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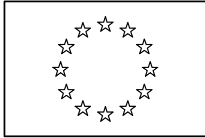

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Accompanying the

**REPORT FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL**

On Progress in Romania under the Co-operation and Verification Mechanism

ROMANIA: Technical Update

{COM(2009) 401 final}

TABLE OF CONTENTS

1. Benchmark 1: Ensure a more transparent and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes............. 3

- *Implement any necessary measures, including those provided for in the relevant Action Plan of the Superior Council of the Magistracy adopted in June 2006, that ensure a consistent interpretation and application of the law at all levels of court throughout the country following adequate consultation with practising judges, prosecutors and lawyers; monitor the impact of recently-adopted legislative and administrative measures*
- *Design and implement a rational and realistic staffing model for the justice system on the basis of the ongoing needs assessment*
- *Develop and implement a plan to restructure the Public Ministry that addresses the existing managerial shortcomings and human resources issues*
- *Monitor the impact that the newly-adopted amendments to the Civil and Criminal Procedure Codes have on the justice system so that any necessary corrective measures can be incorporated in the planned new Codes*
- *Report and monitor on the progress made, as regards adopting the new Codes including adequate consultations and the impact it will have on the justice system*
- *Enhance the capacity of the Superior Council of Magistracy to perform its core responsibilities as well as its accountability. In particular, address the potential conflicts of interest and unethical actions by individual Council members. Recruit judicial inspectors, according to the newly-adopted objective criteria, who should also have a greater regional representation*

2. Benchmark 2: Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken 8

- *Adopt legislation establishing an effective and independent integrity agency with responsibilities for verifying assets, potential incompatibilities and conflicts of interest, as well as issuing mandatory decisions on the basis of which dissuasive sanctions can be taken*
- *Establish such a National Integrity Agency; ensure it has the necessary human and financial resources to fulfil its mandate*

3. Benchmark 3: Building on progress already made, continue to conduct professional, non- partisan investigations into allegations of high- level corruption...................... 10

- *Continue to provide a track record of professional and non-partisan investigations into high-level corruption cases*
- *Ensure the legal and institutional stability of the anti-corruption framework, in particular by maintaining the current nomination and revocation procedure for the General Prosecutor of Romania, the Chief Prosecutor of the National Anti-Corruption Directorate and other leading positions in the general prosecutor's office*

4. Benchmark 4: Take further measures to prevent and fight against corruption, in particular within the local government 13

- *Assess the results of the recently-concluded awareness-raising campaigns and, if necessary, propose follow-up activities that focus on the sectors with a high risk of corruption*
- *Report on the use of measures to reduce the opportunities for corruption and to make local government more transparent, as well as on the sanctions taken against public officials, in particular those in local government*

Note:

Under each of the four benchmarks, several issues of particular concern were mutually agreed when the Cooperation and Verification Mechanism was created in December 2006. These issues are listed above under each benchmark and have been addressed as far as progress has been reported. You may consult previous reports at: http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm

1. BENCHMARK 1: ENSURE A MORE TRANSPARENT AND EFFICIENT JUDICIAL PROCESS NOTABLY BY ENHANCING THE CAPACITY AND ACCOUNTABILITY OF THE SUPERIOR COUNCIL OF MAGISTRACY. REPORT AND MONITOR THE IMPACT OF THE NEW CIVIL AND PENAL PROCEDURES CODES.

Jurisprudence

The appeal in the interest of the law, determined by the High Court of Cassation and Justice (HCCJ), remains the main tool for unifying jurisprudence. Between August 2008 and May 2009 24 appeals in the interest of the law were lodged, 22 by the General Prosecutor and 2 by the leading boards of Courts of Appeal. By the end of April 2009 the HCCJ had admitted nine of these appeals and rejected one. Most of the decisions had not yet been motivated.

The decisions of the HCCJ in the appeals in the interest of the law, once determined and the motivation published, are binding upon all courts. It therefore remains the most tangible tool in enforcing a coherent jurisprudence. However, the procedures are restrictive and time consuming. In addition, in many cases the HCCJ does not act as a proper Court of Cassation in charge of the interpretation of the law but as a third (and sometimes first) degree of jurisdiction. This does not allow the HCCJ to play fully the usual role of a Supreme Court, which is to ensure a uniform application of law. Appeals in the interest of the law are decided by the General assembly of the HCCJ composed of at least two-thirds of the 120 members of the Court. Even if decisions are given in relatively short time (2 months in average), the motivation process which takes place in a second stage is long (sometimes more than 1 year) and extremely cumbersome as all participating judges have to agree to the final motivation. The result might often be unclear motivation as a result of a difficult compromise process. This undermines the efficiency and transparency of this mechanism.

Various other measures have also been taken to assist with the delivery of consistent jurisprudence. These include various trainings[1] and significant steps to increase the publication of court decisions. In February 2009 the Superior Council of Magistracy (SCM) signed an agreement with the Vrancea Tribunal to establish a national portal for the publication of all court decisions. This website is now progressively being populated with court decisions. This will ensure the full jurisprudence of courts are published and accessible to all increasing transparency in the act of justice.

Progress is therefore being made but reports of contradictory jurisprudence, including within the HCCJ, continue. It is important that efforts are maintained and intensified. There will be opportunities in the draft new Procedure Codes to address some of the problems with the efficiency of the legal tools for the unification of jurisprudence.

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[1] The HCCJ has organised forty-four meetings in different Courts of Appeal to discuss different points of law where non-unitary practice is more prevalent. Eighteen seminars on non-unitary practice were also organised by the National Institute of Magistracy, with further seminars organised on a decentralised basis.

Staffing

A Human Resources Strategy 2008-2011 was adopted by the SCM in November 2008. This detailed recruitment and training needs and measures to meet, as well as briefly detailing initiatives underway to improve the efficiency of the system. However, the human resourcing situation remains a concern and this Strategy failed to propose emergency solutions such as the temporary reallocation of staff to tackle pressing staff shortfalls. Nor did it provide a clear timetable for the necessary reorganisation of courts and prosecutors' offices.

On 26 February 2009 the SCM supplemented this Strategy with additional actions including identifying courts and prosecutors' offices with acute resourcing difficulties, reviewing secondments and in the long run seeking to improve the efficiency of courts and prosecutors' offices by balancing personnel schemes with workloads and transferring administrative tasks to auxiliary personnel. This acknowledgement of the need for both short term, temporary solutions but also longer term structural reform is to be welcomed. However, it is important these intentions are pursued with suitable vigour.

So far some temporary measures have been taken. Sixty-five secondments have been cancelled, and a working group has been created to analyse personnel schemes and workloads. This working group has recommended the redistribution of 18 vacant judge positions, and the earmarking of 38 further positions for redistribution when they become vacant. Forty-six vacant prosecutor positions have also been re-distributed, and 25 positions transferred from military prosecutors' offices to civilian prosecutors' offices[2]. However, excluding the positions transferred from the military prosecutors' offices, there has been no vertical redistribution of vacant positions and promotion contests have recently been held that have filled vacant positions at higher courts and prosecutors offices that could have been redistributed. No needs analysis appears to have taken place in these cases. This is despite significant variations in workload with significantly higher workloads at lower (Courts of First Instance / Tribunal) level courts and prosecutors' offices. The procedure for cancelling secondments has also been changed, to remove the possibility from the seconding institution to request the return of their seconded judge or prosecutor.

The system continues to face major challenges. Between 1 May 2008 and 1 May 2009 287 judges and 205 prosecutors left the magistracy, the vast majority through retirement. More magistrates retired in the first five weeks of 2009 than the Human Resources Strategy envisaged would leave in the entire year. There remains a significant pool of magistrates who meet the retirement conditions and could, theoretically, retire at any point.[3] Efforts need to be made to limit the uncertainty this causes for human resourcing management. At the same time it necessitates significant recruitment merely to cover exits from the system. Between 1 May 2008 and 1 May 2009 181 judges and 202 prosecutors entered the system, a net deficit of 106 judges

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[2] 14 positions were redistributed to Prosecutors' Offices attached to Courts of First Instance and 11 placed as a special reserve at the disposal of the General Prosecutor.

[3] As of May 2009 483 judges and 288 prosecutors complied with the requirements provided for by the law to be entitled to a retirement pension. It is unknown how many of these magistrates have obtained pension decisions.

and 3 prosecutors. Figures are better for the 12 months to 1 June 2009, which take into account the distribution of recent National Institute of Magistracy (NIM) graduates and successful candidates from the spring 2009 direct entry exam, and therefore may be more representative of recent SCM efforts.[4] However it is clear the system is in a state of flux[5] and is struggling to cope with covering the total turnover.

At the same time total vacancy levels for execution positions remain high in prosecutors' offices (19%) and are high for leading positions in both courts (29%) and prosecutors' offices (34%).[6] The distribution of vacancies is also uneven with higher vacancy levels at lower level courts and prosecutors' offices, despite the higher workload and there are acute problems in certain locations.[7] More fundamentally, workload continues to vary significantly between different locations irrespective of vacancies and a full re-dimensioning of the personnel scheme, to allocate personnel according to workloads and enhance efficiency, has not yet taken place. Efforts must continue to be made to address these problems.

The initiative to transfer administrative tasks to auxiliary personnel remains a pilot. An EU funded project to improve court management and to introduce the concept of the court manager commenced in November 2008, with a pilot set to commence this summer. Consideration should be given to rationalising the territorial distribution of courts and prosecutors' offices.[8] In short, despite some small steps, significant work remains to be done to move towards a rational and realistic resourcing model.

Public Ministry

The plan to restructure the Public Ministry was completed in 2007. The 2008 Activity report of the Public Ministry was presented on 4 March 2009. The priorities for 2009 include an enhanced focus upon combating corruption as well as other economic and financial crimes, assets recovery and the unification of jurisprudence of prosecutors' offices. Other priorities include participating in discussions on the draft new Codes, filling management positions, improving managerial activity and implementing a coherent strategy for public communications.

Further restructuring of the Public Ministry remains necessary and continues to be actively pursued by the General Prosecutor. Workload and performance varies significantly between prosecutors' offices and vacancy levels remain high. However, these efforts are hampered by the fact that recruitment, evaluation, promotion,

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4 Between 1 June 2008 and 1 June 2009 231 judges and 282 prosecutors were recruited. Comparable figures for exits for the same time period are not available, but compared to the exit figures for the 12 months to 1 May 2009 these figures show a deficit in judges of 56 positions but an increase in 77 prosecutors.

5 For the thirteen months from May 2008 to June 2009 (effectively covering two years output from the National Institute of Magistracy and spring direct entry exams) 690 new magistrates entered the system, effectively 10% of the total magistracy.

6 In total as of the 1 May 2009 there were 316 (8%) vacant execution positions for judges and 340 (19%) vacant execution positions for prosecutors. There were 187 (29%) vacant leading positions for judges and 168 (34%) vacant leading positions for prosecutors.

7 The Prosecutors' Offices in Bacau and Satu Mare have 75% of their positions vacant.

8 There are currently twenty-eight prosecutors' offices with only one or two prosecutors in post.

sanctioning and transfer of staff are the final responsibilities of the SCM, who have not embraced the propositions made by the Public Ministry.

The only redistribution of positions that took place was between prosecutors' offices of the same level. This means that it has not been possible to tackle the inequalities in workload between prosecutors' offices of different levels. Acute problems exist at certain offices. The General Prosecutor also sought the support of the Ministry of Justice to extend the powers of the General Prosecutor to make emergency detachments but the discussion was so far inconclusive.

New Codes

The Government has prioritised the finalisation of the four codes. The draft Criminal Code, Criminal Procedure Code and Civil Procedure Code were sent to Parliament on 25 February. The Civil Code was sent to Parliament on 11 March. The Government opted to discuss the Codes in special Parliamentary commissions, inviting external experts and civil society. A number of other meetings were organised in parallel.

Following the completion of the work of the special Parliamentary commissions on the two substantive codes, which addressed a number of concerns (though not all) raised by practitioners and other stakeholders, the Government assumed responsibility before the Parliament for the new Criminal and Civil Codes on 22 June providing for an expedited adoption procedure. The special Parliamentary commissions will now consider the accompanying Procedure Codes.

The Ministry of Justice established a working group in April to undertake the impact assessment on all four codes and has asked for the World Bank's assistance. The full impacts on the delivery of justice, and the financial and human resource implications are so far not known. The impact assessment will be especially significant as regards the new Procedure Codes, where a range of new innovations are proposed.[9] The adoption of new Procedure Codes present a real opportunity to improve the functioning of the justice system. It will be crucially important that what is finally adopted will, in practice, improve the efficiency of the justice system, ensure a more predictable outcome, shorten the length of trials and reduce the abuse of procedural rules as delaying tactics. A real assessment of the implications of the draft new Procedural Codes is therefore required.

Superior Council of Magistracy

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[9] One such innovation is a new legal mechanism aimed to assist in establishing a coherent jurisprudence. The new mechanism will allow a judge, ex officio or at the request of one of the parties, to ask the HCCJ to solve a legal issue relevant to the pending case where courts have previously delivered inconsistent jurisprudence. The HCCJ's decision is binding on the judge who requested their ruling and also on other courts. The new procedure is intended to complement the existing mechanism for lodging appeals in the interest of the law, but is controversial as the trial will be suspended whilst the High Court deliberates. Nor are there limitations on the numbers of times this provision could be used during a trial, generating fears it will have an adverse impact on the celerity of court proceedings.

The SCM possesses the material resources necessary to perform its functions. Excluding the judicial inspection 92% of its positions are occupied and for 2009 it has received a budget increase of 6.9%. This contrasts to budget cuts elsewhere within the justice system.

The SCM has taken elementary steps towards enhancing its transparency and accountability. This has included the publication of various SCM related documentation on the SCM website, and periodic meetings with representatives of magistrates associations and with civil society. However, concerns continue to be raised in terms of their transparency and accountability, including the incomplete publications of agenda items and resulting decisions (especially in disciplinary proceedings). This undermines transparency and generates concerns as to inconsistent decision making. Disquiet amongst the magistrates they represent has led to general assemblies of magistrates around the country opening revocation procedures against some members of the SCM. In an apparent reply SCM members have become more vocal in voicing the concerns and complaints of the magistrates they represent leading them into institutional conflict with the executive.

The evaluation system introduced by the SCM to assess the performance of magistrates appears of questionable value. As of 6 May 2009 6258 magistrates (86.79% of the total) had been evaluated, of which 99,8% were awarded gradings falling within the highest, “very good” band. Magistrates attribute this to the structuring of the evaluation criteria but questions raised about the impartiality of the evaluation commissions have also not been addressed.

In light of concerns raised as to the composition of the judicial inspection, on 27 November 2008 the SCM amended the rules for recruiting inspectors to ensure the selection of inspectors respected a geographical representation within the Inspection. However, at the end of 2008, following the renewal of the positions of a number of the seconded inspectors without apparent consideration of the geographical representation, the percentage of inspectors from Bucharest courts and prosecutors’ offices was at its highest level since 2005. On 26 February 2009 following an evaluation the SCM decided to terminate the secondments of all the inspectors with effect from 1 May and to run a new competition to recruit inspectors. Twenty-eight inspectors were recruited as a result of interviews held on 7 and 8 April and a further recruitment contest is underway to recruit another twenty-two inspectors. However, twenty-one of the twenty-eight inspectors recruited were reappointments. Despite a regional allocation of positions the procedure continues to apparently favour recruits from Bucharest. Of the 28 inspectors appointed so far, 13 are from Bucharest courts and prosecutors offices (with 10 – all reappointments – of the 17 judges from Bucharest courts). New rules specifically prohibiting inspectors from performing inspections of the courts or prosecutors’ offices where they previously worked were also introduced in November 2008 which may assist in reducing conflicts of interest.

In 2008 the Judicial Inspection received 5205 notifications and also commenced 39 ex officio investigations.[10] In the first four months of 2009 the Judicial Inspection

[10] As a result of their investigations they sent 230 cases to the Discipline Commissions for follow-up of which by the end of the year 180 had been closed, 17 sent to the Discipline Sections for Judges and Prosecutors and 33 were still pending.

received 1169 notifications and also commenced 12 ex officio investigations.[11] As a result of their work the Discipline Sections for Judges and Prosecutors applied 18 sanctions in 2008 and dismissed 4 cases. The sanctions applied included three dismissals from the magistracy, one disciplinary transfer, ten salary reductions and four warnings. In the first five months of 2009 they applied 9 sanctions (including three dismissals and three salary reductions) and dismissed 8 cases. These included sanctions applied in some high profile cases. Further recruitment to bring the judicial inspection up to full complement is clearly required and to allow them to increase their inspection capacity. Incidences of inconsistent practice within the inspection continue to be reported and need to be addressed. Greater transparency is also required to ensure confidence in the process from magistrates and citizens alike.

2. BENCHMARK 2: ESTABLISH, AS FORESEEN, AN INTEGRITY AGENCY WITH RESPONSIBILITIES FOR VERIFYING ASSETS, INCOMPATIBILITIES AND POTENTIAL CONFLICTS OF INTEREST, AND FOR ISSUING MANDATORY DECISIONS ON THE BASIS OF WHICH DISSUASIVE SANCTIONS CAN BE TAKEN

ANI is now operational and has developed a track record of cases. From just forty cases under investigation in June 2008, as of 22 May 301 investigations had been completed and 68 files had been referred to competent institutions for sanctions to be applied or for criminal investigation.[12] Thirty five of these files have been sent to prosecutors' offices (to investigate possible criminal offences); four files to courts (to confiscate unjustified wealth); and 22 files to discipline committees of various institutions (to apply disciplinary sanctions for incompatibilities). Preliminary checks are currently being carried out by ANI on 2279 persons and 1948 cases are currently being processed. ANI has also applied fines to 2080 persons for late or non-submission of asset and interest declarations.

No information is available on the follow up of the cases referred to prosecutors or to disciplinary bodies. In the courts the majority of cases handled so far concern appeals to fines imposed by ANI for late or non-submission of declarations of assets and interests.[13] The other cases – more fundamental to ANI's ultimate objectives – concern applications by the Agency for the confiscation of unjustified wealth and appeals by claimants against the findings by ANI of incompatibility and conflicts of interests. The initial results achieved by ANI in the appeals against their determinations of incompatibilities and conflicts of interest are promising[14] but in contrast at this point none of the unjustified wealth cases has yet reached a first decision so it remains untested as to whether the confiscation of unjustified wealth

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[11] As a result of which they sent 92 cases to the Discipline Commissions, who have so far have closed 65 cases and sent 23 cases to the Discipline Sections for Judges and Prosecutors.

[12] These include files on two current / former Members of Parliament, three Presidents / Vice Presidents of County Councils, ten mayors, 24 county and local councillors, three police officers, one judge and the President of the Competition Council.

[13] Final decisions have been reached in 150 of the 850 cases, with the initial fine being maintained in 30 cases, a reduced fine imposed in 63 cases, a warning in 49 cases and in 8 cases the penalty cancelled in its entirety.

[14] The Courts have rejected the appeals on four occasions and admitted the appeal on one occasion; three other files remain pending, and the appeal against a determination of a conflict of interest was rejected but is pending a second appeal.

will be constitutional. Eleven other exceptions of unconstitutionality have been raised; in ten cases the exceptions have been rejected by the Constitutional Court and in the eleventh case a decision is pending.

In these circumstances it will only be possible to fully assess the actual outcomes of ANI's work on the basis of a track record of resulting confiscations of unjustified wealth, indictments by prosecutors or disciplinary sanctions applied by discipline committees. However, ANI has established a track record of cases, including a significant number of cases commenced ex officio.[15] First indications also suggest that the existence of ANI is beginning to have a preventive effect, encouraging the submission of more accurate and timely declarations of assets and interests.

Given the so far limited body of experience of the courts handling ANI's cases, it also remains too early to take a definitive view on the adequacy of the legal framework for ensuring an effective delivery upon objectives for which ANI was created. There have been no further changes to the ANI legal framework since the adoption of Law 94/2008 on 14 April 2008[16].

Questions remain as to whether the legal framework will allow ANI, and specifically ANI's inspectors, to function independently and free from influence. In autumn 2008 a member of the National Integrity Council, attempted to interfere in an ANI investigation. ANI reported the attempted interference to the Council and ultimately the member of the Council resigned. In February 2009, following reports made by three whistleblowers concerning the President of ANI and the Secretary General of ANI, the Council established a special disciplinary committee composed of five of its members to investigate the report. The committee has not yet completed its report. An independent external audit will also shortly be undertaken and will be an important opportunity to review progress, identify vulnerabilities and to strengthen the functioning of the Agency.

ANI now has 124 members of staff of the 200 provided for by law. The 124 personnel include 63 integrity inspectors. Overall this is an increase by 24 on the number of personnel ANI had in post last summer, with the increase mainly accounted for by additional integrity inspectors recruited in the second half of 2008.

ANI was provided with a budget for 2009 of EUR 4.3 million. In April this was reduced by EUR 0.4 million. However as currently provided for the budget for 2009 remains significantly higher than the final budget ANI received for 2008 (which totalled EUR 3 million), reflecting the institutional development of the Agency. The budget is sufficient for the operational needs of the Agency and to provide for the procurement of a data processing system. The procurement of this system has been delayed but is anticipated to be completed this year. The system will assist ANI in developing a more targeted and strategic approach to identifying vulnerable sectors and cases for investigation, assisting in enhancing the efficiency of ANI's work.

[15] Thirty five of the sixty eight files finalised and sent to other institutions for follow up were commenced by ANI ex officio.

[16] This approved Government Emergency Ordinance Number 49/2007 amending and supplementing the ANI law (Law 144/2007).

Financial provision is also available for training. ANI has established a training strategy. Other institutional developments include the launching of ANI's website, the drafting of guidelines for completion of asset and interest declarations, and the conclusion of protocols with other authorities. A strategy for the Agency was submitted to the National Integrity Council in June, having originally been envisaged for the beginning of the year.

3. BENCHMARK 3: BUILDING ON PROGRESS ALREADY MADE, CONTINUE TO CONDUCT PROFESSIONAL, NON-PARTISAN INVESTIGATIONS INTO ALLEGATIONS OF HIGH-LEVEL CORRUPTION

DNA has maintained its good track record of investigations into high level corruption and has sent a significant number of high level cases to court. In the nine months (1 August 2008 – 24 April 2009) DNA opened 176 criminal investigations and issued 115 indictments against 552 defendants. During the same period the courts ruled 49 final decisions on DNA files through which 64 defendants were convicted. There were 43 non-final decisions, involving the conviction of 71 defendants. Thirty nine defendants were acquitted. However, twenty-four of these acquittals arose as a result of the decriminalisation of the relevant offences.

The cases sent to trial included files concerning one former Prime Minister, one Minister, one former Minister and current Member of Parliament, two other Members of Parliament, two former Members of Parliament, eight Mayors and two Presidents of County Councils. The nature and number of the files sent to trial by DNA is evidence of a continuing positive track record of non-partisan investigations into high level corruption. Many investigations are commenced following complaints by citizens or exofficio indicating public trust in DNA and also proactive approach to opening investigations.

The opening of criminal investigations into Ministers or former Ministers requires the formal request (and therefore approval) of either the President or, if the individual is a Member of Parliament, of their Parliamentary chamber. In the course of the past 12 months the Parliament has, at the request of prosecutors, requested the opening of investigations in four such corruption cases. However, the Parliamentary procedures have proved lengthy[17]. In two cases the opening of the investigations was refused. In one of these cases the Parliamentarian subsequently resigned allowing the opening of the criminal investigation (following an approval given by the President) but the other case (concerning a former Prime Minister) remains effectively blocked. In light of a Constitutional Court ruling concerning the voting procedure used in rejecting this case[18], the General Prosecutor has asked Parliament to reconsider their refusal to request the opening of the criminal investigation. On 23 June the Parliament

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[17] The cases where Parliament eventually approved the opening of criminal investigations took respectively 4 months, 7 months, 7 months and 10 months.

[18] The Constitutional Court ruling of 1 October 2008 found unconstitutional the voting thresholds concerning such votes, with the existing requirement in the Chamber of Deputies requiring a two-thirds majority of all deputies and in Senate a simple majority of all senators considered unconstitutional. As a result the Chamber of Deputies amended their regulations on 3 March 2009 and the Senate in May 2009. Both chambers now apply a simple majority of those present at such a vote.

concluded that this request was inadmissible. This decision has been challenged to the Constitutional Court

The handling of high level corruption trials by the courts, and in particular the celerity of court procedures remains problematic. Of the 49 final decisions reached each case took an average of two years and 26 hearings. However, there were 6 cases dating from 2004 and one from 2003. These are cases that reached a final decision. As of the 24 April 2009 there were 462 further DNA cases on trial in various stages of completion. It is striking that virtually none of the cases of highest public interest have yet reached a decision in first instance, let alone a final decision.[19] As of 25 April 2009, of the twenty-one cases against current and former members of the Government and of the Parliament sent to trial since 2006, only one of the cases has reached a decision in first instance. Seven of the cases were sent to court in 2006 and five in 2007. Some of these cases had been suspended on a number of occasions or were cases where parliamentary approval had to be sought retrospectively.

High level trials are especially lengthy as a result of frequent defence attorneys` requests for delays. Exceptions of unconstitutionality are frequently raised, as are requests to transfer trials from one court to another, sometimes on multiple occasions. If admitted by the trial court – and they routinely are[20] – trials are currently suspended whilst such issues are determined by the competent court[21], even though suspensions are only currently mandatory when exceptions of unconstitutionality are admitted. A high number of transfer requests appear to be being granted by the High Court in corruption cases (despite the fact that for all cases the approval rate is only 5%). A draft law that would have removed the suspension of trials whilst the Constitutional Court deliberates on exceptions of unconstitutionality was rejected by the Senate on 4 May 2009. The draft law had been widely supported by the judiciary and had been presented previously by the Government as a significant reform measure to accelerate and enhance the performance of the judiciary. It would have cut down the abusive usage of constitutional exceptions given 98% are currently rejected. A new draft law with the same objective adopted recently by the Government will give the opportunity to the Parliament to redress this issue.

Sentencing data also continues to raise concerns as to the inconsistent and non-dissuasive penalties applied by the courts. A comprehensive analysis undertaken by DNA indicates that of final conviction decisions issued in 2008, 71% of final convictions were with suspension, and 58% of convictions were at the minimum or under the special minimum. The draft Criminal Code as sent to Parliament proposed significant reductions in the minimum and maximum penalties, including for a number of corruption offences so as to render the overall framework for penalties

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[19] Such cases include the case of a former Vice Prime Minister, indicted on 6 June 2006 and on trial now for over three years without the indictment having yet been read, with activity limited to the consideration of procedural issues. The DNA investigation in this case lasted less than one year.

[20] Reportedly even in circumstances where the Constitutional Court has determined on this point and the exception need not be admitted.

[21] The High Court of Cassation and Justice for transfer requests and the Constitutional Court for constitutional exceptions. The practice on challenges to the legality of administrative decisions is inconsistent. Where admitted the trials are being suspended and referred to an administrative court.

more proportionate and coherent. These changes would also have had the effect of reducing the statute of limitations, meaning in practice that a significant number of important corruption cases would have been lost. Following the parliamentary discussions the penalties were raised, reducing these problems, though they remain lower than in the current Code.

A new working group was established by the Ministry of Justice on 21 October 2008 to elaborate a study into the penalties applied by the courts for high level corruption offences. The working group comprised of judges and prosecutors, analysed sentences applied by the courts in corruption cases from 2004-8[22]. A bilateral project involving judges from the UK is also contributing to the considerations. Based on this report, the HCCJ might issue a ruling setting up interpretative guidance for sentencing in corruption cases.

Stability of the anti-corruption framework

The stability of the anti-corruption framework remains a cause for concern. During the last 12 months the stability of the framework was threatened on a number of occasions.

In September 2008 Parliament revived and adopted proposals to amend the nomination and revocation procedures for senior prosecutor positions. The amendments were ultimately declared unconstitutional by the Constitutional Court on grounds related to the Parliamentary procedure followed in handling the draft law, and the draft law was returned to Parliament where it has not been further discussed. However, Parliament's attempt to change the nomination and revocation procedures ran counter to the obligations Romania took at accession and appears a clear attempt to undermine the effectiveness of the system.

In February 2009 the existing Chief Prosecutor, who had been fulfilling the functions on Chief Prosecutor through a delegation of the General Prosecutor, was appointed for a second mandate, ensuring continuity in the management of the DNA. On 30 June this stability was further strengthened by reappointing a number of other members of DNA's senior management team.

Discussions in the context of the draft Criminal Code prompted concerns that Law 78/2000 on the preventing, discovering and sanctioning corruption acts would be repealed with parts (but not all) of the Law incorporated into the Criminal Code. In addition to leading to a new wave of acquittals in DNA cases due to decriminalisations, such a repeal would jeopardise the stability of the anti-corruption framework. Ultimately the final version of the Code upon which the Government assumed responsibility does not touch upon provisions from Law 78/2000.

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[22] Their findings confirmed non dissuasive penalties, inappropriate application of mitigating circumstances, the high incidence of suspended penalties, inconsistent sentencing and inadequate motivations of the court decisions, as well as problems with training, specialisation and the absence of guidelines. Various recommendations have been made including legislative changes to limit the possibility for the courts to apply suspension of sentences and the preparation of guidelines.

4. BENCHMARK 4: TAKE FURTHER MEASURES TO PREVENT AND FIGHT AGAINST CORRUPTION, IN PARTICULAR WITHIN THE LOCAL GOVERNMENT

After a year of implementation of the National Anti-Corruption Strategy for Vulnerable Sectors and Local Public Administration 2008-10, there has been some progress on individual measures. However, a complete assessment of progress is not possible. Detailed and verifiable outputs are not available and actual tangible results are difficult to measure.

This Strategy provides an opportunity to deliver coherence and focus to efforts to prevent and deter corruption, but until now this seems to have been an opportunity that has not been exploited. The Steering Committee intended to oversee the Strategy and its action plans, and to make amendments has only met twice in the last 12 months, rather than the quarterly meetings foreseen. Nor has it considered any amendments to the Strategy despite criticisms from civil society as to its coherence and synchronisation. This has all contributed to the lack of a clear co-ordinated assessment of where actions have reached and what still needs to be done. Furthermore within the Romanian authorities awareness of the existence of the strategy is limited and there is confusion as to its scope. Reforms to the co-ordination arrangements being contemplated, including the creation of a technical working group to support the Steering Committee, are timely.

At the level of individual authorities various measures are being taken. These include simplification of administrative procedures, and measures to improve transparency, integrity and to reduce opportunities for corruption. Initiatives underway include the phased national role out (not yet complete) of new more secure testing procedures for driving licences, as well as the ongoing introduction of a online tool to track applications with the National Agency for Cadastre and Land Registration. Such measures are replicated in other sectors, accompanied by other preventative including fast-track premium price application procedures, limiting of face-to-face contact with citizens, and random assigning of work or rotation of personnel. A telephone line to report problems (including corruption) encountered in the health system was established by the Ministry of Health. Despite progress in individual instances, the nationwide implementation and effectiveness of these measures is unclear, especially at the local level.

Three further awareness raising campaigns have been undertaken, all using EU funds. One of these campaigns was broad-ranging co-ordinated by the Ministry of Justice, whilst the other two, run by the Anti-Corruption General Directorate (DGA) of the Ministry of Administration and Interior (MAI), focused on deterring citizens from giving bribes.[23] These awareness campaigns have been supplemented with various other initiatives, largely undertaken by the DGA who have used various media to distribute anti-corruption messages. In support of the results achieved from these campaigns, the Romanian authorities point to perception surveys they carried out in late 2008 illustrating an increased confidence in, and awareness of, the anti-corruption

[23] The campaigns included road shows, conferences, and the production of various promotional materials. The Ministry of Justice co-ordinated campaign involved awareness raising road shows in twelve cities throughout Romania, involving 355 participants.

activities of the institutions involved in the preventing and countering of corruption. However, this survey and other independent surveys highlight continued high levels of distrust.[24] Outside of the MAI there remain many other vulnerable sectors which do not appear to have been especially targeted by such campaigns and there appears little co-ordinated assessment of where further campaigns can maximise their impact.

The National Integrity Centre has continued its work, including the running of training courses and the holding of regional anti-corruption debates.[25] As a result of these debates the Centre has produced a number of recommendations for consideration by the Romanian authorities but it is unclear in many cases what consideration of these recommendations has taken place. Civil society has also undertaken a range of useful studies and made recommendations. In higher education for example a recent study found 77% of students and 35% of teaching staff consider corruption in universities as high. The same study also revealed that only 50% of the universities surveyed complied with the public procurement law. The study identified problems related to the far reaching interpretation of university autonomy and ineffective control mechanisms.[26] Such studies clearly indicate the need for further steps and can usefully inform the institutions own strategies.

In terms of sanctioning of civil servants, data collected by the National Agency of Civil Servants reveals that during 2008 Disciplinary Commissions solved 837 complaints, imposing 375 sanctions[27]. The majority of these sanctions were written warnings, but did include 38 dismissals. Forty eight cases were also referred for criminal investigation. Surprisingly few of the complaints were made by members of the public (just 15%) and only 9 were made by whistleblowers. Most of the complaints are made by the institutions management or by the head of the institution. These statistics are revealing of more general trends. Prosecutors receive surprisingly few notifications concerning corruption from internal control and audit bodies of public institutions and in some cases it would appear the independence of the control bodies and the infrequency, predictability and limited focus of controls is problematic. Prosecutors also report receiving surprisingly few notifications from the Court of Accounts. Practical implementation and awareness of whistleblower policies (especially on their confidentiality) within institutions needs to be strengthened.

Significant efforts have been made to strengthen the law enforcement and prosecutorial response to corruption. The General Prosecutor has adopted a set of measures to increase the effectiveness of local prosecutors' offices in corruption cases. The measures include the assessment of performance in this field, production of a best practices manual for handling corruption investigations, twice yearly exchange of experience session with DNA prosecutors, and the devising of a special programme of training seminars with the NIM. Moreover, the centre piece of these measures is the requirement upon each county prosecutors' office to produce their own strategies for combating corruption, taking into account the specifics of the corruption

[24] Transparency International's Global Corruption Barometer 2009 found that in Romania 69% of those surveyed considered anti-corruption measures taken by the authorities as inefficient.

[25] Between 1 June 2008 and 30 April 2009 twenty-four debates were held in different counties.

[26] Coalition for Clean Universities – Romanian Academic Society: University Integrity Contest (2009).

[27] This data do not distinguish between different types of offences.

phenomenon in their locality. The strategies aim to deliver a more proactive approach to combating petty corruption and to foster a closer and more dynamic co-operation with other law enforcement partners.

The Fraud Investigation Directorate of the General Inspectorate of the Romanian Police has also prepared an anti-corruption measures programme setting out priority areas and risk factors as well as objectives and measures to enhance the institutional and functional capacity of the Romanian Police units involved in countering corruption. In December 2008 they finalised an action plan for tackling corruption in procurement in the health sector.

It remains too early to assess fully the results of these initiatives to strengthen the combating of petty corruption but the police are reporting an increase in intelligence leads and notifications to prosecutors[28], whilst there has been an increase in indictments made for corruption by local prosecutors' offices.[29] A number of recent cases also indicate the emergence of a more proactive approach by certain offices and a greater focus on more complex cases but it is unclear whether this is a more widespread result yet.[30] However, further steps are necessary to strengthen inter-institutional co-operation, to ensure the supply of timely and good quality information to prosecutors, and timely feedback to the Police. The introduction of common performance indicators is needed.

DGA has continued its work. Between 1 August 2008 and the end of April 2009 DGA submitted 861 files to prosecutors, who commenced criminal investigations in 216 files involving 606 persons (258 of whom were from the MAI), in which DGA's judicial police officers were delegated[31]. During the same period prosecutors indicted 255 persons (68 persons were from the MAI of whom the majority (44) were from the Romanian Police) in 101 files in which DGA had assisted. During the same period DGA organised 1894 preventive meetings attended by 26084 Ministry personnel. They also prepared a guide for identifying risks and vulnerabilities to corruption within the Ministry and undertook an analysis of the risks. An action plan on preventing corruption within Directorate for Driving Licences and Vehicle Registrations was prepared. By a recent Ministerial order the number of DGA staff has been increased by 28% and the internal structure has been reorganised to, amongst other motivations, reflect an increased desire to pursue corruption in public

[28] In total between 1 August 2008 and 30 April 2009 the Romanian Police detected 884 civil servants working in central and local public administration who were investigated in 294 criminal files for corruption. In the same period the Police forwarded to prosecutors 51 files concerning 396 people suspected of corruption in the education sector (a 296% increase) and 96 criminal files concerning 521 persons suspected of corruption in the health sector (a 74.25% increase). It is not known what percentage led to indictments.

[29] In total in the six months from October 2008 – March 2009 the local prosecutors' offices solved 1141 cases leading to 121 indictments. This contrasts to 115 indictments in the first nine months of 2008.

[30] One example is an investigation by the Prosecutors' Office attached to the Covasna Tribunal in cooperation with the DGA, who are investigating a case involving 19 police agents concerning the fraudulent issuing of driving licences.

[31] During the same period DGA received 841 notifications from institutions, 1445 written petitions from members of the public (of which 69 became criminal complaints) and 4156 telephone calls over the TelVerde phone line (of which 12 became criminal complaints).

procurement. Corruption in public procurement is an important issue on which more needs to be done across the public sector.

The Department for the Fight against Fraud has also continued its administrative investigations into the fraudulent abuse of EU funds. Between 1 June 2008 and 15 March 2009 they had under investigation 128 cases of which 80 cases were finalised and in 49 cases potential frauds identified and forwarded to the competent prosecutors' office.