Informal Practice in the Judiciary:  
A Comparison of East Central Europe, South East Europe and the West Balkans  

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Introduction

Much has been written on corruption in the judiciary from the perspective of ordinary citizens and business representatives. Less is known about the perceptions and personal experiences, on the subject, of those working within the legal profession.

Legal sociologists studying legal culture hold the view that the legal culture of the legal insiders, i.e., those working professionally with the law and who share a legal background, differs from that of the legal outsiders, i.e., the general public, which is affected by, and respond to, law. This chapter asks whether the perceptions and personal experiences of legal insiders differ from those of legal outsiders on one key dimension of legal culture in post-Communist states—

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2 For definitions and a brief discussion of legal culture as a concept, see note 32.

3 In this chapter, the term “legal insiders” refers to judges and prosecutors, i.e., those administering the law. Our purpose is to compare the perceptions and experiences of elites requiring a legal qualification to perform their duties (judges, prosecutors) with those for whom such a qualification is not required. It could be argued that our definition of legal insiders is rather narrow and that it would be appropriate to include also other types of legal elites, such as lawyers and legal academics, in our study. As the two projects upon which this chapter is based did not specifically address legal culture (for details, see the methodology section of this chapter), data were collected among two types of legal elites only. This being said, judges and prosecutors represent two key types of legal elites and informal practice is an important part of legal culture. Our findings, therefore, should be useful to those with an interest in the legal culture of legal professionals.

4 For practical purposes the term post-Communist states is used to refer to all countries covered by this chapter, i.e., the Czech Republic, Slovenia, Bulgaria, Romania, BiH, Macedonia and Serbia.

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namely informal practice. In this chapter, the term “informal practice” refers to behavior which is not in line with formal procedures stipulated for the solution of a given problem and/or behavior aimed at solving problems for which there are no formal procedures. In post-Communist states, informal practice often serves as a vehicle for corruption. What is more, it appears to a large extent to be “informed” by national culture.

Drawing on large-scale qualitative and quantitative elite surveys from seven post-Communist states, this chapter examines the use of informal practice in the judiciary by analyzing: (i) general perceptions of law and informal practice; (ii) perceptions of informal practice as applied in the judiciary—including personal exposure to such practice; and (iii) personal use of informal practice, among judges and prosecutors in seven countries in East Central Europe, South East Europe and the West Balkans as well as by comparing: (iv) average findings for judges and prosecutors with averages for other elites from our elite surveys conducted in these regions.

Post-Communist Judiciaries in Transition

The judiciary in Europe’s post-Communist states has undergone major transition in recent years. Transition from “rule by law” to “rule of law” has changed the role of the judiciary from that of a loyal ally of the executive to that of an independent state player in its own right. What is more, the role of the judges and prosecutors

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6 Informal practice is frequently used as a tool by which to facilitate corruption. For a discussion, see Åse Berit Grødeland, “‘Red Mobs’, ‘Yuppies’ and ‘Lamb Heads’: Informal Networks and Politics in the Czech Republic, Slovenia, Bulgaria and Romania”, 59(2) Europe-Asia Studies (2007), 217-252.


8 For our purposes, the term “judiciary” refers to public prosecution and the courts.

9 The study covers the following countries: Czech Republic, Slovenia, Bulgaria, Romania, Bosnia and Herzegovina (in the following referred to as BiH), Macedonia and Serbia.

10 In this chapter, the term “legal insiders” refers to judges and prosecutors.