INFORMAL NETWORKS AND CORRUPTION IN THE JUDICIARY: 
ELITE INTERVIEW FINDINGS FROM 
THE CZECH REPUBLIC, SLOVENIA, BULGARIA AND ROMANIA

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Abstract: Judicial reform in post-communist states to date has only been partially successful, primarily as it has failed to address what may be coined a “culture of informality” and which has been carried over from communism. The paper presents findings from 360 elite in-depth interviews conducted in the Czech Republic, Slovenia, Bulgaria and Romania in late 2003/early 2004. Examples are given of how people’s understanding of the rule of law is influenced by their pre-transition experiences, how informal practices manifest themselves in the judiciary, and of personal exposure to contacts and informal networks. Although more common in Bulgaria and Romania than in the Czech Republic and Slovenia, informal practices are widespread in all these countries. Increasing judiciary independence, improving capacity and enhancing efficiency should reduce some of the scope for informal practices. Such measures should be accompanied by efforts to educate the general public in the rule of law and to enhance their understanding of the judiciary and how to approach it. More specific confidence building measures are also called for: the judiciary should demonstrate to the general public that everybody is equal before the law.

Keywords: judiciary, informal practices, contacts, informal networks, judicial reform

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Introduction

Modern democracy rests on two key principles: on the one hand, the citizens’ right to choose their rulers in free and fair elections and on the other, their entitlement to fair and equitable treatment by the state. In a “fully consolidated” democracy, respect for the electorate-as-a-whole goes hand in hand with respect for the electors as individuals.\(^1\) This also extends to justice: all citizens are equal before the law and are entitled to equal treatment by the courts. The market economy is common to most Western style democracies. As noted by Anderson, Bernstein and Gray, ‘well-functioning legal and judicial institutions are critical to economic growth and poverty reduction in market economies. They define the rules by which markets function, and they provide a means to resolve disputes, protect economic and social rights, and hold governments accountable for their actions.’\(^2\)

During communism, the main purpose of the judiciary was to protect the socialist order and the rights of the citizens. The judiciary thus primarily served a political purpose, as ‘an inferior servant, rather than an equal partner, of the executive and legislature.’\(^3\) Instead of passing independent verdicts and rulings, judges were obliged to abide by the prosecutors’ opinions and to respect their suggestions.\(^4\) Transition thus brought about a dramatic change in the role of the judiciary: from being subordinated to political structures it was to become fully independent, acting as a counter-balance to the legislative and the executive. Besides, its tasks were greatly expanded: during communism the judiciary mostly dealt with non-economic issues.\(^5\) As a result of the introduction of the market, the courts were also charged with presiding over economic disputes.\(^6\)

In the late 1980s and early 1990s the dominant idea was that transition entailed the shedding of a known past – i.e. communism – and replacing it with an also known future – i.e. Western-style democracy.\(^7\) Judicial reform to some extent took the backseat to efforts aimed at building democracy and the market.\(^8\) Still, a wide range of measures have been introduced to

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1 Miller, Grødeland and Koshechkina, 2001: 1.
2 Anderson, Bernstein and Gray, 2005: xi.
5 Administrative law was administered predominantly by the Ministry of Economy and its substructures. The courts, on their part, primarily administered civil and criminal law. Anderson, Bernstein and Gray (2005), p. 9.
6 Ibid., xi.
7 Czarnota, Krygier and Sadurski (2005).
increase judicial independence and enhance its efficiency. Evidence suggests that the impact of judicial reform to date has been limited, however.

There are a number of reasons for this: firstly, the people overseeing judicial reform appear to have been only partially committed. In the Czech Republic, for instance, attempt to increase the independence of the judiciary have met with resistance on the part of parliament. Secondly, a general lack of funding has reduced the pace of reform and undermined its efficiency. In many post-communist states, judicial staff is neither provided with adequate remuneration nor with the resources required to properly reinforce the law. In addition, they are not always provided with sufficient training and possibilities to keep up-to-date and also not with adequate protection. Thirdly, the judiciary in several post-communist states is plagued by a shortage of qualified staff – partly due to lustration, partly due to inadequate training, partly due to brain-drain as a result of inadequate remuneration and partly due to an insufficient number of positions – which in turn has resulted in case backlogs. Fourthly, as old laws have been amended (often several times) and new ones introduced, a degree of legal “chaos” has ensued: even experienced lawyers are sometimes finding it difficult to keep up-to-date. All these factors make those working within the judiciary vulnerable to external influence. Specific efforts to limit such influences and to address the issue of corruption in the judiciary have produced few results and in countries such as Bulgaria, where institutional change has been accompanied by high-profile anti-corruption campaigns, it appears that that rather than reducing corruption these campaigns have brought about anti-corruption fatigue and further undermined public trust in state institutions.

Perhaps the most important reason why judicial reform in post-communist states has so far only had limited success, however, is that it has largely failed to address the mentality and to some extent also the behaviour of not only those working within the judiciary but also of those interacting with it from the outside. Changing mentality and behaviour is more difficult and also requires a different time perspective than changing formal institutions, laws, rules and regulations. It appears that international organisations and donors in their effort to introduce

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12 EU has warned applicant states Romania and Bulgaria that should they fail to adequately address – and consequently reduce – corruption in this sector, their accession to EU may be put on hold (both countries are due to join EU in 2007), Chiriac (2005).
swift political, economic and judicial reform in the former communist states and consequently
turn them into Western-style democracies, have at best overlooked, at worst ignored, the need to
accompany such measures with measures aimed at changing the mindset of those in charge of
implementing these measures as well as those affected by them.

Rose-Ackerman argues that ‘we know less than we would like about the actual operation
of government institutions and about private sector organisations and informal groups.’  
The judiciary may be added to this list. Still, we do know quite a bit. Below we will give examples –
based on 360 in-depth interviews with representatives of various categories of elites in the Czech
Republic, Slovenia, Bulgaria and Romania – of how attitudes carried over from communism
influence people’s understanding of the rule of law. Below examples are given of how this
mentality manifests itself in the judiciary in the form of informal practices. Finally, the paper
makes some suggestions as to how the negative aspects of this “culture of informality” may best
be overcome.

Contacts, informal cultures and informal networks

Given that considerable interests and sums of money are often at stake, it is not surprising
that a number of individuals and groups have vested interests in promoting certain outcomes in
the judiciary – for instance as regards legal registrations and court rulings. There are many ways
in which this may be done. One may try to influence court registrars responsible for the
registration of businesses, NGOs or media outlets. Further, efforts may be made to influence
investigators – either directly or indirectly (i.e. through a contact) – not to start or to discontinue
an investigation, to persuade the police not to press charges, to manipulate prosecutors to prevent
a case from reaching court or, when that is not possible, to influence the judge(s) to provide a
specific outcome.

Individuals or groups of individuals linked together either formally or informally who
engage in such activities may simply present a number of arguments in support of their agendas,
they may try to influence judicial staff by offering various incentives in return for their
assistance, or they may try to pressurise them into complying with their wishes. What is more,
they may approach the judiciary directly themselves or indirectly, through a contact. The contact
may know the relevant people working in the judiciary personally, know people who are linked

14 Rose-Ackerman (2001).
with them either at a personal or professional level, or may be particularly skilled in the art of lobbying – and thus also in a better position to influence judicial staff.

A previous study conducted by Miller, Grødeland and Koshechkina\textsuperscript{15} revealed that the use of contacts in local government institutions in the former Soviet Union and East Central Europe is widespread. We have no reason to believe that their use is any less common in the judiciary – both at high and low levels. It also seems reasonable to assume that people sharing the same interests join forces to promote these. In West European countries formal networks have become quite common in recent years. In former communist societies, however, scepticism toward anything formal is (still) widespread.\textsuperscript{16} People often seek to do things informally rather than in a formal manner and outcomes are often sought through the circumvention of formal rules and regulations. We have therefore found it useful to investigate the various ways in which this “culture of informality” manifests itself in the judiciary by focusing on the use of contacts and informal networks in this sector.\textsuperscript{17}

There are numerous definitions both of “contacts” and “informal networks.” As our focus is primarily on how contacts and informal networks exert influence in politics, public procurement and the judiciary – i.e. on the end result of their actions – we define a “contact” as “a person who is able to and willing to help someone.” An “informal network” is defined as “an informal circle of people able to and willing to help each other.”

People linked together in an informal network derive some benefit from belonging to the network and therefore have an interest in maintaining it over time. Moreover, they have a sense of obligation towards other people in the network as (repeated) failure to comply with the wishes of other people in it may lead to their estrangement from the network altogether.

People using contacts do so with a view to derive some benefit – for instance to solve a problem, to speed up an official procedure or for personal gain. There is usually also an element of reciprocity involved in the sense that the person who seeks the assistance of a contact would normally offer something in return – either immediately or at some point in the future. A failure

\textsuperscript{15} Miller, Grødeland and Koshechkina (2001).
\textsuperscript{16} Ibid.
\textsuperscript{17} As we are primarily interested in the work of the courts and as the number of interviews we conducted is limited, we decided to interview prosecutors and judges only. For this reason we have not interviewed court registrars, court secretaries, police officers and other investigators. Our questions, however, focused on the judiciary as such and not exclusively on the courts.
to offer something in return may result in the loss of the contact. One therefore has a sense of obligation towards the contact in the sense of returning the favour rendered.

The two terms – as defined above - are not mutually exclusive: a contact may of course also be part of one or more informal networks. Similarly, people linked together in informal networks may resort to ‘contacts’ outside their networks. Besides, a contact may convey a request on behalf of one individual or a group of individuals. An informal network, on the other hand, may convey a request on behalf of, or through, several people linked together in the network or of one single individual. Our definitions of contacts and informal networks therefore do not allow us to distinguish between the individual approach on the one hand, and the collective approach on the other.

They do, however, allow us to distinguish between requests made directly by an individual or a group of individuals linked together either formally or informally, and requests conveyed indirectly, through a contact on behalf of an individual or a group of individuals linked together either formally or informally. The distinction is also useful in that contacts are often sought on an on-off basis for solving one particular problem or issue, whereas informal networks are linked together by people whose shared interests are usually more long term.

<table>
<thead>
<tr>
<th><strong>INFORMAL NETWORK (def):</strong> ‘An informal circle of people able and willing to help each other.’</th>
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<tbody>
<tr>
<td>(1) These people derive some benefit from their interaction;</td>
</tr>
<tr>
<td>(2) They therefore make an effort to maintain the network over time;</td>
</tr>
<tr>
<td>(3) A failure to comply with the wishes of other people in the network may lead to one’s “exclusion” from the network altogether;</td>
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<tr>
<td>(4) They therefore have a sense of obligation towards other people in the network.</td>
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<tr>
<th><strong>CONTACT (def):</strong> ‘A person who is able and willing to help someone.’</th>
</tr>
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<tbody>
<tr>
<td>(1) Both the person who is helping and the person who is helped derive some benefit from their interaction;</td>
</tr>
<tr>
<td>(2) A contact may be approached on an on-off basis for help to solve a particular problem;</td>
</tr>
<tr>
<td>(3) A failure to comply with the wishes of the contact may result in the loss of the contact;</td>
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</table>
It also makes sense to distinguish between contacts and informal networks in terms of social capital: although a contact may be a very powerful individual with access to considerable financial and/or other resources, and for this reason may be highly influential, the informal network is able to draw on the collective resources of all the people it links together. This, in turn, gives people linked together in informal networks an advantage as far as influence is concerned. The distinction between contacts and informal networks thus allows us not only to study the informal culture referred to above, as such: it also allows us to study different aspects of the ways in which this informal culture manifests itself in key areas of society.

Contacts and informal networks are in themselves neither positive nor negative. Both can be used for legitimate or illegitimate purposes. To the extent they are used for legitimate purposes, they may help people gain something to which they are entitled by law – for instance publicly available information, assistance from public offices and the like. Informal networks may also help facilitate trust and professionalism in society, as people linked together in the network know they can rely on each other and as they are often well qualified people. However, they may also be used for more clandestine purposes, such as giving people access to something to which they are not entitled, undermining fair competition and professionalism in society and promoting illegitimate interests, thus facilitating corruption.

Methodology

Informal networks are usually investigated through case studies of concrete institutions – more specifically the link between people working in these institutions. The bulk of the studies of informal networks focus on information flows in businesses with the aim to improve efficiency, though studies have also been undertaken into how businesses seek to enhance their profitability by operating through informal networks. Network theory has also been applied to investigate informal links at the political level. The latter usually require access to detailed information such as media footage, telephone- or meetings’ logs that are difficult to obtain, or they call for direct observation – even participation – over time. A draw-back with the case study


19 For a study mapping connections between former president of Peru, Fujimori, and representatives of the media and business interests in Peru, Ocampo (2003).
approach is that although it may generate very detailed and accurate information about one network, it fails to put the activities of this network in a broader context.

As noted above, we are primarily interested in the ways in which contacts and informal networks manifest themselves in society more generally and in politics, public procurement and the judiciary in particular. Secondly, we would like to know how common informal practices are in these sectors, as compared to formal practices. And thirdly, we are particularly interested in negative aspects of informal practices – i.e. in corruption. Conducting case studies for this purpose would simply not be feasible. For our purposes, we have therefore found it more useful to collect data through a combination of qualitative and quantitative methods – in order to conduct large N-studies and thus to ensure a high level of representativeness for both.  

Work on the project commenced in March 2003 and will be completed in March 2006. Data for the project was collected in three stages: 1) in-depth interviews; 2) roundtable discussions and 3) national quota-based quantitative surveys (N=600 x 4). The in-depth interviews and roundtable discussions were completed in late 2003/early 2004 and the summer of 2004 respectively, whereas the national surveys were conducted in 2005.

During the winter of 2003/04 we conducted a total of 360 structured, open-ended in-depth interviews – 90 interviews per country with nine categories of respondents. Half of these interviews were carried out with respondents operating at the national level, whereas the other half were carried out at capital level to allow for comparison of informal networks operating at different administrative levels. More specifically the following categories of respondents were interviewed: 1) elected representatives; 2) public procurement officials; 3) prosecutors and judges; 4) national business representatives; 5) international business representatives; 6) political party representatives in charge of party finances; 7) media representatives; 8) national

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20 Whereas in-depth interviews are frequently used to study informal networks, surveys are less common. While some more recent studies have made use of internet surveys to collect data, it is still a widely held view amongst people studying networks that surveys are better avoided. For an account of the former, see Rob Cross, Nitin Nohria and Andrew Parker, “Six Myths about Informal Networks – and how to overcome them.” *MIT Sloan Management Review* (Spring 2002): 67-75. Duncan J. Watts argues that surveys are not a very reliable way to obtain high-quality data on networks ‘not only because people have a hard time remembering who they know without being suitably prodded, but also because two acquaintances may have quite different views of their relationship. So it can be hard to tell what is actually going on. The method also requires a lot of effort on behalf of the subjects and particularly the investigator. A much better approach is to record what it is that people actually do, who they interact with, and how they interact.’ Watts (2003): 26. As our main focus is not so much on how people in networks are linked with each other, but more on their impact in the political sphere, in the judiciary and in public procurement, the flaws Watts refers to are not relevant for our study.

21 One third of the national samples are made up of prosecutors, the remaining two thirds – of judges. Although the courts make up only one part of the judiciary, public trust in courts and the effective functioning of the courts are essential features of consolidated democracies. For this reason and also as our samples are limited, we decided to focus on prosecutors and judges.
and international NGOs; and 9) EU- and Council of Europe-representatives and national government officials working in the field of anti-corruption.22

Each interview lasted for approximately one hour and was conducted in the local language by professional interviewers. All interviews were carried out according to a pre-prepared interview guide, consisting of five main sections: 1) general views on the rule of law; 2) general views on the use of contacts; 3) general views on informal networks; 4) personal exposure to and use of contacts and informal networks; and 5) general views on how to strengthen the positive aspects of networks while limiting their negative aspects.

English language transcripts of the interviews were coded in QSR NUD*IST (version 4) – a software for qualitative data analysis – according to a detailed coding scheme consisting of more than 60 nodes (or coding categories) and sub-nodes. The text unit – the basic unit to be coded – was defined as a respondent’s answer to a question, starting when the respondent started to speak and finishing when the respondent either stopped talking or was interrupted by the interviewer.

Some double-coding did occur in cases where the respondent’s answer to a question addressed issues covered by more than one node. In some cases respondents provided answers to one question when answering others. In such cases, more than one answer from one and the same respondent was coded at the same node. Furthermore, some respondents failed to answer all the questions. The total number of text units (N) in the tables below therefore does not always correspond to the total number of respondents interviewed.23

Once the data set had been coded, the total number of text units coded at each node was recorded and percentaged. This allowed for the creation of tables based on the numerical findings from the four national data sets (N=90 per country). We also wanted to establish (a) whether there were any major differences between the nine categories of respondents interviewed, within each country; and (b) whether there were any major differences between the

22 Interviews were conducted by In the Czech Republic interviews were carried out by Pavol Fric, David Ondracka and Czeslaw Walek. The Slovenian interviews were carried out by Bojan Dobovšek and Maja Calvette. Anoaneta Raykinska, Vyara Gancheva, Galya Koleva, Vladimir Vladov, Atanas Stoilov, Maria Bakalova, Marta Sugareva, Stanka Dobreva, Emiliya Chengelova, Albena Nakova, Penka Harizanova, Raiko Ivanov, Tzvetelina Todorova, Tanya Konstantinova and Svetlana Avramova carried out the Bulgarian interviews, whereas the interviews in Romania were conducted by Emanuel Rauta, Ciprian Ciucu, Ion Traian Stefan, Todor Arpad, Adrian Cioflanca and Cristina Niculescu. A limited number of interviews in Slovenia, Bulgaria and Romania respectively, were carried out by Grødeland and in English.

23 The findings presented in this paper are therefore also based on a count of how many respondents who answered the questions referred to in the paper, answered in the same way.
nine categories of respondents across countries. For this purpose we created nine independent variables – one for each category of respondents interviewed.

All statements made by all respondents belonging to the public procurement category were coded at a “public procurement node”, all statements made by all respondents from the national business category were coded at a “national business node”, and so forth. Each independent variable was cross-tabulated with all the dependent variables (nodes and sub-nodes) and the total number of text units retrieved from each cross-tabulation put in tables and percentaged.

Analysing qualitative data statistically is in itself not sufficient, however. To give an example, several respondents may hold the view that informal networks are more common now than they were before 1989. Still, they may have different opinions as to why or in what way informal networks are more common now. To get the full picture, it is necessary to combine the statistical findings with a content analysis of what the respondents actually said. Findings below were generated from this combined analysis: numerical findings are presented in table form and “illustrated” by quotations from the in-depth interviews. Statements made by respondents representing the judiciary – i.e. prosecutors and judges – are compared with statements made by the other respondents in sections addressing perceptions, whereas sections addressing the respondents’ personal experience present findings from in-depth interviews with prosecutors and judges only.

Public and Elite Trust in the Courts

It appears reasonable to assume that trust in the courts is likely to be higher in societies in which the rule of law is respected than in societies where there is less regard for the law. Besides, one might assume that trust in the courts would be higher in new EU member states the Czech

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24 Each respondent’s answer to a particular question was coded at the same node and treated as an independent variable.

25 As can be seen from some of the tables, the number for ‘other/don’t know’ is in some cases quite high. This is not a result of people not having an opinion. Statements that did not fit into the coding scheme were coded as “other” during initial coding. Statements coded in this way will later be recoded, which will in turn reduce the number of statements coded as “other/don’t know”.

26 Quotations are marked as follows: El-r (elected representative); PP (political party representative); N-bus (representative of national – i.e. local company); I-bus (representative of international company); Med (media representative); NGO (NGO representative); Proc (public procurement official); Leg (judge or prosecutor); G-off (government official working in anti-corruption); EU (EU representative); CoE (Council of Europe representative). The number of the respondent is also indicated, as is the country in which the interview took place: Thus “El-r-3, Cz” indicates that the respondent quoted is an elected representative, the third respondent interviewed within this category and that the interview was conducted in the Czech Republic. Similarly Sl refers to interviews conducted in Slovenia, Bu to interviews conducted in Bulgaria and Ro to interviews conducted in Romania.

27 We conducted a total of 40 interviews with prosecutors and judges (ten interviews pr country: five at the national level and five at the local level in the capital).
Republic and Slovenia – which at the time of interviewing had adopted most of EU’s pre-accession requirements in the judicial area – than in EU applicant states Bulgaria and Romania. Findings from surveys carried out by the Centre for the Study of Public Policy in 1993, 1995 and 1998, show that public trust in the courts was low in all countries during this period\textsuperscript{28}: in 1998 less than 40 per cent of those polled said they trusted the courts. However, levels of trust were highest in Romania and lowest in Bulgaria.\textsuperscript{29} 2001 poll results from the Czech Republic show that only 25 per cent trusted the courts and monthly surveys\textsuperscript{30} conducted in Bulgaria between October 2002 and February 2003 produced trust-levels in the range of 13-15 per cent\textsuperscript{31} which was somewhat lower than the just under 20 per cent recorded for the 1998 Centre for the Study of Public Policy survey. The South East Europe Public Agenda Survey, conducted in 2002, produced similar findings for Bulgaria (12 per cent said they trusted the courts).\textsuperscript{32} Trust in the courts in Romania was considerably higher, at 37.8 per cent. It thus appears that trust in Romanian courts remained fairly stable between 1998 and 2002.\textsuperscript{33} Still, a 2000 World Bank study on corruption in Romania suggested that more than 50 per cent of Romanian households (53 per cent) thought that all or almost all officials in courts and prosecution were corrupt. Some 62 per cent of public officials and 66 per cent of Romanian enterprises held the same view.\textsuperscript{34}

Our own qualitative and quantitative findings suggest that \textbf{elite} trust in the judiciary as such and in the courts in particular, is higher in EU member states Czech Republic and Slovenia than in EU applicant states Bulgaria and Romania. The majority of the respondents in the Czech Republic and Slovenia interviewed for the \textit{qualitative} survey thought the judiciary was more law-abiding than other sectors in their country.\textsuperscript{35} In Bulgaria, government officials and in Romania the media were considered somewhat more law abiding than those working in the judiciary. Interviews with judges and prosecutors produced similar results. Findings from the \textit{quantitative} elite surveys conducted earlier this year and which is currently being analysed,

\begin{itemize}
    \item \textsuperscript{28} Between 1993 and 1998 trust in the courts increased in Bulgaria, but decreased in the Czech Republic and Slovenia. In Romania trust in the courts fell from 1993 to 1995, but increased from 1995 to 1998.
    \item \textsuperscript{29} Anderson, Bernstein and Gray (2005); 19.
    \item \textsuperscript{30} STEM Agency, quoted in Open Society Institute (2001): 116-17.
    \item \textsuperscript{31} Gallup, USAID. UNDP. Early Warning System. BULGARIA: Beyond the facts. Politics, Confidence in Institutions, via Early Warning, http://www.earlywarning.bg/content.php?cons=18&issue=1
    \item \textsuperscript{33} Vojmir Franicevic. “Real and Perceived Inequality, Poverty and Well-Being in South East Europe: Challenges of the Welfare State and Democracy”: 247, via Hokudai University, http://src-home.slav.hokudai.ac.jp/sympo03September/pdf/V_Franicevic.pdf
    \item \textsuperscript{35} Respondents ranked the following: politicians, government officials, people working in the judiciary, business and media.
\end{itemize}
indicate that elites in the Czech Republic and Slovenia have higher trust in the courts than elites in Bulgaria and Romania. Besides, Romanian elites are more trusting of the courts than elites in Bulgaria. We also found a marked difference between countries: 64 per cent of the Czech, 78 per cent of the Slovenian, but only 40 per cent of the Bulgarian and 49 per cent of the Romanian respondents themselves working in the judiciary said their trust in the courts was high.

Table 1: Trust in Courts by country (in per cent)

<table>
<thead>
<tr>
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<th>Czech R</th>
<th>Slovenia</th>
<th>Bulgaria</th>
<th>Romania</th>
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<tbody>
<tr>
<td>High trust</td>
<td>26</td>
<td>25</td>
<td>8</td>
<td>16</td>
</tr>
<tr>
<td>Some trust</td>
<td>62</td>
<td>60</td>
<td>58</td>
<td>60</td>
</tr>
<tr>
<td>Low trust</td>
<td>11</td>
<td>14</td>
<td>33</td>
<td>21</td>
</tr>
<tr>
<td>Don’t know</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>N=</td>
<td>(600)</td>
<td>(600)</td>
<td>(600)</td>
<td>(600)</td>
</tr>
</tbody>
</table>

Notes:
(1) Total no respondents each country: weighted down to N=600 (from 615 interviews in the Czech Republic, 606 interviews in Slovenia and Bulgaria and 620 interviews in Romania).
(2) Respondents were asked to indicate how much they trusted the courts on a scale from 1 (no trust) to 7 (great trust). 1 and 2 have been coded as “low trust”, 6 and 7 as “high trust” and 3,4 and 5 as “some trust”.

The Judiciary vs. other Elites on the Observation of the Rule of Law

Low trust in the judiciary implies that the judiciary is not functioning as it should – in other words that the fault lies with the judiciary itself. Our previous study of the interaction between low-level government officials and the general public in the Czech Republic, Slovenia, Bulgaria and Romania in general and of corrupt exchanges in particular, showed that the general public are not exclusively the victims of corruption. They also often initiate corrupt exchanges, which effectively makes them accomplices. Besides, officials who benefit from corruption in their own work, occasionally themselves fall victim to such practices elsewhere. It seems reasonable to assume that people interacting with the judiciary are also to some extent responsible for negative public perceptions of the judiciary and ensuing low levels of trust. Besides, low levels of public trust in the judiciary are likely to be not only a result of the way in which people are received by the judiciary, but also to some extent determined by their attitude towards the law as such.

The Russian sociologist Olga Kryshtanovskaia suggests – based on extensive survey findings – that the term “democracy” is understood differently by Russians than West Europeans.

In Russia people’s understanding of democracy is to a considerable extent (still) influenced by democracy as defined and understood by the Soviet Communist Party. During communism, “democracy” was often used synonymously with “social justice”. To illustrate her point, Kryshtanovskaia refers to the case of Mikhail Khodorkovsky. While Western democrats reacted negatively to his arrest and subsequent jail sentence, the average Russian did not perceive either as a problem: to him/her Putin comes across as a democrat because he is depriving the oligarchs of that which they have unlawfully acquired at the public’s expense.37

Russia was under communist rule for more than 70 years. Communist rule in East Central and South East Europe, on the other hand, was shorter (just about 40 years). One might therefore argue that consequently, the latter would find it easier to adjust to Western-style democracy. As noted above, the Communist Party was above the law – i.e. the decisions of the Communist Party took precedence over laws. Nationally representative surveys conducted in East Central and South East Europe after the collapse of communism suggest that people are committed to democratic values more generally and to the rule of law in particular.38 But is it still possible that the communist legacy has affected people’s understanding of concepts central to democracy also in post-communist states in these regions – including their understanding of and attitude to the rule of law – and consequently also their behaviour? The answer to this question is important as donors supporting democratic reform in post-communist states tends to take it for granted that their understanding of concepts and terms central to democracy, coincides with that of the people living there – and ordinary people as well as elites.

As can be seen from table 2 below, when asked whether they thought people in their country respect the rule of law, Czech and Slovenian elites tended to answer in the affirmative. Respondents working in the judiciary, on the other hand, predominantly held the view that people did not respect the rule of law. In Bulgaria and Romania there was no difference between the views of the two groups – though the Romanian respondents somewhat more optimistically announced that people in their country were generally law-abiding.

38 Miller, Grødeland and Koshechkina (2001).
Table 2: Whether the General Public respect the Rule of Law in (COUNTRY)

<table>
<thead>
<tr>
<th></th>
<th>Czech Republic</th>
<th>Slovenia</th>
<th>Bulgaria</th>
<th>Romania</th>
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<tbody>
<tr>
<td></td>
<td>Judiciary</td>
<td>Other</td>
<td>Judiciary</td>
<td>Other</td>
</tr>
<tr>
<td>Respect</td>
<td>20</td>
<td>51</td>
<td>20</td>
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</tr>
<tr>
<td>Does not respect</td>
<td>50</td>
<td>25</td>
<td>60</td>
<td>18</td>
</tr>
<tr>
<td>Other /Don’t know</td>
<td>30</td>
<td>25</td>
<td>20</td>
<td>28</td>
</tr>
</tbody>
</table>

N= (10) (69) (10) (80) (10) (84) (11) (91)

Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

The majority of the Czech respondents who thought people respect the rule of law suggested that most people in their country are law-abiding citizens – though primarily because they fear punishment and not so much because abiding by the laws is seen as a virtue in itself. Further, the Czech Republic is considered more law-abiding than other countries in East Central Europe, though less law-abiding than “old” EU member states: ‘I think the majority of people are trying to get along with the law.’ (N-bus-1, Cz); ‘mostly they do (obey the law), although the media is trying to create the impression that the opposite is true…I think our standard of legal awareness is quite high in comparison with other post-communist nations, but much lower (than in) the EU states…’ (NGO-2, Cz); ‘people do respect the rule of law because they are afraid of sanctions, but don’t respect the laws because of their civic persuasions and because they realise that they will strengthen their society by respecting (them).’ (NGO-3, Cz).

A majority of the Slovenian respondents, on their part, thought Slovenes are fairly law-abiding – and one respondent in particular, thought this was the legacy of the Austrian-Hungarian empire: ‘Slovenes obey the law. They are more obedient than the pope!...’ (Proc-1, Sl); ‘yes, I believe that (people) do (respect the rule of law). Compared to other ex-Yugoslav nations the cultural tradition of the rule of law of the Austrian Hungarian Monarchy is still present in Slovenia and Croatia, probably also in Bosnia and Herzegovina. A strong cultural influence from the Monarchy can still be seen in Slovenia, especially among older generations, whose (tendency) to abide by the law is very strong.’ (NGO-5, Sl).

Romanian respondents – just like the Slovenes and Czechs – mostly held the view that people in their country generally respect the law. Still, a fairly large number thought there were exceptions to the rule, implying that some elites considered themselves to be above the law. Just like respondents in the Czech Republic and – as will be seen below – Bulgaria, they thought people respect the law primarily because they fear the consequences of not doing so. This was
thought to be the case particularly in terms of criminal law: ‘it is hard to do that (i.e. respect the law) since laws are changed so often. However, I think ordinary people tend to respect it because they are taught at home to do so.’ (N-bus-4, Ro); ‘people who don’t have the power to influence a law, respect it.’ (Proc-3, Ro); ‘generally speaking, Romanians do respect the rule of law. The law is dodged by those who hold political power and by businessmen...’ (Med-10, Ro); ‘people usually...respect the so-called “hard law” – i.e. criminal law and civil law – but they do not seem to respect administrative law that much. It might be that in this area Romanians are less law-abiding than others.’ (G-off-4, Ro); ‘yes, I think so. They are afraid of repercussions, of what follows if they break the law...’ (Med-4, Ro).

A majority of the Romanian respondents representing the judiciary, on their part, argued that Romanians generally respect the law and that to the extent they don’t, they are forced to disregard it due to the political changes their country has endured in recent years: ‘most of the time the Romanians act in accordance with the law.’ (Leg-1, Ro); ‘I believe that in general the law is respected, but there are particular situations when the law is not obeyed either because of ignorance or – in a small percentage (of cases) – on purpose.’ (Leg-3, Ro); ‘as long as the evolution of the Romanian society is one with very profound social transformations, law breaking is unavoidable. The Romanian society is deeply marked by 45 years of communism.’ (Leg-7, Ro); ‘unfortunately, there is a lack of information, due to which ordinary people cannot be aware of all the laws that are passed and changed all the time.’ (Leg-8, Ro).

Unlike what was the case in the Czech Republic, Slovenia and Romania, only a minority of the Bulgarian respondents thought people in their country respect the rule of law. In most cases they simply stated that Bulgarians – understood as ordinary people – are generally law-abiding and that to the extent they are familiar with the law, they seek to abide by it. Some people also obey the law because they fear the consequences of not doing so: ‘people do (respect the rule of law) in general.’ (Leg-1, Bu); ‘ordinary people respect the rule of law and have a high regard for (it). Due to constant changes of the legislation and their low level of information, people are not always able to know the changes (that are made) to the laws and sometimes unintentionally infringe (on) the law.’ (PP-3, Bu); ‘people in Bulgaria respect the law because they fear (the) sanctions (of not respecting it).’ (G-off-2, Bu).

Czech respondents who blamed the present problems on the past argued that during communism, stealing from the state was widespread and also morally acceptable and that this
mentality still lingers on: ‘from communist times people here are used to steal from the state.’ (El-r-3, Cz); ‘it is obviously a result of our history…the rule generally accepted as a moral rule would be respected as the rule of law…and the one not accepted as a moral rule would not be very respected…public property…is naturally subject to protection as any other property, but people do not feel like they commit any criminal offences (if they don’t respect it)...there are…areas where people have a feeling that it is not necessary to respect the rule of law…’ (Leg-10, Cz).

Those who thought transition was to blame for the low levels of respect for the rule of law in the Czech Republic, argued that people simply do not know the laws – partly as a result of frequent changes in legislation, partly as a result of red tape, and partly as a result of by the absence of a legal culture: ‘I would say that (those who do not respect the rule of law do so) due to the fact that laws are often changed and are not transparent, which particularly applies to all kinds of tax laws…for people to know the law it must be in force for a long time, which is not the case in our country...it is wrong when some law on income tax has been amended 40 times...so absolutely no one can understand it. Then it is hard to ask people to respect the law when often not even tax advisors would know it…’ (Leg-1, Cz); ‘(people) circumvent the rule of law. On the one hand (there is an) effort to obtain personal benefit, and on the other hand, the level of red tape (ensures) that at the moment when you want to respect the rule of law you will not be able to go on at all.’ (Med-3, Cz); ‘the legal culture here is underdeveloped…’ (I-bus-10, Cz); ‘you can see real ignorance of the law, which results in a worse attitude.’ (PP-2, Cz).

As a result both of the past and of transition a ‘culture of law-breaking’ had developed in the Czech Republic – some respondents even considered law-breaking to be a national sport – and pointed out that even law-makers did not respect the rule of law: ‘here the ladder of moral values is not set the way it should. And it is the legacy of the past... immediately after the (Second World) War, the value(s) were reversed. Respect for property, for personal integrity suffered considerably...today the fact that someone is convicted, a criminal, is not that negatively perceived in our society. The same applies to non-criminal relations. It means that I don’t keep my word, breach the contract, do not do what we agreed upon. It is not perceived that negatively in our country...(abroad) at a business meeting it will do when (the parties) give their word and it is a deal. In our country before shaking hands (people) will have come up with how to...trick each other. So in this sense I think that the laws are less powerful morally.’ (Leg-8,
Cz); ‘in the Czech Republic not respecting the law is a hobby. It is typical for all fields of law. And even people who respect the law are tolerant of the law breakers.’ (I-bus-6, Cz); ‘I would even say that it is our national sport … here the rule of law is not respected, especially by its authors…’ (Leg-5, Cz); ‘I think that people do not respect the rule of law…they think that their actions would not be legally evaluated.’ (Leg-9, Cz).

Respondents in Slovenia who thought Slovenes did not respect the rule of law, in most cases simply stated this as a fact – though like the Czechs, some of them thought the country’s communist past was to blame. In contrast, respondents representing the judiciary were inclined to think – like some of the Czech respondents referred to above – that laws are broken as a result of a wider, law-breaking culture, which is making people less prone to respect the rule of law on moral grounds. To the extent they do respect (it), they do so only when it suits them: ‘in the past it was useful to navigate around the law in order to benefit a certain region or certain companies. This is a reminder of the previous times, because people don’t change over night and the majority of the people were raised in that time when there was such a climate and regime.’ (PP-2, Sl); ‘I have a feeling that everybody is trying to con the state…’ (Leg-6, Sl); ‘generally Slovenes think that you should be resourceful and find a hole in the law. That sort of man is supposed to be successful.’ (Proc-2, Sl); ‘looking for holes in the law is a national sport…’ (Leg-9, Sl).

The majority of the Bulgarian respondents held the view that Bulgarians as a rule do not respect the rule of law. Unlike the Czechs and Slovenes, however, they did not try to explain this so much by referring to their country’s communist past. Instead they perceived lack of respect for the law as part of Bulgaria’s national culture. Respondents working in the judiciary, on their part, were inclined to think that people do not rather than do respect the rule of law and primarily due to the national psychology and their political upbringing: ‘our attitude is such that we oppose everything above us – even God.’ (N-bus-4, Bu); ‘Bulgarians always look for ways to bypass the law, even when this is not really necessary…it’s a national feature…’ (Proc-10, Bu); ‘citizens look upon the law as a door in the middle of an open field. This attitude has been inculcated for a long time…’ (Proc-8, Bu); ‘…the attitude is formed…in the school years…(in) a short story from Bulgarian literature, studied at school…the “good character” succeeds in deceiving the tax collector.’ (Proc-2, Bu); ‘(the lack of respect for the rule of law) is rather a matter of national psychology and upbringing.’ (Leg-9, Bu).
A larger number of respondents, however, blamed disregard for the rule of law primarily on the transition, which had caused frequent changes to the laws, so that most people therefore are not sufficiently familiar with the law, that laws are imperfect, that they sometimes reflect special rather than common interest, that they are not properly enforced and to the extent they are, that people are not equal before the law. All these factors have in turn resulted in a general disregard for the law: ‘the problem is that many people have understood the transition as a sign that they may do whatever they like and that they will not be punished for it…the laws are good but they are just not abided by…’ (PP-1, Bu); ‘frequent amendments to the legislation…are creating “chaos”.’ (NGO-2, Bu); ‘(as) they don’t know the law, people in Bulgaria do not abide by it…’ (El-r-4, Bu); ‘by and large (the laws) are not abided by, because they are imperfect.’ (Proc-9, Bu); ‘not all are equal before the law in this country.’ (G-off-5, Bu).

As was the case in the Czech Republic, historical, cultural and transitional factors had produced an at best resigned and at worst cynical attitude towards the law: everybody is for themselves and those not respecting the law are better off than those respecting it. According to those respondents who work within the judiciary, the judiciary is itself to blame for the current state of affairs. As a result of the poor performance of the prosecution and inefficiency within the judiciary more generally, people do not feel protected by the law. Besides, they have the impression that everybody else is breaking the law and thus have no incentive to change their own behaviour: ‘in Bulgaria, too many things can be arranged the “second way”, as we say, and for that reason, people don’t believe their life will get better if they respect the law…they are watching the law being violated not only by other citizens, but also by the state institutions.’ (NGO-4, Bu); ‘this disregard of the law is constantly demonstrated, everywhere and by everyone…people are convinced that the law does not protect them and hence they do not respect it.’ (Leg-5, Bu); ‘usually when everyone around you disobey the law, it is very difficult for you to respect it. This is the behavioural model of the majority of people here.’ (N-bus-6, Bu); ‘there is a deeply rooted sense that in order to be successful, you have to evade the law, because it is essentially a constraint on your success.’ (Med-6, Bu); ‘there is no liability for criminal acts committed, or for any administrative violations, except in minor cases. The system is extremely inefficient in the sphere of civil law. What is more, and what is actually very alarming, is that public administrative and other bodies and authorities in their turn do not respect court decisions. It is a vicious circle. The criminals walk free.’ (Leg-4, Bu).
Romanian respondents also blamed disregard for the rule of law on their country’s historical past and national culture. In the view of one respondent, the disregard for the law is also affecting new legislation imposed upon Romania by the international community: ‘we have a tradition of seeking ways to avoid the law. Our imagination regarding the breaking of the law has no boundaries and has rich traditions. In certain spheres of society, the (ability) to deceive the authorities is even a matter of pride.’ (Proc-6, Ro); ‘I think that people in Romania are not used to obey the law, because during all those years spent under the communist regime, they have been inoculated with the idea that you can break the law and nothing happens if you have “pile” and connections…’ (PP-9, Ro); ‘I think it has become a custom in Romania…not to abide by the law…Ceausescu…issued a law (i.e. a plan) and his subordinates tried to accomplish the plan by lying and cheating. Nowadays, laws are adopted due to external pressure, but the next day some people in the administration or in the government are trying to interpret it and that is changing its dispositions…’ (PP-4, Ro).

The majority of the Romanian respondents who thought people did not obey the rule of law, however, believed that transition in its various manifestations was to blame for this: laws are often designed to suit vested interests rather than the common good, they are often of poor quality, frequently change, are enforced in an arbitrary manner, causing people to draw the conclusion that everybody is not equal before the law. This, in turn, breeds distrust and further undermines the rule of law: ‘they (people with higher education) try to make laws for personal privileges to the detriment of most citizens. I think this is a most serious phenomenon, namely corruption institutionalised by law. Most of the people are struggling for their existence and break the laws because they have to…’ (CoE-1, Ro); ‘of course (the) law is not a perfect thing, and there are certain aspects which are very disturbing…’ (Proc-5, Ro); ‘first of all, laws are not that clear-cut: they change very often, at least this is the general perception. I’ll refer a lot to my experience as ex-prosecutor…you see, there is a process of harmonisation going on, which is like a revolutionary process for Romanians. Many laws are not explained the way they should be, people cannot understand them and so laws become confusing for them…’ (EU-1, Ro).

As in Bulgaria, some respondents also blamed the judiciary for the current state of affairs, accusing it of being politicised, biased and incompetent: ‘the judicial power is politicised…’ (NGO-8, Ro); ‘the actual judicial system has lots of deficiencies and at the
moment people realise that those who stole hundreds of billions and benefited from illegal privatisations…practically received only very soft punishments or (were not arrested), of course people (stopped) believing in justice. And what is even worse than breaking the law is this lack of trust in the rule of law and in the institutions in charge of applying and enforcing the rule of law.’ (PP-9, Ro); ‘Romanians would like to respect the law, but unfortunately there are two obstacles for this to happen: the first one is their habit of breaking the law…and the second is the incompetence of the institutions designed to apply the law. So the Romanians tend to break the law, tend to be uncivilised...’ (PP-5, Ro).

The Use of Contacts in the Judiciary: The General View

As noted above, the use of contacts and informal networks is in itself neither positive nor negative – it all depends on how and for what purpose they are used. We asked our respondents in which sector of society they thought the use of contacts was most widespread. Respondents in the Czech Republic and Slovenia – those working within the judiciary as well as those working elsewhere – made relatively few statements about the use of contacts in the judiciary compared to other sectors of society, thus suggesting that they perceived their use in the judiciary to be less widespread. Bulgarian and Romanian respondents – though with the exception of those working within the judiciary themselves – on the other hand, thought contacts were used to a larger extent in the judiciary.

| Table 3: Areas in which the use of Contacts is most widespread (in per cent) |
|-----------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
|                             | Czech Republic | Slovenia | Bulgaria | Romania |
|                             | Judiciary | Other | Judiciary | Other | Judiciary | Other | Judiciary | Other |
| Politics                    | 14        | 26    | 25        | 16    | 25        | 19    | 11        | 13    |
| Public Procurement          | 14        | 14    | n.a.      | 7     | 15        | 16    | n.a.      | 12    |
| Judiciary                   | n.a.      | 3     | 4         | 2     | 5         | 15    | n.a.      | 10    |
| Police                      | 10        | 7     | n.a.      | 2     | 15        | 7     | n.a.      | 6     |
| Business                    | 24        | 15    | 46        | 32    | 10        | 6     | 11        | 24    |
| Media                       | 5         | 7     | 7         | 1     | 10        | 18    | n.a.      | 6     |
| State administration        | 10        | 9     | n.a.      | 14    | 20        | 18    | n.a.      | 1     |
| Other/Don’t know            | 24        | 19    | 18        | 26    | n.a.      | 78    | n.a.      | 30    |
| N=                          | (21)      | (153) | (28)      | (194) | (20)      | (164) | (9)       | (145) |

Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

Czech respondents failed to specify how the use of contacts manifested itself within the judiciary. The Slovenes, on their part, did provide some detail. Contacts were as a rule used to speed up procedures and in some cases for promotion: ‘mainly in the judiciary…’ (NGO-9,
Cz); ‘(to be) promoted.’ (Leg-6, Sl); ‘you need contacts in the judiciary…(you need contacts in places) where you need something fast.’ (Proc-8, Sl); ‘…in the judiciary where there are big backlogs. Without connections you cannot arrange anything (fast), only very slowly. Time is money…’ (Proc-9, Sl).

Most of the Bulgarian respondents were less specific in terms of how contacts in the judiciary were used, though they were fairly convinced that these were quite widespread. Those who gave examples said that people who are not very familiar with the legal system, use contacts to find their way around and also sometimes to influence court rulings. Business people use contacts to protect their business interests, and criminals use them to limit – or avoid altogether – detention: ‘…police and judiciary…there people try to work things out mostly through contacts.’ (Leg-9, Bu); ‘in the judiciary you are lost without contacts.’ (N-bus-2, Bu); ‘this is related to people’s poor legal awareness, which is why the easiest way of achieving some goal or resolving some problem is to resort to contacts.’ (NGO-6, Bu); ‘in recent years, we have seen a lot of different rulings on similar cases…one of the reasons could be illegal influence. Another possible reason could be the incompetence of a particular judge…’ (Proc-2, Bu); ‘contacts are very necessary in the judiciary, especially in matters adversely affecting the interests of a company.’ (N-bus-10, Bu); ‘people seek contacts for approaching a judge, lawyer or prosecutor. This explains why criminals remain unpunishable and this demoralises ordinary people.’ (Proc-6, Bu); ‘we see how criminals are released within 24 hours, we see proven criminals who are untouchable. In my view this is a consequence of such unregulated contacts.’ (PP-3, Bu).

Romanian respondents were also fairly general when claiming that contacts were commonly used in the judiciary – as in Bulgaria contacts were used to find one’s way around and to influence trials and/or sentences. One respondent thought the judiciary in Romania experienced political pressure: ‘one needs connections in the field of justice…’ (El-rep-9, Ro); ‘probably the most important contacts are those within the…judiciary…’ (I-bus-1, Ro); ‘also in…justice. But the principle there is money…’ (Med-6, Ro); ‘and in justice for those people who are involved in trials.’ (Med-9, Ro); ‘in the judiciary: It is not the same if I get a one month sentence or a three year sentence…’ (NGO-7, Ro); ‘unfortunately in the judicial field there is a bigger need for these good contacts. There the political pressures are incredible, dramatic.’ (Proc-5, Ro).
The Use of Contacts in the Judiciary: The View Judges and Prosecutors

When specifically asked whether contacts were commonly used in their own sector – i.e. within the judiciary – most of the Czech and also a fair number of the Bulgarian respondents stated that this was not the case. In contrast, a majority of the Slovenian and Romanian respondents answered our question in the affirmative. One might expect judges and prosecutors to be less forthcoming on this issue. Contrary to our expectations, they provided even more detail than other elites on how contacts are used in the judiciary and their stories often echoed the stories told by other respondents, presented above – though with the exception of Romania.

<table>
<thead>
<tr>
<th>Table 4: The use of Contacts in the Judiciary in COUNTRY (in per cent)</th>
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<tbody>
<tr>
<td>Contacts commonly used in the judiciary</td>
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<tr>
<td>Contacts used in the judiciary</td>
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<tr>
<td>Contacts uncommon in the judiciary</td>
</tr>
<tr>
<td>Contacts not used in the judiciary</td>
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<tr>
<td>Other/don’t know</td>
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<tr>
<td>N=</td>
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Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

Most of the Czech respondents argued that given the impersonal character of the judicial system and the new generation of “clean” judges and prosecutors, it would be difficult to use contacts in the judiciary. To the extent contacts were used, they could at best only speed up a procedure or delay the passing of a verdict, rather than influence the actual verdict itself: ‘it is not common...connections are not useful.’ (Leg-3, Cz); ‘to use contacts in the judiciary is impossible... here there is a totally brutal, impersonal review system, which...you cannot influence...’ (Leg-5, Cz); ‘in the judiciary I would say that contacts cease to have a meaning, because the new generation of our young colleagues is really absolutely unapproachable to anything...contacts in the judiciary can maximally cause a ruling not to be written in three months or for the case to be pulled out from the bottom (of the pile) and put at the top. But that the ruling would be influenced...no, definitely not.’ (Leg-9, Cz); ‘useful contacts undoubtedly existed in non-criminal matters and in the company registers in the past...’ (Leg-8, Cz).

Slovenian respondents more readily admitted that contacts were used in the judiciary – though as in the Czech Republic mostly for small things such as getting advice or for speeding up or delaying procedures – and amongst staff to get promotions. Unlike the Czechs,
however, some of them thought contacts were used primarily at higher levels. Those who thought contacts were not so common in the judiciary, thought it was very difficult to use them in the first place: ‘yes (they are used), but not for making decisions, only for getting advice about lawyers or procedures, because our system is very complicated.’ (Leg-5, Sl); ‘now when everything is computerised, it is very hard to use contacts in the judiciary. People ask to speed up procedures (however), because the courts have many cases.’ (Leg-8, Sl); ‘because of slow procedures connections are used for speeding (up a case).’ (Leg-10, Sl); ‘to arrange that the case is moving at a snail’s pace.’ (Leg-7, Sl); ‘(contacts are only used) in promotion procedures, not for solving cases.’ (Leg-6, Sl); ‘in the judiciary it is not common to use contacts. It could be at the higher level.’ (Leg-6, Sl); ‘no, I think it is impossible.’ (Leg-3, Sl).

Only two of the Bulgarian respondents thought contacts were commonly used in the judiciary. One of them claimed that to the extent they were used, they were used for getting a job, for promotion, or to get a favour from a colleague. The other one suggested that contacts were used to speed up procedures or to secure a certain outcome: ‘the attempts to exert influence are increasingly noticeable…(i.e.) not to let the judiciary decide an issue on an equal standing for all parties involved.’ (Leg-8, Bu); ‘contacts in the positive sense in the judicial system are used for preparing a court decision more quickly, for setting the date of a hearing sooner or for advancing a lawsuit more quickly. In penal cases it is harder to use contacts, because a trial is public and the access of the parties and of the public in the courtroom is not restricted.’ (Leg-6, Bu).

One respondent distinguished between so-called “white” and “black” intercessions and another tried to explain how “black” intercessions work in practice: ‘for instance, a “white” intercession would be a request to postpone the hearing or to wait for the attorney who is busy somewhere else, or to speed up the writing of the (court) decision without breaking the law. These are harmless contacts which are not that reprehensible. This is rather a gesture towards a colleague, a manifestation of a fellow-feeling. The “black” intercession is when you look for contacts to influence the final outcome of a legal dispute or court case.’ (Leg-9, Bu); ‘within the judiciary there are informal channels based both on family ties and friendship…there is a very big difference between Sofia and the countryside. In Sofia, judges are approached not so much through contacts as through channels. You don’t approach them as friends but in an institutionalised manner, so to speak. If we are talking about corruption, it takes place through a
channel. Whereas in the countryside…it is more likely to be based on family relations…the spouses of the judges make up one…basic corruption channel. If you take a look at Sofia City Court and the higher courts, the bulk of the lawyers appearing there are married to judges. And it’s all a matter of exchanging favours. They hire your spouse, who is a well-paid and in many cases mediocre lawyer and he will not plead his case in your court but before your colleagues, and then someone else’s husband will appear before your court.’ (Leg-4, Bu).

Other respondents distinguished between various branches within the judiciary, claiming that whereas the use of contacts in court is rare, their use is more common in the court administration: ‘in my view there are very few judges, if any, who would sacrifice the right of one living person for the right of another living person…but when it comes to the court administration – for instance the company register or the court register of legal, non-profit bodies…contacts are used more often…in the judiciary there are practically no institutional contacts because there is no real institutional dependence. Contacts that are used in the judiciary are a result of personal relations…and are most often used not to decide the issue in a particular way, but to speed up things.’ (Leg-10, Bu).

Those respondents who thought contacts were rare, argued that legal procedures are cumbersome and therefore difficult to manipulate, that to the extent contacts are used, they are used to make the system work more efficiently, and that the negative impression that has formed with regard to the use of contacts in the judiciary is very much a media-creation rather than a reflection of reality – though one respondent hinted that judges could be swayed: ‘the use of contacts in the judiciary is not very common. A legal case passes through three instances. That means that at least seven people are involved in it…in our system things are organised in such a way that the use of contacts is very complicated, or rather restricted, or can be used (only) for something really small. At the same time, we (the judges) often infringe on the ban on giving legal council to relatives and friends…’ (Leg-3, Bu); ‘the use of contacts is not common in the judiciary, however, listening to the mass media one gets the impression that attempts (to use contacts) are made quite often.’ (Leg-2, Bu).

Romanian respondents also thought contacts were primarily used in the judiciary for obtaining information about a system perceived as very complicated and difficult to understand, or to speed up procedures – though occasionally also for more direct favours, for which payments were made: ‘the judicial system is composed by several other subsystems. The
citizen does not know nor understand how the law really functions and that is why he or she might think that in order to achieve something he/she needs good contacts. Also because of the lawyers’ desire to get more money they might present the judicial procedures as something very complicated and inaccessible…nowadays better and stricter modalities have been discovered, with which to select the magistrates and so good contacts are not useful anymore…’ (Leg-9, Ro); ‘most of the time (people) hope to solve things as fast as possible and so they appeal to their good contacts and they negatively affect the legal procedures and paralyse the system. In Romania trials take a long time – for example the Court of Appeal needs a lot of time to pass a final verdict – and that is why people try…to diminish the period from the beginning (of the court case) to the final decision.’ (Leg-10, Ro); ‘communication within the judiciary is pretty problematic. For every law suit, for instance, judges have to appeal to different institutions in order to obtain the information necessary to solve the case. The problem is that these institutions don’t hurry to provide us with the information and so we must postpone the case forever. Moreover, even witnesses don’t show up in court when called. This leads to a feeling of uncertainty for the person who decides to bring his case to court.’ (Leg-8, Ro); ‘yes (they are used). The relationships are not necessarily of the family type, but mostly friendships (i.e. acquaintances, not real friends) because any favour like this is paid for…’ (Leg-5, Ro).

Contacts were also used to secure fair trials or for obtaining a good position within the judiciary. Judges sometimes also come under pressure from the prosecution: ‘in my field contacts are used…to make sure the trial will be fair for both parties. Of course there are also some attempts to influence the judge’s decisions.’ (Leg-1, Ro); ‘there were…some general prosecutors who put a lot of pressure on some judges.’ (Leg-7, Ro).

The use of Informal Networks in the Judiciary: The General View

When asked in which sectors of society informal networks were most common, almost none of the respondents in the Czech Republic and Slovenia answered the judiciary. Some of the Bulgarian respondents not working within the judiciary thought informal networks did operate in the judiciary, as did the Romanians – and those working within the judiciary more so than those working in other sectors of society. As will be seen below, our respondents to some extent spoke about “informal networks” in much the same manner as they had earlier spoken about
“contacts.” They also suggested that informal networks were largely used for the same purposes as contacts.

Table 5: Areas in which Informal Networks are most common (in per cent)

<table>
<thead>
<tr>
<th></th>
<th>Czech Republic</th>
<th>Slovenia</th>
<th>Bulgaria</th>
<th>Romania</th>
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<tbody>
<tr>
<td></td>
<td>Judiciary</td>
<td>Other</td>
<td>Judiciary</td>
<td>Other</td>
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<td>Politics</td>
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<td>Public Procurement</td>
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<td>4</td>
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<tr>
<td>Judiciary</td>
<td>n.a.</td>
<td>1</td>
<td>n.a.</td>
<td>2</td>
</tr>
<tr>
<td>Police</td>
<td>n.a.</td>
<td>5</td>
<td>n.a.</td>
<td>1</td>
</tr>
<tr>
<td>Business</td>
<td>21</td>
<td>15</td>
<td>25</td>
<td>30</td>
</tr>
<tr>
<td>Media</td>
<td>n.a.</td>
<td>10</td>
<td>25</td>
<td>6</td>
</tr>
<tr>
<td>State administration</td>
<td>11</td>
<td>5</td>
<td>n.a.</td>
<td>4</td>
</tr>
<tr>
<td>Sector overlap</td>
<td>n.a.</td>
<td>1</td>
<td>25</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>32</td>
<td>12</td>
<td>13</td>
<td>16</td>
</tr>
<tr>
<td>Don’t know</td>
<td>5</td>
<td>3</td>
<td>n.a.</td>
<td>1</td>
</tr>
<tr>
<td>N</td>
<td>(19)</td>
<td>(142)</td>
<td>(16)</td>
<td>(139)</td>
</tr>
<tr>
<td>N</td>
<td>(30)</td>
<td>(192)</td>
<td>(11)</td>
<td>(158)</td>
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</tbody>
</table>

Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

Czech and Slovenian respondents talking about informal networks operating in the judiciary, failed to specify what types of network they had in mind – though some thought they were influential: ‘they can have a great influence only in politics, the judiciary or in the police.’ (Med-10, Cz); ‘…in the judiciary.’ (N-bus-10, Cz); ‘definitely in law…’ (EU-2, Sl); ‘the most networks…in the judiciary…’ (I-bus-4, Sl).

Bulgarian and Romanian respondents, on their part, provided more detail on what networks and how they operated. According to our respondents, in Bulgaria there is one network based upon the judicial nomenklatura, another one composed of lawyers and judges who went to the same university, one network centred around former policemen-turned-lawyers, and in addition there is a wider network composed of politicians and people working in the judiciary, as well as a network linking the judiciary with criminal structures: ‘judiciary – well, there are various groups and groupings there, in prosecution, even in court…’ (EU-1, Bu); ‘in the judiciary circles exist around personalities, around the judicial nomenklatura…’ (El-r-3, Bu); ‘there is a…network of lawyers and judges who studied at the same place and all know each other. They have a very powerful network and all too often, it is the network that decides the cases rather than the law. The good lawyer is often one who is well connected in the judicial system, who is successful and wins his cases thanks to his extensive contacts rather than his skills as a lawyer and the facts themselves (though) there are cases in which such things are not
involved.’ (Med-1, Bu); ‘the judicial system is vulnerable with regard to the political system, which it is trying to reform.’ (Med-6, Bu); ‘the judiciary and the criminal networks are part of the same network, which has its own defence mechanisms and channels of interaction…’ (El-r-2, Bu).

In Romania there appeared to be a network linking business with the judiciary, a network of lawyers and magistrates, providing a further link to politics, a wider network linking people working in the judiciary, networks of former colleagues and friends, and finally also a network of people who studied together: ‘I think that networks are most active in the judiciary…’ (G-off-2, Ro); ‘yes, there are certain networks, like those of the great magnates, art merchants or of the people who work in the judiciary…’ (PP-3, Ro); ‘they (i.e. the informal networks) are also active within the judiciary, especially (those linking) lawyers and magistrates. Lawyers are a sort of “go-between” between magistrates and parties. They represent the interests of the parties, on the one hand, and on the other hand, they are also interested themselves in gaining the trial or the lawsuit. So they go to people they know and facilitate the traffic of influence.’ (EU-2, Ro).

A few of the Bulgarian respondents also gave examples of how informal networks operated within the judiciary – networks were used for appointments and could also be used to determine the outcome of court cases – in other words they were used for the same purposes as contacts: ‘they appoint people themselves, but the system is generally rather open for new people to enter. Internally, in relation to the ongoing reform, there are still things to be done. In every court it is written that judges do not consult people. Yet some people do get consultations – especially the attorneys…this might be the link…’ (EU-1, Bu); ‘an informal connection gives rise to the suspicion that a judge is connected with some of the parties, or that the police are going after someone because he has some informal connection with a police officer. Not to mention the commissioned pieces in the media.’ (NGO-4, Bu).

Most of the Romanian respondents who thought informal networks existed within the judiciary, however, simply stated this as a fact. Still, one respondent gave examples of how appointments within the judiciary were facilitated by informal networks: ‘you just need to take a look around…how Victor Ciorbea appointed his former law faculty colleague to a high position. At the local level this can also be seen…Prosecutor-General Mircea Cristea appointed
his former colleagues and friends from faculty as county prosecutors. I wouldn’t say that the judiciary is more subject to such practices (than other sectors); but I would say that those positions which are occupied subjectively or by appointment are more subject to such practices – i.e. where the criteria is not clearly stated…such appointments are “semi-legal” and it starts from the top down.’ (Leg-5, Ro).

As far as influence is concerned, many respondents in Bulgaria and also some of the Romanian respondents thought the informal networks were influential in the judiciary. One respondent even gave an example of how those working within the judiciary benefited from such networks – though a fairly sizeable number of respondents thought their influence was more limited: ‘informal networks are most influential in the judicial system, where the law is applied…’ (PP-5, Bu); ‘they (i.e. the informal networks) are also influential in…the judiciary.’ (NGO-3, Ro); ‘there was one case when a prosecutor with a 600 leva monthly salary built a house worth 250,000 USD. I wish someone would explain how he earned this money…’ (Proc-6, Bu); ‘in the judicial system… I have friends and colleagues there and solid information from personal observation – there informal networks have the least influence…’ (Proc-8, Bu).

The use of Informal Networks in the Judiciary: The View of Judges and Prosecutors

As seen above, none of the Czech, Slovenian and Bulgarian respondents thought informal networks were most widespread in the judiciary – though some Romanian respondents did think that this was the case. When specifically asked whether informal networks were common in their own sector, however, a majority of the respondents in Slovenia and Bulgaria answered that informal networks were active in the judiciary, whereas the majority of the respondents in the Czech Republic thought the opposite. Romanian respondents were fairly divided. The stories told by judges and prosecutors more or less matched those told by other types of elites.

| Table 6: The use of Informal Networks in the Judiciary in COUNTRY (in per cent) |
|---------------------------------------------------------------|-----|-----|-----|-----|
| Informal networks are active                                 | 15  | 77  | 69  | 23  |
| Informal networks are not active                             | 77  | 23  | 31  | 23  |
| Other/don’t know                                             | 8   | n.a. | n.a. | 54  |
| N=                                                           | (13) | (22) | (13) | (13) |

Note: N=total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

40 General Mayor of Bucharest from December 1996 to April 1998 and Romanian Prime Minister from June 1996 to March 1998. Ciorbea is president of the National Christian Democratic Peasant Party of Romania (PNTCD).
One of the Czech respondents was hinting at networks forming due to the frequent interaction between the judiciary and politicians, whereas another respondent suggested that the Judges’ Union was part of a larger network: ‘these kinds of interest networks probably exist here. But I would say that they just don’t work so strongly in the judiciary. That is because of the way the system of justice is based – that the judges here are in essence without limits, so they do not have the need to reassure and secure their position one way or another…we need to be in contact with the district (authorities)…they arrange assistant judges for us…and so I must be on good terms with them…here it is just, wherever you come, immediately everyone says to you, “look, I have this (problem) and could I come to see you with that.”…it is the problem of the organisation here that we are forced to communicate with the district…they are supposed, for example, to arrange assistant judges for us, they don’t bother doing it, and I must go to see the Mayor and talk to him, convince him that it is good that we must have it and again, it is quid pro quo…they are not networks as such, but more likely personal contacts.’ (Leg-6, Cz); ‘we have only one sort of an informal network in the sense that there exists the Association of Judges, the so-called Judges’ Union, they…sort out…business activities, when they want the right to (advice) the wider group of business people who are supposed to pay for it. It (i.e. the practice) is subject to much criticism.’ (Leg-9, Cz).

The large majority of the Czech respondents, however, did not think informal networks operated within the judiciary: ‘I don’t know any networks of connections and contacts there.’ (Leg-2, Cz); ‘I think not…’ (Leg-3, Cz); ‘I have not encountered them. Obviously we know each other from school, from one class…but I do not think that it would have any effect…it is one thing when you help informally and something different when I expect to be given something for it. (The latter) is obviously wrong.’ (Leg-7, Cz).

A majority of the Slovenian respondents, on their part, held the view that informal networks are active in the judiciary. Most of them pointed out how these networks sought influence and what kind of influence they were after (employment, verdicts), whereas only one respondent referred to the type of networks operating in the judiciary – circles of people connected with the court presidents: ‘(it is) not about adopting decisions, perhaps about employment,’ (Leg-3, Sl); ‘influence on the judiciary is not direct, it is (exerted) through the media. The media presents a case and pushes the courts because they have their own solution in
advance, and people expect the same conclusion from the courts.’ (Leg-9, SI); ‘in one case...depending on a judgement at stake, (involving) a large amount of money, a judge was called by the minister and shown a box, but he did not accept…I also remember one other case when there was quite the same procedure...a telephone call by a minister, but this is rare...’ (Leg-1, SI); ‘yes, but fairly low-key ones.’ (Leg-2, SI); ‘there is a circle of people who are connected to presidents of courts. Presidents have a network of their people. Networks from the outside do not penetrate the judiciary.’ (Leg-6, SI).

As was the case with contacts, Bulgarian respondents thought informal networks are common also in the judiciary – and that they are influential – but less so in the courts, more so elsewhere. Influential informal networks are often composed by friends, former colleagues and people who graduated together. Such networks were used to obtain information, employment or advice: ‘well, everybody has friends, colleagues. In that sense networks do have some negative influence...’ (Leg-1, Bu); ‘there are, of course (networks). This cannot be denied. Such networks are again built on personal contacts born at the time of university studies or when a particular circle of people worked together in the same place.’ (Leg-5, Bu); ‘if you mean networks like those of people who graduated together, there are such things.’ (Leg-2, Bu); ‘perhaps the network of university contacts...these contacts still exist. At times they lead to good results, for instance in terms of obtaining information, getting a job, advice, etc. At other times they probably have their negative features.’ (Leg-7, Bu); ‘there are surely some, simply because...people come to the court from somewhere and they carry (with them) their contacts and relations...’ (Leg-10, Bu).

As far as directly harmful networks are concerned, two respondents mentioned networks of former police officers-turned-lawyers. Such networks in turn initiate wider networks – or channels – linking people in the police, investigation, prosecution and court. These networks engage in corrupt activities: ‘it was openly stated by the police, by high-ranking police officials, that policemen quit and go to the opposite side of the barricade to work for money...’ (Leg-8, Bu); ‘for me the most dangerous network within the judiciary is that of former policemen who became lawyers and established such “channels” – beginning with the police, investigation, prosecution, court...it is common practice for former policemen who are now lawyers to establish such corruption channels...’ (Leg-9, Bu).
Another lawyer thought incompetence may be conducive to informal practices in the judiciary: ‘after 1990 the judiciary was brain-drained when many capable and educated people became attorneys of law or were fired...(we got) more than 13 law faculties and after 1998 their graduates entered the judiciary thus leading to the overall decrease of the quality of the system. All of these have at the same time started to influence the quality of judicial decisions and actions, the pace of the legal process, etc. Now the question is whether an informal organisation functions (within the judiciary), whether this is due to somebody’s incompetence or whether some of the people who became attorneys are professionally better prepared than the ones who stayed in the judiciary, whether there are too many climbers in the judicial system, or too many novices.’ (Legl-8, Bu).

As for the possible link between politics and the judiciary, opinions were divided: ‘I would not say that any of the political parties has a network in the judiciary. We are various people here and claims that the judiciary was “red” or “blue” are nothing but hearsay. The fact that a person with a particular political affiliation stands as head of a court does not influence lower levels.’ (Leg-9, Bu); ‘(informal networks) are associated with political centres since career advancement takes place through these political centres. They are the only ones (i.e. informal networks) I am aware of. I don’t see any emerging on the basis of some idea, or for the purpose of professional improvement. They’re all related to the political centres. Gravitating around them. And those who are not in power are just waiting for their turn. As for the way they act – they are generally unscrupulous. Even at our court we have these little groups, supporting each other.’ (Leg-4, Bu).

Other respondents thought informal networks are not particularly influential in the judiciary due to the very role of the judiciary itself. In their view, friends or acquaintances may be treated worse than others in order to avoid accusations of bias: ‘I don’t see what (informal networks) could do in the judiciary.’ (Leg-2, Bu); ‘a judge is a rather restricted person in terms of personal contacts...his work demands this of him – both in terms of professional contacts and in his personal life...’ (Leg-6, Bu); ‘I do not know anyone who has won his own legal case...in our system...those who told you that a lawyer does not deny another colleague – this is absolute nonsense. In our system, if a judge sees a case of a colleague of his, it is as if he sees the most disgusting thing...even if they are colleagues who graduated together...in some cases there is also some form of over-insurance – at least I perceive it that way: “well, I’d better turn him
down so that they cannot say I made him a favour.’ I have seen this…and I can cite at least five cases…” (Leg-2, Bu).

Romanian respondents were either fairly convinced that informal networks exist – or, on the contrary, that there are no such networks. To some extent the former thought informal networks in the judiciary are essentially a remnant from the past. Networks operating within the judiciary included circles of magistrates and education-based networks. According to rumours, a network of professors, lawyers and members of parliament also exist, though one of the respondents very much doubted that this was the case. One respondent claimed that the purpose of informal networks is corruption: ‘I think there are active networks in the judiciary and that they are based on the affinities between different magistrates.’ (Leg-1, Ro); ‘(networks) by education, by contacts with a foreign environment. We were a very closed society and people still carry the fear that was justified during the communist regime. Now it is not justified, people do not communicate enough and this is proven by their tendencies, by their dreams.’ (Leg-7, Ro); ‘in the judiciary there are no networks, or I do not know about them.’ (Leg-3, Ro); ‘there was a public debate at some point about professors, lawyers and members of parliament, who would be able to influence the decisions of judges. That is not true. I have never heard about such situations.’ (Leg-8, Ro); ‘yes (there are) and their purpose is corruption.’ (Leg-10, Ro).

Informal Relations in the Judiciary: the Personal Experience of Judges and Prosecutors

Survey results from East Central Europe and South East Europe suggest that people tend to exaggerate problems such as corruption when speaking in general terms. When asked specifically about their personal experiences, corruption comes across as a lesser problem. We were interested not only in our respondents’ perceptions of the use of contacts and informal networks in society more generally and in their own sectors in particular, but also in their personal experiences with and exposure to them. The latter is important as it may shed some light on how informal practices manifest themselves in the judiciary and thus enhance our understanding of why things don’t always work according to the book.

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41 One respondent said he had no evidence of such networks himself, but talked at length about what he thought about the media and other sources of such information – which explains why the high percentage for “Other/don’t know” is high for Romania.

42 Miller, Grødeland and Koshechkina (2001).
Types of Requests received

As can be seen from table 7, the majority of requests received by our Slovenian, Bulgarian and Romanian respondents were requests for favours. In contrast, the Czech respondents said that they were primarily approached with requests for something to which the requester was entitled by law:

<table>
<thead>
<tr>
<th>Table 7: Types of Requests received (in per cent)</th>
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<tbody>
<tr>
<td>Czech R</td>
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<tr>
<td>Requests for information</td>
</tr>
<tr>
<td>Lawful requests</td>
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<tr>
<td>Requests for favours</td>
</tr>
<tr>
<td>Other/Don’t know</td>
</tr>
<tr>
<td>N=</td>
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</table>

Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

*Czechs* approaching the judiciary for information, wanted to know about *proceedings* – either because they were *not familiar* with the *court system* or because they *did not trust official information*: ‘in essence (requests) regard the matter as such – i.e. the procedure, speed, and elementary information about the processes in the criminal proceedings, as the…public naturally knows nothing about that…’ (Leg-8, Cz); ‘they just want to get the information…today not everyone would be happy with what he/she is told here or anywhere else and wants to check it, verify it one way or another.’ (Leg-6, Cz).

In other cases people made requests that they appeared to be, or believed that they were, entitled to – often in terms of advice on *how to proceed in cases* – though often what they were essentially asking for were *favours*: ‘they do not see that they want a favour. They want help, as they believe they are entitled to it. And I…show them that I will help them within the law.’ (Leg-9, Cz); ‘they very often want to obtain a favour…they want something they believe they are entitled to, but in reality want something they are not entitled to or even something that is to the detriment of a third party…’ (Leg-5, Cz).

Requests for favours typically involved help to *speed up a procedure* or to *get an advantage*. Our respondents expressed understanding for the former requests and complained that the latter were facilitated by general low levels of legal awareness in the Czech Republic: ‘they are most concerned with their case not lying here for long…the court is at present having (only) 50 per cent of the employees it should have, it is understaffed, so really the proceedings
are a pitiful sight, people complain, want to find out how they could get things moving, it is natural…’ (Leg-6, Cz); ‘they want to get an advantage. They do not know that by law they are entitled to get (only) this and that – it is the entire lack of legal awareness existing here.’ (Leg-10, Cz).

A fair amount of the Slovenian respondents were also approached for information – either about procedures or about people – or something they believed they were legally entitled to: they ask for things they are entitled to by law.’ (Leg-9, Sl); ‘just friends who are asking information about how to do something properly.’ (Leg-10, Sl); ‘information about procedures.’ (Leg-8); ‘they are just asking who those people are.’ (Leg-8, Sl); ‘they ask you who is a good lawyer and similar things. In the beginning (i.e. when I started working) I was advised that this kind of help is not appropriate.’ (Leg-5, Sl); ‘usually it was only at the level of professional colleagues…(for) access to information.’ (Leg-2, Sl).

A majority, however, admitted that they had also been approached for favours – in most cases for speeding up procedures, to act as an intermediate to facilitate contact to people higher up, and also – though rarely – to intervene in a case to somebody’s advantage or to quash a sentence: ‘especially requests (for) how to speed up cases…’ (Leg-5, Sl); ‘(they ask) to speed things up in inheritance matters.’ (Leg-9, Sl); ‘speeding up the procedure, I believe this is the main problem. Maybe also deciding cases in such a way that a sentence would even be quashed…’ (Leg-1, Sl); ‘there were questions if I can ask other people in the judiciary that I know to get some information from them.’ (Leg-10, Sl); ‘they want information about whom to turn to or if I know somebody in the land register.’ (Leg-5, Sl); ‘sometimes they ask if I…know somebody higher.’ (Leg-7, Sl); ‘…they ask if I know a person who is in charge of their case and if I could approach that person.’ (Leg-9, Sl).

Bulgarian respondents also frequently received requests for information. Such requests were often essentially masked requests for favours – though to some extent judges and prosecutors were sympathetic to them. Requests for advice – often relating to specific cases – were often facilitated by a general lack of information and low levels of trust in society: ‘often (people) are afraid because they believe the other part acts in the same way and they feel compelled to play it safe…probably these are remains from earlier periods.’ (Leg-1, Bu); ‘very often, they want information to make sure they won’t make a mistake. And they approach me as friends, colleagues…in this respect our job is very difficult. We are not supposed to offer
consultations, and if we do, it means we can’t get involved in decision-making on the disputes...essentially they need information so they can feel confident that they are on solid ground. Because ours is not a normal country where you know who is who...here people don’t have this information and they need to make sure. They typically and mostly request information from me and it is difficult because I am approached by friends with whom I cannot be blunt or rude. A very dear friend comes to see me and brings some people who first start complaining about all the other arbiters and then try to engage me.’ (Leg-4, Bu).

Like the Czech and Slovenian respondents, Bulgarian respondents were also approached for speeding up procedures. Requests for favours were often linked to ongoing court-cases. Judges and prosecutors were sometimes approached for information about the case, sometimes for advice on how to proceed, and sometimes to influence or alter court rulings: ‘they want me to help them solve problems to their advantage.’ (Leg-9, Bu); ‘I am very often asked about particular cases and people believe this is the most normal and natural thing...’ (Leg-10, Bu); ‘people come and ask for personal things. For instance, one comes and asks “are you going to try that case?” “Well, I am.” “What are you going to plead?” “You will hear it.” What can I tell him in advance?’ (Leg-2, Bu); ‘very often they are quite straightforward about it, they want assistance...this young lawyer I know, recently got in touch with me and asked to meet me about some case he had taken...they try to arrange a meeting at which they will most probably ask for inadmissible things...they are trying all the time.’ (Leg-4, Bu); ‘there are also people who are not acquainted with the law and they want us to cancel court decisions, which are of course impossible...’ (Leg-8, Bu).

Some of the Bulgarian respondents had also received requests for appointments, to facilitate contacts with others and to speed up procedures: ‘I have been asked impossible things – to appoint people to whatever positions. These are funny things when people due to their low education believe that if you occupy a particular position, you are almighty.’ (Leg-5, Bu); ‘for finding a job, things like that...there are cases when some contact is sought with other people, but such cases are very limited in number. The concrete aims are to find work, to speed up some court procedure...’ (Leg-7, Bu).

Romanian respondents were also asked for a range of things – information or advice, though more frequently for favours. The latter included estimations of verdicts and incentives were sometimes offered: ‘I was being asked for information, for legal benefits and also for
favours.’ (Leg-1, Ro); ‘most of the time they ask for estimations of the final verdict of the case. If you feel that the person who came to you will try to negotiate the estimated verdict to favour the defendant, you have to stop the discussion.’ (Leg-5, Ro); ‘people usually request a good solution from a judge, whether they are right or wrong they seek a convenient solution. Very few accept that they are mistaken when they show up with a case and their request is rejected – with good reason. In this case, inevitably one may get to corruption…’ (Leg-3, Ro).

Personal Exposure to Contacts

A majority of the respondents in all countries except the Czech Republic, where none of the respondents answered our question, said that they had been approached by contacts.

Slovenian respondents simply stated that they had been approached – and either for information, for advice or in rare cases also to speed up procedures. They also took care to explain that these were legitimate requests that our respondents complied with. Those making the requests were usually friends, acquaintances or relatives: ‘they ask me for information all the time. However, this is not something (i.e. information) that anybody could not get.’ (Leg-2, Sl); ‘yes, for things they are entitled to by law. Information about lawyers and similar things.’ (Leg-10, Sl); ‘I advise acquaintances on how to write a formal letter to speed up a procedure.’ (Leg-9, Sl).

| Table 8: Whether Respondent has been approached by Contacts (in per cent) |
|-----------------------------|-----------|--------|---------|--------|
| Respondent has been approached | Czech R | Slovenia | Bulgaria | Romania |
| Respondent has not been approached | n.a. | 73 | 73 | 100 |
| Other/don’t know | n.a. | 18 | n.a. | n.a. |
| N= | (0) | (11) | (15) | (3) |

Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.

Requests made by contacts in Bulgaria were usually of a similar nature to those received by the Slovenian respondents – they were asked for information, for advice, for help to find a job, or to speed up a procedure. As in Slovenia, such requests were as a rule made by friends, acquaintances or other people close to the respondent: - ‘there were some (requests), yes. Why should I insist on the opposite? Everybody knows this.’ (Leg-1, Bu); ‘most often they turn to me for information or advice…for finding a job, things like that.’ (Leg-7, Bu); ‘well, there was once a request from an acquaintance of mine who asked me to speed up an inspection…’ (Leg-8, Bu).
Unlike the Slovenes, the Bulgarian respondents emphasized the need to refuse or to find intelligent ways in which to respond to such requests. There was also a fair amount of understanding towards contacts making requests: ‘it has happened, of course. The issue is to find a way to refuse.’ (Leg-5, Bu); ‘sometimes it’s about things they’re entitled to by law, sometimes about other things…But essentially they need information so (that) they can feel confident (that) they’re on solid ground. Because ours is not a normal country where you know who is who…here people don’t have…information and need to make sure. They typically…request information from me and it’s difficult because I am approached by friends with whom I cannot be blunt or rude. A very dear friend comes to see me and brings some people who first start complaining about all the other arbiters and then they try to engage me…those who have turned to me have been personal friends and they intervened in favour of a state-owned enterprise. No one has requested a personal favour…’ (Leg-4, Bu).

Those Romanian respondents who said they had been approached by contacts had been asked for advice – also unsolicited advice. As in Slovenia and Bulgaria, contacts also primarily constituted relatives, friends and acquaintances – though also former and current colleagues: ‘I was contacted by relatives, friends, former or present colleagues to help them or their acquaintances, but only with advice, nobody asked me to interfere in a certain trial.’ (Leg-1, Ro); ‘mostly my relatives and my acquaintances asked me about land trials, but I am not allowed by law to give advice about disputed issues, even though I am not the one presiding over them.’ (Leg-2, Ro).

Personal Exposure to Informal Networks

We also asked our respondents directly whether they had been exposed to informal networks. As can be seen from table 9, judging by their statements Bulgarian respondents had been approached, whereas the opposite appeared to be the case as far as the Czech, Slovenian and Romanian respondents was concerned.

| Table 9: Respondents’ exposure to informal networks (in per cent) |
|-----------------|---------|---------|---------|---------|
| Approached by informal networks | 18 | 24 | 53 | 29 |
| Not approached by informal networks | 64 | 76 | 21 | 71 |
| Other/don’t know | 18 | n.a. | 26 | n.a. |
| N= | (11) | (17) | (19) | (7) |

Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.
The two Czech respondents who said they had been approached by informal networks were fairly vague about how they were approached – though one of them talked about the type of informal network that approached him. Another respondent who had not himself been approached by informal networks was still able to identify one operating within the judiciary: ‘Slavia (Czech football team) men want something from me now and then – I am also a Slavia fan.’ (Leg-10, Cz); ‘I noticed that (i.e. the influence of informal networks) several times as the outputs of the…police-prosecutor network…’ (Leg-5, Cz).

Most of the respondents who said they had not been approached by informal networks simply stated this without any further explanations – though one respondent thought informal networks did operate in the judiciary, just not in his own area: ‘no one contacted me.’ (Leg-4, Cz); ‘I would not say so. But it is because of what I do. As a judge I have been working in the civil law-line. It can probably be different when someone is, say, a criminal law judge and the person who would like to influence him…is for instance some(one from the) drug mafia or something like that. There I think that it can happen, but in the civil law line and moreover when I am not in charge of commercial cases – we have a specialised Senate for that – I would say it is not so.’ (Leg-1, Cz).

Only two of the Slovenian respondents had been approached by networks – and only one of them in a work-situation. Establishing whether or not one was approached by an informal network was easy as those approaching someone with a request usually gave this away – either directly or indirectly: ‘(I have) not (been approached) at work. Otherwise they did approach me.’ (Leg-7, Sl); ‘they act (in a) very sophisticated (manner). They give the impression (that they need) a good outcome. If they are turned down, they become aggressive.’ (Leg-10, Sl); ‘you can see from the outside that they belong to a network and they also tell you. They emphasize whom you know…so that this person could harm you later.’ (Leg-7, Sl).

Still, some of the Slovenian respondents who said they had not been approached, indicated that they may have been approached but without being aware of it: ‘I had no such contact…I think such a person (i.e. a person belonging to an informal network) does not express it.’ (Leg-4, Sl); ‘I simply know (that I have not been approached) because Slovenia is small and you know who is who.’ (Leg-6, Sl); ‘I do not have such an experience…maybe we realise later that we were approached by such a person.’ (Leg-8, Sl); ‘I do not have a feeling that they would expose their belonging to an informal network.’ (Leg-3, Sl).
Some of the Bulgarian respondents said they had been approached by informal networks, although they could not specify which ones. Networks did not simply make requests, but applied pressure and threats to get their way. One judge even suspected that some of his colleagues had fallen victim to such networks. One respondent said the Masonic Lodge had made an attempt at co-opting him: ‘many times I suppose so, but with no proof.’ (Leg-1, Bu); ‘I have such an impression lately. The feeling of pressure from all sides, which cannot be by a single person, but is more likely a matter of an organised effort...there is a particular feeling. This is already a matter of discussion. We do not talk here of a request. We talk of pressure and threats. These people (i.e. those who make pressure and threats) are strongly related and have positions in the highest places.’ (Leg-5, Bu); ‘generally, everyone is trying to get you on their hook. And if they break through once, then they will have a hold over you. I have my suspicions about some of my colleagues that they are simply trapped.’ (Leg-4, Bu); ‘there have been such attempts...from the Masonic Lodge...in terms of personal experience I can only speak of the Masonic Lodge and that’s not an informal network in the strict sense...they directly invited me to join as a member.’ (Leg-4, Bu).

Other respondents were more clear about what types of networks they had been approached by, or at least they realised what the network succeeded in obtaining: ‘yes, I have had such an impression (i.e. that I have been approached by informal networks). For instance university colleagues or the legal advisor of a certain group, which I know or have read (about) in the media that is informal – either “wrestlers” such as SIK, MIK, VIS (abbreviations of previously existing insurance companies that allegedly used illegal means and terror to promote their cause) or something like this. When you see such a person and he starts explaining that he is the legal consultant of this and that (group) you simply ask yourself “why you?”, because they (i.e. the groups) do not stand unknown people, one has to be trusted there. The legal consultant should be loyal to them and not run to the police every other day...(in that case) they would kill him on the second day.’ (Leg-2, Bu); ‘well, let me give you an example. I had a case once and a colleague asked to backdate the registration: let’s say it came before Christmas and should have been registered with a date before 31 December (that year), but the date of this registration was from the following year. Everything was very simple and legal. Afterwards it appeared that out of this trick somebody saved VAT in the amount of 400,000 leva, but I could not know that. They didn’t tell...someone comes, asks on a company’s behalf. It is obvious that he does not
represent the company, hence someone has asked him, otherwise it makes no sense for him to do this.’ (Leg-1, Bu).

Most of the *Romanian* respondents said they had either not been or were not aware of having been approached by informal networks. Those who had been approached, on the other hand, said it was often difficult to identify them, though network requests were usually conveyed in a different manner from other requests: ‘I have never identified a request coming from a member of an informal network.’ (Leg-1, Ro); ‘yes, almost every time behind an intervention there is an informal network. Before coming to you the people inform themselves about you. If they come to you to talk about a cause, they have certainly tried to intervene with the police, then with the investigation before the case reaches the judge…and when they have passed all these stages, you are finally approached…you will never know who is behind that request – (you will only know) if you start an investigation to find out…People do not say on whose behalf they came to you.’ (Leg-5, Ro); ‘yes, there are certain mechanisms that they use: the way they speak, the contacts they use, etc.’ (Leg-10, Ro).

**Attempts at Influencing the Judges and Prosecutors**

The more susceptible prosecutors and judges are to external influence, the more vulnerable they are to corruption. We therefore asked our respondents whether attempts had been made to influence them. As can be seen from table 10, the majority of the statements made by the respondents in the Czech Republic, Bulgaria and Romania – though not in Slovenia – said there had been such attempts.

<table>
<thead>
<tr>
<th>Table 10: Attempts at Influencing the Respondent (in per cent)</th>
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<td>Czech R</td>
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<td>Attempts made to influence resp.</td>
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<tr>
<td>Attempts not made to influence resp.</td>
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<tr>
<td>Other/don’t know</td>
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<td>N=</td>
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*Note: N=the total number of text units. Each text unit represents an answer to a question given by one respondent. As numbers are rounded up or down, they don’t always add up to 100.*

*Czech* respondents who said attempts had been made at influencing them, in many cases did not state how they had been made, but rather how they had not been made. One respondent spoke about specific types of people causing problems in court: ‘there is naturally the effort of the prosecutor to influence the judge.’ (Leg-4, Cz); ‘argument, threat – not that, but otherwise all
(ways)...the friendlier (they are), the more dangerous it is.’ (Leg-5, Cz); ‘besides bribes, people naturally...try everything on us, either in writing, over the phone or verbally...’ (Leg-7, Cz).

Other respondents claimed that no attempt had been made at influencing them– though one had devised his own “coping strategy” to reduce the possibility of this happening, to a minimum: ‘in the 22 years I have been doing this job I have not met any pressure on how to decide...Neither under the previous regime, nor now. No one would...dare...in all my life, I have not encountered any influence...(from) contacts or anything like that...’ (Leg-2, Cz); ‘I don’t think it happens.’ (Leg-1, Cz); ‘I think that you should treat people in a friendly manner and not rigidly, so that it would not even cross their mind (to try to influence you).’ (Leg-1, Cz).

Most of the Slovenians said they had not been exposed to attempts at influencing them. Those who had, reported that people simply asked or begged, whereas those who reported no attempts at influencing them in most cases failed to qualify their replies: ‘they just ask.’ (Leg-5, Sl); ‘people try to beg.’ (Leg-4, Sl); ‘mostly they ask.’ (Leg-8, Sl); ‘they just ask.’ (Leg-3, Sl); ‘they just beg. No request or pressure...’ (Leg-10, Sl).

Some of the Bulgarian respondents simply stated that there had been attempts at influencing them without specifying in what manner. The majority, however, provided more detailed stories about how such attempts were made. In some cases people simply conveyed a request or tried to appeal to the respondent – frequently through displays of emotion: ‘they only appeal – and always to my feelings: “oh, this is such an injustice, I feel so hurt, I suffer so much. Well, I might deserve it, but look at me now, I am so unhappy.”’ (Leg-10, Bu).

Others persisted or offered the respondent an incentive. More worryingly, respondents also reported cases of extortion or threats: ‘the more stupid ones try to be more persistent. The intelligent ones grasp the situation immediately...there are also dull people who are stubborn like donkeys and you have to repeat (things to) them several times.’ (Leg-2, Bu); ‘they usually do not use threats. Probably we are at such a (high) level that threats do not work. In general, they apply the carrot and not the stick, because there are not so many superiors above us. Although there are some cases...’ (Leg-1, Bu); ‘there are threats. This is part of the profession.’ (Leg-5, Bu); ‘I’ve only been impolite on a couple of occasions when they practically resorted to extortion.’ (Leg-4, Bu).

Quite a few of the respondents referred to the combination of several strategies to secure the desired outcome in court: At first efforts were made to persuade the judge/prosecutor.
If this did not work, a (better) position or money might be offered. Should also this fail, various threats may be issued – sometimes in the form of contacting superiors. More serious threats were also occasionally conveyed – such as physical threats or murder threats: ‘first they cry and when it does not help, they start threatening.’ (Leg-9, Bu); ‘well…they tried to influence me, including with threats…sometimes I was threatened with my superiors and that is very humiliating…’ (Leg-8, Bu); ‘they typically approach me in connection with cases where I am an arbiter…they want to explain, they want me to hear them out and tell me what the dispute is about. And I tell them, “I’m supposed to find out during the open court hearings…”’. (They say) “No, no, we just want to explain to you…”’. The second stage involves indirect and direct offers of money and the third stage (consists of) physical threats of beating and murder. On one occasion they tried to offer me a position. They said “let’s get this case over with and we’ll appoint you as a lawyer with us.” They’ll employ you to make sure the dispute will be settled in their favour.’ (Leg-4, Bu).

In Romania, prosecutors as well as judges said that there had been attempts at influencing them – sometimes directly, sometimes indirectly through the media, and sometimes on the part of political interests. In some cases the pressure comes from within the judiciary itself, as colleagues might seek a certain outcome. Some of our respondents had also received threats by letter or telephone: ‘if we talk about a colleague, you will notice that he/she comes more often to have coffee with you, comes to ask you about certain cases of his/hers…he/she sustains your points of view during certain meetings…if we talk about someone from the outside, he/she calls you more often…I had several threats, but very well covered, of course…’ (Leg-5, Ro); ‘there are political pressures…’ (Leg-10, Ro); ‘there have been cases! One could try to pressurise the prosecutors through the media. I (also) know some prosecutors who received threatening letters…I have received some phone calls but that was all.’ (Leg-9, Ro).

Romanian judges were also vulnerable to outside pressure due to the way in which the judiciary is organised. In Romania one judge is responsible for a court case regardless of whether it is big or small. As the work load of big case is often huge and vested interests considerable, judges may be at risk: ‘of course there are also some attempts to influence the judge’s decisions.’ (Leg-1, Ro); ‘pressures do exist. When those involved in the case are very famous, the judges, the magistrates and the policemen are being pressurised by the mass media.
Let us take for example the FNI case\textsuperscript{43}. In this case there was just one judge – in my opinion this is a very big problem – and he had to face 15 lawyers… and it is obvious that there were big pressures on the judge.’ (Leg-6, Ro); ‘one needs a little bit of experience and courage to refuse them.’ (Leg-4, Ro).

As seen above, our respondents mostly received requests for favours – and requests, regardless of their nature, were usually accompanied by an amount of pressure. The type of requests and the manner in which they are conveyed matter less, however, than the response with which they are met. We therefore also asked our respondents what type of requests they were able to accept and what type of requests they rejected. For reasons of space, it is not possible to provide a detailed account of these. Still, it is worth noting that respondents in all countries stated that as a rule they would comply with requests that were \textbf{within the limits of the law}. Such requests included the \textbf{speeding up of procedures}, providing people with publicly available \textbf{information} and \textbf{advice} considered to be within the limits of the law. Some Bulgarian respondents also said they were willing to intervene to ensure that \textbf{justice} be done – including intervention to \textbf{ensure impartiality in a court case}.

\textbf{Conclusions}

As noted above, public trust in the courts is fairly low in all countries covered by our project. Courts are perceived as politically dependent, easy to influence and inefficient. Low trust in the courts is not only widespread amongst the general public. Findings from our own quantitative elite surveys conducted in 2005, suggest that a fairly high percentage of elite representatives in Bulgaria and Romania do not trust the courts. Besides, less than half of the Bulgarian and Romanian respondents who themselves work in the judiciary, said their trust in the courts was high.

Czech and Slovenian respondents who held the view that people in their country generally respect the rule of law, emphasized the uniqueness of their countries in this regard: the Czech Republic was seen as more “progressive” than other countries in East Central Europe, after 40 years of communist rule Slovenia was still affected by pre-communist thinking. Still, to the extent Czechs and Slovenes – as well as Bulgarians – followed the law, this was not so much

\textsuperscript{43} FNI was a unit trust company that closed down all its branches at the end of May 2000 when investors tried to withdraw huge sums of money. As a result, investors took to the streets across Romania.
because of their regard for the law as such, but more because of the consequences breaking the law might have.

Bulgarians and Romanians who wanted to abide by the law were not always in a position to do so due to frequent changes in legislation and the ensuing unfamiliarity with the law. Respondents in all countries who thought the rule of law was not respected, mostly blamed this on the country’s historical past, the national culture or on the transition – though differences in terms of emphasis could be observed between the four countries in which interviewing took place. As a result of these factors a “culture of law-breaking” had taken hold of society. Law-breaking was perceived as so extensive and publicly acceptable that some even coined it a “national sport”. Some respondents thought the perceived and/or real weakness of the judiciary was conducive to the strengthening of this culture.

Widespread disregard for the rule of law in society is likely to affect people’s interaction with the courts. If one perceives other people approaching the courts as (potential) law-breakers and the people administering justice are not seen as impartial, this in turn, affects the coping strategies applied when dealing with them. When courts are not fully independent, capacity is low, staff not properly educated or trained, and backlogs common, people are more likely to seek informal solutions to their problems.

As shown above, contacts are used in all countries by people to find their way around in the judiciary. Contacts are also used to speed up procedures. As such, their use may largely be attributed to transition – i.e. facilitated in part by frequent and extensive changes both within the actual judiciary and in part by frequent changes in legislation, backlogs and delays, making it difficult for people to know whom to approach, how to get their rights and also to get them on time. Though largely attributed to transition, backlogs and delays are by no means new phenomena in post-communist states, but were inherent features of public institutions also during communism.

Prosecutors and judges in the Czech Republic and Slovenia suggested that as a result of transition it has become more difficult to use contacts in the judiciary in their countries. Besides, contacts are in their view not used to influence court rulings. In this sense, transition may have reduced the impact of attitudes to laws and rules dating back to communist times. In Bulgaria, contacts are also used to influence court rulings and in Romania they are used to ensure that trials are fair as well as to exert political pressure on the courts. Such behaviour may in part be
attributed to transition in the sense that “everybody is for themselves”. However, it may also be attributed to disregard for the law in post-communist societies more generally. In addition, the judiciary’s previous subordination to political structures may to some extent explain political pressure currently exerted on the judiciary in some post-communist states. It thus seems reasonable to conclude that certain uses of contacts within the judiciary in post-communist societies are facilitated by the transition, whereas others are facilitated by attitudes to the law shaped during communism. Thus, the latter to some extent still translates into practical behaviour – both on the part of the general public and of those working in the judiciary – not compatible with the rule of law.

The stories told by respondents working in the judiciary suggest that contacts and informal networks are often used for the same purposes and that they refer to the same types of people. Czech and Slovenian elites did not provide much detail with regard to the type of networks that are active within the judiciary, nor with regard to the purposes for which they are used. Bulgarian and Romanian respondents, on the other hand, gave examples of both, suggesting that circles within the judiciary are linked to influential circles on the outside and which are in a position to exert considerable influence on decisions made in court. Thus it appears that the mentality of the past – in combination with new opportunities brought about by transition – also affects the ways in which informal networks operate during the transition. Some of these stories are obviously based on hearsay rather than on hard evidence and should therefore be treated accordingly – though they are still likely to affect people’s understanding of the judiciary and thus also their attitudes towards the law and towards those in charge of implementing it.

In terms of personal experience, the type of requests received by the judges and prosecutors we interviewed were similar to the types of requests they attributed to contacts and informal networks more generally. In all countries people sought the assistance of prosecutors and judges to find their way around in the judiciary and to speed up slow procedures. In all countries – though more so in Bulgaria and Romania than in the Czech Republic and Slovenia – respondents reported that they had been approached with requests that would directly affect court rulings. In all countries, requests for assistance were often accompanied by attempts to influence those who received the requests. Most often, such attempts involved friendly appeal or displays of emotion, though if this did not produce the desired outcome, incentives were sometimes
offered or threats issued. Our respondents were, as a rule, happy to offer information, advice and often also to speed up procedures for people. To some extent they motivated their willingness to do so by expressing frustration with the judiciary itself – with its inefficiency and huge backlogs and in some cases, though not often, perceived lack of objectivity.

Given the relatively small number of interviews, it would be wrong to claim that our findings are generally representative. Findings from our elite surveys should help us shed some more light on the issues examined. Still, the amount of interviews is big enough for us to conclude that contacts and informal networks are to quite an extent used as coping strategies helping people to deal with transition – and that attitudes towards the law that date back to communism not only affect people’s understanding of the rule of law more generally, but also their behaviour when interacting with the judiciary. The response this behaviour is met with on the part of the judiciary is to some extent also influenced by such attitudes. Our findings therefore also have policy implications.

As noted in the beginning of this paper, judicial reform to date has had only limited impact. For the courts to act independently and effectively, further reforms are required. For judicial reform to be effective, formal institutional changes and changes to legislation have to be accompanied by (a) measures aimed at providing the general public with a proper understanding of the rule of law as well as of what it entails; (b) measures aimed at changing the behaviour of both the general public and those working within the judiciary; and (c) measures aimed at enhancing court independence and efficiency.

To address problems within the judiciary that have been caused by – and to some extent also reinforced by – transition, there is a need for continued efforts in terms of capacity building, possibilities for updating of and training opportunities for judicial staff, strengthening the ability of law enforcement bodies to actually enforce the law, training staff on how to address attempts at influencing them (i.e. change mentality of the past), enabling the judiciary to hire additional staff, providing the resources needed to address case backlogs and ensuring continued education of staff, to keep them up-to-date on new legislation and legislative amendments.44

Efforts to strengthen the judiciary, however, should – to be fully effective – be accompanied by measures aimed at strengthening the general public’s respect for the rule of law as such and in turn also their behaviour with regard to the law. Given daily media coverage of

44 World Bank (2005).
high profiled politicians, businessmen or criminals evading the law, people have come to expect poor treatment from the courts. Besides, backlogs, delays and perceived injustices further undermine public trust in them. Strengthening the general public’s regard for the rule of law may to some extent be achieved through education – i.e. by teaching children to respect the rule of law from an early age. In addition, the general public at large needs to be educated in terms of what the concept “the rule of law” actually entails.

There is also a need to properly inform the general public about how the judiciary functions as well as of their own rights and duties. Such information could be passed on through the media as well as through information leaflets distributed by the authorities. Public information could also be made more accessible not only in the courts but also in other bodies that are part of the judiciary. One way to go about improving public trust in the courts would be for the courts to open their doors to the general public – for instance in the form of “open days” during which members of the general public could visit the courts and obtain information about how the courts work. Public lectures explaining the role and tasks of the judiciary may also be helpful in this regard. As noted above, changing attitudes and behaviour is a more long-term project than changing formal structures, laws, rules and regulations. However, if people are not familiar with or do not understand the very concepts motivating formal change, they also have less of an incentive to endorse and comply with them. As long as there is no incentive to comply, then the impact of judicial reform in post-communist states is likely to at best be limited.
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