequently facilitated through navigation) through the introduction of a new legislative branch. It is about the anti-money laundering law, including inter alia the theft of the cargo of a ship as well as antiquities looting and trafficking as basic crimes. However, this branch has sometimes caused severe criticism as the doctrine has localized various problems, such as the mechanism of independent authorities as well as uncritical over-criminalization [20]. Anyway, the introduction of new criminal law rules and cases constitutes a new challenge for forensic science in international scale. Indeed, the authorities have to find out and assess the appropriate evidence for illegal behaviors, which are based on other illegal ones, frequently committed a lot of years ago and eventually covered by prescription.

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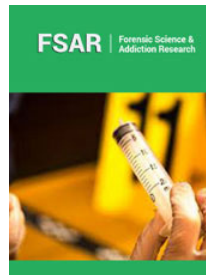
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