

Dr. Anna Ondrejová, the Slovak Republic

Mr. Chairman, Ladies and Gentlemen,

The evolution of penal law leads towards the laws and proceedings harmonization, towards the establishment of supranational institutions,

I believe that sooner or later the European penal court and the European public prosecutor shall be established. And I am also aware of that currently it is not enough political will for such clear solution. The solution, which does not take into account the creation of the common European penal court but is taking into account the establishment of the European public prosecutor, is the compromise solution. As every compromise solution it is characterized by certain internal tension .

If the European penal court should be established, then the European prosecutor – who would not be in the same time also the national prosecutor – would have nowhere to file a penal action. The right of bringing charges to national courts is considered the manifestation of States sovereignty over its territory. We cannot suppose currently that the overwhelming majority of States would renounce to this privilege. Therefore – even I can imagine the legislative models of cooperation between European prosecutor, national police and national administrative bodies – I believe that the representatives of the European prosecutor have to be integrated into national prosecutions hierarchy.

Such a solution has its own advantages:

1. the main advantage is the trouble-free possibility of bringing charges to the national courts
2. the following important advantage is the fact, that this solution shall not interfere with the sovereignty of States, so it should not require the changes of constitutional principles
3. the third advantage is the easy cooperation with the police

The integration of European prosecutor representatives has – as every compromise solution – also some disadvantages.

I consider the following facts the biggest disadvantages:

1. a dependence, to a certain degree, on national bodies (disciplinary liability, professional career), which could be to the prejudice of the mixed cases. That is because I consider necessary the representatives of

European prosecutor should have a special position and they should be only subordinated to the head of national prosecution, and they need an unambiguously defined powers related also to the cross border cases, serious cases and other cases, if the competent national body is not handling them.

2. the double subordination is the second inconvenient of the integration into the national prosecution – the subordination to the head of the national prosecution as well as to the European prosecutor. The solution to this conflict of two subordinations shall be rather difficult and it could also motivate some permanent problems. I am afraid it shall require a number of different bilateral agreements between the European prosecutor and the national prosecution offices.
3. the main inconvenient of European prosecutors integration into the hierarchy of national prosecution shall be the inadequacy (lack) of competencies on the Member States territories as well as towards employees of the Union. Actually such a prosecutor is only able to act on the territories of other States like a foreign country prosecutor. As his main task shall be handling the cross border cases, this inconvenient is of great importance. According to my opinion, to compensate this inconvenient, the European prosecutor should be able to contribute to the material equipment of his national representatives and to cover their travel costs in order to maintain the permanent communication and close cooperation among them.

The law is coming to life in the hands of the body applying it. Establishing the EPP independent from governments and parliaments of the Member States for the reason that the disclosing of the financial means misapplication may not be in the interest of some States. The common benefit of whole Union should be the higher interest. But the higher interest is often the more distant and more abstract one then is the current interest to use the means - from the viewpoint of the particular Member State. The disclosing of the means misapplication has usually the consequence of suspension further means for this State. Therefore, the political and government representatives of the State may not be interested in the revealing of the misapplication of the means. They may try to bring some pressure also on the Prosecution.

In conclusion I would like to express my opinion, that the better solution should be the creation of independent European prosecution system. This should of course require the establishment of European criminal court. But without the European court, I see necessary the integration of national representatives of European prosecutor into national prosecutions hierarchy, with all advantages as well as problem related to it.