EUROPEAN
COMMISSION

Brussels, 28.1.2015
SWD(2015) 8 final

COMMISSION STAFF WORKING DOCUMENT

ROMANIA:Technical Report

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on Progress in Romania under the Co-operation and Verification mechanism

{COM(2015) 35 final}

Benchmarks to be addressed by Romania pursuant to Commission Decision of 13/XII/2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption:[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

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

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

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

[1] Previous CVM reports can be consulted at: http://ec.europa.eu/cvm/progress_reports_en.htm

List of acronyms

ANAF: National Agency for Fiscal Administration

ANI: National Integrity Agency

ANRMAP: National Authority for Regulating and Monitoring Public Procurement

ARO: Asset Recovery Office

CCR: Constitutional Court

CNSC: National Council for Solving Complaints

CVM: Cooperation and Verification Mechanism

DGA: Anti-corruption Directorate General – Ministry of Internal Affairs

DIICOT: Directorate for Investigating Organised Crime and Terrorism

DNA: National Anti-Corruption Directorate

ECRIS: information system of the RO justice system (for internal use)

HCCJ: High Court of Cassation and Justice, also referred to as *High Court*

MoJ: Ministry of Justice

NAC: National Audio-visual Council

NAS: National Anti-corruption Strategy

NIC: National Integrity Council

NIM: National Institute of Magistracy

SCM: Superior Council of Magistracy

SEAP: Electronic Public Procurement System

UCVAP: Unit for Coordination and Verification of Public Procurement

WIC: Wealth Investigation Commissions

INTRODUCTION

This technical report sets out the information and the data which the Commission has used as the basis for its analysis. This information has been collected from a variety of sources. The Commission services are following developments in Romania through a permanent presence,[2] as well as via contacts of the various Commission services with the Romanian administration. It has also had the benefit of working closely with the Romanian government and key judicial and State bodies, which have provided detailed and focused responses to a series of questionnaires, as well as during frequent meetings with the Commission services. The Commission also benefits from invaluable assistance from independent experts from other Member States in its work and also draws on the various studies and reports that are available from international institutions and other independent observers in the field of judicial reform and the fight against corruption.

1. THE JUDICIAL PROCESS

Reform of the judicial system is one of the two overarching themes monitored under the Co-operation and Verification Mechanism (CVM) in Romania. At the point of accession it was concluded that shortcomings remained in the functioning of the Romanian judicial system which required further reforms. These reforms focus on establishing an independent, impartial, and efficient judicial system, strengthening the consistency of the judicial process, the transparency and accountability of the judiciary.

1.1. Judicial independence

Judicial independence, objective and perceived, is essential for the justice system to work. The legal guarantees for judicial independence should not only be recognised in the law but also ensured and defended, so that society can trust that the judiciary fulfils its task in an impartial and professional way. This trust is endangered if there are attacks on the judicial power, if the work of the prosecution is hindered or if court decisions are ignored. Attacks on judicial institutions and on individual judges and prosecutors can have negative effects on the independence and the impartiality of the judiciary.

Corruption and professional misbehaviour within the judiciary also undermine judicial independence and seriously damage public trust in the justice system.

This section reports on the activity of the main institutions playing a role in consolidating the independence of justice in Romania. It describes the risks to independence faced by the Romanian justice system and how the above institutions have reacted.

1.1.1. Checks and balances at work

The Constitutional Court (CCR)

The CCR has an important role in further development of the rule of law and the consolidation of an independent justice system. CCR rulings have been instrumental in providing solutions to issues linked to the balance of powers and respect for fundamental rights that could not be solved by the justice system alone.

[2] The Commission has a CVM resident adviser in Bucharest.

In 2014 the Constitutional Court ruled on a number of important issues concerning possible amendments of the Constitution and modifications of the Criminal Codes voted by the Parliament:

- On 15 January 2014, the CCR annulled amendments to the Criminal Codes voted by the Parliament in December 2013. Notably, these would have had the effect of excluding elected officials from corruption laws.[3,4] The proposed amendments were not brought up again by Parliament in 2014.
- On 16 February 2014, the CCR rules on a number of amendments to the Constitution proposed Parliamentary Committee for the revision of the Constitution in February 2014.[5] The draft included a number of changes concerning justice, the functioning of the Superior Council of Magistracy, which were also later criticised by the Venice Commission. (See below)
- On 4 November 2014, the CCR ruled that the law that abrogates article 276 of the Criminal Code[6] on criminalising false statements in view of influencing the course of justice is constitutional.[7]

After the entry into force of the new Criminal Code and Code of Criminal Procedures, Constitutional Court rulings solved major stumbling blocks and re-enforced respect for fair trials in line with ECHR case law.

- On 6 May 2014, the CCR, seized by the HCCJ, proposed a solution to the application of the most favourable law for a person accused of a crime committed before the introduction of the new Criminal Code.[8] The law had not included the necessary transitional provisions and this question divided judges in all courts, including the HCCJ, risking inconsistent interpretations.
- On 3 December 2014, the CCR invalidated two provisions of the Code of Criminal Procedure, ruling that the decisions of the preliminary chamber judge should be given in the presence of the parties[9] and that measures of judicial control should have a deadline.

The CCR also ruled on laws relating to incompatibilities.

- On 3 July 2014, the CCR ruled that the wording "the same function" in the laws on incompatibilities refers to all eligible functions, confirming the interpretation of ANI and of the HCCJ. This solved a long-standing debate between the justice system and ANI on one hand, and the Parliament on the other. Parliament had declined to enforce incompatibility decisions against its Members on the grounds that the incompatibility concerned another elected function.[10]
- On 16 December 2014, the CCR confirmed the constitutionality of provisions relating to incompatibilities when a mayor is member of the general assembly or the board of directors of regional operators.[11,12]

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[3] http://www.ccr.ro/files/products/Decizie_002_2014.pdf
[4] COM (2014) 37 final
[5] http://www.ccr.ro/files/products/Decizie_80_2014.pdf
[6] ART. 276 Placing pressures on justice: *The act of an individual who, during an ongoing legal proceeding, makes false public statements regarding the perpetration, by the judge or by the criminal prosecution authorities, of an offense or of a serious disciplinary violation related to the investigation of the cause in question, in order to influence or intimidate, shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine.*
[7] http://www.ccr.ro/files/statements/Comunicat_presa_4_noiembrie_2014.pdf
[8] http://www.ccr.ro/files/products/Decizie_265_20141.pdf
[9] http://www.ccr.ro/files/products/Decizie_641_2014.pdf
[10] As a result of this ruling, one Senator resigned and one Deputy's mandate was terminated in November 2014 (see below). http://www.ccr.ro/files/products/Decizie_418_2014.pdf
[11] Article 87 para. (1) f) of the Law no.161 / 2003
http://www.ccr.ro/files/statements/Comunicat_presa_16_decembrie.pdf

Several other rulings of the Constitutional Court have had a direct impact of the functioning of the judiciary: rulings on the status of judges and prosecutors, on the disciplinary proceedings decisions of the SCM and JI, on mediation and on other provisions of the Code of Civil Procedures.

Follow-up on CCR rulings

When the CCR decision declares a law unconstitutional, the law is automatically annulled after 45 days.

Judges and prosecutors consistently respect CCR decisions. Although some of the rulings can be challenging for the justice system, requiring adaptations to working methods, improved respect for fundamental rights is perceived as an important step in consolidation and modernisation of the justice system. Some of the rulings also require urgent adaptations of the laws. The Ministry of Justice has sought to make necessary amendments by emergency ordinance within the required deadline.[13] However, there are clear examples where Parliament has not followed up on CCR rulings.[14]

Reform of the Constitution

In February 2014, the Parliamentary Committee for the revision of the Constitution produced a new draft Constitution, which was then analysed by the Constitutional Court and the Venice Commission.[15] The draft includes a number of changes concerning justice and the functioning of the Superior Council of Magistracy. The Constitutional Court subsequently declared an important number of the Constitutional amendments unconstitutional (See above). The Venice Commission was also critical on the changes concerning the justice system, in particular shifting responsibility for investigating and prosecuting parliamentarians from the HCCJ. The Commission also called for a more careful look at the status of prosecutors.[16]

In April 2014, Members of the Parliament Committee for the Revision of the Romanian Constitution informed the European Commission services that a new timeframe for the revision has been decided, with a target date of 2015 – in part to allow time for more public debate. They also gave reassurances that the views of the CCR and the Venice Commission would be respected. The SCM underlined again the importance of its participation in the debate, restating its position that any amendments to the Constitution should not affect the Council's role and mission, nor the independence of judges and prosecutors, but should rather strengthen the institutional capacity of the SCM and the independence of the Judiciary. The Committee for the Revision of the Romanian Constitution held a debate on ruling of the CCR and the views of the Venice Commission.[17]

To inform the debate, the Minister of Justice set up a project to provide translations of all Constitutions from EU Member States. The results will be debated in a public event in February 2015, and the work of the Parliamentary Commission is expected to resume.

1.1.2. Threats to the independence of the judiciary

Pressure on key institutions

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[12] ANI has established 114 such cases of incompatibility of mayors or deputy mayors, most of which are still pending before courts.
[13] For example, setting deadlines for judicial control.
[14] For example, Decision of 2013 concerning Senator Mora.
[15] The Romanian government had previously made a commitment that any amendments would be looked at by the Venice Commission (COM(2014) 37 final))
[16] Venice Commission Opinion no 732/24.03.2014. The 2014 CVM report pointed to the risks of political interference in the appointments of prosecutors. (COM(2014) 37 final))
[17] On the 8th of May 2014 the Senate hosted a conference regarding the Constancy of Law and Revision of the Romanian Constitution, in the context of celebrating 150 years since the creation of the Romanian Senate.

Previous CVM reports have noted the prevalence of media and politically motivated attacks targeting judges and prosecutors.[18] Whilst not reaching the scale of attacks of previous years (2012 in particular), this issue remained a problem in 2014. Examples reported by the SCM included providing intentionally misleading information to the public, raising doubt on the professional competence of the magistrate or accusing the magistrate (including family members) of corruption. Specific criticisms of individual magistrates included prosecutors in the National Anti-Corruption Directorate (DNA) and High Court judges, but also judges from lower courts such as Constanta for example. There were also cases where senior politicians commented directly on judges and the judiciary.

The CCR and its members have also been the subject of pressure in the past.[19] In September, following rulings invalidating provisions of the Romanian data retention laws, in the light of the European Court of Justice's ruling on the Data Retention Directive, the rulings of the Court were publicly criticised by some State authorities. This issue has been notified to the CCR by the Ombudsman, and following the judgement, he was quoted as regretting that he had done so.

The National Integrity Agency (ANI), an independent administrative authority responsible for investigating incompatibilities and conflicts of interest and checking wealth declarations of elected officials, continued to be subject to media and political pressure in 2014. On several occasions, the National Integrity Council (NIC), the political monitoring body for ANI, had to step up publically to defend ANI.[20]

One document which could be used to set certain standards for politicians, at least in Parliament, is the Code of Conduct for Senators and Deputies.[21] The 2014 CVM report included a recommendation to "ensure that the Code of Conduct for parliamentarians includes clear provisions so that parliamentarians and the parliamentary process should respect the independence of the judiciary".[22] The Code of Conduct does not include appropriate provisions touching on the need for parliamentarians and the parliamentary process to respect the independence of the judiciary and judicial decisions.

The defence of judicial independence by the Superior Council of Magistracy

One of the roles of the Superior Council of Magistracy (SCM) is to guarantee the independence of justice. Since 2012, the SCM has a procedure in place for defending the independence of justice and the professional reputation, independence and impartiality of magistrates. The procedure involves an inquiry by the Judicial Inspection, the approval of the case by the SCM plenary, and finally the publication of a press release by the SCM defending the magistrate or institution. In 2014, the judicial Inspection reduced the investigation time to a maximum of 15 days (compared to 45 days in 2013). This has allowed the SCM to react faster to the attacks, even within one or two days. The SCM intends to draft procedures and define criteria for assessing situations of threat to the independence of the judiciary, and to analyse possibilities for supporting the magistrates affected. No deadline for these steps has been given.

The number of requests for defence of the professional reputation, independence and impartiality of magistrates to the SCM increased in 2014, compared to 2013. In 2014, the SCM received 23 requests for defending the professional reputation and independence of magistrates or for defending the independence of the judiciary, considering that several public statements on the activity of judges and prosecutors have breached the principle of separation of powers, affecting the trust and confidence in

[18] COM (2014) 37 final; COM (2013) 47 final; COM (2012) 410 final
[19] COM(2012) 410 final
[20] In May, the NIC intervened to defend ANI when senators sought to use the activity report of ANI to raise criticisms which seemed to go beyond the scope of the report. In June, the NIC published another press release in defence of the ANI, following statements on television channels.
[21] This is presented as a legally binding instrument annexed to the law on the Statute of Deputies and Senators.
[22] COM(2014) 37 final

the judiciary. Out of these 23 requests, 16 were approved by the SCM, representing an increase of 35% with regard to 2013. In two cases the SCM also notified the National Audio-Visual Council. The SCM also published a press release to call candidates for the Presidential campaign to exercise restraint in voicing opinions on the judiciary and ongoing lawsuits.

Whilst recognizing the importance and benefits of the procedure set up by the SCM, NGOs and representatives of magistrates' organisations have noted the difficulty in securing an equivalent level of coverage for these statements, compared to the initial criticisms. Some NGOs have also sought to defend the judiciary, through press releases or social media, but access to the important television channels is difficult.

The SCM is also active on this front through international collaborations. The SCM coordinated a project "Judiciary Independence and Accountability" together with the equivalent organisations from the Netherlands and England and Wales within the European Network of Judicial Councils (ENCJ).[23]

The magistracy's media work

Most courts visited during CVM missions appoint a judge as an official spokesperson, but they reported that they had not received special training for this role. They can issue press releases if a judge is unfairly attacked but this does not seem to be done systematically.[24]

From the Ministry of Justice, the SCM, the HCCJ and the General Prosecutor's office, there is a general move to provide more or better information to the media on developments in the justice system, including on specific cases. Both the SCM and the Ministry of Justice have organised several information and discussion meetings with representatives of the press. In May, the SCM amended its guidelines on the relationship between the judiciary and mass media, taking into account the provisions of Article 277 of the New Criminal Code, relating to the disclosure, without right, of evidence or confidential information on an on-going criminal case. Judges and NGOs have also called for the National Audio-Visual Council should play a more active role in sanctioning media when acting in a way that does not respect professional ethics.[25]

1.1.3 Appointments

The risk of political interference in senior appointments has been one of the major concerns with regard to judicial independence. CVM reports have underlined the importance of transparent and merit-based selection procedures.[26] In 2014, there were no appointments of judges or prosecutors at the highest level. One major appointment will soon be made, following the resignation of the Chief Prosecutor of DIICOT in November. The procedure is as follows: the Minister of Justice proposes a candidate, the SCM is consulted on the choice, and final appointment is made by the President of Romania. The procedure therefore includes a strong political element in terms of the role it gives to the Minister of Justice.[27] Guidelines from the Venice Commission on the independence of prosecutors point to the importance of avoiding too great a role for political figures in appointments to the prosecution.[28] The SCM has proposed to the Minister of Justice an amendment to the laws on judges

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[23] The Report was published in June 2014: http://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adopted_version_sept_2014.pdf

[24] To compare this with practices in one Member State: in the Netherlands, if there is an incorrect media coverage of a delicate judicial topic that could damage the judiciary, the Council for the Judiciary often reacts the same day, using television, Twitter etc. There is a pool of experienced spokesmen and well trained media judges, as well as a media strategy.

[25] The SCM reported that the NAC did not follow up cases in a systematic way.

[26] COM (2014) 37 final; COM (2013) 47 final; COM (2012) 410 final

[27] This was the source of controversy in respect of appointments to senior posts in the prosecution in 2012-13.

[28] Venice Commission, European standards as regards the independence of the judicial system – Part II: The prosecution service, http://www.venice.coe.int/webforms/documents/CDL-AD(2010)040.aspx

and prosecutors, which would align appointment of prosecutors on the procedures used for judges. This proposal would need to be presented by the Government, for adoption by the Parliament. It could be in place in time for a number of important appointment procedures expected in 2016: including the General Prosecutor, DNA Chief Prosecutor, as well as the President of the HCCJ and the President and Vice-President of ANI. To add to the importance of appointments in 2016, it will also see elections for a new composition of the SCM, as well as Parliamentary and local elections.[29]

For other magistrate positions, including leading positions in courts and prosecutors' offices, posts are filled through open competitions organized by the NIM and SCM. These competitions are organised for entry into the magistracy, promotions to higher level courts and appointments in leading positions. The competitions for entry into magistracy are also open to lawyers with at least five years of professional practice. The Commission has not received representations concerning political interference in these processes; though there has been criticism from magistrate associations concerning the transparency of the process, especially for competitions for HCCJ positions.

1.2. The new Codes

Legal systems periodically have the need to update the Codes that are the basis of the judicial process and civil and criminal law. The demands of social change, fundamental rights, economic change and European law can all call for a modernisation and simplification of legal Codes. This can help to improve the quality of justice decisions, as well as the efficiency of the judicial process in rendering predictable and timely decisions. Such reforms could be expected to be needed relatively rarely, so have a particular need to be based on a strong consensus and to be well prepared. They are a sensitive and complex undertaking, and as such are a challenge for government, legislators, the legal system and legal practitioners.

This section describes the status of the implementation of the new Civil Code and Code of Civil Procedures and the new Criminal Code and Code of Criminal procedures. It describes how the key institutions involved, and the judiciary more broadly, have coped with the changes and it describes the progress since the last report.

1.2.1. Criminal codes: one year down the road

The new Criminal Code and Code of Criminal Procedures entered into force on 1st of February 2014, as planned. Judges and prosecutors, the SCM and the Ministry of Justice, were all closely involved and despite previous concerns about the scale of change needed, there are few reports of major challenges and no evidence received of disruption in the prosecution and trial of cases. Overall the messages received by the Commission have been of a judiciary expressing satisfaction on having a new modern criminal code.

Intensive training on the new codes organised by the National Institute of Magistracy (NIM) and the National School of Clerks (NSC) launched before entry into force have continued throughout the year. The training is considered to have been well targeted and professionally organised, and have been available centrally, at local level and through e-learning. Other legal professions have also been involved in the training.[30] The HCCJ has also organised videoconferences on the Codes involving the SCM, the NIM and courts of appeal.

The Minister of Justice has continued to take steps to supplement the number of positions (court clerks, judicial police, judges, and prosecutors), in accordance with the Memorandum “Preparing the judicial system for the entry into force of the new codes”, and to secure budget increases for implementing the reforms. The government set aside a specific budget for the transition to the new

[29] ANI: April 2016, DNA and General Prosecutor: May 2016, HCCJ: September 2016, SCM: elections in 2016

[30] However, some concerns have been expressed that he budget for the NSC means that they are not in a position to maintain the level of training for the planned increase in clerk posts.

codes.[31] The courts and the prosecution offices at all levels appear to have undertaken the necessary re-organisation to adapt to the new codes.

Monitoring and evaluation

In December 2014, the Minister of Justice organised the first meeting of an inter-institutional Evaluation Commission to monitor the implementation of all four new Codes. This builds on an inter-institutional group active since June, and involves the key institutions: the SCM, the HCCJ, the Public Ministry, DNA and DIICOT. This Evaluation Commission would bring together information on the state of implementation of the four codes and propose solutions to the problems identified. Where legislative solutions were needed, some of these would be fast-tracked: others would be subject to a longer reflection.

In parallel, the SCM also decided to step up its specific work on evaluating the implementation of the codes, especially with regard to efficiency, human resources distribution and the need for legislative amendments. The SCM reports that the civil and criminal codes themselves have not raised many issues, but that the implementation of the procedural codes is more difficult.

Feedback mechanisms at the level of courts and prosecution offices are in place for monitoring the application of the new Codes and notifying problems and questions.[32] Several major courts are setting up their own evaluation mechanisms. A country-wide evaluation will be conducted by February 2015.

Preliminary feedback pointed to a few legal issues of discrepancies between provisions or competing provisions. Often pragmatic solutions have been found to fill the gap until a permanent solution.[33] The prosecution has also looked for practical solutions to new problems.

However, most problems reported refer to general organisational issues faced by the justice system. These are often not new, but have become even more acute with the implementation of the new Codes. This is the case for workload pressure for judges, prosecutors and court clerks, management of cases and the distribution of work between judges and clerks. Logistics and resources issues are also still important, with IT adaptations not finalised, obsolete IT systems, an insufficient number of courtrooms (courts are faced with two new institutions), as well as pressure on offices for judges or rooms for organising access to their file for the defendants.

Most favourable law

The application of the principle by which a person should not be disadvantaged where there has been a change in the law[34] was the first important issue in the implementation of the Criminal Codes. There were no transitional provisions in the Code on how the principle should be applied. It quickly became clear that there was no consensus between two approaches: a "global" approach, where the court determines whether the old or the new code is most favourable, and applies it throughout the case; or the "pick and mix" approach, the court arrives at the most favourable result by drawing on different provisions from both the old and the new codes (e.g. the prescription period from one code, penalties from another).

After two months of entry into application of the new Criminal Code, the HCCJ had received nine preliminary questions concerning the application of the most favourable law.

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[31] In total the budget allotted for the entry into force of the codes amounts to 56,7 Million Lei, about 54% higher than initially approved in the beginning of 2013.

[32] www.mpublic.ro; The General Prosecutor received 260 questions.

[33] An example was that, when faced with the CCR ruling on time limits for judicial control measures, the HCCJ decided to apply time limits from the old Criminal Code until the entry into force of new laws.

[34] In Scoppola v Italy (2010) 51 E.H.R.R. 12, the European Court of Human Rights, reversed its earlier approach and held that the principle is part of Article 7 of the Convention. The principle is well known in Romania, being referred to in Article 15(1) of the Constitution. Articles 5(1) and 6(1) of the new Criminal Code introduce it into Romanian criminal law.

On 14 April, the HCCJ ruled on one preliminary question in favour of the "pick and mix" approach, in a question related to prescription regime of penalties.[35] The HCCJ decision was published in the Official Journal on 30 April and was therefore applicable to all courts.

On 6 May, the CCR, seized by the HCCJ, ruled in favour of the global approach.[36] The CCR decision is binding, so any new court decision must follow the same line. Later that month, the HCCJ confirmed the global application of the most favourable criminal law for continued offences and definitely closed the issue of the most favourable law in line with the CCR's interpretation.[37] Although these issues could have been anticipated and tackled through transitional provisions in the law, this solution has since been acknowledged as definitive. However, a draft law to define transitional provisions for the application of the most favourable law, presented by the Government at entry into force of the new Criminal Codes, is still pending in Parliament.

Pending amendments to the Criminal Code and Code of Criminal Procedure

A series of important issues, errors and omissions in the Codes came to light before or at the time of the entry into force of the codes on 1 February 2014. The Government, after consultation with the SCM, quickly adopted amendments to address most of these issues, but parliamentary consideration has not been so swift.

On 5 February, the Government adopted an emergency ordinance covering many of the most urgent questions.[38] The amendments stayed within the bounds of the criminal policies of the new Criminal Codes; but if not addressed, the identified issues risked creating major shortcomings at the level of courts, prosecutor offices and prisons. Though in force, the procedure requires approval by Parliament, and this is still pending: the Minister of Justice has expressed the hope that this will be covered in the general process now under way to address the outstanding issues (see above).

The Government addressed several other issues in a draft law.[39] These included amendments to provisions on initiation of prosecution, the obligation to order expertise and the interpretation on the application of the most favourable criminal law. The law is still pending in Parliament. In addition, as mentioned above, the provisions regarding the interpretation of the most favourable law are not in line with the decision of the Constitutional Court and will have to be adapted, as well as the need to update the law to reflect CCR decisions on the preliminary chamber and judicial control.

In addition to these changes promoted or planned by the Government, parliamentarians have proposed amendments to the Criminal Code or the Code of Criminal procedures. Such amendments could be expected to require at least the same standards of consultation and scrutiny as amendments proposed by the Government.

Rights and freedom/preliminary chamber judges

The introduction in the Code of Criminal Procedure of the institution of the "rights and freedom" and the "preliminary chamber" judges, was not implemented as a separate cadre of specialised judges (as was the original intention). The tasks of considering applications for searches and preventive

[35] This case aimed to determine whether the statute of limitation in criminal liability is an autonomous institution or not in relation with the institution of punishment.
[36] This stated that the provisions of art. 5 of the Criminal Code are constitutional as the provisions of successive criminal laws are not mixed in the process of establishing and applying the more favourable criminal law.
[37] Decision no. 5/2014 of the High Court of Cassation and Justice published in the Official Journal no. 470/26.06.2014
[38] Draft law for approving the Government Emergency ordinance no. 3/2014. Examples of amendments relate to ensuring judicial certainty for the composition of certain panels, specifying the criminal offences to be investigated by DIICOT as a result of a broader definition of the organised group, clarifying the provisions on the competences of the prosecutor, and on the possibility to challenge preventive measures.
[39] Draft law for amending and completing the Law no. 135/2010 on the Criminal Procedure Code, as well as for completing the Law no. 187/2012 on the application of the Law no. 286/2009 on the Criminal Code

measures, checking the legality of evidence gathered and the procedural acts undertaken in the course of the prosecution, which were intended for these new institutions, are still being undertaken by judges retaining these previous functions.

The task of the preliminary chamber judge was taking place in judicial offices, without the presence of the parties. In December, the Constitutional Court ruled that the parties should be present. This will require the judges to organise hearings, so will have important logistical consequences on the organisation of the work of the judges in criminal sections and on the availability of courtrooms already under great pressure. The SCM and the HCCJ however consider that this change can be accommodated.

Corruption penalties and prescription (limitation) periods

Under the new Criminal Code, some of the penalties in relation to corruption offences are reduced. This has consequences on the prescription periods for corruption offences, by affecting the length of the maximum period possible for starting the lawsuit after the crime was committed. For example, for passive bribery, in the old Criminal Code the lawsuit would have to start within 10 years, whereas in the new Criminal Code the lawsuit has to start within 8 years after the crime was committed.

In Romanian law criminal lawsuits and trials must also be ended within the "special" prescription period.[40] Whereas in the old Criminal Code the special prescription period was 1.5 times the prescription period, in the new Criminal Code the special prescription period is 2 times the prescription period. This may therefore extend the prescription period. For example, for passive bribery, the special prescription period was 15 years in the old Criminal Code and is now 16 years in the new Criminal Code. As a result, fears expressed by some stakeholders before the entry into force of the new Criminal Code – that the new Codes might make the failure of corruption cases due to prescription more likely – have not materialised.

Nevertheless, NGOs have long voiced their concern with the system of special prescription period, as it risks that justice is evaded by creating an incentive for defendants to delay court proceedings as long as possible.[41] Even if the limitation of appeal possibilities within the new Criminal Codes makes it more difficult for defendants to extend the proceedings, there will continue to be an important responsibility on the prosecution and the courts to finalise all proceedings in time and counter attempts from defendants to delay the proceedings.

Opportunity principle

The new Criminal Code and Code of Criminal Procedures introduce the principle of opportunity, which says that a crime will be punished only if its prosecution is considered opportune. This means that public prosecutors have the discretion to discontinue the prosecution of a crime. The reason for this can be to free up capacity in the legal system to prosecute serious crimes by not prosecuting some minor offences; or when the prosecutor feels the weakness in evidence makes a conviction highly unlikely. In cases of multiple offenses, it also allows the prosecution to focus on the crime that is the best evidenced or the most serious without having to prosecute all offenses.

The General Prosecution Office is encouraging the use of the opportunity principle as a way to solve workload issues, by closing many petty cases. It seems that prosecutors have started to use this possibility, as more than 85000 cases were dropped in 2014. When dropping charges, the prosecutors have the possibility to apply coercive measures instead (such as community work, fines or victim compensation). An assessment is planned in 2015 and guidelines on the use of the opportunity principle will be drawn up. Experts consulted by the Commission underlined that an important element in this change will be the need for formal safeguards to ensure that a decision to discontinue a

[40] As noted in previous CVM reports, this is an unusual provision, though there is a parallel in Italy.

[41] Transparency International, Timed Out. Statutes of Limitation and Prosecuting Corruption in EU countries, 2011

case is well-founded and can be challenged. This can be a particular issue in corruption crimes, where the lack of an identifiable victim means that there may be less chance of such a decision being scrutinised.[42,43]

The Service of guidance and control (a structure recently set up, which became operational at the end of October 2014), will organise the assessment, together with the counsellors of the Prosecutor-General. Attention will be focused on decisions where cases were dropped against repeat offenders, where dropping charges was subsequently invalidated (either by the hierarchically superior prosecutor, either by the court, upon complaint of the injured parties), and all cases involving misuse of office.

1.2.2. Civil codes: still in transition

The new Civil Code entered into force on 1 October 2011. The new Code of Civil Procedures entered into force on 15 February 2013, with some provisions to become operational on 1 of January 2016.[44]

Quarterly meetings are organised with the presidents and vice-presidents of the courts of appeal and with representatives of the HCCJ and the SCM, to discuss the implementation of the new codes. The HCCJ has continued its efforts to define harmonised practices in civil courts. A systematic monitoring of the implementation of the Civil Codes started in the second half of 2014, and a first assessment of implementation by the SCM suggested that there had been an overall fall in workload as a result of the codes: an increase in the number of cases of 5% at first instance courts but a decrease of 17% in tribunals and courts of appeal. The average duration for having a first instance decision has fallen to 1.5 years and the timing for the first hearing has also decreased to about six months. More time is needed to have a thorough assessment. In interviews with court managers and judges throughout the country, judges continued to highlight the organisational and workload issues that cause delays in proceedings and transitional problems in the effective application of the codes.

The new Code of Civil Procedures applies only to cases introduced after the entry into force of the Code. In most courts there are still many cases pending under the old Codes, so the Courts still have to cope with parallel systems. This situation complicates the organisation of court hearings and proceeding of cases for judges, clerks, parties and lawyers alike.

2015 should see a gradual clearing of these legacy cases. But it will also be the year of preparation for the provisions of the new Code of Civil procedures to come into force in January 2016. Their entry into force had been delayed essentially for organisational and resources issues, including the lack of courtrooms. It is clear that in many cases, this problem has not yet been solved. Swift action would be required to avoid the need for another delay, a possibility which has already been mooted by the SCM.

1.3. Consistency of jurisprudence and predictability of the judicial process

The unification of jurisprudence has been used as a term to designate the need for consistent judicial decisions on similar cases taken by different courts and judges. This is an important element of quality and predictability of the judicial process, supporting trust in the judicial system as well as its efficiency. The predictability of judicial decisions is part of the accountability of the justice system towards the society it serves.

Different elements contribute to unification of jurisprudence: the organisation of the system in terms of management and the Procedural Codes; the availability and transparency of court decisions; and the awareness and training of judges and prosecutors on the need for consistency. Broader issues of the quality of public administration and quality of legislation also play a role. This section analyses progress in these areas, consistently recognised as a priority by the Romanian authorities.

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[42] Venice Commission, European standards as regards the independence of the judicial system – Part II: The prosecution service, http://www.venice.coe.int/webforms/documents/CDL-AD(2010)040.aspx

[43] Article 339(4) of the Criminal Procedure Code includes a procedure for complaints against resolutions from prosecutors to close a case or drop charges.

[44] Articles XII, XIII,XVIII, XIX, of Law no.2 of 1st of February 2013.

1.3.1. Legal consistency mechanisms

The role of the High Court of Cassation and Justice (HCCJ) in unification of jurisprudence has been reinforced in the new Procedure Codes (Civil and Criminal) and the HCCJ has worked in a number of different ways to progress. As well as the existing mechanism of appeals in the interest of the law, which can be used to resolve the interpretation of the law when facing inconsistent judgements, the new procedural codes also introduce a new, proactive mechanism for improving the consistency of jurisprudence. This "preliminary ruling procedure" allows for a court ruling in final instance to address questions to the High Court for an interpretative ruling that is binding both for the court in question and for future cases.

Mechanism of preliminary ruling in criminal matters

From 1 February 2014 until the end of 2014, the High Court received 31 preliminary ruling requests in criminal matters, and settled 28 of them. About half of the questions referred to the interpretation of the most favourable law.[45]

In order to ensure the unitary implementation of the mechanism of preliminary ruling provided by the new Code of Criminal Procedures, the HCCJ has set out guidelines. These are now published on the HCCJ website. So too are all requests for preliminary rulings, their solutions and relevant information, so that the process is transparent and can be followed through the different stages. The General Prosecutor also participates in the debate of the preliminary ruling panels.

Mechanism of preliminary ruling in civil matters

As for the mechanism of preliminary ruling under the new Code of Civil Procedures, the HCCJ also agreed guidelines, a model request for a preliminary ruling, and a model judgment and model report on the question of law. The system is therefore streamlined and made more predictable both for courts requesting a preliminary ruling, and for the HCCJ itself.

In 2013, the HCCJ received 3 preliminary ruling requests and settled 1. In 2014, with the increasing application of the new Code of Civil Procedures, the number of preliminary ruling requests rose to 17. In 2014, 13 requests were settled.

Appeal in the interest of the law

So far as appeals to the High Court in the interest of the law are concerned, these have been small in number compared to 2013 (perhaps because alternatives are now available).[46] The number of appeals in the interest of the law lodged in 2014 has been of 9 in civil matter and 5 in penal matter. The number of appeals in the interest of the law settled in 2014 has been of 6 in civil matters and 3 in penal matters.

1.3.2. Management action

The High Court, the General Prosecutor, the SCM, and the Presidents of courts have voiced their consciousness of the importance of consistency of judicial decisions, and have sought to use their management processes to address the issues. Part of this has been communication – this has been an important element in the video-conferences organised by the HCCJ with the courts of appeal to prepare for the Codes. It has also important in initial and specialised training provided by the National Institute of Magistracy and the National School of Clerks. With the coming into force of the new Codes, they issued standard guidelines for procedural acts, including model documents, to be used by judges and clerks. These guidelines were distributed to all courts.

[45] An interesting example (Question 28) concerned whether a doctor is a public servant with respect to the provisions of the criminal law, in particular whether a doctor can be party of a corruption situation of bribe taking. The HCCJ ruling confirmed that a doctor is a public servant and holds a public office and therefore should not be excluded of the category of active subjects in bribe taking.

[46] In 2011 there were 33; in 2012, 19; and in 2013, 21.

Courts have also started using the mechanism of agreements "in-principle". This approach was first used by the administrative section of the High Court. It offers an agreement on a point of law as a result of courts discussing questions of law internally and trying to reach a consensus. Both the HCCJ and the other courts confirmed that these meetings to discuss such issues take place regularly, about once a month in the Chambers of the High Court. The meetings vote if necessary but judges are not bound by the results. The "in-principle" agreements of the HCCJ are published on their website and sent to the courts of appeal.

The General Prosecutor continues to publish guidelines and analyses for all prosecutors to help applying the Codes and ensure a uniform practice.

The Judicial Inspection also contributes to the detection and correction of non-unitary practice through thematic horizontal inspections. In 2014, the Directorates for judges and for prosecutors have each carried out respectively 4 and 5 horizontal inspections. Corrective actions are implemented as a result of their reports (see below).

Publication of jurisprudence

Publication of the jurisprudence is a prerequisite for consistency. If judicial decisions are readily accessible, courts can refer to and follow them. This can also help lawyers, administrations and businesses. So publication of all case law is an essential step in the unification of jurisprudence, as well as a step in improved accountability.

The HCCJ continues to publish its decisions on its website.[47] It publishes résumés of key decisions as well as full texts of all decisions. The result is that there are now with over 4,000 résumés and over 100,000 (anonymised) full texts, including the decisions concerning preliminary ruling requests, available online. The HCCJ has recently revamped its website, improving the search function and the user-friendliness of the information. The HCCJ has received very positive feedback for its new website.

Other courts of appeal also publish their decisions, including from their lower courts, again on their own website. However, the official system internal to the justice system, ECRIS, although in theory available to all judges throughout the country, is not always accessible and is not easily searchable. Progress on a new system to be funded through the Romanian Institute for Legal Information – ROLII – has been very slow. In July, ROLII published a call for proposals to develop a public-private partnership aiming at publishing the case law of the courts and developing a common way to erase personal data in the courts' decisions. According to the draft contract, the implementation would begin end 2014, and the "go live" would be for August 2015.

1.3.3. Obstacles to the unification of jurisprudence

Despite these efforts, inconsistency remains a problem in the Romanian judicial system. Cases are frequently raised which illustrated the problem, and in particular suggest that courts are not proactively accepting that they have a responsibility to prevent inconsistency. For example, one law firm advising clients on a standard form contract used by a Romanian re-insurer found that different Romanian courts had different interpretations regarding the same issue. Two colleagues faced with the same issue on social benefits went to court, in two different cities – and received two different decisions. The decisions about the same issue were opposite. A businessman losing a dispute with the tax authorities in one city won in another city. There have been inconsistencies in the interpretation of the incompatibility laws, which have resulted in seizing the Constitutional Court, with an example of an Appeal Court not following the interpretation of the High Court and not requesting a preliminary ruling.

[47] http://www.scj.ro/jurisprudenta.asp

Organisational issues

The distribution of work between judges and court clerks in most courts is often the source of criticism in general, and only rarely do court clerks seem to have the specific task of searching case law. Yet many of the cases dealt with by first instance courts in particular are repetitive cases (for example cases against the administration on pensions or pollution tax). Failure to rely on existing cases both increases workload and risks diverging decisions. The public administration also has a responsibility to ensure that once a decision is taken, it does not successively return to court on the same issue.

Accountability

Previous CVM reports have noted the tendency of some judges to see diverging decisions as reflecting the independence of the judiciary.[48] If the independence of each judge in his/her decisions and his/her right not to follow previous decisions has to be safeguarded, judges are also accountable to the public in providing a reasoning on why another previous decision cannot be applied again. When asked about this point, the SCM stated that the independence of the judiciary cannot be an excuse for non-unitary practice. There is a thin line between incoherent decisions on straightforward administrative matters, and bringing forward new legal solutions that elevate the quality of judicial decisions.

Legislative process and quality of legislation

The quality and coherence of legislation is a contributory factor to the consistency of jurisprudence. Many legislative proposals are put forward or amended by parliamentarians, but also by the government, without thorough analysis on the legal consequences on the existing framework. As a result, the legal framework is not always coherent and unambiguous. Examples within the CVM remit are amendments relating to integrity and incompatibilities, or of the Criminal Code. The Ministry of Justice has finalised a project (financed through EU funds) of a portal consolidating existing legislation, N-LEX,[49] and part of the motivation has been to facilitate a global picture of existing legislation. Also important will be the "Strategy for strengthening the public administration" adopted by the Government in October 2014.[50]

The use of Government Executive Ordinances

As an exception to the normal legislative process, the Government regularly adopts legislation through Government Emergency Ordinances (GEO).[51] The Constitutional Court is regularly called upon to rule on GEOs, and CCR judges have been critical on the overall number of GEO, as well as the respect for the criterion of urgency. Rushed legislative processes impact the quality of the legislation, and its application by administrations, citizens and businesses and its enforcement by courts risk being inconsistent.

The use of GEO can be challenged by the Ombudsman. Past CVM reports have noted the importance of this function in terms of the balance of powers and quality of the legislative process that are necessary for an independent and effective justice system.[52] The ombudsman now also has the right to seize the High Court for recourse in the interest of the law or to seize administrative courts for illegal administrative decisions.[53]

[48] COM (2014) 37 final; COM (2012) 416 final.
[49] The national module of the N-Lex legislation portal was launched on 12 November 2014 and is accessible from the home page on the official web site of the MoJ: http://legislatie.just.ro/. The data base offers free access of citizens to the Romanian legislation after 1989 in a user friendly format. The date base includes a search engine and it shall be updated daily.
[50] http://www.mdrt.ro/userfiles/strategie_adm_publica.pdf
[51] COM (2014) 37 final; COM (2012) 416 final; COM (2013) 47 final
[52] COM (2014) 37 final; COM (2012) 416 final; COM (2013) 47 final
[53] Under a GEO of June 2014

In January 2014, the ombudsman elected in February 2013 resigned. After an interim period of several months, a new ombudsman was elected in April with the support of only one party (the CVM report of July 2012 had noted: "The Romanian authorities need to ensure the independence of the Ombudsman, and to appoint an Ombudsman enjoying cross-party support, who will be able to effectively exercise its legal functions in full independence."[54]).

Regarding the constitutionality of laws and emergency ordinances, the current Ombudsman has expressed the view that the Ombudsman should not get involved in questions that concern the balance of powers between state authorities. He has raised constitutionality questions based on fundamental rights issues brought forward by NGOs, but has refrained from seizing the CCR on the constitutionality of emergency ordinances on very political issues (such as electoral matters). Some CCR judges have raised the implications of this limitation of the Ombudsman role on the need for constitutional checks and balances.

As a result of this limitation, the Ombudsman has been asked to challenge the use of GEO but he did not act. In one of the cases concerning "migration" to other political parties of locally elected officials during their mandate, the ordinance was eventually declared unconstitutional by the CCR, after an appeal by political parties. However the law had already taken effect, so the question arose of what action to take in respect of such cases. An earlier submission of the case to the CCR might have allowed the issue to be clarified before it started to apply.

1.4. Structural reforms and key institutions

Structural reforms to the administration of justice have been shown to have a direct impact on the effectiveness of justice. Issues like the speed of the system, its independence, its affordability, and the ease of access are all important factors in an effective justice system. This is true for citizens, but also for businesses, and justice is a key element in a successful business climate.[55]

1.4.1 The Strategic framework

Strategy for the Development of the judiciary 2015-2020

The Ministry of Justice has presented a Strategy for the Development of the Judiciary 2015-2020, setting out a vision for the judiciary and the key steps.[56] This document draws heavily on CVM recommendations, and studies developed with the World Bank, in particular the *Functional Analysis of the Romanian judiciary*.[57] This strategy and its action plan are also designed to be the basis for defining the priorities for EU funding in the area of justice. A first draft was ready in September 2013, but was taken forwards slowly. Consultations of judicial institutions and legal professions and professional associations have taken place, though some organisations have characterised the process as rather formal, and some relevant stakeholders do not seem to have had a full opportunity to comment. In October 2014, an updated draft was put into public consultation, though not everyone seemed to be aware of the opportunity to comment, and the consultation period was later extended to allow more NGOs involvement. Two discussions between NGOs and the Minister of Justice were organised.

The strategy document is a high level description of vision and objectives, but would need to be backed up by further details on actions and deadlines, so an action plan will follow. The Minister of

[54] COM(2012) 416 final, p.18
[55] Annual Growth Survey 2015 (COM(2014) 902 final), p.14
[56] The Strategy for the development of the judiciary 2015-2020 was approved by Government Decision no. 1155/23.12.2014.
[57] The strategy is based among other background elements on: Judicial Functional Review; CVM Reports and EC recommendations; Study on Court Optimization; Inputs from MoJ specialized departments, Superior Council of Magistracy, Public Ministry, High Court of Cassation and Justice, National Trade Office, National Administration of Penitentiaries.

Justice has promised to finalise this by April 2015. Extended consultations with all stakeholders would be organised in early 2015.

Objectives of the strategy

The strategy sets out a series of underlying principles: compliance with the rule of law; separation of powers of the State, strengthening judicial independence; loyal cooperation between institutions; respect for human rights; information-based management; and promotion of a culture of dialogue. It then identifies the problems of the judiciary and proposes a series of objectives for the development of the judiciary for the period 2015-2020: Rendering justice efficient as a public service; Institutional strengthening of the judiciary; Integrity of the judiciary; Ensuring the transparency of the act of justice; Improving the quality of the act of justice; and Guaranteeing free access to justice.

1.4.2 Resources

The Ministry of Justice 2014 budget for the judicial system (excluding Public Ministry and HCCJ) represented a 3.6% increase on 2013. In particular, the Ministry was able to secure specific funding for the entry into force of the codes, over 50% higher than those approved in the beginning of 2013. In the budget for 2015, the draft budget for the Ministry of Justice is 17% more than the initial 2013 budget and 5.6% more than the initial budget for 2014.

Throughout 2014, the Minister of Justice has continued to take steps to supplement the number of positions allotted to courts and prosecutor offices, in accordance with the Action Plan included in the Memorandum "Preparing the judicial system for the entry into force of the new codes", approved by the Government on 26 September 2012. In particular, decisions were taken for supplementing auxiliary positions in courts and prosecution offices (200 posts in total). In parallel, the National School of Clerks, the National Institute of Magistracy and the SCM organized the competitions and the training for the new posts, so that they could be filled as quickly as possible. The posts are allocated by the SCM to the courts and prosecutor offices.

The DNA was supplemented with 50 judicial police posts, the majority of whom part of which will work on identification and freezing of criminal assets.

In addition to the national budget, the Ministry of Justice also benefited from a number of external sources. This included a loan from the World Bank within the project "Judicial Reform Project" (€16,5m in 2014), used for infrastructure work in the courts of Iasi, Cluj, Oradea, and Sibiu, and for IT developments. The Ministry also implemented 13 projects funded by external sources targeting strategic domains for the development of the judicial system.[58]

Financial Framework for Structural Funds 2014 - 2020

The Ministry of Justice has coordinated the negotiations for future financial allocations for the judiciary available from the Structural Funds allocated to Romania for the period 2014-2020, carrying out an extensive process of consultation with all the stakeholders within the judiciary. The Operational Programme Administrative Capacity (OPAC) is of particular importance for the judiciary, given that two of the specific objectives of the programme finance interventions for the benefit of the judiciary. The objectives related to the judiciary within OPAC 2014-2020 aim to improve the efficiency of the judiciary, through measures for strengthening their institutional capacity and strategic management, and to increase the quality, accessibility, transparency and integrity of the judiciary, by improving

[58] Including: 7 projects financed through European Commission financing specific programs: „Criminal Justice", „Civil Justice" and „Prevention and fight against crime", with a total amount of funds of: 3.144.307, 52 euro; 1 project financed from structural funds (in the framework of PODCA 2007-2013): " Implementation of N-Lex portal" (October 2012 – February 2015) (Value of the contract: 20.443.694 lei). €20m were received through the Norwegian Financial Mechanism 2009-2014 (€3m as national co-financing.

professional knowledge, development of instruments, procedures and support programs to facilitate the access to justice, as well as enhancing transparency and integrity at the level of the judiciary.

Facilities

Although some buildings have been renovated and there are plans within the Ministry of Justice to renovate regional courts, many courts, especially larger ones, do not have sufficient council rooms, or enough offices for judges or clerks, and many lack up to date IT facilities. Facilities are often inadequate for parties or lawyers coming to court for their case.

The entry into force of the new codes has added to the pressure by introducing new categories of proceedings. In civil matters, the entry into force of the most courtroom-intensive provisions were delayed until January 2016, but this will put a lot of onus on 2015 for undertaking the necessary work, and there are clear doubts about readiness. In criminal matters, part of the pressure had at first been relieved by having the work of the preliminary chamber judges being done in back offices, but the CCR has now required that the preliminary judge convenes the parties (see above). This additional constraint increases pressure for solving the organisational and management issues in court.

On 10th of December 2014, the Government approved, three National Investment programs for rehabilitation of existing buildings and also construction of new buildings within the next three years, namely: Infrastructure consolidation of courts in 27 cities; development of Justice District in Bucharest; Infrastructure consolidation of all prosecutors´ offices attached to the tribunals.

1.4.3 Efficiency of the judicial process

Workload

Workload is a recurrent problem within the judiciary and a major source of complaint from magistrates and clerks. The workload is an issue at all levels of courts. The average workload per judge in the first semester of 2014 is 789 at Judicatorie level, 670 at Tribunalele level and 600 at appeal level. At the start of 2014, for all courts there were more than 1.2 million cases pending, while incoming cases amounted to more than 2.2 million.

The legislative framework has a central impact on workload. This was an important aspect in the four new codes, and the SCM have identified an overall reduction in workload (see above). The use of plea bargaining offered by the new Code for Criminal Procedures should have a positive effect on the workload of courts, as procedures can be finalised quicker.[59]

Another key aspect of workload concerns the weight of tasks between courts. There are a number of very small courts with only 2 or 3 judges, and the fact that every court needs an attached prosecution office means an office with only one or two prosecutors. These courts often have a very low workload, high overheads, and their small size increases the risk of corruption or partiality. In 2013, the Government proposed a reform of the judicial map, closing down 30 courts and prosecutor's offices with low workload. The draft law was rejected in the Chamber of Deputies in June 2014 and is now under discussion in the Senate, where there is already a motion to reject the proposal. Progressing with a smaller number of courts has been mooted as a possible compromise.

The General Prosecutor has also raised the possibility of closing down some of the small prosecution offices and attaching the prosecutors to a higher court. This is particularly relevant as the criminal cases represent at maximum one quarter of the cases in the small courts.

Another issue of workload is the division of tasks between judges and law clerks. At present this seems to vary from court to court, according to the specific court organisation or each individual judge to each judge. A draft law has been pending for some years setting out possibility for the court clerks

[59] In 2014, there were 1979 plea bargain resolutions notified to courts for the entire Public Ministry, involving 2235 defendants and 5 legal persons.

to take over some part of the legal work of the judges. However, the draft has been blocked in Senate. The Ministry and the SCM are working on a new draft law to unblock the situation.

Alternatives to court proceedings also play a role in workload. For example, the enforcement of court decisions had required two stages in court, the court decision and then the authorisation of a bailiff to apply the decision. A law amending the Civil Procedure Code was adopted in October 2014 to address this issue. [60] Give the bailiff the authority to enforce some court decisions automatically could relieve the courts of about 300 000 cases a year.

Another example is mediation. The new Code of Civil Procedure had a provision specifying that the judge should invite parties to participate in an information session about mediation, according to special laws, with the intention of promoting an alternative to court proceedings. Legal provisions suggesting that parties should compulsorily attend an information session on mediation and bring proof of this before going to court were annulled by the CCR in 2014, as mediation should only be a voluntary alternative.

1.4.4 Management of the courts

In May, the SCM created a working group on the efficiency of court's activity. 4 actions were set in order to improve the efficiency and the effectiveness of court's activity:

- setting the performance indicators for the efficiency and effectiveness of the courts' activity, as well as time standards;
- ensuring the quality of data as well as the related communication and analysis;
- allocation of human resources (judges, court clerks);
- Periodical monitoring of the first 3 actions.

The project identified five indicators of performance[61] and quality designed to assess the efficiency of courts' activity. A first interim report was presented in August 2014 including the objectives, the methodology, conclusions and methods for their implementation were submitted for observations to the courts countrywide, together with a first analysis of data from the courts and a series of recommendations.

The SCM has also developed an application in the field of judicial statistics (StatisECRIS) designed to offer a clear image and information on the relevant judicial statistics in each court.[62] This is intended to become a managerial instrument available for courts' leadership regardless of the level of jurisdiction, and to enable the collection of consistent statistics for the SCM. The testing phase randomly selected five courts at different levels to take part, and others have requested to be involved. The testing phase has been completed and the application was implemented in all courts (including the HCCJ) by the end of 2014.

1.4.5 Enforcement of court decisions (civil, administrative and criminal)

The enforcement of court decisions is regarded as a continuing problem. Complete statistics on the effective enforcement are not always available, but some partial information is already telling: at court levels, there were more than 800.000 civil enforcement cases and more than 80.000 administrative

[60] *Law no. 138/2014 for amending and completing the Law no. 134/2010 on the Civil Procedure Code, as well as for amending and completing some related normative acts.*

[61] The indicators are: Clearance rate; Stock of files (older than 1 year/1 year and a half); Percentage of cases closed within 1 year; Average term for solving cases, on different field/matters of law at the level of each court countrywide (only for the first instance stage of the case and not for the case of the courts of appeal), Drafting decisions exceeding the legal deadlines.

[62] In partnership with Arges Tribunal.

enforcement cases in 2014. The recent modification of the Code of Civil Procedures on coercive enforcement will significantly reduce the civil enforcement cases in court.

The Strategy for the Development of the Judiciary includes an objective to improve the organisation and functioning of bailiffs in order to improve effective enforcement of court decisions, but there is not yet any action or deadline for this objective.

In terms of enforcements of criminal decisions, the only statistics available are the confiscation of criminal assets, but there is no overview available on the recovery of damages by the State or private parties. ARO reports an improvement of assets confiscation by the Fiscal Administration (ANAF) from 5% in 2013 to 15% in 2014[63] of seized assets.

1.4.6 Integrity within the judiciary

Corruption cases against the magistracy

Integrity within the judiciary is a particularly important test of the management of the magistracy. In 2014, DNA reported an increase in the number of corruption cases against judges and prosecutors.[64] There has been an increase in the number of persons coming forward as whistle-blowers, and the DNA regard this as an illustration of increased confidence that signals would be acted upon. This year, DNA indicted 23 judges (including 4 from the HCCJ), 6 Chief prosecutors and 6 prosecutors for corruption within the judiciary.[65] 7 judges and 13 prosecutors were convicted of corruption. Many of these cases are high-profile and significant cases. Examples include 4 judges prosecuted for bribery in a case involving an influential businessman and press magnate, and a Chief Prosecutor is prosecuted for traffic of influence in a case where the prejudice involved is €60m.

The SCM is responsible for ensuring that there are no obstacles to the criminal investigation of magistrates. It has espoused a policy of "zero tolerance" against corruption within the judiciary and this has become a consistent feature in the SCM's public statements. It decided in July 2014 that judges who have committed offences in office, which may constitute a criminal offence, may not benefit from immunity in the criminal proceedings; that judges subject for criminal investigations for corruption offences should abstain from rendering solutions in similar cases until the moment his/her situation is clarified; and that the principles of impartiality and independence cannot be a justification for hiding a behaviour that constitutes a threat to independence and impartiality, as is the case for corruption.[66] In 2014, the SCM approved the pre-trial detention of 4 judges and 5 prosecutors, and suspended from office 14 judges and 6 prosecutors.

The “Law limiting special pensions for magistrates convicted of corruption” came into force on 14 July 2014. This provides that magistrates convicted of corruption will not receive the special pension normally enjoyed by the profession.

Disciplinary action

The SCM is responsible for sanctioning professional misconduct and disciplinary offences of magistrates, notably bad behaviour, incompetence and serious negligence.

The investigation of such cases rests with the Judicial Inspection. The number of disciplinary actions has increased in 2014. In total the judicial inspection initiated 36 disciplinary actions (27 judges, and 10 prosecutors), against 28 in 2013. This is the result of additional personnel, internal efforts to speed

[63] This is the percentage of the value of confiscated assets by ANAF with regard to the value of assets seized by courts. Note that the seized amount should also cover damages, and therefore the actual confiscation rate may be higher.
[64] See Section 3.2.3
[65] Comparison with 2013: 13 judges and 12 prosecutors were sent to trial; 5 judges and 5 prosecutors were convicted for corruption.
[66] Decision 846 bis/3 July 2014

up investigations and a change of the law extending the scope of investigations to inadequate use of language by a judge in court and to obstruction of inspection activity. The number of complaints has actually decreased in 2014. [67]

The reports of the Judicial Inspection are forwarded to the respective SCM sections. The decisions of the SCM can be appealed before the HCCJ, where special panels are chaired by the President or the Vice-President of the High Court. The chain of decisions seems to have become more predictable and consistent: in comparison to 2013, the SCM reports much less variations between SCM decisions and HCCJ appeals. [68,69]

1.4.7 Judicial Inspection

The Judicial Inspection's role goes beyond its disciplinary functions. It also has a key role in reform and modernisation more generally. In 2014, it moved into new offices and reinforced its organisation, filling vacant posts and setting up autonomous departments. The SCM has also supported its work with new IT investment and a specialised module for the inspection as part of ECRIS. However, the need for the inspectors to travel for long periods throughout the country still puts a strain on resources.

The Judicial Inspection has been able to reduce the deadlines for investigating notification for defending the independence of justice or the professional reputation of magistrates to 15 days instead of 45, in spite of an increase in cases 2014 (see above).

The horizontal verification activities in 2014 focused on substantive controls on the whole activity of the courts and thematic controls. The results lead to horizontal recommendations, and can also trigger individual investigations and sanctions of magistrates. The themes chosen by the Judicial inspection cover key themes in the current efforts to modernise the magistracy, including the time lag between registration of a complaint and the first hearings in court for cases under the Civil Procedural Code; managerial duties in terms of planning, organizing, coordinating, control and communication; extended confiscation; monitoring of cases older than 10 years; monitoring of high level corruption cases; controls where the statute of limitation has expired, and public procurement cases.

The themes for 2015 have been chosen together with the main judicial institutions and specific consultation mechanisms are in place this year. The Judicial Inspection has also published its first bulletin to make their work better known within the judicial system and to the outside world.

1.4.8 Accessibility, transparency, “user-friendliness” for professionals and justice users;

Several opinion polls conducted by the Romanian authorities have shown an increased public trust in the judiciary in Romania,[70] in particular in the institutions pursuing high-level corruption. Part of this is linked to the interface which lawyers, businessmen, NGOs, and citizens face in their dealings with courts. Accessible information, clear deadlines, help when arriving at a court building, the treatment of parties during court appearances and access to files are all areas which have been identified for action and improvement.

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[67] 5779 complaints in 2014, 6058 complaints in 2013.

[68] The SCM registered 28 actions against judges, rejecting 8, applying 14 sanctions (from 8 warnings to 2 suspensions from office). There were 8 appeals to the HCCJ with 5 rejected, 4 accepted (in one of these cases, the HCCJ imposed a higher penalty, exclusion from office). There was a similar pattern in the 13 cases registered against prosecutors.

[69] In the UK, the courts would have an approach of not interfering with the sanctions imposed by professional disciplinary bodies (which are best fitted to assess the seriousness of professional misconduct), taking the view that sanctions are not primarily directed to punishment, but to maintenance of public confidence in the trustworthiness of all members of the profession. *Bolton v Law Society, Court of Appeal [1994] 1 W.LR. 512*

[70] For example Barometrul "Inscop — Adevărul despre România" conducted by Inscop Research.

In October, the SCM launched the Guidelines for court users under the new civil and criminal codes. The Guidelines are meant to be a useful instrument for the court users and should help to avoid some procedural sanctions such as the annulment of a complaint because it does not fulfil the formal requirements. Furthermore the guidelines may streamline the judicial proceedings, by avoiding the delays caused by the necessity to comply with the requirements of the complaints.

The Minister of Justice has pursued the "judges in school" project with the Minister of Education.

2. INTEGRITY FRAMEWORK AND THE NATIONAL INTEGRITY AGENCY

Romania has a clear framework for integrity amongst public officials, and an independent institution to help the application of these rules and apply sanctions which can be challenged in court. An important aspect of this work is seeking to ensure that conflicts of interest can be avoided in the first place.

During the reporting period, the National Integrity Agency (ANI) has continued to process a high number of cases (638 cases were notified to ANI and 541 started ex-officio. ANI has finalised 514 reports in 2014). However, ANI remained subject to pressure and the implementation of its reports, even when confirmed by court decision, has continued to be questioned. ANI continued to initiate a substantial number of cases in terms of conflicts of interest and incompatibility issues, many of them concerning senior politicians and well known public figures.[71] Despite the fact that 90% of ANI's decisions on incompatibilities and conflicts of interests have been confirmed by the HCCJ[72] and that the Constitutional Court has also confirmed ANI's conclusions on issues such as the concept of "same public office" for sanctions of ineligibility or the constitutionality of rules on incompatibilities, ANI's decisions are still often subject to public criticism.

2.1. The National Integrity Agency and the National Integrity Council

2.1.1. Institutional capacity

ANI's staffing and budget was stable in 2014, after increases in the past years.[73] The budget for 2015 has also been approved.

Cooperation with other institutions seems to have consolidated in 2014. Cooperation with institutions like the DNA and the security services is characterised as good, and improving with the police – though most notifications passed on to ANI come from private citizens. The General Prosecution is an area identified as having the potential for more cooperation, including pursuing potential offenses in the area of false declarations. The process of passing through the Wealth Investigation Commissions, which had in the past on occasion been cumbersome, seems to have normalised, with no particular difficulties to report.[74]

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[71] 70% of 2014 incompatibility cases concern elected officials: Deputies (27), Senators (11), County Council Presidents (1), County Counsellors (11), Local Counsellors (54), Mayors (47), Deputy Mayors (54); the incompatibility cases of mayors and deputy mayors cover all the political spectrum. 65% of 2014 administrative conflicts of interest cases concern elected officials: Deputies (1), Local Counsellors (26), County Counsellors (2), Mayors (34), Deputy Mayors (4).

[72] However, one high-profile case illustrated a problem that some issues may not reach the HCCJ. One of the candidates in the May 2014 EP elections had been subject to an incompatibility decision. His eligibility to run was challenged by ANI, but the Court of Appeal ruled that he could run (although the issue in question was the question of the "same office", on which the HCCJ had already ruled). The Court of Appeal did not refer the case to the HCCJ, so there was no mechanism for the High Court to restore its own interpretation of this question.

[73] The budget in 2014 was of 19.390.000 Lei (approx.4.308.800 EUR).

[74] The WIC were established to examine ANI's reports on alleged discrepancies between income and wealth of over 10.000€, considering that the RO constitution contains a presumption of legal ownership of assets.

2.1.2. National Integrity Council (NIC)

The National Integrity Council provides political oversight for ANI. In 2014, as well as monitoring the management of ANI, it intervened on several occasions to protect the independence of the Agency and defend its personnel against outside pressure. A concrete example of such pressure was the call for the resignation of ANI's President after a decision, validated by the HCCJ, on the incompatibility of a candidate to the European Parliament's elections.[75] The NIC issued a statement in defence of ANI.[76] The NIC also cleared ANI's President following media speculation.

The NIC's role also implies intervening proactively in Parliament in support of ANI. An example took place in May 2014 when the Senate opened a debate on ANI's annual report, with the NIC taking ANI's defence in Parliament.[77] Another important role of the NIC is to defend ANI's budget in the context of parliamentary debates.

The current NIC's mandate expired in November 2014. The process for appointing a new NIC was subject to a number of controversies, including the nomination (in a first phase) of candidates who were themselves subject to ANI or DNA proceedings. The process does not seem to have allowed for a proper discussion of the integrity of the candidates put forward. A new procedure will be held in Spring 2015.

2.1.3. Track record – conflict of interest, unjustified wealth, incompatibility

In 2014, ANI's track record showed a stable trend in ANI's activity compared to 2013:

- 294 cases of incompatibilities;
- 101 cases of administrative conflicts of interests;
- 60 cases of criminal conflicts of interests;
- 30 cases of significant differences between incomes and assets;
- 29 cases of solid suspicions on committing criminal offences or corruption offences.

The 514 cases include 6 magistrates, 3 State Secretary/Secretary general, 14 County council's counsellors, 11 senators, 28 deputies, 60 vice mayors, 84 mayors, 1 County council president, 22 special public officials, 36 public officials and 100 persons with management or control position. The number of cases of unjustified wealth doubled in 2014 compared to 2013 (from 15 to 30). The Agency also communicates on its activity by publishing on its Internet Webpage press releases informing the public about definitive and irrevocable decisions.[78]

A high percentage of ANI decisions are challenged in court (70%) but the confirmation rate of ANI decisions in court is above 90%. The instance responsible for first instance or appeals is the Administrative Section of the HCCJ, and in 2014, it made significant efforts to reduce the delays for hearing these cases, despite its high workload overall. The HCCJ plays a key role in setting

[75] This case concerning a former MP and candidate to the European Parliament elections has led to different interpretations of the laws on incompatibilities between the Parliament (restrictive interpretation that only the same office as the one targeted in an incompatibility decision has to be given up) and the HCCJ (non-eligibility for all offices). The electoral bureau eventually decided to let the candidate run for the EP elections, and this decision was confirmed at Court of Appeal level. Subsequently, in July 2014, the CCR confirmed the interpretation of the HCCJ - http://www.ccr.ro/files/products/Decizie_418_2014.pdf

[76] http://www.integritate.eu/Comunicate.aspx?Action=1&Year=2014&Month=4&NewsId=1566&M=NewsV2&PID=20

[77] http://www.integritate.eu/Comunicate.aspx?Action=1&Year=2014&Month=5&NewsId=1578&currentPage=3&M=NewsV2&PID=20

[78] http://www.integritate.eu

jurisprudence in incompatibility cases, all the more so given examples this year of contradictory decisions from different courts. Quicker decisions and a coherent jurisprudence should result in swifter enforcement of incompatibility decisions and may also increase public acceptance.

A practical solution for dealing with conflict of interest cases was also found at prosecution level. With the new codes, the lower courts - Tribunalele - became competent for these cases. Prosecutors in the appeal courts, who had developed experience in these cases, were requested to take cases over from the lower courts, to promote continuity and maintain expertise. In 2014, at prosecution level, 350 conflict of interest files were solved, a court of law being notified in 36 cases.[79]

A challenge faced by the Agency is the implementation of definitive court decisions regarding unjustified assets or conflict of interests and incompatibilities. The follow-up of these court decisions seems to be far from automatic. In this context, ANI has set up a process to monitor the implementation of its definitive reports (i.e., those which have not been challenged) and of final court decisions.[80] Final decisions are communicated to competent authorities for appropriate follow up, such as assets confiscation, removal from public offices or the application of other types of sanctions in the case of the persons for whom unjustified assets, incompatibilities or conflicts of interests have been established.

In cases where authorities or institutions refuse or unduly delay the application of decisions and sanctions such as removal from office of persons in cases of incompatibilities or conflict of interests, the Agency applies contravention fines.[81] Also, the Agency has the legal obligation to make all necessary efforts to carry out the final and irrevocable decisions, including notification of the prosecution (not applying a final decision is a criminal offence).

Such procedures can be very lengthy. Parliament provides particular examples where Court decisions have not been swiftly applied. For example, several months passed before a member of the Senate resigned from the Parliament, after a final decision delivered by the HCCJ that had found him to be in a state of incompatibility. The resignation allowed the Parliament to avoid taking a decision on ANI's request for the enforcement of the HCCJ decision in his case. Another case concerning a Deputy also took several months to proceed, before the Chamber of Deputies declared the position "vacant", implicitly confirming the removal from office of the Deputy. ANI had to set in train procedures to apply fines to the relevant parliamentary committees for failure to act. A new case of a Deputy found incompatible is awaiting decision in the Chamber of Deputies, while court decisions are pending for about 40 parliamentarians.

[79] 38 defendants were sent to trial, including 7 deputies, 10 mayors, 1 president of county council, 1 local councillor, 2 physicians, 1 manager of bank unit, and 2 officials working for city halls.

[80] This is based on a reporting and monitoring module within the Informatics System of Integrated Management of Assets and Interests Disclosure (S.I.M.I.D.A.I.).

[81] For example, ANI fined members of a city council until they eventually applied an ANI decision concerning one of their peers and removed him from office.

2.1.4. Ex ante checks and prevention activities

ANI has been finalising the public procurement procedure on IT tool "Prevent" for ex-ante checks of conflict of interest in public procurement. This is seen as an important step to help prevent conflict of interest in the first place. The project is on track for implementation in mid-2015, and – in line with CVM recommendations[82] *– will cover all electronic public procurement, not just that involving EU funds. A budget of 23 million Lei (€5.1m) has been foreseen. ANI has already experience with electronic declarations of wealth on a database, with a certificate of excellence on this project.*

A Government Emergency Ordinance will be issued in March or April 2015, after public debate, to specify operational and data protection rules for the system. [83] *This will be important as the system creates new obligations: Local authorities will have to react if the "Prevent" system issues a warning of a potential conflict of interest. If the warning is not followed up, DLAF or DNA will be automatically notified (and of course the procedure will be at risk of cancellation).*

The system would cover a limited number of potential conflicts of interest as defined in the Romanian legislation, i.e. the existence of kinship to the third grade (parents, children, siblings), but it could potentially be extended to also cover third parties, consultants or sub-contractors. According to ANI, a very large share of situations of conflicts of interest (85 to 90%) in Romania now take place within the family sphere and consist in concluding contracts awarding public funds to companies owned by family members of local officials. "Prevent" will essentially be an administrative tool, but will cover all contracts within its scope, and not just operate on a sample basis (contrary to other existing systems). More complex cases of conflicts of interest that involve criminal qualifications would in any event be subject to criminal procedures, including for example attempts to conceal relevant information.

ANI also invests in other preventive activities, notably by sending experts to other institutions to apply integrity systems and participating fully in the National Anti-corruption Strategy.

2.1.5. Legal Framework

ANI's core legal framework remained unchanged in 2014, despite some parliamentarians putting forward proposed amendments to the rules on incompatibilities. However, the overall integrity legal framework is also affected by legislation centred on other public policies. The law on inter-community development associations, the education law and the health law have all been amended with changes to the incompatibility provisions. There is no evidence that the implications for incompatibilities were assessed in advance, and when consultation of ANI did take place, it was perceived as being only formal.[84] CVM reports have underlined the desirability of clarity in the legal framework for integrity,

[82] COM (2014) 37 final, p.14.

[83] Concretely, Public authorities would be obliged by law to enter in a common database all tendering companies. These could be cross-checked against declarations of interest. After a conflict of interest has been detected, ANI would issue a warning to the head of the authority which has launched the public procurement. Though there would be no obligation to stop the procedure, there would be an obligation to respond, and if this did not happen, this would be notified to the prosecution which would be expected to investigate the potential wrongdoing. The draft law to regulate the system would also foresee for civil servants to have 20% responsibility for misused funds – considered as a major disincentive.

[84] ANI reports that some amendments that were adopted without consultation of ANI have affected files pending before the courts.

with any uncertainty likely to give rise to litigation, but also the need for stability and for ANI itself to be fully involved in any legislative reform. The Ministry of Justice have confirmed these objectives but expressed caution about any immediate plans to consolidate the integrity framework.

The amendments to the Criminal Code adopted by Parliament in December 2013, declared unconstitutional by the Constitutional Court in January 2014, would have diluted the effectiveness of the integrity framework.[85] The Parliament has not revived the proposal.

In the course of 2014, there were two sets of amendments proposed in the Senate on the issue of whether conflict of interest or incompatibility should apply only to the specific office held at the moment that the transgression was established. One of these was proposed whilst CCR consideration of this issue was pending, one when the CCR had already ruled on the issue, so both appeared to constitute a proposal that Parliament could override a CCR decision.[86] The Ministry of Justice has been clear that it opposes both amendments.

2.2. Integrity and the Romanian Parliament

Two important issues have been regularly raised in previous CVM reports concerning the approach of Parliament to integrity issues.[87] The first has been the procedures for the lifting of parliamentary immunity with respect to search, arrest and detention. The second has been the automaticity with which Parliament implements final court judgments, and an apparent tendency in Parliament not to consider court rulings as automatically binding, notably those which have upheld decisions of the National Integrity Agency. In this respect, principles of clarity and automaticity have been regarded to be core elements which help to avoid subjectivity in parliamentary actions. Some hopes had been expressed that work on the law on the Statute of Deputies and Senators and the Code of Conduct of MPs would have addressed this issue. More broadly, it is also the case that there are no provisions in Parliament to exclude parliamentarians who have been convicted of criminal offence – so that a parliamentarian convicted of corruption, but with a suspended sentence, can continue to sit in Parliament as before.

ANI continues to report problems with the follow up of its incompatibilities decisions, in particular by the Parliament, even when those have been confirmed by the HCCJ. For example, a ruling by the CCR in July 2014 settled the interpretation of the concept of "same office", but Parliament did not proceed to automatically suspend the parliamentarian in question. The CCR ruling would have been expected to have settled the question definitively. Although the specific cases are now no longer pending (see above), there will be new tests for the Parliament's actions, as there are over 40 parliamentarians found incompatible by ANI for whom court decisions are pending.

Parliamentary and ministerial immunity with respect to search, arrest and detention

There had been hopes that new Statute of Deputies and Senators adopted in July 2013[88] would have introduced a more systematic and consistent approach, in line with the principle of equality before the law. However, 2014 continued to be characterised by delays in the approvals and refusals given to requests from the prosecution to lift the immunities of MPs. During 2014, DNA prosecutors requested the Parliament for approval for the pre-trial detention of 8 Deputies and 1 Senator, who had been charged with corruption offenses:

- 5 requests were denied (4 by the Chamber of Deputies, 1 by the Senate);
- 4 requests were admitted by the Chamber of Deputies.

[85] COM(2014) 37 final
[86] In the second case, one of the parliamentarians supporting the amendment was also a government Minister.
[87] COM(2014) 37 final
[88] Law no. 96/2006 (r2), of 21/04/2006 regarding the Statute of Deputies and Senators, republished in Monitorul Oficial, Part I no. 459 of 25/07/2013,

12 requests were also made for approval to investigate one Minister and 11 former Ministers for corruption offenses:

- 2 requests were addressed to the Chamber of Deputies, one was accepted, the other denied;
- 2 requests were admitted by the Senate;
- 7 requests were admitted by the President of Romania;
- One request has been pending since September 2014 at the European Parliament.

CVM reports have also pointed to the need for motivation of these decisions.[89] The criteria on which requests are accepted or rejected remain unclear and are not communicated to the prosecution.

November 2014 saw a number of pending requests being granted: the preventive arrest of three members of the Chamber of Deputies, and two requests for the approval to investigate former ministers who are also members of the Senate.

Upon request of the Ministry of Justice, the General Prosecutor's Office commented on proposals to speed up and to increase objectivity in parliamentary procedures on amending article 24 of the Law no. 96/006 on the Statute of Deputies and Senators and articles 13-15 of the Law no. 115/1999 on ministerial responsibility and the Rules and Regulations of the two parliamentary chambers.

At the same time, the Draft Law on amnesty and pardon was rejected by the Chamber of Deputies. When first adopted by Parliament in December 2013, this was seen as a risk to the pursuit of corruption crimes, in opening the door to giving an amnesty to those convicted of such crimes.

3. TACKLING HIGH-LEVEL CORRUPTION

Corruption is a deep-seated societal question with consequences for both governance and the economy. It remains a major issue in Romania, as evidenced by several perception surveys. According to a recently published Eurobarometer survey, at least nine out of ten respondents in Romania said that corruption (91%) was important problems (stable since 2012).[90] However, recent CVM reports have also been able to point to a growing track record in terms of investigating, prosecuting and deciding upon high-level corruption cases.[91]

3.1. High Court of Cassation and Justice (HCCJ)

The High Court's track record on tackling high-level corruption cases has been maintained throughout 2014, with a scale of cases for 2014 comparable to 2012 and 2013 figures. Between January 1 and December 31, 2014 the Penal Chamber settled, as first instance, 12 high-level corruption cases and the Panels of 5 judges settled, as final instance, 13 high-level corruption cases. There are also a few cases pending in the panel of 5 judges, all registered in 2014. Even in cases with a high number of witnesses and complex evidence, the HCCJ has underlined its efforts to ensure respect of procedural rights for all parties. Amongst the high profile defendants convicted were those who had served in the positions of Prime Minister, Ministers, Members of Parliament, judges and prosecutors.

Amongst the emblematic cases still pending, a verdict is expected by mid-2015 in a large case of suspected electoral fraud to the 2012 referendum, with 78 defendants (3 of them having already admitted guilt), and about 550 witnesses (notably elderly people whose signatures were allegedly

[89] COM(2014) 37 final and COM(2013) 47 final
[90] Flash Eurobarometer 406. This finding is also corroborated by the 2014 Transparency International Corruption perception Index: http://www.transparency.org/cpi2014/results
[91] COM (2012) 410 final; COM (2013) 47 final, COM (2014) 37 final.

forged). Other ongoing cases handled by the criminal section of the HCCJ relate to Deputies, Senators, ex-Ministers, MEP and magistrates.[92]

The HCCJ has also reported improved cooperation amongst institutions. The entry into force of the new Criminal Codes was managed without generating problems or loopholes in ongoing procedures in cases of high level corruption, notably with the application of the principle of the most favourable law and the possible implications for prescription periods. The HCCJ is satisfied that these issues have now been resolved by the CCR.

The new codes have also introduced a very clear definition of corruption offenses. Sanctions have been reduced for first offender (following a general trend introduced by the new codes), but strengthened in case of repeated or cumulated offences. The general trend of a rather high percentage of suspended sentences in Romania is less obvious for decisions at the level of the HCCJ's decision, with some considerable custodial sentences (up to 7 years) having been applied.[93] Possibilities for appeal have also been limited (only appeal and cassation, no additional recourses), which is a welcome development. According to the HCCJ, the overall number of corruption cases reaching the court is increasing. This trend, also highlighted by other institutions, tends to demonstrate on the one hand the scale of the problem in Romania, but also on the other hand that more cases are reported or detected and brought to justice.

A few cases of corruption have been discovered in the ranks of the HCCJ itself. The HCCJ has measures in place to try to combat this, including the random allocation of judges to panels. Judges fearing a potential conflict of interest must file a request for abstention.

3.2. The National Anti-Corruption Directorate (DNA)

3.2.1. Legal Framework

An important change for the anti-corruption institutions, DNA included, has been the entry into force of the new criminal codes 1 February 2014. DNA was attentive to the risk that the new rules would hamper their effectiveness, and raised a number of issues for proposed amendment (see above).

As a follow-up to the European Union Court of Justice ruling on the Data Retention Directive, the CCR considered that the Romanian law did not provide sufficient guarantees. As a consequence, DNA faced reduced access to data held by telephone operators. Discussions are ongoing to find the right balance between criminal investigations and fundamental rights in this case (see above).

Another important CCR decision came with a ruling that provisions of the Criminal Code regarding judicial control were non-constitutional, as they did not set time limits for judicial control measures. To prevent the risk of a legislative vacuum when the CCR ruling started to be applied, the government introduced an emergency ordinance modifying the provisions to include time limits (see above).

DNA has also expressed satisfaction with the change in its scope to exclude prosecution of less important cases. [94]

3.2.2. Institutional capacity

DNA has reported good cooperation with the HCCJ, ANI, SCM, police and the Ministry of Justice. DNA obtained reinforcement of its investigative capacity with an extra 50 posts for judicial police, 35

[92] Including a former SCM judge indicted for abuse of office and a former judge of the HCCJ criminal section indicted for divulging matters of national security.
[93] The overall figures provided by Romanian authorities are that 32% of sentences relating to cases brought by DNA are with detention. The rate is 20% for corruption cases handled by the Public Ministry. The rest are suspended sentences.
[94] SWD(2014) 37 final, p.30.

of whom will be devoted to financial investigations inside a new department was also established to deal with financial investigations, damage recovery and extended confiscation. This will contribute to the enforcement of court rulings in cooperation with the fiscal administration. Only a legislative change would enable DNA to act directly, for example by selling directly frozen assets.

The Commission visited the Cluj-Napoca DNA local branch, where a small team (5 prosecutors supported by specialised police and DNA central office when needed, for example for cases implying international cooperation, and by the SRI) have nevertheless been able to establish a substantial track record. Cluj-Napoca DNA local branch have been involved in cases involving the President of the County Council, a mayor, politicians, key figures in the field of education (Deputy County Inspector, a headmaster…) and high profile business figures.

Cooperation between DNA and DIICOT is an important feature and possible conflicts of competence are handled pragmatically, with the institution who first received the complaint taking the lead, with a possibility for the General Prosecutor to arbitrate if needed.

3.2.3. Track record

DNA maintained its track record on conducting investigations of high level corruption cases throughout 2014. This is also reflected in an increase in public trust[95] but also more notifications being received from citizen.[96]

In 2014, DNA registered 4987 new cases, which is a very sharp increase compared to 2013.[97] 246 cases were sent to trial, regarding 1167 defendants, 47 of these defendants were indicted with plea bargain agreements.

Amongst the high profile defendants, DNA has indicted 8 Members of Parliament, 2 County prefects, 7 presidents of county councils and 21 mayors (from different political parties). 23 judges have been indicted (including four HCCJ judges) as well as 6 Chief prosecutors and 6 prosecutors (the approval of the SCM is necessary for search and arrest. It has been granted in all cases). According to DNA, this high figure reflects not an increase of corruption within the magistracy, but an improvement in the capacity of DNA to find such cases and in the willingness of citizens to come forward. Such cases are complex and a new special DNA unit has been established to deal with them.

During the reference period, 335 final conviction decisions were ruled in corruption cases against 1138 defendants (this is a slight increase compared to 2013) and 47 final acquittal decisions for 138 defendants, of whom for 7 defendants the acquittal decisions was ruled following the decriminalisation of the offence and for 3 defendants the court ruled the application of an administrative fine. Amongst the high profile defendants convicted were those who had served in the positions of Prime Minister, Ministers, Members of Parliament, judges, prosecutors and mayors. DNA has secured convictions in a high proportion of cases (the acquittal rate is 7.9% for DNA cases).[98]

DNA has paid special attention to the asset recovery component of each individual case. In order to recover the damages caused by the offenses for which the cases had been sent to court during the reference period or to ensure the confiscation by the court of the illicit proceeds, prosecutors ordered ensuring freezing measures for sums of money and goods worth around €200 million. Amongst these assets are 416 real estate properties and 93 cars. In the cases with final conviction decisions during the reference period, the courts ruled the confiscation of the total sum of approximately €30 million, as

[95] 55.8% of citizen trust, according to DNA.
[96] According to DNA, 32% of notifications come from citizen and 17% are ex-officio cases, including information received from SRI.
[97] 3793 cases between January and November 2013.
[98] For the general prosecution the acquittal rate for corruption cases is 4.8%.

well as of a large number of movable goods. Compensations ordered to civil parties amounted at €274 million.[99]

4. TACKLING CORRUPTION AT ALL LEVELS

4.1 The extent of corruption

The perception that corruption remains a deep-seated problem in Romania is confirmed not only by opinion polls,[100] but by experts in the field. For example, prosecutors taking part in the 2014 edition of the National phase of the Anti-corruption competition, which brings together prosecutors from across the country, made a distinction in attitudes towards high-level corruption and low level corruption – a phenomenon which was seen as broadly tolerated by society at large.

Successive CVM reports have pointed to the need for determined and sustained efforts at all levels. In the CVM report of January 2014, Romania was invited to step up efforts in the prosecution of low level corruption, but also upstream, through implementation of measures related to prevention and education.

On the side of the prosecution, more priority has been given to corruption. 337 indictments for corruption offences were drawn up in 2014, for which 956 defendants were sent to trial. This represents a substantial increase in the number of defendants – of over 80%. A total of 2416 cases were solved, an increase by 4.55 % compared to the similar period of the last year[101]. Provisional arrest was applied to 103 persons.[102]

There was also more targeting. In priority domains (complex cases) – such as defrauding the health, social or education insurance systems – there was an increase in the number of investigations in relation to offences of passive corruption (bribe-taking), up from 784 of the cases solved to 1278. The offences provided by the Law no. 78/2000 – corruption offences or offences assimilated to corruption, committed by / in connection with public servants having special qualities under the law, counted 421 cases. Concerning economic offences, the value of the assets from tax evasion[103] and money laundering[104] (including the DNA and the DIICOT), for which provisional measures were issued, amounted to around €96.6 million.

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[99] However, collection of sanctions generally remains a problem in Romania – see below.
[100] See above
[101] Throughout the similar period of the year 2013, 240 indictments were issued in relation to 451 defendants. In the same period of the year 2012, 211 indictments were issued in relation to 367 defendants.
[102] The defendants sent to trial for corruption offences included: 58 members of medical staff and pharmacists, 17 teachers, 7 mayors, 2 vice-mayors, 6 local counsellors, 36 local/judicial police agents, 11 border police agents, 4 ISU SMURD (Inspectorate for Emergency Situations - Mobile Emergency Service for Resuscitation and Extrication) workers, 1 bailiff, 2 labour inspectors, 7 public servants releasing driving licenses, 1 APIA (Payments and Intervention Agency for Agriculture) civil service clerk, 1 ITP (Periodical Technical Inspection) technical inspector, 4 penitentiary public servants, 2 ANAF (National Agency for Fiscal Administration) servants, 1 ranger, 70 other public servants, 3 legal persons, others.
[103] In 2014, 1492 indictments were issued in cases dealing with offences of tax evasion (1447 indictments drawn up in 2013), with 1826 defendants sent to trial. The actual prejudice recovered amounts to approximately €136 million (up from €113 million over the same period in 2013).
[104] In 2014, 74 indictments were issued in cases dealing with offences of money laundering, by which 499 defendants were sent to trial (424 natural persons and 75 legal persons), a rising trend compared to last year (261 defendants sent to trial in 2013 in 59 cases).

4.2 Corruption prevention

4.2.1 National Anticorruption Strategy (NAS)

Under the National Anticorruption Strategy 2012-2015, the Ministry of Justice launched the second round of thematic evaluations at central and local level. Centered on peer review, the concept is based on GRECO and OECD practices. The 2500 institutions which adhere to the NAS commit to observing a set of 13 legally binding preventive measures and to submitting themselves to the peer review. This has brought some first results on how the preventive measures are being implemented in practice by public institutions at central and local level as regards incompatibilities, transparency and codes of ethics, though such initiatives often face reticence from institutions to be overly critical of each other.

At local level, implementation of sectorial plans has identified several good practices developed by municipalities.[105] In addition, the Ministry of Justice carries out a regular follow-up regarding the implementation and improvements, with 2 systems, on-site and self-evaluation. The follow-up seems to show involvement from the institutions and active participation.

In October 2014, the Ministry of Justice organised the Annual Anticorruption Conference, on "*Best practices in preventing corruption, promoting integrity and transparency*".[106] Education in the anticorruption area has been included in several Ministries' specific sectorial plans[107]. The National Integrity Agency organized 12 training sessions for 326 persons at national level and 20 seminars attended by 400 persons.

A study is also underway to identify the triggers for corruption. It will be performed as a joint project between the Bucharest and Amsterdam law schools and is based on a survey of 250 persons in custody or in the probation service for corruption offenses. According to DNA, lessons should also be learned from successful cases to identify corruption patterns and risk areas.

4.2.2 Institutions

As well as the Ministry of Justice, other key actors in the fight against petty or lower profile corruption are the general prosecution services and the Anti-corruption General Directorate (DGA) in the Ministry of Interior Affairs. Cooperation is of critical importance to the success of the different agencies dealing with anti-corruption. The DGA has pursued its track record for fighting corruption within the Ministry of the Interior, but also in support of DNA and of the General Prosecution. The DGA has a hotline which is available to citizens free of charge to report corruption offenses, and has proposals to turn this into a call center and link it to the prosecution.

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[105] 30 assessment reports have been completed, focussing on incompatibilities, conflicts of interest, asset declarations, transparency and ethical codes. Issues touched on include the identification of sensitive functions or to the definition of the profile and of the mandate of integrity advisers.

[106] The general aim of the conference was to increase the knowledge and visibility of the measures to prevent corruption. Specific issues covered included corruption in public procurement and in the management of public funds, awareness campaigns, and increasing transparency by public open data. The event was attended by representatives of all public institutions involved in NAS implementation, Parliament, Government, judiciary, as well as partners from the business sector and civil society.

[107] Ministry of Foreign Affairs, Ministry of National Defense, Fight against Fraud Department (FAFD), Court of Accounts, Ministry of Regional Development and Public Administration, Minister of National Education. As an example, the Ministry of National Education held training sessions on ethical norms and norms of conduct which in the end involved over 10,000 staff.

This track record lay behind a proposal to extend the DGA's mandate made through a government emergency ordinance in 2013.[108] This would have extended the remit of DGA across the public sector. However, this ordinance was reversed by a law in Parliament. Statistics show that in the 7 months during which DGA enjoyed an extended competence, notifications relating to possible corruption of public officials in other ministries grew – and declined again when the decision was reversed.

At institutional level, DGA carried out information and training activities with priorities set for the areas most vulnerable to corruption.[109] An anti-corruption course "Preventing and countering corruption" was held jointly with the Institute for Studies and Public Order.[110] An example of specific action was the distribution of some 300,000 leaflets at border crossing points. A new Anti-corruption Guide was also launched to mark International Anti-corruption Day on 9 December. An increase of cases of corruption being raised by the public suggests greater confidence in anti-corruption measures. Statistics also show a decrease in the number of people who admit having been asked to pay a bribe.[111] Cases are reported in the media, acting as a deterrent. An electronic application has been set up with EU funds to collect information on risks and vulnerabilities and identify repetitive patterns (for example, when the stealing of goods has been reported in an institution, similar institutions will be subject to an audit).

Under the National Anti-Corruption Strategy, all Ministry of Interior employees take part to training activities at least every three years. Integrity tests are also performed. According to DGA, out of 100 tests performed on traffic police, 3 led to negative results. There are also cases of policemen refusing bribes and reporting the bribe attempt to DGA – there is also a leniency clause for policemen reporting corruption before the offense is discovered.[112] The overall number of cases of corruption amongst border guards and traffic police is declining after having reached a peak in 2010.

4.2.3 Role of civil society

Civil society in Romania continues to play an important role in the fight against corruption, both by documenting and highlighting the problems and by providing support and expertise to concrete anti-corruption projects. The DGA implemented the project "*Development of the civil society involvement in drafting, implementing and assessing anticorruption policies*", co-financed by the European Commission. This involved a number of NGOs specialized in anti-corruption and public policies.[113] This project is seen as a bridge with NGOs, in line with the National Anti-corruption Strategy.

The results of the project are presented in an assessment report on the collaboration between NGOs and public institutions in the field of anti-corruption and best practices manual on cooperating, with positive examples in this field developed in Romania, Bulgaria, the Netherlands and other EU Member States.[114] Specific examples include:

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[108] Governmental Emergency Ordinance no. 59/12.06.2013

[109] Examples of groups identified were police units responsible for Criminal Investigations; those in charge of Detainment Centres and Preventive Arrest; Civil Emergencies units; personnel from hired from external sources; and personnel within the Bucharest public order and traffic police.

[110] This focused on how to identify the possibilities to prevent, discover and sanction corruption deeds, training of target groups; and morality and ethics in preventing and countering corruption.

[111] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_romania_factsheet_en.pdf

[112] There have been 23 case of guilt admission declaration since 1 February 2014.

[113] Expert Forum, Freedom House, Pro-Democracy Association, the Center for Independent Journalism, the Institute for Public Policies and the Association for Implementing Democracy, as well as anti-corruption experts from the Center for the Study of Democracy (Bulgaria) and Saxion University (the Netherlands).

[114] http://www.mai-dga.ro/downloads/SSPA/EN_Asessment%20Report.pdf

- the "bribe market website" (*Piața de șpagă*[115]) initiative. This aimed at informing users of the possibility to obtain public services and/or utilities without paying bribes and gathers information on the scale of bribes. Based on user reported data, the project estimates that €1 bn/year is paid in small bribes in Romania.

- the Initiative for a Clean Justice organised seminars on the key issue of relations between magistrates and media,[116] in the context of the publication by SCM of the guidelines between the media and judiciary.

- the project "Combatting fraud in public procurements" organised a series of seminars, training 122 magistrates, as well as many police officers and financial investigators.

- a public debate on the Parliament's Code of Conduct, including developing ideas on exactly when parliamentarians should abstain from voting due to a conflict of interest.

4.2.4 Media

The media also has an important role in raising awareness about corruption, as well as identifying specific cases. A project called "*The Public procurement files*"[117] was launched in April 2014[118], to raise awareness of public procurement corruption and to identify the loopholes used. The results have been used in prosecutions involving prejudice of several millions euro. It has also brought to light specific practices which can help to identify or dissuade other cases.[119]

4.3 Investigation – prosecution and court practice

Low level corruption is notoriously difficult to measure in a systematic way, and appreciations tend to rely on summaries by experts looking at the field – for example, that there are fewer reports of bribes being asked by traffic police, or that "informal" payments in the field of health and education remain a major problem. The General Prosecutor has made the fight against "petty corruption" a priority, including using the tool of asset forfeiture. He also brought together prosecutors in September in the national phase in an anticorruption competition to increase awareness and exchange best practice.

4.3.1 Prosecution services throughout the country

According to Prosecutor General, the entry into force in February 2014 of the new Criminal Codes limited activity in the first half of the year, but this was stepped up from the summer. For instance, from July to September, there were 78 cases of petty corruption where 183 defendants were sent to trial. In the same period, seven cases dealt with conflict of interest, 500 with tax evasion, 126 with

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http://www.mai-dga.ro/downloads/SSPA/EN_Best%20Practices%20Manual.pdf

[115] www.piatadespaga.ro ; Given that perception of corruption is quite high in Romania, but hard data concerning the exact price of bribes is almost non-existent, the project draws on the previous experience in India (ipaidabribe.com) and Europe (bribespot.com), adding an innovative element regarding competition among prices and satisfaction regarding quality of service.

[116] http://www.freedomhouse.ro/index.php/stiri/evenimente/item/332-procurorii-si-presa

[117] http://www.hotnews.ro/achizitii_stiri

[118] The platform was launched as part of the project "Fighting Public Procurement Criminality. An Operational Approach", coordinated by Freedom House Romania Foundation, with important institutional partners in Romania, France and Germany.

[119] Other websites which cover corruption issues in detail are http://anticoruptie.hotnews.ro/ and www.romaniacurata.ro

money laundering[120] and 200 with contraband and more than 10 legal persons had been indicted.[121] The number of low level corruption cases finalised by courts declined in 2014.[122]

It appears from the cases presented during the national anticorruption competition in September 2014 that the term of "petty corruption", whilst being understood in contrast to high level corruption (involving senior officials) covers very different realities. Sometimes it refers to small amounts of bribe being asked by low ranking officials, sometimes very substantial amounts of money linked to elaborated fraud schemes (for example, for the issuance of fake invalidity certificates on a large scale or fake prescriptions). These repetitive cases may be particularly suited to ex ante identification through risk assessment. For example, obligations of assets declaration could cover sensitive functions (such as in the above mentioned case of issuance of certificates) currently excluded and be subject to a stricter check against illicit enrichment. This would also point to a need for more systematic analysis of corruption patterns linked to audits or inspection in similar structures.

Measures to make corruption less straightforward are also an important element. The General Prosecutor has highlighted the benefits of putting a ceiling on cash transactions (for example, in one case the proceeds of corruption were used to buy a number of properties, facilitated by the use of cash). The Ministry of Finance is considering legislating on this issue.

4.3.2 Confiscation and asset recovery

As already highlighted in previous CVM reports, effective confiscation and asset recovery is a key element in the effective dissuasion of corruption and in illustrating an effective anti-corruption regime to the public.[123] The recovery rate to ensure that decisions of the courts with financial consequences accrue to the public purse still remains very low, around 8% of assets notified by Courts. The prosecution is in charge of proving the illegal source of an asset,[124] but the responsibility for the execution of the court orders rests with the financial institutions. According to the Asset Recovery Office under the Ministry of Justice (ARO), the 8% figure relates to old files and with the new legislation on assets forfeiture in place, results will improve. There has also been an increase of frozen assets in 2014 which should carry through into recovery. The National Agency of Fiscal Administration (ANAF) also reports a significant increase of its activity in 2014, with the amount of confiscated money having doubled. New provisions of the Criminal Codes might provide help.[125]

The problem of final execution of recovery orders is acknowledged by the institutions involved and there is a common understanding on the need for legal provisions to make the procedure more efficient. One of the problems is a shortfall in statistical data, for example reporting on the execution of sentences implying confiscation, despite the efforts ARO, essentially a monitoring body. An important distinction here is the difference between the recovery of damages by the state and the

[120] The value of the assets for which provisional measures were taken in cases dealing with offences of money laundering amounts to approx. 95 million euros, a rising trend compared to the same period of the year 2013, when seizures in amount of approx. 40 million euros were ordered.

[121] A field visit to the prosecution in Cluj-Napoca in September gave an example of the variety of cases being handled, with cases of corruption concerning bribes under 10.000€ and fraud to public procurement up to 200.000€. Other cases were reallocated to DNA, as well as those concerning high level officials. Many corruption cases related to the education and health sectors, but two major cases involved the head of Cluj police and his deputy.

[122] According to the data centralized by the Public Ministry, in the period 1 January 2014 – 31 October 2014, 120 decisions – concerning 186 persons – in the matter of corruption offences stayed final. In the same period of the year 2013, 158 decisions stayed final, with regard to 218 persons.

[123] COM(2012) 410 final

[124] The Romanian Constitution includes a presumption of legitimate ownership, so the burden of proof is on the prosecution

[125] New provisions allowing for the sale of assets if any Court verdict within a year has not been used so far; DIICOT used provision of the Criminal Code allowing for the appointment of a manager for frozen assets.

confiscation of assets found in the course of the criminal procedure. It still seems that the public authorities responsible for recovering these damages only rarely pursue the cases. ARO intends to gather all statistics from all institutions and develop an IT application.

There seems to be a particular issue with those in charge of the execution of Court decisions, and their apparent reticence to pursue to the end action to seize and recover the assets for which an executory title has been issued – in spite of the obvious implications for public finances. Whilst ANAF has a particular role here, there are many exceptions (for instance, Romsilva for forest cases). In cases of fraud affecting the financial interests of the EU, defrauded money has to be refunded after a financial correction is imposed by the management authority. But this comes from the state budget, without necessarily being compensated by those committing the fraud.

There are also a wide variety of practical issues to be addressed. For example, whilst seizure of cash is relatively straightforward, seizure of property or assets like cars is more complicated. These continue to be used by the indicted persons until there is a court verdict, which then need to be executed by ANAF. Another problem is that assets like cars depreciate relatively quickly in value. For perishable goods, a procedure for pre-emptive conversion into cash is foreseen in the new criminal code – though with restrictions.[126] DIICOT has started to use this procedure and will help to train other prosecutors and judges. DIICOT has also been using new provisions allowing for the appointment of an interim management for frozen assets.[127] There are however issues like disposing of property in difficult market conditions.

As for extended confiscation, ANAF intervenes to execute the court rulings or during the trial if extended confiscation measures have been taken. Even if it exists since 2012, extended confiscation still remains a relatively rare procedure and measures to increase awareness and training do not yet seem to have carried through into action.

One of the difficulties frequently cited has been a proliferation of institutions involved in this area. In December 2014, the Ministry of Justice approved a memorandum for the creation of an Agency dedicated to the administration of assets seized in criminal procedure cases. The Agency will be under the authority of the Ministry and will manage the activities performed currently by several different institutions. It is in particular designed to bring a more systematic approach to handling and valuing the confiscated goods. The new structure should become operational by end of March 2015, with 30 posts.

Finally, to underline the political priority of the fight against corruption and asset recovery, as part of the South-East European Cooperation Process Chairmanship in Office, Romania promoted a regional declaration of ministers on the issue. More generally, on asset recovery, ARO continued to register an increased level of exchanges of data and information with EU counterparts and other specialized international networks. Several projects aimed at disseminating good practices in the area of asset recovery are also implemented with relevant stakeholders.

4.3.3 Sentencing

The fact that corruption offences such as bribery are considered part of social reality is perhaps reflected in the nature of sentences. Custodial sentences for corruption remain the exception. In 2014, less than 21% of those convicted for corruption received a custodial sentence (48 out of 225), [128] 70

[126] For cars, there is a need to wait for a depreciation of 40% or a period of one year before being able to sell, except if the owner agrees.

[127] For example, one hotel in Bacău to be managed until a ruling on an organised crime case decides whether it will be confiscated

[128] In the same period of the previous year, the percentage of the convictions with execution was almost identical (17 %). The fact that a comparable proportion of suspended sentences for an offence like burglary, for example, is 50%, could suggest that judges continue to view corruption with more leniency than other crimes.

defendants convicted with conditional suspension (31 %) and 107 defendants convicted with suspension under supervision (47%). For example, a custodial sentence was applied to 21 out of 54 convictions for bribe-taking (with a minimum 1 year sentence, maximum 3 years and 6 months), 12 out of 44 convictions for bribe-giving (with a minimum 8 months sentence, maximum 5 years), and 8 out of 57 convictions for trading in influence (with a minimum 1 year and 3 months sentence, maximum 4 years).[129] As for the offences of conflict of interests, in 2014, 350 files were solved, a court of law being notified in 45 cases. 48 defendants were sent to trial, including 7 deputies, 10 mayors, and one President of county council.

4.4 Tackling corruption in different sectors

4.4.1 The magistracy

As set out earlier in this report, the SCM continued in 2014 to take measures against corruption within the judiciary.[130] It has voiced a more explicit policy of non-tolerance for offences. The work in this area of the DNA, the HCCJ, and the Judicial Inspection is set out above.

4.4.2 Healthcare

Corruption in the health sector appears to be widespread. The practice of informal payments is still frequent, especially in smaller towns or villages, and therefore is difficult to eradicate. The Ministry of Health and the Association for Implementing Democracy in Romania undertook a perception survey in February 2014.[131] It reveals that more than two thirds (68%) consider that the level of corruption in the public health system is high and very high, and one fifth of people admitted giving informal payments.

In the area of health, corruption is addressed on two levels: higher level corruption[132] – in the field of public procurement – and petty corruption in the field of informal payments for medical services. Projects in both areas have been pursued in 2014. For tackling the specific problem of public procurement in the health system, the Ministry of Health has looked at monitoring the spending of public funds by the public health units through a portal.[133] In addition, a platform to monitor public procurement and the contracts carried out by public health units and a portal to monitor the conflicts of interests is under way.

Currently, public procurement is centralized at national level for the main products (equipment, vaccines etc.). In 2014 six procurements were made and they will generate, over time, budget savings of 20%, framework agreements being signed during the year. Another 13 centralized procurements are on-going. Expenses are also monitored and when deficits are found, they can highlight anomalies. It is intended to put in place a methodology according to which the hospitals will report the procurement

[129] Figures for maximum sentences were also broadly comparable in 2013 (4 years for bribe-taking, 3 years 4 months for bribe-giving, 6 years for trading in influence).
[130] Decisions for approving preventive measures for corruption offences during 2014 (solicitations for custody for 7 judges and 6 prosecutors; for preventive arrest for 13 judges and 7 prosecutors; for preventive domiciliary arrest for 9 judges and 8 prosecutors) and suspension from office have been decided (5 judges and 6 prosecutors due to preventive arrest; 13 judges and 2 prosecutors due to arraignment).
[131] http://www.aid-romania.org/comunicat-de-presa-2/
[132] As regards higher level corruption, the Ministry of Health identified three priority areas: 1) monitoring the spending of public funds in public hospitals – identifying risk areas; 2) proposal to monitor public procurement - identifying risk areas in public procurement; 3) proposal to monitor the risks for conflicts of interests for the management positions in the health system.
[133] Spending was monitored for 2 years and controls and verifications were carried out by the Ministry of Finance.

procedure, to enable to evaluate the performance of contracts. However, staffing constraints seem to limit the potential of these measures to effectively detect and prevent corruption.

As a first step towards attempting to curb informal payments, a system of feedback mechanism for patients is now being tested. Ethical Councils in hospitals are not yet functioning, but a methodology for their operation is now being developed. They will be tasked with the analysis of patients' report of possible ethical breaches and deeds of corruption. They will not have the power to investigate criminal offenses but will be tasked with sending relevant information to the prosecution. Another element is the issuance of an electronic health card that will register all consultations and prescription, which would also help highlight abusive/fake consultations or prescriptions. Civil society has proposed other elements to curb informal payments,[134] also noting the issue of remuneration for medical staff in public hospitals. Cases have also pointed to the need for proactive risk assessment – one case of repetitive bribe-taking was successfully exposed following a signal from the public, but the fact that it has led to unexplainable patterns in spending (on disability payments) had not been picked up.[135]

In addition, the HCCJ established in December 2014 that any doctor employed in a Health Minister's unit is considered a public official and is thus punishable according to the Criminal Code for bribe taking.

4.4.3 Education

In the education sector, the main problem has been the corruption related to exams, especially during the baccalaureate national examination. Cases have included leaking the content of the examination papers, and turning a blind eye to cheating. There is an on line portal where persons can introduce complaints and which guarantees confidentiality. 2014 has seen a decrease in the number of complaints, and this may be the consequence of using video recording for examinations, which seems to have been a useful preventive measure.

2014 has seen a number of convictions for corruption offences in this area, including personnel with senior management responsibilities within the Ministry of Education. During the past year, training was provided for the head of educational institutions and a Code of ethics had been introduced, which would include forbidding teachers to give after-classes to pupils from their own classes. An agreement with the SCM and the Ministry of Justice has allowed for anti-corruption to be added to the school curriculum.

Another identified risk area is university level.[136] Institutions are not required to appoint external assessors when making decisions in view of conferring degrees, a standard practice in many countries.

4.4.4 Public procurement

Romania faces persistent shortcomings in public procurement. Issues identified include a combination of several factors touching upon the capacity of public purchasers, the lack of stability and the fragmentation of the legal framework, the institutional system and the quality of competition in public

[134] http://www.romaniacurata.ro/bolnavi-dar-corupti/?utm_source=newsletter&utm_content=Newsletter-157542-20141206&utm_campaign=B%C4%83g%C4%83m+medicii+%C8%99i+bolnavii+%C3%AEn+pu%C8%99c%C4%83rie+sau+facem+ceva%3F

[135] A physician employed as a medical inspector at the Ministry of Social affairs had taken bribes to give false certificates of disability. The average bribe amounted to around €50. In this case more than €960,000 was recovered from his home.

[136] One involved a university professor who had, in return for cash payments, awarded highs marks to degree theses which he has actually written himself using material plagiarised from the dissertations of students in previous years.

procurement. A high percentage of procedures of public procurement are subject to complaints. There is a general perception of high levels of corruption, fraud and conflict of interests. Civil society observers have noted major differences in the number of cases identified and pursued in different parts of the country and by various agencies; authorities at local level being particularly affected by the lack of transparency in the allocation of public funds to public procurement projects, and the risks of corruption in awarding public contracts at the local level being substantial.[137] Concerns also exist regarding the capacity and the degree of expertise of staff dealing with public procurement procedures, at both national and local level. On one hand, the number of public procurement professionals seems to be insufficient compared to the workload in this area, leading to inadequate tender documents, triggering complaints from economic operators and making the evaluation and the execution of the contracts difficult. The repeated use of exceptions affects the transparency and openness of the market and creates the potential for corruption. According to the national public procurement agency ANRMAP, it is impossible to assess all the technical specifications (which can be a way to manipulate contracts) as there are too many of them. On the other hand, the remuneration of public procurement officers is very low in comparison to the value and complexity of the contracts they are supposed to process or to verify. Wages for staff dealing with European funds are planned to be increased, as from 1 January 2015.[138]

The existence of manuals, guidelines and other tools of good practice seem to be becoming more widespread in administrative bodies and training is given to the personnel dealing with public procurement files, including by NGOs. In addition, the system for ex ante checks being developed by the National Integrity Agency ("Prevent") should help to prevent and detect better particular types of transgressions such as conflicts of interests. On the remedies side, the National Council for Solving Complaints (CNSC) receives complaints on public procurement. It acts as an efficient filter in preventing a substantial number of irregularities in public procurement procedures, both in the case of national and of European funded projects. In case of suspicion of fraud, CNSC may refer the cases to the prosecution. However, problems remain with overlapping responsibilities (e.g. in the field of ex-ante control), insufficient inter-institutional cooperation, and checks and balances leading to inconsistent interpretation of legislation and conflicting decisions of the public procurement authorities. It remains difficult to cancel contracts that have been concluded despite a conflict of interest, especially if they were already (partially) executed.

The definition of conflicts of interest in Romanian law will also have to be updated with the transposition of the new EU Directive on Public Procurement, which has a broader definition (not limited to family and business relations), leading to a necessary fine-tuning of existing preventive measures. In cooperation with European Commission services, Romania has recently started to develop an overarching public procurement strategy and action plan which should be delivered by end June 2015. The related actions and measures should be implemented by the end of 2016.

From the prosecution side, public procurement was identified as a major risk factor in an exercise of local strategies to fight corruption that were elaborated for prosecution units. As part of its specialised trainings, the Public Ministry has conducted an analysis of judicial practice in the matter of public procurement as regards offences investigated by non-specialised prosecutor's offices. This analysis was distributed to prosecutor offices as a best practice model for establishing certain legal qualifications in cases under investigation.

[137] This is corroborated by the risk analysis for fighting corruption at local level conducted by the prosecution, showing that corruption cases at local level relating to public procurement concern mostly mayors, but also deputy mayors, local counselors, and others working for public administration.

[138] http://legestart.ro/cresc-salariile-persoanelor-care-lucreaza-pe-fonduri-structurale-ce-modificari-aduce-legea-nr-702014/ .

4.4.5 Management of EU funds

From the complaints related to public procurement in Romania, almost 40% of the complaints are about public procurement contracts financed by EU funds, as stated the latest report of the CNSC. The share of EU funded projects involved reflects their very high share in public investment and hence in tendering procedures.

At a local and regional level, according to the Cluj-Napoca DNA branch, frauds related to large projects benefiting from EU funds rarely concern the entirety of the project, but parts of it. As an example approximately 20 to 30 serious cases are discovered each year only in this region.