

CORRUPTION AND ORGANISED CRIME IN THE NEW EUROPE -  
NEEDS AND GAPS OF CRIMINAL JUSTICE IN THE W BALKANS

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To give you a better idea as to the background of my experiences, let me mention that I served as a public prosecutor for more than 35 years (the last four years of this period as the Austrian "Generalprokurator" at the Supreme Court). After reaching retirement age about two years ago, I have been active as the president of the Austrian Association for European Criminal Law as well as for the CLC (Center for the Promotion of Legal Competence in Eastern Europe and Central Asia), a research, training and consulting institution. To this non-profit association, the Austrian Ministry of Justice has outsourced the administration of its twinning activities. As a mandated body, the CLC has been - and still is - implementing a considerable number of twinning projects, mainly (but not solely) in the Balkans region. As for myself, I have been active in the CARDS 2003 twinning project "Establishment of an independent, reliable and functioning judiciary and the enhancing of the judicial co-operation in the Western Balkans", and I also am the proposed project leader of the PHARE twinning project "Strengthening of the Bulgarian Judiciary. Implementation of the New Penal Procedure Code. Strengthening the interagency co-operation between Public Prosecutor's Office and other concerning bodies in fighting organised crime and corruption".

My regional experiences were gathered when participating in the first-mentioned W Balkans project's fact finding missions and the preparation of needs and gaps analyses. To some of you my report on these experiences may sound familiar from a presentation at the CARDS regional round table in Tirana in late March of this year; to others, at least some of the reported phenomena will be familiar, because they are not only common to the W Balkans, but to most societies of so-called "New Europe". Even if several of the problems may already have been solved in a country which will be a member of the European Union within short, they occur in Bulgaria's near neighbourhood and therefore remain a matter of concern for the whole region.

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Many reforms of criminal law deemed necessary for an effective fight against organised crime and corruption in the W Balkans have already been passed as acts of legislation. However, quite naturally, implementation lags behind. This evaluation is especially true as far as co-operation between authorities —both on national and on international level — is concerned.

Some structural weaknesses still form obstacles to such co-operation: Not all systems of pre-trial procedure are compatible within the small countries forming the region, although efforts in the same direction as in the New Bulgarian Penal Procedure Code (towards a leading role of the public prosecutor rather than the investigating judge) have been made. Special prosecution authorities for the combat against organised crime and corruption have been established; but their legal competences are not equal and do not always ensure an efficient and economic use of resources: Sometimes competences are too narrowly limited because they do not include all forms of serious corruption, others are too extensive, including petty ("street") corruption cases whose handling by specialists can be regarded a waste of precious expertise. The efficient use of staff with special knowhow is a "must", however, in a region, where there is no general lack of manpower in investigating authorities, prosecution offices and courts, but only a very limited number of really well-trained and specialised investigators (including finance and accounting specialists), prosecutors and judges.

The specialised public prosecutors also miss equally specialised counterparts on the same working level in police and courts: It makes a considerable difference whether a special prosecutor can cooperate with a police unit closely attached and endowed with competences for the same range of crimes — or with a department of the Ministry of Interior also competent for a great number of other tasks. The comparatively limited number of operators in specialised units with clearly defined matching competences could also be more easily subjected to equally close scrutiny (security, property and income checks).

Data and witness protection have already been provided for in legislations of the region, but implementation is insufficient. For this reason, there is still a wide-spread reluctance to cooperate with justice.

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To ensure such cooperation, a region-wide cooperating protection program as well as more video conference equipment is needed. Technical equipment, but also common rules and standards for good practice and training, would ensure regionwide improvement of data protection, registration, analysis and exchange. The same is true for good practice on special investigation methods.

One of the greatest problems is the lack of both reliable and affordable experts, translation and interpretation services. Common (region-wide) pools and registers for such services have been proposed as a solution.

Considering the smallness of territories and populations, international cooperation within and beyond the region is an urgent need for an effective crime combat. There are, however, still very narrow limits to extradition and to transfers of proceedings. Suspects or convicted persons have a good chance to avoid being trialled or punished, if they just manage to change from one territory to the other. <sup>Criminal</sup> Procedures are also delayed or made ineffective by complicated procedures concerning letters rogatory. Even in countries whose legislation allows direct contacts practice remains the same: A great number of authorities, both in the requesting and in the requested state, are involved, because central authorities (ministries) or even diplomatic channels are preferred to direct contacts between the authority initiating a request and the one in the requested state which really carries the workload of the execution.

Direct contacts take place, at least, within the contact (focus) point systems of CARDS, SEEPAG, or EUROJUST. The recommendation to use the same expert persons in each country as such contact points has not always been followed.

The lack of training of prosecutors and judges in matters of international cooperation as well as in foreign language is also obvious. Together with the small number of affordable translators this also causes a great part of delays of criminal procedures of international scope.

Another difficulty in such cases is that the co-ordination of pre-trial measures and the swift determination of a single authority to take the lead in a cross-border case is rarely possible due to the lack of harmonised guidelines and framework.

In all systems concerned, the need for intensified training of judges and prosecutors has been recognised and is already partially met by the help of donations. To cover all needs, a better coordination of sponsoring and donation programs would be necessary.

More objective selection procedures concerning candidates for prosecution or court service have been introduced. It is, however, doubtful whether appointments to leading positions and dismissals of such chief experts are always in accordance with objective criteria. To my impression, they take place rather frequently after major political changes, and the reasons presented to the public sometimes seem somewhat superficial or not more than a pretense.

This kind of instability (even if only assumed) can be seen as one of the numerous causes for the obvious lack of public trust in the authorities involved in the combat against organised crime and corruption. Making the public-~~instead-~~fully aware of the importance of this combat and of the true devotedness of all authorities engaged in this struggle should be a major goal of the stakeholders. To achieve this change of public attitude, professional fair cooperation with the mass media as well as the help of media experts within the institutions will be required. Together with the closing of security and confidentiality gaps by improved data and witness protection and intensified selection and scrutiny of staff, this could create a climate not only of acceptance, but of support for the actions of investigators, prosecutors and judges in their common fight. Only in such a climate, their success can be sustainable.

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