

**Standard Summary Project Fiche – IPA centralised programmes**

**Project Fiche: 1**

**1. Basic information**

- 1.1 CRIS Number: 2009/021-170
- 1.2 Title: **Support to implementation of the new Criminal Procedure Code (CPC)**
- 1.3 ELARG Statistical code: 01.24
- 1.4 Location: Montenegro

**Implementing arrangements:**

- 1.5 Contracting Authority: Delegation of the European Commission to Montenegro
- 1.6 Implementing Agency: N/A
- 1.7 Beneficiary (including details of project manager):

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**Financing:**

- 1.8 Overall cost: 1,130,000 EUR
- 1.9 EU contribution: 1,000,000 EUR
- 1.10 Final date for contracting: Two years from the date of the conclusion of the Financing Agreement
- 1.11 Final date for execution of contracts: Two years from the final date for contracting
- 1.12 Final date for disbursements: One year from the final date for execution of contracts.

## **2. Overall Objective and Project Purpose**

### **2.1 Overall Objective:**

High effectiveness in the fight against corruption, organized crime and other types of crime and protection of human rights.

### **2.2 Project purpose:**

To strengthen the capacity of the law enforcement bodies for the implementation the new CPC in line with European standards.

### **2.3 Link with AP/NPAA / EP/ SAA**

All strategic programming documents highlight the need to strengthen the efficiency of the Judiciary to fully play its role as a guarantor of the rule of law (for further details see Annex IV).

The **European Partnership (EP)** was adopted following the independence of Montenegro in June 2006. The EP stresses the need to strengthen judiciary independence, rationalize the court system, modernize proceedings and improve administration, provide adequate and sustainable financing for the judicial system. The key priorities of EP indicated the need to reform the judicial system. Within the framework of political criteria specific attention will be given to good management, justice reform, strengthening and implementation of the rule of law.

The **SAA** states under art 80 that in their co-operation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law, law enforcement and the administration of justice in particular. The article stresses that co-operation will aim at strengthening the independence of the judiciary and improving its efficiency.

### **2.4 Link with Multi-Annual Indicative Planning Document (MIPD)**

The **MIPD** emphasizes the need to improve the rule of law which included Judiciary reform, fight against organised crime and other criminal acts with special accent put on strengthening institutional capacity of the judiciary system included organisational, human and technical resources. The status of judges and prosecutors, upgrading the capacities, straightening the efficiency of judiciary and improving education of judges are essential elements. Strengthening of judiciary is a main priority in order to guarantee the rule of law. MIPD indicate also the need to remove judicial recruitment and career management from the parliament's powers. Rather, the MIPD advocates the establishment of transparent procedures based on professional and objective criteria for selection and career advancement, rationalise the court system and provide adequate financing. (for further details see Annex IV).

### **2.5 Link with National Development Plan**

N/A

Link with NPI

**National Program for Integration** (May 2008-2012) stipulates that reorganization of courts and prosecutor's offices will be performed in compliance with the changes of the Law on Courts and the Law on the Public Prosecutor

## 2.6 Link with national/ sectoral investment plans

**Judiciary Reform Strategy (2007 2012).** The **Judiciary Reform Strategy** was adopted by the Montenegrin Government in June 2007. The Strategy defines main objectives of the further judiciary reforms for the following five-year period. Key objectives of the reforms are: strengthening of independence, efficiency and availability of judiciary, and the increase of the public confidence in the judiciary. The Action Plan for implementation of the Judiciary Reform Strategy envisages specific measures that should be undertaken for the implementation of these objectives and responsible bodies and implementation deadlines. Action Plan was adopted by the Government in December 2007 (See Annex IV)

**The Action Plan for the implementation of the reform of Judiciary (2007 2012).** The **Action Plan for the implementation of the reform of Judiciary** indicated following objectives: Independence and autonomy of the judiciary system, strengthening of the public's confidence in the judiciary system, staff education in the judiciary organisations, strengthening of the international and regional cooperation, alternative solving of disputes, fight against crime, and namely corruption, terrorism and organised crime, strengthening of human capacities, the penitentiary system, launch and use of the judiciary information system PRIS. The Action Plan for the implementation of the reform of Judiciary highlighted the need to combat corruption at national and local level and through an inter-agency cooperation between judicial bodies and other institutions. The Action Plan stipulated also the need to foster the participation of CSO.

The Government of Montenegro passed the **Programme of the Fight against Corruption and Organized Crime** (August 2005) and the **Action Plan for Implementation of the Programme of the Fight against Corruption and Organized Crime** and it formed a body to monitor implementation of the Action Plan – *National Committee for Implementation of the Action Plan for Implementation of the Programme of the Fight against Corruption and Organized Crime (February 2007)*, which includes highest-ranking representatives of the legislative, executive and judicial power, as well as representatives of the non-government sector.

**The Action Plan for Implementation of the Programme of the Fight against Corruption and Organized Crime** is a mid-term document projected for the period of three years. It constitutes specific measures and activities, responsible bodies and institutions, deadlines, success indicators and risk factors. Representatives of the non-government sector were involved in development of both the Programme and the Action Plan for its implementation.

### **3. Description of project**

#### **3.1 Background and justification:**

The reform penal process legislation in Montenegro was initiated before the acquiring of its independence, while still in the State union of Serbia and Montenegro. The Constitutional charter stipulated that the competence in the field of penal law lied at the level of the member States. Montenegro adopted the Criminal Procedure Code (CPC) in December 2003 (Official Journal of Montenegro, number 71/03), which is to a significant extent harmonised with international legal standards and modern scientific ideas in this field. By its characteristics, it remained in the category of European continental penal procedure systems. Within a relatively short time span changes occurred with the 2006 Law on changes and amendments to the Criminal Procedure Code (Official Journal of Montenegro, number 47/06).

The drafting of the new Criminal Procedure Code progressed in parallel to the drafting of the new Constitution, and is hence in agreement and compatible with the Constitution. The new CPC reflects also the Montenegrin aspirations to its European integration. The new CPC is the expression of new needs and a result of a quite pronounced inefficiency of the criminal procedure which sometimes lasts too long. In that sense, the Criminal Procedure Code is aimed at reaching two most important objectives : firstly, the creation of a normative basis for a more effective and more efficient criminal procedure ; secondly and not less importantly, ensuring the full protection of freedoms and human rights guaranteed by the Constitution and international documents. Ensuring the full protection of freedoms and human rights implies establishing the equilibrium of the two requirements which are separated in each procedure – on one side the requirement of effectiveness of the penal procedure, and on the other side the demand of a maximal protection of freedoms and human rights. It should also be specified that the Code contains decisions which were checked and confirmed in comparative law and which should be implemented in the Montenegrin criminal procedure.

One of the most important points of the new Criminal Procedure Code is the modification of the concept of investigation, that is to say its placement under the authority of the Prosecutor, and not the Court, as it was previously the case. Up until recently the investigation was led by investigative judge upon request of the State prosecutor. The new Code foresees that the investigation is led by the State Prosecutor. After the adoption of the Criminal Procedure Code in 2003, the question arose whether to modify the concept of investigation, but it was deemed that the conditions for such change were not provided, including the reform of the police, the State Prosecutor and its readiness to take on the investigation. However, the new concept of investigation and its transfer from the Court to the Prosecutor jurisdiction, should be properly addressed.

The implementation of the Criminal Procedure Code requires necessary pre-conditions, namely the preparation of the human, technical and organisational resources with the Prosecution, but also the increase in the number of magistrates, and ensuring the necessary workspace and equipment. Furthermore, new means will be necessary due to the extension of the scope of the implementation of secret surveillance, as well as due to the broader spectrum of penal offences to be considered in the phase of investigation. The implementation of the Criminal Procedure Code will affect the Courts, the State Prosecutor and the Police, and therefore it is of great importance that the key institutions collaborate in an optimal manner. The implementation of the Criminal Procedure Code is expected to increase up to 40% the number of practitioners (prosecutors).

The training of the judges and their collaborators with regards to the implementation of the Criminal Procedure Code is of great importance, especially concerning the following issues : basic tenants of the CPC, the role of the investigative judge in the process of investigation, the role of the defence in the penal procedure, the production of evidence, means of securing the presence of a suspect (means of surveillance and safeguard), implementation of new activities for the production of evidence (audiovisual recording), control of the accusation, agreement on the recognition of guilt, preparation of a search warrant.

Finally the implementation of CPC is not simply a matter of sound legislation and operational practice. There must be an effective administrative support staff servicing the operational work of the prosecutors and investigators and this requires good procedures and modern technical means.

### **3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact**

The project's main **impact** will seek to strengthen the independence and efficiency of the judiciary as well as its capacity to operate more closely according to EU standards. This will allow better legislative implementation, increased citizens' confidence in the system and improved judicial cooperation within the region and EU.

And more broadly, an efficient and professional judiciary will increase confidence of the external actors and it will be a **catalytic effect** for foreign investment, particularly via promotion of the tourist industry.

**Sustainability** of the results of the project will be enhanced by securing Government commitments to provide the necessary financial and human resources to operate and maintain the new equipment. The project will provide training of professionals in Courts, Prosecutors offices and Police Directorate which will have multiplier effect.

### **3.3 Results and measurable indicators:**

#### ***Result 1: Established normative framework with regards to the new Criminal Procedure Code (CPC)***

Measurable indicators:

- At least three normative acts drafted
- At least three normative acts adopted

#### ***Result 2: Increased capacities of the Prosecutor's Office, Courts and Police Directorate in identification and processing criminal acts in accordance with the new legislative solutions***

Measurable indicators:

- Up to 20 trained staff per each training
- Up to 20 prosecutor's trained on CPC
- At least 50 judges trained on CPC

- At least 30 assistants of prosecutors trained on CPC
- At least 50 assistants of judges trained on CPC
- Up to 40 employees from Police Directorate trained on CPC

***Result 3: Strengthened technical capacities of the Prosecutor’s Office and Courts***

Measurable indicators:

- At least 5 Courts and at least 5 Prosecutor’s Offices equipped with new equipment
- At least 10 trained staff to use new equipment

***Result 4: Enhanced operations of the Commission for monitoring the implementation of the CPC***

Measurable indicators:

- At least 10 participants at the Conference
- At least two presentations/ comparative experiences provided at the Conference

***Result 5: Enhanced dialogue with Civil Society Organisations (CSO), research institutions and other stakeholders on the implementation of the new Criminal Procedure Code (CPC)***

Measurable indicators:

- At least 10 seminars, 5 workshops, and 2 public presentations organised
- Number of people and organisations taking part in the dialogue development events
- At least 500 brochures printed

**3.4 Activities:**

***Activity 1: Drafting of acts in accordance with the CPC***

1.1. Drafting of sub-laws in accordance with the new Criminal Procedure Code

1.2. Creation and publication of a Rule Book (manual containing examples of all documents linked to the new CPC, i.e decision of arrest, etc.)

1.3. Organization of workshops for exchanging practical experiences between judicial bodies involved in the implementation of the CPC

***Activity 2: Training for Judges, Prosecutors and Police Directorate employees***

2.1. Organization of joint trainings for Prosecutors, Judges and Police Directorate employees for an effective implementation of the new CPC:

2.1.1. Training on the role of the prosecutor's office (with the special focus on experiences from EU member states and other states),

2.1.2. Training for taking legal proceedings, preparation of proposals for custody order, hearings of suspects, witnesses, and vulnerable witnesses, (sexual violence victims, human trafficking victims, family violence victims, etc.)

2.1.3. Training for Judges and associates on implementation of the new CPC, namely: control of the accusation, agreement on the recognition of guilt, property confiscation or objects acquired through criminal activity, hearing of protected witnesses and cooperative witnesses, training of staff working with special equipment for hearing procedures, etc.

2.1.4. Training for the Police Directorate employees, courts' and prosecutor's office staff on collecting of evidence (searches, collection of biological material for DNA analysis), conduct of financial inquiries, audiovisual recording, video surveillance, report drafting, investigation training, etc.

2.2. Analysis and recommendations for strengthening Special Prosecutor's Office for fight against organized crime, corruption and terrorism including assessment of the needs related to the development and management of the human resources.

2.3. Visit tour in EU member countries who have a similar criminal procedure concept and with regards to the application of legal solutions for staff working for the prosecution, courts and police

### ***Activity 3: Purchase of technical equipment***

3.1. Purchase of equipment for the Prosecutor's Offices and Special Prosecutor's Office

3.2. Procurement of equipment for Courts.

### ***Activity 4: Support to the Commission for monitoring the implementation of CPC***

4.1. Organisation of a conference on "Comparative approach in the implementation of CPC" for the members of the Commission for following the implementation of the CPC

### ***Activity 5: Public debate on the implementation CPC***

5.1. Holding public events (public presentations, TV debates, etc) on the solutions foreseen by the new legal solutions related to the new CPC involving Civil Society Organizations (CSO), research institutions and other concerned stakeholders (public debates).

5.2. Translation of legal and sub-legal regulations that are in relation to the implementation of the new Criminal Procedure Code

The project activities will be implemented through four contracts:

- Contract 1: Service – to cover Activity 1 – funded by national funds
- Contract 2: Twinning – to cover Activities 2, 4 and 5 – funded by IPA.
- Contracts 3 and 4: Supply – to cover Activity 3. Contract 3 will be funded with national funds while Contract 4 will be funded under IPA.

### **3.5 Conditionality and sequencing:**

The project success is dependent on the following conditions:

- Political stability and economic growth maintained.
- All state systems well functioning
- Smooth operation of the Prosecution Council and the Prosecution Assembly
- Effective cooperation between all law enforcement bodies
- Prosecution Council appoints a sufficient number of Judges
- Commitment of officials and civil servants participating in project activities to the new CPC
- Availability of professional personnel having the necessary skills for use of new equipment
- Adequate expert assistance for the drafting of new normative acts available
- Active participation of CSOs
- Sufficient financial means from the national budget allocated

Additionally, for the smooth operation of the project a Steering committee consisting of key stakeholders has to be established in the initial phase of the implementation. Steering committee will supervise implementation of the project.

The following in kind contribution has to be provided by the beneficiary at the project start:

- Working space and expertise for activities related to result 1 provided
- Training space, office for Resident Technical Advisor and project assistant provided
- Training space for users for new equipment provided

The beneficiary will prepare sub-laws necessary for implementation of the new CPC as national contribution and it will be completed before the twinning project starts. Sub-laws need to be adopted before the new CPC is enforced and it is precondition for successful implementation of the CPC. Establishment of the Commission for monitoring the implementation of CPC is also a pre-condition for the successful project implementation.

### 3.6 Linked activities

This project will take in to consideration experiences gained during implementation stage of EU funded projects.

#### EU funded projects:

In the context of judicial reform, the CARDS programme has focussed on developing initial and in-service training for judges, prosecutors and court support staff, and continues to strengthen the judicial training centre and prison administration.

- Justice Reform, Twinning, IPA, (2.000.000 eur). There is a need to coordinate with this project.
- Support to the Prosecutor's Network in South eastern Europe, CARDS, PROSECO regional Project, April 2008 April 2010, (1, 666, 669, 20 eur): The project focus on strengthening the legislation and institutional capacities of General Prosecutor's Office
- Advisory Support for prosecutors training, CARDS, Twinning light project is under implementation by the Judicial Training Center From 1 July 2008 until 31 December 2008
- Development of monitoring instruments for judicial and law enforcement institutions in the Western Balkans, CARDS, Regional Programmes 2006
- Communication environment for Judicial European network in Western Balkans, EC
- Development of a reliable and functioning judicial systems and enhancing of international judiciary cooperation, CARDS 2003. The almost finalised project contributed significantly to the development of the draft strategy for the Montenegrin judiciary and the new project will build upon its results as well by developing the action plan for the implementation of the mentioned strategy.

#### Other donor's activities:

- Institutional and Judicial Reform Cluster, UNDP Judicial Portfolio. Strengthening Capacities of Judiciary in Montenegro to Fight Corruption and Organised Crime (January 2008-December 2008) (224,197.61 USD) Donor funds, Government of Norway. The project activities are divided into 3 components: *Support to the Ministry of Justice in its legislative efforts, Support to the Judicial Training Center, Supply of the sophisticated electronic equipment to the Judiciary.* The project focus is support the Judicial operators in their daily duties on the two main procedures preceding the request for warrant of arrest. Project results aim to improve the fight against organised crime
- U.S.A. has also being active although is now phasing out. USAID supported mainly court computerisation, court management and introduction of mediation. As far EU Member States are concerned specific inputs have been provided. France funded training for prosecutors. The Netherlands and Luxembourg supported a court monitoring project implemented through OSCE.

### 3.7 Lessons learned

Improvement of efficiency of Judiciary institutions is identified as a top priority within the Government's strategic documents. In order to achieve defined objective for full effectiveness, it

must be supported by complementary development of institutional organization, upgrading of security equipment and a comprehensive training programmes. These elements have been addressed through previous EU and other donor's activities. The simultaneous presence of several donors (in particular non-EU donors) with sometime different agendas did not always lead to the necessary synergies. Therefore, further and better organized donor coordination is necessary. Need for public debates for the implementation of CPC is also foreseen as a priority. Informing the general public on the judiciary reform process still exists and will be taken into consideration during the course of project implementation.

Other lessons learned involve the availability of sufficient financial and human resources as well as involvement of judges, prosecutors and police equally in the training activities.

#### 4. Indicative Budget (amounts in €)

			SOURCES OF FUNDING									
			TOTAL EXP.RE	IPA COMMUNITY CONTRIBUTION		NATIONAL CONTRIBUTION					PRIVATE CONTRIBUTION	
ACTIVITIES	IB	INV	EUR (a)=(b)+(c)+(d)	EUR (b)	%	Total EUR (c)=(x)+(y)+(z)	%	Central EUR (x)	Regional/ Local EUR (y)	IFIs EUR (z)	EUR (d)	%
Activities 1												
contract 1 Service	X		90,000			90,000	100%	90,000				-
Activities 2, 4, 5												
contract 2 Twinning	X		800,000	800,000	100%							
Activity 3												
contract 3 Supply		X	40,000			40,000	100%	40,000				
contract 4 Supply		X	200,000	200,000	100%							-
TOTAL IB			890,000	800,000	89.89%	90,000	10.11%	90,000				
TOTAL INV			240,000	200,000	83.33%	40,000	16.66%	40,000				
<b>TOTAL PROJECT</b>			<b>1,130,000</b>	<b>1,000,000</b>	<b>88,5%</b>	<b>130,000</b>	<b>11,5%</b>					

Amounts net of VAT

## 5. Indicative Implementation Schedule (periods broken down per quarter)

Contracts	Start of Tendering	Signature of contract	Project Completion
Contract 2 twinning	Q3 2009	Q1 2010	Q3 2011
Contract 4 supply	Q4 2009	Q1 2010	Q2 2010

Contracts 1 and 3 are under the responsibility of the national authorities of Montenegro. The indicative timetable for their implementation follows:

Contracts	Start of Tendering	Signature of contract	Project Completion
Contract 1	n / a	Q3 2009	Q4 2009
Contract 3	Q1 2010	Q2 2010	Q4 2010

## 6. Cross cutting issues

### 6.1 Equal Opportunity

Gender balance is applied. The reform and modernisation of the judiciary will aim at providing equal opportunities for women in terms of access to employment, promotion, equal wages, and social benefits.

### 6.2 Environment

Environmental issues will be addressed through purchasing and installing of new equipment in line with environment protection and the new understanding of saving natural resources. Moreover, the reinforcement of the fight against corruption and organised crime has usually positive impact on protection of environment as we are witnessing growing presence of organised crime and corruption in the area of environment through, for example, illegal import and export of waste; disposal of hazardous waste; movement of ozone depleting substances, illegal construction and exploitation of natural resources, etc.

### 6.3 Minorities

The proposed project will, as far as is practicable, take the required steps to assure that the internal policies, structure or operating procedures of the beneficiary will conform with or promote minority issues. In order to develop a fair and accountable judicial system, the project should assist beneficiaries in implementing mechanisms to ensure equitable representation of ethnic minorities so as to reflect the ethnic diversity of Montenegrin society.

## ANNEX 1- Log frame in Standard Format

Project Logframe	Project name and number: Support to the implementation of the new Criminal Procedure Code (CPC) 2009/021-170	
	Contracting period expires: Two years after conclusion of the Financial Agreement.	Disbursement period expires: One year after the final date for the execution of contracts
	Total Budget: 1,130,000 €	IPA / pre-accession budget : 1.000.000 €

Overall objective	Objectively verifiable indicators	Sources of Verification	
High effectiveness in the fight against corruption, organized crime and other types of crime and protection of human rights.	<ul style="list-style-type: none"> <li>-Decreased number of criminal acts</li> <li>-Improvement in the country's ranking in the corruption perception index of transparency international (2008 CPI score - 3.4)</li> <li>- Increase in the foreign direct investment, number of tourists in Montenegro raising</li> </ul>	<ul style="list-style-type: none"> <li>MONSTAT Statistical data</li> <li>Statistical data from the Police Directorate</li> <li>Supreme State Prosecutor's Report</li> <li>Transparency international</li> <li>Statistical data from the EBRD</li> <li>Statistical data from WIIW</li> <li>IMF Reports</li> <li>Statistical data of the National Tourism Office</li> </ul>	
Project purpose	Objectively verifiable indicators	Sources of Verification	Assumptions
To strengthen the capacity of the law enforcement bodies for the implementation the new CPC in line with European standards	<ul style="list-style-type: none"> <li>-Increased number of completed investigations in Prosecutor's Office (by 10%)</li> <li>-Increased number of completed cases in Courts (by 10%)</li> </ul>	<ul style="list-style-type: none"> <li>European Commissions reports for the judiciary</li> <li>Supreme State Prosecutor's Report</li> <li>Supreme Court annual Report on the work of the Courts</li> <li>Project Reports</li> </ul>	<ul style="list-style-type: none"> <li>Political stability and economic growth maintained.</li> <li>All state systems well functioning</li> </ul>

<b>Results</b>	<b>Objectively verifiable indicators</b>	<b>Sources of Verification</b>	<b>Assumptions</b>
<b>Result 1:</b> Established normative framework with regards to the new Criminal Procedure Code (CPC)	<ul style="list-style-type: none"> <li>-At least three normative acts drafted</li> <li>-At least three normative acts adopted</li> </ul>	<ul style="list-style-type: none"> <li>- Official Journal of Montenegro.</li> <li>- Project reports</li> </ul>	
<b>Result 2:</b> Increased capacities of the Prosecutor's Office, Courts and Police Directorate in identification and processing criminal acts in accordance with the new legislative solutions	<ul style="list-style-type: none"> <li>-Up to 20 staff trained per each training</li> <li>-Up to 20 prosecutor's trained on CPC</li> <li>-At least 50 judges trained on CPC</li> <li>-At least 30 assistants of prosecutor's trained on CPC</li> <li>-At least 50 assistants of judges trained on CPC</li> <li>-Up to 40 employees from Police Directorate trained on CPC</li> </ul>	<ul style="list-style-type: none"> <li>- Supreme State Prosecutor's Report</li> <li>- Supreme Court annual Report on the work of the Courts</li> <li>- Project Reports</li> <li>- Reports on records on the number of the employees, which is kept in prosecutor's offices, The Prosecutor Council's records</li> <li>- Annual Police Directorate Report</li> </ul>	<ul style="list-style-type: none"> <li>▪Smooth operation of the Prosecution Council and the Prosecution Assembly</li> <li>▪Prosecution Council appoints a sufficient number of Judges</li> <li>▪Sufficient number of trained officials from the Prosecutor's Office, Police Directorate and other civil servants in line ministries actively participating in project activities</li> <li>▪Good cooperation between Prosecutore's Office, Courts and Police Directorate</li> </ul>
<b>Result 3:</b> Strengthened technical capacities of the Prosecutor's Office and Courts	<ul style="list-style-type: none"> <li>-At least 5 Courts and at least 5 Prosecutor's Offices equipped with new equipment</li> <li>-At least 10 trained staff to use new equipment</li> </ul>	<ul style="list-style-type: none"> <li>- Project reports</li> <li>- Technical reports of the Prosecutor's Office,</li> <li>- Technical reports of the Courts</li> </ul>	<ul style="list-style-type: none"> <li>▪ Available technical documentation</li> <li>▪ Availability of professional personnel having the necessary skills for use of new equipment</li> </ul>
<b>Result 4:</b> Operations of the Commission for monitoring the implementation of the CPC enhanced	<ul style="list-style-type: none"> <li>-At least 10 participants attend the Conference</li> <li>-At least 2 presentations/ comparative experiances provided at the the Conference</li> </ul>	<ul style="list-style-type: none"> <li>- Project reports</li> <li>- Conference reports</li> <li>- Minutes</li> </ul>	<ul style="list-style-type: none"> <li>▪Sufficient financial means allocated</li> </ul>
<b>Result 5:</b> Enhanced dialogue with Civil Society Organisations (CSO), research institutions and other stakeholders on the implementation of the new Criminal Procedure Code (CPC)	<ul style="list-style-type: none"> <li>-At least 10 seminars, 5 workshops, and 2 public presentations organized.</li> <li>-No of people and organisations taking part in the dialogue development events</li> <li>-At least 500 copies of brochure printed.</li> </ul>	<ul style="list-style-type: none"> <li>- Project reports</li> <li>- Press reports (i.e from the media)</li> <li>- Minutes.</li> </ul>	Active participation of CSO

Activities	Means	Costs	Assumptions
<p><b>Activity 1: Drafting of acts in accordance with the CPC</b>  1.1. Drafting of sub-laws  1.2. Creation and publication of a Rule Book  1.3. Organization of workshops</p> <p><b>Activity 2: Training for Judges, Prosecutors and Police Directorate employees</b>  2.1. Joint trainings for Prosecutors, Judges and Police Directorate employees for an effective implementation of the new CPC:  2.2. Analysis and recommendations for strengthening Special Prosecutor’s Office for fight against organized crime, corruption and terrorism including assessment of the needs related to the development and management of the human resources.  2.3. Visit tour in EU member countries with a similar criminal procedure concept</p> <p><b>Activity 3: Purchase of technical equipment</b>  3.1. Purchase of equipment for the Prosecutor’s Offices and Special Prosecutor’s Office  3.2. Procurement of equipment for Courts.</p> <p><b>Activity 4: Support to the Commission for monitoring the implementation of CPC</b>  4.1. Conference on “Comparative approach in the implementation of CPC”</p> <p><b>Activity 5: Public debate on the implementation CPC</b>  5.1. Holding public events (public presentations, TV debates, etc)  5.2. Translation of legal and sub-legal regulations that are in relation to the implementation of the new Criminal Procedure Code</p>	<p>Human resources</p> <p>Equipment for audio and audio-visual recording, equipment for query under daylight and night conditions</p> <p>Material resources</p> <p>4 contracts:</p> <ul style="list-style-type: none"> <li>- 1 twinning</li> <li>- 1 service</li> <li>- supply contracts</li> </ul>	<p>IPA funding – 1.000.000 €</p> <ul style="list-style-type: none"> <li>- twinning: 800.000 EUR</li> <li>- supply: 200.000 EUR</li> </ul> <p>National co-financing – 130.000 EUR</p> <ul style="list-style-type: none"> <li>- service: 90.000 EUR</li> <li>- supply: 40.000 EUR</li> </ul> <p><i>In kind:</i></p> <ul style="list-style-type: none"> <li>- Working space and expertise provided</li> <li>- Training space, office for RTA and project assistant provided by beneficiary</li> <li>- Training space for users for new equipment provided</li> </ul>	<p>Adequate expert assistance for the drafting of new normative acts available</p> <p>Sufficient capacities and readiness in Prosecutor’s Office, Courts and Police for the implementation of the new CPC</p> <p>Commitment of officials and civil servants participating in training activities</p> <p>Effective cooperation between all law enforcement bodies</p> <p>Good coordination between officials from Special Prosecutor’s Office and experts working on the analysis</p> <p>Establishment of the Commission for monitoring the implementation of CPC</p> <p>Active participation of CSO</p> <p>Required experts available</p> <p>Sufficient financial means from the national budget allocated</p> <p>Available technical documentation</p> <p>Available translators</p>

**Annex 2- Amounts in EUR contracted and Disbursed per Quarter over the full duration of Programme**

<b>Contracted</b>	<b>Q1 2010</b>	<b>Q2 2010</b>	<b>Q3 2010</b>	<b>Q4 2010</b>	<b>Q1 2011</b>	<b>Q2 2011</b>	<b>Q3 2011</b>
Contract 2	800,000						
Contract 4	200,000						
<b>Cumulated</b>	1,000,000						
<b>Disbursed</b>	<b>Q1 2010</b>	<b>Q2 2010</b>	<b>Q3 2010</b>	<b>Q4 2010</b>	<b>Q1 2011</b>	<b>Q2 2011</b>	<b>Q3 2011</b>
Contract 2	426,667			293,333			80,000
Contract 4	120,000	80,000					
<b>Cumulated</b>	<b>546,667</b>	<b>626,667</b>	<b>626,667</b>	<b>920,000</b>	<b>920,000</b>	<b>920,000</b>	<b>1,000,000</b>

### **Annex 3 - Reference to laws, regulations and strategic documents:**

#### **Reference to laws, regulations**

- The Law on Courts (Official Gazette of the Republic of Montenegro No. 5/02, 49/04 and 22/08) regulates the organization and jurisdiction of courts, as well as the manners and procedures for electing judges
- The Law on the courts Council (Official Gazette of the Republic of Montenegro No. 13/08) regulates the manner of operation and implementation of the constitutional jurisdiction of the court Council.
- The Law on the Public Prosecutor (Official Gazette of the Republic of Montenegro No. 69/03) regulates the requirements and manner for appointing and discharging public prosecutors and their deputies according to which the Public Prosecutor was elected by the Parliament, while other prosecutors were elected by the Government upon the proposal of the Public Prosecutor. Significant novelty is the establishing of the Department for the Fight against the Organized Crime, within Supreme Public Prosecutor, managed by the special prosecutor for the fight against organized crime.
- Organization and the working manner of the magistrate authorities is regulated by the Misdemeanor Law (Official Gazette of the Republic of Montenegro No. 25/94, 29/94 and 48/99).
- The Law on Protection of the Right to a Trial in a Reasonable Period of Time (Official Gazette of the Republic of Montenegro No. 11/07) regulates the protection of the right to a trial in a reasonable time period, as well as the legal satisfaction due to the violation of the right to a trial.
- The Law on Education in Judiciary Bodies (Official Gazette of the Republic of Montenegro No. 27/06) is in compliance with the Basic Principles of the Judiciary Autonomy, Recommendation on the Independence, Efficiency and Role of the Judges of the Ministers' Committee of the SE member countries, European Charter on the Law on Judges, Opinion No. 4 on the Appropriate Initiative and Subsequent Education of Judges on the national and European Level, of the Consultative Council of the European Judges, and prescribes the initial and continuous training in judiciary bodies.
- Within the reform of the criminal legislation, the following legislations have been enacted: Criminal Code (Official Gazette of the Republic of Montenegro No. 70/03 and 13/04), Code on the Criminal Proceeding (Official Gazette of the Republic of Montenegro No. 71/03, 7/04 and 47/06), Law on Witness Protection (Official Gazette of the Republic of Montenegro No. 65/04) and Law on Responsibilities for Criminal Acts of the Legal Entities (Official Gazette of the Republic of Montenegro No. 2/07 and 13/07).
- Criminal Code is introducing novelties related to: the institute of minor social danger, force or threat, responsibility for criminal acts of the legal entities, new types of penalties – work in the public interest, possibility of alternative fines, measuring fines in daily amounts, limitations related to pronouncement of conditional conviction, while the special part of the Law prescribes more severe fines for the criminal acts performed in the organized manner. In the process criminal legislation, with the objective of creating legislative regulation with the principle of providing guarantees and established rules that would ensure that no innocent person should be convicted and that the perpetrators of criminal acts should be sanctioned, several new rights have been introduced for the incriminated person. Thus, the incriminated person should be informed on the criminal act with which he is charged and on the ground of reasonable

doubt against him on the first hearing, in order to be able to decide in which manner he will defend himself. Incarcerated person is also guaranteed other rights: information on the reasons for incarceration on the languages that he understands, right not to make any statement, to freely choose his defender, and the right for his family to be informed on his incarceration. Public prosecutor has obtained a more active role in proving criminal acts and prosecuting perpetrators, as the performer of the pre-criminal procedure, with the objective of enabling the court to perform its basic function - lawsuit. Extorting statements on which the court decision can be made has been banned, as well as special investigation techniques, i.e. measures of secret surveillance. Special attention is given to the processing of criminal acts performed in an organized manner; therefore, special rules for conducting criminal procedures for this type of the most severe crime have been prescribed in details. Progressive development of the international law has led to the creation of new institutes that should be implemented in the Montenegrin criminal legislation. Therefore, in 2006, changes and amendments of the Criminal Code and Code on the Criminal Procedure have been introduced. The most significant changes and amendments relate to the increased implementation of the principle of postponed criminal prosecution towards minors and the increased implementation of the alternative sanction and harmonization of the criminal acts against the safety of computer data.

- The Law on Responsibility for Criminal Acts of the Legal Entities (Official Gazette of the Republic of Montenegro No. 2/07 and 13/07) regulates the responsibility for criminal acts of the legal entities, as a novelty in the legal system.
- After assuming the exclusive jurisdiction for the legislative organization of the civil law, Montenegro has started with the reform, with the adoption of the Law on Litigation Procedure (Official Gazette of the Republic of Montenegro No. 22/04 and 76/06), Law on Executive Procedure (Official Gazette of the Republic of Montenegro No. 23/04), Law on Arbitration (Official Gazette of the Republic of Montenegro No. 30/05), Law on Notaries (Official Gazette of the Republic of Montenegro No. 68/05), Law on the Extra-Judicial Procedure (Official Gazette of the Republic of Montenegro No. 27/06). These laws are introducing new principles and process institutes in order to achieve more efficient and better protection of violated and endangered subjective rights in the court proceedings. The Law on Litigation Procedure introduces the accusation principle of the procedure, which is transferring the burden of proving to the parties, improves solutions that regulate delivery, and introduces monetary fines for disregard of the court. Specific deadlines have been shortened and clearly defined by the Law, while specific activities can be performed up to the legally prescribed procedure stages, such as: counter complaint, revoked complaint and the institute of standstill procedure has been abolished. One of the most important novelties is the introduction of the possibility of arbitration, as well as conclusion of court reconciliations even in the complaint procedures. Procedures before the arbitrage are largely harmonized with the international standards. Therefore, Law on Arbitration has been introduced as a lex specialist (Official Gazette of the Republic of Montenegro No. 30/05), which closely regulates the arbitration procedure. New Law on the Executive Procedure has introduced the reform of the executive procedure in order to adequately overcome inadequate solution in the area of court executions.

### **Reference to AP /NPAA / EP / SAA**

In line with the EP of 2007, Montenegro has to meet the following priorities in short-term period (1-2 years):

- Finalise plans to reform the judicial system; remove control of recruitment and career management from the parliament and establish transparent procedures based on professional and objective criteria for selection and career advancement; rationalise the court system and modernise proceedings and improve administration; provide adequate and sustainable financing for the judicial system (page 4),
- Improve prison conditions, in particular as regards vulnerable groups such as juvenile offenders and those in need of psychiatric care (page 5).

### **The Stabilization and Association Agreement (October 2007)**

In their co-operation on justice, freedom and security, the Parties shall attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. Co-operation will notably aim at strengthening the independence of the judiciary and improving its efficiency, improving the functioning of the police and other law enforcement bodies, providing adequate training and fighting corruption and organised crime (page 42).

### **Reference to MIPD**

The project supports key objectives of the **MIPD (2009-2011)**. Main objectives and priorities under the **MIPD 2009-2011** include the following:

- Strengthen the efficiency of the judicial system to fully play its role as a guarantor of the rule of law in the country; including juvenile justice (page 14),
- Improvement of prison conditions, in particular as regards vulnerable groups such as juvenile offenders (page 15).

Among the expected results the MIPD lists the following:

- Significant progress in the implementation of reforms in the judiciary: this would include a new system for appointment and career development of the judges and prosecutors based on professional and objective criteria; the creation and institutional development of the High Judicial Council as the organ responsible for human resources management and monitoring and evaluation of the work of judges; the revision of parameters for financing the judiciary; the adoption and implementation of juvenile justice law (page 15),
- Problems of vulnerable groups being addressed (health services, education and housing) in line with anti-discrimination legislation and European standards of human rights and with the EU strategy on the rights of the child; improved situation of prisons (page 16).

MIPD recommends the following programmes to be implemented:

- Support to the judicial reform strategy, including for the development of the institutional capacity of the High Judicial Council and for the Centre for Education in Judiciary; in terms of curricula and concrete training actions; support would include upgrading procedural legislation and enforcement as well as establishing juvenile justice (page 16),
- Support to improving prison conditions, including juvenile and persons with special needs imprisonment, and enhancement of security system (page 17).

### **Reference to Sector Policies and Strategies**

#### **Judiciary Reform Strategy (2007-2012)**

The Judiciary Reform Strategy was adopted by the Montenegrin Government in June 2007. The Strategy defines main objectives of the further judiciary reforms for the following five-year period. Key objectives of the reforms are: strengthening of independence, efficiency and availability of judiciary, and the increase of the public confidence in the judiciary.

The reform of criminal legislation was conditioned by certain changes in the state and legal status and it commenced with the adoption of the Law on Changes and Amendments to the Criminal Law of 2002 whereby capital punishment was abolished and replaced by long imprisonment; also, in accordance with the development of international criminal law, new criminal acts were introduced: trafficking in human beings, family violence, money laundering and criminal offences with elements of corruption in various areas of activity. The reform of the entire criminal substantive and procedural legislation began after the creation of the State Union of Serbia and Montenegro, when entire criminal legislation was transferred to the exclusive jurisdiction of member states.

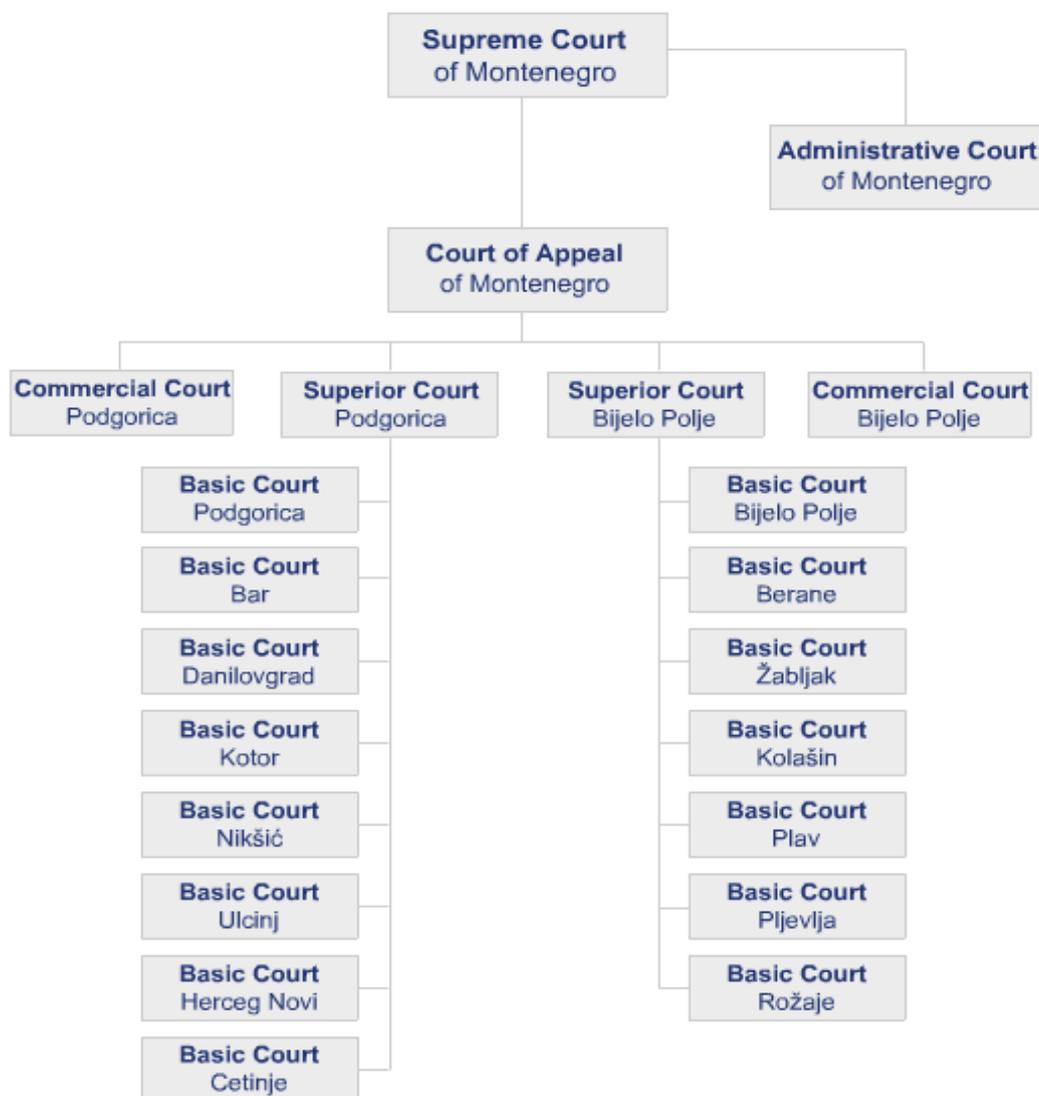
So far, activities on the reform of criminal legislation have included the adoption of the new Criminal Code and Law on Criminal Proceedings, as well as the changes and amendments to them; Law on Public Prosecutor; Law on Changes and Amendments to the Law on Execution of Criminal Sanctions; Law on Witness Protection and Law on Criminal Liability of Legal Entities.

Further legislative reform activities are directed to the revision of the criminal procedural system whereby the concept of judicial investigation will be abandoned and its conduct entrusted to the state prosecutor and the police with the purpose of simplifying the former criminal procedure; they are also directed to legislative regulation of international legal assistance in criminal matters in accordance with international standards.

## **Government strategy and Action plan for the fight against organised crime and corruption**

Innovated Action Plan for implementation of the Program for fight against organized crime and corruption (2008-2009). This Plan stipulates the need to strengthen police capacities for fight against organised crime.

## Annex 4- Description of the Institutional framework



- **Institutional framework of the judiciary system**

Institutional framework of the judiciary system includes 15 courts of first instance, two higher courts (Podgorica and Bijelo Polje) and two commercial courts, Appellate, Administrative and Supreme courts. Administrative Office has been established for performing administrative and financial activities for the needs of courts within the Supreme Court. Public prosecution operations are performed by 13 prosecutors of first instance, two higher prosecutors (Podgorica and Bijelo Polje), Supreme Public Prosecutor and a Special Prosecutor for the fight against the organized crime. Responsible for conducting magistrate procedure are 17 regional magistrate authorities, ministries, public administration bodies and local self-government bodies, as well as the Magistrates' Council.

## **Annex 5- Details per EU funded contract**

### **A. Twinning contract (Contract 2)** - financed by EU

#### *A.1 Activities to be covered*

- a) Organization of joint trainings for Prosecutors, Judges and Police Directorate employees for an effective implementation of the new CPC:
  - o Training on the role of the prosecutor's office (with the special focus on experiences from EU member states and other states),
  - o Training for taking legal proceedings, preparation of proposals for custody order, hearings of suspects, witnesses, and vulnerable witnesses, (sexual violence victims, human trafficking victims, family violence victims, etc.)
  - o Training for Judges and associates on implementation of the new CPC. This training should address the following issues: control of the accusation, agreement on the recognition of guilt, property confiscation or objects acquired through criminal activity, hearing of protected witnesses and cooperative witnesses, training of staff working with special equipment for hearing procedures, etc.
  - o Training for the Police Directorate employees, courts' and prosecutor's office staff on collecting of evidence (searches, collection of biological material for DNA analysis), conduct of financial inquiries, audiovisual recording, video surveillance, report drafting, investigation training, etc.
- b) Analysis and recommendations for strengthening Special Prosecutor's Office for fight against organized crime, corruption and terrorism including needs assessment for training of this institution
- c) Visit tour in EU member countries who have a similar criminal procedure concept and with regards to the application of legal solutions for staff working for the prosecution, courts and police
- d) Conference on "Comparative approach in the implementation of CPC" for the members of the Commission for following the implementation of the CPC
- e) Holding public events (public presentations, TV debates, etc) on the solutions foreseen by the new legal solutions related to the new CPC involving Civil Society Organizations (CSO), research institutions and other concerned stakeholders (public debates).
- f) Translation of legal and sub-legal regulations that are in relation to the implementation of the new Criminal Procedure Code

## *A.2. Project management*

The twinning contract will require a Resident Twinning Advisor, Project Assistant and Short-term Experts.

### Profile of the Resident Twinning Advisor (RTA) – 18 months

- a) A senior magistrate with at least ten years of professional experience, including some experience in the key areas covered by this assignment: appointment, transfer, evaluation, promotion and career development of judges and prosecutors
- b) Experience and profound knowledge of EU standards related to activities
- d) Strong written, oral and inter-personal communication skills
- e) Excellent oral and written English
- f) Experience in legal drafting
- g) Experience in similar technical and legal assistance assignments in third countries will be considered an asset.
- h) Experience in new EU member states (Eastern Europe countries)
- i) Experience in Western Balkans countries

### Project Assistant - 17 months

The Project Assistant will assist RTA in coordination and implementation of the activities and the exact profile will be decided at the level of detailed work programme.

Short term expert will have to cover relevant activities, but the exact profile will be decided at the level of detailed work programme.

In kind support for the implementation of this project will be provided by the Beneficiary in terms of training space, office for RTA and project assistant, translation services.

## **B. Supply contracts (Contracts 3 and 4) – EU and national contribution**

One Supply Contract (3) will be financed by national contribution with 40,000€ and one Supply Contract (4) will be funded by EU with 200,000€ The Contract will be tendered in a timely manner, in order to guarantee the delivery of equipment.

### *Specification of the Equipment to be purchased*

a). Equipment for the 6 Basic Prosecutor's Office and 2 Superior Prosecutors' Office:

- 1. Audio- visual equipment for hearing of the suspect and witnesses
  - a) back up server (2,000 x 8 prosecutor's office) 16,000€
  - b) cameras (1,000 x 8) 8,000€
  - c) microphones and other equipment (500 x 8) 4,000€
- 2. Audio – visual equipment for conducting investigation on field
  - a) camera for daily and night conditions (1,000 x 15 out of which 13 are basic prosecutor's office and 2 are superior prosecutor's office) 15,000€

b) additional equipment (casets, devices, etc.)  
 (300 x 15 out of which 13 are basic prosecutor's office and two are superior prosecutor's office) 4,500€

3. IT equipment for 6 offices of the Special Prosecutor's Office for organised crime, corruption and terrorism  
 (computers, multifunctional printers and additional equipment) 8,000€
4. Equipment for room for recognition  
 ( special glass/ mirror and audio-visual equipment)  
 ( 2000 x 15 out of which 13 are basic prosecutor's office and two are superior prosecutor's office) 30,000€
5. Equipment for hearing through video-link  
 (this equipment is movable and it will be located at the Supreme Prosecutor and used by all Prosecutor's Offices when needed) 25,000€

Total equipment for Prosecutors' offices- 110,500€

b). Equipment for courts:

Superior Court in Podgorica:

1. Switch for video signal	400€
2. Mikseta x 2	600€
3. Amplifier	350€
4. Controlling monitor x 2	600€
5. DVR	180€
6. DVD Player	100€
7. Video conference system – bridge	9,500€
8. PTZ camera x 2	1,200€
9. Speakerphones x 4	600€
10. Microphones x 6	600€
11. Widescreen TV x 2	2,000€
12. Monitors x 3	1,000€

Superior Court in Bijelo Polje:

1. Switch for video signal x 2	800€
2. Mikset x 4	1,200€
3. Amplifier x2	700€
4. Controlling monitor x 4	1,200€
5. DVR x 3	540€
6. DVD Player x 2	200€
7. Video conference system – bridge	9,500€
8. PTZ camera x 3	1,800€
9. Speakerphones x 8	1,200€
10. Microphones x 12	1,200€
11. Widescreen TV x4	4,000€

12. Monitors x 6	2,000€
13. AV Mixet (Picture scrambling)	4,700€
14. PC with installed PVX8.0.2 for video conference	900€

Equipment for Appellate Court:

1. switch for video signal	400€
2. Mikset x 2	600€
3. Amplifier	350€
4. Controlling monitor x 2	600€
5. DVR	180€
6. DVD Player	100€
7. PTZ camera x 2	1,200€
8. Speakerphones x 4	600€
9. Microphones x 6	600€
10. Widescreen TV x 2	2,000€
11. Monitors x 3	1,000€

Equipment for 13 Basic Courts for audio recording of hearings:

1. FTR Reporter Deck 2 (5000 x 13 courts)	65,000€
2. microphones with cables - system of 4 (13 courts x 500)	6,500€
3. transcription device (150 x 13 courts)	1,950€

Total equipment for courts – 128,150€

**C. Service contracts (Contract 1) – national contribution**

Contract 1 which is consisted of number of contracts, which will cover engagement of members of working groups that will draft sub-laws, discussions and roundtables during the drafting process, etc. Also it will cover preparation and publication of a Rule Book – manual with information relevant for implementation of the new CPC, as well as organization of workshops for judicial bodies involved in the implementation of the CPC.

Sub-laws need to be prepared before the new CPC become enforced which is expected to be in the first quarter of 2010 (one year after the adoption). Sub-laws are precondition for successful implementation of the new CPC.

Ministry of Justice makes the decision on establishment of working groups that will drfat sub-laws. Working groups are consisted of representatives of all relevant stakeholders who are obliged to meet regularly, provide inputs from the aspect of the institutions they present, provide comparative experience and draft the sub – laws. The work of working group members is not part of their regular scope of work, but it is additional engagement and it is paid from the national budget.

*In kind:*

For contract 2 the beneficiary will assume training space, translation service and office for RTA and project assistant.

For contract 3 and 4 the beneficiary will assume premises for the equipment.

Overall contribution of the EU is 1,000.000 € while national contribution is 130.000 €