# Two Years after EU Accession: Risks and Challenges to New Member States

## *Justice and Home Affairs*

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## Executive Summary

The subject of this study is the progress of reforms in the area of Justice and Home Affairs in the countries of Central and Eastern Europe (CEE) during the first two years after their accession to the European Union. The purpose is to assess the sustainability and the results of the reforms and, on this basis, to outline the key risks and challenges to the development of this process in Bulgaria.

The reforms in the field of Justice and Home Affairs in the EU-8 countries are intended to address the same problems. The totalitarian past leaves a legacy of weak judicial systems, susceptible to political influence and criminal interests, which have yet to be constituted as holders of independent power. At the same time, they must perform the functions of a modern system of pubic services ensuring effective and quick justice.

The ways to address these problems are not predetermined in terms of an approach and methods by the conditions for EU membership. Unlike the other topics in the negotiating chapters, the EU has no ready recipe for the problems of the applicant countries in the field of Justice and Home Affairs.

The survey of various publications and analyses shows that the EU-8 countries honour the commitments assumed in the course of the negotiations on membership, the European Commission assesses them as a reliable partner in the fields of management of external borders and protection of the financial interests of the Community, and no turning back on the reforms in the field of Justice and Home Affairs is observed. This conclusion can be accepted with some qualifications only with regard to Poland, where the situation concerning corruption and the respect of human rights has apparently deteriorated since the last parliamentary elections.

An analysis of the material collected disproves some of the principal fears of the old Member States associated with EU enlargement. Many see only a threat in the admission, within a short span of time, of 12 new Member States which have a different administrative culture and a tolerance of relatively higher levels of corruption. The most widespread fears of the "big bang" enlargement are associated with export of corruption and organised crime from East to West, a massive labour migration and the concomitant lowering of pay for work and loss of jobs for the citizens of the old Member States, and compromising the security of the external borders of the Union.

These fears cannot be supported by any evidence whatsoever and must be regarded as groundless speculation.

The EU-8 countries managed to carry out relatively successful reforms to accelerate and improve the effectiveness of their administration of justice and to curb corruption. The support provided under the pre-accession instruments and the partnership with the old Member States for management of external borders have produced fine results. The intensity of the movement of persons between the old and the new Member States exceeds very slightly the detected mobility inside the EU-15, which affects some 1 per cent of the population and cannot possibly have a sustained effect on the common labour market in the EU.

In all likelihood, the accession of Bulgaria and Romania to the EU will not change substantially this state of affairs, either, especially as far as labour migration and management of the EU external borders are concerned.

Still, there are several significant risks which must be extrapolated separately and which, albeit unable to affect the direction of the reform in the area of Justice and Home Affairs in Bulgaria, may substantially decelerate it or make it far more resource-intensive than it is in the EU-8 countries.

1) **Confining counter-corruption and organised crime control to the methods and means of penal policy.**

What with the influence of the overexpectation of more convictions of key underworld figures, which is signalled by the European Commission, and what with the inability of its own administration to identify and analyse problems, the Bulgarian Government invests its principal resources in criminal prosecution of corruption and organised crime. Moreover, it systematically underrates the measures to guarantee transparency and prudent management of public funds and the detection and safeguarding against possible conflicts of interest, which actually led Hungary and the Czech Republic to the road of success.

2) **Lagging in the implementation of modern methods in the management of the court system.**

The introduction of information systems for case management and case progress within the judicial system is often underestimated even though it is an exceedingly important part of the reform in the field of Justice and Home Affairs. In the EU-8 countries, this task was completed, in one form or another, at the time of accession, i.e. three years ago. The Bulgarian Integral Counter-crime Information System has been absorbing investment for more than ten years now.

3) **Too much administration and too weak co-ordination at the central level.**

It seems that the problems related to justice and home affairs are addressed in Bulgaria only through the establishment of more and more new administrative bodies, which often go into operation without a clear advance plan, trained personnel and sufficient resources. It is important to note the example of, say, the Czech Republic, which established a single service where the Bulgarian Government established three. The bringing of probation, mediation in criminal proceedings and care of crime victims under a single administrative roof in the Czech Republic and their linking to the administration of the courts is far cheaper and more efficient because it obviates a number of problems of decision co-ordination, information exchange and internal control.

4) **Capacity for active participation in the "third pillar."**

The area of Justice and Home Affairs, the "third pillar" of European integration, is currently the pillar that undergoes the most vigorous development. Part of the structures created to implement the common European policies (like the above-mentioned FRONTEX and OLAF) are still clarifying their profile and gradually re-formulate their functions through ever closer co-operation among the Member States. The EU-8 countries, as well as Bulgaria and Romania, have yet to develop their capacity for active participation in the formulation and implementation of the common policies in the area of migration, organised crime control and counter-terrorism. The discipline that the administration has built in the pre-accession period will probably help, but the national parliaments, as well as the societies themselves, will also have to pool additional resources so that the new Member States could benefit fully from this co-operation.

Since the process of judicial system reform, especially in Bulgaria and Romania, cannot be viewed as completed, it is important that, on the basis of this study and of the few other known such studies of this type, a process of regular collection and summarisation of information on the progress of reforms and their key problems be organised and maintained in future. Such an initiative would have two useful effects. On the one hand, it would help share experience and avoid making wrong or too costly governance decisions which have been proven to have led to a failure in other countries. On the other hand, such an initiative could revive and enrich the public debate on the subjects related to Justice and Home Affairs, broadening the range of feasible alternatives. Such an effect will ultimately generate an added internal impetus for reform, which is quite scarce after completion of the EU membership negotiations.

The EU institutions can use the post-accession monitoring of the judicial reforms of Bulgaria and Romania which they organise in order to address the general problem of accessibility, reliability and comparability of the available information on the effectiveness of the law-enforcement authorities and the judicial systems of the individual Member States (including the EU-15). It becomes increasingly clear that national governments cannot cope effectively on their own with current challenges to security such as terrorism, migration and organised crime. The availability of sufficient and comparable information is an essential tool to build confidence among the separate national services and, hence, to deepen integration in the field of Justice and Home Affairs.

## Introduction

The subject of this study is the progress of reforms in the area of Justice and Home Affairs in the countries of Central and Eastern Europe (CEE) during the first two years after their accession to the European Union. The purpose is to assess the sustainability and the results of the reforms and, on this basis, to outline the key risks and challenges to the development of this process in Bulgaria.

Thematically, the study covers the key issues included in *acquis communautaire* Chapter 24 *Co-operation in the field of justice and home affairs* and the commitments assumed in the course of the negotiating process to strengthen judicial capacity, fight corruption, and be ready for application of Community law. We will therefore use below the term "Justice and Home Affairs" in a more extended meaning than in the European Commission's reports, to

denote the whole range of reforms undertaken in respect of the courts and the law enforcement authorities.

The study seeks to associate the description of the legislative and administrative changes carried out with some actual trends in the development of crime and migration flows in the countries under review. The idea is to outline the practical context of the reforms rather than to conclude that the reforms of the judicial systems already have a tangible effect of these trends.

This report surveys a broad range of publications of a disparate nature, which do not concern directly the subjects of rule of law and internal security in the EU-8 countries, but indirectly make it possible to build some initial hypotheses about the trends in these areas. The hypotheses presented here are subject to further elaboration and a more in-depth verification.

### *Justification*

Notably, the sources of information on the progress of reforms in the field of Justice and Home Affairs after the accession of the new Member States are extremely scarce. Despite the importance attached to this topic in the course of the negotiating process, the European Commission did not make arrangements for a ex-post monitoring of developments in the EU-8 countries, unlike the agreed procedures for such monitoring for Bulgaria and Romania. Pursuit of such comparative studies outside the EU structures does not attract much interest, either.

At the same time, there is a very strong demand for this type of information, and the need to collect and summarise it is hardly debatable. This need is justified by two types of reasons.

Firstly, the EU-8, together with Bulgaria and Romania, are following the same reform path and have the same problems to address. From their common past of totalitarian societies and Soviet satellites, those countries have a shared legacy of weak judicial systems. They are alien to the forms of judicial review of legislative and executive acts, as well as to entire branches of law related to the development of the market economy. Explicitly or implicitly, the Gordian knot of the reforms is actually the Vyshinskyian prosecuting magistracies, which are an instrument of political repression rather than effective crime control administrations.

It is only natural to assume that the progress and the setbacks in the process of judicial reforms of the EU-8 countries would be shared as valuable and important information. In reality, however, the reformers of the separate countries have no access to summarised information on the progress in the rest of the EU-8 states. The main reason for this is that the instruments that the EU uses to encourage the reform movement do not take account of the use of such an exchange inside the EU-8 and between the EU-8 and the then acceding countries: Bulgaria and Romania. The principal EU instrument for reforms in CEE, the Phare Programme, confines this exchange and the process of provision of technical assistance to the old Member States and the applicant countries. Even though the old Member States can undoubtedly demonstrate achievements of their independent and effective judiciaries, they lack the most valuable element: knowledge of how to reform the judicial system in a post-totalitarian society. It is precisely this knowledge element that is important for reformers in the CEE countries, because it can spare them a number of mistakes and can also provide an additional incentive to reforms.

The second reason which justifies the need to collect and summarise information about the judicial reforms in the CEE is related to the characteristics of the European integration process itself. In the years since the Treaty of Amsterdam, the "third pillar" of integration, the EU as an area of freedom, security and justice, is the field of co-operation among the Member States that has been making the most vigorous progress. The structures established and functioning at the EU level: EUROPOL, EUROJUST and FRONTEX, ensure deepening of this co-operation in the future as well. Besides this, the European Commission already works on tasks involving approximation of the rules of criminal procedure among the Member States and has an Action Plan which will lead, by 2010, to the establishment of a common European instrument for collecting, analysing and comparing information on crime and victimisation in the Member States. Within this context, the accumulation of knowledge about the operation of the various national law enforcement authorities and judicial systems and the development of instruments for their comparison is a key factor of deepening co-operation among the countries.

Certainly, this process runs into a number of difficulties stemming from the lack of a uniform concept of what indicators determine that a judicial system functions successfully and the disparities in national statistics. For the CEE countries, these difficulties are additionally exacerbated by the secrecy of a large part of the information concerning the operation of the judicial systems and the law enforcement authorities, underdeveloped crime statistics and restricted accessibility of the available data. Nevertheless, it is far not impossible to collect and summarise information on the reforms of the judicial systems.

Since the process of judicial system reform, especially in Bulgaria and Romania, cannot be viewed as completed, it is important that, on the basis of this study and of the few other known such studies of this type, a process of regular collection and summarisation of information on the progress of reforms and their key problems be organised and maintained in future. This process would also be valuable in generating fresh topics for a public debate and alternative solutions to the problems and will thus provide further incentives to the reforms.

***Basic premises***

The reforms in the field of Justice and Home Affairs in the EU-8 countries are intended to address the same problems. The totalitarian past leaves a legacy of weak judicial systems, susceptible to political influence and criminal interests, which have yet to be constituted as holders of independent power. At the same time, they must perform the functions of a modern system of pubic services ensuring effective and quick justice.

Thus, the reforms in the field of Justice and Home Affairs must guarantee the simultaneous attainment of a number of different targets:

- Judicial independence
- Protection of citizens' rights and fundamental freedoms
- Quick, effective and accessible justice
- Containment of corruption and organised crime

The ways to address these problems are not predetermined in terms of an approach and methods by the conditions for EU membership. Unlike the other topics in the negotiating

chapters, the EU has no ready recipe for the problems of the applicant countries in the field of Justice and Home Affairs.

In the absence of a solid *acquis*, the acceding countries of CEE resort to various approaches in reforming their judicial systems. These approaches are largely influenced by the cultural and historical traditions of the respective country, but are also modelled under the influence of the pre-accession programmes by the solutions adopted in some of the old Member States. Thus, practically identical institutional solutions often prove to differ in content.

For example, the establishment of the probation systems in the CEE countries, in the absence of an *acquis communautaire* in the penal sanctions sphere, is strongly influenced by the established model of social assistance in the respective country and by the experience of the old EU Member States which, however, is far from homogeneous. Bulgaria has established a close pre-accession co-operation with the National Probation Service for England and Wales and adopted a probation organisation model that was closely linked to the management of a self-contained system and has a strongly pronounced control function. At the same time, the probation services in other countries, like the Czech Republic and Estonia, are attached to the courts and have a stronger element of social support, in line with the Scandinavian and German models.

Pressed in the same way by a tight pre-accession schedule and by various internal factors, the CEE countries rush through their reforms, without advance testing of the institutional solutions for which they opt, without explaining to the public and without planning the budgetary, human and logistical resources needed for a successful completion of the reforms.

These are risks that put to a test the entire EU concept of building the rule of law through the conditionality of accession. Three year later, it is actually not clear whether the new policies and the new institutions introduced in the EU-8 countries under the sign of the judicial reform deliver on their promises.

At the same time, the challenges of the present-day world: terrorism, migration and cross-border crime, exert an ever-mounting pressure for accelerated intra-Community integration in the field of Justice and Home Affairs. Mutual familiarity and confidence among the judicial systems and the law-enforcement authorities of the separate Member States is an important factor of achieving this integration. Therefore, the collection and summarisation of information on the progress and results of the judicial reforms in the EU-8 - and in the old Member States as well - will be gaining importance as a basis for reaching common solutions to the common problems. It is recommended that the collection and management of such information be developed and improved inside the EU structures, now that they are expected to formulate such common solutions.

In fact, if the collection of such information is structured and regulated for all Member States, this would be crucial in organising post-accession monitoring of counties like Bulgaria and Romania, in respect of which the European Commission has clearly emphasised that they have a lot more commitments to honour in the field of Justice and Home Affairs. The Commission must reckon with the change of context and rationalise the process of their monitoring. Bulgaria and Romania are no longer applicant countries but EU Member States. The monitoring practised before membership was conducted through peer reviews by professionals expressly recruited from various Member States. They register changes on the basis of exclusively standard criteria (such as progress in the fight against organised crime

and corruption), for which objectively quantifiable indicators are not envisaged. This monitoring was effective at the pre-accession stage because it triggered a purely political impulse for a change from without. Now that the purpose of this impulse - accession - has already been achieved, it loses its effectiveness and can no longer serve as an instrument through which the European Commission could guarantee continued reforms in Bulgaria and Romania.

Finally, it should be noted that this study, albeit inexhaustive, provides an idea of the scope and depth of the reforms undertaken by the EU-8 in the field of Justice and Home Affairs. It comes to show that the efforts of Bulgaria and Romania in this sphere are far from exclusive and the expectations of the European Commission and the old Member States regarding the results of the reforms in this country are not more rigorous compared to the expectations regarding the EU-8. Bulgaria is far not unique in adopting a new Criminal Procedure Code and Administrative Procedure Code, nor in drafting a new Civil Procedure Code and a new Judicial System Act. A sweeping renovation of legislation has been carried out in precisely these spheres by the EU-8 countries as well, and then within a timeframe fully commensurable with the timeframe in which the Bulgarian legislator had to work.

# I. Justice

The reform process in the judicial systems of the new EU Member States of Central and Eastern Europe continues even after their accession to the Union. The reforms are intended to improve the effectiveness of the judicial systems and their integration into the European legal space. All countries experience similar problems, related to understaffed courts and prosecution offices, slow court proceedings, access to justice blocked for lack of legal aid, suspicions of corruption that go uninvestigated or unpunished, low public confidence in justice. These problems affect the judicial systems of the individual states to a varying degree. An analysis of the reports of the European Commission on the countries' progress consistently shows that more problems exist in Poland, the Czech Republic and Slovakia than in Hungary and the Baltic States.

## 1. Development of the Main Priorities of Reform in the Field of Justice and Home Affairs

### 1.1. Independence of the judiciary

Under pressure from the European Commission and following judgements of their constitutional courts, all EU-8 countries launched reforms intended to guarantee the independence of the judiciary. Measures varied from adoption of entirely new judicial system laws to forming separate independent bodies of management of the judicial system to appointment of judges for life in Estonia, to a 2005 judgement of the Czech Constitutional Court which denied the government discretion in fixing judges' salaries.

It is important to note that there is no common model of separation of powers in the EU-8. In the Czech Republic, the Minister of Justice appoints, transfers and dismisses court presidents and vice presidents. This Minister is also the key figure in judicial system supervision. In

Poland and Slovakia, judges are nominated by the National Judicial Council but are appointed by the President of the Republic. In Lithuania, the President appoints the county judges and nominates the presidents and judges of the Supreme Court and the Appellate Court, who are approved by Parliament. In Slovakia, the Minister of Justice appoints the presidents and vice presidents of the separate courts. In Slovenia, the executive branch of government exerts a similar influence in designating court presidents.

One of the *risks* to Bulgaria is related to the still debatable question of judicial independence. Compared to the EU-8 countries, where a certain compromise has long been reached, the Bulgarian Judicial System Act was adopted at a rather early stage and has been repeatedly amended without achieving a satisfactory legislative solution. The matter was re-regulated by the latest amendments to the Constitution in early 2007, but this arrangement can hardly be considered as conclusive. The Bulgarian Constitutional Court will most probably have to pronounce yet again on the independence of the judiciary. Without a stable agreement reached at the constitutional or legal level regarding the apportionment of responsibilities to the Ministry of Justice and the Supreme Judicial Council, the reform in the field of Justice and Home Affairs in Bulgaria will continue to suffer from a lack of a leader and a clear programme of priorities.

### 1.2. Strengthening the administrative capacity of the judicial system

All new EU members have a problem with the timely completion of judicial proceedings and with people's low confidence in justice. The European Court of Human Rights is considering hundreds of applications against those States in connection with delayed proceedings.

The countries apply a complex of measures which could be grouped into the following categories:

- **Increasing the staff and appointing an additional number of judges and prosecutors;**

Recruitment of new judges in Poland and the Czech Republic has prompted a debate about the need to fix a lower age limit for judges so as to guarantee that when they take office they are sufficiently experienced. In 2005, the Association of Judges clashed with President Klaus in the Czech Republic over his refusal to appoint judicial executives aged under 30 to judge positions.

- **Preparing an assessment of the caseload of court personnel and magistrates and taking action to relieve magistrates of extrinsic administrative work;**

A positive example in this respect is the creation of the position of *court assistant in Lithuania and Hungary*. Court assistants relieve judges of extrinsic administrative duties. By 2004, all judges at the Supreme Court, the Court of Appeals and the Supreme Administrative Court had such assistants. Extension of the system to district and county courts is forthcoming. More than 100 jobs for prosecutor's assistants have been created as well. After a study found that administrative work takes up to 70 per cent of the working time of judges, Hungary, too, adopted an express Act on Legal Assistants in 2001. As an additional measure, in 2006 Hungary adopted a law making admissible court actions against excessively long court proceedings.

- **Improvement of the information support of the systems: reforming and expanding the existing information systems;**

In Latvia, court computerisation was completed in 2003. A single court information system was introduced. In Hungary, the so-called Justitia.Net project has been implemented since early 2004. It interfaces the national courts into a single information system. A similar information system is operational for the offices of the public prosecutors as well.

Another positive example can be found in the experience of Estonia. A special analysis of the regional cover of courts and the workload of the individual courts has been prepared in that country as a basis for optimisation of the distribution through redefinition of geographical jurisdictions.

Poland presents a negative example in connection with the administrative support for administration of justice. That country has drawn repeated criticism for the bad records of court proceedings. Even though such records are kept, not everything is written in them but only what the court dictates or summarises. Record takers often do not use computers but write in hand. Lawyers' arguments are not recorded at all in Poland. Records are often contested before the Supreme Court as inaccurate or incorrect. This leads to delays in proceedings.

### 1.3. Modernisation of the process and improving the effectiveness of court proceedings

The EU-8 countries are taking comprehensive measures to simplify, accelerate and modernise their court proceedings. Entirely new legislation is adopted in key areas of substantive and adjective law, and measures are taken to optimise the enforcement of court judgements. Court specialisation is pursued, mainly through establishment of separate administrative courts.

Lithuania is one of the countries which have changed substantially their legal system, by adopting a new Code of Civil Procedure (effective 1 January 2003), a new Criminal Code, a new Code of Criminal Procedure and a Code of Enforcement of Punishment (effective 1 May 2003).

Parallel to that, large-scale programmes are implemented for upgrading the professional qualification of judges and prosecutors. Self-contained educational units have been established: a Judicial Academy in the Czech Republic, and a Judicial Training Centre in Poland. Lithuania has adopted an interesting approach. It has introduced compulsory in-service training for judges and, according to the law, the State budget allocations made available for training should amount to not less than 1.5 per cent of the amounts allocated for judges' salaries for the respective year.

### Conclusions

Most of reform initiatives in the CEE countries were rushed in, without advance planning and experimental implementation. At the outset of the reforms, the absence of reliable information systems and programmes for personnel training impeded additionally the application of newly adopted legislation. In the short term, the measures to optimise the administration of the judicial system and to accelerate court proceedings cannot be expected to meet their pre-set targets.

Undoubtedly, though, modernisation of legislation, the clear demarcation of responsibilities of the executive and judicial strictures and the increased investment in personnel training will be playing a positive role and will guarantee the irreversibility of reforms.
The existence of safeguard clauses in Bulgaria's EU Accession Treaty, as well as the arrangement of post-accession monitoring in the field of Justice and Home Affairs on the part of the European Commission, clearly shows the EU bodies attach far greater importance to the problems in the field of justice in Bulgaria compared to their position towards the countries of the previous enlargement of the Union. Therefore, the process of post-accession monitoring should be placed on a solid basis, i.e. it should rely much more on facts and data about the functioning of the court than on political evaluations. It is recommended to complete within the shortest time possible the introduction of the integral counter-crime information system, the development of systems for evaluation of the impact of proposed legislative revisions and ex-post monitoring of the application of laws. This will guarantee a reliable infrastructure for monitoring and evaluation of the reform process and, hence, for its better management.

## 2. Application of Community Law

Compared to the rest of the state institutions, the courts become really involved in European integration *after* the point of a country's accession to the European Union. Then the courts gain importance in the process of decision-making regarding integration. Even rank-and-file judges of the courts of first instance can approach the Court of Justice of the European Communities (ECJ) for interpretation of Community law and apply this law, assigning it priority over their national law, when they find a conflict between the two.

Achieving readiness for application of Community law is a long and complicated process. The principal challenges facing judges in the new Member States stem from a lack of experience in the interpretation and application of Community law and use of the new institutional approaches. Judges' work is blocked by the obscure links between the constitutions and Community law, the lack of translations of all sources of EU law, and the introduction of new legal institutes and methodology.

National judges must master teleological [1] arguments for interpretation of the legal standards and apply principles and standards which have not existed so far in the new Member States, such as the principles of effectiveness and proportionality, which are applied by the ECJ. The difficulties lie in the fact that judges in the countries of Central and Eastern Europe, with the exception of constitutional judges, traditionally use a formalist approach to interpretation and argumentation.

Judges must master the handling of precedent, which is binding if set by ECJ jurisprudence. The CEE countries belong to the continental legal system. Since this system does not officially resort to precedent, judges have no experience in this respect.

Even before the accession of the EU-8 countries, some judgements of their constitutional courts made references to the principles of Community law in the awareness that it will become binding after completion of the negotiating process. The shared element of these

[1] Editor's Note: The method of teleological interpretation seeks to clarify the purpose (Greek – *telos*) of the law. Thus the court chooses from among several possible interpretations of a standard the one that will ensure, to the greatest degree, the practical application of the purpose of the law.

judgements is the "Euro-friendly" approach of constitutional judges to this process.[2] Thus, the Polish Constitutional Tribunal introduced, as a general rule of construction, the obligation of judges to interpret the existing legislation in such as way as to ensure the greatest possible degree of compatibility of national legislation with Community law.[3] The same Tribunal used Community law as a tool of interpretation even before accession. [4] The Czech Supreme Court[5] and the Czech Constitutional Court adopted a similar approach.[6].

Rushed and shoddy legislative work led to appeals by individuals and companies aggrieved by the new legislation being lodged at the courts right after the countries' accession. In Hungary, Estonia and Latvia, such cases compel judges to complete or correct the rushed work of legislators. Below, we cite examples of the way judges handle such problems.

Despite these difficulties, the first three years after the accession of the new Member States show that doomsayers' predictions about their judicial systems were proved wrong. The courts are not inundated with disputes over the application of Community law.

### 2.1. Community law and the Constitutional courts of the CEE countries

The first constitutional court judgements on cases related to Community law concern the debate over the link between the constitution and Community law, which is classical in European constitutional law, as well as debates related to the Constitutional Treaty and the accession treaty and the European Arrest Warrant. These judgements show four things. First, caution on the part of constitutional judges, who try to avoid pronouncing on matters concerning national sovereignty. Second, respect for Community law. Third, familiarity with the caselaw and the approaches of the constitutional courts of the old Member States regarding the limits of the supremacy of EU law and a readiness to adhere to these approaches for the protection of their citizens. Fourth, co-operation with national legislators for the purpose of assisting integration into the EU in conformity with the constitution and Community law.

At the end of May 2004, the Polish Constitutional Tribunal adjudicated an interesting case regarding the elections to the European Parliament. The petitioners argued that the right of every citizen of the Union residing within the territory of a Member State to vote in such elections was in conflict with the Polish Constitution because this infringed the sovereignty of the Polish people, as well as the clauses granting the right to vote in Poland only to Polish citizens. The Constitutional Tribunal rejected this argumentation. Curiously, the Tribunal

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[2] The judges of the Slovak Supreme Court are less "Euro-friendly:" they refused to examine arguments concerning Community law arguing that it is not binding in the country before its accession to the EU. Decision No. 76/2000 [Collection of decisions of the Supreme Court and courts of the Slovak Republic] (Vol. No. 4/2000, p. 55), cited by Zdeněk Kühn, "The Application of European Law in the New Member States: Several (Early) Predictions," *GERMAN LAW JOURNAL* vol. 06 No. 03, 2005.

[3] Gender Equality in the Civil Service Case. Judgment Re Case K. 15/97, Orzecznictwo Trybunalu Konstytucyjnego [Collection of Decisions of the Constitutional Tribunal], nr. 19/1997, p. 380; English translation 5 E.EUR. CASE REP. OF CONST. L. 271, p. 284 (1998), cited by Kühn, see footnote 2 *supra*.

[4] Polish Constitutional Court Judgment of 29 September 1997 Re Case K 15/976.

[5] Re Skoda Auto, Sbírka nálezů a usnesení [Collection of Judgments and Rulings of the Constitutional Court], Vol. 8, p. 149, cited by Kühn, see footnote2 *supra*.

[6] Case No. 410/2001. An English translation is available at http://www.concourt.cz. Czech Constitutional Court Judgment of 16 October 2001 Re Case PL US5/01, in which Community law is used as an argumentative tool to interpret domestic law even before the accession of the Czech Republic to the EU.

refused to examine the matter of the supremacy of Community law over national law. Nevertheless, an emphasis was laid on the importance of the principle of a "Euro-friendly" construction of national law.[7]

Avoiding, in a similar way, to involve Community law, the Hungarian constitutional judges adjudicated their first case related to EU law at the end of May 2004. In its judgement the court annulled a Hungarian law which had transposed the requirements of Community law against pre-accession accumulation of surplus stocks and post-accession price speculation.[8] This law was promulgated three days before the date of accession. A number of traders were fined because they did not manage to eliminate their stocks within three days. The Hungarian constitutional judges were supposed to determine whether the law in question was consistent with the Constitution. Without examining the European aspect of the case, the Court held that the Hungarian legislator had breached the principle of non-retroactivity, because the addressees of the law were not allowed sufficient time to be able to comply with it. Such laws rushed before accession were contested in Estonia and Latvia as well.[9]

The Polish Constitutional Tribunal also rendered an interesting judgement in April 2005. Then the Tribunal considered whether the European Arrest Warrant was in conflict with the Polish Constitution. The European Arrest Warrant concerns the EU powers under the 'third pillar', in respect of which the supremacy of Community law does not apply. Nevertheless, the Polish judges took the opportunity to rule that Community law can by no means conflict with the expressly proclaimed constitutional standards or breach the minimum guarantees provided by the Constitution for protection of individual rights and freedoms. They determined that the European Arrest Warrant conflicts with the Constitution. Still, the constitutional judges demonstrated their "Euro-friendly" approach by allowing the use of such arrest warrants within 18 months and gave Polish politicians a signal and a chance to amend the Constitution, so as to make it possible to apply the European Arrest Warrant. Accordingly, the Polish Constitution was amended in September 2006.

The position of the Polish constitutional judges on the limits of the supremacy of Community law was reaffirmed in May 2005. Then the Tribunal was petitioned to rule on whether Poland's accession to the European Union was consistent with the Polish Constitution. Although the judges, in their judgement, did not recognise expressly the full supremacy of Community law, they upheld the accession. [10] The position of the Polish constitutional judges regarding the limits of Community law repeated the position of the German Federal Constitutional Court on the same matter. The German Constitutional Court is very influential

[7] Judgment of 31 May 2004 Re Case K 15/04, cited according to the English summary on the Internet site of the Court, www.trybunal.gov.pl/Eng/.
[8] Judgment Re Case 17/04 of 25 May 2004.
[9] Curiously, the Estonian judges invoked Community law and upheld the laws arguing that the aggrieved traders could have learnt about the requirements and restrictions in question from the Accession Treaty, adopted in 2003 and promulgated in the Estonian Official Gazette. They found, however, that the aggrieved parties could not have learnt how the law would be applied, which is why the Court determined that some of the provisions of the law were inconsistent with Community law. In their judgment, the judges called the legislator's notice to the way in which the law should be amended so as to be aligned with Community law. Discussed by Anneli Albi, "Supremacy of EC Law in the New Member States: Bringing Parliaments into the Equation of 'Co-operative Constitutionalism'" Forthcoming in the *European Constitutional Law Review*, 2007(1).
[10] Judgment Re Case K 18/04. Available in English on the Internet site of the Polish Constitutional Court.

in Central and Eastern Europe..[11] Unsurprisingly, therefore, this position was repeated by the Czech Constitutional Court as well in March 2006.[12]

In 2005 the constitutional judges in Slovakia were the first in the EU-8 to pronounce on the particularly important question as to whether their court can request preliminary rulings from the ECJ. They held that they have the right to make such requests.[13] A similar understanding on the possibility of the constitutional court to make such requests to the ECJ was later adopted by the Czech Constitutional Court as well.[14]

## 2.2. Application of Community law by the national courts

### *Requests for preliminary rulings*

By early February 2007, the ECJ was approached with 15 requests for preliminary rulings by ten States: nine by Hungary, three by the Czech Republic, two by Poland, and one by Slovakia. Three judgements were rendered.

The proceedings for preliminary rulings, which originate from the EU-8, are on various matters (excise duty on imported automobiles in Poland [15] or registration fees for imported used automobiles in Hungary [16], pay for overtime work of a physician in the Czech Republic [17] etc.).

Some requests for preliminary rulings are unrelated to Community law [18] or are hypothetical and the questions raised are partly relevant to the subject of the national court case [19]. These requests can be attributed to the national judges' inexperience, a precipitate desire to demonstrate a "Euro-friendly" approach, or overzeal to guarantee consistency of the adjudication of the national case.

Some requests concern questions that are remotely related to Community law or problems that do not represent difficulty of interpretation. The judges were probably apprehensive of applying Community law on their own and, therefore, preferred to leave that to the court in Luxembourg. The judges also probably viewed the possibility to make a request as an obligation rather than as a right, and instead of allowing an upper national court to examine the matter, they approached directly the European Court of Justice.[20]

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[11] Constitutional courts in the CEE countries view themselves as guardians of national constitutions. Following the lead of the German archetype, they can be expected to pursue a policy of protection of national sovereignty and delineate the limits of the ECJ's competences in the way the German Federal Constitutional Court did in its Solange II (BVerfGE 73, 339 (1986), *Solange II*) and Maastricht (BVerfGE 89, 155 (1993), Maastricht) decisions.

[12] Case Pl. ÚS 50/04, 08.03.2006, cited by Albi, see footnote 9 *supra*.

[13] Case Pl.US 8/04-2002. Decision of 18 October 2005.

[14] Decision of 8 March 2006 Re Case PL.US 50/04, cited by Albi, see footnote 16 *infra*.

[15] Case C-313/05.

[16] Case C-290/05.

[17] Case C-437/05.

[18] Case C-328/04.

[19] Case C-302/04.

[20] Certain judges are influenced by lawyers who insist on a request for a preliminary ruling because they are interested in adjournment of the cases, especially if their clients stand to gain a pecuniary benefit from this. One such example is a Czech case, in which a bus carrier contests the liberalisation of transport services. Even though he is aware that he will lose the case, the delay resulting from the request for a preliminary ruling would enable

Since the number of requests is not large, it can be presumed that most judged interpret and apply Community law without requesting preliminary rulings.

### *Application of Community law by the national courts*

It is impossible to say how many cases in the ten Member State concern Community law. Such cases started to be instituted right after the accession of the countries of Central and Eastern Europe. These cases fall into two groups:

- concerning application of Community law where it takes precedence over national law, such as the cases of migration and asylum, customs duties, competition and agriculture; and
- concerning a determination of whether Community or national law prevails when the two are in conflict.[21]

### *Using Community law as a tool of interpretation*

Community law is also used as a tool of interpretation by the judges of CEE. There are cases in which the judges use the EU directives to establish the significance of ensuing national legislation. Community law was invoked for this purpose in a case about mobile telephone number portability[22] or in a case concerning a delay of payments under commercial transactions.[23].

### *Assisting judges in the application of Community law*

The overdue or unavailable translations of the sources of Community law in the official languages of the new Member States is a serious problem for judges in Central and Eastern Europe. Most judges do not know how to proceed when Community law is untranslated and unpublished. Thus, in a case in the Czech Republic, the claimant, a wine importer, appealed against a fine imposed on him for miscompleted customs declaration for a period partly covering the time after the accession of the Czech Republic to the Union.[24] The claimant argued that he was not familiar with the provisions which were applicable after the accession because these provisions were not translated and published in Czech at the time of completion of the declaration. Translation and publication of the official translations is an obligation of

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him to take advantage of the lack of competition for several more years. 7 Ca 193/2005, cited by Michal Bobek, "A New Legal Order, or a Non-Existent One? Some (early) experiences in the Application of EU Law in Central Europe", *Croatian Yearbook of European Law and Policy*, vol. 2, 2006.

[21] Bobek cites as an example a Czech case concerning national taxes on wine production. See footnote 27 *infra*.

[22] Czech Supreme Administrative Court Judgment of 27 September 2005 Re Case 1Ao 1/2005/98, where Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 is invoked, cited by Bobek, see footnote 20 *supra*.

[23] Kladno County Court Judgment of 19 July 2005 Re Case 16 C 109/2004-42, in which the Court invokes Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000, cited by Bobek, see footnote 20 *supra*.

[24] Ostrava District Court. Case 22 Ca 69/2005.

the EU institutions.[25] obligation of the EU institutions..[26] This ruling is expected to address a number of similar cases in all new Member States.

Another positive development is the increased interest in Community law and foreign language training in the faculties of law. Since judgeship is a career profession, young judges who are familiar with Community law and speak foreign languages will be gradually recruited.

To assist judges in determining the applicable Community law, some of the new Member States have introduced a requirement, when referring a matter to the court, to present not only the facts but also the legal aspect of the dispute, including the specific EU instruments invoked by the parties.[27] This change turns the court into an arbitrator, which requires from the parties to specify the law.

**Conclusions**

The judges in the EU-8 countries encounter a number of complicated theoretical problems related to application of Community law. Adequate programmes for professional qualification, the ready availability of translations of the *acquis communautaire* in the relevant language and the possibility to exchange information on rendered judgements applying Community law within the judicial systems are a factor of a successful solution of these problems.

Bulgarian judges will be instrumental in their country's successful EU integration. To accomplish their tasks, they should follow the "Euro-friendly" approach to Community law, which their colleagues of CEE apply in its interpretation. The main *risks* facing Bulgaria in this respect are related to the unfinished information systems of the courts, which will impede the access of all judges to the first judgements on application of Community law and the excessively theoretical nature of judges' preliminary training. A comparison with the Community law training programmes for judges in Estonia and Bulgaria, for instance, shows that training in Estonia is more practically oriented, whereas a large part of the subjects in Bulgaria are still related to initiation and general principles of Community law.

It is important to emphasise that both in the EU-8 countries and in Bulgaria, the universities and the research institutes do not at all encourage and motivate the elaboration of adequate theoretical research on the problems of application of Community law. It is exceedingly important to cultivate theoretical interest in the role of precedent and in the application and balancing of the principles of Community law, such as the principle of proportionality and the principle of effectiveness, which often baffle even the most experienced judges in the EU.[28] The development of theoretical thought would thus help Bulgarian judges in the process of application of Community law.

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[25] On the one hand, the Act of Accession requires that the provisions of the original treaties and the acts adopted by the Union's institutions and the European Central Bank prior to accession become applicable to the new member States as from the date of accession. On the other hand, the same Act requires publication of these instruments in the *Official Journal of the European Union* and specifies that the EU institutions take responsibility for the translation and publications.

[26] Request 22 Ca 69/2005-43 of 10 February 2006, cited by Bobek, see footnote 20 *supra*.

[27] The Czech Code of Administrative Justice is an example of this.

[28] Csaba Varga, Transition to Rule of Law / On the Democratic Transformation in Hungary p. 86 (1995), cited by Kühn, see footnote 2 *supra*.

## 3. Protection of Human Rights

Stability of institutions guaranteeing human rights and protection of minorities is the first of the Copenhagen criteria for membership in the European Union. The process of accession of the CEE countries followed the period of democratisation after the political changes in 1989. During that period, the former totalitarian states achieved visible progress in the area of human rights, which was assessed by Freedom House as "dramatic" compared to the other regions of the world. Therefore, the EU-8 countries do not have to take special care in the area of human rights and protection of minorities in order to fulfil the Copenhagen criteria.

Certainly, admission to the EU does not certify that the countries do no commit human rights violations. Both before and after accession to the EU, the eight CEE countries have drawn criticism for arbitrary violence and excessive use of force by the police, bad conditions in places of involuntary confinement (prisons, investigative detention facilities and mental institutions), human trafficking, ineffective justice due to delays of cases and lack of legal aid, as well as violence and discrimination against women and minorities.

A survey of development in this area of reform in the EU-8 since 2004 makes it possible to identify two peculiarities: (1) institutional reforms have been carried out under EU influence to improve the protection of human rights, and (2) new, "integration-specific" problems have emerged, including: an escalation of xenophobia and racism, erosion of social protection and equality, change of the working framework of human rights organisations. These two trends in the post-accession period are analysed below.

### 3.1. Priorities and development of human rights protection policies

***Ethnic minorities***

While the risks of mass-scale violations of human rights in Western Europe is related to the governments' counter-terrorism actions, in CEE mass-scale violations are committed in the Roma ghettos. After the EU enlargement in 2004, the Roma are the largest and probably the most wronged minority in the EU.[29] For this reason, the EU institutions exert certain pressure on the applicants for membership during the negotiating process for development of policies and programmes for integration of the Roma, who are the most marginalised part of the population in each of the states.

Several years after the accession, both human rights activists and the European Commission itself find that the state policies do not produce the expected results because no progress is observed in the fight against Roma discrimination and in Roma integration. [30] Governments are most often blamed for the failure, because they launch *ad hoc* initiatives, without rationalising and discussing them with the Roma themselves.[31] The strategies are not geared

[29] Between three and four million before the accession of Bulgaria and Romania. Another two million or so Roma live in these two countries.
[30] Two reports arrive at these conclusions: "Minority Protection in the Enlarged European Union. The Way Forward" and "The Situation of Roma in an Enlarged Europe". The latter report was prepared by the European Commission. It reports that the condition of the Roma is deteriorating.
[31] Ivan Vesely, Roma Decade: Where Are the Romani Organizations?, Transitions Online, 3 February 2005.

to the specific needs. Financing is not spent effectively. There is insufficient support for implementation of the strategies on the part of the Roma as well as in the public itself. In 2005, for instance, the Slovak Constitutional Court found unconstitutional the provisional measures for positive discrimination, which Parliament admitted after a prolonged debate so as to equalise opportunities for minorities..[32]

Others blame the EU institutions for the poor performance, because the EU does not monitor how governments honour their commitments under the national programmes for integration. [33] In 2005, for instance, a proposal for monitoring in Slovakia for this purpose was rejected in the European Parliament.[34] For lack of external control, government Roma policies have marginalised as much as the Roma themselves. Even though new teachers and social workers have been appointed to work with Roma children and their parents, the quality and effectiveness of the policies implemented are not evaluated. Therefore, it is not clear whether the huge allocations are geared to the specific conditions and whether they contribute to addressing specific and real problems of the minorities.[35]

It is important to emphasise that even though litigation over Roma discrimination is in progress in all new Member States, the court is not in a position to prevent the tensions generated by poverty, unemployment, curtailment and elimination of welfare allowances and insecurity in the ghettos. The CEE countries have not overcome the risk of a repeat of Roma riots like the one in the Slovak ghetto of Trebisov in 2004 or manifestation of mob law as in the Slovenian village of Ambrus in 2006.

***Right to fair trial***

The judicial reforms in the states of Central and Eastern Europe over the last three years are intended to guarantee the fairness of court proceedings. The measures which were taken in recent years are supposed to lead to an acceleration of the examination of cases and to provision of legal aid to citizens who wish to be represented by a lawyer but cannot afford it. Community law [36] encourages the adoption of laws on legal aid and the establishment of a network of lawyers to assist citizens in civil and criminal matters. In 2004-2006, such laws were adopted in Bulgaria, Latvia, Cyprus, Poland, Estonia and Latvia.

***Protection against discrimination***

New national bodies for protection against discrimination were created in all new Member States (with the exception of the Czech Republic and Malta). In Hungary and Slovakia, the

[32] Case Pl.US 8/04-2002. Decision of 18 October 2005.
[33] Interview with Roma Press Agency Director Kristina Magdolenova in Transitions Online, 5 August 2005. Magdolenova argues that Roma policy is "the most expensive reality show." Ivan Vesely, a Roma activist of Prague, expresses a similar view. He believes that the European Union is racist in its relations to the Roma because its projects do not take account of the specific needs of the individual groups of Roma.
[34] The reluctance of the European Parliament to engage in monitoring is attributable, to a certain extent, to the less rigorous minority protection requirements set to old Member States, some of which refuse to identify problems with their minorities and delay application of Community law. For example, in 2005 the Court of Justice of the European Communities criticised Austria, Germany, Finland and Luxembourg for failing to transpose the Anti-Discrimination Directive.
[35] Kristina Magdolenova tells about a EU project in Slovakia, on which 85 million crowns were spent on water supply infrastructure in a Roma community. The project was predicated on the participation of the residents who were supposed to co-finance it with 2 million crowns, needed to connect the system directly to the homes. But since they did not have this money, the project could not be completed when due. See footnote 33 *supra*.
[36] Directive 2003/8 of 8 April 2005

new institutions soon established themselves as active and strong participants in public life. The Hungarian body has broad powers to protect the victims of discrimination. It can appear in court, it can represent the victims in court and can bring actions in the public interest. Along with these new institutions, the ombudsmen continue to make their marks as defenders of fundamental human rights. In Lithuania, citizens prefer to approach the ombudsman because of the quick reaction to their complaints. Hungary already has four ombudsmen.

### 3.2. Main post-accession challenges

#### *Growth of intolerance*

Since accession to the EU, racism, xenophobia and intolerance have been attracting much greater attention in the new Member States. The magnitude of this problem is impossible to specify because these phenomena have started to go on record only recently. The fact remains that since 2004, there has been a stronger fear of foreigners in the new Member States. This is evident from the emergence of political parties and organisations with nationalist and populist platforms, which incite mistrust of foreigners and minorities. The victims of violence are most often Roma. In the spring of 2006, however, in Slovakia there were cases of violence and threats against ethnic Hungarians. During the same year, there were also reports of attacks against participants in gay parades in Slovenia and Latvia.

The police fail to suppress effectively racist manifestations. In Latvia, skinhead attacks against blacks are persecuted as hooliganism rather than as racial violence. The police sometimes do not investigate cases in which nobody is physically injured. Only after their accession to the EU, Estonia, Latvia, Lithuania, Hungary and Slovenia have improved their practices of recording ethnic violence.

So far the media in the EU-8 have been reacting promptly to manifestations of racism. Public campaigns are conducted against xenophobia and intolerance. In 2005, Slovakia adopted rigorous legislative measures against racism. During the same year, a court in Hungary deregistered a neo-fascist organisation.

Poland is a special case in point. All human rights activists note the recent negative development in respect of protection of human rights. In June 2006, Polish President Lech Kaczynski spoke in favour of restoration of the death penalty in Poland. The League of Polish Families, which is part of the coalition government, launched a campaign for a referendum on restoration of the death penalty in August 2006. The powerholders are engaged in a forceful homophobe campaign. It also involves the prosecuting magistracy, which is initiating investigations of all organisations which defend homosexuals against discrimination. Foreigners, refugees and immigrants come under increasing attacks in Poland. A special institution for encouragement of equality ceased to exist in the autumn of 2005. The government's shift in policy direction threatens to erode women's rights as well.[37]

[37] See the Concluding Statement of the UNIFEM Consultative Meeting *Gender Equality in the EU – Two Years after Accession of New Member States*, held in Bratislava in April 2006.

***New framework for work of human rights organisations***

Foreign sources outside the EU diminished their financing for human rights organisations in the CEE countries after accession. The entire third sector is experiencing a radical change, because it was created thanks to the aid of US organisations and donors. They administrate public projects in a way different from the EU. The American donors allow greater leeway in gearing activities and measures to specific needs. In the EU, project management is placed within a completely different organisational framework, and a number of human rights organisations complain of the red tape and the limited opportunities for flexible use of resources.[38]

**Conclusions**

States guaranteeing human rights and respect for and protection of minorities is a condition for EU membership. The experience of the first years after the accession of the EU-8 shows that the countries find it difficult to keep up the achievements demonstrated in the course of the negotiations on membership. The quality of integration and anti-discrimination policies, implemented by the separate countries, is not subject to external monitoring. The success of these policies depends on the will of power-holders and on public control. The example of Poland shows that where one of these two conditions is absent, the human rights situation deteriorates.

EU membership, however, makes it possible to improve the infrastructure and institutional protection against discrimination. The increased number of refugees and immigrants and the rise of racism and xenophobia are the new challenges facing governments and human rights organisations. Coping with these challenges requires planning, institutional support and allocation of funds. Human rights organisations must adapt to the new conditions of work since they can rely on ever less funding from sources outside the EU.

# II. Home Affairs

## 1. Crime and Penal Policy

In the field of crime and penal policy, it is exceedingly difficult to draw comparisons between the separate states and to apply the conclusions to the case of Bulgaria. The reasons for this are related mainly to the organisation and accessibility of national statistics, as well as to the peculiarities of each national criminal law. The countries have different categories of unlawful acts and, accordingly, organise their statistics around them. In Estonia, for instance, the Penal Code differentiates between offences and misdemeanours, which reflects on crime statistics as well. In Bulgaria there is just one category of unlawful acts, which is why crime statistics cover acts which are regarded as misdemeanours in the rest of the countries and are left outside this statistics.

[38] Interview with Roma Press Agency Director Kristina Magdolenova, Transitions Online, 5 August 2005.

### 1.1. Conventional crime

Crime has been growing steadily in all countries of the former socialist bloc since 1992, and this tendency persisted until the last years of the century. The structure of crime changed everywhere, with the share of personal offences decreasing and the share of property offences increasing. There is a pronounced concentration of crime in the large cities, especially in the capitals. In Estonia, 50 per cent of the recorded crimes were committed in Tallinn. In Hungary, recorded crimes quadrupled between 1980 and 2002.

The growth of crime peaked at the end of the 1990s (for Bulgaria: in 1997), and then levelled around those levels (known as a level of crime saturation). **Accession to the EU does not represent a watershed in respect of recorded crime.** For Estonia, total recorded crimes countrywide invariably approximated 53,000 between 2002 and 2005. Some interesting trends are worth mentioning:

***Growing percentage of solved crimes***

For Estonia, the number of solved crimes increased substantially, from 18,065 in 2002 (34 per cent of recorded crimes) to 27,965 in 2005 (53 per cent). The clearance rate in Latvia rose as well. Undoubtedly, the improvement of this indicator in the CEE countries can be attributed to the reforms carried out in criminal justice in connection with the requirements for EU membership and can be used as an indicator of the success of these reforms.

***Growing percentage of property crimes and drug-related crimes***

Despite the levelling of total recorded crime at stable levels, specific types of crimes increased substantially in the period around and after EU accession, which must prompt a reconsideration of the priorities of police work and the operation of social services. Theft and fraud have been growing steadily. In Estonia, thefts soared from 6,799 in 2002 to 10,216 in 2005. As a share in total recorded crime, these offences represented 13 per cent in 2002, 17 per cent in 2003, 18 per cent in 2004, and 19 per cent in 2005. Fraud, too, grew at a similar pace: from 1,259 recorded frauds in 2002 (2 per cent of total recorded crime) to 1,703 in 2005 (3 per cent). In Hungary, frauds increased from 3-4 per cent to total crime to 20 per cent.

The growth of drug-related crimes is particularly notable. They accounted for 1.1 per cent of total recorded crimes in Hungary in 2002, 1.5 per cent in 2003, 1.9 per cent in 2004, and 2 per cent in 2005. In Lithuania, drug-related crimes increased from 696 in 1999 to 1,039 in 2001.

***Increase in repeat offences***

Repeat offences represent a serious problem especially among juvenile offenders. In Hungary, the number of juveniles convicted of a single crime rose by one-fifth between 1980 and 2002, while the number of juveniles convicted of multiple crimes rose by more than 2.5-fold. These facts suggest a common problem for the CEE countries: a weak effect of the reformative impact of penitentiary systems and programmes for supervision and support of juvenile offenders, as well as a poor quality or insufficient intervention of the system for social assistance to former offenders. These deficiencies of the supervision and support authorities, as well as a number of other factors, condition the intensified “professionalisation” of crime in the CEE countries.

### 1.2. Penal policy

The EU-8 countries, as well as the newly admitted Bulgaria and Romania, follow similar priorities in their penal policy and have similar approaches to the reform of their penitentiary systems. In a nutshell, these priorities can be formulated as follows:

- introduction of alternatives to custodial sentences, with a special emphasis on development of systems of penal sanctions to be implemented in the community;
- administration and covering conditionally sentenced persons and persons who have been granted conditional early release in a supervision and support system;
- increased care of the victims of crime;
- introduction of a possibility for plea bargain agreements in criminal proceedings.

These priorities, however, are visible only at the level of legislative revisions. The practice of application of the new institutes of probation, community service and the various programmes for supervision and community support have yet to be developed and to prove their advantages.

In reality, deprivation of liberty remains the most widely imposed penal sanction, even though it is difficult to identify a common tendency for the EU-8. The Czech Republic is a positive example in this respect. The legislator reduced the number of offences punishable by deprivation of liberty and introduced additional grounds for termination of criminal proceedings and replacement by administrative sanctions. Conversely, in other countries, and especially in Bulgaria, the legislator reacted to the growing problem of crime in the 1990s by broadening the range of acts which constitute criminal offences and by adding further constituent elements under the Penal Code for which custodial sentences are provided, as well as increasing the maximum sentences.

In the medium term, however, this policy exacerbates the problem of prison overcrowding. This issue is particularly poignant for Estonia, which joined the EU in 2004 with a sustained exceedingly large prison population rate, similar to Bulgaria in 2007. Upon the accession of the Czech Republic, this problem was also noted by the European Commission.

Unlike Bulgaria, however, Estonia and especially the Czech Republic are trying to modernise integrally their penal policy and their penitentiary institutions. In 2000 the Czech Republic established a Mediation and Probation Service.[39]. The Service combines several integrated functions in a single administration: drafting of pre-trial reports with assessment of the risk of a repeated offence and a proposal to personalise the sanction depending on the specifics of the concrete offender, mediation in criminal proceedings (for the purpose of reaching a settlement between victim and perpetrator), social support and supervision of offenders who have served part of a prison sentence, control over the implementation of penal sanctions in the community, and support for victims of crime. The Czech probation service can be cited as a positive example because, according to some researchers, its operation does lead to a reduction of the prison population and a quality prevention of crime.

Conversely, Bulgaria did not introduce any opportunity for mediation in criminal proceedings, provided for the establishment of a separate administration for support of the victims of crime, and does not admit the possibility of pre-trial reports. In this way, the court and the prosecuting magistracy are deprived of essential expertise for determination of the most

[39] Law No. 257 of 2000, effective 1 January 2001.

appropriate penal sanction for the offender. Worse yet, the first two years of operation of the Bulgarian probation service showed that it has an exceedingly limited capacity to provide specific social services to offenders, say, assistance in finding work, issuing various documents for receipt of welfare benefits etc. The mission of this service at present is entirely repressive: the offenders are obliged to report daily at the service and sign a register, which completely distorts the intended purpose of probation. In practice, the way in which it is organised in Bulgaria at present, probation is a relatively severe punishment. In some cases, lawyers are known to have recommended to their clients to prefer a conditional custodial sentence to probation. The social element: the support which the convicted person receives from the probation service, is still underdeveloped at the Bulgarian Probation Service. It is precisely this element that represents the most important factor that can deter further criminal activity of the convicted person and thus live up to the high expectations of this newly established administration.

Regarding the care of the victims of crime, Hungary provides a positive example in the group of countries under review. A public fund for compensation of victims of serious crime was established in Hungary in 1996. The Interior Ministry has a department for assistance of crime victims with a fixed size of specialised staff allocated to the Ministry's regional structures. The department provides a broad range of services: from advice on safety through psychological counselling to assistance to address financial problems.

**Conclusions**

On the whole, the public is inadequately informed of crime and crime-related problems. Without access to reliable information, crime control policies will remain uncertain in identifying their priorities and ineffective since they will not count on mobilising substantial public resources but only on the efforts of the law enforcement authorities. Part of the problem lies in the need to develop an information system conforming to EU standards for collection of crime statistics. Another part of the problem is the secrecy and the lack of reliable analyses of the problems of crime in CEE, which are undoubtedly a legacy of the totalitarian past.

When reliable statistics and research are not available, repressive approaches to curtailment of crime easily take the upper hand. The only result of this, however, is professionalisation of criminals and increase of the costs of prison maintenance. On the whole, custodial sentences, which are still preponderant in the penal policies of the CEE countries, come at an excessive social cost while having a limited impact as a deterrent of criminal activity.

**1.3. Organised crime**

An enlarged European Union gives organised crime groups more opportunities to expand their criminal activities and, therefore, faces the Union with a serious challenge. In practice, however, there is no evidence that the accession of the eight countries of CEE to the EU has led to an increase of crime in the old Member States. A 2005 study of the Council of Europe even shows that the number of persons suspected of committing crimes, who originate from a country of Eastern Europe, remained stable and even tended down in some types of crime.

The lack of a change in the number of suspects, however, is not a reliable ground to argue that the EU exaggerates the risk of "export of organised crime" from the CEE. On the contrary, the number of suspects rather demonstrates weaknesses of the investigation and charging of

persons involved in such type of networks. At the same time, the increased significance of organised crime groups is evidenced by the analysis of the changes in the character of criminal activity within the territory of the EU-25.

Europol's Organised Crime Report and Organised Crime Threat Assessment for 2005 outline the priority growth of several types of criminal activity, and they are all typically related to the criminal markets of the organised crime groups of CEE and pose a serious risk to the CEE countries:

- The increased share of trafficking in human beings within the territory of the EU: Europol stresses the use of criminal networks specialised in drugs for this type of business as well and associates them with Romanian and Bulgarian crime groups.
- The improvement of the quality of counterfeit euro banknotes because of sophisticated printing facilities and the recruitment of professional individuals with considerable printing skills. The Europol's Organised Crime Report for 2004 lays a special emphasis on the increased involvement of Lithuanian and Bulgarian organised crime groups in this type of crime.
- The report for 2004 (but not for 2005) stresses the tendency of organised crime moving more and more into areas of 'petty crime' like pick-pocketing and shoplifting and theft by deception of tourists. This business is run by Romanian and Bulgarian groups.
- An emphasis must be laid on the growing importance of economic crimes, within the traditional package of offences associated with organised crime. The Council of Europe notes that value added tax fraud, fraud in connection with public procurement and fraud related to privatisation are mainly involved here. The report emphasises that in some countries of South-eastern Europe and the former Soviet Union, the power of organised crime groups is based on assets acquired during the process of privatisation, under unclear conditions in the 1990s and reportedly with the involvement of political leaders and state officials.[40].

The Europol's report for 2004 singles out several countries of the last and last-but-one EU enlargement as particularly problematic. These are Poland (because of its geographical location and the specialisation of crime groups that control an enormous border and the principal transport routes from the East to the EU), Lithuania (because of the specialisation in counterfeiting euro banknotes), Romania (because of the organised trafficking of human beings, the growing role in drug trafficking and organised "petty" crime), and Bulgaria (because of the trafficking in women for sexual exploitation, euro counterfeiting and debit card fraud). The report notes the following peculiarity of the distribution of counterfeit euros by Bulgarian criminal networks: the distributors are briefed about the legislation of the country they are sent out to and trained how to react to the police in case of an arrest. This is indicative of a high level of organisation and professionalism of criminals.

**Conclusions**

EU enlargement, apart from posing an additional risk of unobstructed spread of organised crime, should also be viewed as providing a unique opportunity to combine the efforts of 27

[40] Organized Crime Situation Report 2005. Focus on the Threat of Economic Crime, Council of Europe, Provisional version, December 2005, p. 13.

states in fighting organised crime. This is only possible on the basis of a common understanding of what organised crime is, what are the threats and the risks arising from it, and of arriving at a common approach to the problem at EU level. Arriving at such an approach is a matter of political will and a high measure of confidence between the law enforcement bodies of the EU Member States, i.e. it is a matter of the future. The individual strategies of the Member States and the capacities of the separate law enforcement authorities and judicial systems are still the only tangible tools to combat organised crime.

It is therefore exceedingly important that each Member State, including Bulgaria, adopt a flexible approach, reckoning with the changing nature of criminal activity and based on reliable information and solid research.

Current researchers stress a key point: the decreasing significance of violence and coercion as a *modus operandi* of organised crime groups and the ever more active use of corruption, legal professionals and legal commercial structures for criminal purposes.

Despite this tendency, in Bulgaria the fight against organised crime and corruption continues to be perceived exclusively as a matter of penal policy and too weak measures are taken to regulate and avoid conflicts of interest and ensure transparency of the management and effectiveness of the spending of public funds. Without a holistic approach, which takes due account of prevention, organised crime will continue to pose a risk to the country's successful integration into the EU.

From the perspective of EU integration, the lack of reliable and comparable statistics on crime and the effectiveness of justice is one of the significant deficiencies in the area of justice, freedom and security. Collecting and analysing quantitative information on levels and trends, as well as on the structures of crime and terrorism and the measures taken for the prevention of and fight against these problems in the Member States and at the EU level in general, are immensely important for the development and implementation of effective policies for prevention of and fight against the present-day challenges to security.

## 2. Fight against Corruption

The fight against corruption is invariably identified as a key priority in the policy of the CEE countries during the negotiations and after their accession to the EU. Even though the EU-8 demonstrate - at least at the level of political talking - a will and determination to cope with the problem, a material change is not objectively observed. Certainly, identifying objective indicators in this sphere is a serious challenge. Still, it is interesting to note that the levels of corruption in the separate CEE countries according to various international organisations which monitor the situation are affected by the specific policies undertaken by the State in order to meet the requirements for EU membership.

Freedom House, one of the organisations that monitor corruption levels in the EEC countries, gives the same rating to Slovenia for each year between 1999 and 2004. Latvia is the same case (with a single slight deterioration for 2002), and the index declined only for 2006. Poland, instead of improving, is worsening. The corruption index there rose from 2.25 (between 1999 and 2002) to 2.50 in 2003 and 2004 and 3.25 in 2006. Transparency International actually rates Poland as the most corrupt country in the EU, second only to Bulgaria.

Other instruments for assessment of corruption perception, such as the Transparency International Corruption Perception Index, find a slight improvement of the situation between 2005 and 2006 in almost all EU-8 countries (with the exception of Lithuania, where the situation was unchanged). Despite these indications of a change for the better, the assessment of the respective countries' citizens of the government counter-corruption efforts is markedly negative. According to the Transparency International Global Corruption Barometer 2006, 40 per cent of the citizens of the Czech Republic and 41 per cent of the citizens of Poland find that the government's efforts to cope with corruption are ineffective. Twenty-one per cent of the Czech citizens and 28 per cent of the Polish citizens believe that their governments do not even try to fight corruption.

Clearly, the objective indicators of corruption levels and the progress of the reforms underway after the accession of the EU-8 demonstrate some hesitant progress, the results of which have yet to be appreciated by the citizens of the respective countries.

Despite the hesitant data, we will consider below two examples of legislative and administrative measures which some EU-8 countries take and which, being well resourced and well planned, promise good results in future.

Latvia established a special institution, a Corruption Prevention and Combating Bureau, which became fully operational in February 2003. The Bureau performs investigative functions in all cases of suspicions of corruption in the public sector and checks the financial interests disclosure declarations of public officials. All disputes under the Public Procurement Act are mandatorily referred to the Bureau for investigation. The Bureau also performs sanctioning functions, has the right to fine political parties for violation of legislation in connection with the financing of election campaigns. Between 2002 and 2004, the budget of the Bureau was quintupled, and since 2003 it has a staff of over 100. The activity of the Bureau is monitored by a special Parliamentary Committee on Supervision of the Fight against Corruption and Organised Crime.

Hungary has opted for a different approach which, too, can be assessed as successful. Instead of setting up standing state bodies, Hungary adopted a long-term programme focussed on legislative revisions intended to ensure transparency of governance and corruption prevention. The programme, known as the "Glass Pockets Programme," was adopted by Parliament in April 2003. Through modifications of 19 legislative acts, it ensures transparency and improves control over the spending of public funds and the management of public property. Hungary's State Audit Office is authorised the follow the path of public funds, even in private companies which have concluded contracts with central or local government bodies. All contracts of a value exceeding EUR 20,000 must be made public.

Despite these positive examples, the international organisations which monitor corruption in the various countries note that corruption in the new Member States is invariably a more serious problem than in the EU-15. Still, the fears that EU enlargement will pose a threat to the general business and administrative culture of the EU and that corruption will be "exported" by the new Member States to the old ones, are exaggerated and groundless.

Miklos Marschall [41] presents general arguments to this effect in an interview with EuroActiv.com. According to Marschall, such "export" did not happen when Greece, Spain and Portugal joined the EU, while some of the old Member States, such as Greece and Italy, continue to have corruption levels comparable or even exceeding the levels of the new Member States. Marschall argues that corruption is far more a problem of dysfunctional and incompetent public institutions than of deeply ingrained cultural differences. For this reason, the deepening reforms of separate public sectors in the new Member States will lead to curtailment of corruption and a total disappearance of the remaining petty corruption. At the same time, corruption in the upper echelons, institutionalised through non-transparent mechanisms for political party financing in CEE, may well continue to pose a serious risk to those countries.

## 3. Protection of Community Financial Interests

According to an assessment of the European Commission,[42] the acceding states were well prepared to take on full financial responsibilities for the correct implementation of EU funds. The fully decentralised management of the SAPARD and ISPA pre-accession instruments, as well as the completion of the extended decentralisation implementation systems (EDIS) in each of the EU-8 countries at the time of accession, contribute substantially to this positive assessment.

All Member States have created central services for the fight against fraud (Anti-Fraud Co-ordination Services, or AFCOS), which help the new Member States familiarise themselves with their duties concerning fraud prevention and fraud repression. These services co-ordinate all legislative, administrative and operational obligations of the respective country related to the protection of the Communities' financial interests and ensure operational co-operation and communication with the European Commission's Anti-fraud Office (OLAF) and the services of the other Member States. In the majority of the new Member States, the AFCOS are established as either a department within the Ministry of Finance. In other Member States, they are established in the Ministry of Justice (Czech Republic and Cyprus), or in the Ministry of Internal Affairs (Lithuania). The foundations of co-operation between the EU-8 and OLAF were laid long before the enlargement of the Union through conduct of intense training courses for specialised investigating authorities, legal and financial experts.

Assessing the interaction between the EU-8 and the European Commission in the fight against financial fraud, it should be borne in mind that OLAF itself is still developing its strategic capacity for intelligence and investigation. The duration of the active stage of cases is between 22 and 24 months, and OLAF makes a sustained effort to shorten this duration. It was not before 2005 that the number of cases closed with follow-up (133) exceeded the number of cases closed without follow-up (100).

The new Member States and the acceding countries (by 2005) Bulgaria and Romania are far not in the focus of interest for OLAF, nor do they represent a substantial share of the investigations in connection with abuses of the aid provided by the EU to third countries or

[41] Interview with Miklos Marschall, Regional Director, Europe and Central Asia, Transparency International, for EurActiv.com, published 30 April 2004, available at www.euractiv.com/en/enlargement/

[42] Report from the Commission to the Council and the European Parliament – Protection of the Financial Interests of the Communities – Fight against Fraud – Commission's Annual Report 2004 COM (2005)323 final, p. 4

with Structural Funds abuses. In the first full calendar year after the EU enlargement in 2004, OLAF opened 24 cases in new Member States and 23 cases in acceding and candidate countries. These cases do not account for a sizeable portion of the total number of cases: at the end of 2005, OLAF was investigating 452 cases, and a further 226 cases were in the initial assessment process.

On the whole, the European Commission [43] comes up with the assessment that "the ten new Member States were brought into the fold without any particular difficulties and took adequate steps to prepare for their new task of protecting the Communities' financial interests."

## 4. Migration and Border Management

### 4.1. Migration

The movement of people, perceived as clandestine migration, human smuggling and human trafficking, is one of the central issues in the EU enlargement debate. Many fear that enlargement will contribute to increased trafficking by eventually eradicating border crossings between Western and Eastern Europe, where many prominent human trafficking routes currently exist. EU Member States also fear that post-Communist states in Eastern Europe cannot adequately control their borders due to structural corruption and inadequate technical and financial resources. Moreover, the EU-15 countries view the extension of the Union's external borders towards the east as a security risk.[44]

The newly admitted states have little say over the reform of their own migration legislation and visa requirements. They are forced to agree to the adoption of the Schengen *acquis* at the time of acceding to the EU while, at the same time, their actual entry into the Schengen area and, hence, the free movement of persons, is deferred for the future.

The fears and the most pessimistic forecasts of a massive movement of labour from CEE to the old Member States have been proved wrong.

A recent analysis [45] of the Bureau of Economic Policy Advisers looked into the effect of the penultimate EU enlargement and the related movement of persons on the common European market. The report notes that "the long run migration potential for the EU [is] between 2-4% of the source populations of the CEECs. Cumulated over 15 years, the absolute net number of migrants has been estimated at around 3 million people. This would correspond to about 1.2 percent of the projected working-age population of the former EU-15 in 2020. [...] Even after allowing for a significant upward margin of error, these numbers are simply not large enough to affect the EU labour market in general."

The accession of Bulgaria and Romania to the EU cannot be expected to change substantially this state of affairs, either. Emigration from these countries peaked a long time ago. Similar to Spain, Italy and Portugal, which were mainly sending countries of migration before their

[43] Report from the Commission to the European Parliament and the Council – Protection of the Communities' Financial Interests – Fight against Fraud – Annual Report 2005 COM (2006) 378 final, p. 8
[44] Koff, p. 404
[45] Enlargement, Two Years after: An Economic Evaluation, by the Bureau of European Policy Advisers and the DG for Economic and Financial Affairs, No.24, May 2006, p. 79

accession to the EU, the CEE countries will gradually change their profile and will become receiving countries. The prospect of accession to the EU and especially economic growth in the CEE countries are the key factors motivating this reversal. The opening of the market and the growing demand for low-skilled labour in CEE may even be expected to lead to a certain easing of the immigration pressure on Western Europe.

A recent report of ECAS stressed that economic growth in the EU-8 countries has the potential to encourage the return of migrant workers who left those countries in the early 1990s. The report cites the example of Lithuania, where return migration increased by 34 per cent in 2005, while emigration increased by only 4 per cent.

Certain authors[46] argue that the European migration policy applied so far, focussed exclusively on border protection and visa control, is actually counter-productive because, instead of reducing the inflow of migrants to the countries of Western Europe, it merely restructures the flows and redirects it through the illegal channels of human trafficking and smuggling, run by organised crime. These authors assert that enlargement will not pose a serious threat to the EU external borders because the new Member States have already been transformed from sending countries to transit states. On the contrary, enlargement in practice presents increased opportunities to reduce human smuggling and trafficking.

Rather than focusing on coercive elements of migration control, which ultimately force migrants into illegality, it would be more productive for the EU to tackle immigration questions within the broader framework of economic development and institutional stability in Eastern Europe. Harlan Koff writes: *"Migration cannot simply be stopped at the border because organised crime has developed technological and organisational solutions to bypass state controls. Clandestine migration can only be effectively addressed by broader economic strategies that aim to reduce migrants' incentives to put themselves in 'at risk' situations and institutional development programmes that decrease the influence of organised crime in sending states."*

The complexity of the issues related to the movement of persons, the ever more serious problems that the separate Member States encounter in immigrants' integration, as well as the aspiration to improve the economic competitiveness of the EU on a global level, raise the need to develop a common migration policy of the Union so as to make it an attractive destination for young, highly qualified personnel.

The European Commission proved ready and, despite the difficulties presented by the decision-making process in the EU, it makes ever more active efforts to assume a leading role in the field of legislation on legal immigration. The fight against illegal immigration, however, will long remain a concern of the national governments.

The problem for all CEE countries at this point is that EU enlargement and the concerns of the old Member States, as well as the momentum of a legacy of being mainly sending countries of high unemployment, make them view migration as a problem of control and security. Few countries manage to develop an aggressive and sensible national policy of attracting immigrants, who will be increasingly needed for maintenance of the current pace of economic growth in the region.

[46] Harlan Koff

### 4.2. Asylum

Contrary to expectations, accession to the EU is not associated with an increase in the number of asylum applications in the CEE countries. This number there actually peaked far earlier, around 2000-2001. Soon after, in an effort to meet the EU requirements, the candidate countries tightened the criteria for granting asylum, which makes them less popular destinations for applicants.

An additional factor is the decrease in the number of asylum seekers in the industrialised countries by some 14-15 per cent annually, as registered by the UN High Commissioner for Refugees. For all Europe, the largest relative decline was reported by the ten new EU member countries. These countries received 8,200 new asylum requests during the first half of 2006, a 30 per cent drop compared to the first six months of 2005 and a 54 per cent decline compared to the first six months of 2004.

Thus, the number of asylum applications lodged in Hungary plummeted from 9,555 in 2001 to 1,600 in 2004 and 1,610 in 2005. Similarly, the applications lodged in the Czech Republic dropped from 18,095 in 2001 to 5,300 in 2004 and 3,590 in 2005 (according to Eurostat, intermediate data for 2004 and 2005).

At the same time, the countries apply an exceedingly restrictive policy in granting asylum: the percentage of rejected applications is very high. In 2002, more than 86 per cent of all decisions on asylum applications in Poland were refusals; in 2003, 58 per cent of the applications were rejected.

The waiting time for examination of applications in these countries is relatively long. This results in a contingent of permanently resident asylum seekers, which are "in limbo," but anyway already work illegally and use the country's social protection systems.
Bulgaria is no stranger to this tendency. The largest number of asylum seekers was registered in 2001 (2,430) and 2002 (2,890). For 2005, this number dropped to 700. In the long term, this is not likely to present a problem for Bulgaria, insofar as the crises around former Yugoslavia are at a low point. Nevertheless, the heavy investment in the capacity of the Foreign Ministry and in the accommodation centres must continue.

### 4.3. Management of EU external borders

Management of the EU external borders faces the candidate countries with a formidable challenge. Building a large-scale infrastructure, purchasing equipment, investing in technologies, training personnel and restructuring the border troops into a border police are only part of the required reforms.

In practice, Poland guards the longest EU land border: over 800 km with Belarus and Ukraine (part of the terrain can still be patrolled only by mounted guards) plus the Russian enclave of Kaliningrad. Before acceding to the EU, Poland carried out massive reforms, mainly focussing on personnel recruitment and training, modernisation of the equipment of the Polish border police and construction of new facilities along the border. At the first stage of the

project (until 2004), the EU invested over EUR 58 million in such projects. It is worth the cost because of the substantial relief for Germany and Austria (which bore the whole brunt of the influx from Eastern Europe before the enlargement).

It is not accidental that Warsaw was selected to host the headquarters of the new EU border security agency, FRONTEX, which opened on 3 October 2005. The agency co-ordinates operations related to management of the Union's external borders and its efforts depend crucially on the level of co-operation that the Member States are willing to ensure.

Management of the external borders of the EU, however, is still the responsibility of the separate national governments and involves massive spending. The most affected countries, those along the southern border of the EU (France, Spain, Italy, Greece, Portugal, Malta, Cyprus and Slovenia), actively promote the need of an agreement on financing the management of external borders for the account of the general budget of the EU. As a result, a European External Borders Fund went into operation at the beginning of 2007. It is supposed to compensate Member States for the financial burden of dealing with external border control and visa policy.

## 5. European Arrest Warrant

The principle of mutual recognition of court judgements in criminal matters and the European Arrest Warrant (EAW) are some of the most important EU instruments to fight cross-border crime. The EAW creates a new system replacing the old extradition arrangements in the Member States and is one of the first instruments on mutual recognition of court judgements in criminal matters within the EU. This system eliminates the intervention of political and administrative bodies in extradition and places it entirely in the power of the judicial authorities. The idea is to simplify and accelerate proceedings by restricting the double criminality principle, limiting the grounds for refusal to surrender a person by one country to another, and introducing the surrender of nationals of another State.

The EAW is part of the *acquis communautaire* and the countries of the penultimate enlargement of the Union are obliged to apply it. They effectively removed the constitutional obstacles and adopted transposing legislation. The EAW is in force for the EU-8 as from 1 May 2004.

Ensuring the equal application of the Council Framework Decision on the European Arrest Warrant in all Member States is a major challenge to the European Commission. Back at the outset, specific States took advantage of the possibility of derogations provided by the Decision and, upon transposition, exclude the applicability of the EAW to offences committed prior to a specific date. This impedes co-ordination between the countries.

The European Commission monitors and reports the implementation of the Council Framework Decision on the EAW and during the first year after its entry into force did not formulate any special criticisms to the new Member States.

Bulgaria adopted an Extradition and European Arrest Warrant Act in 2005. The constitutional obstacles to surrender of Bulgarian nationals to another State have been removed by relevant

amendments to the Constitution. According to statements by Bulgarian officials,[47] the country has the capacity to apply the EAW as from the point of its accession to the Union, which is largely guaranteed by an active twinning project with Spain on introduction of the mechanisms of judicial co-operation in criminal and civil matters.

It is important to note, however, that part of the States, upon transposition of the Framework Decision on the EAW, allow direct contact between the competent judicial bodies at the various stages of the procedure, and this can place an enormous number of unforeseen technical obstacles to the Bulgarian side.

## III. Principal Conclusions and Risks Applicable to Bulgaria

The survey of various publications and analyses shows that the EU-8 countries honour the commitments assumed in the course of the negotiations on membership and no turning back on the reforms in the field of Justice and Home Affairs is observed.

In practice, this analysis disproves some of the principal fears of the old Member States associated with EU enlargement. Many see a threat in such a large-scale one-off act, a "big bang" enlargement, and numerous risks that co-operation with the CEE countries will spell in future since they have a different administrative culture and a tolerance of relatively higher levels of corruption.

Three principal groups of fears are most widespread:

- **export of corruption and of organised crime**, according to which the accession of the EU-8 will have a contagion effect on the general business culture of the EU, will help corrupt the EU administration and will increase the insecurity in the societies of the old Member States
- **export of labour**, according to which the elimination of borders between Eastern and Western Europe will lead to a massive labour migration and the concomitant lowering of pay for work and loss of jobs for the citizens of the old Member States
- **compromising the security of external borders**, according to which the CEE countries, owing to their corruption, technological backwardness and bad administration, will be unable to ensure the protection of the external border of the EU and this will lead to an influx of migrants from third countries and a spread of terrorism.

No empirical evidence whatsoever exists to support any of the above allegations. On the contrary, the analysis of the sources surveyed invites far more optimistic conclusions. The EU-8 countries managed to carry out relatively successful reforms to accelerate and improve the effectiveness of their administration of justice and to curb corruption. The support provided under the pre-accession instruments and the partnership with the old Member States for management of external borders have produced fine results. The efforts taken by Poland to guarantee the security of the longest EU external land border is particularly impressive. The intensity of the movement of persons between the old and the new Member States exceeds very slightly the detected mobility inside the EU-15, which affects some 1 per cent of the population and cannot possibly have a sustained effect on the common labour market in the

[47] Interview with Deputy Justice Minister Margarit Ganev http://www.evroportal.bg/article_view.php?id=730303

EU. Arguably, the consequences of the accession of Bulgaria and Romania will not change substantially this state of affairs, insofar as the reforms undertaken in these countries seem irreversible.

Still, there are several significant risks which must be extrapolated separately and which, albeit unable to affect the direction of the reform in the area of Justice and Home Affairs in Bulgaria, may substantially decelerate it or make it far more resource-intensive than it is in the EU-8 countries.

- **Confining counter-corruption and organised crime control to the methods and means of penal policy.** What with the influence of the overexpectation of more convictions of key underworld figures, which is signalled by the European Commission, and what with the inability of its own administration to identify and analyse problems, the Bulgarian Government invests its principal resources in criminal prosecution of corruption and organised crime. Moreover, it systematically underrates the measures to guarantee transparency and prudent management of public funds and the detection and safeguarding against possible conflicts of interest, which actually led Hungary and the Czech Republic to the road of success.
- **Lagging in the implementation of modern methods in the management of the court system.** The introduction of information systems for case management and case progress within the judicial system is often underestimated even though it is an exceedingly important part of the reform in the field of Justice and Home Affairs. In the EU-8 countries, this task was completed, in one form or another, at the time of accession, i.e. three years ago. The Bulgarian Integral Counter-crime Information System has been absorbing investment for more than ten years now.
- **Too much administration and too weak co-ordination at the central level.** It seems that the problems related to justice and home affairs are addressed in Bulgaria only through the establishment of more and more new administrative bodies, which often go into operation without a clear advance plan, trained personnel and sufficient resources. It is important to note the example of, say, the Czech Republic, which established a single service where the Bulgarian Government established three. The bringing of probation, mediation in criminal proceedings and care of crime victims under a single administrative roof in the Czech Republic and their linking to the administration of the courts is far cheaper and more efficient because it obviates a number of problems of decision co-ordination, information exchange and internal control.
- **Capacity for active participation in the "third pillar."** The area of Justice and Home Affairs, the "third pillar" of European integration, is currently the pillar that undergoes the most vigorous development. Part of the structures created to implement the common European policies (like the above-mentioned FRONTEX and OLAF) are still clarifying their profile and gradually re-formulate their functions through ever closer co-operation among the Member States. The EU-8 countries, as well as Bulgaria and Romania, have yet to develop their capacity for active participation in the formulation and implementation of the common policies in the area of migration, organised crime control and counter-terrorism. The discipline that the administration has built in the pre-accession period will probably help, but the national parliaments, as well as the societies themselves, will also have to pool additional resources so that the new Member States could benefit fully from this co-operation.

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