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Corruption is a major human rights problem

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In several European countries there is a widespread belief that the judiciary is corrupt and that the courts tend to favour people with money and contacts.

This perception may sometimes be exaggerated, but it should be taken seriously. No system of justice is effective if it is not trusted by the population. Even worse, there are indications to show that people's suspicions are in some cases well justified.

During my visits to member states of the Council of Europe I have often heard complaints about corruption affecting key components of the justice system: the judiciary, the police and the penitentiary.

Such allegations may be part of party political propaganda and are in many cases difficult to verify. Still, it has become clear to me that corruption in the justice system is a serious problem in several European countries - not only as a perception, but also as a concrete reality.

Corruption in the justice system often goes hand in hand with political interference. Ministers and other leading politicians do not always respect the independence of the judiciary and instead give underhanded signals to prosecutors or judges on what they are expected to deliver.

The distortive effect of such practices is even worse in countries where there are close links between the political leaders and big business. This is where greed really tends to triumph over justice.

Corruption threatens human rights and, in particular, the rights of the poor. Policemen are badly paid in several countries and some of them try to add to their income through asking for bribes; the result is that people without money are treated badly. I have met prisoners who have had no family visits because the relatives could not pay the unofficial fee for the entry into the prison.

Sadly, there are also cases of court officials who have been influenced by money under the table or by other less obvious favours, like career promises. This appears, in fact, to be one of the explanations for the excessively drawn out trials in some cases and for the very shortcut procedures in others.

Judges should be well paid in order to minimise the temptation for such corrupt practices. However, a higher salary level is only one aspect of this picture and not always effective – indeed, greed sometimes tends to grow with income.

What is needed is a comprehensive, high-priority programme to stamp out corruption at all levels and in all public institutions. There is also a need to react clearly on corrupt practices in private business, the consequences of which tend to spill over into the public sphere.

The basis has to be a concise legislation which criminalises acts of corruption. However, such laws can in themselves hardly address all concrete problems in this field. It is extremely difficult to define the criminal dimension of some of the corrupt

practices, such as nepotism and political favouritism. Issues relating to 'conflicts of interest' must also be assessed in their contexts. In other words, more focused standards and effective follow up mechanisms are necessary.

Clear procedures for the recruitment, promotion and tenure of judges and prosecutors are a must and should confirm the fire-wall between party politics and the judiciary. The process of appointing judges should be transparent, fair and based on merit. Requirements concerning the integrity of judges should be part of their training and defined clearly and early in the recruitment process.

Codes of conduct could serve as useful tools to enhance the integrity and accountability of the judiciary. The standards should regulate behaviour in office, but also for outside activities and their remuneration. Independent disciplinary mechanisms should be established to deal with complaints against court officials. They should be able to receive and investigate complaints, protect the complainants against retaliation and provide for effective sanctions.

Relevant recommendations have been presented by the *Group of States against Corruption* (GRECO), a body initiated by the Council of Europe to fight bribery, abuse of public office and corrupt business practices. GRECO has also developed a system for regular review of anti-corruption measures among its participating member states; its reports have encouraged important reforms on a national level.

Legally binding norms for measures against corruption are set by a couple of important international treaties which should be used as inspiration for national action. The Council of Europe has adopted the *Criminal Law Convention on Corruption* and the *Civil Law Convention on Corruption* which entered into force in 2002 and 2003 respectively. There is also the *United Nations Convention against Corruption* which entered into force in 2005.

One aspect stressed in these treaties is the need to protect those individuals who report their suspicions in good faith internally or externally. Such whistleblowers have too often been hit by retaliation – dismissals or worse - which in turn may have silenced others who have had grounds on which to report misdemeanours. Even if such overt sanctions are prevented there remains a problem of how to hinder more subtle forms of retribution, for instance non-promotion or isolation.

Many corruption scandals have been exposed by the media and freedom of expression is, indeed, key in this struggle. This is one reason why it is essential to promote freedom and diversity of the media and to protect the political independence of public service media. The European Court of Human Rights has recognised that the press is one of the means by which politicians and public opinion can verify that judges are discharging their heavy responsibilities in a manner that is in conformity with the task entrusted to them.

It is also important that Freedom of Information legislation promotes governmental transparency. The public should, in principle, have access to all information which is handled on their behalf by the authorities. Confidentiality is, of course, necessary, for instance in order to protect privacy and personal data, but should be seen as

exceptional and be justified. Though progress on this is being made in Europe, transparency is far from the general rule.

Not only should governments be passively transparent, they have an obligation to ensure that the public has effective access to information. The European Court of Human Rights has emphasised that the public must have information on the functioning of the judicial system, which is an essential institution for any democratic society. "The Courts, as with all other public institutions, are not immune from criticism and scrutiny".

When reporting on Ukraine I had to stress the importance of such transparency, 'With the exception of the judgments of the highest courts, only a small percentage of judicial decisions are published. Accurate and reliable records are an exception'.

Parliamentarians could play a particularly important role in the fight against corrupt practices. They should certainly set a good ethical example themselves and openly declare their income and capital assets, as well as all relevant activities carried out on the side, connections and interests. Further, they could act as watchdogs on the risk of corruption within the government administration and ask questions which others may find difficulty in answering. They could ensure that legislation and oversight procedures are in place and functioning.

Some of the non-governmental organisations already play an important role in the struggle against corruption. This has now been recognised in, for instance, Ukraine and Serbia. On an international level the Berlin-based Transparency International (TI) has made major contributions and also managed to encourage the World Bank to take the problem more seriously. TI has now national sections in several countries and there are also other groups on a national level who expose bad practices and seek reforms against corruption.

Ombudsmen and other independent national human rights structures are in some countries actively working against undue influence and other corrupt practices. Examples are the Public Defenders in Georgia and Armenia who have described how poor and destitute people are damaged by such tendencies. In Latvia the mandate of the Ombudsman specifically includes work on violations against standards of good governance.

The poor need legal aid, not pressure to pay bribes. They need proof that everyone is equal before the law. They need a system of justice that is fair and unbiased. This is their right.