

Preface

The value of this book is that its complex structure unifies three different subjects, each of which would itself raise considerable interest: criminal inquiries, transnational judicial cooperation, and fundamental rights.

This research has been carried out at a historical moment in which we are witnessing a strengthening of transnational judicial cooperation as essential means to fight against the expansion of criminal organizations that profit from their ability to operate across borders. These are – alongside organizations nurturing political terrorism, sometimes even working closely with them – the criminal groups behind the most serious economic and financial crime, those controlling among other things both production and smuggling of drugs and human trafficking.

The danger of new transnational crime has helped overcome traditional resistance to a strengthened and more efficient international cooperation between domestic states, which have always been jealous of their own sovereignty over everything concerned with the exercise of criminal jurisdiction. These resistances continue to be felt, and those that are still justified must be separated from those which are simply the remnants of obsolete nationalist mentalities. However, this is not the field in which the international community and its individual components are facing the most serious challenge as they try to improve and strengthen their instruments for combating transnational organized crime through international cooperation.

For at least 30 years I have argued that the issue of fundamental rights cannot be dealt with theoretically and handled practically as if the only question at stake were that of elevating the threshold of untouchable individual guarantees entailed by any of them. In particular, one cannot rule out that the increase of terroristic threats should lead to partially rethinking even the extension of some individual freedoms currently considered “fundamental.”

This would not, however, be the same as sharing the logic of “*à la guerre comme à la guerre*,” according to which any mode of fighting against terrorism and other dangerous forms of organized crime should be admissible, even in contempt of most fundamental rights.

Fundamental rights are not a flag one can wave only under a shining sun. They are the main sail which must always be protected without being lowered even when a storm arises. For instance, it is significant that the European Convention on Human Rights distinguishes, within the sphere of the rights it deals with as fundamental, between those that can be suspended or limited in exceptional circumstances (albeit, of course, compensated by some “institutional” guarantees) “in time of war or other public emergency” and other rights which can never be either suspended or limited.

It is not my task to enter into the merits of the approaches to these problems of the various contributions of this book. However, focusing on these problems and involving so many outstanding scholars to provide information and express their opinions thereon are a credit both to the contributors and to the editor of this project.

Torino, Italy

Mario Chiavario

Transnational Inquiries and the Protection of
Fundamental Rights in Criminal Proceedings
A Study in Memory of Vittorio Grevi and Giovanni
Tranchina
Ruggeri, S. (Ed.)
2013, XIV, 573 p., Hardcover
ISBN: 978-3-642-32011-8