

*Bálint Magyar*

## The Post-communist Mafia State as a Form of Criminal State

### I.

If we want to understand the nature of corruption as a governance regime, we have to clearly distinguish between three evolutionary stages of corruption.

The **first** evolutionary stage is the simplest—so-called day-to-day corruption. It is characterized by scattered, sporadic, face-to-face corrupt transactions involving players in the economy and of the public authority.

The **second** evolutionary stage is when corruption ascends vertically to reach the higher layers of governance. These are not just occasional transactions—they show signs of being a regular practice. The cooperation of players becomes more complex not only on the side of corruption supply, but also on the side of corruption demand, namely that the corruption partners on the side of the economy are in many cases oligarchs or criminals of the organized underworld. (We need to distinguish between the abovementioned two groups: while *criminal organizations* carry out illegal “economic” activities supported by an illegitimate access, *oligarchs*, on the other hand, usually conduct lawful economic activities, but mostly with illegitimate access.)

This evolutionary stage is known today as the realm of state capture, because we can speak about this phenomenon when only certain segments of the public authority are captured and not the governmental structure in its entirety.

Within this evolutionary stage the political competition may still go on, political power transfer is still possible under constitutional circumstances, and the oligarchs still maintain their relative autonomy, as they are

not tied infinitely to certain political actors. Both sides can enter and leave the corruption transactions relatively freely.

In organizational criminology, this stage is referred to as “state crime,” which can take the form of corporate-facilitated state crime or state-facilitated corporate crime, depending who is the dominant or initiating actor.

In the case of the **third** evolutionary stage it is not appropriate to talk simply about “state crime” as the phenomenon that we see takes place in what is already a criminal state. It is not just that oligarchs or the organized underworld have captured the state—it has, instead, become a political enterprise. The organized upper world has captured the economy, including the oligarchs themselves. We can see this in **some post-communist countries**: e.g., Hungary within the EU, Montenegro in the Balkans, Russia, Azerbaijan, and some Central Asian countries that are former Soviet republics. This evolutionary stage is possible when two conditions are met: the monopolization of power by one political actor, accompanied by the systematic surrendering of the institutions of checks and balances. The second condition is the lack or practical nonexistence of private property during the regime changes and the extensive distrust as privatization happened in these countries.

The emerging post-communist criminal states, where the governance bears the features of a criminal organization, can be described as **post-communist mafia states**. It is nothing less than the privatized form of a parasite state. In this case, the central bodies of the state itself operate in concert as a criminal organization, as the organized upper world.

Let us briefly summarize the **basic features of the corrupt criminal state**:

1. **The concentration of political power and the accumulation of wealth by the adopted political family occur in unison.** Public benefit becomes subordinated to private interests not occasionally but permanently, and in a manner that influences political decision making in a fundamentally determinant, systematic way.
2. **The alternation and systematic replacement of the political elite takes place in parallel with that of the economic elite.** These changes are not driven by the instruments of democracy and market economy.
3. With the legalized instruments of state monopoly of coercion, **the mafia state coercively extracts private fortunes**—sometimes indirectly through **different forms of nationalization**—to serve its own interests, and it redistributes this among clients of the adopted political family.

4. The corruption of the organized criminal upper world is neither a matter of incidental—even sporadic—backdoor dealing, nor an occasional irregularity or deviance, but centrally directed and rationally transacted plunder, a centrally carried out collection of protection money. For in the organized criminal upper world, **the concentration of power and the increase in wealth of the adopted political family cannot be operated in disjointed systems.** But while the traditional mafia reaches its objectives through blackmail, intimidation, and open violence, the spheres of influence in the mafia state can be shaped by the quasi-lawful instruments of coercion accomplished by public authorities.

5. Let us specify the **key players** in this type of the corrupt criminal state:

- The **poligarch** is someone who uses legitimate political power to secure illegitimate economic wealth—while his political power is visible, his economic power remains hidden. The poligarch manages his family business in the form of a political venture.
- The **oligarch** is someone who, from more or less legitimate economic wealth, builds political power for himself—in this case his economic power is visible, while the political power, if exists at all, remains hidden.
- The **stooge** is someone who has no real power, neither in politics, nor in the economic sphere, but is a bridge over the gap between the real nature of power and its required legitimacy. So he formally serves as the middleman between the legitimate and illegitimate spheres for the public.
- The **corruption broker** brings the partners of the corrupt transaction together in the role of mediator or expert lawyer. When the monopoly of political power is created, the criminal state surrenders the corruption brokers to the adopted political family in a strict order.

6. **Decisions are taken outside the competence of formalized and legitimate bodies** of democratic institutions and are brought in the topmost, tightly knit informal circle of the adopted political family.

7. Formalized and legal procedures give way to material and arbitrary actions. The head of the executive power does not govern, but illegitimately disposes of the country as if he owned it. State institutions, including the parliament, the government, the tax offices, and the prosecutor's office do no more than rubberstamp decisions and attend to the bookkeeping. They become the institutions of a politically selective law enforcement system.

The “**law of rule**” substitutes for the “**rule of law.**” Proper jurisdiction is replaced by the arbitrary practice of justice. Legislation is no longer the field of lawful, normative regulations that are valid for all and brought to bear upon all equally, but a place where laws are tailored to fit the needs of those in power. **Equality before the law has been replaced by inequality after the law.**

8. In place of legally protected autonomous positions, a **patron–client chain of vassal relationships** comes into being, which results in the liquidation of the grounds of individual autonomy and the forcing of existences into an order of dependences.

9. This new form of vassal dependency should not be called feudal or patrimonial, because **the material nature of power and its formal legitimacy do not converge.** The gap between them is bridged by state coercion and hypocrisy using quasi-democratic procedures by restricting civil rights, constraining the freedom of the press, and manipulating electoral democracy. It is neither a liberal democracy nor a dictatorship.

10. **The mafia state is not ideology driven.** Rather, it builds on various ideological templates that suit its political agenda. While inconsistent in terms of public policy expertise, emotionally it remains consistent. This is also its strength: it resists rational critique. The coherence of its values is ensured by the **cultural model of the dominance of the head of the patriarchal family.**

## II.

Organizational criminology has systematized criminal acts according to the type of organization that commits them.<sup>1</sup> It differentiates between corporate crimes and state crimes, but acknowledges that government and business may occasionally collaborate, and even directly encourage and assist each other in committing certain crimes. Three separate categories follow from this: state-facilitated corporate crime, corporate-facilitated state crime, and state–corporate crime, which occurs when the two act together on an equal basis. “**Governmental crime**—or crime that occurs within the context of government—is the principal cognate form of white-collar crime. **State crime** (or crime of the state) is macro-level harm carried out on behalf of the state or its agencies; **political white-collar crime** is crime carried out by individuals or networks of individuals who occupy governmental positions and seek economic or political advantage for themselves or their party.”<sup>2</sup>

Just as **state crime** exists, so does the **criminal state**, which is a state that systematically, deliberately, and perniciously violates and impairs the fundamental rights of its citizens. Within such a state, both the various economic entities that depend on public procurements and tenders, as well as civil society organizations are interwoven very tightly within the state and government. Rather than acting independently of the government, in reality they function as political puppets and serve the interests of power. In such cases, those involved in corrupt activities and those playing roles in the repressive regime are connected to each other in manifold ways.<sup>3</sup> It is possible to classify these kinds of states according to their main criminal activity. Consequently, one can differentiate between a “**criminal state** with a central project of a crime against humanity,” a “**repressive state** with a core project of systematic denial of basic rights to citizens or some group of citizens,” a “**corrupt state** with systematic looting of the state for the benefit of the leadership and relatives or associates of the leadership,” and a “**negligent state** characterized by a basic failure to alleviate forms of suffering that the state could address.”<sup>4</sup> A criminal state, of course, may be characterized by different combinations of the “state projects” listed above.

### *1. Hungarian Law on Criminal Organizations*

According to the Hungarian Criminal Code, “**criminal organization: a group of three or more people, formed for an extended period of time and acting in concert, with the objective of [...] intentionally perpetrating criminal offenses.**”<sup>5</sup> In applying this law, “acting in concert” means that the members of the criminal organization “**share tasks related to criminal activities,**” which “**obviously presumes prior planning, and a certain degree of direction and organization.**” A legal harmonizing resolution by the Supreme Court of Justice in 2005<sup>6</sup> also provides guidance on understanding the functioning of a criminal organization for different specific trial situations, as follows:

- A criminal organization is qualitatively different from simply individuals acting together; the **criminal organization itself has to be formed for an extended period of time, and must act in concert.**
- “Acting in concert” is a conceptual component of the **criminal organization**, which, in terms of content, is none other than the **mutually reinforcing effects on those acting in it**; however, the existence of acting in concert does not follow from being in direct contact with

actors in a criminal organization, nor specific knowledge of other actions nor the identity of other actors; behavior as **a member of a criminal organization** can only be attributed to a perpetrator who has engaged in activities in a criminal organization formed by a division of functions, and in a manner based on superiors and subordinates, with full knowledge of the organization, and collaborated while in constant contact with its members.

- The existing provisions of the Criminal Code do not distinguish among the **hierarchy** (or “posts”) of actions within the **criminal organization** in terms of their activity or intensity, as these conditions are only considered during the sentencing phase.
- A person outside of a criminal organization does not become a member of it by receiving a contracted job from the organization, as integration into said organization requires knowledge of the organization’s inner workings and active involvement within it; a clear distinction must be made between substantively judging a criminal act committed as a member of a criminal organization, and **a criminal act committed on a contracted job from a criminal organization (or any of its members)**.
- If there is evidence that a criminal offense was linked to the operation of an actual criminal organization, or committed within the context of such, then due to the conditions it was carried out—particularly due to the nature of specific behavior presuming the prior or later **linked actions** of others, and due to events that are necessary and therefore likely to occur, it can be concluded that the action of the occasional perpetrator (participant) is recognized at the time it was carried out as being committed within a criminal organization.

This language is clear. Although the legal harmonizing resolution grants a unified interpretation of human trafficking, prostitution, drug trafficking, and other classic activities of a similar nature in the organized underworld, neither the Criminal Code nor the definitions in the resolution exclude the possibility of applying these provisions in cases where a large part of the members of a criminal organization are leaders at the highest levels of public authority institutions. In fact, it does not even exclude this from being the element that moves and defines the criminal organization, which is not the organized underworld, but the organized upper world itself.

## 2. *The Palermo Protocols*

The Palermo Protocols against transnational organized crime, adopted in 2000 by the United Nations and ratified by Hungary in 2006,<sup>7</sup> also do not rule out the narrative that the struggle might not only take place between the organized groups in the underworld and representatives of state authority, but that the representatives of the state can themselves form the core of the criminal organization.

Following the Palermo Protocols, the Council of Europe's group of specialists on organized crime (PC-S-CO) also defined the criteria that, when present, provide evidence of a **criminal organization**. Their definition includes both mandatory and optional criteria. As will be seen, the criteria used by the expert group to define the mafia, or the organized underworld, which also regulates Hungarian criminal law, may also be used to describe the organized upper world, or the functioning of the mafia state. The Protocols distinguish between mandatory and optional criteria as follows:

### **Mandatory criteria:**

- Collaboration of three or more people
- For a prolonged or indefinite period of time
- Suspected or convicted of committing serious criminal offenses
- With the objective of pursuing profit and/or power

### **Optional criteria:**

- Having a specific task or role for each participant
- Using some form of internal discipline and control
- Using violence or other coercive means suitable for intimidation
- Exerting influence on politics, the media, public administration, law enforcement, the administration of justice, or the economy by corruption or any other means
- Using commercial or business-like structures
- Engaged in money laundering
- Operating on an international level

## 3. *The Mafia State as a Type of Criminal State*<sup>8</sup>

It should not be particularly difficult even for the lay reader to see that the mafia state assigns its most suitable persons and events to these cri-

teria. “What is picking a lock compared to buying shares? What is breaking into a bank compared to founding one?” asks Mack the Knife in Brecht’s *Threepenny Opera*. In terms of the mafia state, one might ask: What is law breaking compared to passing legislation? What is robbery compared to the expropriation of property through laws and decrees? What is abuse committed by one’s boss compared to centrally planned purges? What is hacking a website to illegally depriving someone of their radio frequency? And one can keep going down the list across all areas of life, where it is evident that the institutions of public authority are not the guardians of legality and equality before the law, but just the opposite: institutionalized bodies serving the arbitrariness of personal interests.

The question is no longer how it should be interpreted in a legal sense when “three or more people collaborating”—unlike the presumably original expectations of Hungarian legislators, or the Council of Europe’s group of specialists—does not mean the underworld mafia, but the organized upper world, sometimes even those with official duties. The question is: How can the machinery of justice be put in motion at all in a mafia state? How can society and the immune system of public authority that has not yet been destroyed completely be activated? The answer to this would naturally go beyond the “descriptive” and “understanding” genre of sociology.

The central figure in the criminal state is not an arbitrarily structured power elite with an incidental culture, but, in the case of the mafia state, the adopted political family with powers granted by the patriarchal head of the family, which are then extended to the entire nation through illegitimate means from a supreme, narrow group of decision makers, working as a nonformalized, nonlegitimate body. In this case, **the agent of action, the criminal organization perpetrating criminal offenses, is the “polipburo” itself**, in which some members have senior-level public authority duties at the very top of the branches of power, including all of their key institutions. But there are also “advisory” members that have not been incorporated into the institutions of public authority, as well as trusted oligarchs and possibly their stooges as well. Perhaps a dozen or two individuals make up the “polipburo” of the mafia state. (While the “politburo” was the top-level body of the bolshevik-type communist parties, Fidesz has no politburo; its highest formal organ is the Presidium. The actual top power center is an informal close network the virtual feelers of which are like arms of the **octopus** (*polip* in Hungarian), which was also the Hungarian title of the film series *La piovra* about the Sicilian mafia screened to wide acclaim in

Hungary during the 1980s.) The criteria for a criminal organization applies to them: “three or more people,” “a group formed for an extended period of time and acting in concert” that has a “hierarchy” and “mutually reinforcing effects on those acting in it,” and includes “the objective of perpetrating criminal offenses,” “dividing up tasks” required for this, and, if necessary, “contracting” persons outside of the criminal organization.

From among isolated violations of the law, the contours of relationships in the mafia state are outlined by the **linked actions** of organized crime. These include acts that are unlawful in and of themselves (such as extortion, fraud and financial fraud, embezzlement, misappropriation, money laundering, insider trading, agreements that limit competition in a public procurement or concession procedure, bribery, bribery of officials—both the active and passive forms of these last two criminal acts—abuse of authority, abuse of a public service position, buying influence, racketeering, etc.) combined with acts that are not unlawful in and of themselves (such as motions submitted by independent parliamentary representatives, instigating tax audits, etc.).

### *3.1. Criminal organizations expropriating property—The example of an outdoor advertising company*

A linked action may consist of a wide variety of situations as described above. Let us demonstrate the action of a state-sponsored criminal organization with the example of an outdoor advertising company, ESMA, in the context of the criminal law mentioned above. With ministerial collaboration, an offer is made to the owner of ESMA to purchase the company. The potential new owner, who belongs to the leading oligarchs of the adopted political family, is named. ESMA’s owner does not accept the offer, upon which the tax authorities appear at his door as a means of persuasion through nonphysical violence. This still does not convince the owner of the desired company to rid himself of his property, upon which, again as a means of bloodless violence, an ad hoc legal amendment proposed by a parliamentary representative and adopted by the parliament deprives the company of its concession-based activities. The company’s value begins to drop precipitously, and as a final step, a second amendment exempts his rival from any possible negative consequences stemming from the amendment that destroys the business in question. The entire operation takes place within a very short period of time. After the company is starved for

several years, the owner sells his hopeless business, at which time the godfather's new, favorite oligarch then makes an offer for it at a moderately depressed price. As expected, the discriminatory legal provision that made the business impossible to run is also repealed by the parliament, so that the new oligarch, who is loyal to the godfather, can operate his firm at full capacity. Unlike the traditional mafia, public authority in Hungary uses bloodless means to enforce its will.

This case bears the characteristics of **the activities of a mafia state** criminal organization. The actions have been the following:

- Persons intentionally commit criminal offenses (extortion, abuse of authority, etc.).
- Persons act in concert, as a wide range of the branches of power (ministerial, governmental control and law enforcement institutions, the legislature) and individuals (the oligarchs, the chosen beneficiaries who change from time to time) are required to coordinate their actions according to a specific schedule.
- The members of the criminal organization constitute a hierarchical group, where those who comprehend the entire operation are isolated from those carrying out the actions, each person just one step lower in the hierarchy (such as public servants conducting tax inspections, or parliamentary representatives submitting legal amendment proposals).
- Persons in the criminal organization mutually reinforce the effects of their actions, since they would not be able to reach their desired goal (expropriation of property) by acting independently.

### *3.2. Criminal organizations expropriating property—The example of slot machines and casinos*

Since the autocratic system under study has been defined as a mafia state, it is only appropriate to illustrate the mechanism of change of ownership carried out by state coercion with the example of slot machines and casinos. The operation of **slot machines** (one-armed bandits) generating a tax revenue worth somewhere around HUF 70 billion (€220 million) was overseen on behalf of the authorities by the state-owned Szerencsejáték Zrt. It is worth examining the rearrangement of this branch of business step by step, as it was integrated into the political family's circle of interests.

**Step one:** In 2011, the rules governing the operation of slot machines, which are primarily located in catering industry premises, were revised by an unexpected amendment motion in the parliament. The monthly tax per machine was raised from HUF 100,000 (€330) to five times that amount, and the operators were obliged to change their existing machines to server-based machines by October 2012. As a result of the measure, the operators handed in 60% of the slot machines within a month of the amendment being passed.<sup>9</sup> Their numbers decreased further over the next year: from 22,000 to 2,000.<sup>10</sup>

**Step two:** In October 2012 the operation of slot machines, as well as game rooms and electronic casinos, was banned by means of an amendment pushed through parliament in the matter of a couple of days. Only casinos were exempt from the measure and were allowed to continue operating. The ban also affected the approximately one thousand businesses that had invested in the server-based slot machines in line with the amendment that had been introduced a year earlier. According to the government, “the earlier measures had only achieved their objective in part, trying to ensure that those who lived in the most disadvantaged situations did not dump their money into slot machines, while on the other hand, serious national security risks had also been raised in regard to the activities of those with interests in the gaming industry.”<sup>11</sup> The government intended to make up for some of the losses in tax revenue that followed from these actions by taxing online gambling.

**Step three:** The casinos were exempted from the ban on the operation of slot machines, and the maximum number of machines that could be installed in one premise was set at three hundred. Then in 2013, the maximum number of casinos that could be operated in the country was set at eleven.

**Step four:** “Amending the law on gambling in the middle of November 2013, parliament decided that the minister for national economy could sign concession contracts for the operation of at most five casinos without making a public tender, but taking an exceptionally high concession fee, with those contractors whom he considers reliable. [...] The other important change in the November amendment was that the gaming managers could deduct the amount of the concession fee from the tax on the games. The Las Vegas Casino, one of Andy Vajna’s interests, is best served by this change: thanks to the amendment he could pay HUF 1.6 billion less to the state budget. In 2012 the Las Vegas Casino had paid HUF 1.1 billion in

gambling taxes at a rate of 30% on the net income of HUF 3.8 billion, as well as HUF 791 million as a fee for the concession. Thus, altogether HUF 1.9 billion was paid to the state. According to the new regulations they only have to pay about HUF 300 million in taxes.”<sup>12</sup>

**Step five:** In May 2014, of the eleven casino concessions that could be issued, five were granted in Budapest by the ministry for national economy to Vajna’s Las Vegas Casino Kft., while two were issued to Gábor Szima’s Aranybónusz 2000 Kft. for the eastern Hungarian cities of Debrecen and Nyíregyháza. All of these were issued in spite of the fact that the state-owned Szerencsejáték Zrt. had also applied for a casino operator concession. It seems Szerencsejáték Zrt. had proved to be less “reliable.” As previously recounted, Vajna, a former film producer, is the government commissioner who distributes state support for the production of Hungarian films and is a close confidant of Viktor Orbán. Szima, on the other hand, had been involved in the gambling business earlier and once owned the Debreceni Vasutas Sport Club, a successful Hungarian League professional football team (now his son owns the team). “According to the Ministry of National Economy they will pay HUF 4 billion in concession fees and HUF 1 billion in VAT toward the state budget.”<sup>13</sup>

**Step six:** The parliament, at the same time as distributing the casino concessions, made it possible for the casino owners to deduct the concession fee from the gaming tax, and even made it VAT exempt.<sup>14</sup>

**Step seven:** “With the involvement of Andy Vajna and Gábor Szima, the large international companies operating online casinos and card game websites—such as PokerStars or Bet365—could legalize their presence in Hungary. This opportunity is made available to the businessmen close to the government by the amendment, which was handed in by the cabinet to parliament as part of the omnibus bill on changes to the tax regulations for the following year. One item of the proposal would make it possible for the concession fee that is to be paid on the gambling games to be paid by someone other than the owner of the concession—a third party. This makes it possible for the fee to be paid from a foreign, perhaps offshore, company, out of funds whose origin is not clean. On top of this, the owner of the permit is still allowed to deduct it from the gambling tax to be paid to the budget accounts. Furthermore, according to the proposal, online card game websites and casinos can only be operated by people who have a Hungarian concession for the operation of casinos—i.e., currently Vajna and Szima.”<sup>15</sup>

**Step eight:** The taxes paid by the casinos owned by Vajna and Szima—unlike tax regulations on retail units—“are based on self-declaration, because the National Tax and Customs Administration of Hungary does not really have an overview of the slot machines. On the one hand, the integrated online inspection device of the tax authorities was not fitted into these slot machines, which would have collected and recorded the data created in the course of its operation, and, secondly, there is no mention of the server-based network. So in this age of online cash registers, the state is completely in the dark where the income of casinos is concerned.”<sup>16</sup> Furthermore, “various parties involved in this industry estimate that the income generated at Vajna’s five casinos in the capital should be around HUF 15 billion.”<sup>17</sup>

**Step nine:** All that is left is to launch the legislatively guaranteed money-laundering machine called the Stability Savings Accounts which enables poligarchs, oligarchs, and stooges to deposit disposable laundered funds under state protection.

This is how the adopted political family of the mafia state manages gambling and acquires casinos: expulsion, establishing monopoly, favoring friends in concessions, special tax benefits, state-supported money laundering. And not a drop of blood has been spilled.

This case bears the characteristics of the **activities of a mafia state** criminal organization as well. The actions:

- Intentionally perpetrating criminal offenses (extortion, abuse of authority, purchasing influence, etc.), causing serious damages to law-abiding companies that changed their machinery to server-based machines and causing massive losses in tax revenues directly by the uncommon and large-scale tax amnesty and indirectly by not enforcing the use of electronic cashiers connected to the network of the National Revenue and Tariff Office. There is no positive societal goal behind this law and it is clearly discriminatory since every other company in the country had to introduce the costly electronic cashiers.
- Acting in concert, as a wide range of the branches of power (ministerial, governmental) and individuals (the chosen beneficiaries) are required to coordinate their actions according to a specific time and sequence of events.

- The members of the criminal organization constitute a hierarchical group, where those who comprehend the entire operation are isolated from those carrying out the actions, each person just one step lower in the hierarchy (such as parliamentary representatives submitting legal amendment proposals).
- Persons in the criminal organization mutually reinforce the effects of their actions, since they would not be able to reach their desired goal (expropriation of concessions) by acting independently.<sup>18</sup>
- Involvement in money laundering, because both PokerStars and Bet365 are offshore companies that could benefit from the introduction of Stability Savings Accounts.

### *3.3. Criminal organizations expropriating property—The example of tobacco shop concessions*

In other cases, the redistribution is not about possession of property itself, but the creation of arrangements in the private sector under which tributes can be extracted via a second tax regime. According to the rationale of the system, **the political family must be built, extended, and fed on the middle and low levels as well.** This means that new segments of the economy in areas that were formerly operated sector neutrally by the market have to be occupied and repositioned to function as direct state tribute extractors.

This is what happened in the case of the so-called **tobacco shop concessions**, which granted businesses the right to sell tobacco products. In an unprecedented move, and on false health-protection grounds, the state imposed a monopoly on the retail of tobacco products. Having been stripped of their right to sell tobacco products, which had the effect of devaluing their businesses, tens of thousands of small, rural food-and-newspaper shop owners and other small property holders were ruined. Once the previous small shop owners had been driven out of their means of making a living, legislation was enacted to enable the new concession holders to sell tobacco products in a profitable way. In this case, the mafia family had appeared in all of its organized structure and candid self-assurance. When it came to the distribution of large fortunes, the deals between a small number of actors took place behind closed—at times government—doors. In contrast, the tobacco shop concessions were run past the whole network of the adopted political family and were reviewed by Fidesz-led

municipalities and the rest of the government clientele. “Basically what is important is that the people chosen must be committed to the political right, [...] so the socialists don’t win,” said the Fidesz mayor of Szekszárd at the meeting where he and the Fidesz councilors reviewed the list of those applying for the tobacco shop concessions.<sup>19</sup>

The case of tobacco shop concessions is a clear demonstration of what typifies the mafia state, in part because this is not classic corruption, where many independent, small cases of corruption are carried through within the large application procedure in a decentralized and unsynchronized way, but to the contrary: as centrally planned by the adopted political family, a group of people are divested of their property—i.e., a concessionary right—legalized by a parliamentary amendment of law, and then comes the centrally directed robbery by selection of the new owners who belong to the family. The first phase of the process is also an example of market-acquiring nationalization, when it is not the property itself, the shop that is taken away, but the right to sell a range of products there. The case of the tobacco shop concessions is not a series of individual “scams,” but the coordinated functioning of the mafia state, which aimed primarily to benefit its “small shareholders” rather than the oligarchs of the adopted political family. Before the rearrangement of the retail market of tobacco products, the guaranteed trading margin was 3%. The new law stipulated the margin at 4%, and following the manipulated selection process the parliament raised this to 10% with another amendment. In other words, the revenue generated from raising the levies on tobacco products—contradicting the declared ideological aims—was not directed into the health-care system or prevention programs, but into the pockets of members of lower ranks of the adopted political family. This guaranteed deal did not even serve the kind of social goals that go back to the praxis of the interwar period, when the state supported disabled war veterans, war widows, or war orphans from the income of these concession rights. Of the 5,415 winning bids, only 280 went to people with disabilities.<sup>20</sup> But the action did not leave the small food and convenience stores, especially in villages, undisturbed; 5% of them had to shut down in 2014 as a result of the significant decrease in income due to being deprived of the right to sell tobacco products.<sup>21</sup>

The redistribution of tobacco retail rights was followed by the nationalization of the wholesale rights as well. Not all Fidesz members supported it. János Bencsik, a Fidesz MP who was disciplinarily penalized with a fine of HUF 300,000 (€1,000) for his vote against the amendment, said:

I would have very much liked to show my support for the third tobacco act with my vote. It hung on very little. All that it would have required was for the tobacco trade to become a state monopoly, in fact, and for the profit it generates to serve the greater good. The version now accepted, however, offers the possibility for the state to pass on these rights, now in its possession, to a private company without a tender for bids. The legal formula I am against promotes the possibility of hunting for allowances. Hunting for allowances means, in a nutshell, when rather than producing value, a given socio-economic actor invests its resources in excluding other actors from certain market opportunities with the cooperation of the state.<sup>22</sup>

Prophetic words, for, indeed,

without a public tender and as the only applicant, Tabán Trafik Zrt., owned by the Continental Tobacco Group and British American Tobacco, was given the exclusive right to wholesale tobacco by the government. The co-owned business of these two companies, shortly to be registered, would supply tobacco to all of the 6,300 Hungarian tobacco stores. [...] In answer to our inquiry about why a public tender was not arranged for the state monopoly, [Minister of the Prime Minister's Office János] Lázár replied that in the case of public funds, it is indeed usual to call for bids. However, in this case "there was no call for bids because no public funds are involved," showing ministerial largess in overlooking the matter of a fee for the concession. [...] The success of Continental did not cause any surprise among market observers. The company from Hódmezővásárhely, with strong ties to the network around the governing party, was not only one of the big winners of the tobacco shop tenders, but as a result of a small technical glitch it had also been revealed that earlier it had even participated in drafting the tobacco concessions law.<sup>23</sup>

Meanwhile,

market experts estimate the expected profits of the "national tobacco distributor" to be between HUF 5–12 billion (€16–39 million), as it will not have competitors, and the government majority has even granted it exemption from local business tax. Meanwhile, the conces-

sion fee is ridiculous: this year the co-owned company will have to pay HUF 10 million (€32,000), and in the following year HUF 100 million (€3,200,000), while the concession fee of HUF 600 million annually, which still seems symbolic compared to the fantastic deal they are getting, will only be expected from 2021 onward.<sup>24</sup>

(At the same time, János Sánta, Continental's CEO—presumably upon request of the state—has bought a 49% share of the publisher of the new progovernment daily, *Napi Gazdaság*. “With his entry, a new media empire presumably more loyal to János Lázár is beginning to take shape, while Árpád Habony, the prime minister's senior advisor, continues to build his own separate unit, Modern Media Group, which seeks to occupy the field of tabloids and online content,”<sup>25</sup> so these can challenge Lajos Simicska's media empire.)

After the revenues of the tobacco trade have been diverted to the family network and when the situation seems propitious, the government, under a claim of acting in the interests of public health, can proceed along the same lines regarding the trade in alcohol and medicine.

This case bears the characteristics of the **activities of a mafia state** criminal organization as well. The actions involved here have been:

- Intentionally perpetrating criminal offenses (extortion, abuse of authority, etc.).
- Acting in concert, as a wide range of the branches of power (legislative, governmental control, and Fidesz factions in the local governments) and individuals (to a smaller degree the oligarchs of the adopted political family, mostly the least significant beneficiaries of the current regime) are required to coordinate their actions according to a specific time and sequence.
- The members of the criminal organization constitute a hierarchical group, where those who comprehend the entire operation are isolated from those carrying out the actions, each person just one step lower in the hierarchy (the local organizers of the nationwide plan are presumably not overseeing the whole process, but the process itself is definitely manifested at a local level).
- Persons in the criminal organization mutually reinforce the effects of their actions, since they would not be able to reach their desired goal (the distribution of concessions in the adopted political family) by acting independently.

- The stalling to provide data of public interest and the destruction of the losing applications was definitely aimed at covering up corruption and the obstruction of investigative inquiries.

But the multitude of cases described above could also be discussed through a similar framework, starting with the issue of biased leases on state-owned land to the distribution of concessions on slot machines and casinos, to the reallocation of concessions for the retail sale of tobacco products.

### III. Classifying Criminal Organization Actions

#### 1. *The nature of damage caused by criminal organization actions of the state, broken down by damage caused to either private or public parties:*

- **Damage to public property and revenue:**
  - Diverting potential state revenue to private parties (e.g., the gas deal between MVM [Hungarian Electricity Company] and MET Holding AG)
  - Forgoing potential tax revenue (e.g., forgiving billions of forints in tax debts without audits by the tax authority)
  - Diverting potential state dues to private parties (e.g., the residency bond—€250,000 in addition to a €29,000 fee, which is collected by some half-dozen firms close to Fidesz that are entitled to deal with it)
  - Diverting state concessions to private parties (e.g., online gambling)
  - Expropriating leasing rights (e.g., on the basis of civil law, dispossession of rights to prelease state land that is rightfully due to private lessees)
  - Diverting municipal or government real estate properties to individuals within the political family's sphere of interest at below-market values (e.g., the downtown Budapest real estate racket, which has given rise to alleged misappropriation)
  - Illegitimately diverting tender funds to overpriced bidders within the political family's sphere of interest (e.g., the series of tenders won by Simicska, Mészáros, Tiborcz)

- **Damage to private property and income:**
  - Expropriating property (such as the dispossession of savings accumulated in private pension funds, but also including the forced nationalization of the savings cooperatives and their subsequent transfer to third parties)
  - Expropriating private enterprises (e.g., 300–400 private companies by media estimates, such as the case of ESMA, discussed above)
  - Introducing mandatory state concessions for private enterprise activities (e.g., retail and wholesale tobacco sales, discussed above)
  - Expropriating state concessions and leasing rights (e.g., slot machines, allocating state land leasing rights to targeted members of the political family regardless of prior relationships with lessees or producers)
  
- **Causing both public and private damage** (e.g., manipulating the concessions for slot machines and casinos)

2. *Connectedness of the actions by a criminal organization:*

- **Single-staged:** a single-staged corrupt act can be understood as a simple corrupt transaction occurring between two parties that involves a single deal only. These acts fall within the scope of classical corruption with each representing a small amount, regardless of how many they are. The mafia state attempts to put these ad hoc individual actions under its control.
- **Multistaged:** actions with multistaged connectedness involve many institutions in the legislative and executive branches; complex cooperation between legislative acts and executive bodies may also be possible. This is much more typical of the everyday functioning of the criminal state, since, by necessity, only these complex mechanisms are capable of realizing large-scale projects that rewrite market conditions, often fundamentally, implemented through the intertwining of government and business.

3. *The institutional scope of managing corrupt transactions by a criminal organization:*

- **Within one institution:**

- At the clerical level: almost without exception, this coincides with single-staged, noninterconnected corrupt actions. Obviously, implementing corrupt plans that are complicated or applicable nationwide simply cannot be conducted at low levels of administration: the vertical structure of the relevant government institution must necessarily be involved.

- Complete vertical structure within the institution: it is inconceivable that corruption at certain central agencies, such as the suspected corrupt acts of the tax authority, including its well-known tax remissions on the order of billions of forints, would occur without the knowledge and approval of the entire vertical structure of the institution. In these specific cases, “equity,” the original purpose of which would be to assist taxpayers in a tight situation with small tax debts, here appears as a means of abuse to increase the profit of the major loyal entrepreneurs.

- **Interinstitutional:**

- Horizontally: when several institutions cooperate with one another, which is considered rare in any event, as in complex transactions requiring coordination from above.

- Vertically: due to the functioning of the Hungarian criminal state, as previously outlined, the vertical structure necessarily comes to the fore as the complexity of the analyzed corruption transactions requires the high-level coordination of the different steps involved.

4. *Extent of the authority of the institutions involved:*

- **Local:** areas where the dominions of certain “tax renters” are paid out as actual remuneration—such as the cities of Hódmezővásárhely or Debrecen—are classic examples of relative autonomy from the center, their former mayors being closely linked to the top of the political family. In a certain respect, the real estate racket in downtown Budapest can also be included here.

- **Nationwide:** for example, anomalies surrounding the Paks nuclear power plant tender can be included here, as well as MET Holding AG's gas and oil deal with public company MVM that resulted in dividends of around HUF 50 billion—most of which went to offshore companies.
- **Local and nationwide:** classically included here are the land lease and tobacconist transactions that were centrally directed but carried out primarily at the local level. They would not have occurred if either central or local coordination had not been involved.

5. *Type of collaborating institutions according to their branch of power:*

- **Legislative:** during the period 2010–2015, the parliament passed a mass of custom-tailored laws that mostly served as a framework for any subsequent manipulation, as well as laws that generally support the functioning of the mechanisms of state corruption, such as:
  - Raising price limits on public procurements (thereby facilitating the feasibility of a higher degree of corruption in procurements)
  - Facilitating the undue classification of public interest data (under the pretext of national strategy and national security considerations)
  - The law facilitating money laundering
  - Eliminating conflicts of interest as an obstacle in applying for tenders and subsidies
  - Upholding the confidentiality of official asset declarations by the relatives of politicians
  - Abusive disqualifying applicants from public procurement tenders, on occasion or for longer period
- **Executive** (public administration): the list of collaborating institutions ranges from central bodies (e.g., the tax authority), to municipalities and chamber associations. The use of the Counter Terrorism Centre as a political tool also emerged in the case of WELT 2000, a company that owned software and databases used in applying for EU grants.
- **Justice:** selective law enforcement, in which the number of cases prosecuted on corruption-related charges has fallen to an unprecedented extent.
- **Any combinations thereof.**

6. *Statutory definition of crimes committed by a criminal organization:*

- Extortion, fraud and financial fraud, embezzlement, misappropriation, money laundering, insider trading, bribery, bribery of officials (both the active and passive forms of these last two), abuse of authority, abuse of a public service position, buying influence, racketeering, etc.

*Categorization of Four Cases of Criminal Organization Acts  
under the Mafia State*

Action by the criminal organization	Outdoor advertising company (ESMA)	Land leases	Slot machines, casinos, online betting	Tobacconist concessions
Injured party	private sector	private + public sector	private + public sector	private sector
Connectedness	multistaged	multistaged	multistaged	multistaged
Institutional scope	interinstitutional (horizontal and vertical)	interinstitutional (horizontal and vertical)	interinstitutional (horizontal)	interinstitutional (horizontal and vertical)
Extent of the authority of the collaborating institutions	nationwide	local and nationwide	nationwide	local and nationwide
Type of collaborating institutions according to their branch of power	legislative, executive (ministries, tax authority), branches	legislative, executive branches (ministries, National Land Fund Management Organization)	legislative, executive branches (ministries)	legislative, executive branches
Applicable statutory definition of crime	extortion, abuse of authority, abuse of a public service position, buying influence, bribery of officials (active and passive)	buying influence, racketeering, bribery of officials (active and passive)	buying influence, racketeering, bribery of officials (active and passive)	abuse of authority, abuse of a public service position, racketeering, bribery of officials (active and passive)

In most cases, there is no need to run through the entire process, since the victims understand that the “offer” from the adopted political family, backed by the full arsenal of state power, “cannot be refused.” And so businesses created through threats and extortion take the appearance of being voluntary, which will usually reduce the victim’s losses if he can take the hint and is willing to reach an agreement. As with the mafia, in that the proportion of those who suffer physical violence following a “voluntary understanding” is minimal compared to those who pay protection money or offer their services, it is also usually sufficient for the mafia state to simply display the range of illegitimate state coercion, accompanied by an offer for a “voluntary” deal. (Needless to say, achieving similar goals in a real dictatorship does not have to be so complicated; neither is it done in a way that imitates the functioning of a democratic institutional system.)

As the institutionalized immune system of liberal democracy is neutralized, the process of socialization of obedience and submission advances forward. If the monitoring power of the public is restricted, if the chances to change the government are reduced by manipulating the electoral system, and if faith is effectively lost in the fair operation of forums for legal redress due to selective enforcement of the law, then the effect will be in the direction of acquiescence and accommodation. One cannot help but notice that the chief prosecutor is also a part of the “polipburo,” a colluding member of the team, and so **there is no means by which the machinery of legal redress or justice can be set in motion against the criminal organization of the “polipburo.”** (In fact, in the course of selective law enforcement, it is not only a question of who is not charged with a crime, so that they can be left to run or just continue to “work” obediently according to their instructions in the vassal order, but who is charged merely with criminal intent. Furthermore, it is also about who faces a preliminary trial that was initiated by Hungarian prosecutors for protective purposes, so that this person can be “immunized” by the courts and relieved from having to stand trial in front of international law enforcement agencies.<sup>26</sup>)

As a result of this socialization process, the number of crimes reported between 2010–2013 for three types of criminal activities related to corruption, both active and passive forms of official bribery as well as racketeering, decreased to one-half to one-third of the amount in the preceding four years.<sup>27</sup> One reason for this may be that “citizens were previously more likely to see the value of reporting crimes, or even that they had less fear of reprisals,”<sup>28</sup> meaning that reporting on others for a crime turns into

reporting on oneself. But even more telling is that—as an illustration of selective law enforcement—the number of crimes that were reported but later rejected by the authorities has tripled, and the rate of investigations that were started but then terminated has doubled.

## NOTES

- <sup>1</sup> David O. Friedrichs, *Trusted Criminals* (Belmont: Wadsworth Publishing, 2010).
- <sup>2</sup> David O. Friedrichs, “Transnational Crime and Global Criminology: Definitional, Typological, and Contextual Conundrums,” *Social Justice* 34.2 (2007): 9, [http://www.socialjusticejournal.org/archive/108\\_34\\_2/108\\_02Friedrichs.pdf](http://www.socialjusticejournal.org/archive/108_34_2/108_02Friedrichs.pdf).
- <sup>3</sup> Friedrichs, *Trusted Criminals*, 132–58.
- <sup>4</sup> Friedrichs, “Transnational Crime and Global Criminology,” 10.
- <sup>5</sup> [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV), 459. §(1)
- <sup>6</sup> Resolution 4/2005, Criminal Legal Section of the Supreme Court of Justice, <http://www.lb.hu/hu/print/joghat/42005-szamu-bje-hatarozat>.
- <sup>7</sup> Act CI of 2006 on the promulgation of the United Nations Convention against Transnational Organized Crime, Palermo, 14 December 2000.
- <sup>8</sup> For more on classifying the public legal system as one that stretches the conceptual limits of a criminal organization, see Imre Vörös’s essay in this volume.
- <sup>9</sup> Szabolcs Tiger, “A félkarú rablók kivégzése” [Execution of one-armed bandits], *feol.hu*, 11 November 2005, <http://feol.hu/gazdasag/a-felkaru-rablok-kivegzese-1123941>.
- <sup>10</sup> “Megszavazták a nyerőgépek betiltását” [Parliament banned slot machines] *HVG*, 2 October 2012, [http://hvg.hu/itthon/20121002\\_Megszavaztak\\_a\\_nyerogepek\\_betiltasat](http://hvg.hu/itthon/20121002_Megszavaztak_a_nyerogepek_betiltasat).
- <sup>11</sup> *Ibid.*
- <sup>12</sup> “Több ezer félkarú rabló lepi el Magyarországot?” [More than a thousand one-armed bandit will operate in Hungary?], *HVG*, 9 December 2013, [http://hvg.hu/gazdasag/20131209\\_Tobbezer\\_felkaru\\_rablo\\_lepi\\_el\\_Magyarorsz](http://hvg.hu/gazdasag/20131209_Tobbezer_felkaru_rablo_lepi_el_Magyarorsz).
- <sup>13</sup> “Andy Vajna kapta a Budapest környéki kaszinókat” [Casino concessions in the Budapest area were awarded to Andy Vajna] *Origo*, 6 May 2014, <http://www.origo.hu/gazdasag/20140506-a-kormany-het-kaszinora-adott-ki-engedelyt.html>.
- <sup>14</sup> “Varga: Ezért kap milliárdos adókedvezményt Andy Vajna” [Varga:] *Napi.hu*, 19 August 2014, [http://www.napi.hu/ado/varga\\_ezert\\_kap\\_milliardos\\_adokedvezmenyt\\_vajna.585449.html](http://www.napi.hu/ado/varga_ezert_kap_milliardos_adokedvezmenyt_vajna.585449.html).
- <sup>15</sup> Ambrus Ábrahám, “Vajna zsebére nyílnak a százmilliók kiskapuk,” *Népszabadság*, 8 November 2014, <http://nol.hu/belfold/vajna-a-neten-is-mindent-visz-1497253>.
- <sup>16</sup> Márton Vég, “Felépült a Vajna-birodalom” [Vajna’s empire is completed] *Világ-gazdaság*, 20 June 2016, <http://www.vg.hu/gazdasag/felepult-a-vajna-birodalom-448456>.

- <sup>17</sup> Ibid.
- <sup>18</sup> Richi Tóth, “Törvényben szabályozta az online kaszinójátékot a parlament” [Parliament approved a bill restricting online betting and casino activity] *24.hu*, 6 July 2015, <http://www.hir24.hu/belfold/2015/07/06/torvenyben-szabalyozta-az-online-kaszinojatekot-a-parlament/>.
- <sup>19</sup> “Megszereztük: Hangfelvétel bizonyítja a trafikmutyit” [We got it: Tape recording proves foul play in the distribution of tobacco selling licences] *HVG*, 9 May 2013, [http://hvg.hu/itthon/20130509\\_trafik\\_Szekszard\\_Fidesz\\_hangfelvetel?utm\\_source=mandiner&utm\\_medium=link&utm\\_campaign=mandiner\\_201502](http://hvg.hu/itthon/20130509_trafik_Szekszard_Fidesz_hangfelvetel?utm_source=mandiner&utm_medium=link&utm_campaign=mandiner_201502).
- <sup>20</sup> “Halló, itt a trafikmutyi hangja beszél!” *Népszava*, 11 May 2013, <http://nepszava.hu/cikk/644749-hallo-itt-a-trafikmutyi-hangja-besz-el>.
- <sup>21</sup> “Tömegesen zárnak be a boltok a trafikrendszer miatt” [Many shops closed down due to the tobacco selling system] *HVG*, 3 June 2015, [http://hvg.hu/ene-sacegem/20150603\\_Tomegesen\\_zarnak\\_be\\_a\\_boltok\\_a\\_trafikok\\_m](http://hvg.hu/ene-sacegem/20150603_Tomegesen_zarnak_be_a_boltok_a_trafikok_m).
- <sup>22</sup> “300 ezret kell fizetnie a fideszes képviselőnek, aki háromszor sem úgy szavazott, ahogy elvárták tőle” [Fidesz MP fined HUF 300,000 for voting three times against party] *444.hu*, 18 December 2014, <http://444.hu/2014/12/18/300-ezret-kell-fizetnie-a-fideszes-kepviselonek-aki-haromszor-sem-ugy-szavazott-ahogy-elvartak-tole/>
- <sup>23</sup> Zoltán Batka, Dániel Bitá, “Valami nagyon furcsa az Orbán-kormány álomüzletében” [Something is fishy in the Orbán government’s tobacco business] *Népszabadság*, 12 June 2015, <http://nol.hu/gazdasag/valami-nagyon-gyanus-az-orbankormany-alomuzleteben-1539525>; <http://propeller.hu/itthon/3118393-kihuzta-gyufat-kormany-nemzetkozi-dohanycegeknel>.
- <sup>24</sup> Zoltán Batka, “Habony embere vigyáz a hatalmas dohányyra,” *Népszabadság*, 22 June 2015, <http://nol.hu/gazdasag/habony-emberevel-erositenek-1541333>.
- <sup>25</sup> András Bódis, “Lázár János dohányos embere a Napi Gazdaság új tulajdonosa” [János Lázár’s tobacco guy is the new owner of Napi Gazdaság] *Válasz.hu*, 28 June 2015, <http://valasz.hu/uzlet/lazar-janos-dohanyos-embere-a-napi-gazdasag-uj-tulajdonosa-113652>.
- <sup>26</sup> “Lengyel lehallgatási botrány: Hernádi elintézte” [Polish leak scandal: Hernádi took care of it] *Népszabadság*, 23 June 2014, <http://nol.hu/gazdasag/ujabb-botranynos-hangfelvetel-1469927>.

“The following is from an audio recording published in the Polish liberal weekly *Wprost* on Monday. In it, Jacek Krawiec, president of the Polish petroleum company PKN Orlen, is in discussion with Treasury Minister Włodzimierz Karpiński and the latter’s deputy, Zdzisław Gawlik. The meeting took place in January 2015 in Sowa and Friends, a restaurant in Warsaw.

Among other things, the petroleum company chief talked about his visit to Budapest and the discussions he conducted with Zsolt Hernádi, president and CEO of MOL, in this passage:

Krawiec: Listen, I’ll tell you something that proves how different our situation is from that of the Hungarians. I went to see Hernádi because he cannot leave Budapest. I ask him, ‘How many years are you going to get?’ Relaxed and smiling, he says, ‘Y’see, my lawyers realized that if this case goes to trial in any

EU country and I am acquitted of the charges, then the verdict has to be recognized by every EU member state, letting me travel around Europe.' I ask him if the case will be tried in Hungary. He tells me it will. So I say, 'But then it may take two or three years.' And he says, 'We'll have a ruling in April.' Sitting next to him is this guy, the head of Legal, a real self-important type named Ábel [referring to Ábel Galács, who is not the director of Legal but the group-wide sales director]. He [Hernádi] turns to him and says, 'Ábel, tell Jacek who the prosecutor is going to be for this trial in Hungary.' He says, 'My wife.' You see? Just imagine such a situation! His wife is the prosecutor, he gets an acquittal, and everything is taken care of. Can you imagine this happening over here?

Zdzisław Gawlik: Maybe it does happen and we just don't know about it.

Włodzimierz Karpiński: This is what Kaczyński dreams about, these are the kind of internal political conditions he would like."

<sup>27</sup> Babett Oroszi and Balázs M. Tóth, "Polt Péter kinevezése óta meredeken zuhan a politikai korrupciós ügyekben indított büntetőeljárások száma" [The number of prosecutions for political corruption has fallen sharply since the appointment of Péter Polt], *Átlátszó*, 6 February 2015, <http://atlatszo.hu/2015/02/06/polt-peter-kinevezese-ota-meredeken-zuhan-a-politikai-korrupcios-ugyekben-inditott-buntetoeljarasok-szama>.

<sup>28</sup> *Ibid.*