

**Octopus Interface "Corruption and Democracy"  
Workshop on democracy, corruption and justice**

**DEMOCRACY, JUSTICE AND CORRUPTION - ISSUES FOR DISCUSSION**

A democratic state is based on the separation of powers between the executive, the legislature and the judiciary. The judiciary must be independent in order to ensure that the executive and the legislature act within constitutional limits. A democratic state is furthermore built on the rule of law: nobody is above the law and everybody is to be treated equally before the law. The right to a fair trial and the fair administration of justice is a basic human right. Independence, impartiality, integrity, fairness, equality, responsibility, competence and diligence are core values and principles which should guide the judiciary (as reflected in the Bangalore Principles on Judicial Conduct and the Charter for the Status of European Judges).

With regard to corruption, two aspects are of particular importance:

1. Institutions of the judiciary and the justice system (including investigative judges, prosecutors, law enforcement officers) should be free from corruption
2. Institutions of the judiciary and the justice system should be independent and free from undue influence. This is particularly important for those investigating, prosecuting and adjudicating corruption offences.

This is clearly stated in the Criminal Law Convention on Corruption of the Council of Europe and the United Nations Convention against Corruption. The independence of criminal justice institutions investigating, prosecuting and adjudicating corruption offences was also a principle evaluated during the first round of GRECO evaluations.

In practice, however, the confidence in judicial independence, integrity and effectiveness is rather low in a number of European countries. In many, the independence of those investigating, prosecuting and adjudicating corruption offences requires further strengthening. Of particular concern seems to be the undue influence that may be exercised by governments on the criminal justice system, such as:

- Pressure on judges, prosecutors, investigators by politicians
- Instruction of the prosecution by the executive
- Patronage and influence in the selection/appointment/promotion of judges or prosecutors, or their removal
- Politically motivated prosecutions/convictions or non-prosecutions
- Immunities to prevent prosecution and protect corrupted politicians

Such undue influence may lead to the corruption of democratic principles, that is:

- The rule of law
- The separation of powers
- Human rights (right to fair trial, fair administration of justice)

Given the crucial role of an independent criminal justice system free from corruption and undue influence, the following issues are to be discussed, including lessons learned and good practices to be shared:

- What measures can be taken to ensure the independence of judges, prosecutors and investigators, and to protect them from undue political influence and pressure?
- With regard to the judiciary, how can the implementation of standards on judicial conduct and integrity be further promoted in Europe?
- To what extent could systems of immunities for elected representatives, members of government and the judiciary be reviewed in order to permit the prosecution of corruption and other criminal offences?