

GROUP 2

EFFECTIVE MEASURES TO ENSURE INDEPENDENCE AND INTEGRITY OF CRIMINAL JUSTICE AUTHORITIES

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I. INTRODUCTION

Politics penetrates into every sphere of society and sets directions for its development. All state bodies and institutions should follow the vectors of development established by the country's current political system. In this regard, the question of political influence on public authorities will always remain relevant. At the same time, such political influence is not always positive and may be reflected in various attempts to interfere with the activities of such bodies in order to secure the interests of politicians or certain individuals. The most frequent target of undue political influence is criminal justice authorities (hereinafter referred to as CJA), which are responsible for investigating, prosecuting and adjudicating high-profile corruption.

II. ISSUES AND CHALLENGES

Based on the experience of the members of Group 2, the level of undue political influence on CJA is different (from low to very high) from country to country. However, the directions of such political influence or its possible attempts are, in most cases, similar. Thus, the practical experience of the members of Group 2 showed that undue political influence on CJA may take place at the following stages:

A. Appointment of Management or Leadership of CJA (i.e. Heads of Law Enforcement Agencies, Prosecutor's Offices and Courts)

The generally accepted principle of the legal systems of countries is the principle of the separation of powers into legislative, executive and judicial branches. In accordance with this principle, a system of creating CJAs and appointing their heads is being built. For example, the head of a law enforcement agency shall be appointed by the head of the country; the head of the prosecutor's office, which oversees law enforcement agencies during pre-trial investigation, shall be appointed by the Government or Parliament; appointment of judges who subsequently consider the materials of the pre-trial investigation and make the final decision in the cases shall be made also by the head of the country. Other institutions that have to support and facilitate the activity of CJAs may also be appointed by the head, government or parliament. In such conditions and in view of political scenarios, individuals who appoint the leadership of CJAs may pursue their own interests when appointing such heads.

B. Appointment of Other Law Enforcement Officers, Prosecutors and Judges

Through the appointment of leadership of CJAs, representatives of political forces have the opportunity to influence further staff appointments of these bodies (middle- and lower-level executives and other employees);

C. While Performing Official Duties by Investigators, Prosecutors and Judges

With regard to undue political influence, which can take place while performing official duties by investigators, prosecutors and judges, it should be pointed out that there can be cases of direct pressure on the representatives of the law enforcement agencies, prosecutor's offices, judges and cases of indirect

interference into the course of the investigation, prosecution and adjudication, as well as activity of investigators, prosecutors and judges.

There are examples of attempts to obstruct the course of investigations that affect the personal interests of politicians by targeting the CJA against the investigators and prosecutors. In particular, this is reflected in the unjustified creation of criminal proceedings against an investigator and prosecutor in such high-profile corruption cases, which causes the investigator or prosecutor to be suspended from further investigation.

A further threat to their independence is posed by lack of security of their tenure. Such insecurity may make them more susceptible to inappropriate outside pressure. Inadequate remuneration may also pose a threat to the independence of investigators, prosecutors and judges in that it may, for instance, make them more susceptible to corruption.

D. While Amending Legislation Aimed at Reducing or Depriving a CJA of Certain Powers or Rights

The above-mentioned form of influence can be used to deprive or limit a CJA's powers (e.g. exclusion of certain rights, their restriction, creation of additional obstacles to the exercise of their powers) in order to interfere or substantially affect the performance of a CJA's main tasks. The members' experience revealed that while the absence of a culture of integrity is salient, the lack of transparency and clarity in the procedures of most public institutions coupled with the unfettered discretion conferred on public officials, which is prone to be abused due to a lack of guidance, have primarily sown the seeds of corruption within the public sector judiciary and other forms.

Despite the universal strides in anti-corruption legislation, practices and enforcement, the members' presentations made it clear that many issues and challenges remain, and they are shared by many countries. These include interference from politicians and superiors which may result from lack of integrity and awareness. The paradox of *quis custodiet ipsos custodes* ("who shall guard the guardians?") is not something new but remains to haunt the fabric of society, especially the upper echelons or the elites.

III. BEST PRACTICES

The members of Group 2 identified the most positive practices that, in combination, could create the most effective mechanism to counteract undue political and other influence. These positive practices include:

A. At the Stage of Appointment of Management and Staff of the CJAs

- appointment of all employees of the CJA on a competitive basis;
- creation of a selection committee for the above-mentioned purpose, which includes the representatives of certain CJAs, the representatives of public (non-governmental) organizations and international experts;
- conducting a special inspection of the persons applying for a position in the CJA (e.g. checking the integrity of the person, the presence of cases of holding a person liable, the financial status of the person, etc.).

B. At the Stage of Performing Official Duties by Investigators, Prosecutors and Judges

- creation of an internal control unit within the body's structure that responds promptly to cases of interference with the activities of the investigator, prosecutor and judge, as well as provides the prevention and further control of its conflicts of interest;
- conducting an independent external audit of the body's activities;
- creation of a declaration system, according to which all politicians, representatives of CJAs submit information concerning their assets (e.g. including information on beneficiary status, shares in business, loans, movable property, real estate etc.), assets of the members of their families;
- implementation of a gift acceptance policy, codes of ethics.

As a positive experience of preventing undue political or other influence on the activities of CJAs, the creation of an anti-corruption education system should be singled out, since such a system affects the legal consciousness of citizens and forms grounds for not accepting the phenomenon of corruption in the future. The activities such as integrity education for children and youth, awareness raising for the public sector, creating public demand for accountability, strengthening the role of media to promote a culture of integrity, strengthening civil society and citizens to enhance accountability, engaging the private sector towards a society of integrity, awareness-raising for public representatives, judges, judicial officers and so on may be considered.

Moreover, the members of Group 2 also agreed that in order to overcome the undue political or other influence both at the stage of appointment of CJAs' management, other staff and at the stage of the investigation, prosecution and adjudication, it is necessary to use the practice of actively involving the public, non-governmental organizations, representatives of mass media in observing the progress of the investigation, prosecution and adjudication of criminal cases, and further counteracting violations by investigators, prosecutors and judges.

IV. CONCLUSION

During the discussions the members of Group 2 identified both the disadvantages and the advantages of the systems on preventing and counteracting undue political influence on CJAs. As a result, the members of Group 2 suggested a number of ways to address issues concerning such negative influence on investigators, prosecutors and judges during its investigation, prosecution and adjudication of high-profile corruption cases, respectively. The options offered are not exhaustive and universal for each country, but they provide a broad choice of measures that can be most appropriate in view of the legal and political systems of each country.

Many valuable practices and experiences were shared by all of the members. The following practices drew significant attention to the implementation of selection committees, interior control units within the structure of CJAs, independent external audits of CJA activity, integrity codes of CJA representatives, procedures requiring the declaration of assets, engaging public support for anti-corruption policy, systems of anti-corruption education and awareness campaigns, etc. Each country may wish to consider adopting these practices or tailoring them to its unique legal and social circumstances.

However, it should be noted that the possibility of implementing the above-mentioned mechanisms for counteracting undue influence and ensuring integrity of CJA representatives, as well as its effectiveness, depend directly on political will and the active participation of society aimed at building and maintaining such political will.

In conclusion, the members of Group 2 also drew attention to the necessity of using prevention measures, aimed at minimizing or eliminating the potential risks for corruption. In the words of Angel Gurría, the OECD Secretary-General, "integrity, transparency and the fight against corruption have to be part of the culture, and they have to be taught as fundamental values".