

# **MONTENEGRO ANTI-CORRUPTION JUDICIAL TRAINING PROGRAMME**

## **I. Introduction**

United Nations Development Programme through its project “Strengthening Capacities of Judiciary to Fight Corruption and Organized Crime”, funded by the Government of Norway, engaged an expert to prepare anti-corruption judicial training programme for the Judicial Training Centre (JTC) of Montenegro in order to enable it to deliver the program of in-depth study in the area of integrity and anti-corruption measures for prosecutors and judges in the country. Programme should serve as a tool for training of judges and prosecutors on how to recognize and efficiently fight corruption.

The task of the expert was to deliver the following outputs:

- analysis of the previous activities in the anti-corruption area in the judiciary of Montenegro,
- gaps analysis of the anti-corruption training needs for judges and prosecutors,
- preparation of the programme with timing, material resources, estimated costs and target groups for each training activity to be effective and feasible,
- provision of recommendations regarding compatibility of proposed activities with EU standards and accession requirements.

## **II. Legal framework, documents and past activities in the area of judicial anti-corruption training in Montenegro**

There is a set of conventions and other legal documents on corruption in Europe and worldwide. The most important legal instruments are the following ones:

### **II. 1. Documents of the European Union**

- Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union

- Council Framework Decision of 22 July 2003 on combating corruption in the private sector
- Convention drawn up on the basis of Article K. 3 of the Treaty on European Union, on the protection of the European Communities' Financial interests
- Protocol drawn up on the basis of Article K. 3 of the Treaty on European Union to the Convention on the protection of the European Communities' financial interests

### II. 2. Documents of the Council of Europe

- Criminal Law Convention on Corruption
- Civil Law Convention on Corruption
- Additional Protocol to the Criminal Law Convention on Corruption
- Recommendation (2003) 4 of the Committee of Ministers to the member states on common rules against corruption in the funding of political parties and electoral campaigns
- Resolution (97) 24 on the twenty guiding principles for the fight against corruption

### II.3. Documents of the United Nations

- UN Convention against Corruption

### II.4. Documents of the OECD

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

According to the decision of the Supreme State Prosecutor criminal offences described in the following articles of the Montenegro Criminal Code should be considered as corruption criminal offences:

- 268 (money laundering)
- 269 (violation of equality in the conduct of business activities)

- 270 (abuse of monopolistic position)
- 273 (causing bankruptcy procedure)
- 274 (causing false bankruptcy)
- 276 (abuse of authority in economy)
- 278 (false balance)
- 279 (abuse of assessment)
- 280 (revealing a business secret)
- 281 (revealing and using stock-exchange secret)
- 416 (abuse of official status)
- 417 (unconscientiously performance of office)
- 422 (illegal mediation)
- 423 (passive bribery)
- 424 (active bribery) and
- 425 (disclosure of official secrets).

There is no legal obligation for prosecutors and judges for any continued education in the area of anti-corruption. Fulfillment of general conditions for employment, diploma of the faculty of law and state bar exam are sufficient for candidates to be appointed as prosecutors and/or judges. There is no initial training in the area of integrity or anti-corruption and no regular training on the mentioned topics during the professional career of prosecutors and judges.

Innovated Action plan for the implementation of the Programme of fight against corruption and organized crime prescribes the obligation of education of state prosecutors and judges. The mentioned documents provides:

- 1) Acquainting prosecutors with the comparative practice of the countries in the region in the area of fight against corruption and organized crime
- 2) Creation and implementation of the programme for education of prosecutors regarding criminal offences with the elements of corruption and organized crime, especially new forms of crime (Criminal Code and Criminal Procedure Code)
- 3) Creation and implementation of the programme for education regarding criminal offences from Chapter XXIII of the Criminal Code and Chapter XXVIII of the Criminal Code
- 4) Creation of programme and carrying out of training on the implementation of Secret Surveillance Measures (in accordance with the comparative experiences from the region),

as well as creation and implementation of the annual and periodic programmes for education of judges, who adjudicate in the cases of organized crime and corruption. Some training were conducted in the period from September 2006 until 2008.<sup>1</sup>

In Montenegro there is no special law in the area of corruption prevention but there are some provisions on corruption criminal offences in the Criminal Code. There are codes of conduct (ethics) for judges and for prosecutors in force but there were no training activities concerning their substance. In the national “Program of fighting against corruption and organized crime” there is a substantial part on corruption issues, including some general measures in the area of anti-corruption training for all responsible institutions and professions, including prosecutors and judges.

Judicial training Centre is responsible for education of prosecutors and judges. Beside other training activities it is also organizing different training programs in the area of anti-corruption. In the year 2008 there were seminars organized on “Strengthening the capacity of judiciary in Montenegro for the fight against corruption and organized crime”<sup>2</sup> but the majority of time was spent on the problem of organized criminality and not on the problem of corruption. During the visit in Montenegro it was very easy to identify the readiness of the Centre to start with the permanent education of judiciary in the area of integrity and anti-corruption measures and that momentum has to be used in the future to the maximum extent possible.

### **III. Gaps analysis**

Due to absence of any specialized training in the area of integrity of prosecutors and judges they are lacking of the necessary in-depth knowledge for ensuring their own integrity and for working in the field of suppression of corruption. In the country there are different groups of judges and prosecutors with different needs in the area of corruption:

- around 150 judges in the area of civil law,
- around 100 judges in the area of criminal law,

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<sup>1</sup> III Report of the National Commission on the realization of the measures from the Action plan for the implementation of the Programme of fight against corruption and organized crime, available at: <http://www.antikorup.vlada.cg.yu/vijesti.php?akcija=rubrika&rubrika=288>.

<sup>2</sup> Seminars organized by the Judicial Training Center with the support of UNDP, May and June 2008

- around 80 prosecutors,
- 6 prosecutors and 9 judges, specialized for the cases of war crimes, organized criminality and corruption.

During the on-site visit Montenegro interlocutors have pointed out a special need for the following topics to be presented to judges and prosecutors in the country:

- identification of corruption,
- international legal instruments on corruption,
- Code of Ethics for judges,
- special investigative measures,
- Code of Ethics for prosecutors,
- problem of “entrapment”,
- elements of the criminal offences of corruption,
- powers of the undercover-agents,
- relation between bribery offences and other types of economic criminality,
- financial investigations of corruption offences,
- money laundering,
- interrogation of suspects and witnesses.

There was also a general opinion that all training activities have to be very practical in order to ensure better quality of the prosecutors’ and judges’ work against corruption.

Due to different requirements and existing level of knowledge there is a need not for one but for three different types of trainings for different categories and numbers of prosecutors and judges:

1. Integrity training for all prosecutors and judges: 333 participants (83 prosecutors + 100 criminal judges +150 civil judges) – Programme No.1

2. Basic training on criminal offences of corruption: 83 participants (83 prosecutors + 100 criminal judges) - Programme No.2

3. Enhanced training on investigation of corruption offences and related matters: 15 participants (5 special prosecutors + 6 special judges + 2 judges of the Supreme or Appellate court + 2 Deputy Supreme State Prosecutors) - Programme No.3

Due to sensitive substance all trainings will have to be closed for any other audience except for formal participants and speakers or other persons subject to the decision of the Judicial Training Centre of Montenegro.

#### **IV. Curricula for three groups of participants**

##### **IV.1. Programme No. 1: Personal and institutional integrity**

Each month except August a group of 31 (8 prosecutors + 9 criminal judges + 14 civil judges) participants will take part at one-day seminar.

*General goal:* enhancement of knowledge in the area of personal and institutional integrity

*Specific goals:*

1. Exploring legal and moral challenges of judicial work:
  - where and when ethical behaviour starts
  - modern theories on ethical requirements in judiciary
  - terminology: what is corruption
  - thin borderline between unethical behaviour and corruption
  - indicators of corruption (offences)
  - importance of transparency in the work of any organisation
  
2. Discussion on acceptance of gifts by prosecutors and judges:
  - motivation of people for giving gifts to members of judiciary
  - which gifts can be accepted by the prosecutor or judge

- how to decline a gift offered
- handling of received gifts by the institution

3. Realising that living in a small society is not always easy for judges and prosecutors:

- ethical challenges of relations with relatives, friends and colleagues
- how to handle interventions of personally known individuals
- coping with image of “our” judge and prosecutor

4. Establishing limitations for outside activities of judges and prosecutors:

- judges and prosecutors are not allowed to do everything for their living
- ethical challenges of allowed outside activities
- how to resist temptation when being offered a “good opportunity”
- reasons for different types of incompatibilities

5. Learning about conflicting interests:

- real and apparent conflict of interests
- handling of existing and potential conflict of interests
- protecting image of individuals and institutions
- legal and ethical consequences of conflict of interests

6. Establishing a model for a daily behaviour of prosecutors and judges:

- relation between the politics and judiciary : clear but extremely sensitive issue
- the real start and end of a working day
- daily routine (distribution of cases, effective working-time, relation to participants in the proceedings,..) as possibility for unethical behaviour
- “indecent proposals” do not happen among complete strangers
- how to decline an indecent proposal
- transparency of personal and institutional behaviour can solve a lot of problems

***Program***

**Month 1 - 11, Day 1**

09.00 – 10.00 Corruption – corruption offences – ethics: what is the difference?

*Presentation*

10.00 - 11.00	Taking gifts as judge or prosecutor <i>Presentation + exercise</i>
11.00 – 12.00	Relatives, colleagues and neighbors do not have to be our friends (the problem of nepotism and favoritism) <i>Presentation + exercise</i>
12.00 – 13.00	<i>Lunch break</i>
13.00 – 14.00	Incompatibility is not just a word <i>Presentation + exercise</i>
14.00 – 15.00	Conflict of interest and its appearance <i>Presentation + exercise</i>
15.00 – 16.00	How to ensure integrity in the daily routine of judicial work? <i>Presentation</i>
16.00 – 16.15	Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

-	<i>travel and lodging expenses of the speakers :</i>	<i>approximately 5000 EUR</i>
-	<i>speakers' fees:</i>	<i>approximately 1500 EUR</i>
-	<i>food and drinks for participants:</i>	<i>approximately 1000 EUR</i>
-	<i><u>unexpected costs</u></i>	<i><u>500 EUR</u></i>
	<i>Total</i>	<i>approximately 8000 EUR</i>

#### **IV.2. Programme No. 2: Corruption criminal offences**

Each month except August a group of 17 (8 prosecutors + 9 criminal judges, starting with the special prosecutors and judges) participants will take part at the one-day seminar organized back-to-back with the seminar on personal and institutional integrity.

*General goal:* Development of knowledge in the area of international legal requirements for criminalization and investigation of corruption offences and their transposition into the Montenegro legal system

*Specific goals:*

1. Study of international legal instruments in the area of corruption and their requirements:

- EU Acquis Communautaire
- Council of Europe Criminal Law Convention on Corruption
- Council of Europe Civil Law Convention on Corruption
- UN Convention against Transnational Organized Crime
- UN Convention against Corruption

2. Analysis of the most important repressive international legal substantive and procedural elements in the suppression of corruption:

- bribery (active and passive)

- trading in influence (active and passive)
- money laundering
- illicit enrichment
- responsibility of legal persons
- investigative measures
- international cooperation

3. Analysis of offences with elements of corruption in Montenegro:

- structure of the “catalogue” of corruption offences in Montenegro
- feasibility of the “catalogue”
- procedural and practical implications of the “catalogue”
- assessment of the need for changes in the “catalogue”
- practical handling of reports on corruption offences

4. Analysis of legislation related to corruption criminal offences:

- public procurement system
- access to public information
- prevention of corruption
- other institutions can also help in the functioning of prosecutors and judges
- multidisciplinary approach to the fight against corruption

5. Theoretical and practical aspects of special investigative measures (SIMS):

- types of SIMS
- legal conditions for the use of SIMS
- most typical legal and practical problems related to SIMS
- practical procedure for the use of SIMS

***Program***

**Month 1 -11, Day 2**

09.00 – 10.00 Requirements of international legal instruments on criminal offences of corruption

*Presentation*

- 10.00 – 11.00 Catalogue of corruption criminal offences in Montenegro, Part I  
*Presentation*
- 11.00 – 12.00 Related legislation and institutions in the fight against corruption  
*Presentation*
- 12.00 – 13.00 *Lunch break*
- 13.00 – 14.00 Catalogue of corruption criminal offences in Montenegro, Part II  
*Exercise*
- 14.00 – 16.00 Corruption investigative techniques  
*Presentation + exercise*
- 16.00 – 16.15 Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

- |   |  |                               |
|---|--|-------------------------------|
| - | <i>travel and lodging expenses of the speakers :</i> | <i>approximately 4000 EUR</i> |
| - | <i>speakers' fees:</i>                               | <i>approximately 1200 EUR</i> |
| - | <i>food and drinks for participants:</i>             | <i>approximately 500 EUR</i>  |
| - | <i><u>unexpected costs</u></i>                       | <i><u>500 EUR</u></i>         |
|   | <i>Total</i>   | <i>approximately 6200 EUR</i> |

### **IV.3. Programme No.3: Investigation of corruption offences and related matters**

Every second month a group of 15 (6 special prosecutors + 9 special judges) participants will take part at the one day seminar.

*General goal:* Comprehensive identification of conditions and circumstances important for the successful investigation, prosecution and adjudication of corruption offences and insurance of complete respect of human rights in all proceedings

Specific goals and expected costs are given for each day of a program separately.

#### **Month 3, Day 2<sup>3</sup>:**

*Specific goals:*

1. Acquiring knowledge on the importance of a decision on the start of investigation of a serious corruption offence:
  - recognition of a corruption offence
  - inclusion of necessary institutions and staff
  - decision on the start of financial investigation has to be made (yes or no)

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<sup>3</sup> Day 1 absorbed in the first month

- first instructions to responsible institutions

## 2. Analysis of the most useful investigation tool – fictitious bribery:

- general legal conditions for its use
- fulfillment of legal conditions in a concrete case
- “who is really asking for/offering a bribe” – the answer has to be given
- analysis of practical conditions for the use of fictitious bribery
- sometimes fictitious bribery must not be used

## 3. Study of problems related to entrapment:

- objective and subjective elements of entrapment
- examples of entrapment from other countries
- how can prosecutors and judges influence theoretical and practical development of the concept of entrapment
- decision on entrapment is never an easy one

## 4. Undercover agents and their work:

- who is an ideal undercover agent?
- undercover agents are subject of a close scrutiny of criminals
- can undercover agent commit any kind of illegal action?
- keeping track of undercover agent’s actions, its usefulness at the court
- consequences of undercover agent’s illegal activity

### ***Program***

09.00 – 11.00 How to start investigation of a serious corruption offence (“follow the money”)?

*Presentation and exercise*

11.00 – 12.00 Fictitious bribery – legal requirements and obstacles, Part I

*Presentation*

12.00 – 13.00 *Lunch break*

13.00 – 14.00 The problem of »entrapment«

*Exercise*

14.00 – 16.00 Powers of the undercover agent

*Presentation and exercise*

16.00 – 16.15 Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

- travel and lodging expenses of the speakers :	<i>approximately 3000 EUR</i>
- speakers' fees:	<i>approximately 900 EUR</i>
- food and drinks for participants:	<i>approximately 500 EUR</i>
- <u>unexpected costs</u>	<u><i>500 EUR</i></u>
<i>Total</i>	<i>approximately 4900 EUR</i>

### **Month 5, Day 3:**

*Specific goals:*

1. Identification of all elements of a corruption criminal offence:

- who can be a suspect ?
- analysis of objective elements of an offence
- analysis of subjective elements of an offence
- what can go wrong in establishing and proving elements of the offence?

2. Study of usefulness of electronic surveillance:

- legal conditions for the use of electronic surveillance
- who can be put under electronic surveillance and how ?
- do we have means for electronic surveillance ?

- how to use its results at the court ?

3. Identification of conditions and consequences of secret observations:

- legal conditions for the use of secret observations
- practical obstacles for secret observations
- keeping track of secret observations
- presenting results of secret observations at the court

4. Getting ready to discuss corruption criminal offences with other players:

- how should know about the case ?
- what can prosecutors and judges tell on the case to colleagues ?
- who should deal with mass media questions ?
- should prosecutors and judges talk to anybody at all ?
- possible consequences of releasing of information on a sensitive corruption case

***Program***

09.00 – 11.00 Most important elements of the corruption criminal offences

*Presentation and exercise*

11.00 – 12.00 Electronic surveillance

*Presentation*

12.00 – 13.00 *Lunch break*

13.00 – 14.00 Secret observations

*Presentation*

14.00 – 16.00 Communication on corruption cases with other players (colleagues, media, ...)

*Presentation and exercise*

16.00 – 16.15 Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

- travel and lodging expenses of the speakers :	approximately 3000 EUR
- speakers' fees:	approximately 900 EUR
- food and drinks for participants:	approximately 500 EUR
- <u>unexpected costs</u>	<u>500 EUR</u>
<i>Total</i>	<i>approximately 4900 EUR</i>

#### **Month 7, Day 4:**

*Specific goals:*

1. Mastering of a concrete case of investigation of a corruption criminal offence with SIMS:

- identification of legal and practical requirements for a real investigation
- importance of different roles in a case for prosecutors and judges
- changing roles in investigation can answer many questions
- keeping track of all problems appeared from the start until the end of investigation
- open and frank discussion on registered problems and questions

#### ***Program***

09.00 – 10.00 Undercover police work, Part I

*Presentation*

10.00 – 15.00 Undercover police work, Part II

*Exercise*

16.00 – 16.15 Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

- travel and lodging expenses of the speakers :	approximately 2000 EUR
- speakers' fees (2 foreign + 5 domestic):	approximately 1200 EUR
- food and drinks for participants:	approximately 500 EUR
- <u>unexpected costs</u>	<u>500 EUR</u>
<i>Total</i>	<i>approximately 4200 EUR</i>

## **Month 9, Day 5:**

*Specific goals:*

### 1. Identification of problems related to witnesses in the area of corruption:

- witnesses will hardly come forward by themselves
- understanding basic elements of the personality of a witness
- records on witnesses' testimonies
- confrontation of witness with his/her previous statements
- assistance to witness when getting ready to confront the suspect/s
- protecting a witness

### 2. Suspects of corruption can be a useful source:

- analysis of the personality of suspects is useful
- people are following different motives and so do the suspects
- records on suspects' testimonies
- how to start, lead and bring an interview with the suspect to an useful end (dynamics of an interview)
- confrontation of suspects with witnesses

### 3. Understanding of internal culture of different institutions and its consequences for corruption cases:

- most typical "walls of silence"
- testifying not testilying !
- raising of anti-corruption awareness of members of different institutions may help
- managers of different public institutions have to solve the problem in advance
- what is better : to convince or to punish ?

**Program**

09.00 – 11.00 Witnesses in the area of corruption

*Presentation and exercise*

11.00 – 12.00 Interview with the suspects of corruption, Part I

*Presentation*

12.00 – 13.00 *Lunch break*

13.00 – 14.00 Interview with the suspects of corruption, Part II

*Exercise*

14.00 – 16.00 Breaking the “wall of silence” within institutions

*Presentation and exercise*

16.00 – 16.15 Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

- *travel and lodging expenses of the speakers : approximately 3000 EUR*
- *speakers' fees: approximately 900 EUR*
- *food and drinks for participants: approximately 500 EUR*
- *unexpected costs 500 EUR*

*Total approximately 4900 EUR*

**Month 11, day 6:**

*Specific goals:*

1. Acquiring necessary evidence for the court:

- register of collected evidence has to be made
- technically recorded evidence is stronger than human testifying

- technical equipment of prosecution services and courts
- dynamics of proceedings with evidence at the court
- illegal evidence is non-existent

2. Ensuring respect of human right throughout all procedures:

- police, prosecutors and judges have to respect human rights in all proceedings and in all decisions
- controlling functions of prosecutors and judges
- defense lawyers will always accuse public institutions on breach of human rights: how to react ?
- efficiency without legality does not exist: how to fight the temptation ?
- consequences of human rights' breaches

3. Development of methods for preserving personal stability of prosecutors and judges:

- judges and prosecutors are part of the system, which has to help
- handling of “friendly” advices, intimidations and threats towards prosecutors and judges
- coping with a work-load in a challenging case: institutional and individual solutions
- deliberations on consequences of prosecutorial and judges' decisions in high-profile (political) corruption cases are not allowed
- dealing with intimate dilemmas and problems after conclusion of a corruption case

***Program***

09.00 – 11.00 Proving of decisive elements of criminal offences

*Presentation and exercise*

11.00 – 12.00 »Balancing« with human rights in the criminal proceedings, Part I

*Presentation*

12.00 – 13.00 *Lunch break*

13.00 – 14.00 »Balancing« with human rights in the criminal proceedings, Part II

*Exercise*

14.00 – 16.00 Surviving pressure of corruption cases

*Presentation and exercise*

16.00 – 16.15 Evaluation of the seminar

*Estimated costs of this one day seminar will consist of:*

- *travel and lodging expenses of the speakers : approximately 3000 EUR*
  - *speakers' fees: approximately 900 EUR*
  - *food and drinks for participants: approximately 500 EUR*
  - *unexpected costs 500 EUR*
- Total approximately 4900 EUR*

**Total of all expenses for all seminars in one-year period should not exceed 38 000 – 40 000 EUR.**

**V. Compatibility of proposed activities with EU standards and accession requirements**

There are only substantive and no procedural EU standards in the area of training activities concerning judicial integrity and anti-corruption measures. EU accession requirements do not directly tackle training of judges and prosecutors but they are asking for judiciary with high level of integrity and with visible results in the fight against corruption.

Substantive EU standards in the area will be achieved through careful analysis and presentation of all international legal instruments dealing with the problems of integrity and corruption, which are part of so-called EU Acquis Communautaire and of the only global convention in this area, the UN Convention against Corruption.

General goal of the whole exercise is to achieve the highest possible integrity of all members of judiciary and to give them enough knowledge to efficiently and effectively investigate, prosecute and adjudicate corruption criminal offences and corruption related criminal offences. Achieving this goal will also mean that accession requirements in the area of fighting corruption, which is still a political criteria for the accession to the EU, are at least partly fulfilled.

## **VI. How to achieve sustainability of the project?**

Above mentioned curricula are planned for a period of one year. After this initial period all prosecutors and judges will hopefully have at least basic knowledge in the area of their integrity, all prosecutors and criminal judges will hopefully have the basic knowledge in the area of corruption criminal offences and all specialized prosecutors and judges will hopefully have in-depth knowledge in the area of investigation, prosecution and adjudication of corruption and corruption related criminal offences.

Of course, it would make sense if this type of training would be repeated in a certain and regular time-frame. In order to refresh the already acquired knowledge, to get familiar with the new international and international developments in the area and to simulate new situations in a series of practical exercises it would be desirable to repeat “refreshed” program of seminars every second year following the general scheme (separation of curricula, participants and seminars) given in this document. To prepare a new program every second year some basic requirements will have to be fulfilled:

- small group of domestic experts for the preparation of new curricula will have to be appointed from the representatives of the Judicial Training Centre, Supreme Court and Supreme State Prosecutors Service, maybe accompanied with some other outstanding experts from the country or abroad;
- handbook/s with all presentations will have to be prepared and amended in accordance with new seminars and than delivered to prosecutors and judges,
- wishes and expectations of prosecutors and judges collected through evaluation procedures at the end of each seminar will have to be respected,
- a “pool” of domestic experts serving as speakers at the seminars will have to be gradually built.

Montenegro has all prerequisites for development of an effective and efficient judiciary with high level of integrity and, therefore deserves international assistance in all areas dealing with the fight against corruption and other forms of criminality and not only in the area of training.

Slovenia