



Challenges for the criminal procedure in cases of corruption

**Fighting corruption- Are we on a road to
nowhere?**

Dubrovnik, 21-25 March 2011



Introduction

- **Corruption as a non-static phenomenon**
- **Need for a systemic approach:**
 - **The establishment of a proper legal framework is one of the goals**
 - **Criminalisation of certain conducts of corruption as a first step to fight against corruption**
 - **The need for implementation of those rules**



The criminal justice response

- **What are the challenges for the criminal procedure in cases of corruption?**
- **What are the problems of the criminal justice system when prosecuting cases of corruption?**
- **Is the actual setting adequate or do we have to reform the rules and principles of criminal proceedings in order to fight more efficiently against corruption?**



Independent Judiciary

- **CoE Recommendation (94)12, of 13 October 1994, On the Independence, Efficiency and Role of Judges**
- **European Charter on the Statute for Judges, of 10 July 1998**



Independent Judiciary

- **Judicial decisions not subject to revision outside any appeals; only exceptionally (amnesty indults) may government invalidate judicial decisions**
- **Decision on their own competence**
- **Executive and legislative shall ensure independence**
- **Decisions concerning professional career of judges should be based on objective criteria, selection based on merit, having regard to qualifications, integrity, ability and efficiency.**
- **Appointment as a rule for lifetime**
- **Special independent and competent body for the government of the judiciary**
- **Ensure proper working conditions: sufficient number; ensure status and remuneration; clear career structure; measures to ensure safety**
- **Accountability and responsibility controlled by special competent body (High Councils of Judiciary)**



The importance of criminal justice

- **Criminal Law Convention on Corruption, Strasbourg, 27 January 1999**
- **UN Convention against Corruption of 2003**
- **CoE Resolution (97) 24 of 6 November 1996, on the Twenty Guiding Principles for the Fight against Corruption.**



TWENTY GUIDING PRINCIPLES

- **3. to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;**
- **4. to provide appropriate measures for the seizure and deprivation of the proceeds of corruption offences; EU FD 2003/577 on freezing property and evidence**
- **6. to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society;**
- **7. to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks;**



Increasing cooperation

- *First and basic pre-condition to investigate and prosecute is to know there is an offence*
- *Witnesses:*
 - *Know to whom to report, trust in the action of the enforcement agents and be safe from negative consequences*
 - *Admit anonymous report?*
 - *Witness protection measures and programmes.*



Increasing cooperation

- **Insiders and “whistleblowers”**
- **Art. 37 UN Convention 2003:**
 - Mitigating punishment
 - Granting immunity from prosecution
- **Problematic application in Croatia: GRECO Evaluation report 2009), even only two cases applied**



Gathering Evidence Problems

- ***The need to use special investigative techniques***
 - ***Wiretapping, electronic surveillance, undercover agents***
- ***In many countries: de facto not used or only allowed for serious or organised crime***
- ***Tracing of bank transfers and the problems of bank secrecy rules***
- ***Special investigative techniques: need of serious suspicion and proportionality. Should these requirements be revised in cases of corruption?***



Prosecution Powers

- **Discretionary powers of prosecution, more risks for inappropriate influencing and of corruption**
- **Mandatory prosecution: neither without risks**

CORRUPTION=

(MONOPOLY+ DISCRETION) – (RESPONSIBILITY+INTEGRITY+
TRANSPARENCY)

**Eliminating monopoly as a solution? The Spanish
“popular accusation”.**



Conclusion

- ***Strong political will is required to fight against corruption, and here Montesquieu's statement is still completely valid nowadays:***

“Every man invested in power is apt to abuse it”



Thank you for your attention!