



Project PACO Impact  
Implementation of anti-corruption plans  
in South-eastern Europe



Activity Summary

**Regional Thematic Seminar  
Application of Treaty Law: CoE and UN Conventions against corruption  
(Durrës, 10-11 June 2005)**

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Seminar title:	Application of Treaty Law: Legislative Reform when applying and implementing CoE and UN Conventions against Corruption
Date:	10-11 June 2005
Place:	Durres, Albania
Implemented by:	PACO Impact Project, Technical Cooperation, Crime Problems Department / Directorate General I – Legal Affairs / Council of Europe, and SPAI: Regional Secretariat Liaison Office
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**Background and justification**

The PACO Impact project is a regional project aimed at the “implementation of the national anti-corruption plans in South-eastern Europe”. It was launched in March 2004. This project provides technical assistance directly to seven project areas in south-eastern Europe, that is, Albania, Bosnia and Herzegovina, Croatia, “the Former Yugoslav Republic of Macedonia”, (Serbia and Montenegro)<sup>1</sup>. It follows up on assessments carried out under the Stability Pact Anti-corruption Initiative (SPAI) as well as recommendations resulting from GRECO evaluations. It furthermore builds on the commitments made by countries of South-eastern Europe at the London Ministerial Conference on Organised Crime (November 2002) and takes into account the anti-corruption measures identified within the Stabilisation and Association process and other agreements with the European Union.

Among the main challenges with regard to anti-corruption measures for the South-east European countries is the application of international standards established by the relevant Council of Europe and UN Conventions and other instruments when combating corruption. Strong political commitment, along with the signature and ratification of treaties in each project area is essential to the success of a sustainable legal reform in order to prevent and combat corruption. However the application of special treaty law when combating corruption represents a challenge in terms of its implementation aspects when considering differences of legal systems and the different pace of legislative reforms in each country of SEE. Furthermore, it presents the need for establishing and sharing certain guidelines when facing also the constitutional and legal questions of the applicability of international law vs. domestic law.

PACO Impact, therefore, pays particular attention to not only the process of signature and ratification of the corruption related conventions, but also to the necessary guidelines and tools that need to be considered prior to the application and implementation of treaties into the domestic legislation reforms. Thus in addition to the in-country project activities, a regional thematic seminar dedicated to this issue is scheduled to take place with a regional participation from all seven project areas.

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<sup>1</sup> The project area includes also Kosovo (Serbia and Montenegro), currently under the interim administration of UNMIK in accordance to the United Nations Security Council resolution 1244 (1999).

There are four specific issues which should be dealt with under this regional thematic seminar:

**1. Application of Treaty Law concerning CoE and UN Conventions against corruption**

Uniform and in-depth understanding of signature and ratification of treaties. Dualist System vs. Monist systems. Implementation aspects of treaty law and other international instruments by domestic institutions.

**2. Drafting aspects of primary and secondary legislation in line with CoE and UN Conventions against corruption**

Guidelines and tools when interpreting international standards and notions, while carrying out legislative reform in line with Council of Europe Civil Law Convention on Corruption; Council of Europe Criminal Law Convention on Corruption, and other texts such as Resolution (97) 24 on the twenty guiding principles for the fight against corruption, and United National Convention against Corruption. Financial, institutional and other resources aspects.

**3. Preventive legislation and penal legislation aspects: necessary recommendations when implementing CoE and UN conventions against corruption**

Aspects of civil, criminal and criminal procedure law, as well as legislation related to conflict of interests and declaration of assets.

**Summary of the Issues and Discussions**

## 1) COUNTRY COMPLIANCE MATRIX IN ACCORDANCE TO THE THREE CONVENTIONS AGAINST CORRUPTION

During the works of the Seminar, all country /project areas delegations according to their updated reports, discussed and acquired relevant information concerning the on-going reforms and legislative amendments in their own legal systems with regard to the implementation aspects of the Council of Europe and United Nations Convention[s] against corruption.

All the discussed information was made also available and reported in the format of Compliance Matrix Country/Project Area Reports as in the attached Appendixes.

Within the framework of the PACO Impact Project's regional exchange and cooperation, it was stressed and decided that such Compliance Matrixes will be made available on the Project web-sites in order to allow interested institutions/experts/countries to exchange information and experiences with regard to specific efforts and reforms when implementing concrete provisions/requirements of the treaty law in the field against corruption. Such information exchange as well as aspects of assistance and evaluation of progress made will also be assured and facilitated through the PACO Impact project framework.

## 2) ISSUES ADDRESSED BY WOPRKING GROUPS

### CoE Criminal Law Convention on Corruption (Working Group 1)

The implementation of the CoE Criminal Law Convention standards into domestic legislation is of paramount importance for the improvement of anti-corruption co-operation, efforts, and measures among the South-Eastern European countries. It has been established by now that such efforts should be focused on the development of the common standards concerning corruption offences (i.e. coordinated criminalisation of corruption) and the strengthening of the capacities of law-enforcement and judiciary. In this context, the following issues were addressed as most critical ones among all the countries of the region during the Regional Seminar in Durrës, Albania:

1. To ensure the inclusion in the domestic law of all material elements/components of the criminal offences of active and passive bribery (e.g. in relation to the different punishable actions and concept of undue advantage);
2. To establish as criminal offence the bribery (at least active bribery) of foreign public officials and to provide for a definition of "foreign public official" which covers the respective categories of persons under the Convention;
3. To establish the trading in influence as a criminal offence;
4. To establish the bribery in private sector as criminal offence and to ensure clear understanding on the conceptual differences between the private and public sector bribery;
5. To establish liability of legal persons and to provide for effective, proportionate and dissuasive sanctions for them in accordance with the standards of the Convention;
6. To provide continuous specialised training and adequate resources for those officers in charge of investigation and prosecution of corruption and corruption related offences.

**During the working Group sessions, the participants also identified the following areas where the current and available information for each country in the region, could be shared and provided among other countries in order to ensure cooperation and exchange of best practices:**

- Exchange of experience and regional arrangements and provide effective protection for witnesses and victims.
- Exchange of experience and cooperation on the use of special investigative techniques.
- Exchange of experience among authorities competent for extradition, mutual legal assistance to establish working contacts and identify obstacles to cooperation in the region.

## CoE Civil Law Convention on Corruption (Working Group 2)

It is noteworthy that The Civil Law Convention of Corruption has been to date ratified by all, but one (i.e. Serbia and Montenegro which ratification is pending), countries attending the seminar. In contrast, the general awareness of the objectives pursued by the Convention, as well as their effective implementation in practice, seem to be notably low. Possibly, the lowest in relation to other international anti-corruption legal instruments discussed at the seminar. The Convention is the only international instrument aiming at utilising civil law remedies in the overall strategy to suppress corruption by – among others – requiring compensation to victims who suffered damage as a result of corruption, providing for the State's civil liability and responsibility for negligent omissions of supervisory bodies that resulted in corrupt acts of public officials, for the nullity of contracts and clauses providing for corruption, for the protection of employees – whistleblowers, etc.. The seminar has confirmed that the legislation in the area of civil law of most participating countries provides for compensation for damages, including State's responsibility, which could in theory be applied to corruption. However, those provisions are extremely seldom used in practice. Some of the reasons for this lie in the prevailing general understanding of corruption as a "victimless crime" involving two consenting parties, as a problem of the criminal justice system, possibly also in the reluctance of countries to assume responsibilities for damages caused to third by corrupt public officials. On the other hand, good practices exist in the region – some countries, such as the "the Former Yugoslav Republic of Macedonia", Albania, have upon ratification of the Convention strengthened their legal framework through general corruption-prevention legislation, labour law and civil law with aim to give better effect to the requirements of the Convention.

Accordingly, the working group has identified a number of strategies to address these problems:

1. Raise awareness among relevant practitioners (judges, lawyers, etc.) in the field of civil and labour law on the objectives pursued by the Convention and the corresponding State's obligations as well as on the provisions of domestic civil law that could be utilised to effect the provisions of the Convention;
2. Raise general public awareness on the applicability of the Civil Law Convention on Corruption, in particular in regard to who can be considered a victim of corruption, on the rights of seeking compensation for damages resulted from civil as well as public corruption, State's civil liability and responsibility and the protection of whistleblowers;
3. Review the legislation in the field of civil and labour law and identify gaps and opportunities with aim to give better effect to the requirements of the Convention; accordingly strengthen and reference (for higher "visibility") existing relevant provisions of civil and labour law though special legislation on prevention of corruption if such legislation exist in the country;
4. Ensure the protection of whistleblowers through legislation in the field of labour law in addition to the protection of witnesses in criminal proceedings;
5. Ensure that validity of contracts and clauses providing for corruption can be challenged not only by parties of the contracts and third interested parties, but also by specialised anti-corruption services in the area of repressing and preventing corruption.
6. In countries where applicable ensure that provisions on Free Legal Aid in civil and labour proceedings apply also to persons seeking compensation for damages resulted from corruption;
7. Pursue a broad interpretation of "victims" of corruption in legal proceedings; interpretation based on the purpose of the Convention;
8. Consider establishing a special State fund for compensation of victims of public corruption;
9. Study good practices from other countries on of the implementation of the Civil Law Convention on Corruption (especially on the issue of identification and definition of a victim, just compensation, causal link, and protection of employers-whistleblowers).

### **United Nations Convention against Corruption (Working Group 3)**

1. States that have not yet done so should proceed with ratifying the Convention;
2. States view the anti-corruption preventive mechanisms and measures in place domestically and complete those with measures required and recommended under the convention.
3. States, as a minimum, establish the criminal offences mandated by the Convention, including money laundering with respect to the widest range of convention offences and liability of legal persons.
4. States review the application of international cooperation mechanisms and convention offences, and improve their effectiveness – in particular mutual legal assistance.
5. States ensure that powers and mechanisms are in place domestically and freezed, seized and confiscated domestically and upon request from other countries.