

ANNEX 3: CASE STUDY – SPAIN

1. Synopsis

The case of **Spain** is of interest, as it involves a unique mix of historic, socio-economic, and criminogenic factors, such as: strong pressures from drugs smuggling (cocaine and hashish); a big prostitution market; the largest recent increase in immigration in the EU; a terrorist problem with ETA, which is of priority to the police; a coastline that has attracted for years not only tourists but also criminals and money-launderers; and a culture where informal and family relations are of significant importance. The most serious issues identified were concerned police corruption and local level political and administrative corruption relating to the real estate and construction sectors. Political influence over the judiciary was also identified as an issue that plays a role in local level corruption, and occasionally is related to organised crime.

2. Introduction

Methodology

The writing of the report took place between May and July 2009. The sources of information used include judicial documents, journalistic sources, academic work and interviews with eleven key informants.

The interviewees that participated in this report were assured of anonymity. Therefore, their responses have been coded as follows:

Name	Position	Institution
J1	Former judge	Barcelona court
J2	Criminal lawyer dealing with organised crime cases	Private law firm
A1	Academic	Major university in Spain
P1	Superintendent (specialising in anti-drug and terrorist investigations)	National Police Corps
P2	Chief Superintendent (specialising in corruption investigations)	National Police Corps
P3	Commander (specialising in economic crime investigations)	Spanish Civil Guard
P4	Superintendent (specialising in organised crime intelligence)	National Police Corps
K1	Chief Inspector	National Tax Administration Agency
K2	Chief Audit & Tax Advisor	Private company
K3	Ex-MP and practising lawyer specialising in planning and development offences	Spanish Parliament/Private law firm
K4	Journalist specialising in economic /organised crime	National daily

3. Background: organised crime in Spain

At the beginning of the 2000s, public debate on organised crime in Spain was very scarce, if it existed at all. In his 2001 Address to the Nation, the then President of Spain, José María Aznar, excluded any reference to the scale and nature of serious and organised crime for profit in the country, which was surprising given the evidence at the time: "...over 33 tons of cocaine and over 860 tons of hashish seized in 2001; Over

30 drug-related vendettas in Madrid from 2000 to 2004; The disruption of over 650 criminal networks engaged in facilitating illegal immigration into Spain between 2000 and 2001; the mysterious escape of two of the main defendants in the Operation Temple maxi-trial charged over the importation into Spain of 11 tons of cocaine and 200 kg. of heroin in 1999, or the various serious fraud scandals that rocked the reputation and (lack of) transparency of the Spanish financial institutions in 2001 and 2002. (Gómez-Céspedes & Stangeland 2004, p.387)”

One thing to bear in mind when analysing the Spanish anti-organised crime agenda, its policy evolution and its political endorsement is that terrorism has always been considered a far more important problem and, the awareness and social construction of ‘danger’ at the political, police and society levels has, many times, overshadowed the issue of organised crime. In fact, until very recently, the official debate on organised crime in Spain was completely dominated by the debate on the terrorism perpetrated by ETA⁸⁰ (De la Cuesta 2004).

This is not surprising because terrorism-related criminal activity has had a far stronger impact on Spain (especially in terms of casualties of innocent people) than organised crime has. Terrorism has also become an essential political tool for the government and the parties in the opposition. Likewise, the associations for the support of victims of terrorism (over fifteen across the country) have succeeded to gain substantial social support in order to either get financial aid from the government and/or have their voices heard more clearly. This situation varies significantly from the case of anti-organised crime or anti-corruption associations which are virtually non-existent in the country.⁸¹

Perhaps, one of the unresolved matters regarding anti-organised crime policy relates to the fact that at present, legal persons are not criminally liable, especially in terms of economic crimes such as money laundering.⁸² Legal persons may, however, be subject to administrative sanctions if the natural persons responsible for their management and direction are found guilty of a criminal offence involving the legal person in question. This includes the possibility of closing the enterprise, dissolving the company or suspending its activities.⁸³

Possibly, the episode dated 4 December 2004, may turn out to have been a major turning point in the anti-organised crime agenda of the Spanish government. Two innocent people were killed in an organised

⁸⁰ *With the Islamist-related Madrid train bombings on 11 March 2004, the anti-terrorist agenda has gone through substantial changes but still has priority over economic and organised crime issues.*

⁸¹ *The author recognises the efforts of some of these organisations such as the Erguete Association and Foundation (an anti-drug trafficking and rehabilitation association founded by Galician women who recognised drug-trafficking as an important threat to the health of their children) and the Association for Analysis and Reflection or AYRE (founded by lawyers who were aware of the pernicious effects that corruption and money laundering could have to the Rule of Law in Malaga and elsewhere). Also, the various civil associations inspired by planning and development related corruption.*

⁸² *Anti-organised crime legislation in Spain has been enacted much as a legislation of emergency as opposed to the result of pre-legislation studies or evaluations of criminal trends. Much of the legal reforms that have been adopted so far originate from the pressure of international and European organisations.*

⁸³ *This trend is to be modified with the proposed amendment of the Criminal Code.*

crime related shootout in the Costa del Sol resort of Marbella on that day. A thirty-six-year-old Italian male who owned a beauty salon, and a ten-year-old boy from Seville who was on holiday, were killed, while three other relatives of the boy were injured. In the days that followed, the then Minister of the Interior, José Antonio Alonso, announced that a special anti-organised crime police unit would be established in the area⁸⁴ and the then Spanish Attorney General, Cándido Conde Pumpido stated that new anti-mafia prosecutors would be appointed in Malaga, Alicante and the Balearic Islands.

Since then, the government of Spain has been engaged in slowly-progressing yet steady efforts in the fight against organised crime, especially in terms of improved resources such as more police staff, better equipments, heightened databases and operations⁸⁵ and more adequate budgets. Equally important has been the government's recognition and awareness of the problem and, as a consequence of this, the incorporation of serious organised crime into the political agenda.

Nevertheless, the overall serious organised crime threat to Spain remains high and increasing in its scope and complexity. So far, the Ministry of the Interior has been the only agency that holds or collects raw data on the dynamics of organised crime. Unfortunately, that information is restricted and when published, usually through the media, it lacks a serious assessment of the nature of organised crime, its trends, prevention and reduction.⁸⁶ Given that framework, empirically-based academic research is inevitably scarce and even exceptional.

Spain's organised crime landscape is determined by four factors:

- its geographical position as the Southwest gateway of Europe;
- historical, cultural and geographic connections with Latin America and North-West Africa (in particular Morocco);
- its dynamic immigration situation (Spain had the largest increase of the share of immigrant population from 2 to almost 10%);
- rapid economic development since 1990, along with the development of the tourist industry and real-estate across the country, and in particular on the Mediterranean coast.

The above factors explain the central place that Spain has played (both as a transit point and as an illegal market) in smuggling and distribution of cocaine and cannabis in the EU; as an important destination or transit point for THB, illegal immigration, and money-laundering; and as a

⁸⁴ That Unit, attached to the National Police Corps, was called GRECO which stands for Groups of Special Response against Organised Crime. It was originally established in Malaga but it has further coverage today.

⁸⁵ Especially with the establishment, in September 2006, of the National Intelligence Centre against Organised Crime (CICO) attached to the Ministry of the Interior. CICO coordinates counter narcotics operations among various government agencies, including the Spanish Civil Guard, the National Police, Customs Service and the Ministry of Defence. Under their guidance, law enforcement cooperation appears to function well. Notwithstanding, cooperation agreements with regional police forces namely, the Mossos d'Esquadra in Catalonia and the Ertzaintza in the Basque Country are still pending.

⁸⁶ Although the Spanish Ministry of the Interior publishes public-access Annual Statistics, it was not until early 2006 that this Institution published a public-access summary of a Spanish Report against organised crime. It mentions some figures on the investigation of criminal groups (474) and the dismantling of such groups (290). It also provides the total number of people investigated (9,294 persons) and arrested (3,925 persons) for organised crime activities. The annual reports of the National Intelligence Centre against Organised Crime (CICO) are confidential.

destination of a number 'transit criminal activities', related to counterfeit money, credit card fraud, and motor-vehicle theft.

3.1 Organised crime markets

3.1.1 Drugs

As discussed in the Europol OCTA report, Spain is the main transit point for hashish/cannabis from Morocco to the Netherlands, where it is further distributed within the EU. Criminals and groups of Spanish and Moroccan nationalities cooperate in this activity (2008, p. 42). Its historic links to South America, and large immigrant communities from Latin American countries, including Colombia and Bolivia, have also made Spain one of the main smuggling points for cocaine into the EU. Irish and British criminals, as well as the 'Ndrangheta, the main Italian OC group involved in the cocaine trade, have set up logistical bases in Spain. The cocaine market in Spain is largely regulated either by Spanish OCGs, with some South Americans facilitating contacts, or by OCGs composed of South American criminals. The above mentioned OCGs are reported to be in contact with OCGs based in other MS, such as The Netherlands, France and Italy, for further distribution. (Europol 2009, p.28, pp.42-44)

The above has transformed Spain as the biggest consumer (in terms of share of adult population) of both cocaine (3%) and cannabis (11.2%) in the EU (UNODC drugs database 2005 data), making it even more attractive to criminal groups.

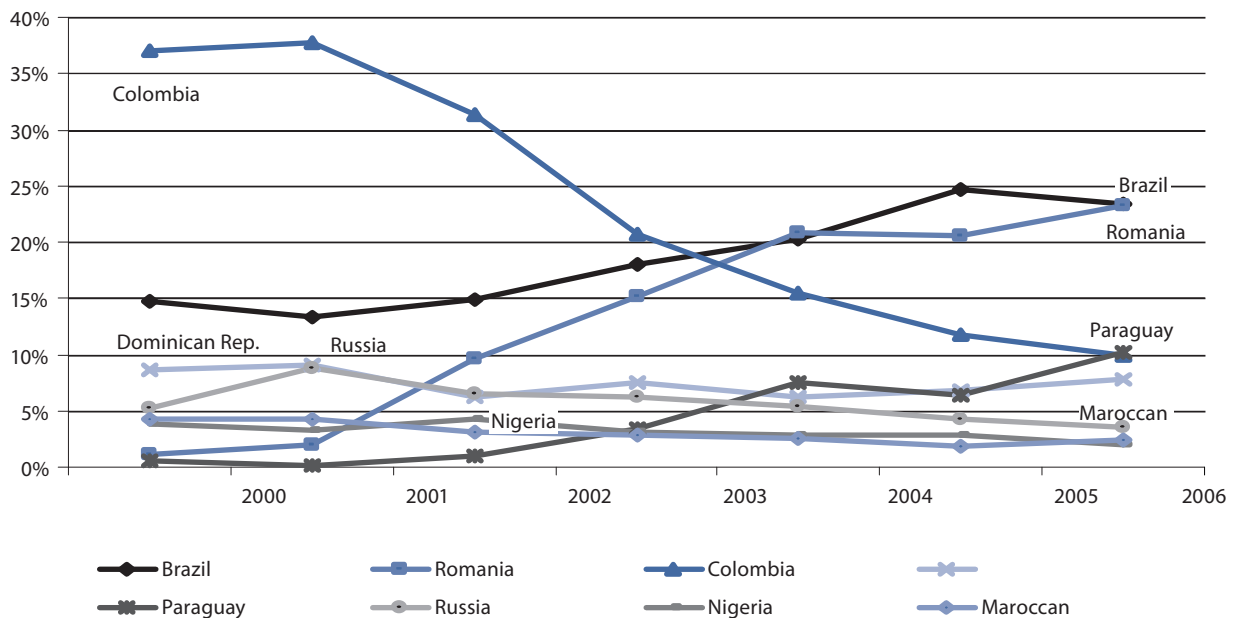
According to the United Nations World Drug Report (2006) Spain accounted for more than 40% of all cocaine seizures in Europe in 2004. In terms of world cocaine seizures, Spain ranked third in 2004, after Colombia and the United States. The geographic distribution of such seizures in that same year was as follows: about 60% of seizures were made while the cocaine was still at sea; 10% were made at airports and 30% on roads. In 2007, Spain fell to the 5th ranking position preceded by Colombia, the United States, Panama and Mexico, in that order. In 2007, Spain also remained the highest ranking country in seizures of hashish (50%) far ahead of runners-up Morocco (9%) and by Pakistan (8%).

As Díez Ripollés and Gómez Céspedes (2008) explain, the majority of those arrested for drug trafficking in Spain are still of Spanish origin. Nonetheless, Spanish nationals seem to be losing importance as the arrest of foreigners for this type of crime seems to be on the increase. For instance, the number of Spanish nationals that were arrested in the period 2001 – 2005 decreased 18.91%. Simultaneously, the number of foreigners that were arrested for that same period increased 13.68%. Foreigners arrested for drug trafficking in the year 2005 include the following ethnic groups: Moroccans (38.63%), Colombians (11.19%), Algerians (3.65%), French (3.18%), Dominicans (2.64%) and Portuguese (2.63%).

3.1.2 Human smuggling

The large immigrant communities from Northwest Africa (Morocco), South America (Ecuador, Colombia, Bolivia), and Eastern Europe (Romania, Bulgaria) (Pereda et al. 2008, p.2) determine to a certain extent the main countries of origin for the other key criminal markets: the ones related to THB and illegal migration. Trafficking for labour and illegal migration have been connected to the rapid development of Spain’s economy, and in particular real-estate and infrastructural development. Along with increased incomes, a fairly large domestic prostitution market developed, quickly supplied by South American and Eastern European sex workers. Spain (similarly to the UK) also has OCGs based outside the EU, specialising in money laundering (Europol 2009, p.45).

FIGURE 17. TRENDS IN MAIN ORIGIN OF VICTIMS OF HUMAN TRAFFICKING DETECTED IN SPAIN



Source: Guardia Civil (quoted in UNODC 2009)

Following the illegal drug trade, another large organised criminal activity in Spain is the organised smuggling of migrants (comprising largely immigrants coming from the African continent). Especially during the summer months, Spain faces the arrival of thousands of illegal immigrants originating in the sub-Saharan and the western-coast regions of Africa. These immigrants, travelling in small/medium overcrowded fishing boats undertake a hazardous trip into the shores of Andalusia and/or the Canary Islands.

The 2005 Report of the Spanish Department for Immigration and Emigration (Ministry of Work and Social Affairs 2005) reveals that the arrival of African immigrants via fishing boats has decreased considerably. Nonetheless, the figures for 2006 may reverse that trend as the arrival of immigrants especially into the Canary Islands could surpass all previous years’ figures.

It is believed that the Spanish-French border is crossed by thousands of non-European Union nationals who may enter the EU with valid passports yet remain in Spain or other European countries illegally. Barajas, the Madrid airport, is also believed to be another critical entry point for illegal immigrants originating in Latin America (e.g., especially nationals from Ecuador, Bolivia and Peru) and Asia. Again, these semi legal-immigrants may enter the country with valid passports yet overstay their visas.

3.1.3 Counterfeit currency

According to some estimates, over a quarter of all € 500 notes in the euro zone are believed to be circulating in Spain. The Spanish authorities have been able to trace roughly 10% of the € 500 banking notes circulating across financial institutions. The rest is probably circulating in illegal/informal circuits. In 2008, 30% of all investigations regarding the circulation of € 500 notes took place in Andalusia: 40% in Malaga, 30% in Seville and the rest between the provinces of Cadiz and Almeria. (K2)

3.1.4 Organised robberies

According to media and press releases from the Ministry of the Interior,⁸⁷ organised criminal groups are also profiting from property crime, namely robberies of industrial estates, jewellery shops and dwellings.

Even though it is very difficult to know the scale or cost of organised robberies in Spain (especially if one does not have access to reliable data) official statistics show that organised violent robberies remain relatively low. Nonetheless, the media coverage along with victims' testimonies and the alleged loss of assets, have caused a lot of bad publicity to this type of criminal activity when perpetrated by Albanian or Romanian criminals.

The Spanish Association of Jewellers, Silversmiths and Watchmakers have staged demonstrations in recent years on the streets of Madrid demanding enhanced security measures after a series of numerous violent robberies. In fact, back in 2002, the then president of this Association stated before the Senate that robberies had cost the sector € 17 million in 2000 and € 32 million in 2001.⁸⁸

4. Background: corruption in Spain

According to the 2008 Corruption Perception Index published by Transparency International, Spain fell from 23rd to the 28th position worldwide compared to the previous year. Spain is still ahead of other European countries such as Portugal, Czech Republic, Slovakia, Greece or Italy.⁸⁹

⁸⁷ Some of these are available online at <http://www.mir.es>.

⁸⁸ See, Gomez-Cespedes & Stangeland (2004).

⁸⁹ The country scores can be obtained from the TI web site: http://www.transparency.org/policy_research/surveys_indices/cpi/2008.

Corruption seems to be a comprehensive term combining a lot of different connotations to different people; to date, the Spanish legal system has not defined it. Rather, the Spanish Criminal Code of 1995 determines a series of offences that can be included under the umbrella of the term ‘corruption’. These offences include: *passive and active corruption* of Spanish authorities and public officials (Articles 419-427), *trading in influence* (Articles 428 – 431), *bribery in international transactions* (Article 445a), *offences against the Treasury* (Articles 305-310), *smuggling and offences against exchange controls*, *abuse of official authority* (Articles 404-406), *use and misuse of privileged information* (Article 418, where private individuals are concerned and Article 442 in respect of public officials), *misappropriation of public funds* (Articles 432-435), *fraud and extortion* (Articles 436-438), *negotiations prohibited to officials* (Articles 439-441), *illegal exercise of functions* (Articles 506-508) and all offences connected therewith. When any of the corruption related offences are committed in an organised manner, the offence of “unlawful association” (Article 515) also comes into play.⁹⁰ Broader social concepts, such as clientelism, nepotism, cronyism, patronage, discrimination, lack of transparency, “capture” of institutions by interest groups (Rose-Ackerman 2004) remain largely outside these narrow legal definitions.

Understanding how governance operates and how it is organised becomes indispensable to getting the picture of why corruption and organised crime opportunities seem to be so favourable in Spain. Nieto (1996, 2005, 2008)⁹¹ has published extensively on the issue of the *ungovernance*⁹² of the Spanish public institutions. He analyses the impact that the law has on the behaviour of citizens, public officials, the administration and the judges. With regard to the impact on public administration, he argues that non-performance of bureaucrats does not usually carry a personal responsibility but a disciplinary action with no serious consequences. He also criticizes that judges often pass legally correct yet contradictory sentences without consequences. Nieto also argues that the fact that the General Council of the Judicial Power (CGPJ) is voted in the Parliament makes it subordinate to political parties.

“One cannot vote freely from a list of candidates, the party tells you who to vote for. Therefore, the CGPJ is shamelessly manipulated by the political parties”. (K3)

The last trait of Spanish ungovernance is that power is exercised from a personal stand. The political system is made up of a network of personal relations and particular interests. Individuals are linked according to group, territorial or corporate interests: something concrete is given

⁹⁰ For a thorough description in English of the Spanish legal system and its shortcomings in the field of corruption, see the evaluation reports of the Council of Europe’s Groups of States against Corruption (GRECO), online at: http://www.coe.int/t/dghl/monitoring/greco/default_en.asp.

⁹¹ To the author’s knowledge, his work has only been published in Spanish yet it stands as one of the most acute portrayals of the Spanish government institutions, including the public administration, the judiciary, the political parties and the exercise of political power. Some titles include: “La organización del desgobierno”; “La ‘nueva’ organización del desgobierno”; “El desgobierno de lo público” or “El desgobierno judicial”.

⁹² For Nieto the term “ungovernance” (*desgobierno*) implies not an absence of governance but a disorganised exercise of governance.

and something concrete is obtained in return. The political parties grant their affiliates access to power and universal protection (including protection from criminal prosecution) in exchange for loyalty and service. Politics has therefore turned into business and parties compete on a market-based principle. (A1)

5. Targeted institutions

5.1 Police corruption

The official view is that the country's level of police corruption is contained within ranges experienced in other West European countries as well. Police corruption is rather unsystematic and unlikely to last for long periods, as internal affairs units are proactive, and eventually investigate cases and bring charges against corrupt officials (P3). There are currently over 220 officers (including prison officers, National Police officers and Civil Guard officers) in prison (either as remand or convicted prisoners) in Spain. They are held in prisons in Madrid, Seville, Castellón and Logroño (K4).

The Internal Affairs Unit (located both at the National Police and Guardia Civil) is a fully independent investigative agency that processes complaints against law enforcement officials. This body has the power to instigate disciplinary proceedings against law enforcement officials and to refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought.

The research for the present report has indicated that there has been an average of twenty-five police corruption cases reported every year in the Spanish press since 1996. Law-enforcement corruption is generally related to lower-level organised crime including drug trafficking, organised robbery, human smuggling and trafficking or trafficking of vehicles. Most of the media cases reported have involved police officers from the Civil Guard arrested for links to drug trafficking networks. This is understandable given the fact that the Civil Guard is charged with controlling the ports of entry. However, there have also been cases of National Police and Local Police officers, along with members of the military,⁹³ who have been linked to drug trafficking.

Nevertheless, a few recent examples of corrupt practices in law enforcement institutions which have been uncovered by internal affairs units, point to levels of police corruption that have not been observed recently in most EU-15 Member States.

5.1.1 Operation Block: the Coslada police corruption ring⁹⁴

Following complaints from victims of extortion, on May 8, 2008, the chief of the local police⁹⁵ of Coslada (a Madrid suburb) and another twenty-

⁹³ Cases involving military personnel usually occur in the Spanish enclaves of Ceuta and Melilla located in the north of Africa.

⁹⁴ See, national media at the beginning of May 2008.

⁹⁵ The local police corps (also called municipal police), is an armed force which comes under the jurisdiction of the Town Hall in each municipality. They have responsibility for traffic control and offences, enforcement of local ordinances, and minor crimes.

six local police officers were arrested on suspicion of involvement in a corruption ring that involved extortion from prostitutes, bars and local businesses. On May 14, a judge authorized detention without bail for thirteen of the arrested officers. Trial proceedings have not begun yet.

According to some police officers working in Coslada, the so-called “Sheriff” of the town, Ginés Jiménez Buendía, was the only one in charge of the local police corps. He liked to surround himself with people he trusted but if anyone opposed his orders, they would be quickly replaced. That is how he managed to build his core group which was known as The Block.

Ginés Jiménez Buendía told the investigative judge that he was innocent and had just gotten caught up in political in-fighting. The name of Ginés Jiménez has also been allegedly linked to extortion rackets of Madrid nightclubs (made public under the Operation Guateque) and of some brothels in Barcelona.

It has been claimed that Jiménez protected Bulgarian organised crime groups involved in prostitution and that he in turn has always enjoyed protection from Coslada Mayors since the early 1990s, while he also managed to befriend several judges. In fact, Judge Carlos Nogada from Coslada, was suspended temporarily by the General Council of the Judicial Power (CGPJ) after some wiretapped conversations between him and the Sheriff were made public.

5.1.2 The Ronda police corruption ring

The investigations into the alleged corruption ring among the National Police Corps stationed in Ronda⁹⁶ focussed on the irregular administration of immigration files and, above all, the relationships of certain officers with the local “red light district” clubs.

Three National Police officers (the Head of the Ronda National Police Station ranked as the Chief Inspector, a sub-inspector and an ordinary officer), an officer of the local Civil Guard, an individual with links to a local judge, as well as three other businesspeople who ran brothels in Ronda, have been indicted on charges ranging from bribery and abuse of authority, to sexual abuse, fraud and extortion.

The judge accused some law enforcement officers of demanding money from the owners of clubs in exchange for advance warnings of police raids, or for not searching their premises for women who might have been in the country illegally.

The investigation carried out by the National Police Internal Affairs Unit sprang from an unannounced raid into a brothel in which Malaga police officers found forged documents. These belonged to one of the prostitutes, who claimed to have obtained it from the local police sta-

⁹⁶ *Inland from Marbella, Ronda is a city in the Spanish province of Malaga and is located about 100 kilometres (62 miles) from the city of Malaga.*

tion. This led the Internal Affairs Unit to the discovery of irregularities at the Ronda police station that had already been under investigation for two years, although the case had been shelved due to insufficient evidence.

The investigation revealed that certain officers likely had had sexual relations with prostitutes without paying for them, and that these contacts might even have taken place in offices at the police station and not just in clubs. The likelihood that officers would have taken advantage of their position to enjoy free sexual services is what led detectives to believe that these were obtained without consent. Therefore, charges of sexual abuse were included even though there was no evidence of violence or intimidation. The detainees denied all charges in front of the judge.

Sources close to the investigation confirm that the Chief Inspector is charged with sexual abuse, bribery, revelation of secrets, sexual assault and unlawful detention. While the first three of the above charges are shared by several of the officers allegedly involved, the final two appear not to be connected directly with the investigation but with the private life of the Chief Inspector. The trial is pending.

5.1.3 The Costa del Sol “Drug and Organised Crime Unit” (UDYCO)

The Malaga Provincial Court sentenced, on 21 April, 2009, two former UDYCO⁹⁷ officers (the former head of UDYCO – Costa del Sol, Superintendent Valentín Bahut, and former chief of the Organised Crime Section, Chief Inspector Alfredo Marijuán) to eighteen months in prison and to an eleven-month-prohibition from holding public office for revealing secrets and failing to counteract crimes. A third defendant, also a police officer, was acquitted of the charges.

The charges related to the cover provided to an Italian protected witness who was allowed to travel freely between Spain and Morocco despite being the subject of a European arrest warrant. The police officers have appealed the sentence.

Other cases include the arrest of a lieutenant colonel of the Civil Guard,⁹⁸ the dismantling of the Santa Pola anti-drug unit,⁹⁹ or the theft of 400 kilograms of cocaine in the Port of Barcelona.¹⁰⁰

5.2 Customs and tax corruption

The magnitude of tax evasion and carousel fraud activities in Spain broke all records in 2002. Since then, the National Tax Administration

⁹⁷ UDYCO stands for *Unidad de Drogas y Crimen Organizado* or *Drugs and Organised Crime Unit attached to the National Police*.

⁹⁸ Like in the case of Lieutenant Colonel Rafael Masa. See *El País* 22/01/2001.

⁹⁹ *Las Provincias*, 13/02/2004.

¹⁰⁰ *El País*, 22/02/2009.

Agency (AEAT) has concentrated human and technical resources into addressing this serious issue (K2).

Tax corruption is quite subtle and not much is known about it. The tax authorities are known to have lots of information – sufficient to convict criminal companies – but no real enforcement takes place. Lower level tax officers have even protested over this.

Corruption in customs is used primarily to avoid detection and import duties. To a lesser extent it is also used for VAT fraud schemes. Again, this corruption very rarely involves officials at the Tax Agency.

The main corruption cases involve controls on VAT and excisable goods. The main targets are individual employees (rather than entire units) at the excise tax control departments and ports. It is mainly lower level public officials in any department at a local level who would be more vulnerable to corruption. VAT fraud schemes that involve false receipts in order to get VAT exemptions and smuggling of electronic devices, could also be facilitated through corruption.

There has been no public official from the Tax Agency who has been convicted for participating in any organised crime network and passive corruption by organised crime is very rare (K1).

Organised crime groups would use mainly employees from Customs Agencies and tax accountants as intermediaries.

On a yearly basis, the Department for Corruption Investigations analyzes around fifty cases of alleged corruption from public servants working at the Tax Agency. More than half of them are dismissed because of lack of evidence and the rest are mostly cases that involve only a breach of the law regulating the holding of multiple positions. There have been less than five cases a year where tax officials have actually been involved in corruption (K1).

Anti-corruption efforts rely mainly on the Department for Corruption Investigation. Public officials in the Agency are not aware of the ongoing operations of this department. The department monitors the bank accounts of public officials and their spouses, other personal income that they may have, and relevant financial operations in which they could be involved. It follows carefully any significant change in personal wealth and payments from companies or others. Random checks and inspections are also carried out (K1).

The Plan for the prevention of Tax Evasion was updated recently. Among other things, it reinforced the controls that were in place for different sectors that could be more vulnerable to corruption, like real estate, and adopted new measures against money laundering and drug and tobacco smuggling (K1).

5.3 Political corruption

Political/administrative corruption in Spain in relation to organised crime and white-collar crime is widespread at the local level, in particular as it relates to planning and urban offences. The 2008 Report on Democracy in Spain published by the Fundación Alternativas [*Alternatives Foundation*] includes a description of 151 cases (one hundred and fifty one) of town mayors and councillors who have been accused of and/or indicted for corruption since 2004. The list includes politicians from the three main national political parties (namely, Partido Popular (PP), Partido Socialista Obrero Español (PSOE) and Izquierda Unida (IU)) along with other regional parties. Most, if not all, allegations and/or charges of corruption are related to planning and development offences taking place at the local level.¹⁰¹

One of the most disturbing issues included on the conclusions of this Report is that "...the analysis of the municipal election results in those local government areas where accusations of political corruption were made demonstrates the limitations of the democratic vote as a control mechanism for corruption (Fundación Alternativas 2008, p.251)" as many of those mayors were elected in following local elections, despite the corruption scandals. **Informants P2, P3, K3 and K4** agreed that *political corruption in the Spanish planning and development sector is rampant at the local level.*

On 26 March, 2009, the European Parliament approved the *Auken Report*¹⁰² on real estate, planning and development abuses in Spain. The report threatened to freeze all European Community funds for Spain until such abuses denounced in Brussels by Spanish residents from several EU countries were resolved. However, the decision to cut the funding was not binding. The report, compiled by Margrete Auken, a Green MEP from Denmark, portrayed an extremely harsh yet realistic reflection of the planning and development sector in Spain.

The text of the *report* asserted that urban planning and real estate development related corruption is endemic in Spain, and that the responsibility lies at all levels of the administration for the toleration of 'unsustainable development practices'. It slams the judiciary by saying that it is 'not correctly prepared' to deal with the problem, as its rulings in many cases cannot be carried out in a way that compensate victims of abuse. This situation has reinforced the impression of a lack of action and partiality of the Spanish justice system.

The report further states that there is a lack of 'clarity, precision and judicial security' in the current Spanish legislation regarding property rights, and a lack of application and coherent legislation in environmental matters, whereas lax judicial proceedings have created 'a form of

¹⁰¹ The Report does not include the town mayors and all the councillors who were arrested under the Malaya Operation taking place in Marbella in March 2006.

¹⁰² The Auken Report has been the third EU Parliament Report denouncing planning and development corrupt practices in Spain. Earlier EU Parliament reports (December 2005 and June 2007) did not threaten to withdraw EU funding.

endemic corruption'. The authors deplore the 'greed' and 'speculative conduct' on the part of local authorities.

The report singles out Marbella, citing concerns regarding town planning as 'dozens of thousands of homes have been constructed illegally probably infringing also community legislation'.

5.4 Judicial corruption

In 2007, the Spanish Chapter of Transparency International published a report regarding the extent of corruption in general and judicial corruption in particular (Mendieta 2008). The report emphasized three different types of judicial corruption:

- Corruption in the courts;
- Judicial corruption *in stricto sensu*;
- Undue political influence of governing bodies on the judicial system.

5.4.1 Corruption in the courts

This type has to do with corruption occurring in the courts which is usually perpetrated by civil servants (not necessarily judges) who abuse their positions in order to prioritise certain files/cases over others. In Spain, this type of corruption was rather common some years ago. Today, it has practically disappeared, due in large part to the implementation and management of computer-based information systems, particularly software applications and computer hardware. Nevertheless, the corruption that occurs in courts is not only connected to the speeding up or delay of proceedings but also to evidence that goes missing¹⁰³ or to the removal of judicial records.¹⁰⁴

5.4.2 Judicial corruption in stricto sensu

This type of corruption relates to the voluntary loss of judicial impartiality in exchange for bribes or even to the extortion of bribes in order to ensure favourable rulings. This type of corruption is exceptional although some cases have been brought to light.

The intermediaries that organised crime most often uses are lawyers and tax advisers (law firms that have specialized in tax matters). It is well known that law firms often give their own address to shadowy domestic and international companies in return for payments. Notaries can also be useful as intermediaries, but to a lesser extent, as they very often do not know what the law firms are up to.

Perhaps the best example of this 'stricto sensu' judicial corruption is epitomised by the case of former judge Luis Pascual Estevill.

¹⁰³ In February 2006, various tapes incriminating drug traffickers got lost at the National Court.

¹⁰⁴ In August 2001, the press reported the theft of at least 15 judicial records in the courts of Marbella. The missing records were connected to then major of Marbella, Jesus Gil y Gil.

On January 3, 2005, the High Court of Justice of Catalonia passed a nine-year prison sentence on former judge Estevill. He was also fined 1.8 million Euro after being convicted on bribery, extortion and breach of legal duty charges. He was implicated in the biggest corruption scandal unveiled in the Spanish judicial system in twenty-five years. Estevill, a former judge in Barcelona and one-time member of the General Council of the Judiciary (Consejo General del Poder Judicial), was found to have accepted bribes and helped Catalan lawyer Joan Piqué Vidal run extortion activities between 1990 and 1994. Piqué Vidal was also sentenced to seven years imprisonment and fined 900,000 Euros. According to the court ruling, Estevill and Piqué Vidal abused their positions by demanding bribes from business people under investigation for or charged with economic crimes.¹⁰⁵ As a result of this, both Estevill and Piqué Vidal accumulated hundreds of thousands of euros in bribes over the four-year period. Several other people found guilty of participating in the scam, including Estevill's son, were fined and sentenced to up to one year in prison. Estevill had previously been disqualified from office.

A more recent example is the case of former judge Francisco Javier de Urquía in Marbella. Francisco Javier de Urquía was found guilty of accepting a 73,800 Euro bribe from Juan Antonio Roca, the former planning advisor to Marbella Town Hall and alleged man at the centre of Marbella's Malaya Operation corruption case. The bribe was allegedly paid in exchange for favourable treatment of Mr. Roca before his court. De Urquía was sentenced to a 21-month suspension but once the 21-month period was completed he applied for a vacant magistrate position. The General Council for the Judicial Power rejected his application and suggested he could only re-apply after March 2012.

Meanwhile, de Urquía is now charged with blackmailing defendants of the money-laundering *Hidalgo* case which he was instructing at the time he was suspended. Newspaper El País has reported that the Andalusian High Court of Justice (TSJA) considers he collaborated with two associates in the extortion of the Marbella hotelier David Shamoan in exchange for freeing up some of the property that had been until then been embargoed under the *Hidalgo* case. Likewise, the Pakistani businessman Azan Khan, arrested in the *Hidalgo* case, allegedly gave 60,000 Euros to one of the associates so that bail would be granted to him, his wife and his nephew. De Urquía has denied the allegations, insisting they were part of a mafia plot to link him to the money laundering case.

Although this type of corruption can be considered exceptional, one should take into account that judges are truly condescending when *judging* their *peers*. Not all cases will end up like the Estevill and de Urquía ones and, according to **Informant No. K4** "judges will be transferred or called into a chat before any disciplinary action is taken".

¹⁰⁵ Some cases include the following: *Macosa*, *Nutrexpa*, *Vitalicio*, *Bertrán*, *Olabarria*, *Regesa* or *Prenafeta*.

5.4.3 Political influence on the judiciary

Higher levels of the judiciary are less likely to be corrupt (at least in terms of active or passive bribery). However, they are more exposed to political influence. Normally, the boards of judicial control have influence and/or are composed on the basis of political affiliation. These boards are subject to pressure from those who contributed to their appointment and thereby are at the mercy of partisan criteria in terms of disciplinary actions, appointments, promotions and transfers.

Whenever corrupt political networks are formed, they would try to guarantee impunity by having some control over the judiciary. In order to achieve that, politicians would place key magistrates in judicial governing bodies. If an investigation arose, these magistrates would be able to pressure local judges so that their political patrons might walk free.

It is not possible to assert that there exists rampant political corruption at the national level, nor can one affirm that a judge's independence is necessarily reduced by the government. However, this does not imply that the General Council of the Judicial Power (CGPJ) is free from partisan pressures. In fact, one could say that the degree of ideological division (on the left-right spectrum) in the Council and among the judges themselves is enormous. (A1)

At the top of the hierarchy of the judicial administration, judges are promoted by political parties, and they are likely going to have to decide on a few very controversial issues in accordance with on their political affiliation. There is a clear divide between judges that are considered to be close to the right wing party (PP) and those who have been promoted by the socialist party (PSOE). In the Prosecution Service, the Chief Prosecutor would tend to be very clearly favourable to the party that is currently in power. As it is a very hierarchical organisation, the top prosecutor is very likely to influence the decisions taken at a lower level. Presently, the lower level prosecutors not related to the ruling party are trying to keep a low profile. Corruption and even undue political influence rarely affects the higher levels of the judiciary, because the cases often end up being dismissed by lower courts, where most external pressure is focused.

6. Private sector corruption

The Spanish Penal Code does not criminalise corruption in private companies. Nevertheless, the draft amendments to the Penal Code have introduced the offence of bribery in the private sector. So far there have been no studies on the subject and the government does not collect systematic information.

The last Evaluation Report on Spain of the Group of States against Corruption (GRECO 2009, p. 14) appraised that:

“Since there is no private bribery offence, the definition of “public official” has proven to be key to criminalise the broadest possible types of situation giving rise to a bribery offence; it would allow,

for example, to punish bribery instances within undertakings which are strictly private, but which continue to be controlled by the State. The safest punitive strategy with regard to private bribery is probably that represented by the offences of misappropriation/mismanagement, in cases where the employee (or the manager receiving the bribe) enters into a contract which harms the undertaking financially. In the civil-law field, private bribery is prohibited by the Law on Unfair Competition, which expressly prohibits "the inducement of workers, suppliers and other persons under contract to breach basic contractual duties that they have agreed to with competitors". Although the Law on Unfair Competition provides exclusively for instruments of a civil nature, the possibility would exist of imposing an administrative penalty (Article 7 of the Law for the Protection of Competition) in those cases where the unfair practice consisting in the payment of bribes was sufficient in scale to 'seriously distort competition on the market' and if that distortion affected the 'public interest'".

According to **Informant K2**, strong companies are vulnerable to the activities of lonely fraudsters as opposed to the activities of organised criminal networks. However, given the lack of liquidity nowadays and the rise of full-time criminals in the legal economy, we can expect a more pronounced presence of organised crime in the private sector.

7. Conclusion

In Spain a variety of historic, socio-economic and criminogenic factors contribute to the increasing scope and complexity of organized crime. As Europe's main entry point for cocaine and for cannabis resin (hashish), Spain continues to provide a fertile ground for drug trafficking with increasing seizures of cocaine and cannabis resin. Smuggling of migrants (comprising largely immigrants coming from the African continent) is another large playing field for organised crime and poses a serious humanitarian challenge. Organised criminal groups also profit from property crime, including by burglarising industrial estates, jewellery shops and dwellings.

Organised crime exercises serious corruption pressures on law enforcement, the local level administration and politicians. Recent cases of police corruption have involved extortion from prostitutes, bars and local businesses, participation in drug trafficking networks, and relationships of certain officers with local "red light district" clubs. Nevertheless, corrupt arrangements in the police are not likely to be long-lasting as internal affairs units investigate cases and can be rather effective in bringing charges against corrupt officials.

Spain's coastline has long attracted criminals and money-launderers, which have exerted corrupt influence on local governance. This type of pressure has challenged the impartiality of the justice system, linking judicial corruption with political corruption.

Judicial corruption is singled out as a serious problem in Spain, whereas the courts are corrupted in order to delay or speed up proceedings, to

conceal evidence or judicial records. Judicial impartiality is sometimes achieved in exchange for bribes but most often through political pressures. Politicians place key magistrates in judicial governing bodies and in case of investigations magistrates are able to pressure lower level judges so that their political patrons and related businessmen may be acquitted.

Political parties grant their affiliates access to power and protection (including protection from criminal prosecution) in exchange for loyalty and electoral support. Politics has therefore turned into a market where parties compete like businesses, inspired by personal benefits and supported by corruption. This political system, made up of a network of personal relations and particular interests, is at the core of the so called Spanish “ungovernance”.