



Republic of Slovenia



## **4th Summer School for Junior Magistrates from SE Europe**

# **CoE CIVIL AND CRIMINAL LAW CONVENTIONS (overview)**

**Ohrid, 1 – 6 June 2009**

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# Why confiscate?

*“..offenders smiled when they got a 15 or 20 years jail sentence, which they regard as an occupational hazard I suppose, but they literally burst into tears when they lost their favourite Rolls Royce, the family home, the kids’ private education and the wife’s luxurious lifestyle. Police have started seeing forfeiture as a way of hurting and getting at these guys..”*

Willie Hofmeyer, Head of the Asset forfeiture unit, South Africa  
Sunday Telegraph, 2 April 2000

# *International Anti-Corruption Standards*

- ❑ Convention on the protection of the EC financial interests + protocols (EU, 1995, 1996, 1997,1998)
- ❑ Inter-American Convention against corruption (1996)
- ❑ The Twenty Guiding principles for the fight against corruption (CoE, 1997)
- ❑ Convention on the fight against corruption involving officials of the EC or officials of Member States of the European Union (EU, 1997)
- ❑ **The Criminal Law Convention on Corruption + protocol (CoE, 1999, 2003)**
- ❑ **The Civil Law Convention on Corruption (CoE, 1999)**
- ❑ UN Convention against Transnational Organised Crime (2000)
- ❑ OECD Convention on combating bribery of foreign public officials in international business transactions (1997)
- ❑ MERIDA – United Nations Convention against Corruption (2003)

# Conventions overview

## Council of Europe (Criminal convention)

- the third multinational anti-corruption convention to be adopted and was negotiated by the member states of the Council of Europe, along with the participation of a number of observers
- It represents a European regional consensus on what states should do in the areas of criminalisation and international cooperation with respect to corruption.
- **Adopted:** 4 November, 1998, by the Council of Ministers  
**Opened for signature:** Strasbourg, 27 January 1999  
**Signatories:** 47 (as of 7 April 2006) Consisting of 47 member states & 3 non-member states  
**Ratifications and accessions:** 33  
**Entry into force:** 1 July 2002  
**Open to:** All member states of Council of Europe and 6 non-member states (Belarus, Canada, Holy See, Japan, Mexico, USA). Also, EU and other states can be invited to join.

# General structure

## Five chapters, 42 articles

- **Chap. I Use of terms**
- **Chap. II Measures to be taken at National Level**  
**Art.13:** Money laundering of proceeds from corruption offences  
**Arts.19, 22, 23:** Sanctions and measures, Protection of collaborators of justice and witnesses, Measures to facilitate the gathering of evidence and the confiscation of proceeds
- **Chap. III Monitoring of Implementation**
- **Chap. IV International Co-operation**
- **Chap.V (Final Provisions)**

# Coverage

- Sectors covered: Public sector and private sector (private-to-private) corruption
- Corruption offences covered: Broad range of offences including bribery (domestic and foreign), trading in influence, money laundering and accounting offences
- Measures: Criminalisation and regional cooperation measures, as well as provisions on recovery of assets
- Level of obligation: Mandatory provisions but possibility of specified reservations

# Monitoring arrangements

- A monitoring mechanism (GRECO) is provided for in Art 24. The GRECO began functioning in May, 1999.
- Its aim is to monitor through a process of mutual evaluation and peer pressure the compliance of States with their undertakings in the field of corruption.
- Although a State Party automatically joins the GRECO when it ratifies the CoE Convention, the reverse is not true; a State Party may choose to participate only in the GRECO, but not accede to the CoE Convention

# Main benefits of the Convention

- Regional agreement on importance of addressing corruption with a joint framework, setting common standards for criminalisation.
- Broad range of criminal offences, encompassing not only bribery of domestic and foreign public officials, but also international public officials and also covering bribery in the private sector
- Regional cooperation framework providing improved for mutual law enforcement assistance, including in extradition, investigations, as well as confiscation and seizure of proceeds of corruption. Includes restrictions on use of banking secrecy to block cooperation
- Broad jurisdictional provisions (Art: 17)
- Provision for corporate liability (Art. 18)
- Requires effective, proportionate and dissuasive criminal penalties, or, for legal persons, at least effective non-criminal sanctions (Art. 19)
- Requirement of creation of specialised anti-corruption authorities (Art. 20)
- Provisions on protection of whistleblowers and witnesses (Art. 22)
- Functioning review process



# Main weaknesses

- Few preventive measures
- No provision on statutes of limitation
- Parties may make reservations to the Convention in relation to some provisions

# Conventions overview

## Council of Europe (Civil convention)

- It is the first attempt to define common international rules in the field of civil law and corruption. In particular, it provides for compensation for damages as a result of acts of corruption
- **Adopted:** 4 November 1999  
**Signatories:** 40 including one non-member state (Belarus).  
**Ratifications and Accessions:** 25 (as of 7 April 2006).  
**Entry into force:** 1 November 2003  
**Open to:** Council of Europe member states; non-member states which took part in drawing it up; other non-member states by invitation; and the European Community.

# **General structure**

## **Three chapters, 23 articles**

- **Chapter 1 (Measures to be taken at national level)**
- **Chapter 2 (International co-operation and monitoring of implementation)**
- **Chapter 3 (final clauses)**

# Coverage

- **Sectors covered:** Public sector and private sector (private-to-private) corruption  
**Corruption offences covered:** A broad definition is given covering the "requesting, offering, giving or accepting of a bribe or any other undue advantage or the prospect thereof", which gives the Convention a relatively wide scope  
**Measures:** Civil law remedies for injured persons, compensation for damage from corruption; invalidity of corrupt contracts (null and void); whistleblower protection.  
**Level of obligation:** Mandatory provisions. No reservation may be made in respect of any provision of the Convention.

# Main benefits of the Convention

- Provides for civil remedies for persons who have suffered damage as a result of acts of corruption, including compensation for a broad range of damages (Art. 3)
- Requires that the State or appropriate authority is liable to compensate for the corrupt act of a public official (Art. 5)
- Establishes minimum limitations periods for bringing a case (Art. 7)
- Requires contracts providing for corruption to be held void and enables parties to apply for contract to be voided where consent undermined by corruption (Art. 8)
- Requires whistleblower protection of employees (Art. 9)
- Requires measures ensuring accounts present true and fair view of the company's financial position and that auditors be required to confirm this (Art. 10)
- Requires effective procedures for acquisition of evidence in civil cases (Art. 11)
- Provides for international cooperation by contracting parties in civil cases of corruption, including in obtaining evidence abroad, jurisdiction, recognition and enforcement of foreign judgements. (Art. 13)
- Provides for monitoring system (Art. 14)
- No reservation may be made in respect of any provision in the Convention. (Art. 17)

# Main weakness

- No restriction on the use of banking secrecy



# The Criminal Law Convention on Corruption

## **Article 13 – Money laundering of proceeds from corruption offences**

- ❑ Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141);

## **Article 21 – Co-operation with and between national authorities**

- ❑ Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:
  - ❑ by informing the latter authorities, on their own initiative, where there are grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or
  - ❑ by providing, upon request, to the latter authorities all necessary information.



# *How to get information on (possible) corruption?*

- Other cases
- Regular police powers
- SIM's\*
- Informants\*
- Citizens' complaints\*
- Public sources (media)



# Cooperation in practice

- Problems
  - Legislative loopholes
  - No (clear) rules – channels established
  - Insufficient knowledge
  - Written or oral exchanging
  - Data secrecy
  - Political influence?

## *How to improve cooperation?*

- ❑ Proper implementation of the legislation and other rules
- ❑ Trainings
- ❑ Building of trust
- ❑ Role of Internal Audit
- ❑ Role of the management

# *Fruitful cooperation*

1. Confidentiality of investigation: “need to know”  
***NOT*** “nice to know”
2. More colleagues have to know
3. Prosecutor has to be involved
4. Everything has to be documented
5. Pile-up the evidence
6. Joint final decision on the case



# Thank You for Your Attention!

## Questions or Comments