



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 21 March 2013
cdpc/docs 2013/cdpc (2013) 3

CDPC (2013) 3

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

**SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE ON
PROTOCOL TO CRIMINAL LAW CONVENTION ON CORRUPTION:
NON-PROFIT SECTORS**

Document prepared by the
Directorate General I – Human Rights and Rule of Law

CDPC website: www.coe.int/cdpc
CDPC e-mail: dgi.cdpc@coe.int

Introduction

In June 2012, the Committee of Ministers of the Council of Europe invited “the European Committee on Crime Problems (CDPC), in co-operation with the Group of States against Corruption (GRECO) and EPAS (European Partial Agreement on Sport) to consider the feasibility of an Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), which could expand the scope of application of its provisions to the private non-profit sector, notably sport;” (see point 4 of the CM decision attached).

As a follow-up of this decision, the CDPC decided “to instruct the Secretariat, in order to allow the CDPC and GRECO to form a view on this matter, to send out a short questionnaire and invite delegations to reply to the following questions:

- Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?
- Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?
- Are you aware of any studies on these practices/phenomena that have been carried out in your country?
- What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?”

This questionnaire was sent to CDPC and GRECO delegations and to date 29 replies have been received which have been compiled in a CDPC document (CDPC (2012) 19 Bil rev).

This document contains explanations and summaries of the replies and attempts to draw some initial conclusions.

Summary of the replies

1. Which corrupt practices/phenomena in non-profit sectors (such as sport, humanitarian aid, politics, trade unions, etc.), if any, are not covered by the existing legal provisions on bribery in your country?

In the majority of states that replied to the questionnaire, corrupt practices in non-profit sectors are covered by existing legislation be it the criminal code, criminal law or specific corruption law. For example Montenegro has specific articles in the criminal code that regulate bribery of responsible persons in non-profit organisations and institutions. Several states have a particular article within the criminal code (e.g. Belarus, France, Greece) or in the anti-corruption law (e.g. Poland) which covers corruption in sport.

Some states have answered that the current criminal legislation is broad enough to cover both public and private sectors and therefore any corruption in non-profit sectors such as sport would fall under these more general provisions. For instance, in Slovenia the criminal code was amended in 2012 to give a new broader definition of economic activity which would in principle cover corruption in the non-profit sector. In Ukraine the law on prevention and combating corruption covers corruption offences committed by people who work in areas such as sport, humanitarian aid, trade union activities and others.

For some countries, although the criminal code covers certain aspects of corruption in sport such as bribery of public officials, when this is not the case, for example when benefits are granted to players or referees for the purpose of game manipulation, these aspects are sanctioned by other provisions on fraud or breach/misuse of trust (e.g. Germany, Turkey). Alongside the criminal code, certain countries also have specific laws on corruption in sports, for example Cyprus (sports organization law, 1969) and Portugal (corruption in sports law, 2007). In Turkey the Law on the prevention of violence and disorder in sports covers match-fixing and incentives as does the Italian law on the manipulation of results in sports competitions.

However some countries such as Estonia and the Republic of Moldova state that corruption in non-profit sectors does not appear to be covered by the existing legislation. Estonian legislation does not explicitly exclude the non-profit sector however there is no relevant experience in this matter and in Moldova many illegal practices such as corruption in sport do not fall under the current criminal code. In Bosnia and Herzegovina, although there are no specific provisions, the reply refers to rulebooks on disciplinary liability which provide basis for sanctions.

Lithuania also reports that, although in theory the existing legislation covers all corrupt practices, there has never been a single case of someone being sentenced for sports bribery for example. On the contrary the Czech Republic, where corrupt practices are covered by the criminal code, refers to extensive jurisprudence in cases of match-fixing.

In Switzerland where provisions on corruption in the private sector exist, the question is still open as to whether these provisions would cover sports organisations. This topic is currently under debate. Along the same lines, in Finland where the corruption legislation covers both the public and private sectors, there is the question of whether, concerning match-fixing for example, while the legislation covers high-level matches, this legislation would stretch to matches at a lower-level (non-professional).

A further safeguard in common law countries is the offence of conspiracy to defraud (Ireland) or conspiracy to commit the offence or offences in question (UK). The Netherlands underlines that the current legislation is broad enough to cover such corrupt practices.

The reply from Sweden refers to new legislation in the Swedish penal code amending Sweden's bribery offences (July 2012), however argues that there is nothing to prevent the sports movement from taking self-regulatory measures to further strengthen the protection against manipulation of sports results for example.

Conclusion

In conclusion, in almost of the countries that replied to the questionnaire, corrupt practices in non-profit sectors are covered by existing legislation. However, the form that this legislation takes varies from state to state. In some countries, the wider provisions of the criminal code apply, while in others there are more specific provisions within the criminal code. Some countries mention the anti-corruption law as also applying. In certain states there are specific laws for particular offences, for example in the case of sports manipulation. However concrete examples of sanctions actually being applied against such corrupt practices seem to be few. Moreover, once again taking the example of sport, additional steps could be taken by sports organisations to further protect against corruption and manipulation of sports results.

2. Are there any plans or intentions in your country to address these practices/phenomena and possible legal lacunae related thereto?

In 20 of the 29 states that replied to the questionnaire, there are no plans to address these practices in the near future. For three states, Greece, Sweden and Switzerland, this is because their legislation was recently amended (2012). Germany raises the need to avoid over-criminalisation in this respect.

In Cyprus the Sports Organization Law is currently under revision to be amended: criminal provisions regarding corrupt practices in sport may be strengthened and/or revised as a result. In Ukraine as well, a draft law is being examined on “preventing and counteracting achieving the fixed results and other corruptive offences in football”.

In Finland there are plans to include trading in influence into the Criminal Code. Further discussions have been taking place, however for the instant there are no other concrete plans.

In the case of Ireland the Criminal Justice (Corruption) Bill 2012 was approved in June 2012. When enacted this will strengthen the existing law criminalising corruption in Ireland while addressing active and passive corruption and will hopefully be sufficiently broad to cover non-profit sectors.

In “The former Yugoslav Republic of Macedonia”, where many of these practices are already covered fairly extensively by the Criminal Code with the latest amendments made in 2009, there are currently plans to add further articles to the code on match-fixing, violence in sports matches and corruption in sport.

Although the Republic of Moldova has recently adopted a law on corruption, there is now a draft law under preparation to modify the criminal code in line with the recommendations of CM Rec (2011)¹⁰ on promotion of the integrity of sport to fight against manipulation of results, notably match-fixing. This would include the addition of two new articles on manipulation of an event and arranged bets. It would criminalise encouraging or influencing a participant in a sporting event to carry out actions that could alter the result of this event in return for any type of advantage or benefit. Illegal betting or encouragement of people take part in irregular betting would also be criminalised. The draft law had its first reading in parliament in December 2012.

In Switzerland legislative work is being carried out in order to put into place the recommendations of the GRECO 3rd round evaluation. This should clarify the existing provisions on corruption in the private sector.

Conclusion

Although some states have recently amended their legislation, adopted new legislation or plan to do so in the future, it appears that many states, that do not have any specific criminal law provisions on corrupt practices in non-profit sectors, have also indicated that they do not have any plans to develop specific legislation in this respect.

3. Are you aware of any studies on these practices/phenomena that have been carried out in your country?

21 out of the 29 states that replied to the questionnaire were not aware of any studies on these practices. This is either because there is no available information or because they are unable to gain access to this information.

For the other countries, some studies have been carried out at government level, for example in Belgium a study by the Office Central pour la Répression de la Corruption (OCRC) on football and in Switzerland a 2012 report on the fight against corruption and match fixing in sport. In Greece the NGO Transparency International Greece deals with corruption in sports and published an article on Football and Corruption in 2011 stating that the main problem with regard to corrupt practices is the lack of any internal control mechanism. In other countries studies have been carried in the academic field for example in Finland where one doctoral thesis is being carried out on sport and there is research on the gambling market carried out by Turku School of Economics. In Lithuania there are several recent studies mainly focussing on corruption and cheating in sport.

In both Finland and Turkey the government is carrying out other initiatives. The government of Finland has recently prepared an action programme mentioning that risk-sectors of corruption should be mapped out. This could happen soon and sports could be included as one of the risk-sectors. In Turkey a brochure setting out citizen's rights and administrative regulations is planned with a view to raising social awareness.

Conclusion

Therefore we can conclude that studies and other types of initiative are being carried out however only in a few states, from differing standpoints and on a limited scale.

4. What are, in your view, the (perceived) legal difficulties in criminalising these practices/phenomena?

19 of the 29 countries that answered the questionnaire did not see any legal difficulties in criminalising these practices. However some of these countries (e.g. Greece, Ireland) mentioned that although the potential problems are not in the criminalisation in itself, there may be difficulties in other aspects related mainly to prosecution of the offences. The example of proving the link between a player underperforming deliberately and a transfer of money was given.

Other countries such as Finland took the opportunity to call for awareness-raising in the matter.

Bosnia and Herzegovina and Italy mentioned the possibility of having a new legal instrument in this field. For Bosnia and Herzegovina the existence of a unique legal instrument (convention or protocol) on this matter could be a helpful tool and a good basis for strengthening the national legal framework. The UK called for a comprehensive and all-embracing legal framework. For Switzerland co-ordination among those working on the problem at the CoE level is necessary.

Of those that pointed to problems in the criminalisation of these practices, some were concerned about the lack of clarity in the concepts and in the definition of terms used. Along the same lines, Slovenia mentioned that the line between allowing the giving and accepting of gifts and forbidding this not very clear, so it is hard to establish a legal basis and court practice. In Latvia the problem is that the manipulation of sports results includes a wide range of offences some qualifying as criminal offences and other as administrative offences.

Belgium mentioned that their Criminal Code requires that managers or employers not be aware of or approve the offender's actions. This is not entirely satisfactory as this requirement could be misused to permit agreements for the purposes of manipulation of the game between the management of 2 football clubs for example or to enable persons being prosecuted after the event to be exonerated.

Conclusion

While for most countries that answered the questionnaire there are no problems in the criminalisation of these practices, for certain there are some difficulties stemming from the lack of clarity in the concepts and the terms used and also the interpretation of the law as it stands. For others to collect evidence and prove the charges in criminal proceedings seems to be one of the major problems in many cases. At the same time it is also important to protect the citizens and take into account their rights.

Certain countries agreed that the possibility of a specific legal instrument in this field could be looked in to.

General Conclusion

In general in the majority of countries that replied to the questionnaire corrupt practices in the non-profit sector are covered by existing legislation and these countries have no plans to make any changes. However in certain countries the legislation has recently been amended or new legislation is in the pipeline. The replies also revealed that studies in the field are relatively rare.

Furthermore, in most countries that replied to the questionnaire there are no particular legal difficulties in criminalising these practices, although for many states there may be problems interpreting the provisions of the law due to *inter alia* a lack of clarity in the terms and definitions. There are also serious problems in the collection of evidence in order to properly bring the charges in criminal proceedings. Awareness-raising on corruption in non-profit sectors could be also a valuable initiative in a possible protocol to the CoE convention on corruption.

APPENDIX

Item 8.1

12th Council of Europe Conference of Ministers responsible for Sport (Belgrade, Serbia, 15 March 2012) – Report by the Secretary General (CM(2012)66)

Decisions

The Deputies

1. took note of the resolutions below adopted by the 12th Council of Europe Conference of Ministers responsible for Sport (Belgrade, Serbia, 15 March 2012) (cf. document CM(2012)66, Appendix 3):

- Resolution No. 1 on international co-operation on promotion of the integrity of sport against the manipulation of results (match-fixing);
- Resolution No. 2 on current issues in pan-European sport co-operation and, in particular:
 - 2.1 on co-operation between the Council of Europe and the European Union
 - 2.2 on strengthening the monitoring capacities of the Convention on Spectator Violence;

2. agreed to bring them to the attention of their governments and to transmit them to the States Parties to the European Cultural Convention as well as to the member States of the Enlarged Partial Agreement on Sport (EPAS);

3. invited the EPAS Governing Board, where appropriate, in co-operation with the Group of States against Corruption (GRECO), the European Committee on Crime Problems (CDPC), MONEYVAL and other relevant bodies, and in co-ordination with the European Union, to launch the negotiation of a possible Council of Europe Convention against Manipulation of Sports Results and notably Match-fixing. EPAS shall report on the process to the Committee of Ministers for consultation as soon as possible. EPAS shall submit the completed draft instrument that may, eventually, be finalised as a convention or as another instrument, to the Committee of Ministers;

4. invited the European Committee on Crime Problems (CDPC), in co-operation with the Group of States against Corruption (GRECO) and EPAS to consider the feasibility of an Additional Protocol to the Council of Europe Criminal Law Convention on Corruption (ETS No. 173), which could expand the scope of application of its provisions to the private non-profit sector, notably sport;

5. instructed the Secretariat to forward the above-mentioned resolutions to the competent Council of Europe bodies for information and so that they could take them into account in their work; invited the Standing Committee of the Spectator Violence Convention in particular to undertake a critical review of the Convention, prior to taking other steps mentioned in Resolution 2.2;

6. instructed the Secretariat to forward the above-mentioned resolutions to the European Union for information, and in particular Resolution No. 2, section 2.1 – Co-operation between the Council of Europe and the European Union;

7. taking into account decisions 1 to 6 above, took note of the Secretary General's report on the 12th Council of Europe Conference of Ministers responsible for Sport, as it appears in document CM(2012)66, as a whole.