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**STATE'S ATTORNEY INTERVIEW:**

**In your experience, what are the challenges facing the Administration, the State Attorney's Office or the Public Prosecutor's Office, different bodies as well, in terms of Financial Investigation together with the fact that crimes are moving to the Internet sphere?**

Well, look, the good thing about the internet is that it leaves traces, I had a lawsuit in which there were companies that were in European Union countries, some time ago and it was curious because in the end it was a fictitious scheme of invoices, and then it turned out that the same company in which we put the administrators in jail controlled supplier companies and what they did was to make payments between accounts and it was curious because the same person accessed their company's account, and the other company's account and the money was sent between different accounts and that was discovered through the cookies they leave, access to the website leaves a cookie and then it was discovered in this way.

The whole Internet leaves traces and that is the good thing that happens, that there, from what they told me from customs, from the smuggling and customs unit, the issue is that many times they use servers that are abroad and in countries that do not cooperate directly and there I believe that in the issue of Financial Investigation, the basis is collaboration, because if they use servers that are in third countries, they play with servers, from a server that is in a country that does not cooperate, from one server to another, and in the end a server arrives that is in a country that does not collaborate and when you send documentation there is no information or they do not send it at all and then all traces are lost, so I think the good thing about the internet is that it leaves traces and the bad thing is that there comes a point where if there is no collaboration between different countries nothing is achieved.

**I don't know if you are aware in your field of work, which is more litigious and not criminal, for example, that the pandemic is leading to an increase in economic crime or organised crime via the Internet.**

Not in my profession, I am aware as a user, what I have suffered as a user and not as a State's Attorney is the attempts by hackers, phishing and all those things that have multiplied and now we receive emails from our Ministry warning us of attempts at identity theft and hacking and so on, lots and lots of them.

You know what happens in the Administration is that we are always late and so we react to the facts when we detect them and the pandemic, we are still in a pandemic and we are seeing normality little by little, but it was two days ago and so everything that has happened there will take us two, three, four or five years to discover it.

**We have another question and it is if you are aware that there may be an activity suspected of a criminal offence such as human trafficking, is there an effective procedure for collaboration with the security forces or the Public Prosecutor's Office, and how is this process going?**

Whenever we act, we always defend an administrative act, and generally in this matter there tend to be sanctions, infringement reports and so on, in reality when we have knowledge of something, the Labour Inspectorate or the Law enforcements agencies have more knowledge than we do, what we receive is what is in the file, maybe in some cases I can tell them that they have missed something or relate one case to another, but they have more information than we do, I receive a resolution in their file, they qualify the facts more and maybe I can say something, but no, it is not normal.

**Is there a need for greater collaboration between administrations?**

Of course, in the end, the information that the Inspectorates, for example, have is essential and they cross-reference it, cross-referencing the data is what works best, and the Inspectorates, both tax and labour, are the ones that have the most information and with this data you can control a lot.

**And I don't know if you detect that at the administrative level, there is more awareness or more emphasis is being placed on financial investigation, in other words, on following the money trail in all these matters.**

Yes, I tell you, it is one of the tools, in the end what happens is that in the provinces we don't have experience either and I can't speak with much certainty, but it is true that in the big plots they are tied up a lot by the Financial Investigation, it is essential, at the level of crossing data that already existed in the administrations, tax communications and so on, Public property registers, land registers and then also, requiring banks is essential and this reinforces the evidence, there is a lot of information there and now, as cash operations are also being limited, although these people really operate at other levels that do not worry them, all of this makes the circle much tighter.

**In this sense, Could you also identify signs of illicit money flows?**

Of flows or of holdings?

It could be both, a flow of money or the holding of money as such by companies.

This is something that really strikes me, those people who handle a lot of money and have nothing, the same thing happens with companies, there are some evidences in Spain there is a model that is essential which is the 347, a model that is informative and through which companies are obliged to say the operations over 3000 € that they have with third parties, both what they buy and what they sell and of course, there are companies that have nothing, they have no operations, but they handle and move a lot of money, there is something going on, if they have no workers, if they have no basic means, if they have no materials and no premises, companies that are totally fictitious more than normal, companies that have nothing and that on the other hand handle a lot of income for the activity they have which is zero, I think this is fundamental, because in the end all the lawsuits that we have brought here in criminal matters, related to fraud of benefits from the public employment service or tax matters, in the end when there is a company that is instrumental, that has nothing, it is that they cannot prove it, in other words, it is completely abnormal.

What is complicated is when a company has a normal activity and a fictitious one, but in the end, the volume of income they manage and the means they have a lot to say.

**And with regard to the taxation of illicit profits, which is also a very important issue, what would be the points in favour of this taxation being able to go ahead.**

The only thing I would like to say is that if you say that an activity is exempt or has low taxation, what you are doing is encouraging this taxation, which is what the State does with cultural events for instance, either we declare them exempt or we reduce their taxation, so if you send the message that you are a criminal because you are not going to pay taxes, in the end you are encouraging a criminal activity.

**We are thinking about this idea, so how can the State ensure that these profits are declared so that the State's message is not erroneous?**

It is very complicated because it is very difficult for a person who commits a crime to have an incentive to declare what they are earning.

Then we have to distinguish between the criminal and administrative levels because it is true that criminal law is simply a minimum option so that it really reaches the criminal sphere and then it is much more complicated to achieve a satisfactory result, because in the criminal process when you arrive, the principles are inverted and you have to prove that you are a criminal, whereas in administrative law it is not like that, the administration has to prove the part that you have not declared and the other party has to prove that they are deducting the invoices or the expenses of goods and then also, the administrative resolution has a presumption of certainty, so the party that acts against an administrative act has to disprove it and then of course, it has nothing to do with taking something that you have not declared, it has nothing to do with taking something to the criminal field where there is a presumption of innocence, to take something to the administrative field where there is a presumption of certainty and accuracy of what you have done as an Administration, and where this is going, if you, in administrative proceedings, put a lot of pressure on these people, imposing very heavy penalties for the lack of declaration, or on the other hand if a higher tax on illegal activities is established, well then, of course, all of this would encourage them in one way or another, either by lying in the declaration, saying that this money comes from a legal source, perhaps this could encourage them to declare, it has to be at the end that it hurts more, aggravate the tax offence, aggravate the quota or the penalties, that it hurts more and that they say that if I don't declare, I am under more pressure, that is to say either I pay more or you be more sanctioned.

**Do you think that this requires legal reforms or is it possible to achieve this taxation of illicit profits with the legal framework we have today?**

To modify a tax rate, a legal reform is obviously necessary, but not to take things through administrative channels, that is to say, for penalties and sanctions, it is always necessary to define the rate and define the sanction, but for investigation and so on, it is not necessary, right now the Administration has many tools to investigate, legal tools, material and personal tools, we could discuss it, but legal tools it does have.

**Another need we were considering would be training, in this case it could be for the State Attorney's Office or for all the people involved in carrying out a financial investigation, for example, as we were saying in the area of the Internet, do you consider that the Administration is trained, for example, in investigation tools, in cyber intelligence, or if they need this type of training?.**

I can't say much about that, because when I receive the file, it is already very well worked out, I don't know if they may lack training or not, what I can say is that when we receive it, people are already trained and they know, but if they need more training, I can't tell you.

**We were asking because many stakeholders involved, for example, tell us that, with all this money flow, with cryptocurrencies, they need training to understand how this whole digital economic world works.**

Of course, it complicates everything, in fact, when you asked me before about some legislative reform, I didn't tell you, but I thought about it, let's not reform more things because we complicate everything, it is better, clear institutions that if we add more paragraphs to the article we complicate it, then, I think that cryptocurrencies are a world of their own and criminals always have the advantage, they are always ahead, they have more need to invent things.

**We are finishing and I don't know if there is anything that you think could be important or that from the State's point of view should be there.**

The personal effort that can be made here from personal levels is the key I think, to encourage collaboration, talking about research, all the manpower that you invest is little and that is what is lacking, people who know and without pressure, even we, the people who are working, is that you not only have that issue, you have that and twenty others, you have a very important issue for the purposes of human trafficking or a similar crime and then you have thousands of small issues that take up your time and sometimes it is said, or it has been lost or this investigation has not come to fruition and it is not for lack of interest or lack of desire, it is that you cannot manage more effort than you are putting into it.

And I don't know if this can be solved by dedicating the necessary people to each case, more staff, more specialised staff is needed in the higher investigation bodies, tax inspectors, law enforcements agencies, Labour Inspectorate, if they have to do 200 reports, they could be more creative and dedicate more time to each report if instead of 200 they had to do 20 per month.

What is not normal is that I have one lawsuit for 20 million euros and 200 lawsuits for a thousand euros, so sometimes when things do not come to a good end, it is either because they have not let you go further because nobody collaborates in international investigations or it is because you cannot go further, because you do not have time, material time for that, you need support, more than legal instruments, although of course you can improve in terms of internet investigation, but you need personnel and quality resources.

It is that sometimes the legislator tries to fill gaps by means of reforms and in the end it is not a question of legislative reforms, in the end if you want a court to function well, a criminal court for example, then take away everything that is theft and so on, and dedicate it to economic crimes, only to that for example, because otherwise, a criminal court has thousands of small crimes and then it will have two or three economic crimes that are very complicated and that are rated the same, and it has the same staff to resolve everything and it has to do its schedule of hearings and that complicates things, if we want to solve it we have to put more resources there.

What happens is that in the end things come out with the effort you make, but more punishable conduct or administrative sanctions would be detected with more resources, because it is not that the criminal courts have to act, but sometimes in administrative proceedings you get a lot, the criminal courts when you reach a result after years have passed and you find that there is nothing, for example, we were talking the other day about liquidating a tax quota of a legal activity to a confiscation, if you arrive and liquidate the quota but that person or that company no longer has any assets because they have taken them out of the country, no matter how much you liquidate you are not going to get paid, with administrative proceedings you arrive sooner, they are procedures of six months, a year, but in the end you get somewhere, but in criminal proceedings it takes between 6 or 7 years for a sentence to be handed down.